1889 OCT. 2. — APPELLATE CIVIL. — 14 B. 312.

having no interest whatsoever [315] in his natural father's property. The mortgage-bond bears Pundlik's attestation as adopted son, and the mortgagee raises no objection to it. He cannot now turn round and contest the adoption. Assuming that the defendant is not estopped, still the lower Court ought to have considered whether the adoption was not valid according to the custom of the caste to which the parties belonged, or the usage of the district—*Vayidinada* v. *Appu* (1).

JUDGMENT.

JARDINE, J.—We are of opinion that the District Judge has, as is admitted by Mr. Pandurang for the respondents, relied on the fact that in the mortgage-deed executed by the widow Parvatibai, her son Pundlik, for whom the loan was incurred, is described as the son of one Raghunath, who is said to have adopted him. The District Judge has assumed upon this fact that the third defendant Lakshman, the mortgagee, must have admitted the adoption: and treating this as an estoppel, he has reversed the Subordinate Court's decree without deciding upon the merits.

We are of opinion that in so doing he has committed an error of law which requires us to remand the cause. Even if we assume, for the purpose of argument, that the fact is any evidence of an admission, we must remember that, under s. 31 of the Indian Evidence Act, admissions are not conclusive proof. But under any circumstances the fact treated by the District Judge as an estoppel has no such effect, unless it has caused or permitted the other person to believe a thing to be true and to act upon such belief. This is expressly stated in s. 115 of the Evidence Act and expounded in the cases of *Vishnu* v. *Krishnan* (2), *Rajnarain Bose* v. *Universal Life Assurance Co.* (3) and *Kuvarbai* v. *Mir Alam Khan* (4). The District Judge has, in our opinion, failed to perceive the difference between an estoppel and a fact which may or may not be evidence of an admission.

We now remand the cause to the District Court to a re-hearing on the merits. Costs to follow the final decree.

Decree reversed and case remanded.

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14 B. 316.

[316] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Scott, and Mr. Justice Candy.

HEPTULA SHEKH ADAM AND COMPANY, *Executants*; ESAFALI ABDUL ALI, *Executee.** [2nd December, 1889.]

Stamp Act I of 1879, sch. I, art, 5 - Document acknowledging receipt of money for future sale of shares of a company and promising to execute a packa *document of sale—Construction.*

A document whereby the party executing it purported to sell his right, title and interest in certain receipts for shares, and to execute in future a *packa* document of sale thereof, and acknowledged the receipt of Rs. 10,001.

Held, to be an agreement, and, as such, liable to a stamp duty of 8 annas under sch. I, art. 5, of the Stamp Act I of 1879, the property in the receipt not being intended to pass forthwith.

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* Civil Reference, No. 20 of 1889.

(1) 9 M. 44. (2) 7 M. 3. (3) 7 C. 594. (4) 7 B. 170.

1889 DEC. 2. APPELLATE CIVIL. 14 B. 316.

REFERENCE from W. H. Propert, Esq., Commissioner, N. D., under s. 46 of the Indian Stamp Act I of 1879.

The Commissioner was of opinion that the following document was an agreement and liable to a stamp duty of 8 annas under art. 5 of sch. I of the Stamp Act. The following is a translation of the document:—

"TO ESAFALI ABDUL ALI,

"FROM HEPTULA SHEKH ADAM AND COMPANY,

"To Wit:

"We (Heptula Shekh, Adam and Company) have, in the names of the share-holders of our company and others, purchased receipts to the extent of Rs. 70,000 to Rs. 75,000 from the creditors of the Beyla Company. We have sold to you our right, title and interest in the above receipts to the fullest extent. We have yet to take from you the price we had to pay for these receipts, and the receipts have similarly still to be delivered to you. These transactions will be completed in the course of to-morrow. And whenever you desire a *'packa'* document (*i. e.*, a formal document completing the transaction), we shall execute such document at your expense. We are responsible for anything which may have to be paid, more or less, on account of the [317] receipts. As our profit on account of this, we have received from you Rs. 10,001 (ten thousand and one), and have passed this receipt.

"*Dated February 1888.*"

JUDGMENT.

SARGENT, C. J.—We think the property in the receipts was not intended to pass, and that the document should be stamped as an agreement for Rs. 10,001 under sch. I, art. 5.

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14 B. 317.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Hart.

BABU VALAD SHEIK IBRAHIM AND ANOTHER (*Original Defendants*), *Appellants v.* BHIKAJI (*Original Plaintiff*), *Respondent.**
[18th November, 1889.]

Limitation—Hindu law—Inheritance—Reversioner—Adverse possession—Adverse possession against owner bars the reversioners.

R. died, leaving him surviving his son G. and his widow J. On R.'s death G. succeeded to R.'s property and died subsequently, leaving him surviving his widow S., who lived with her brother. The property remained in the possession of J., the widow of R. In 1862 J. sold the property to the defendants, who entered into possession forthwith. In 1874 J. died, and subsequently S. died.

In 1886 the plaintiff, as reversionary heir, sued to set aside the alienation made by J. in 1862 to the defendants.

Held, that the plaintiff's suit was barred. The adverse possession of J. and her alienees for more than twelve years during S.'s life was a bar, not only to S., but also to the claim of the reversionary heirs on her death.

[D., 19 A. 357=17 A.W.N. 80.]

* Second Appeal, No. 250 of 1888.