

*Referred Case.*1870.  
August 2.

CHOTA'LA'LE JAMNA'DA'S ..... *Plaintiff.*  
 BULA'KIDA'S JETHA' ..... *Defendant.*

*Stamp—New Trial—Small Cause Court.*

A petition for a new trial in a Small Cause Court is, under the Court Fees Act (VII. of 1870), properly stamped with a one-anna stamp.

CASE referred for the opinion of the High Court by  
 Gopálráv Hari Deshmukh, Judge of the Court of Small  
 Causes at Ahmedábád :—

“ Is a petition for a new trial in a Small Cause Court required to be written, under the Court Fees Act (VII. of 1870), on a paper of the value of one half of the fees leviable on the plaint according to Art. 5 of Sch. I. ?

“ The case in which this question arose was decided in favour of the defendant, and the plaintiff has made a petition for a new trial on a stamped paper of one anna, and the preliminary question is whether it should be received or not. The plaintiff in his petition states that a petition for a new trial is not specified in the Court Fees Act, and that Arts. 4 & 5 of Sch. I. of the Act refer to Sec. 377 of the Civil Procedure Code, as shown by the distinction they make between an application for review of judgment made within, and after, ninety days. The petition for a new trial, therefore, falls under Art. 1 of Sch. II., and that it may be written on a stamp of one anna.

“ My opinion is that petitions for new trials should be considered as coming under Art. 5 of Sch. I. of the Court Fees Act.”

PER CURIAM (GIBBS and MELVILL, JJ.) :—The Court is of opinion that an application for a new trial under Sec. 21 of Act XI. of 1865 is distinct from an application for a review of judgment, and that it falls within Art. 1 of Sch. II., and not within Art. 5 of Sch. I., and that a one-anna stamp is sufficient.