Special Appeal No. 567 *of* 1867. 1867. Nov. 21.

MAHA'RA'NA' FATESANGJI.....*Appellant.*
DESA'I KALYA'NRA'YA.....*Respondent.*

Todá Garás—*Limitation—Moveable Property—Act XIV. of* 1859. *Sec.* 1., *Cl.* 16.

In a suit brought by the plaintiff to establish his right to a *todá garás* allowance, and for arrears of it, it was held that *todá garas*, in the absence of special proof to the contrary, must be presumed to be moveable property. A suit for its recovery must, therefore, be brought within six years.

THIS was a special appeal from the decision of C. G. Kemball, District Judge of Súrat, in Appeal Suit No. 92 of 1867, affirming the decree of the Principal Ṣadr Amín of Súrat.

The plaintiff, on the 9th of October 1866, filed a suit to establish his right to a *todá garás* allowance in the inám village of Kalam, Táluká Wágrá, of the Broach collectorate, and also to recover seven years' arrears with interest.

The defendant pleaded the law of limitation, and urged that, the cause of action having arisen more than six years ago, the maintenance of the suit was barred by Cl. 16 of Sec. 1. of Act XIV. of 1859.

The Principal Ṣadr Amín of Súrat allowed the defendant's plea, and threw out the plaintiff's claim.

The District Judge, in appeal, affirmed this decree.

The special appeal was argued before WARDEN and GIBBS, JJ.

Reid, for the appellant:—The District Judge disposes of this case on the point of limitation only. He follows the decision of the High Court in S. A. No. 642 of 1865; and here, I submit, he is in error. The true origin of *todá garás* has not been determined. It seems, as remarked by Lord *Kingsdown* in the case of *Sambhúlál Girdharlál* v. *The Collector of Surat* (*a*), that all classes of *todá garás* have not had the same origin; and, therefore, each case must stand by itself. The ruling of the High Court in S. A. No. 642 should

(*a*) 8 Moor. Ind. App. 1.

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be held to be applicable only to the particular *todá garás* the subject of that suit. The facts of the present appeal show that the *todá garás* allowance claimed by the plaintiff was a charge on the revenue of the village of Kalam, if not on the village of Kalam itself. The village accounts would show it to be such; and indeed this has been admitted by the defendant's father. It has never yet been decided that a direct charge on land is not an interest in land. If the charge was originally a charge on land, and was afterwards converted by Government into a money payment, not secured upon any land, the case would be different; but here the charge was originally a charge on land, and has so continued. I, therefore, submit that in this case the *todá garás* should be treated as immoveable property, and the twelve years' limitation be applied. The document containing the admission of the defendant's father alluded to above is not filed in the case. A copy of it is, however, on the records of this court, which may be referred to, and the cause remanded that the original may be put in. He also cited *The Collector of Súrat* v. *The Heiresses of Kúvarbái* (*b*); *Keshavbhat bin Guneshbhat* v. *Bhágirathibái kom Náráyanbhat* (*c*). and S. A. No. 4277.

Nánábhái Haridás, on the other side, was not called upon.

WARDEN, J. :—*Todá garás* has always been held to be a species of black mail levied from the inhabitants of a village; and there is nothing in this case to show that it, in any way, differs from those cases already decided. In the papers, on which Dr. Reid relied and asked for a remand, there is nothing to show that *todá garás* is a charge on the lands of the village. We must, therefore, hold, as in S. A. No. 642 of 1865, that it is of the nature of moveable property; and, therefore, this claim is barred by Cl. 16 of Sec. 1. of Act XIV. of 1859.

GIBBS, J. :—I concur. I may also add that the request of the special appellant to remand the cause, in order to give him an opportunity of having the document, purporting to

(*b*) 2 Bom. H. C Rep., 253.
(*c*) 3 Bom. H. C. Rep., A.C.J. 75.

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contain the admission of the defendant's father that this particular *todá garás* is a charge on land, filed, cannot be complied with. A certified copy of the paper being on the records of the court, we have, as empowered by the Code of Civil Procedure, called for and examined it; and we find that it does not contain an admission of the nature contended for by the special appellant's counsel. There is, therefore, no ground for a remand, and we must confirm the decree of the lower court.

Decree affirmed.

Regular Appeal No. 15 *of* 1866.

Sep. 4.

RA'JE VYANKATRA'V ANANDRA'V NIMBA'LKAR. *Appellant.*
JAYAVANTRA'V bin MALHA'RRA'V RANADIVE. *Respondent.*

Hindú Law—Adoption—Only Son—Age of Adopted.

Held:—The adoption by a Hindú widow of an only son, if valid in every other respect, cannot be set aside by reason of the adopted being an only son of an advanced age.

An adoption by a widow has a retrospective effect, and relating back to the death of the deceased husband, entitles the adopted to succeed to his estate.

THIS was an appeal from the decision of Arthur St. John Richardson, Judge of the District of Ahmednagar in Original Suit No. 4 of 1866.

The plaintiff, who is a Shudra by caste, brought this suit to recover the moveable and immoveable property of Gajrábái, wife of Bhaváníráv Ráje Nimbálkar, the original owner of the same, representing that she died on the 6th of February 1865, leaving no other heir her surviving but himself, and that the defendant, who was her servant, wrongfully possessed himself of the whole estate, and refused to deliver it up on demand.

The defendant, *inter alia*, answered that Gajrábái was his mother's mother; that she had in her lifetime conveyed all her estate to him by a deed of gift, dated the 12th of February 1857; that the Inam Commissioner decided in 1854 that the jáhágír was to terminate with the life of