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attorney executed to him by Ramaswami. The words are "I do hereby authorize Mr. Shivshankar Ramaswami Mudliar to dispose of my bungalows situated in the camp at Sholapur in the way he thinks proper."

The word "dispose" is not used in any technical sense; and in the absence of authority, it seems to us that it would be wrong to assume from the language that Ramaswami intended to confer a power to pledge which is not necessarily included in a power to sell—*The Bank of Bengal* v. *Fagan* (1). A power of attorney should be construed strictly—Story on Agency, s. 68.

It is argued, however, that the witnesses prove that Ex. 8, a draft of the letter, Ex. 232, dated 1st March, 1869, is in the hand-writing of Ramaswami. The Court is asked to infer from the contents that Ramaswami must have known of the mortgage by Shivshankar, and that his successor in title is now estopped from questioning that transaction. In the absence of any information about the circumstances in which Ex. 8 was written, and in face of the fact that Ex. 232 is a letter from Shivshankar, it would be unsafe to draw so great an inference and decide this suit thereupon. Nor, in face of the ruling that powers of attorney must be construed strictly, can any especial weight be given to the fact that Ramaswami and Shivshankar did a joint business, and found it convenient to live together.

There is no evidence that Shivshankar purported to act under the power of attorney in mortgaging to the Bank. There is no evidence that the Bank was aware of this power of attorney. It is clear that Shivshankar acted and that the Bank dealt with him in this matter as if he were the real owner of the property, as he was of the other properties mortgaged by the same instrument. There is no evidence that any of the money raised by the mortgage ever reached Ramaswami. Exhibit 260, dated the 21st [594] October 1870, is the notice given by the Bank of the intended sale under the mortgage. It is directed only to the representatives of Shivshankar.

For these reasons, we are of opinion that the plaintiff must fail; and we, therefore, reverse the decree of the Subordinate Judge and dismiss the suit; the plaintiff to pay the costs of defendant 3 in all Courts.

Decree reversed.

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Before Mr. Justice Birdwood and Mr. Justice Jardine.

MUNLA AMAD (*Original Petitioner*), *Appellant v.* KRISHNAJI GANESH GODBOLE (*Original Opponent*), *Respondent.** [31st March, 1890.]

Limitation Act (XV of 1877), s. 5—Appeal—Appeal filed beyond time—Order for admission of such appeal not binding on respondent—Bombay Civil Court Act (XIV of 1869) s. 27—Power "to hear" appeals includes power to hear any question of limitation relating thereto—Practice.

Where a District Judge admits *ex parte* an appeal filed beyond time, and the appeal is referred for disposal to a Subordinate Judge with appellate powers, the

* Second Appeal, No. 492 of 1881.

(1) 5 M. I. A., 27 (41).

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Subordinate Judge has the power to consider whether the delay in presenting the appeal is sufficiently accounted for. The power "to hear" an appeal conferred by s. 27 of the Bombay Civil Courts Act (XIV of 1869) includes also the power to hear any question as to limitation relating thereto.

The order for admission of an appeal under s. 5 of the Limitation Act (XV of 1877) made before issue of notice to the respondent, is an *ex parte* order, and cannot bind him.

[F., 2 C.W.N. 461 ; Appr., 22 B. 849 (861).]

SECOND appeal from the decision of Khan Bahadur M. N. Nanavati, First Class Subordinate Judge, A.P., of Ratnagiri, in appeal No. 223 of 1888.

The appellant applied, under s. 332 of the Code of Civil Procedure (Act XIV of 1882), for the recovery of certain land of which he had been dispossessed on the 11th December, 1882, in execution of a decree obtained by the respondents against a third party.

The application was rejected by the Joint Subordinate Judge of Ratnagiri on 31st March, 1883.

[595] Against this order an appeal was preferred to the District Judge on 21st May, 1888.

The District Judge admitted the appeal, and ordered notice to issue to the respondents, under s. 553 of the Code of Civil Procedure, on 2nd June, 1888.

The appeal was referred for disposal to the First Class Subordinate Judge with appellate powers.

At the hearing of the appeal, the respondent's pleader raised a preliminary objection that the appeal was time-barred.

It was contended for the appellant that the appeal having been admitted by the District Judge, a Subordinate Judge with appellate powers could not set aside the admission after going into the question of limitation.

This contention was overruled, and the Subordinate Judge held that no sufficient cause had been shown for presenting the appeal beyond time. He, therefore, rejected the appeal with costs.

Against this decision a second appeal was preferred to the High Court.

Shantaram Narayan, for appellant :—In this case the District Judge admitted the appeal. Even assuming that the District Judge was wrong in admitting the appeal, still the only Court which could set him right was the High Court, and not the Subordinate Judge with appellate powers. His duty was only to hear the appeal on the merits, and not question the correctness of the order admitting the appeal. (Refers to s. 27 of Act XIV of 1869 and *Jhotee Sahoo* v. *Omesh Chunder Sircar*(1).)

Daji Abaji Khare, for respondent :—The order for admission of the appeal was made *ex parte*. It is not, therefore, binding on the respondent. The Subordinate Judge, having the power to hear the appeal, had also by implication the power to hear the question of limitation relating to the appeal. It is not disputed that if this question had been raised before the District Judge, he could have heard and decided it. Why should not the Subordinate Judge, to whom the appeal is referred for disposal, hear and decide it? There is nothing to prevent his doing so.

(1) 5 C. 1.

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JUDGMENT.

[596] BIRDWOOD, J.—The appellant was dispossessed on the 11th December, 1882 of certain *dhara* lands in execution of a decree obtained against him by the respondent. He applied to the Subordinate Judge on the 19th December, 1882 to be restored to possession, but his application was refused on the 31st March, 1883. Thereupon he filed a suit for possession on the 29th November, 1883. The litigation lasted till the 13th February, 1888, when the High Court held that the appellant had no remedy by suit, as the question between the parties was one relating to the execution of the decree, within the meaning of s. 244, Civil Procedure Code—*Raghunath Ganesh* v. *Mulna Amad* (1). The appellant then filed an appeal on the 21st May, 1888 five days after the close of the annual vacation of the Court, against the Subordinate Judge's order of the 31st March 1883. The appeal was admitted by the District Judge and referred by him to the Subordinate Judge, A. P., who dismissed it as barred by time.

It has been contended here that, under s. 27 of the Bombay Civil Courts Act, 1869, the Subordinate Judge had no power to question the District Judge's order for the admission of the appeal; that under the Act he had jurisdiction only to "hear appeals" referred to him by the District Judge,—that is to hear them on the merits. We cannot yield to this contention, though it appears to be supported by the authority of the Calcutta High Court in a similar case, decided when Act VI of 1871 was in force, s. 26 of which conferred on Subordinate Judges in the Bengal Presidency power to hear appeals similar to that conferred on Subordinate Judges in the Bombay Presidency by s. 27 of Act XIV of 1869—*Jhotee Sahoo* v. *Omesh Chunder Sircar* (2). We are not prepared to follow that case. The decision of the District Judge, under s. 5 of the Limitation Act, was an *ex parte* decision made before issue of notice to the respondent. It was one directing the issue of a notice to him. It could not possibly have bound the respondent. When the appeal was referred to the Subordinate Judge he had power to "hear" it, and this power clearly included the power to hear any question as to limitation relating thereto. It is a common practice to [597] permit respondents to raise such questions at the hearing—*Ramey* v. *Broughton* (3), and it would be opposed to all justice to refuse them such permission. The Subordinate Judge has rightly decided the point of limitation. After deducting the time taken up in ineffectual litigation, as was done in *Sitaram Paraji* v. *Nimba* (4), the period of thirty days allowed by art. 152 of sch. II of the Limitation Act, from the date—the 31st March, 1883—when the period began to run, was far exceeded: for the period before the filing of the suit of November, 1883, cannot, on the authority of that case, be allowed. The decree of the lower appellate Court must, therefore, be confirmed with costs.

Decree confirmed.

(1) 12 B. 449. (2) 5 C. 1. (3) 10 C. 652 (658). (4) 12 B. 320.