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satisfied. The fact that the plaintiffs were not excluded from their share in other fields does not prevent, we think, the statute from operating in respect of the field from which they have been excluded to their knowledge. The argument on this part of the case has not been pressed. Our view accords with the judgment in *Budha Mall v. Bhugwan Das*<sup>(1)</sup>, cited by Mr. Starling in his work on the Limitation Act, page 254. We confirm the decree with costs.

*Decree confirmed.*

(1) Panj. Rec. No. 86 of 1886.

## APPELLATE CIVIL.

*Before Chief Justice Farran and Mr. Justice Strachey.*

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*December 10.*

CHUNILAL HAJA'RIMAL BY MUKHTYA'R MULTA'NMAL LACHHIT-  
RA'M (ORIGINAL PLAINTIFF), APPELLANT, v. SONIBAI KOM HAJA'RI-  
MAL (ORIGINAL DEFENDANT), RESPONDENT.\*

*Civil Procedure Code (Act XIV of 1882), Secs. 503, 505 and 622—Receiver—Ap-  
pointment of a receiver—Nomination by Subordinate Courts with grounds of  
nomination—Sanction of the District Judge—Order passed by the District Judge—  
Ex-parte order—Review—Appeal.*

The District Judge made an *ex-parte* order for the appointment of a receiver under section 505 of the Civil Procedure Code (Act XIV of 1882). Subsequently it having been shown to the Judge that the nomination made by the Subordinate Judge on which the order was passed was incorrect, the District Judge made an order admitting a review. The plaintiff appealed to the High Court. Without deciding whether an appeal would lie against the order of the District Judge, the High Court dismissed the appeal, holding that the order of the District Judge having, in the first instance, been *ex-parte*, he had clearly the power to review it.

APPEAL from the decision of W. H. Crowe, District Judge of Poona, in Miscellaneous Application No. 193 of 1895.

The plaintiff filed a suit in the Court of the First Class Subordinate Judge of Poona against his adoptive mother as administratrix of his property, and applied for the appointment of a receiver. The Court under section 503 of the Civil Procedure Code (Act XIV of 1882) ordered that a receiver should be appointed to manage the money-lending business of the estate. In submitting the name of a receiver for the sanction of the District Judge under section 505 of the Code, the Subordinate Judge in

\*Appeal No. 38 of 1895 from order.

his report referred to the whole of the property in dispute instead of only to the money-lending business. The District Judge having sanctioned the nomination made by the Subordinate Judge, the receiver attempted to take possession of the whole of the property in dispute. The defendant thereupon applied for review of the order granting the sanction, pointing out that the terms of the report made by the Subordinate Judge being at variance with his order, the sanction granted by the District Judge was illegal, and praying that the sanction having been granted *ex parte* without giving her an opportunity of being heard, was contrary to law, and should be set aside.

The Judge granted the application for review.

The plaintiff appealed from the order granting the application for review.

*Shivram V. Bhandarkar* for the appellant (plaintiff):—The Judge was wrong in granting a review of his order. Section 505 of the Code does not relate to the propriety of the order passed for the appointment of a receiver. What is to be taken into consideration under that section is the propriety of the nomination of the receiver. The Judge's order is purely a ministerial order passed on the report of the Subordinate Judge. The Judge has confounded the Subordinate Judge's judgment and his report. The order nominating the receiver is his judgment, and his communication asking for the Judge's sanction for the nomination is his report. The Judge cannot sit in appeal as to the report. He had, therefore, no power to review the order passed on the report. The words "pass such other order as it thinks fit" in section 505 of the Code mean that the Judge may approve or disapprove of the appointment, or suggest the name of any other person.

It was not necessary to issue a notice to the respondent because she had notice in the Subordinate Judge's Court. The Judge's order being purely ministerial no notice was necessary.

*Mahádeo B. Chaubal*, for the respondent (defendant):—Section 629 of the Civil Procedure Code (Act XIV of 1882) prescribes the grounds on which an appeal can be preferred. The objections now urged cannot be made the grounds of appeal under

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that section. The Judge had authority to go into the question of the propriety of the order appointing the receiver—*The Bombay Persia Steam Navigation Company, Limited v. The S. S. "Zuary"*<sup>(1)</sup>; *Biraján v. Rám Churn*<sup>(2)</sup>.

With respect to notice, we submit that both the parties should be heard when an order is to be passed.

FARRAN, C. J.:—It is contended that this appeal will not lie from the order admitting a review. The contention is probably correct—*The Bombay and Persia Steam Navigation Company, Limited v. The S. S. "Zuary"* (1). It is not, however, necessary for us actually to determine the question whether the appeal lies or not, as it is open to us, if the Court had no jurisdiction to act as it did, to deal with the case under section 622 of the Civil Procedure Code : and upon the merits the law seems to us to be clear. Section 503 gives power to civil Courts in certain cases to appoint a receiver. That, however, is a power which subordinate Courts are forbidden by section 505 to exercise without sanction. Such Courts can only make a nomination with the grounds for the nomination, and upon that the District Judge can authorize the Subordinate Judge to appoint the person so nominated, or pass such order as he thinks fit. The latter words give full discretion, we think, to the District Judge to pass such order as the circumstances of the case considered in all their bearings require. He may give the proper directions to the Subordinate Court. Nomination in section 505 seems to be equivalent to the conditional appointment of a receiver which the District Court can accept or reject or modify. We agree entirely on the above points with the judgment of the Calcutta High Court in *Biraján v. Rám Churn*<sup>(2)</sup>.

It is not necessary to consider in this case whether an appeal will lie to the High Court or not when the Court has passed its order. We shall deal with that question when it arises.

The order of the District Judge having, in the first instance, been made *ex parte*, he has clearly the power to review it. Appeal dismissed with costs.

*Appeal dismissed.*

(1) I. L. R., 12 Bom., 171.

(2) I. L. R., 7 Cal., p. 719.