appeal from the Collector's decision on this point. But the application here was an application under the provisions of section 9, and in the words of the law the Collector was bound to proceed to enquire into such application and to pass a decision either allowing or disallowing the measurement. The point therefore, and the sole point before the Collector under the provisions of section 9, was whether the measurement should be allowed or not; and there was not and could not be before the Collector the point as to the length of the measurement rod, because until the zemindar had been permitted to measure and had proceeded to measure, there could be no issue as to the measurement rod that he was to be permitted to use. In the cases of *Turucknath Mookerjee* v. *Meydee Biswas* (1) and *Rakhaldas Mookerjee* v. *Tumnoo Puramanick* (2), there are judgments of Division Benches of this Court, which, on other grounds, support this view of the law, and there is an unreported judgment of a Division Bench of this Court, which is directly with us, *Ramanath Rakhit* v. *Muchiram Paramanik* (3) Following these judgments we direct that so much of the Collector's decision as allows the plaintiff's to measure should stand, but that so much of the decision as declares what is the standard pole of measurement of the pergunna by which the plaintiff is to measure shall be set aside as passed without jurisdiction. The special appellant will get his costs of this Court.

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

1869
May 31.

LAKHIKANT DUTT AND OTHERS (PLAINTIFFS) *v.* JAGABANDHU CHUCKERBUTTY AND OTHERS (DEFENDANTS.)*

Majority—Act XL. of 1858.

The age of majority fixed by Act XL. of 1858 is not only for proprietors of land paying revenue to Government, but for all persons not being British subjects.

Baboos *Nalit Chandra Sen* and *Purna Chandra Shome* for appellants.

Baboo *Girish Chandra Ghose* for respondents.

BAYLEY, J.—We are of opinion that this case is governed by the decision in *Madhusudan Manji* v. *Debigobinda Newgi* (4).

We read that decision as laying down that every person not being a European subject, who has not attained the age of 18 years, is a minor. It is urged that the Full Bench Decision goes on to state that such a person is a minor "for the purposes of the Act" of 1858, which means that the 18th year is the age of majority in regard to proprietors of land paying revenue to Government, who have been taken under the Cout of Wards. It is further argued that section 28,

*Special Appeal, No. 140 of 1869 from a decree of the Subordinate Judge of Dacca, dated the 3rd November 1868, reversing a decree of the Moonsiff of that district, dated the 31th December 1867.

(1) 5 W. R., Act X. Rul., 17.
(2) 7 W. R., 239,
(3) See *ante* p. 63.
(4) 1 B. L. R., F. B., 49

1869

LAKHIKANT DUTT v. JAGABANDHU CHUCKER-BUTTY.

Regulation X, of 1793, lays down a different period fixing the age of majority for all other persons; but it appears that this section and the law generally were fully considered by the Judges of the Full Bench, and it was considered that 18 years was the age of majority, not only for persons paying revenue to Government and taken under the Court of Wards, but for all other persons not European subjects. We are of opinion that the opinion expressed in that judgment is the correct law; and in that view we think it right to follow it.

The appeal is dismissed with costs.

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

1869
June 1.

MOHABAT ALI AND RAMAT ALI (PLAINTIFFS.) *v.* ALI MAHMED KULAL (DEFENDANT.)*

Disability of Heir—Limitation—Act XIV. *of* 1859, *s.* 11—*Cause of Action.*

Under section 11, Act XIV. of 1859, the subsequent disability of an heir will not save a suit instituted after a lapse of 12 years from the date of cause of action, when such cause of action arose during the life-time of the ancestor.

Mr. *G. A. Twidale* for appellant.

Baboo *Akhil Chandra Sein* for respondent.

BAYLEY, J.—We think this special appeal should be dismissed with costs. The plaintiff sued to establish his right derived from his father as the original purchaser of the property. The defendant claimed through one Shahmat Ali, who, he alleged, was a co-proprietor of the lands, and also pleaded limitation. The first Court gave the plaintiff a decree, holding that the defendants kabala was false, and that his possession was not proved.

The lower Appellate Court has clearly found as a fact, on the evidence that from five years before the plaintiff's father's death, in 1213, that is from the year 1209, the possession was with the defendant and those through whom he claimed, and that this was shewn by several acts of ownership, such as the receipts of rent and the direct evidence in the case; and further that the title under which the defendant claimed, that is the kabala, was a good and a valid title.

In special appeal it is urged that the law of limitation has not been properly applied in this case, and that whereas the first Court has given several reasons for its decision, the lower Appellate Court has not given sufficient reasons to meet those of the first Court. Now the law of limitation that is applicable to this case is section 11, Act XIV of 1859, and that section says: "If at the time "when the right to bring an action first accrues, the person to whom the "right accrues is under a legal disability, the action may be brought by such

* Special Appeal, No. 179 of 1869, from a decree of the Subordinate Judge of Chittagong, dated 2nd December 1868, reversing a decree of the Moonsiff of Chokey, Futtickserry in that district, dated the 8th February 1868.