short time of suing the plaintiff was a minor and incapable of showing possession in any other way than that he was maintained out of the family estate, and as his father Madhub Lall died when the plaintiff was six years old, it is not easy to see how he could have proved his father's possession.

The Judge below has, no doubt, found as a fact that Madhub Lall never was in possession, but this of itself is not enough to do away with the presumption of Hindoo Law that Ram Bullub's possession was that of his brother also.

It appears to us that, before the plaintiff could be declared barred by limitation, the defendant No. 1 was bound to show that the property had passed absolutely to Ram Bullub in 1834.

This he did to the satisfaction of the first Court, and the Judge, we think, should have followed the same course as the Principal Sudder Ameen, and have tried the issue in bar and the issue of fact together.

We remand the case to him for re-trial accordingly. Costs to follow the result.

The 3rd June 1869.

Present:

The Hon'ble H. V. Bayley and E. Jackson, *Judges.*

Limitation—Possession—Section 15, Act XIV., 1859.

Case No. 203 of 1869.

Special Appeal from a decision passed by the Additional Subordinate Judge of Mymensingh, dated the 10th November 1868, reversing a decision of the Moonsiff of that District, dated the 17th August 1867.

Golam Nubee and others (Plaintiffs), *Appellants,*

versus

Bissonath Kur and others (Defendants), *Respondents.*

Baboo Ramanath Bose for Appellants.

Baboos Kalee Kishen Sein and *Nuleet Chunder Sein* for Respondents.

Where plaintiffs had been out of possession for more than 12 years before the institution of a suit to recover immoveable property, it was held that forcible possession for a few months prior to dispossession under Section 15, Act XIV. of 1859, gave them no fresh cause of action.

Jackson, J.—THIS suit was preferred by Moonshee Golam Nubee and others, plaintiffs, to recover from Bissonath Kur and others, defendants, possession of one anna share of Kismut Nischinpore.

The plaintiffs stated that they had purchased this property on the 30th Bysack 1273; that they had obtained possession of it, but that the defendants had brought a suit against them under Section 15, Act XIV. of 1859, and under that and by the decision in that suit they had been dispossessed—and the plaintiffs alleged that their cause of action was their dispossession by the defendants under that decision.

The defendants alleged that neither the plaintiffs nor the plaintiffs' vendor had been in possession of the estate in dispute at any time within 12 years of suit, and that the plaintiffs' suit was barred by limitation.

On the point of limitation, the first Court decided that as the plaintiffs were in possession for a few months previous to the decision passed under Section 15, Act XIV. of 1859, they were in possession for those few months within 12 years of the institution of the suit, and their claim, therefore, was not barred by limitation.

The Appellate Court has reversed that decision. The Appellate Court has found that the plaintiffs' cause of action did not originate in the decision under Section 15, Act XIV. of 1859, but that for 16 or 17 years before that decision, the plaintiffs' vendor had been out of possession. The Appellate Court, therefore, considered the few months' forcible possession which the plaintiffs had obtained to be no possession at all, and in no way to bar the effect of the Law of Limitation.

The case of the plaintiffs was that their vendor and the defendants were joint members of an ijmalee Hindoo family, but that they separated in 1263; that the property now in dispute was purchased by the family prior to the separation; and that, therefore, the plaintiffs' vendor had been entitled to a share of this property along with his other

brothers, and that this share he had sold together with other properties.

The case of the defendants was that the separation between the joint brothers took place so far back as 1254, and that the disputed property had been purchased after the separation by the other brothers, and that the plaintiffs' vendor had no connection with it. The finding of the Appellate Court upon those disputed points is that from the evidence of the witnesses examined for both parties in the case, although it was not clearly found in what precise year the separation took place, but that still it was clearly established that 16 or 17 years ago the family separated. Also that the evidence on the record did not at all prove that the vendor of the plaintiffs, after he had separated from his paternal uncles, was ever in possession of the property in suit. The Subordinate Judge goes on to find that the plaintiffs also were not in possession of the disputed share within 12 years of the institution of this suit. In fact, the Judge found that within 16 or 17 years before suit, neither the plaintiffs nor their vendor had been in possession. The Judge of the Lower Appellate Court differed from the first Court and held that the few months' forcible possession prior to the decree passed under Section 15, Act XIV. of 1859, did not in any way bar limitation, but considered that in such a case the original cause of action must be looked to. Looking then to that cause of action, the Judge held that the suit was barred by limitation.

On special appeal, the same point has been taken before us. It is said that the plaintiffs obtained a fresh cause of action when they were dispossessed by the decision under Section 15, Act XIV. of 1859. The latter part of the Clause is to this effect: "But nothing in this Section shall "bar the person from whom such possession "shall have been so recovered, or any other "person, from instituting a suit to establish "his title to such property and to recover "possession thereof *within the period limited by this Act.*"

The first point, therefore, is as to how we are to read the words "period limited by this Act." What is the period of limitation assigned by this Act to suits to recover possession of immoveable property? Section 1, Clause 12, lays down the period of 12 years as the period of limitation from the time that the cause of action arises. Taking the facts, then, as found by the Lower Appellate Court, *viz.*, that the plaintiffs' vendor separated from the Hindoo family with which he had previously been joint about the year 1254, or at least 16 or 17 years before the institution of this suit, and that neither the plaintiffs' vendor nor the plaintiffs were ever in possession of this disputed property until they took forcible possession, and that the only time during which within that period they had been in possession was the few months during which they held such *forcible, i. e.,* wrongful possession: the question is when, under such circumstances did the plaintiffs' cause of action arise? According to the plaintiffs' statement, their vendor was in possession in 1263 and remained in possession from 1263 up to the present time, and that the dispossession has only taken place in consequence of the decision under Section 15, Act XIV. of 1859. If the plaintiffs had proved the facts of this case as stated by them, no doubt their suit would not be barred by limitation, for the cause of action would then arise as stated by them; but the facts being found against them, it is quite clear that on the day on which they were dispossessed, no cause of action accrued to them. If they had been dispossessed for 15 years, forcible possession for a few months in the 16th year gave them no fresh cause of action. If we were to hold that any fresh cause of action arose to them on such date it would be holding that wrongful and forcible possession was equivalent to honest and legal possession, and it would be altogether defeating the object and policy of the law. Although there is no direct precedent on the point, there is a case at page 306, Hay's Reports, Volume I., the case of Mookta Keshee *versus* Ranee Luckhee and others, in which the same view of the law has been taken with reference to a decision under Act IV. of 1840, which was an Act for possessory suits as much as Section 15, Act XIV. of 1859.

We are of opinion, then, that the plaintiffs have not proved that their cause of action arose from the date stated by them, and that they have not proved that their cause of action arose within 12 years of the institution of the suit, and on this ground we hold that the Lower Appellate Court was right in saying that limitation barred this suit.

We, therefore, dismiss this special appeal with costs.