this Court that a party desirous, as a reversioner, to obtain a declaration of his rights affected by a sale or gift made by a Hindoo widow must bring his suit within twelve years of the alienation, and that it is a remedy of a different description which is open to him after the death of the widow.

Under these circumstances, we have no choice, but to reverse the decisions of the Courts below, and dismiss the plaintiff's suit with all costs.

The 24th April 1873.

Present:

The Hon'ble Louis S. Jackson and Dwarkanath Mitter, *Judges.*

Minor's Right of Action—Limitation—Act XIV. of 1859, s. 2.

Case No. 805 of 1872.

Special Appeal from a decision passed by the Officiating Judge of Chittagong, dated the 9th March 1872, reversing a decision of the Officiating Subordinate Judge of that District, dated the 28th August 1871.

Taruck Chunder Sen (Plaintiff), *Appellant,*

versus

Doorga Churn Sen (Defendant), *Respondent.*

Mr. R. E. Twidale and *Baboo Aukhil Chunder Sen* for Appellant.

Baboo Motee Lall Mookerjee for Respondent.

Case.—Plaintiff sued to recover certain moneys from defendant, who had been appointed manager of property which plaintiff's late uncle had conveyed to him by a will, and who had obtained a certificate under Act XL. of 1858. Plaintiff alleged among other things that defendant, as manager, had sued for money due on a bond executed by one T; but that the suit was dismissed as barred by limitation to the plaintiff's prejudice. The Lower Appellate Court held that the defendant could not be made liable; but that the dismissal of the suit on the ground of limitation would be no bar to a suit by the minor within three years of his attaining his majority:

HELD that, as the cause of action in respect of the bond had arisen in the lifetime of the testator, no further time would, under the proviso in Act XIV. of 1859, s. 2, be allowed to plaintiff by reason of his previous legal disability.

Jackson, J.—THE only ground on which the special appellant appears justly to impugn the judgment of the Lower Appellate Court is that which relates to the bond given by one Tiluck Chunder, the amount whereof the defendant seems to have omitted to sue for and to realize. It appears that a suit on that bond was commenced, if not by the defendant, in the name of the defendant, though the defendant states that this suit was really brought without his knowledge or authority by the plaintiff's brother. The defendant's liability as to this amount has been got rid of by the Lower Appellate Court in the following words: "The dismissal of "the suit by the manager and guardian on "the ground of limitation will be no bar to "a suit by the minor within three years of "his attaining his majority, having reference "to section 2, Act XIV. of 1859, and the "law already referred to." It is not clear what is meant by "the law already referred to," but section 2 of the Limitation Act says: "The action may be brought by such "person or his representative within the "same time after the disability shall have "ceased as would otherwise have been allowed "from the time when the cause of action "accrued, unless such time shall exceed the "period of three years, in which case the "suit shall be commenced within three years "from the time when the disability ceased; "but if, at the time when the cause of action "accrues to any person, he is not under a "legal disability, no time shall be allowed "on account of any subsequent disability of "such person, or of the legal disability of "any person claiming through him."

Now it appears that the cause of action in respect of the bond in question had arisen during the lifetime of the testator, and, therefore, under that proviso, a further time would not be allowed to the present plaintiff by reason of his previous legal disability. It will, therefore, have to be determined whether the defendant is not liable to the plaintiff for the amount of this bond, and if so, to what extent the account between the parties will be affected by the liability. For this purpose the case will go back to the Lower Appellate Court.

The 24th April 1873.

Present:

The Hon'ble Sir Richard Couch, *Kt., Chief Justice,* and the Hon'ble F. A. Glover, *Judge.*

Adjournment under Act VIII. of 1859, s. 146—Rescission of Order of Adjournment—Re-trial—Fresh Summonses.

Case No. 1111 of 1872.

Special Appeal from a decision passed by the Judge of Shahabad, dated the 14th June 1872, affirming a decision of the Subordinate Judge of that District, dated the 29th February 1872.

Bishen Perkash Singh and others (Plaintiffs), *Appellants,*

versus

Ruttun Geer Chela and others (Defendants), *Respondents.*

Mr. C. Gregory for Appellants.

Mr. R. E. Twidale for Respondents.

Where an order was regularly made by a Moonsiff under Act VIII. of 1859, s. 146, granting time to the parties, adjourning the hearing, and fixing a day for the further hearing, but was rescinded on the same day, on the application of the defendant, and the case tried on the following day when all the evidence which the plaintiff was entitled to produce was not before the Court:

HELD that, as it was not shown that the rescinding order was regularly and properly made, there was a defect in the procedure and a defect in law which might most materially have affected the decision on the merits.

Quære.—Where, either under s. 119, Code of Civil Procedure, or in the exercise of the power of review, a suit is restored to its original position, is the plaintiff bound to obtain and issue fresh summonses?

Couch, C.J.—IN this case we have to consider what took place subsequently to the order of the 3rd of February. By that, which was made either under section 119 of the Code of Civil Procedure, or in the exercise of the power of review, the judgment or decision which had been previously passed was set aside, and the suit was restored to the position in which it would have been if that judgment had not been passed, and was to be regularly heard. The 23rd of February was appointed for the hearing, and it seems that on the 10th of February, on the application of the defendant, that date was altered, and it was ordered that the case should be heard on the 27th. Therefore, as regards the plaintiffs, it is as if the 27th was the date fixed for the hearing by the order of the 3rd of February. On the 27th the case could not be heard, because that day was made a general holiday subsequently to the making of the order on the 10th. The plaintiff appeared on the day fixed, namely, the 28th.

The orders do not state fully how the parties appeared, but on the 28th the Moonsiff made an order for the postponement of the hearing to the 12th of March, and he ordered that two of the witnesses for the plaintiff who were not present should be summoned. The order does not in terms say that the hearing was adjourned, but that must be what was meant, because it says that the 12th of March is to be fixed for the hearing. That was a regular order which he had power to make under section 146, granting time to the parties and adjourning the hearing and fixing a day for the further hearing.

Then it would seem that, on the same day after he had made that order, on the application of the defendant, but whether in the presence of the plaintiffs or their pleader and after hearing what they had to say in the matter does not appear, he rescinded it. Apparently his ground for doing so was that, in consequence of the previous judgment, which had been given in the case, the summonses that had been issued for the attendance of the witnesses were of no avail whatever, and it was the duty of the plaintiff after the order of the 3rd of February to have obtained fresh summonses.

I am not sure that he is right in that view; indeed, I am rather inclined to think that it was not necessary that all the expense and trouble of obtaining and serving fresh summons should be incurred by the plaintiff. But whether it was a good reason or not, it does not appear to me to be shown that this rescinding order was regularly made. And there being a previous order which was regularly made under section 146, and which the Moonsiff clearly had power to make, it was incumbent on the defendant to show that it was regularly and properly rescinded. If it was not, then the order first made stands good, and the Moonsiff had no power to decide the case on the 29th, when all the evidence which the plaintiff was entitled to produce had not been produced, and was not before him. Therefore, there was a defect in the procedure and a defect in law which might most materially have affected the decision of the case on the merits. For that reason I think the decree which the Moonsiff passed, and the decree of the Court confirming it, ought to be reversed.

The other objection taken was that the decree of May 1872, in a suit against a ryot for rent, was improperly rejected. That decree was admissible in evidence, but unless it was followed up by evidence that it had been executed, or that the defendant against whom it was obtained had paid the money, and satisfied the decree, it would be quite worthless. It is not shown to us that any offer was made on the part of the plaintiff

to give such evidence, or that any proceedings in the execution of that decree were tendered to the Moonsiff. We cannot assume that there were such proceedings. Without them the decree ought not to have varied the decision of the case; and for that reason the rejection of it is not a ground for a special appeal. But on the other ground, the decrees of both the lower Courts must be reversed, and the suit must be remanded for re-trial. The costs will abide the result.

Glover, J.—I am of the same opinion.

The 24th April 1873.

Present:

The Hon'ble L. S. Jackson and Dwarkanath Mitter, *Judges.*

Special Appeal—Suit against Law-agent—Act XI. of 1865, s. 6—Act XXIII. of 1861, s. 27.

Case No. 757 of 1872.

Special Appeal from a decision passed by the Subordinate Judge of Tipperah, dated the 12th February 1872, reversing a decision of the Moonsiff of Pauchpookooreah, dated the 29th April 1871.

Joogul Kishore Roy (Plaintiff), *Appellant,*

versus

Rughoo Nath Seal (Defendant), *Respondent.*

Baboo Rash Beharee Ghose for Appellant.

Baboos Chunder Madhub Ghose and *Sreenath Banerjee* for Respondent.

In a suit to recover the balance, unaccounted for, of plaintiff's money in the hands of defendant who had been employed as a law-agent on a salary to conduct and look after plaintiff's law-suits, and to receive and disburse moneys connected with such law-suits, it was HELD that the case might be brought under the terms "claim for money due under a contract" (Act XI. of 1865, s. 6), and that, therefore, under Act XXIII. of 1861, s. 27, a special appeal would not lie.

Jackson, J.—THE suit out of which this special appeal arises was a suit to recover Rs. 428, being the plaintiff's money in the hands of the defendant unaccounted for. It seems to be admitted that plaintiff retained and employed the defendant as a mookhtear or law-agent, to conduct and look after his law-suits, and to receive and disburse moneys on his account connected with such law-suits, the defendant receiving a monthly salary of Rs. 2. The service extended over something less than a year and a half, *viz.*, from 15th Falgoon 1272 to 30th Srabun 1274, and the money which passed through the defendant's hands during that time from the plaintiff amounted to Rs. 2,391, out of which, according to the plaintiff's own statement, the sum of Rs. 1,927 was accounted for over and above the defendant's wages, and the suit was for the balance.

In the opinion of the Moonsiff who tried the suit, the defendant succeeded in accounting for a larger sum than was admitted by plaintiff, and the balance was, in his judgment, reduced to Rs. 310.

On appeal, the Subordinate Judge, Mr. Hutchinson, was of opinion that, according to the nikas, that is, the defendant's statement of accounts, the sum of Rs. 2,273 "was used "in various ways on behalf of the plaintiff, "and though a portion of the money, as "bribes to the Court amla, was not lawfully "spent, if really so spent, yet it was spent "by the plaintiff, and therefore the onus lies "with the plaintiff, and he must show item "by item the different sums amounting to "Rs. 310-10-5, which he did not authorize "the defendant to spend on his account." He then goes on to add: "In a proceeding "held on the 10th instant, I gave the plaintiff's vakeel an opportunity to examine the "defendant's nikas, and to prove the items "of unauthorized expenditure amounting to "Rs. 310-10-5. The vakeel has not been "able to show this," and, thereupon, he reversed the judgment of the Court below.

It seems to us not surprising that plaintiff has preferred a special appeal, but the respondent has taken a preliminary objection that under section 27, Act XXIII. of 1861, an appeal will not lie. The special appellant replies to this objection by saying that the case does not fall within the terms of section 6, Act XI. of 1865. We feel bound to say that, in our opinion, the words of that section are sufficiently wide to include, and they do include, such a suit as the present. They include "claims for money due on bond or other contract." It was admitted by the special appellant that the word "contract" is not restricted to express contracts, but refers also to implied contracts. Assuming the concessions made on both sides, it appears that the defendant was the servant of the plaintiff, and in consideration of the wages he received he was bound to attend to his master's interests, and to disburse the moneys which he received from his master according to that master's direction, that is, it seems to us to account for such moneys, and to make good any balance that might remain in his hands. It is also possible to include this