it difficult to believe that on receiving summons the appellant remained indifferent to the assertion of her rights as the wife of the respondent. Having regard to all the circumstances of the case I am of opinion that the finding that summons was served on the appellant is unreasonable and cannot be supported.

At the argument in appeal the point was raised whether the decree *nisi* and the decree absolute entered under Chapter XLII of the Civil Procedure Code could stand in view of the failure to comply with section 85 of the Code which requires that upon an *ex parte* hearing the decree *nisi* shall be served personally on the defendant, unless the Court directs some other mode of service. It is conceded that after the *ex parte* hearing on the 27th August, 1948, the procedure laid down in section 85 was not followed. There is nothing in Chapter XLII from which one is entitled to infer that the imperative provisions in section 85 are not applicable to matrimonial cases. On the contrary section 596 provides that " the procedure generally in such matrimonial cases shall (subject to the provisions contained in this Chapter) follow the procedure hereinbefore set out with respect to ordinary civil actions ". If in an action respecting property it is necessary that a defendant should have notice of a decree passed against him in his absence, the grounds are very much stronger for holding that the same procedure should be followed in an action for dissolution of marriage resulting as it does in the alteration of the status of the parties. I am, therefore, of the opinion that the decree *nisi* and the decree absolute passed under section 604 are void and of no effect.

I would, therefore, set aside the decree *nisi* and the decree absolute dissolving the marriage and remit the case to the learned District Judge with directions to allow the appellant to file answer and to try the action in due course. The appellant will be entitled to the costs of appeal and the costs of the proceedings in the District Court on the 9th March, 1949.

JAYETILEKE C.J.—I agree.

Decree set aside.

1949 *Present :* **Basnayake J.**

EDIRISINGHE, Petitioner, *and* DISTRICT JUDGE OF MATARA, Respondent

S. C. 49—IN THE MATTER OF AN APPLICATION FOR WRITS OF CERTIORARI AND PROHIBITION AGAINST L. B. DE SILVA, THE DISTRICT JUDGE OF MATARA

Writs of Certiorari and Prohibition—Obstruction to Commissioner in partition action—Inquiry—Bail—Jurisdiction of District Court—Civil Procedure Code, s. 839.

Petitioner was alleged to have obstructed a Commissioner who had been directed to sell land in a partition action. The District Judge fixed the matter for inquiry and directed the petitioner to furnish bail in a sum of Rs. 500 to ensure his attendance in Court.

Held, that the Court had inherent jurisdiction under section 839 of the Civil Procedure Code to inquire into the matter.

Held further, that the Court had no power to order bail.

APPLICATION for writs of *certiorari* and prohibition against the District Judge of Matara.

Ivor Misso, for the petitioner.

M. Tiruchelvam, Crown Counsel, for the respondent.

May 19, 1949. BASNAYAKE J.—

The facts relating to this application by the 37th defendant in D. C. Matara Partition Case No. 14,059 are as follows :—

A commission returnable on 24th November, 1948, for the sale of the land which was the subject-matter of the action was issued to one R. D. Perera, a land surveyor, on 15th September, 1948. On 10th November, 1948, the proctor for the plaintiff moved for a postponement of the sale which had been fixed by the Commissioner for 12th November, 1948, on the ground that the plaintiff was ill and unable to attend the sale. The respondent refused the application but issued directions to the Commissioner to accept bids on behalf of the plaintiff from any person who had his written authority to bid. The Commissioner returned the commission unexecuted for reasons stated in his report which is set out below.

" *Report*

" Pursuant to the Commission issued to me in the above case, I after due notice to the parties proceeded to the land on the 12th instant, the date fixed for the sale.

" The 1st, 2nd, 32nd and 37th defendants were present. Many other persons who were not co-owners were also present. One of these persons wanted my permission to bid at the sale on behalf of the plaintiff. I inquired from him whether he had brought a written authority from the plaintiff to act as his agent. He had no such authority and he was not even a co-owner. I told him that I could not allow him to bid at this sale.

" This person charged me with taking sides and said that it was unfair on my part not to consider the position of the plaintiff who was ill in hospital and also of some minors whom the plaintiff represents.

" The parties present were very argumentative and excited. In order to prevent any possible disorder I postponed the sale. The 37th defendant was very boisterous and in a threatening manner warned me and said ' Don't come to this land again for a sale. I shall not allow it.'

" I left the place as I was not prepared to face any eventualities.

" I beg Your Honour be pleased to relieve me of this sale and issue the Commission to another. "

On receipt of this report the respondent issued the following notice on the 37th defendant :

" You are hereby required to appear in person before this Court on 22.12.48 at 9.00 a.m. to show cause why you should not be dealt with by Court for the alleged obstruction and why you should not be condemned to pay all the costs incurred as a result of the obstruction. "

He appeared in Court on the day mentioned in the notice and denied that he obstructed the Commissioner. The respondent thereupon ordered the case to be called on 11th January, 1949, directed the Commissioner to be present in Court on that date, and ordered him to furnish bail in a sum of Rs. 500 to ensure his attendance in Court.

On 11th January, 1949, the Commissioner and the 37th defendant were present and the respondent in fixing the inquiry for 2nd March, 1949, made the following order :

" Inquiry *re* obstruction to Commissioner, *re* costs of such obstruction and to consider what steps should be taken against the 37th defendant if he has obstructed the Commissioner for 2.3.1949. "

Thereupon the 37th defendant moved this Court for a mandate in the nature of a writ of prohibition and also for a mandate in the nature of a writ of certiorari. He submits that the respondent had no jurisdiction—

(*a*) to make the order requiring him to furnish bail, and

(*b*) to inquire into the alleged obstruction by him to the Commissioner.

He asks that the order to furnish bail be quashed and that the respondent be prohibited from holding an inquiry into the alleged obstruction to the Commissioner.

The respondent states that on 2nd March, 1949, he meant to ascertain—

(*a*) whether the 37th defendant had committed any offence punishable under the Penal Code, or

(*b*) if he was guilty of conduct amounting to contempt of court punishable under section 47 of the Courts Ordinance.

The respondent's order of 11th January, 1949, clearly indicates to my mind that the respondent meant only to ascertain the true facts by inquiry on 2nd March, 1949, in order to decide what action, if any, he should take in respect of the alleged obstruction by the petitioner. In my opinion the respondent was entitled by virtue of his office as judge to hold the inquiry he contemplated when it was reported to him that the execution of his order had been prevented by the petitioner. Such a power is implied in the Partition Ordinance under which he issued the Commission for the sale of the land in question, for it is a rule of statute law that when the legislature confers a jurisdiction it impliedly grants the power of doing all such acts as are essential to the exercise of the jurisdiction so conferred [1]. This principle has its origin in the Civil Law wherein it is laid down : " *Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potuit* (Digest II, 1, 2.) "

Learned counsel sought to limit the powers of the District Court to those expressly conferred by the Courts Ordinance. I am afraid I cannot assent to that proposition. In proceedings under the Partition Ordinance where no express provision is made by that Ordinance it has been the inveterate practice to resort to the Civil Procedure Code. That practice has received the sanction of this Court. Section 839 of that Code enacts that nothing therein shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

[1] *Martin, Ex P., (1879) 4 Q. B. D. 212, 491.*

This provision appears to have been introduced in 1921. An express provision saving the inherent powers of the courts governed by the Civil Procedure Code was perhaps deemed necessary in view of the rule of interpretation that a Code must be construed as containing the entire law on the subject for which the Code is designed [1]. The inherent powers of the District Court have been recognised in the cases of *Abeyaratna v. Perera* [2], *Wijesuriya v. Kaluappu* [3], *Mohamed Alia v. Meera Saibo* [4]. The exercise of the inherent jurisdiction of a court has its limits. One of the limits to that jurisdiction is stated by Humphreys J. in the case of *Re A Solicitor* [5] :

"This application comes before the court in that most attractive form, an appeal to the inherent jurisdiction of the court. The judges of this division have always been friendly to such an application based upon that ground, but one has to remember, however desirable it may be in order to prevent injustice not to confine within too strict limits what is known as the inherent jurisdiction of the court, it is quite another thing for this court to be invited to over-ride the terms of statutes and statutory rules and orders which have the effect of statutes, and to say, as we are invited by this application in effect to say, that, while those statutes and those rules provide no stay of proceedings upon an appeal to this court, this court will provide the necessary stay under its inherent jurisdiction."

For the above reasons I am of opinion that the respondent has not endeavoured to assume a jurisdiction which he was not in law competent to exercise. The petitioner is therefore not entitled to a mandate in the nature of writ of prohibition.

I can find no authority for the order made by the respondent that the petitioner should furnish bail, nor does learned Crown Counsel support that order. Such an order cannot be made in the circumstances disclosed in the proceedings which are before me. In proceedings under Chapter LXV of the Civil Procedure Code, however, an order to furnish bail can be made under section 794. I therefore quash that order.

This is not a case in which I should make an order as to costs in favour of either party. I order that each party should bear his own costs.

Mandate refused.

Order for bail quashed.

[1] *Bank of England v. Vagliano Bros.* (1891) A. C. 107 at 144.
Deonis v. Samarasinghe et al. (1911) 15 N. L. R. 39.
[2] (1912) 15 N. L. R. 347.
[3] (1919) 6 C. W. R. 198.
[4] (1918) 5 C. W. R. 299.
[5] (1944) 2 All E. R. 432 at 434.