The nth January 1866.

Present:

The Hon'ble W. S. Seton-Karr and A. Macpherson, *Judges.*

Damages (Civil Suit for)—Conviction by Magistrate.

Case No. 2328 of 1865.

Special Appeal /ram a decision passed by the Principal Sudder Ameen of Hooghly, dated the 23th May 1863, affirming a decision passed by the Sudder Ameen of that District, dated the 30th November 1864.

• Bishonath Neogy (Plaintiff), *Appellant,*

versus

Huro Gobind Neogy and others (Defendants), *Respondents.*

Baboos Umbica Churn Banerjee and *Doorga Doss Dutt* for Appellant.

Baboos Onoocool Chunder Mookerjee, Nil Madhub Sein, Banee Madhub Banerjee, and *Luckhee Churn Bose* for Respondents.

The conviction in a criminal case is not conclusive in a civil suit for damages in respect of the same act.

THE ground of special appeal in this case, which is a suit to recover damages for an assault, is that a conviction of the defendants by the Magistrate for rioting under Sections 147 and 148 of the Penal Code is conclusive evidence, and proves the assault complained of. The Magistrate does convict the defendants of rioting under these Sections, and, in his judgment, finds that the plaintiff was personally assaulted by them. The Lower Appellate Court has, however, considered it not proved that any assault took place, and therefore dismissed the suit.

We cannot in special appeal interfere with the finding of the Lower Court, as the conviction in the criminal case is not conclusive in this, which is a civil suit for damages *{see* the cases collected in Roscoe's Nisi Prius, 10th Edition, 171).

The whole case is highly unsatisfactory. The Lower Court directed that each party should pay his own costs, and we make a similar order, while we dismiss this appeal.

The nth January 1866.

Present:

The Hon'ble C. B. Trevor and G. Campbell, *Judges.*

LimiUtion (Act XIII. of 1848)—No *deiatOta* for legal disability—Commencement of iatfce case of an adopted son.

Cases Nos. 678 and 679 of 1865.

Special Appeals from a decision pasted by fie Judge of Mymensing, dated the 28th November 1864, affirming a decision pasted by the Principal Sudder Ameen of that District, dated the nth July 1864.

Huro Chunder Chowdry (Plaintiff),

Appellant,

versus

Kishen Koomar Chowdhry and others (Defendants), *Respondents.*

Baboos Sreenath Doss and *Bhuggobutty Churn Ghose* for Appellant.

Baboos Kalee Kishen Sein and *Htm Chunder Banerjee* for Respondents.

No deduction or allowance is made by law **for fawl** disability from the period of limitation prescrtbeaKy Act XIII. of 1848.

Limitation against an adopted son will **count from** the time of his attaining majority.

THE plaintiff sued the defendants in two different suits for certain plots of land qf which he had been dispossessed by the defendants. A portion of the plaintiff's claim the Judge remitted to the Lower Court for investigation on the merits ; but as to plots No*. 3 and 4 to 42 in suit No. 27, and plots Nos, z and 3 in No. 28, he declared plaintiff out of Court under the Statute of Limitations.

The Judge finds that, as to all these plots, plaintiff is on his own showing out of Court. As to plot No. 3 in No. 27, plaintiff, retnatis the Judge, states that his mother TaTamoiree was dispossessed by a summary award In the year 1264 whilst Act XIII. of 1846 was in force; and as the order as to three yeafs in that Act is absolute, no time being allowed for any cause whatever to be deducted m counting limitation, and as the suit wfcs not instituted within three years front fn'sit time, plaintiff is barred by lapse of time as regards it. Again, as regards Nos. 4 td 4$, remarks the jadge, plaintiff states that defendant took possession in 1254 under an

Act IV. of 1840 award. When Taramonee, the mother of plaintiff, was dispossessed in that year, the plaintiff's right had not begun, as he was not then adopted ; consequently, Taramonee ought to have sued whilst she was under no legal disability. Plaintiff states that, at the time of dispossession, she was only the guardian of her former adopted son, Jugut Chunder, who died in Chyet 1257; from that date, therefore, she was under no legal disability to sue for her own rights until Chyet 1258, when, plaintiff's vakeel states, the plaintiff was adopted ; consequently, limitation began to run from 1st Bysack 1258, or earlier; and, as this suit was instituted more than two years after the passing of Act XIV. of 1859, no subsequent time can be allowed on account of the subsequent liability of the plaintiff under Section 11, and he is, therefore, barred by limitation, as this suit was not instituted till Chyet 1270, being 13 years after 1st Bysack 1258. The Judge considers that plaintiff was similarly barred as regards plot No. 2 in appeal 28, in which Taramonee was dispossessed in 1262. As regards plot No. 3 of appeal 28, of which a former proprietor was dispossessed according to plaintiff's statement in 1232, confirmed by a decree under Act IV. in 1834, which kept Taramonee out of 'possession of it, plaintiff alleges, remarks -the Judge, that Gobind Chunder Chowdry, the plaintiff's father, held the zemindary when of full age, from 1246 to 1248, and when under no legal disability; consequently •limitation runs from 1246, and plaintiff's claim is barred as regards this plot.

Plaintiff now appeals specially, urging that his claim is not barred by the Statute of Limitation, and that the Lower Court has miscalculated in determining him to be out of time under the Statute.

As to the plot No. 3 in No. 27, we think that there can be no doubt that plaintiff is out of time in suing for it. When suing to reverse a summary award, it is necessary, under Act XIII. of 1S48, to sue within three years of the final award. No deduction or allowance is made by law for legal disability. The agents, of whatever nature they may be, of parties legally disabled from appearing themselves, are under obligation to appear for them within three years to contest the awards, and, if they fail to take the necessary steps to that end, the parties for whom they are acting lose their right by efflux of time.

As to the plots Nos. 4 to 42 in appeal No. 27, it appears that, when the dispossession by defendant took place in 1254, plaintiff's mother was in possession as the guardian and manager of her minor adopted son, Jugut Chunder, wbo was adopted on 12th Falgoon 1250, and who died in 1257. It appears, moreover, that plaintiff was adopted in Jait 1258, and brings his present suit in Chyet 1270, he having reached his majority in Magh 1268 or 1861.

Now, it seems clear that plaintiff is not the heir of either his adopted brother who died in infancy, or of his mother; consequently, when the cause of action arose, and previous to his adoption, no one through . whom he claims was in possession of the property of which the lands are said to form a portion. It follows that limitation did not begin to run against him until his adoption ; • but he was a minor from that time (1258) until 1268, and has brought his suit within three years from the time when the disability ceased; he is consequently as to these lands clearly within time, and his claim to them must be enquired.

The same reasoning applies to plot No. 2 of appeal 28. Taramonee was dispossessed of it in 1262 when acting as the guardian of her first adopted son, and, until plaintiff's adoption, no one through whom he claims possessed his property in virtue of which he brings the present action.

In determining that limitation does not apply under the peculiar circumstances of this case to the above portion of the present claim, we are not unmindful of the ruling of the Privy Council in the case of Kalamimissa *vs.* the Rajah Swagunge to the effect that a decree obtained against a widow in possession of her husband's estate would bind her husband's heirs, unless that decree could be successfully impeached on some special ground.

As to plot No. 3 of appeal 28, the Judge is clearly of opinion that the decree of the Sessions Judge of 1252 was merely a recognition of a previous dispossession commencing in 1232, after which possession of his property has been acquired by plaintiff's father when he came of age in 1246. Limitation, therefore, having once, during his father's possession of the property, begun to run against plaintiff, his brother's and his own subsequent disability did not prevent the continuance of its running, and it has long since placed him out of Court as to this plot.

The Judge will enquire into the title of the plaintiff to plots Nos. 4 to 42 of appeal 27 and plot No. 2 of appeal No. 28.