he would not be plaintiff. If the plaintiffs had separate rights, this was superfluous. If they had no rights separate from his, it could not cure the defects of the case, as they did not base their suit on an averment of collusion. Sakhárám was a necessary party as plaintiff. We confirm the decree of the District Court with costs.

[APPELLATE CIVIL JURISDICTION.]

June 18.

Miscellaneous Special Appeal No. 18 of 1873.

GOVIND LAKSHUMAN .....*Appellant.*

NA'RA'YAN MORESHVAR.....*Respondent.*

Limitation Act IX. of 1871, Sec. I., Clause (a)—*Application for execution of a decree—Suit—Act I. of 1868, Section 6—Act XIV. of 1859, Section 20—"Proceeding."*

The Limitation Act IX. of 1871 comes into operation from 1st July 1871 with respect to appeals and applications, and is not controlled by the General Clauses Act I. of 1868, Section 6.

An application for execution of a decree being made on the 27th September 1871, *Held* not to be a suit within the meaning of Section I., clause (a) of Act IX. of 1871, and, therefore, barred under Schedule II., No. 167 of that Act, as having been made more than three years after the date of the last preceding application.

The application of the 27th September 1871 cannot be regarded as a mere continuation of a proceeding pending, viz., of the last preceding application of the 7th January 1868, within the meaning of Act I. of 1868, Section 6, at the time when the new Limitation Act came into operation, though the order on the latter application having been made on the 31st March 1870, would possibly have been a sufficient proceeding within the 20th section of Act XIV. of 1859, to constitute a fresh terminus, whence time might run under that Act.

THIS was a miscellaneous special appeal from the order of W. H. Crowe, Acting Assistant Judge of Tanna, reversing the order of Mangeshráv Balvant, Subordinate Judge at Pen. The facts of the case are as follows :—

Náráyan Moreshvar obtained a money decree in the Munsiff's Court at Pen against Govind Lakshuman and two others on the 28th June 1864. In execution of that decree, Nárá-

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yan, on the 7th January 1868, applied to the Court for the attachment and levy of certain money in the hands of the Mámlatdár of Pen, belonging to the judgment-debtors. On the representation of the Mámlatdár that the money was not available, the Court, on the 31st March 1870, disposed of the application as struck off from the file. On the 27th September 1871, Náráyan again applied for the execution of his decree. The Subordinate Judge, Mr. Mangeshráv Balvant, rejected the application as barred by the new Limitation Act IX. of 1871, inasmuch as it had not been made within three years from the date of the last previous application, as required by Schedule II., Article 167. In appeal, Mr. Crowe reversed that order, and granted execution. His reasons are contained in the following extract from his judgment given in another similar case :—

"The issue for decision is, whether an application for the execution of a decree properly comes under the denomination of the word 'suit' so as to render the provisions of Act IX. of 1871, Section I., clause (a) applicable to it.

"I find that applications for execution of decrees do come within the denomination of the word 'suit,' and that the provisions of the law mentioned above do apply to them.

"Act IX. of 1871 (the Indian Limitation Act) makes certain provisions for the limitation of suits, appeals, &c. By Section 1, clause (a), nothing contained in sections 2nd and 3rd of the Act, or in parts 2nd and 3rd of the Act, applies to suits instituted before the first day of April 1871.

"Section 2 repeals Act XIV. of 1859, in so far as it applies to the limitation of suits, and by Section 20 of that Act "no process of execution shall issue unless some proceeding shall have been taken to enforce such judgment, decree, or order, or to keep the same in force within three years next preceding the application for such execution.

"Whereas by this old law any proceeding of the kind described above was sufficient to keep alive the claim for three

years by the present law, there must be an application for execution every three years to keep the right alive (Schedule II., No. 167), so that although proceedings were pending upon one application, the application itself must be renewed within three years.

"Now No. 167 in the second schedule of the new Act is classed in the third division, *i. e.*, that relating to applications, and not in the first division, which relates to suits. Apparently, therefore, the Legislature treated such applications as distinct from suits, but I do not think that such an interpretation would be consistent. The plaintiff, who has merely got an empty decree, cannot be said to have obtained the relief he sought. He is still a suitor until he has obtained process of execution, and up to that time he will prosecute his suit. The substantial relief is what he wants, not the nominal decree in his favour. His application for execution is partly his suit—the final step—and, therefore, I am of opinion that such applications are governed by Section 1, clause (a) of the new Limitation Act, and that they are not barred by the operation of that Act."

Govind Lakshuman, dissatisfied with the Assistant Judge's order, preferred a special appeal to the High Court, which was heard by WESTROPP, C.J., and WEST, J.

Vishnu Ghanashám, on behalf of the appellant, contended that the Assistant Judge was wrong in holding an application for the execution of a decree to be a "suit" within the meaning of Section 1, clause (a) of Act IX. of 1871. Such a construction is opposed to the preamble and Section 4 of the Act. They refer to suits, appeals, and applications as distinct from each other. Part II. is headed "Limitation of Suits, Appeals, and Applications," which shows that an application is not a suit. The exception in the first section is perfectly explicit, and excludes from the operation of the new Limitation Act only suits general and special, the former until the 1st April 1873. Moreover, the Act provides limitation for suits and applications under different divisions, of which the first refers to suits and the third to applications.

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[WESTROPP, C.J., referred to *Nando Coomár Mukerji* v. *Issur Chunder Bhuttacharji* (*a*).]

Ganpatráv Bháskar, for the respondent, referred to the word "execution" in Wharton's Law Lexicon, p. 342, and argued that execution of a decree was the last stage of a suit, and that, therefore, an application for such execution was part of a suit. The Subordinate Court had no power to strike off the respondent's application of the 7th January 1868, in the way it did on the 30th March 1870: *Ghaur Mohan Bandhopádhyá* v. *Tárachand Bandhopádhyá* (*b*). His present application of the 27th September 1871, therefore, must be regarded as a continuation of the previous one, which was only disposed of to clear the Court's file at the end of the official year. The execution proceedings consequently having commenced before the new Limitation Act came into force, were not affected by that Act, under the General Clauses Act I. of 1868, Section 6.

The following decision of the Court was given by

WESTROPP, C.J. :—The Assistant Judge has held that the application for execution of the decree of the 28th June 1864, being made in a suit instituted before the 1st April 1873, comes within the exception contained in Section 1, clause (a) of the Indian Limitation Act IX. of 1871, and, therefore, that the question whether this application for execution is in time, must be decided by Act XIV. of 1859, Section 20, and not by the Indian Limitation Act of 1871 ; and the learned pleader for the respondent seeks to support the Assistant Judge's decision by the 6th section of the General Clauses Act I. of 1868. We, however, think that this application does not fall within the term "suits" used in the exception, contained in Section 1, clause (a) of the Indian Limitation Act of 1871. The 4th section of that Act too clearly makes the distinction between suits instituted, and appeals presented, and applications made, to admit of our holding an application for exe-

(*a*) 12 Beng. L. R. 9 Appx.
(*b*) 3 Beng. L. R. 17 Appx.

cution to be, within the meaning of the Act, part of a suit. The same distinction is equally preserved in the second schedule of the Act, the first division of which schedule is appropriated to suits, the second to appeals, and the third to applications; in which last mentioned division, the Legislature expressly deals with applications for the enforcement of decrees or orders. The same view as that which we have taken of the construction of the term "suits" in the exception, has been acted upon by L. Jackson and Mitter, JJ., in *Nando Coomár Mukerji* v. *Issur Chunder Bhuttacharji*. The provision in the 1st section that the Act (which received the Governor General's assent on the 24th March 1871) should come into force on the 1st day of July 1871, would be completely nullified by holding that the exception of suits instituted before the 1st day of April 1873 included appeals presented and applications made before that day, inasmuch as such a ruling would leave nothing upon which the Act could operate during the period from the 1st of July 1871 to the 1st day of April 1873. We think that the intention of the Legislature, as manifested in the Act itself, is clear that it should operate from the 1st of July of 1871 upon appeals and applications, and that being so, we cannot hold it to be controlled in that particular respect by Section 6 of the General Clauses Act of 1868. And we further are of opinion that the present application cannot be regarded as a mere continuation of a proceeding pending, within the meaning of that section, at the time at which the Indian Limitation Act of 1871, which repealed the Act of 1859, came into operation. The last previous application for execution of the decree in this case was made on the 7th January 1868, and an order for execution was made upon it on the same day. No money was realized under that order, and the Subordinate Judge, having received a communication from the Mámlatdár to the effect that no money was then available for levy under the execution, made an order, on the 31st March 1870, to the effect that the application was disposed of. Against that order the execution-creditor has not made an appeal, and the time for appealing has long since elapsed. Possibly that order,

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being within three years of the date of the present application (27th September 1871), would have been a sufficient proceeding within the 20th section of Act XIV. of 1859, to constitute a fresh terminus, whence time might run under that Act : *Máhárájáh Dheeráj Mahtáb Chund* v. *Bulrámsing* (c). But the Indian Limitation Act of 1871, Schedule II., No. 167, is more strict; the three years are to run, not from the date of the last "proceeding" taken to enforce the judgment, decree, or order, but from the date of applying to the Court to enforce, or keep in force the decree or order. It is impossible to treat the order of the 31st March 1870 (by which the application of the 7th January 1868 was in substance struck off the file, as completely disposed of,) as an application to enforce the decree. So far as the Subordinate Judge could comply with the application of the 7th January 1868, he had complied with it on the day on which it was made. The process of execution, then granted, proved to be abortive, and the order of the 31st March 1870 was the consequence. Four months' time was allowed for the execution of the 7th January 1868, and had expired long before the 31st March 1870.

The arguments of the learned Assistant Judge, contained in his judgment in another case to which he refers, seeming to us to be rather reasoning against the policy of the Indian Limitation Act of 1871, than founded upon its construction and language, we must reverse his order and restore that of the Subordinate Judge. But we direct that each party should bear his own costs of the application and of both appeals.

NOTE.—This case was cited, and followed in Miscellaneous Special Appeal No. 1 of 1874 (*Bálkrishna* v. *Ganesh*), decided by WESTROPP, C.J., and KEMBALL, J., on the 30th July 1874. The following is the judgment :—

WESTROPP, C. J. :—The Assistant Judge has erroneously applied Act XIV. of 1859 to this case, in which the application under present consideration was made on the 18th July 1872. As regards appeals and applications, as distinguished from suits, the new Limitation Act, IX. of 1871, came into force upon the 1st of July 1871 (see *Govindráv* v. *Náráyan*, Misc : Special

(c) 13 Moore I. A. 479.

Appeal 18 of 1873, decided on the 18th June 1874, and *Nándo Coomár Mukerji* v. *Issur Chunder Bhuttacharji*, 12 Beng. L. R. 9 Appendix). The exception of suits in Section I., Cl. A, does not include an application, such as the present. The time runs under that Act in the case of decrees or orders "from the date of applying to the Court to enforce or keep in force the decree or order"—Schedule II., Division III., pl. 167. There was an application for enforcement of the decree in 1870, which was dismissed on the 25th February 1871 on the ground of the non-payment of *bhattá*. Were it necessary to go into the *bona fides* of that application as a means of enforcing the decree, sufficient appears in evidence to show that it was *boná fide*, for the defendant's Vakil, before the Subordinate Judge, admitted that his client, on the 23rd February 1871, satisfied the plaintiff to the extent of Rs. 36-0-4, part of the moneys awarded to him by the decree in 1864, but even an application for the mere purpose of keeping the decree in force, as distinguished from enforcing it, would be sufficient under the Act of 1871. We must reverse the order of the Assistant Judge with costs, and direct him to hear the application on the merits, if any, as we are of opinion that the application is not barred by limitation.

[APPELLATE CRIMINAL JURISDICTION.]

THE GOVERNMENT OF BOMBAY.....*Appellants.* June 25.

In the matter of REG. *v.* DORA'BJI BA'LA'BHA'I and others.

The Code of Criminal Procedure, Secs. 272 *and* 297—*Act XI. of* 1874, *Sec.* 23—*Appeal by Government—Limitation.*

Under Section 272 of the Code of Criminal Procedure, as amended by Section 23 of Act XI. of 1874, an appeal against an acquittal presented by the Government six months after the date of the judgment complained of, is barred by lapse of time, even though the six months expired on the day the amending Act became law.

The amended Section 272 should be read by itself, and not as a clause of the ordinary Statute of Limitations.

The Court will not, under Section 297 of the Code of Criminal Procedure, interfere with an acquittal.

THIS was an appeal by the Government of Bombay, under Section 272 of the Code of Criminal Procedure, against an order of acquittal passed on Dorábji Bálábhái and others, who were tried for murder by W. M. P. Coghlan, Sessions Judge of Tanna.