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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.

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The term "inferior" as used in the Code means statutably incompetent to hold or exercise equal powers, and carries with it the idea of subordination, which latter means "inferior in rank".

Nobin Kristo v. *Russick Lall* (1) and *Queen Empress* v. *Nawab Jan* (2) dissented from.

THIS was a reference under section 215 of the Criminal Procedure Code (Act X of 1882) submitted for the orders of the High Court by H. Parsons, Esq., the Sessions Judge of Thána.

The accused Pirya was charged with the offence of rape, and put before the First Class Magistrate at Thána for trial. The Magistrate discharged the accused under section 209 of the Criminal Procedure Code. The District Magistrate at the same place called for the records and proceedings of the case, and directed committal to the Court of Sessions at Thána.

The Sessions Judge, feeling doubt as to the legality of the commitment, referred the case, under section 215 of the Criminal Procedure Code, for orders of the High Court.

He stated the reference as follows:—

"Under the provisions of section 215 of the Criminal Procedure Code I have the honour to refer the commitment of Pirya, son of Gopál, to the High Court for orders. It will be seen that the said Pirya was originally discharged by the First Class Magistrate, and that the District Magistrate, having called for the record under section 435, has under section 436 ordered the commitment. The question, therefore, which I would refer and on which I would ask the opinion of the Judges, is, are the proceedings of the District Magistrate legal, and is the commitment so ordered by him good?

"The Calcutta High Court has on two occasions answered the question in the negative: see *Nobin Kristo* v. *Russick Lall*(1); *Queen Empress* v. *Nawáb Ján*(2). I can find no reported case on the same point that has been decided by any of the other High Courts, although references from a District Magistrate referring the record of a First Class Magistrate have been accepted without comment by them. See *Empress* v. *Jánki*(3); *Empress* v.

(1) I. L. R., 10 Cal., 268. (2) *Ibid.*, p. 551. (3) I. L. R., 7 Bom., 82.

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Bhagván[1]; *Queen Empress* v. *Joti Rájnák*[2]; *The Municipal Commissioners of Mangalore* v. *J. A. Davies*[3]; *Queen* v. *Guldm Hussein*[4]; *Queen* v. *Chakrasahu*[5]; *In the matter of the petition of Din Muhummad*[6]; *Queen Empress* v. *Hasnu*[7]. The order of the District Magistrate was not objected to, for want of jurisdiction."

There was no appearance for the accused or for the prosecution.

WEST, J.—The question we have to consider is, whether the District Magistrate had power to call for the proceedings held by a First Class Magistrate in his district. The answer to it depends upon the determination of the question, whether the Court of a Magistrate (First Class) is inferior to that of a District Magistrate, within the meaning of section 435 of the Code.

The point does not appear to have been decided in this Court, although for the purpose of sanctioning prosecution under section 468 of the Code of 1872, corresponding for this purpose with section 195 of Act X of 1882, the Court of a District Magistrate was held to be superior to that of a First Class Magistrate—*Imperatrix* v. *Padmanabh Pai*.[8].

The High Court of Calcutta has, however, recently held, that the Court of a First Class Magistrate is not inferior to that of a District Magistrate so as to give jurisdiction to the latter to call for a proceeding held by the former, and make an order under section 436 or 437 of the Code—*Nobin Kristo* v. *Russick Lall*[9]; *Queen Empress* v. *Nawab Ján*[10]. That view does not commend itself to us, for reasons some of which do not appear, from the report of the cases quoted, to have been adverted to by the learned Judges who decided them.

Section 17 of the Code distinctly provides that all Magistrates, of whatever class, shall be subordinate to the District Magistrate; and, regard being had to some other provisions of the Code, it appears that the District Magistrate is clothed with superiority

(1) I. L. R., 7 Bom. 379.
(2) I. L. R., 8 Bom., 338.
(3) I. L. R., 7 Mad., 65.
(4) *Ibid.*, 71.
(5) *Ibid.*, 185.
(6) I. L. R., 5 All., 226.
(7) I. L. R., 6 All., 367.
(8) I. L. R., 2 Bom., 384.
(9) I. L. R., 10 Cal., 268.
(10) *Ibid*, p. 355.

in respect of, not only his executive, but also judicial, functions. We may, by way of illustration, refer to the powers given by the Code to the District Magistrate, by section 350, of setting aside a conviction recorded by a First Class Magistrate under certain circumstances; of calling for record and proceedings under section 435; of hearing an appeal, under section 406, against an order passed by a First Class Magistrate; of transferring and withdrawing appeals under section 407, and of hearing an appeal from orders passed under section 514, or revising them—section 515. These provisions accord with the provision of section 17, that a First Class Magistrate's Court is subordinate to that of the District Magistrate. Being subordinate it is necessarily "inferior", but it is inferior also as being statutably incompetent to hold or exercise equal powers with the latter Court in many respects. There may be "inferiority" without subordination, but there cannot be subordination without inferiority, as "subordinate" means "inferior in rank".

If the Court of the First Class Magistrate is not inferior to that of the District Magistrate on the ground of its inferior or less extensive competence, neither, it seems, can it be inferior to the Court of Sessions, to which its subordination is strictly limited by section 17, and if there is no inferiority then there is no authority for revision; and the result would be that no local Court would have authority or control over the proceedings of First Class Magistrates, except by way of appeal, in cases where it is allowed, and the party aggrieved chooses to prefer it. We cannot assume that such a result was contemplated by the Legislature; if it had intended to exclude the Courts of First Class Magistrates from revision by the Court of District Magistrate it would, we think, have said so in express terms. The epithet "inferior" seems to us to have been used simply in order to avoid the use of "subordinate" on account of the especial limitations of the latter word, which would prevent the Court of Sessions from looking into certain cases arising beyond the line of "subordination" to it, which yet might properly be examined for the purpose of an order under sections 436, 437, or reference under section 438. It is undesirable that the High Court should, in general, order committals. Its hands ought to

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be quite free in dealing with a case in its ultimate stage of appeal or revision. The Bombay cases are generally, but by no means exclusively, cases of review and reference of proceedings of Second and Third Class Magistrates—see *Empress* v. *Bhagván*(1); *Queen Emprss* v. *Joti Rájnák*(2). The practice of other provinces, though not of Bengal, allows a superiority of the District Magistrate. The District Magistrate's order in the present case under section 436 cannot be deemed beyond his jurisdiction, and the commitment made by a First Class Magistrate in pursuance of that order cannot be quashed.

(1) I. L. R., 7 Bom., 379. (2) I. L. R., 8 Bom., 338.

APPELLATE CIVIL

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

September 16.

NILKANTH ANAJI KARGUPI (ORIGINAL PLAINTIFF), APPELLANT, *v.* BASLINGA AND TWO OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Vatan—Officiator's remuneration—Civil process—Bombay Act III of 1874, *Secs.* 5, 7, 10 *and* 13.

The power of the Collector to procure the removal of the process of the Civil Court, or to get the Court to set aside a sale under section 13 of the Bombay Hereditary Offices Act No. III of 1874, extends to any *vatan*, or any part thereof, or any of the profits thereof, assigned or not assigned as remuneration of an officiator; but the exemption from liability to the process of the Civil Court extends only to such *vatan* property, or profits, thereof, as have been assigned as remuneration of an officiator.

THIS was a second appeal from the decision of C. F. H. Shaw, District Judge of Belgaum, amending the decree of A. M. Cantem, Subordinate Judge of Belgaum.

The plaintiff sued to recover Rs. 1,009-8-0 due upon a mortgage bond, dated 4th March, 1876, from the defendants personally and by a sale of the *patelki* lands mortgaged. The defendants denied the genuineness of the bond, and asserted that the plaintiff, not being a member of the *vatandár* family, the alleged alienation, without the sanction of Government, was invalid, and that some of the lands alleged to have been mortgaged were assigned by the Collector as remuneration to the officiating *vatandár*.

*Second Appeal, No. 348 of 1883.