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advertisement or even no interest at all. But in these cases also the sale has not been set aside (1).

But while the present appellant is entitled to recover from the decree-holder his purchase-money and reasonable interest, it cannot be held that he can recover the costs of a suit which he should not have defended. On receiving information of the minor's claim he might have investigated it, and by surrendering the property have escaped the costs of suit. Had he wished to protect himself from those costs he might have informed the decree-holder that he declined to defend the suit unless he obtained a guarantee for the costs. In the absence of such a guarantee he cannot recover anything on this account as against the decree-holder. The decree of the Division Bench, so far as it dismisses the claim to the purchase-money and interest, is reversed, and the order of the Judge affirmed with proportionate costs.

Tikaitin did not appear in the Court of first instance nor in the Judge's Court, nor did she appeal the Judge's order to the Court, but in carrying out the order the Munsif should see that some cause of action is established against this defendant; at present no cause of action is disclosed.

Appeal allowed.

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January 29.

FULL BENCH.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner and Mr. Justice Spinkie.

FAKIR MUHAMMAD (DECREE-HOLDER) v. GHULAM HUSAIN AND ANOTHER
(JUDGMENT-DEBTORS).*

Execution of Decree—Limitation—Act IX of 1871 (Limitation Act), sch. ii, art. 187—Application to enforce or keep in force a Decree.

Held by the Full Bench that the date on which an application for the execution of a decree is presented, and not any date on which such application may be pending, is "the date of applying" within the meaning of art. 187, sch. ii of Act IX of 1871.

* Miscellaneous Regular Appeal, No. 12 of 1876, from an order of Maulvi Muhammad Abdul Majid Khan, Subordinate Judge of Sháhjahánpur, dated the 14th December, 1875.

(1) See *Mahomed Basirulla v. Sheikh Abdulla*, 4 B. L. R., App. 35; *Sowdamini Chowdrain v. Krishna Kishor Poddar*, 4 B. L. R., F. B., 11, S. C. 12 W. B. F.

B. 8; *Rajiblochun v. Bimalamoni Dasi*, 2 B. L. R. A. C. 82; and 6 Bom. H. C. Rep. A. C. J. 258.

Held by the Division Bench that an application by the decree-holder for the stay of execution-proceedings is not an application to enforce or keep in force the decree, within the meaning of the same law.

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THE decree-holder in this case applied for execution of the decree on the 9th April, 1872. On the 28th August, 1872, he represented to the Court executing the decree that partial execution thereof had been obtained, and that the parties would probably come to some arrangement respecting the other relief granted by the decree, and to enable this arrangement to be made, he prayed that the proceedings in execution might be stayed for fifteen days. The Court, however, on the same day, without according time, struck off its file the application for execution. The next application for the execution of the decree, being the present one, was filed on the 28th July, 1875. The Court held that this application was barred by limitation.

On appeal by the decree-holder to the High Court it was contended by him that the application for execution dated the 9th April, 1872, kept the decree in force up to the date it was disposed of, *viz.*, the 28th August, 1872, and that the application of the 28th July, 1875, being within three years of that date, was within time.

The Court (STUART, C. J. and TURNER, J.), with reference to this contention, referred to the Full Bench the question as to the construction to be placed on the term "the date of applying" used in art. 167, sch. ii of Act IX of 1871.

ORDER OF REFERENCE.—This case turns on the construction to be placed on the term "the date of applying to the Court." Does that term mean the date on which an application is made, or can it be interpreted to mean any or the last day on which the application previously made was pending before the Court? The former construction may in many cases work great hardship, and is opposed to the construction placed by the Judicial Committee of the Privy Council on the language of the former Act (1). But grave as the injustice may be, we are constrained to give effect to the law if its terms are free from ambiguity. The point, however, is of such importance that we consider it should be determined by the Full Bench, and refer it accordingly.

(1) See *Mahtab Chund v. Bulram Singh*, 13 Moore's Ind. Ap., 479.

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Pandit *Bishambhar Nath* and *Mir Zuhur Husain*, for the appellant.

Munshi *Sulh Ram* and *Shah Asad Ali*, for the respondents.

The following judgments were delivered by the Full Bench :

STUART, C. J.—It appears to me that the judgment of the Privy Council (1) referred to has no application to the present case. That was a judgment under a totally different limitation law from that which we have now to consider. S. 20 of Act XIV of 1859 provided that “no process of execution shall issue from any Court not established by Royal Charter to enforce any judgment, decree, or order of such Court, 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.” But the provisions of Act IX of 1871 are much more precise, for under No. 167 of the second schedule the time when the period of limitation begins to run is “the date of applying to the Court to enforce or keep in force the decree or order.” I can quite understand that this may operate harshly in many cases, but the meaning is too plain, and it is that “the date of the applying to the Court” is the particular day on which the application is actually presented, and not the last or any other day on which the application was pending.

PEARSON, J.—The date of applying must in my opinion be held to be the date of making application. But an application to enforce or keep in force may not be exclusively an application of the nature described in s. 212 of Act VIII of 1859 (2).

TURNER, J.—However inconvenient may be the construction, I feel bound by the plain terms of the Act to hold that the date of applying means not any day on which an application may be pending but a certain day, the day of its presentation; but the Court may not feel constrained to hold that by the term applying we are to understand only an application to execute the decree. Any application made to a Court during the pendency of proceedings in execution to enforce or keep in force the decree might be held to give a date from which limitation might be calculated, and I am confirmed in this view by the more explicit language of the Act recently passed (2).

(1) See *Muhtab Chand v. Bulram Singh*,
13 Moore's Ind. Ap. 479.

(2) See *Husain Bahksh v. Madge*, I. L.
R., 1 All. 525.

SPANKIE, J. —I concur.

The case having been returned to the Division Court, the Court (after stating the facts) delivered the following

JUDGMENT.—The period of three years must be computed from the date on which the last application to enforce the decree was filed. It cannot be said that the application of the 28th August, 1872, was an application to enforce the decree. It was on the contrary an application for the suspension of the proceedings. Under the circumstances the Court below was right in holding the present application barred by limitation. The appeal is dismissed with costs.

FULL BENCH.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, and Mr. Justice Spankie.

WILAYAT-UN-NISSA (DECREE-HOLDER) v. NAJIB-UN-NISSA (JUDGMENT-DEBTOR).*

Execution of Decree obtained on Bond specially Registered—Act XX of 1866 (Registration Act), ss. 52, 53, 54, 55—Appeal.

Held (STUART, C. J., dissenting) that an appeal lies from an order passed in the execution of a decree obtained under the provisions of s. 53 of Act XX of 1866 upon a bond specially registered under the provisions of s. 52 of that Act.

Ramanand v. The Bank of Bengal (1) over-ruled. *Petition of Behuree* (2) and *Hurnath Chatterjee v. Futtick Chunder* (3) dissented from.

THIS was an application for the execution of a decree which had been obtained under the provisions of s. 53 of Act XX of 1866 upon a bond specially registered under the provisions of s. 52 of that Act. The judgment-debtor objected that the application was barred by limitation, inasmuch as it was governed by art. 166, sch. ii of Act IX of 1871. The decree-holder contended that the application was within time, as it was governed by art. 166, sch. ii of Act IX of 1871. The Court of first instance held that the period of limitation applicable was that provided in art. 166, *viz.*, one year, and not that provided in art. 167, *viz.*, three years, and, as

* Miscellaneous Special Appeal, No. 10 of 1877, from an order of H. M. Chase, Esq., Judge of Aligarh, dated the 27th November, 1876, affirming an order of Maulvi Sami-ul-la Khan, Subordinate Judge of Aligarh, dated the 19th May, 1876.

(1) I. L. R., 1 All. 377.

(2) 7 W. R., 130.

(3) 18 W. R., 512.

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February 13.