impose restrictions on a particular class of owners, it is no argument against the application of it that such a restriction will in a particular case be effectual, and defeat the wishes of some of the owners. What the Act says is that the alienation of less than a whole *bhág*, or recognized share, shall be unlawful, and there is no qualifying principle to prevent this from taking full effect on any alienation by a *bhágdár* after the Act had come into force. We, therefore, confirm the decree of the District Court, with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

GURUPADA'VA' (ORIGINAL OPPONENT), APPELLANT, *v.* PUTA'PA' (ORIGINAL PETITIONER), RESPONDENT*

July 28.

Minor, certificate of administration to the estate of—Act XX of 1864*—Effect of such certificate—Adoption.*

By a deed of adoption a Hindu widow adopted a minor son, the deed stipulating that until such minor attained majority the widow was to manage the property. It subsequently appeared that she was incompetent to manage the property; and the natural father of the minor having applied for a certificate of administration, the lower Court granted one to him. On appeal by the widow to the High Court against the decision of the lower Court

Held that the order of the District Judge granting the certificate should be confirmed. The certificate did not alter the rights and interests of the minor or of the widow in the property. Any right of property or possession that could properly be asserted against the minor before the certificate was granted, could be asserted equally after it was granted.

THIS was an appeal against the order of A. C. Watt, Acting District Judge of Dhárwár, granting a certificate of administration to the estate of a minor.

In 1879 one Tipána died, leaving him surviving his two widows, one of whom was the appellant. On 9th August, 1879, the widows by a deed of adoption duly executed adopted the minor son of the respondent Putápá. The deed stipulated that the widows were to manage and enjoy the property of their husband till the

* Appeal, No. 29 of 1883.

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minor attained majority. Matters went on peacefully till 1881 when a quarrel took place between the father of the minor and the widows, which resulted in the removal of the boy by the respondent from the adoptive family.

About the middle of the year 1882 the respondent Putápá presented a petition to the District Judge of Dhárwár, under Act XX of 1866, for a certificate of guardianship and administration to the estate of his minor son, the adoptee, in which he alleged (among other things) that the minor had been driven out of the adoptive family, and that the widows were mismanaging the property, and were not likely to apply to the District Court for a certificate of administration.

The appellant answered that the respondent had no right to ask for a certificate, and that she was ready to support the minor if he lived with her and obeyed her.

The District Judge of Dhárwár on receiving the application asked the Subordinate Judge at Haveri to make an inquiry as to how matters stood. The Subordinate Judge was of opinion that the property, if left in the management of the appellant, would suffer, as she was an ignorant and incompetent person to manage it, and recommended that Putápá, the respondent, was a fit person to be guardian.

The District Judge accordingly, satisfied with the opinion of the Subordinate Judge of Haveri, ordered a certificate to be granted to the respondent on condition of the latter furnishing a security to the amount of Rs. 20,000.

Against this order of the District Judge the appellant appealed to the High Court.

Máneksha Jehángirshá for the appellant.—The deed of adoption expressly stipulated that the management of the estate would rest with the appellant during the minority of the adoptee. Such a condition must be given effect to. See *Chitko* v. *Janki*[1] The natural father of an adoptee is not his proper guardian where either of the adoptive parents is living, and willing to act

(1) 11 Bom. H. C. Rep., 199.

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as guardian—*Lakshmibái* v. *Shridhar*[1]. The appellant, therefore, is the proper guardian, and a certificate ought to have been granted to her.

Náráyán Ganesh Chandávarkar for the respondent.—The boy had been with the appellant for nearly two years, and ill-treatment was the cause of removal. The appellant was incapable of managing, and the finding of the lower Court is as good as conclusive in such a matter. See *Rádhábái* v. *Zillu*[2]

West, J.—We do not think that, on the evidence before us, we should be justified in reversing the order made by the District Court, appointing Putápá administrator of Bharma's estate. Security is provided for, and the widows, who adopted Bharma, will probably watch the management of his affairs by Putápá. The deed, by which the terms of the adoption were settled, provides, it appears, for the management (and perhaps enjoyment) of the estate by the widows during the minority of the boy Bharma taken in adoption. The rights obtained or retained by the widows under this document and the possession of property held by them would not, of course, be annulled by the grant of a certificate of administration of Bharma's estate to some one else. Such a certificate is an authority for managing a minor's estate as it really is, not as it is merely asserted to be; the fact that the minor's rights and interests are placed in hands more efficient than his own, does not alter the essential character of those rights and interests themselves. Any right of property or possession which could properly be asserted against the minor before the certificate was granted, can be asserted equally after it has been granted. Thus the widows are not, by the appointment of Putápá, deprived of any right or interest vested in them by the deed of adoption.

We, therefore, confirm the order of the District Court of Dhárwár, with costs.

Order confirmed.

(1) I. L. R., 3 Bom. 1. (2) Printed Judgments for 1875, p. 246.