1867.
LAKSHMI'BA'I v. GANESH ANTA'JI.

11 of Act XX. of 1864 (a), the word "estate" in the closing part of the section meaning the entire estate of the minor He also contended that his client, the appellant, was entitled to be granted a certificate of administration.

Vishvanáth Náráyaṇ Mandlik, for the Názar, argued that the order was correct, the intention of the Legislature being that the Collector should be appointed to take charge of the immoveable property only.

Dhirajlál Mathurádás appeared for the Collector.

PER CURIAM :—"The Court see no reason to interfere with the order of the District Judge, so far as it refused to give a certificate of administration to the estate of the deceased Náráyaṇráv Mádhav to Lakshmíbái, the present appellant; but the Court are of opinion that Sec. 11 of Act XX. of 1864 requires that, if the case is a fit one for the appointment of the Collector as administrator, he should be given a certificate of administration to the *entire* estate. The Court therefore directs that the Judge do amend his order dated 21st June 1866 by appointing the Collector to administer to the entire estate, and granting to him the necessary certificate of administration. This order will in no way affect the appointment of a guardian to the person of the minor Rámábái made by the Judge, or the order made for the maintenance of the said minor, which appointment and order have not been appealed against.

(a) *Sec.* 11 *of Act XX. of* 1864 :—If the estate of the minor consists, in whole or in part, of land or any interest in land, the Court may direct the Collector of the district in which the larger part of the same may be situated to take charge of the estate.

July 9.

Special Appeal No. 4 *of* 1867.

GANPATRA'V VIRESHVAR *et al.* .....*Appellants.*
VITHOBA' KHANDA'PPA' *et al.* .....*Respondents.*

Hindú Law—Adoption—Sister's Son.

It is now well-settled law that the adoption of a sister's son by a Hindú of the Vaishya caste is valid.

THIS was a special appeal from the decision of R. H. Pinhey, District Judge of the Konkan, confirming, in Appeal Suit No. 256 of 1864, the decree of the Munsif of Panvel.

The special appellants, the plaintiffs in the original suit, brought this action for the recovery of the possession of a house, now occupied by the defendant Viṭhobá Khanḍáppá Gulve, and a year's rent thereof, alleging that Mhálsábái (deceased), the widow, and A'ppá, the son, of Khanḍáppá Gulve, deceased, having borrowed a certain sum of money from them, had executed a deed stipulating that if the money advanced was not paid within one year, the house now sued for was to be considered as sold to the plaintiffs. After the period agreed upon had elapsed, the plaintiffs alleged that the house in question was leased to the grantors of the deed, namely, Mhálsábái and A'ppá.

The defendant Bhágu, the widow of A'ppá, did not dispute the genuineness of the deed sued on, but stated that she was not liable for the year's rent, as she had not taken the estate of the deceased Mhálsábái and A'ppá.

The defence of Viṭhoba Khanḍáppá was that the house was his and in his possession; that neither Mhálsábái, his mother, nor A'ppá, was competent either to mortgage or sell it, and that Mhálsábái got money from him for her maintenance when required.

Viṭhobá Khanḍáppá was Khanḍáppá Gulve's sister's only son, whom he (Khanḍáppá) had adopted during his lifetime, and A'ppá was a son whom Mhálsábái had adopted after the death of Khanḍáppá. The parties were Lingáyats by caste. The Munsif held that the house in question was in the possession of Viṭhobá, and that neither Mhálsábái nor A'ppá was competent to mortgage or sell it.

On appeal, the District Judge affirmed the Munsif's decree, on the ground that the right of Viṭhobá had already been determined in appeal: *Mhálsábái* v. *Viṭhobá* (10th September 1862).

Against this decision a Special Appeal (No. 830 of 1864) was preferred on the ground, amongst others, that the District Judge was in error in considering the order of the High Court passed in a Miscellaneous Petition regarding the grant of a certificate as binding upon the parties to this suit.

1867.

GANPATRA'V VIRESHVAR *et al.* v. VITHOBA' KHANDA'PPA' *et al.*

After two remands, the District Court found that Vithobá was the legally adopted son of Khandáppá, and that the adoption of A'ppá by Mhálsábái was invalid; and recorded the following judgment:—

"I am of opinion that the witnesses most fully prove the adoption of Vithobá by Khandáppá in the most formal and public way, before the Mámlatdár and leading inhabitants of Panvel, with the consent of Mhálsábái, Khandáppá's wife, and with the consent of Vithobá's mother. An objection is raised against the validity of the adoption, because Vithobá's mother was Khandáppá's sister; but this objection does not apply to a Shudra like Vithobá (Strange's Manual, Chap. III. on Adoption, Sec. 86). Moreover, although Vithobá is the only son of Khandáppá's sister, and although for argument's sake it may be allowed he ought not to have been given in adoption to Khandáppá, still, as he was adopted by Khandáppá, the adoption, although it ought not to have been made, cannot be set aside. * * * The whole of the chapter in Strange shows that as Khandáppá has adopted Vithobá, no necessity existed for the adoption of a second son by Mhálsábái, and that she was therefore incompetent to make any such adoption."

The case came on for hearing before COUCH, C.J., NEWTON and WARDEN, JJ.

Dhirajlál Mathurádás, for the appellants, argued that Vithobá, being a Lingáyat, was not a Shudra, but a Vaishya; and therefore his adoption by Khandáppá, his mother's brother, was invalid, and ought to be set aside, and A'ppá's adoption upheld.

Vishvanáth N. Mandlik, for the respondent, contended that Lingáyats were *Vritti* Vaishyas, and cited Steele, Summary, p. 105, that adoption by a childless Hindú of the Vaishya caste of his sister's son was valid: *Ramalinga Pillai* v. *Sudasiva Pillai* (*a*); that, according to Hindú law, a second adoption of a son, the first adopted son being alive and

(*a*) 9 Moor. Ind. App. 506.

retaining the character of a son, was illegal and void: *Rangama* v. *Alchama* and others (*b*).

COUCH, C. J.:—It appears to me that the law, as stated in Strange's Manual and the cases before the Privy Council, permits the adoption of a sister's son, and that, when it is once done, it cannot be set aside. We must confirm the decree of the lower court with costs.

(*b*) 4 Moor. Ind. App. 1.

Aug. 23.

Special Appeal No. 334 *of* 1867.

ARJU'NA valad BHIVA' .....*Appellant.*
BHAVA'N valad NIMBA'JI' *et al.* .....*Respondents.*

Mirásdár—Rázinámá—Limitation—Act XIV. of 1859, *Sec.* 1., *Cl.* 12.

In a suit brought by a *mirásdár* to recover possession of *mirás* land, which his ancestor had resigned to Government, against a holder to whom Government had subsequently granted it, *it was held* that the statute of limitations commenced to run against the *mirásdár* and his heirs from the time the *mirási* was resigned, and not from the date of the subsequent grant of it by Government.

To the validity of a resignation of mirás land by a mirásdár to Government the consent of his heirs is not requisite.

THIS was a Special Appeal from the decision of R. H. Hunter, Acting Senior Assistant Judge of Puná, in Appeal Suit No. 245 of 1865, reversing the decree of the Munsif of Bársi.

The plaintiffs sued to recover possession of their ancestral mirás field (Survey No. 36), together with the well and trees thereon in the village of Arjiengád, in the Solapúr division of the Puná District. They alleged that they enjoyed the field till 1846, when, in consequence of their inability to cultivate it, they allowed it to remain waste, and the defendant took it up in 1853.

The defendant answered that the field was not the mirás of the plaintiffs, but that of one Ránu Máli; that plaintiff No. 2 held it as his tenant for some time and then threw it up; that one Mhátárá, grandfather of plaintiff No. 1, suc-