1867
RA'JE V. A. NIMBA'LKAR v. JAYAVANTRA'V M. RANADIVE.

son, not illegitimate as her son by other than her husband would be, but a son in the place of a legitimate natural-born son of her deceased husband. I think the silence of all texts or cases on the point raised so ingeniously by Mr. Pigot shows that such an idea would be contrary to the principles of Hindú law on the subject of adoption. I, therefore, consider the adoption of Jayavantráv good and binding on the estate of Bhavánráv, and the second question, therefore, does not arise; and I would confirm the District Judge's decree, throwing out the claim of the plaintiff with all costs.

Decree confirmed.

Nov. 18.

Special Appeal No. 543 of 1867.

DAVLATA' bin BHU'JANGA' *et al.* ....*Appellants.*
BERU bin YA'DOJI *et al.* ....*Respondents.*

Survey Number—Alienation—Consent of Heirs—Limitation.

There is no precedent for ruling that the holder of a Survey field is incompetent to resign it without the consent of his heirs. A point of limitation must be decided, though raised at any stage of the cause.

THIS was a Special Appeal from the decision of R. W. Hunter, Senior Assistant Judge of the Puná District at Solápúr, in Appeal Suit No. 488 of 1865, reversing the decree of the Munsif of Pandharpúr.

The plaintiffs brought a suit to recover a share in certain fields from the defendants, who, they alleged, were members of the same family as themselves.

The defendants answered that one of the fields sued for, No. 30, was taken up by them after its abandonment by one Narsú, and the other fields after their abandonment by Yádoji, the plaintiff's father.

The Munsif, holding the plaintiffs' right not proved, threw out their claim.

They thereupon preferred an appeal. The defendants, under Sec. 348 of the Code of Civil Procedure, objected that

1867

DAVLATA' BHU'JANGA' *et al.* *v.* BERU YA'DOJI *et al.*

the maintenance of the suit was barred, and claimed an issue upon this point.

The Senior Assistant Judge declined to raise the issue as to the suit being barred on the ground that it had not been brought forward in the court of first instance. On the other points arising in the case, he held that the lands belonged to the family of which the parties were members, and that it did not seem to him necessary to inquire into the circumstances of the abandonment of the fields by Yádoji, the plaintiff's father. He considered that it was to be presumed that even if he had formally resigned his share, he must have done so without the consent of his heirs.

The Appeal was heard before WARDEN and GIBBS, JJ.

Vishvanáth Náráyan Mandlik for the appellants:—The Judge below was wrong in not going into the question of limitation. He is bound to go into it at any stage of the case. The Judge below was also wrong in holding that a person unable to cultivate a field could not resign it without the consent of his heirs.

Dhirajlál Mathurádás for the respondents.

PER CURIAM:—The Senior Assistant Judge was in error in not raising and determining the issue of limitation. The rulings of this court have been that this issue must be decided whenever raised, even if taken for the first time in the court of special appeal. The case must be returned for this purpose. There is a difference set up as to title between No. 30 and the other fields; but the question whether Nársu was a mere holder under Government, or a tenant of the plaintiff's ancestors, was not gone into; it is found that he had held for more than twenty years, but there is no reason why a holder of a number might not be the owner also. Further, there is nothing to show what relationship exists between the parties, nor was any inquiry made as to whether the family were united or not, as raised in the defendant's reply. The Senior Assistant Judge has also apparently overlooked the fact that the defendants are in possession, and that the onus, therefore, would lie, in the first instance, solely

1867.
DAVLATA' BHU'JANGA' et al. v. BERU YA'DOJI et al.

on the original plaintiff as a plaintiff in ejectment; he is further in error in presuming, without going more fully into the point, and giving reasons for his opinion, that a cultivator of a number cannot resign it without the consent of his heirs; it has nowhere been so ruled, and it is a question whether such a ruling could be supported. The decree of the Senior Assistant Judge is reversed, and the case remanded for re-trial on merits with reference to this judgment.

Decree reversed, and suit remanded.

Aug. 20.

Special Appeal No. 396 *of* 1867.

MAHIPATRA'V CHANDRARA'V ....*Appellant.*
NENSUK A'NANDRA'V SHET MA'RVA'DI......*Respondent.*

Limitation—Minor—Guardian—Act XIV. of 1859, *Sec.* XI.

Where the father of a minor lent on account a sum of money to the defendant and died without having received back the money, and the account was continued with the defendant by the mother and guardian of the minor, and a balance was struck during the minority of the infant.

It was held that the cause of action arose at the time such balance was struck, and that, as the cause of action accrued to the minor during his disability, his representatives could sue to recover the balance at any time during the term of disability, and that a claim by the minor on attaining his majority, or, if he should die, by his representative, would not be barred if preferred within three years from the cessation of the disability. Further, the extension of the period of limitation conceded to a minor on account of legal disability, is not affected by the fact that during his majority he is represented by a guardian.

THIS was a special appeal from the decision of A. C. Watt, Acting Assistant Judge of Púna, in Appeal Suit No. 123 of 1865, reversing the decree of the Principal Ṣadr Amín at Puná.

The appeal was heard before TUCKER and GIBBS, JJ.

Vishvanáth Náráyaṇ Manḍlik for the appellant.

Dhirajlál Mathurádás for the respondent.

The facts of the case, so far as material, are stated in the following judgment, delivered this day by—