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deemed to have appropriated the payment to the debt of earliest date, there is an end to the case. If on the other hand there was no appropriation by either debtor or creditor, the payment must be applied to the earliest debt due by the defendant to the plaintiff. This was the bond in suit. We dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Tudball.

TULSHI RAM v. ABRAR AHMAD AND OTHERS.*

Criminal Procedure Code, sections 145 and 522—Possession—Ouster—Jurisdiction of Magistrate in exercise of powers under section 145 to dispossess one person and put another in possession.

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Under section 145 of the Code of Criminal Procedure a Magistrate of the first class has no power to oust one person and to place another in possession of a disputed property. Therefore the order of the District Magistrate in his capacity as the head of the Police, declining to carry out such an order is not open to revision by the High Court.

The only provision in the Code of Criminal Procedure which entitles a Magistrate to dispossess a person of property and replace him by another who is entitled, is section 522 of the Code, and for the purpose of exercising the powers therein granted, it is necessary that there should have been a conviction for an offence.

THE facts of this case are fully set forth in the judgement of the Court.

Babu Satya Chandra Mukerji, for the applicant.

Dr. S. M. Sulaiman, for the opposite parties.

The Assistant Government Advocate (Mr. R. Malcolmson) for the Crown.

TUDBALL, J.—The applicant has come to this Court on revision in the following circumstances:—There is a certain house which is in dispute between him and the opposite party and he applied to a Magistrate to take action under section 145 of the Code of Criminal Procedure. On the 5th of December, 1914, the Magistrate passed an order under section 145 calling upon the parties concerned in the dispute to attend his court and to put in written statements of their respective claims. The Magistrate proceeded to make his enquiry and he came to the conclusion that Tulshi Ram had

* Criminal Revision No. 450 of 1915, from an order of L. M. Stubbs, District Magistrate of Bijnor, dated the 19th of May, 1915.

been wrongfully dispossessed on the 25th of November, 1914, by the opposite party. He accordingly treated him as having been in possession on the date of his order of the 5th of December, 1914, acting under the first of the provisos of clause 4 of section 145. He thereupon passed an order under clause 6 of that section declaring Tulshi Ram to be entitled to possession of the house until evicted therefrom in due course of law, and he forbade all disturbances of such possession until such eviction. So far the order of the Magistrate appears to have been good and well within his jurisdiction. He, however, added the following sentence:—"The possession of the house in question will be given to Tulshi Ram through the police." This latter portion of his order is based upon no provision in the Code of Criminal Procedure of which I am aware. Chapter XII nowhere gives a first class Magistrate any such power as to oust one person and to place another person in possession. The only provision in the Code of Criminal Procedure which entitles a Magistrate to dispossess a person of property and replace him by another person who is entitled, is section 522 of the Code, and for the purpose of exercising powers therein granted, it is necessary that there should have been a conviction of an offence. This latter portion therefore of the Magistrate's order, that the possession of the house could be given to Tulshi Ram, through the police, appears to be *ultra vires* completely. Tulshi Ram in good faith applied to the Magistrate to enforce this portion of the order. The Magistrate sent on the petition to the Superintendent of Police asking that it might be done and the Deputy Superintendent of Police might be deputed to see the order carried out. The Superintendent of Police referred the matter to the District Magistrate, pointing out that the order should have come from the District Magistrate and expressing his readiness to maintain order and peace. He seems in his order of reference to have assumed that the dispossession was to be carried out by some revenue official. On this the District Magistrate passed an order which is the subject of revision; that order being "I am not going to order actual possession to be given by the police." In other words the District Magistrate, who is the district head of the police, declined to carry out the order of the first class Magistrate that the opposite party should be dispossessed by the police.

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It is against this order that Tulshi Ram has come to this Court in revision. In the circumstances of the case the order of the first class Magistrate being, as I have pointed out, *ultra vires*, the District Magistrate's order declining to allow the police to be utilized for the purpose of carrying out an illegal order is in my opinion a very proper order indeed with which I would not interfere. It seems to me that it is an order which is not open to revision by this Court at all. It is curious that under section 145 of the Code, the Magistrate is allowed to treat a person, who has been wrongly and forcibly dispossessed, as having been in actual possession on the date on which he passed his initial order under clause 1 of the section, while the section provides no machinery under which or through which the court may proceed to remove the wrong-doer from possession and put the other man in his place. As far as I can see the remedy for Tulshi Ram in the present case is to make a complaint in respect of his wrongful and forcible dispossession and to prosecute the other side, and if the Magistrate should convict, then it would be open to him to apply to the Magistrate to exercise the powers granted by section 522 of the Code. It is quite clear that in proceeding under section 145, as the law stands, it is impossible for the Magistrate to forcibly turn out one person and place another in possession of the property. The application is dismissed.

Rule discharged.

APPELLATE CIVIL.

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Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

KEDAR AND OTHERS (PLAINTIFFS) v. DEO NARAIN AND OTHERS (DEFENDANTS)*
Act (Local) No. II of 1901 (Agra Tenancy Act), section 32—Suit for possession of portion of holding—Suit maintainable.

All that section 32 of the Tenancy Act provides against is the splitting up of a holding or the distribution of the rent so as to bind the land-holders. Clause 2 does no more than enact that a suit brought for such a purpose shall not be entertained by a Civil or Revenue Court; but where a plaintiff sues for possession of a portion of a fixed rate tenancy alleging that he is owner thereof and the defendant is a trespasser, such a suit is not barred by

* Appeal No. 13 of 1915, under section 10 of the Letters Patent.