APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1892. *January* 11.

SHRI VISHVA'MBHAR PANDIT, APPLICANT, *v.* SHRI VA'SUDEV PANDIT, OPPONENT.*

Administrators appointed by the Court—Order to deliver property—Regulation VIII of 1827, *Sec.* 9—"*Determined*"—"*Finally determined*"—*Right of appeal —Illegal order—Jurisdiction—Civil Procedure Code (Act XIV of* 1882), *Sec.* 622—*Extraordinary jurisdiction.*

Section 9 of Regulation VIII of 1827 empowers the District Court to make an order directing the administrators appointed under the Regulation to make over the property, when "it has been determined" between the rival claimants who is the heir of the deceased; but, to give full effect to the object of the Regulation, the word "determined" must be understood "finally determined."

Where the Judge considered that he was bound to make an order directing administrators appointed under Regulation VIII of 1827 to make over the property of the deceased to one of the rival claimants who was judicially declared to be the heir of the deceased,

Held that, so long as the party against whom the decision in the matter of the rival claims was given, had a right of appeal, the order of the Judge was one which he could not make under the Regulation, and that in exercising his jurisdiction under the Regulation he had exercised it illegally and that being so, the High Court had power, under section 622 of the Civil Procedure Code (Act XIV of 1882), to interfere in the exercise of its extraordinary jurisdiction.

THIS was a civil application under the High Court's extraordinary jurisdiction, section 622 of the Civil Procedure Code (Act XIV of 1882), against an order passed by Dr. A. D. Pollen, District Judge of Poona.

The application was made under the following circumstances:—

One Tátia Mahárâj died in the year 1866 possessed of considerable property consisting of *inám* villages situate partly in British and partly in Kolhápur Territory. Tátia Mahárâj had left him surviving two widows, who died in the year 1887. After the death of the widows, disputes arose between Shri Vishvámbhar Pandit *alias* Nána Mahárâj and Shri Vásudev Pandit *alias* Bába Mahárâj, who set up their rival claims to the right of succession to the property of the deceased Tátia Mahárâj. The former set up his title as the reversionary heir and the latter as the adopted son of Tátia Mahárâj. Owing to the disputes the

* Civil Application, No. 249 of 1891, under Extraordinary Jurisdiction.

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District Judge of Poona appointed the Collectors of Poona and Belgaum to act as administrators of the deceased's estate in British territory under section 9 of Regulation VIII of 1827 until the right of succession was determined by a Civil Court. Shri Vásudev Pandit *alias* Bába Maháráj thereupon filed a suit in the Court of the First Class Subordinate Judge of Poona to establish his title by adoption to the estate of the deceased. The suit having been decided in favour of Shri Vásudev Pandit *alias* Bába Maháráj, he applied to the District Court for an order that the property, which was in the possession and management of the administrators, should be delivered over to him, and the District Judge granted the application on the 1st December, 1891. On the 4th December, Vishvámbhar *alias* Nána Maháráj presented an application to the District Judge, stating that he intended to prefer an appeal against the decree of the Subordinate Judge, and praying that the *ex-parte* order which was passed on the application of Shri Vásudev Pandit *alias* Bába Maháráj, directing delivery of property to him, should be cancelled, and that the management and possession of the administrators should be continued. On the said application the District Judge passed the following order:—

"The administrator is only authorized to manage the property till the right of succession is determined, and when it is determined, as it has been in this case, the Judge is bound to direct the administrator to deliver over the property to the rightful heir. Application rejected."

Against the order of the District Court Vishvámbhar Pandit *alias* Nána Maháráj applied to the High Court.

Latham (Advocate General with *Ganpat Sadáshiv Ráo*) for the applicant:—Section 9 of Regulation VIII of 1827 contemplates that the order for the delivery of property should be made after the dispute between the rival claimants is "finally" determined. The word in the section is "determined," but, unless it be held to mean "finally determined," there would be no end to confusion, and the object of the Regulation will be defeated. We have presented an appeal to this Court against the decree of the Subordinate Judge, and till the appeal is disposed of, the

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question as to who has the preferential right to succeed to the property remains open and cannot be considered to have been "determined." The District Judge has taken an erroneous view of the section, and his order, being both irregular and illegal, should be set aside—*Sakamva* v. *Martyava* (1); *Jugobundhu* v. *Jadu Ghose* (2).

Mahádev Chimnáji Apte for the opponent:—The language of section 9 of the Regulation is quite clear and there is no ambiguity about it. When the question between the rival claimants is once decided, the District Court has got no power under the section to keep the property under the custody of the administrator. The Court cannot interfere with the order of the District Judge, because under section 622 of the Civil Procedure Code (Act XIV of 1882) which is applicable to the present case, it can interfere with the lower Court's order only when that Court has failed to exercise or has exceeded its jurisdiction or has acted with material irregularity.

[SARGENT, C. J.:—But the Judge has not properly construed section 9 of the Regulation. Improper construction of a section is an illegality which must be taken notice of under the extraordinary jurisdiction.]

This Court is always very chary in exercising its extraordinary jurisdiction. It has been often held that a decision based upon a wrong view of law cannot be set aright under the extraordinary jurisdiction. Such has been the invariable practice of this Court.

SARGENT, C. J.:—The District Judge considered that he was bound to make the order of the 1st December, 1891, directing the administrators appointed under Regulation VIII of 1827 to make over the property of the late Tátia Mahárâj to Shri Vásudev after he had been judicially declared by the First Class Subordinate Judge in Suit No. 324 of 1888 to be the heir of the deceased. Section 9 of the Regulation doubtless provides for this being done when it "has been determined" between the rival claimants who is the heir; but to give full effect to the object of the Regu-

(1) P. J., 1887, p. 52. (*Vide* note, p. 711 *infra*.)
(2) I. L. R., 15 Calc., 47.

lation, by the word "determined" must be understood "finally determined," which cannot be said to be the case as long as the party against whom the decision in the lower Court has been given has a right of appeal. We think, therefore, that the order was one which the District Judge could not make under the Regulation, and that in exercising his jurisdiction under the Regulation, as he has done, he has exercised it illegally, as was held in *Salamva* v. *Martyava* (1) and *Jugobundhu* v. *Jadu Ghose* (2). That being so, this Court has power under section 622, Civil Procedure Code, to interfere in the exercise of its extraordinary jurisdiction, and we must accordingly make the rule absolute, and direct that Shri Vásudev do restore to the administrators the money paid to him by them under the order of 1st December, 1891.

Rule made absolute.

(1) See note. (2) I. L. R., 15 Calc., 47.

NOTE.—The following is the judgment (P. J., 1887, p. 52) referred to in the argument of the Advocate General and the judgment of the Court :—

JUDGMENT IN APPLICATION No. 177 OF 1886 UNDER EXTRAORDINARY JURISDICTION.

SALAMVA, APPLICANT, *v.* MARTYAVA, OPPONENT.

Application against the order of Ráo Sáheb Rághavendra Rámchandra, Subordinate Judge of Hubli, in Miscellaneous Application No. 89 of 1886.

SARGENT, C. J., and NÁNA BHA'I, J. :—We think the Subordinate Judge has put a wrong construction on the expression "by some person at his instigation" in section 329 of the Civil Procedure Code. He would appear to have thought that, although the claim of the opponent was a real and *bonâ fide* one, still, if she was induced to obstruct by the judgment-debtor, it would fall under that section. Looking at the language of section 331, the contrast, in the contemplation of the Legislature, would appear to have been a *bonâ-fide* claim, and one made not in good faith, but at the suggestion of the judgment-debtor. As the Subordinate Judge has, we think, proceeded upon an erroneous construction of the section under which he obtained his jurisdiction to make the summary orders in question, we think it is a proper case for the exercise of our extraordinary jurisdiction, and that the order should be discharged and the case sent back for a fresh order to be passed on the application of the opponent with due regard to the above remarks. Costs of this application to abide the result.

28th February, 1887.