reasonably necessary. Assuming it to be necessary to give the agent power to draw bills and promissory-notes, it appears to me that it cannot be necessary and it has certainly not been shown to be necessary to give him power to draw in favour of himself or his firm, while to do so must greatly and unneccessarily increase the risk to the minor's estate. The giving of such an unrestricted power is, I think, improper, and if as the result of giving it the guardian finds herself involved in liability for the fraud of the agent, she has no right of indemnity against the assets of the minor in the business nor are her creditors entitled to claim through her. This ground is, in my opinion, sufficient for the reasons already given, to dispose of the case, and the appeal must accordingly be allowed and the suit dismissed with costs throughout.

MUNRO, J.—I agree.

## APPELLATE CRIMINAL.

*Before Mr. Justice Sundara Ayyar and Mr. Justice Ayling.*

*In re* KALI MUDALY AND THREE OTHERS (PRISONERS), APPELLANTS.*

1911. April 25, 26, 27.

*Criminal Procedure Code Act V of 1898, s. 526, cl 8—Application for adjournment to apply for transfer, when to be made—Hearing, commencement of, in Sessions Court.*

The first step in the hearing at a Sessions trial is the reading and explaining of the charge to the accused. An application for adjournment under section 526, clause 8, Criminal Procedure Code, must therefore be made before the charge is read to the accused.

*Quære.*—Whether a contravention of section 526, clause 8, will render the trial illegal.

APPEAL against the order of J. J. Cotton, Additional Sessions Judge of the Coimbatore Division, in Calendar Case No. 101 of 1910.

The facts necessary for the consideration of the point of law raised in this case are set out in the judgment of the Sessions Court as follows :—

The case was posted for trial before the Additional Sessions Court on the 5th of December, 1910. The Court took its seat at

* Criminal Appeal No. 46 of 1911.

SUNDARA AYYAR AND AYLING, JJ.

*In re* KALI MUDALY.

11 A.M., pronounced judgment in Sessions Case No. 104 of 1910 and read the charge over to the four accused in the dock. The defence vakil then rose and made an oral application for the transfer of the case as his clients were apprehensive.

As regards the application for adjournment to move for a transfer, the application which was only verbal had been made too late, after the Court had formally commenced the hearing by reading the charge. The vakil was, however, granted two hours time to move Mr. Harding, the Sessions Judge, who sits in the same building, for a retransfer of the case to his own file as the case was ready. Mr. Harding after hearing the vakil found no grounds to retransfer the case to himself and dismissed the motion. At 1 P.M. the trial of the case was proceeded with.

Dr. *S. Swaminathan* for appellants.

The whole trial is illegal as the learned Sessions Judge acted contrary to the imperative provision of law contained in clause 8 of section 526, Criminal Procedure Code, in refussing to grant a short adjournment so as to enable the accused to apply for a transfer of the case from the Sessions Court. The ruling in *Surat Lal Chowdhury* v. *Emperor* (1) clearly supports this view. The application to the Judge was only a verbal one and made as soon as the case was called. The learned Judge without heeding the request of the vakil for the accused began to read out the charge. It cannot be said that the hearing commenced within the meaning of clause 8, the moment the reading of the charge was begun. "Hearing" commences only after the accused pleads to the charge. Section 271 of the Criminal Procedure Code provides that "when the court is *ready to commence the trial* the accused shall appear or be brought before it, and the charge shall be read out in court and explained to him and he shall be asked whether he is guilty of the offence charged or claims to be tried" and section 272 of the Criminal Procedure Code says "that if the accused refuses to or does not plead or if he claims to be tried the court shall proceed to choose jurors or accessors . . . . " In *Queen-Empress* v. *Bastiano Bin Alexander Silva* (2) it was held that the actual trial does not commence until the charge has been read and the accused claims to be tried.

The Public Prosecutor in support of the conviction.

(1) (1902) I.L.R., 29 Calc., 211. (2) (1891) I.L.R., 15 Bom., 514.

JUDGMENT.—[The court having decided upon the facts that the convictions must be set aside, the judgment proceeded—.] In the view we have taken of the case, it is perhaps unnecessary to pronounce an opinion on the point raised by Dr. Swaminathan that the whole trial should be set aside as illegal on the ground that the Judge acted contrary to the provisions of section 526, clause 8 of the Criminal Procedure Code, in refusing to grant an adjournment of the trial to enable the accused to apply for a transfer of the case to some other court. The application for adjournment was made after the charge had been read and explained to the accused. Section 526, clause 8, does not require the court to adjourn a case when the application is not made before the commencement of the hearing. The learned counsel for the appellants contends that the "hearing" can be said to commence only after the accused plead to the charge. We cannot agree with this contention. The hearing or trial must be taken to include all the proceedings taken to determine a case, and the first step in the hearing at a sessions trial is the reading and explaining of the charge to the accused. In Wharton's 'Law Lexicon' the meaning of the word is given as "the investigation of a controversy." We must hold that the application for adjournment in this case was not made before the commencement of the hearing. We are not to be understood to accede to the argument that the trial could be held to be illegal, assuming that the court was bound to grant the application. We should find much difficulty in agreeing with the view of the Calcutta High Court in *Surat Lall Chowdhry* v. *Emperor* (1), if it were necessary to decide the question.

The conviction and sentences are reversed: and the appellants directed to be set at liberty.

(1) (1902) I.L.R., 29 Calc., 211.