

1925.

Present : Schneider J.KANDIAH *et al* v. VELUPILLAI.

58—C. R. Point Pedro, 20.

Small Tenements Ordinance—Period within which appeal should be lodged—Reckoning of five days—Exclusion of dates—Ordinance No. 11 of 1882, s. 8.

In reckoning the period of five days within which an appeal should be preferred from a judgment under the Small Tenements Ordinance, the appellant is not entitled to exclude both the date of the judgment and the day on which the appeal is filed.

A PPEAL from a judgment of the Commissioner of Requests,
Point Pedro.

H. V. Perera, for defendant, appellant.

Schokman, for plaintiff, respondents.

June 19, 1925. SCHNEIDER J.—

This is an action under the provisions of the Small Tenements Ordinance of 1882. The Commissioner gave judgment in favour of the landlords, and this appeal was filed by the defendant, tenant. The final order in the case was made on February 2, 1925. The petition of appeal was presented to the lower Court on February 9. On appeal a preliminary objection is raised by the landlords, respondents, on the ground that the appeal was not filed within the time prescribed by the Ordinance. Section 8 of the Ordinance directs that all appeals "shall be filed within five days (exclusive of Sundays and holidays) of the order or judgment complained of, and be governed in all other respects by the same rules as are applicable to appeals from judgments of the Courts of Requests." The contention on behalf of the respondents is that the appeal should have been filed on February 7 to bring it within the five days prescribed by the Ordinance. That contention appears to be right, because the 9th would not be within five days even if the 8th, which being a Sunday, be excluded, but Mr. H. V. Perera on behalf of the appellant argued that his appeal is saved by the words "and be governed in all other respects by the same rules as are applicable to appeals from judgments of the Courts of Requests." He drew attention to section 754 of the Civil Procedure Code which expressly provides that in reckoning the period of seven days for appeals from Courts of Requests, Sundays and public holidays

should be excluded, and also the day on which the decree or order appealed against was pronounced, as well as the day when the petition is presented. He contended that the effect of these two enactments was to establish a further exclusion in reckoning the five days prescribed by the Ordinance.

I am unable to agree with this contention. The language of the Ordinance seems to me to be quite clear as to what should be excluded and within what number of days the appeal should be filed. I therefore uphold the preliminary contention, and dismiss the appeal with costs.

Appeal dismissed.

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SCHNEIDER
J.
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*Kandiah v.
Velupillai*

