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.]

June 25.

THE GOVERNMENT OF BOMBAY...............*Appellants.*

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.

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The appeal was heard by WEST and LARPENT, JJ.

Scoble, Advocate General (with him *Dhirajlál Mathurádás,* Government Pleader,) for the Government.

The facts fully appear from the following judgment:—

PER CURIAM:—The Court of Session in this case found, at the close of the case for the prosecution in a trial for murder, that there were no grounds for proceeding, and acquitted the accused.

This occurred on the 6th November 1873. It afterwards appeared that the principal witness for the prosecution, one Hormasji, who had been admitted as an approver on a conditional pardon, had given false evidence. For this he was tried and punished in February 1874.

The Advocate General, on behalf of the Government, now desires to present an appeal under Section 272 of the Code of Criminal Procedure against the acquittal of the accused in the trial for murder. The confession of Hormasji, he urges, makes it clear that his statement made before the Magistrate, not the one made before the Court of Session, was the true one, and that reference being made to the former, the prisoners ought to have been convicted. He asks that a new trial may be ordered.

The present appeal was filed on the 5th June 1874. On the 5th May an Amending Act (XI. of 1874) became law, by which Section 272 of the Code of Criminal Procedure is modified. It is now prescribed that no appeal under that enactment shall be presented more than six months after the date of the judgment complained of. The six months in this case ended on the 5th May, the day on which the Amending Act became law; and it has been argued that as there was no possibility of complying with the terms of the new enactment, after it had become law, so as to exclude the bar which it imposes, the appeal should now be entertained and dealt with. It has been further urged that the limitation of six months, being in *pari materia* with the restrictions on ordi-

nary criminal appeals, should be read as part of the Limitation Act, IX. of 1871, which imposes those restrictions, and as subject, therefore, to relaxation by the Court at its discretion under the circumstances provided for by Section 5 of the Act. But an Act of limitation, being a law of procedure, governs all proceedings to which its terms are applicable from the moment of its enactment, except so far as its operation is expressly excluded or postponed. In the present instance the Legislature has imposed an absolute bar on our entertaining an appeal after six months from the date of the judgment, and where that is so, the only exception that can be allowed from the strict terms of the enactment, arises in such a case as that of *Mayer* v. *Harding* (a), where, what it was necessary to do, could not be done on any day within the given time, owing to the Court's being closed for the whole of the time. Here the Court was accessible for the six months, or for a few days short of the six months, and when the Legislature imposed the bar, it made no reservation, as it frequently does, of proceedings taken within a certain time after its enactment. Had the new law been intended to be read as a clause of the Limitation Act, this would have been plainly expressed. The section, as it stood formerly, excluded the operation of the Limitation Act, so that the provisions of the latter must have been present to the mind of the Legislature in framing the amendment; and in imposing an absolute bar on appeals against acquittals, the Government may have been actuated by quite a different policy from that which led it to allow a certain discretion in the case of other appeals. In the case of *Hari* v. *Vishnu* (b), the Court refused to regard a limitation, prescribed by Section 42 of Bombay Act VII. of 1867, as equivalent to an additional clause of the Limitation Act, and the present is a case in which a discretion is not to be assumed when it is not granted in the clearest terms.

It was suggested that we might call for the case in the exercise of our powers of revision under Section 294 of the Code of Criminal Procedure, but we are of opinion that we

(a) L. R. 2 Q. B. 410. (b) 10 Bom. H. C. Rep. 204.

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could not, under Section 297, deal with the case as one of simple discharge of the prisoners. With an acquittal the Court will not, under that section, interfere, as was ruled in the case of *Reg.* v. *Pirkhán Jámà*, 21st May 1873. We must, therefore, reject the application.

Appeal rejected.

[APPELLATE CRIMINAL JURISDICTION.]

Criminal Reference No. 48 *of* 1874.

June 25.

REG. *v.* UTTAMCHAND KAPURCHAND and others.

The Code of Criminal Procedure, Sec. 119—*The Indian Evidence Act, Secs.* 91 155, *and* 159—*Statements made to the Police.*

Section 119 of the Code of Criminal Procedure not making it obligatory upon a police officer to reduce to writing any statements made to him during an investigation, neither that section, nor Section 91 of the Indian Evidence Act, renders oral evidence of such statements inadmissible. If the statements be actually reduced to writing, the writing itself cannot be treated as part of the record or used as evidence, but may be used for the purpose of refreshing memory under Section 159 of the Evidence Act. Consequently, the person making the statements may properly be questioned about them; and, with a view to impeach his credit, the police officer himself, or any other person in whose hearing the statements were made, can be examined on the point under Section 155 of the Evidence Act.

THIS was a reference by H. M. Birdwood, Acting Session Judge at Surat, reporting, under Section 296 of the Code of Criminal Procedure, the proceedings of Jagjivandás Khusháldás, Magistrate, 1st Class, in the case of the accused Uttamchand and others.

The material facts of the case are as follows:—

The accused were convicted of an offence under Section 152 of the Indian Penal Code; one of them was also convicted in addition under Section 323. With the exception of Navalchand, whose conviction and sentence were reversed on appeal by the Court of Session, the other accused were sentenced to fines of a smaller amount than Rs. 50, and had, consequently, no right of appeal; but they