

Their Lordships will, for these reasons, humbly advise Her Majesty to affirm the decrees appealed from, and to dismiss the consolidated appeals with costs.

BINDESI
NAIK
v.
GANGA
SARAN SAHU.

Appeals dismissed.

Solicitors for the Appellant: *Messrs. Barrow and Rogers.*

Solicitors for the Respondents: *Messrs. Pyke and Parrott.*

REVISIONAL CRIMINAL.

1897
December 11.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Burbitt.

QUEEN-EMPRESS v. FATEH BAHADUR.*

Criminal Procedure Code, section 555—Jurisdiction—Appellate Court not disqualified by interest from granting permission to a subordinate Court to try a case.

The interest which might disqualify a Court from trying or committing for trial a case, having regard to section 555 of the Code of Criminal Procedure, will not prevent an appellate Court from giving the permission contemplated by that section.

IN this case a complaint was lodged against one Fateh Bahadur, a clerk in the employment of the North-Western Provinces Club of the commission by him of an offence punishable under section 409 of the Indian Penal Code in respect of moneys the property of the members of the Club. The complainant was the Honorary Secretary of the Club. The case came before the Cantonment Magistrate of Allahabad, who, being himself a member of the Club, referred it to the Sessions Judge under section 555 of the Code of Criminal Procedure to obtain his permission to try it. The Sessions Judge was also a member of the Club, and held on this application that the prohibition contained in section 555 inferentially applied to him also and disabled him from giving the permission asked for. He accordingly declined to grant permission to the Cantonment Magistrate to try the case. Against this order of the Sessions Judge the complainant applied in revision to the High Court.

* Criminal Revision No. 603 of 1897.

1897

QUEEN-
EMPERESS
OF
INDIA
BY
ATTORNEY-
GENERAL

Mr. G. P. Boys, for the applicant.

EDGE, C. J. and BURKITT, J.—A charge under the Indian Penal Code came on for investigation before the Cantonment Magistrate of Allahabad. The person charged had been a servant of the North-Western Provinces Club. He was charged with having committed the offence punishable under section 409 of the Indian Penal Code in respect of moneys belonging to the Club. The Cantonment Magistrate was a member of the Club, and he referred the matter to the Court of the Sessions Judge of Allahabad for permission to proceed with the case. The Sessions Judge was also a member of the Club, and held that as he was interested as a member of the Club he had no jurisdiction. In that he was wrong. There is nothing in section 555 of the Code of Criminal Procedure to suggest that under these circumstances the Sessions Judge of Allahabad had not jurisdiction to grant permission to the Cantonment Magistrate to try the case or commit it for trial.

We set aside the order of the Sessions Judge of Allahabad and direct the present Sessions Judge of Allahabad to consider the reference from the Cantonment Magistrate, as he has jurisdiction to decide whether permission should or should not be given to try, or commit for trial, the accused.

APPELLATE CIVIL.

1897

December 16.

Before Mr. Justice Banerji and Mr. Justice Aikman.

INAYAT HUSEN AND OTHERS (PLAINTIFFS) v. ALI HUSEN AND OTHERS
(DEBENDANTS).*

*Limitation—Adverse possession—Possession of usufructuary mortgagees
—Act No. XV of 1877 (Indian Limitation Act) schedule ii, article 144
—Burden of proof.*

The possession of a usufructuary mortgagee being the possession of all the persons who have the right of redemption, that is, of all the persons entitled to the estate, it is only when after redemption possession is taken by some of the persons so entitled that their possession can become adverse as against the others.

* First Appeal No. 238 of 1894 from a decree of Maulvi Muhammad Abdul Ghafur, Officiating Subordinate Judge of Meerut, dated the 17th August 1894.