

ad valorem court-fee upon the value of the properties in suit and accordingly directed the plaintiffs to pay the deficiency. The plaintiffs appealed to this court, but ultimately withdrew the appeal in view of the fact that they were permitted to sue in *forma pauperis*. They were also allowed to appeal as paupers. The litigation having terminated as indicated above, the question has been raised as to the correctness of the decision of the court below regarding the court-fee payable by the plaintiffs. It would seem that the view taken by the court below is incorrect. The learned Subordinate Judge held that reading the plaint it was a suit pure and simple for partition and the court-fee originally paid by the plaintiffs was sufficient. Upon the objection, however, of the defendant and in consideration of the ekrarnama (Exhibit 1) the court changed its view and held that *ad valorem* court-fee was leviable. In my opinion the court-fee is leviable upon the construction of the plaint alone and consequently the plaintiffs were liable to pay court-fee as in a partition suit. Accordingly, the plaintiffs, who were allowed to sue as paupers, are directed to pay the court-fee calculated as above.

BUCKNIL, J.—I agree.

Appeal decreed.

CRIMINAL MISCELLANEOUS.

Before Mullick and Scroope, JJ.

LOKA MAHTON

v.

KALI SINGH.*

1927.

March, 8.

Code of Criminal Procedure, 1898 (Act V of 1898), sections 145 and 526(8)—Dispute regarding possession of immovable property—Proceeding under section 145—application for transfer—whether applicant entitled to postponement.

A party to a proceeding under section 145 of the Code of Criminal Procedure, 1898, is not entitled under section 526(8) to a postponement for the purpose of enabling him to move the High Court to transfer the case.

* Criminal Miscellaneous Case no. 23 of 1927.

1927.

The facts of the case material to this report are stated in the judgment of Mullick, J.

LOKA
MARTON.
v.
KALI
SINGH.

H. L. Nandkeolyar, for the petitioners.

Sultan Ahmed, Government Advocate (with him *S. Saran*), for the Crown.

MULLICK, J.—The petitioners are the first party in a case under section 145 of the Code of Criminal Procedure before the Subdivisional Magistrate of Monghyr, Mr. Shams-ul-Huda. On the 8th February, 1927, the Subdivisional Magistrate held a local investigation, and he admits that in the course of that local investigation he rather lost his temper with the petitioners and used certain words with regard to some of them which perhaps were not altogether justifiable. Then on the 14th February he called upon the second party to proceed with the cross-examination of the first party's witnesses. The second party asked for a stay of proceedings under section 526, clause (8) of the Code of Criminal Procedure and stated that they desired to move the High Court for a transfer. The learned Magistrate refused the prayer holding that it was not *bona fide* and proceeded with the trial. The petitioners declined to cross-examine the witnesses on the plea that they were unprepared. The case was adjourned till the 18th and then till the 19th on which date under compulsion, it is alleged, the second party addressed the court with regard to the merits of their case and judgment was reserved. In the meantime application had been made to this court for action under section 526 of the Code of Criminal Procedure and on the 21st February an order was issued by this court directing the Magistrate to stay further proceedings. It appears that when the order was communicated to the learned Magistrate he had already written his judgment and signed it and that he was about to deliver it in court. Very properly he stayed further proceedings and did not deliver the judgment.

It now appears that the Magistrate has been transferred from the district and the question is

whether we should direct some other officer to deliver the judgment or order a retrial of the case from the stage at which it was left on the 14th February.

We think on the whole that the proper course will be to direct the officer who has succeeded the learned Magistrate, or such officer as may be selected for the trial of this case by the District Magistrate, to recall the two witnesses whom the second party declined to cross-examine on the 14th August and to proceed with the trial from that stage according to law.

A point has been taken as to whether clause (8) of section 526 of the Code of Criminal Procedure applies to proceedings under section 145 of the Code of Criminal Procedure. The clause as amended makes it clear that a case within the meaning of the clause includes a proceeding under section 145; but as the clause directs that the application to the trial court is to be made either by the public prosecutor or the complainant or the accused, it would seem that the parties in a proceeding under section 145 cannot take advantage of the clause. That clause would seem to apply only to cases arising out of an offence under the criminal law and probably the legislature thought that proceedings which are quasi civil in nature such as inquiries into the possession of land, do not require the exercise of the very summary power which clause (8) confers. Nevertheless I think that although the learned Deputy Magistrate was right in holding that the application under clause (8) was not competent before him, still in the circumstances he would have exercised a proper discretion in giving the first party time to cross-examine the second party's witnesses.

The result, therefore, is that the application for transfer being no longer necessary is dismissed, but the case is remanded to the District Magistrate in order that it may be disposed of in the manner directed in this judgment.

SCROOPE, J.—I agree.

Case remanded.

1927.

LOKA
MAHTON.v.
KALI
SINGH.

MULLICK, J