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two books in question and finding out similarities and dissimilarities therein and preparing his report. The Commissioner made an application to the court and claimed Rs.1,860 for his remuneration. The lower court after considering the amount of the work that the Commissioner had to do awarded him only Rs.1,500. No objection was taken by the defendant in the lower court. If the defendant had taken any objection to the claim of the Commissioner the lower court would have considered it and the Commissioner would have had an opportunity of meeting it and explaining as to why he demanded and was entitled to such a large sum. The defendant himself is to blame for his not having taken any objection in the lower court. It is not open to him to take objection here for the first time. We therefore do not interfere with this item also.

The plaintiffs have filed a cross-objection against the lower court's not allowing them to amend their relief. The plaintiffs applied on 4th March, 1933, for adding a relief for damages under section 7 of the Copyright Act. This application was rejected. There was no need for any such application because the reliefs claimed in the plaint included the item of damages under section 7. In relief (*c*) the plaintiffs asked for handing over to the plaintiffs the sale proceeds of the books sold and under relief (*e*) for the recovery of the remaining unsold copies. These two reliefs come under section 7 of the Copyright Act, 1911, and they have been given to the plaintiffs. There is no force in the cross-objection and it is dismissed.

REVISIONAL CIVIL

Before Mr. Justice Iqbal Ahmad

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January, 11

RODA RAM (DEFENDANT) *v.* MUKAND LAL (PLAINTIFF)*

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), *sections* 2(2)(*a*) *and* 2(9)—"*Agriculturist*"—*Payment of revenue must be for* "*land*" *as defined in Agra Tenancy Act —House site not* "*land*".

*Civil Revision No. 176 of 1937.

In order to entitle a person to be an "agriculturist" within the meaning of section 2(2)(*a*) of the U. P. Agriculturists' Relief Act it is essential that the revenue paid by him should be on account of "land", which, by section 2(9), defined to have the same meaning as in the Agra Tenancy Act, 1926, and can not therefore include house sites. So, where a person was the owner of two houses and of the sites thereof within the ambit of the Allahabad municipality, the area being entered as abadi land and assessed to a revenue of four annas, and a small kitchen garden and some flower plants existed on a portion of it, it was *held* that the person was not an "agriculturist".

Mr. *K. C. Mital,* for the applicant.

Mr. *N. C. Shastri,* for the opposite party.

IQBAL AHMAD, J.:—This application in revision arises out of a suit under section 33 of the U. P. Agriculturists' Relief Act and the sole question that arises for decision is whether or not the plaintiff was an agriculturist as defined by the said Act.

It appears from the finding of the court below that the plaintiff is the owner of two houses and of the sites thereof within the ambit of the Allahabad municipality. The area of the sites is recorded in the khasra as 2 biswas and the whole of it is entered as abadi land. It has, however, been found by the court below that there is a small kitchen garden on a portion of the site and there are certain flower plants on the same. The Government revenue assessed on the 2 biswa land is 4 annas 3 pies. The learned Judge of the court below held that as the plaintiff paid the revenue just mentioned he was an agriculturist in view of the provisions of section 2(2)(*a*) of the Agriculturists' Relief Act which provides that "agriculturist" means "a person who, in districts not subject to the Benares Permanent Settlement Regulation, 1795, pays land revenue not exceeding Rs.1,000 per annum".

I am unable to agree with this decision of the court below. In order to invite the application of the provision just quoted it is essential that the revenue payable must be on account of "land". By section 2(9) it is

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provided that the word "land" shall have the same meaning as in the Agra Tenancy Act, 1926. By the last mentioned Act "land" has been defined as meaning "land which is let or held for agricultural purposes, or grove-land or for pasturage". Further it is provided by the Tenancy Act that "land" does not include land for the time being occupied by dwelling houses etc. In accordance with the definition of "agriculturist" in the Agriculturists' Relief Act the mere payment of revenue is not enough. In order to entitle a person to be an agriculturist within the meaning of the Act it is essential that the revenue paid by him should be on account of land as defined in the Agra Tenancy Act. In the present case the revenue payable by the plaintiff was on account of house sites and not on account of land as defined by the Tenancy Act. The revenue payable by the plaintiff was, therefore, not land revenue within the meaning of section 2(2)(*a*) of the Agriculturists' Relief Act. The plaintiff was therefore not an agriculturist and was not entitled to sue under section 33 of the Agriculturists' Relief Act. Accordingly I allow this application, set aside the order passed by the court below and dismiss the plaintiff's suit. But under the circumstances of the present case I direct the parties to bear their own costs of this application.

REVISIONAL CRIMINAL

Before Mr. Justice Allsop

1938
January, 11

EMPEROR *v.* SHIB CHARAN AND OTHERS*

Indian Penal Code, section 353—Assaulting public servant while executing a warrant—Legality or illegality of warrant —Criminal Procedure Code, sections 87, 88—Evidence Act (I of 1872), section 114, illustration (e)—Presumption of regularity of judicial acts.

Where there is no illegality on the face of a warrant and it is on the face of it a legal warrant executed by a person who has authority to issue warrants of that nature, it is the

*Criminal Reference No. 807 of 1937.