

**In Re: Kali Mudaly and Three ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/797303](http://sooperkanoon.com/797303)

**Court :** Chennai

**Decided On :** Apr-27-1911

**Reported in :** (1912)ILR35Mad701

**Judge :** Sundara Ayyar and ;Ayling, JJ.

**Appellant :** In Re: Kali Mudaly and Three ors.

**Judgement :**

1. [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 ease, 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 3 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 bearing at a sessions trial is the reading and explaining of the charge to the accused. Id 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* I.L.R. (1902) Calc. 211, if it were necessary to decide the question.

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

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