

For these reasons we must allow the appeal. The learned vakil for the respondent has asked us, in the event of our holding an unfavourable view of his main contention, at all events to give the plaintiff a decree for contribution towards the amount of the debt which was satisfied by him. We are unable to accede to this application. To do so would be to change entirely the character of the suit, and to enable him to recover moneys contrary to the position which he had taken up in bringing this action, and in his defence in the former suit, in which he alleged that he was only a surety for his half-sisters. We can show no indulgence to a litigant who comes into Court with a false case. The claim for general relief would not justify us in so doing. He sued merely as surety, and he cannot now turn round and say that, though not a surety, he was a joint mortgagor, and as such joint mortgagor, entitled to contribution from the other co-mortgagors.

For these reasons we allow the appeal and dismiss the suit with costs in both Courts.

Appeal decreed.

REVISIONAL CRIMINAL.

Before Mr. Justice Banerji.

CHURAMAN v. RAM LAL.*

Criminal Procedure Code, section 522—Act No. XLV of 1860 (Indian Penal Code), section 350—Restoration of possession of immovable property—Use of criminal force.

To support an order under section 522 of the Code of Criminal Procedure, restoring possession of immovable property, it is necessary for the Court to find as a fact, not only that the person in whose favour such order is made was deprived of possession by an offence, but that such offence was attended by the use of criminal force. *Ram Chandra Boral v. Jiyandria* (1) and *Ishan Chandra Kalla v. Dina Nath Badhak* (2) followed.

THIS was a reference under section 433 of the Code of Criminal Procedure made by the Additional Sessions Judge of Aligarh. The applicant Churaman was a tenant of the Awa-estate. He was ejected from certain agricultural land under

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SHAMSH-UL-
JAHAN
BEGAM
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AHMAD
WALI
KHAN.

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* Criminal Reference No. 49 of 1903.

(1) (1897) I. L. R., 25 Cal., 434. (2) (1899) I. L. R., 27 Cal., 174.

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the orders of both the Civil and the Revenue Courts. Subsequently, however, Churaman re-entered upon the land from which he had been ejected and cultivated it. He was accordingly prosecuted before a Tahsildar Magistrate, who convicted him under section 447 of the Indian Penal Code and further ordered the complainant to be restored to possession of the land under section 522 of the Code of Criminal Procedure. On appeal this order was confirmed by the District Magistrate. An application for revision of these orders being made, the Additional Sessions Judge, in view of the ruling in the case of *Ishan Chandra Kalla v. Dina Nath Badhak* (1) and there being no finding that possession of the property from which he had been ejected had been recovered by Churaman by the use of criminal force, reported the case to the High Court with the recommendation that the conviction and sentence should be quashed.

Upon this reference the following order was passed :—

BANERJI, J.—This case has been referred under section 438 of the Code of Criminal Procedure, with the recommendation that an order of the Tahsildar Magistrate of Jalesar, whereby he directed possession of certain land to be restored to the complainant, be set aside. It appears that one Churaman, who was a tenant of the Awa estate, was ejected from certain fields which formed his holding, and that the landlord was put into possession of the fields in due course of law. Subsequently Churaman re-entered forcibly into possession and cultivated the fields. For this he was prosecuted and convicted under section 447 of the Indian Penal Code. The Magistrate who convicted him further ordered possession of the land to be restored to the complainant, and purported to make that order under section 522 of the Code of Criminal Procedure. That section authorizes a Court to order restoration of possession whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that by such force any other person has been dispossessed of immovable property. In order, therefore, to justify an order under that section, the Court must find, *first*, that the offence of which the accused is convicted was attended

with criminal force; and, *secondly*, that a person has been dispossessed of immovable property by the use of such force. In the present case there was no evidence that in resuming possession of the fields, Churaman used criminal force as defined in section 350 of the Indian Penal Code, and there is no finding in the judgment of the Magistrate that criminal force was used. Section 522 of the Code of Criminal Procedure had therefore no application, and the Magistrate was not competent under that section to order possession to be restored. This view is supported by the ruling of the Calcutta High Court in *Ram Chandra Boral v. Jityandria* (1) and *Ishan Chandra Kalla v. Dina Nath Budhak* (2). I accordingly set aside so much of the order of the Magistrate as purports to have been made under section 522 of the Code of Criminal Procedure for restoration of possession.

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APPELLATE CIVIL.

1900
March 2.

Before Mr. Justice Blair and Mr. Justice Banarji.

HAR DIN SINGH (OPPOSITE PARTY) v. LACHMAN SINGH AND ANOTHER
(PETITIONERS).*

Execution of decree—Limitation—Act No. XV of 1877 (Indian Limitation Act), Schedule II, Article 165—Application by judgment-debtor dispossessed of immovable property disputing the right of the decree-holder to be put into possession.

Held that article 165 of the second schedule to the Indian Limitation Act, 1877, is wide enough to include the case of a judgment-debtor who has been dispossessed of immovable property, and who disputes the right of the decree-holder to be put into possession. *Assan v. Pathamma* (3) referred to.

THE facts of the case out of which this appeal arose are as follows. On the 25th of July, 1894, one Thakur Singh executed a conditional sale in favour of Sheo Narain. On the 18th of March 1895 he made a usufructuary mortgage of the same property in favour of Lachman Singh. Subsequently he sold his equity of redemption to the same Lachman Singh and to one

* Second Appeal No. 246 of 1901 from a decree of Babu Ramdhan Mukerji, Subordinate Judge of Gorakhpur, dated the 21st of December, 1900, reversing a decree of Pandit Bishan Lal Sarma, Munsif of Basti, dated the 28th of September, 1900.

(1) (1897) I. L. R., 25 Calc., 434. (2) (1899) I. L. R., 27 Calc., 174
(3) (1899) I. L. R., 22 Mad., 494.