

the Act. The matter is entirely one for the Local Government and not one with which we are concerned. Our decision is that the court fees payable on the memorandum of appeal are payable *ad valorem* under the provisions of article 1 of schedule I of the Act.

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JAGDISH
PRATAP
v.
PANCHAITI
AKHARA
BARA UDASI

REVISIONAL CRIMINAL

Before Mr. Justice Allsop

RAM RAKSHPAL v. RAM NATH*

1937

November, 23

Criminal Procedure Code, sections 344, 526—Adjournment for purpose of applying for transfer—Costs of adjournment can be ordered along with order of adjournment.

As a court is bound to pass an order of adjournment under section 526(8) of the Criminal Procedure Code, it can not make such an order of adjournment conditional on the payment of costs of the adjournment; but the court may, when passing its order for adjournment, direct that the party whose application has necessitated adjournment shall pay the costs of the opposite party. *Emperor v. Salek Chand* (1), distinguished.

Messrs. B. S. Darbari and Ram Mohan Lal, for the applicant.

Mr. Sankar Saran (Deputy Government Advocate), for the Crown.

ALLSOP, J.:—This is a reference by the learned Sessions Judge of Moradabad recommending that an order for costs passed under section 344 of the Code of Criminal Procedure should be set aside. The learned Judge relies upon the decision in *Emperor v. Salek Chand* (1). That case, however, can clearly be distinguished. It laid down merely that a conditional order for an adjournment under section 526 was not justifiable as a Magistrate was bound to adjourn under sub-section (8) of that section. In the case under reference the learned Magistrate took care not to pass a conditional order. It has always been held that section

*Criminal Reference No. 569 of 1937.

(1) I.L.R. [1937] All. 161.

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344 does justify an order for costs. It was enacted in the year 1932 that nothing contained in sub-section (8) or sub-section (9) of section 526 should restrict the powers of a court under section 344; therefore nothing in those sub-sections can restrict the power of a court to pass an order for costs under section 344. A court cannot of course pass a conditional order of adjournment, because it has to pass such an order, but it may when passing its order for adjournment direct that the party whose application has necessitated adjournment shall pay costs of the opposite party. I see no reason to interfere and I therefore reject the reference. The record may be returned to the court below.

REVISIONAL CIVIL

Before Mr. Justice Bennet

1937
 November, 26

SURAJ NARAIN SINHA (PLAINTIFF) v. KEDAR PRASAD
 AND OTHERS (DEFENDANTS)*

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 2(2)(f) and explanation II—"Agriculturist"—Joint Hindu family—U. P. Agriculturists' Relief Act, sections 3, 5, 23—Refusal by Small Cause Court to grant instalments while passing decree—Appeal—No appeal lies.

Where a tenancy of agricultural land is held by a joint Hindu family, at a rent not exceeding Rs.500 per annum, the whole joint family is an agriculturist, under section 2(2)(f) of the U. P. Agriculturists' Relief Act; explanation II comes in only in the case of a joint family where the total rent is more than Rs.500 per annum and then the different members may claim under explanation II that their share is less than Rs.500 and they would be "agriculturists" for purposes of certain specified provisions of the Act.

The Act does not provide any appeal from a refusal to grant instalments under section 3 at the time of passing the decree; section 5(2) provides an appeal in cases where an application for fixing instalments is made in respect of a decree which was previously passed, and section 23 provides for appeals in matters

*Civil Revision No. 215 of 1937.