1868.
March 30.

Special Appeal No. 523 *of* 1867.

BHULA'BHA'I GULLA'BHA'I *et al.* .....*Appellants.*
MODJI DESA'LJI *et al.* .....*Respondents.*

Copy of a Copy—Evidence.

A certified copy of a document deposited in a public office, which document is itself a copy, is admissible as secondary evidence where the absence of the original is duly accounted for.

SPECIAL Appeal from the decision of S. H. Phillpotts, Acting Senior Assistant Judge of Kheḍá, in Appeal Suit No. 16 of 1867, confirming the decree of the Munsif of Kheḍá.

This suit was instituted by the heirs of Jeṭhsanji Mánsang, to recover, on payment of such sum as might be found due, possession of a field, alleged to have been mortgaged, for Rs. 61, to the defendants' ancestors.

The Munsif awarded the claim, and his decision was confirmed by the Senior Assistant Judge, who recorded the following finding:—

"As the field in question was mortgaged between fifty and sixty years ago, it is almost impossible for the mortgagor's representatives to produce direct proof of the transaction, as it is contrary to the law of nature that any of the parties or witnesses to the deed should be alive; hence the original and almost only proof must be in the hands of the mortgagees (defendants), who are of course interested in denying the fact of the mortgage, and do deny it, though a notice was served on them to produce the mortgage deed. Hence, secondary proof must be accepted, which is produced by the plaintiffs, the representatives of the mortgagor, in this case. It appears that in Samvat 1879 (A.D. 1813), ten years after the mortgage had taken place, copies were made, by order of Government, of all deeds connected with *girásias'* holdings, and that the mortgage deed in question was produced and copied: a copy of this, attested as a true copy by Mr. Richey, Settlement Commissioner, in whose

ooks are, is recorded in this case, and as the knowledge of where Mr. Richey, in whose charge is, may be, it must be assumed a *primâ facie* true s document being admitted, clearly proves that as mortgaged in Samvat 1879 (A. D. 1813) by one i Mánsangji to the defendants' ancestors, Sambhu-Kasandás, for Rs. 61."

case came on for hearing before NEWTON, Acting C.J., IBBS, J.

ántárám Náráyan, for the appellants :—The objection e lower court's finding is, that it has based its decision n a copy of a copy. [GIBBS, J. :—The Privy Council have ided the point.]

In the case referred to, *Unide Rajaha Bahadur* v. *Pemmaamy Naidoo* (*a*), the Privy Council have ruled that where the *practice* of the court is to receive such copies, their Lordships would not reject the copy from evidence; but it is not shown here that the practice of our courts is to receive such copies in evidence. Moreover, there is nothing to show that the copy, from which this copy was made, was sworn to, and was a correct copy of the original.

It has been often ruled by this court that it should be shown, when a copy is received as secondary evidence, that such copy had been examined. If such strictness is insisted upon in respect of the first copy, how much more should it be required in regard to the second. In the case of *Muhammed valad Abdul Mulna* v. *Ibráham valad Hasan and others* (*b*), where it was found that a copy from the register was received in evidence, the rule requiring the original to be accounted for, before the receipt of secondary evidence, was applied, though the copy had been taken from a register kept by a public officer.

Nánábhái Haridás for the respondent.

PER CURIAM :—The rule in regard to the admission of secondary evidence would have applied to the copy in this

(*a*) 7 Moo. Ind. App. 128. (*b*) 3 Bom. H. C. Rep., A.C.J. 160.

1868.

BHULA'BHA'I GULLA'BHA'I *et al.* *v.* MODJI DESA'LJI *et al.*

case, had the absence of the original not been accounted for; but here the Judge states that the original is in the possession of the appellants. The objection taken in the memorandum of special appeal is apparently directed to the absolute inadmissibility of a copy of a copy; but this has been somewhat amplified and varied in the course of the argument. We do not find, however, that any error in law has been committed by the lower court, since we are not aware of any law or practice binding on the courts in the Mofussil which prohibits the reception by them of a copy of a copy in evidence.

The judgment of the Privy Council is a sufficient precedent for our decision, that there is no objection to receive in evidence a copy coming out of a public office, and duly certified as a copy of a copy deposited there.

We affirm the lower court's decree with costs.

Decree affirmed.

March 31.

Special Appeal No. 693 *of* 1867.

AMRITRA'V bin YESHVANTRA'V DESHMUKH...*Appellant.*
ANYA'BA' bin ABA'JI DESHMUKH .....*Respondent.*

Limitation—Right to share in a Watan*—Acknowledgment in Writing—Act XIV. of* 1859, *Sec.* I., *Cl.* 13, *and Sec.* IV.

Anacknowledgment in writing, signed by the defendant, or the person through whom he claims, of the right of the plaintiff to share in a *watan*, is not sufficient to revive the period of limitation contained in Act XIV. of 1859, Sec. I., Cl. 13, so as to give a new starting-point from the date of such acknowledgment; under that clause, there must be a payment on account of the alleged share by the person in possession of, or having the management of, the *watan*: and Sec. IV. is not applicable to such a case.

THIS was a special appeal from the decision of A. Bosanquet, Acting Judge of the District of Ahmednagar, in Appeal Suit No. 216 of 1867, confirming the decree of the Munsif of Sangamner.

Anyábá brought this action against Rághobá bin Khandoji, Amritráv bin Yeshvantráv, and Vithobá bin Rámbá, to recover a half-share in the proceeds of ten villages, and a