the common ancestor. But the Judicial Committee in appeal declared that the previous decision had intended to declare, not only that the adoption could not affect the estate of the deceased son's widow, but that her existence and the vesting in her of her husband's estate had made the power of adoption incapable of execution by the elder widow. Now in Western India an express power is not necessary to authorize a widow to adopt, but that is because an authority is presumed in the absence of a prohibition. The implied authority, however, would be made incapable of execution by the same circumstances that would prevent adoption under an express power. As the reason rests on the vesting of the estate in the deceased son's widow, and it is not divested by subsequent unchastity, it follows that in the present case the inquiry into Párvatibái's chastity would be irrelevant. No adoption could during her existence be made by her mother-in-law Yamunábái.

We must, accordingly, reverse the order of the District Court remanding the cause to the Subordinate Judge; and as no other point was put in issue before the District Court, we restore the decree of the Subordinate Judge with costs throughout on the respondent.

Decree restored.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

NA'NA BAYAJI AND ANOTHER (ORIGINAL APPLICANTS), APPLICANTS, *v.* PA'NDURANG VA'SUDEV (ORIGINAL OPPONENT), OPPONENT.* *September* 16.

Practice—Procedure—Civil Procedure Code (Act XIV of 1882*), Sec.* 622*—Possessory suit in a Mámlatdár's Court.*

The opponents had obtained a decree for the possession of certain land against the brother and father of the applicants in the Court of the Mámlatdár at Karád, in the Sátára District. The applicants were not parties to the suit. The decree was executed and the opponents were put into possession.

Thereupon the applicants on the 19th May, 1884, presented a petition in the Mámlatdár's Court, under section 4 of Bombay Act III of 1876, alleging that they had been in actual possession of the lands, and had been ousted from them in execution of the decree, and praying that they might be again put into possession. The Mámlatdár was of opinion that the matter was *res judicata*, and dismissed the petition. He relied on a circular of the Executive Government as his author-

* Civil Application, No. 88 of 1884.

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The applicants applied to the High Court under its extraordinary jurisdiction.

Held, that it was not a case for the exercise of the extraordinary jurisdiction of the High Court. The Mámlátdar was, no doubt, guilty of a formal error. In the exercise of his judicial functions he was bound to be governed by the law as he understood it, or as it had been expounded by superior judicial authority, not as it was understood or expounded by unjudicial persons. This, however, was merely an irregularity on the part of the Mámlatdár not apparently involving an injustice to the applicants, who might bring a suit on their title if they had a title.

THIS was an application for the exercise of the extraordinary jurisdiction of the High Court under section 622 of the Civil Procedure (Code Act XIV of 1882).

The opponents had obtained a decree for the possession of certain land against the brother and father of the applicants in the Court of the Mámlatdár at Karád, in the Sátára District. The applicants were not parties to the suit. The decree was executed, and the opponents were put into possession.

On the 19th May, 1884, the applicants presented a petition in the Mámlatdár's Court under section 4 of Bombay Act III of 1876, alleging that they had been in actual possession of the lands, and had been ousted in execution of the decree, and praying that possession thereof might be restored to them. The Mámlatdár was of opinion, that the matter was *res judicata*, and dismissed the petition. He relied on a circular of the Executive Government as his authority.

The applicants applied to the High Court under its extraordinary jurisdiction, and prayed that the papers in their matter might be sent for, and an order be made, directing the Mámlatdár to try the case on its merits.

On 8th August, 1884, a rule *nisi* was granted.

Ghanashám Nilkanth Nádkarni appeared to show cause.—The proper course for the petitioners was to apply to the Mámlatdár within one month from the date of the order. The decree of the Mámlatdár's Court is a decree of a Civil Court. The petitioners were dispossessed in due "course of law" in the execution of that decree: see *Jadub* v. *Hirálál*[1]. Section 4 of

(1) 1 Ind. Jur. (N.S.), 21.

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Bombay Act III of 1876 would not, therefore, apply to the case so as to enable the petitioners to apply to the Mámlatdár within six months. Nor would section 9 of the Specific Relief Act I of 1877, which is a re-embodiment of section 15 of Act XIV of 1859. Under similar circumstances that section was held not to apply—*Brahma Mayi Dabi* v. *Barkat Sirdár*(1). The Court of a Mámlatdár and a Civil Court are Courts of concurrent jurisdiction—*Rámchandra* v. *Bhikibái*(2). Section 11 of the Mámlatdárs' Act lays down the procedure applicable to a case as the present one. The applicants having failed to apply to the Mámlatdár within one month from the passing of the order, their only remedy is by a separate suit. The Civil Procedure Code extends to all Courts of civil jurisdiction: see preamble. The Mámlatdár's Court being a Civil Court, the Mámlatdár ought to have followed the procedure laid down in section 332 of the Civil Procedure Code.

Gánesh Rámchandra Kirloskar for the applicants.—The Civil Procedure Code does not apply. If the Legislature intended that it should apply to Mámlatdárs' Courts, there was no necessity to prescribe separately a procedure, under section 8 of the Mámlatdárs' Act, exactly similar to that prescribed in the Civil Procedure. If the decree of the Mámlatdár be considered a decree of a Civil Court, the time for bringing a suit is twelve years.

WEST, J.—In the present case the Mámlatdár rejected the application of the present applicants, and referred for authority to a certain circular of the Executive Government. This was irregular, as in the exercise of his judicial functions he was bound to be governed by the law as he understood it, or as it had been expounded by superior judicial authority, not as it was understood or expounded by unjudicial persons. But the present is a case in which the extraordinary jurisdiction of this Court is invoked, and we must guard against its being abused, merely because the Mámlatdár has fallen into a formal error. Under section 332 of the Code of Civil Procedure a Subordinate Judge, on the application of the present petitioners, would have examined

(1) 4 Beng. L. R. (F. B.), 94. (2) I. L. R., 6 Bom., 477.

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them to discover if there was a probable cause for their application, and, in the absence of reason to suppose they had been wronged, he would have refused them a summary investigation. A similar inquiry by the Mámlatdár would, it seems to us, have led, in all probability, to a similar result. The applicants would thus have been left to their remedy by a suit on their title, if they have a title. That remedy is still open to them; and, seeing the relations of the parties, we do not think the case is one in which the extraordinary jurisdiction ought to be used to upset the order of the Mámlatdár, merely on account of an irregularity not apparently involving an injustice to the applicants.

We, therefore, discharge the rule with costs.

Rule discharged.

REVISIONAL CRIMINAL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

September 25. QUEEN EMPRESS *v.* PIRYA GOPAL.*

Jurisdiction—The District Magistrate, superiority of, to the First Class Magistrate—Criminal Procedure Code (Act X of 1882), *Sec.* 17—*Meaning of the term "inferior"—Order by the District Magistrate under Section* 436 *for committal of a person discharged by First Class Magistrate under Section* 209—*Validity of such commitment—Ultra vires.*

The Court of a Magistrate of the first class is inferior and subordinate to that of the District Magistrate,—section 17 of the Criminal Procedure Code (Act X of 1882) expressly providing that all Magistrates of whatever class shall be subordinate to the District Magistrate.

The District Magistrate is superior, in respect of executive as well as judicial functions, to all other Magistrates.

Where a Magistrate of the first class discharged, under section 209 of the Criminal Procedure Code (Act X of 1882), a person charged with an offence exclusively triable by the Court of Sessions, and the District Magistrate directed him, under section 436, to commit the accused to the Court of Session, and a commitment was made, but the Sessions Judge referred the case, under section 215, for the orders of the High Court,

Held, that the order of the District Magistrate under section 436 was not *ultra vires*, and that the commitment thereunder to the Court of Sessions was good, and could not be quashed under section 215.

* Criminal Reference, No. 125 of 1884.