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

UDA BEGAM (PLAINTIFF) *v.* IMAM-UD-DIN (DEFENDANT). *

Execution of Decree—Appeal from Order—Act X of 1877 *(Civil Procedure Code) ss.* 2, 3, 244, 584, 588, *(j)—Act VIII of* 1859 *(Civil Procedure Code)—Repeal—Pending Proceedings—Act I of* 1868 *(General Clauses Act), s.* 6.

The Court executing a decree for the removal of certain buildings made an order in the execution of such decree directing that a portion of a certain building should be removed as being included in the decree. On appeal by the judgment debtor the lower appellate Court, on the 22nd September, 1877, reversed such order. *Held, per* PEARSON, J., on appeal by the decree-holder from the order of the lower appellate Court, that the lower appellate Court's order, being *within the scope of* the definition of a "decree" in s. 2 of Act X of 1877, was appealable under s. 584 of that Act, as well as under Act VIII of 1859, notwithstanding its repeal, in reference to s. 6 of Act I of 1868. The Full Bench ruling in *Thakur Prasad* v. *Ahsan Ali* (1) followed.

Held per STUART, C. J., dissenting from the Full Bench ruling in *Thakur Prasad* v. *Ahsan Ali* (1), that a second appeal in the case would not lie.

THE facts of this case were as follows: In executing a decree for the removal of certain buildings made by the High Court in special appeal, the Court of first instance, the Court executing the decree, on the 11th December, 1876, ordered the plaster on the walls of a "*sidhari*" numbered 6 in a map of the premises to be removed. The judgment-debtor appealed from this order to the lower appellate Court, which set aside the order on the 22nd September, 1877.

The decree-holder appealed to the High Court against the order of the lower appellate Court, contending that the plaster on the "*sidhari*" was removeable under the terms of the decree.

The *Senior Government Pleader* (Lala *Juala Prasad*) and Munshi *Hanuman Prasad*, for the appellant.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the respondent.

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* Second Appeal, No. 30 of 1878, from an order of John Power, Esq., Judge of Shâhjahânpur, dated the 22nd September, 1877, modifying an order of Rai Raghu Nath Sahai, Munsif of East Budaun, dated the 11th December, 1876.

(1) I. L. R., 1 All. 668.

The following judgments were delivered by the Court:

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PEARSON, J.—The admissibility of this appeal has been virtually determined by a recent Full Bench judgment (1) which, until overruled, is binding on us. In my opinion the appeal is admissible, the lower appellate Court's order being a decree within the scope of the definition contained in s. 2, and consequently appealable under s. 584 of Act X of 1877, as well as under Act VIII of 1859, notwithstanding its repeal, in reference to s. 6 of Act I of 1868. On the merits the appeal, in my opinion, fails entirely. The first Court dismissed the claim to No. 6. The High Court certainly did not decree that claim expressly; and there is nothing in its decree or its judgment, or in the judgment of the first Court, relating to the plaster on the "*sidhari.*" The appeal appears to be frivolous and vexatious as well as groundless; and I would dismiss it with costs.

This opinion was recorded by me at the time of the hearing of this appeal on the 19th August last, and I have to-day for the first time been made acquainted with the views entertained by the Chief Justice, who, in the judgment just now delivered by him, not only expresses his reasons for dissenting from the Full Bench ruling to which reference was made in the first part of my judgment, but sets aside that ruling and dismisses the appeal as inadmissible. Under the circumstances the proper course would have been, I conceive, to refer the point in question again for the consideration of the Full Bench; and in order that such course may be taken, if deemed advisable, I feel it to be my duty to require a reference of this appeal to another or other Judges of the Court under s. 575 of Act X of 1877.

STUART, C. J.—If I could regard this appeal as before me on its merits, I would probably concur in the opinion of my colleague, Mr. Justice Pearson, that it is frivolous and groundless, and ought to be dismissed. But there is a preliminary question for myself which this case affords me the first judicial opportunity I have had of considering, *viz.*, whether this appeal should have been admitted to a hearing at all. In other words, whether such an appeal lies. And with whatever result or consequence, I feel it my duty to record the opinion I have formed on that question.

(1) I. L. R., 1 All. 663.

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It is suggested that the admissibility of this appeal has been virtually determined by a recent Full Bench judgment of this Court (1). That judgment was delivered during my short absence from the Court on privilege leave and at once carried into practice, without any previous consultation or communication with myself; and, had the circumstances not been so exceptional, it might have been considered to be binding on me, although I was precluded from hearing the argument and judicially considering the reasons on which the judgment is founded. I would have preferred that so important a question, and raised for the first time under the new Code of Procedure, had been delayed till my return to the Court. When I left on short leave, on account of the state of my health, I had no reason to believe that any such question would have been brought forward in my absence; and from the nature of the case I could not have anticipated, and I did not anticipate, that any such proceeding would have been entertained; for the question came up before the Full Bench on a reference made by Mr. Justice Turner, dated the 13th November, 1877, and a number of other appeals of the same kind having in the meantime been presented, it was felt by the Court generally that owing to difficulties of interpretation arising out of the peculiarities of the provisions of the new Code, some action should be taken by the Court, and it was proposed by one of the Judges that the Legislative Department of the Government of India should be addressed on the subject, and a letter going fully into the difficulties of construction to which I have referred was proposed for adoption by the Court. That mode of proceeding was, however, ultimately abandoned, and the question was allowed to await judicial determination on a suitable opportunity. Such was the state of things when I left the Court on leave at the end of April last, and I very much regret that that opportunity was found almost immediately after my departure, and now all the more from my having formed a deliberate opinion contrary to the conclusion of the Full Bench ruling, for it is possible that, if my colleagues had been made acquainted with the reasons on which my opinion has been formed, they, or some of them, might not ultimately have concurred in the decision which they were induced to accept.

(1) I. L. R., 1 All. 663.

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The reference by Mr. Justice Turner which gave rise to the case before the Full Bench records an admission directly opposed to the subsequent Full Bench ruling, for the reference is in these terms: "It is admitted that no second appeal lies in this case under the new law, and it appears to me that the application is governed by the new law. I refer the point to the Full Bench at the request of the pleader, and because I am told that there is a difference of opinion in the Court on the point." The Court was then full, and the difference of opinion correctly referred to in this reference did, so far as the question had then been considered, undoubtedly exist; and if there was to be a judicial determination on the question which had given rise to this difference of opinion, it was to the last degree expedient and desirable that that determination should have been arrived at by deliberation among all the Judges, and not in the absence of, or to the exclusion of, the Chief Justice.

I may also here observe that the difficulties of construction, which had been anticipated in relation to certain of the provisions of the new Code of Procedure, have to some extent been recognised by the Government of India; and a Bill to amend the Code has for that purpose been introduced into the Legislative Council, and by the kindness of His Excellency the Viceroy I have been favored with a copy of that Bill, and of the statement of the objects and reasons in support of it. But, excepting in so far as we have the opinion of the Member of Council who prepared that statement, the Bill so introduced does not appear to me to touch the question of the competency of such an appeal as that now under consideration. By s. 31 of this Bill it is proposed, among other things, to enact that from cl. (*j*) the following words shall be omitted, *viz.*, "of the same nature with appealable orders made in the course of a suit;" and from the statement of the objects and reasons of the Bill the opinion would appear to be entertained that "the result will be to restore the first of the two appeals given in effect by Act XXIII of 1861, s. 11, against all orders determining any question relating to the execution of a decree;" and if it had been proposed so expressly to provide in the Bill, no doubt the effect would be to allow a special or second appeal in such a case as that determined by the Full Bench ruling, and also in such a case as

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that now before me. But the correctness of such an opinion depends on another question, no doubt expounded by that ruling, but as to which I have myself entertained serious doubts, *viz.*, whether the effect of s. 6 of Act I of 1868, the General Clauses Act, is, notwithstanding the repeal of Acts VIII of 1859 and XXIII of 1861, and the express provisions of the new Code of Procedure, to keep alive the law provided by s. 11 of this latter Act, and to apply the remedy of special appeal in the case of orders passed in execution of a decree. I have said that I have entertained serious doubts whether such is the effect of s. 6 of Act I of 1868. Indeed, I may at once say that the opinion I have formed is that that Act cannot have any such effect, and I shall presently explain my reasons for holding that opinion, and that therefore the Bill which has been introduced to amend the new Code of Procedure will fail in effecting the object apparently intended by it in this respect. But that Bill has not yet been passed, and we cannot anticipate in what form or to what effect it may ultimately be adopted as an Act of the Legislature. But to put an end to all such doubts and difficulties, it would be far better to provide *expressly* that the law of s. 11 of Act XXIII of 1861, as interpreted and applied previous to the passing of the present law of procedure, shall, notwithstanding any provisions to the contrary in the new Code, continue to be the law of procedure to be observed by the Courts, than to leave it to the uncertainty implied in the statement of the objects and reasons. The former course would put an end to all controversy, while the latter would leave the matter open to dispute ; and it is to be remembered that all the four High Courts have not yet pronounced an opinion on the question of the validity or otherwise of these appeals from orders.

With these general remarks I now proceed to consider the question of the admissibility of the present appeal, and therein the argument for and against such a proceeding.

The order appealed against was one made in a suit to obtain possession of a house, and to demolish another which, as alleged by the plaintiff, had been improperly built on her land. The judgments of the lower Courts were both against the plaintiff's claim, and she preferred a special appeal to this Court, which reversed

the judgment of the lower Courts and decreed the plaintiff's claim in full. In the proceedings in execution of this Court's decree, the Munsif, under a misapprehension as to its full meaning and effect, made an erroneous order dated the 11th December, 1876, but which on appeal to the Judge was corrected by an order dated the 22nd September, 1877, and the execution of the decree so corrected was ordered by the Judge.

From that order of the Judge an appeal, in the nature of a special or second appeal, has been presented to this Court, and the question is whether such a proceeding is valid and admissible? According to the Full Bench ruling, delivered under the circumstances which I have explained, such an appeal is valid, and no doubt if the legal effect of s. 3 of the new Code and of s. 6 of the General Clauses Act (to both of which provisions I shall presently advert) is, in a case like the present, still to keep alive the entire procedure allowable under the old Code, such a ruling would be correct But the opinion which I myself have formed, after having carefully and studiously considered the question, and the sound principles of legal construction which have ever been recognised by the Courts in England, and applied by them to the interpretation of statutory laws, is that no such appeal lies.

By s. 3 of the present Procedure Code, Act X of 1877, it is provided that "nothing herein contained shall affect the procedure prior to decree in any suit instituted or appeal presented before the Code came into force." In this provision the meaning of the word "herein" has to be considered. Does it mean the whole Code or merely the particular section of which it forms part? If the former, I would then be disposed to hold that the Full Bench ruling was right in its conclusion, although on different reasoning from that on which the judgment is based, for then there would be nothing to qualify or limit the application of this s. 3 or of s. 6 of the General Clauses Act, the entire new Code being thus simply exempted from any operation in the cases contemplated by s. 3; and, as another consequence, the application of s. 6 of the General Clauses Act would be left unimpeded by any legal considerations arising out of the new Code. But the Full Bench ruling by my colleagues appears to assume that, in the portion of s. 3 which I have quoted, the word "herein" applies

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only to the particular section, s. 3, of which it forms part, and in this respect I concur in the ruling. I think it could never have been intended that the word "*herein*" should have the sweeping effect involved in the other view I have referred to, and that it was not contemplated that the other sections of the new Code relating to appeals should be excluded from consideration in connection with s. 3. The more sound construction therefore would appear to be that the repeal of the enactments, as provided by that section, should not affect the procedure prior to decree, so far as that procedure itself is concerned; and that to such extent the old procedure, notwithstanding its repeal in other respects, is still *pro tanto* saved as regards procedure prior to decree in suits instituted or appeals presented before the new Code came into force. In the present case the date of the Judge's order in appeal to him which is now sought to be the subject of a special or second appeal to this Court is the 22nd September, 1877; and being an appeal undoubtedly contemplated by s. 3, and having been presented before the new Code came into force, the whole procedure, that is the *whole* procedure *which led up to it*, is saved and unaffected by the new procedure.

The question, however, whether the saving of the old procedure in such a case as this of necessity includes and carries with it the right to a second appeal to this Court is, in my opinion, a very different one. I am aware that it has been considered that an appeal is a mere stage or step in one course of procedure till final disposal of the suit. But that opinion I do not hold, nor do my colleagues apparently, for in one part of their judgment they state—"The Code following the usage in this country does not treat appeals as mere stages in a suit," although in a previous part of the same judgment they affirm that "an appeal is in fact a stage of a proceeding." My own opinion is that an appeal is not a necessary part of procedure. It is under the control of the parties after decree in the original suit. It is not therefore a necessary stage, but may be availed of or not, according as the original decree is regarded by the party against whom it is given. Irrespective of any such appeal, the procedure in an original suit, not only prior to but inclusive of a decree thereon, is not only complete, but a completed proceeding in itself, carrying with it a

final result within its own limits, in the shape of an operative decree capable of full execution and final satisfaction, and there is thus a *finis litis*. But, if the unsuccessful party is dissatisfied with a decree so given against him, there are rules and regulations for an appeal to a higher tribunal, and of these he may take advantage; but such a proceeding is no *necessary* part of the original suit, but a separate and independent proceeding to be availed of, not at the mere bidding of the law or of the appellate Court, but as he himself, the defeated party, may in his discretion deem prudent, or as he may be advised. This view of the distinction between the procedure in an original suit, whether prior to or terminating in a decree, and an appeal therefrom, I shall further illustrate and support by authorities in a subsequent part of this judgment.

As to the procedure mentioned in s. 3 of the new Code, I understand by it the *complete* "procedure prior to decree," and that therefore after such decree the procedure provided by the new Code was to determine all that was to follow. Therefore if it be found in such cases that the new Code did not provide for a second appeal, no such second appeal should be allowed. Now, remembering that s. 3 of the new Code has the limited meaning given to it by the Full Bench judgment of my colleagues, concurring, as I repeat I do, in that view, and that only the repealed enactments mentioned in the first part of s. 3, and not the whole Code, are excluded from consideration, it appears to me that we are bound in the first place to read and apply s. 3 as limited and controlled by other provisions of the Code relating to appeals, that is, to read them *together*, and not against each other, allowing effect to the old Code excepting in so far as it appears to be controlled by the new Code.

On the same principle I would read s. 6 of the General Clauses Act *with* and not against the new Code. It is indeed not a little remarkable that the new Code of Procedure from beginning to end makes no allusion to this Act; it is not referred to in any express provisions of the Code, nor is it to be found in the schedule of repealed Acts. My respect for the Legislature forbids me assuming that it was overlooked or disregarded by the framer or framers of the Code, but that the intention was to allow it, not

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unqualified operation, but such legal effect as it might have consistently with the provisions of the new law ; and it appears to me that a construction which makes two separate laws consistent, that is, capable of being read together, is to be favoured rather than one which makes them contradictory of each other. This view of the relative operation of these two laws I shall also presently illustrate and support by authority.

But, before proceeding further with the explanation of my own views on the subject of these appeals from orders, I would advert to the judgment adopted by my colleagues during my recent brief absence from the Court. After stating the case on the reference before them, and alluding to s. 3 of the new Code and s. 6 of the General Clauses Act, the judgment refers to a Full Bench decision of the High Court of Bombay, *In the matter of Ratansi Kalianji* (1), in support of the opinion expressed by the learned Chief Justice, Sir Michael Westropp, that the chapter of the Code which deals with the execution of decree is prospective, and does not affect proceedings already commenced. The Court consisted of the Chief Justice and four other Judges, and of these, two Judges, Mr. Justice Green and Mr. Justice West, concurred with the Chief Justice, while the other two Judges, Sir Charles Sargent and Mr. Justice Bayley, dissented. But the opinion of the Chief Justice, referred to in the judgment of my colleagues, was expressed in a totally different case from the present, for it was whether the imprisonment of a debtor in execution of a decree under the old Code should be determined by that Code or by the new Code, there being a considerable difference between the two in this respect. The Court held, and very reasonably, that the law under which the decree had been made must determine its execution, and that the new Code could not have adversely retrospective effect, and that the execution of the decree and the incarceration of the debtor under it was clearly "a proceeding commenced" within the meaning of s. 6 of the General Clauses Act. But that is a totally different question from that relating to an *appeal* from an order of this kind ; it was simply a question which of two laws, generically of the same nature, should have operation, the law under which the decree was made or the new law ? the latter plainly

(1) I. L. R. 2 Bom. 148.

intending decrees made under its own provisions. I have read the whole of this judgment by my learned and esteemed friend the present Chief Justice of Bombay, with the greatest respect and with much sympathy, and, I may add, with admiration of its legal reasoning and the judicial language in which it is expressed. One of the other Judges, Mr Justice Green, who concurred in the conclusion arrived at by the Chief Justice on the question before the Court, referred to a previous Full Bench ruling of the same Court in the case of *Ratanchand Shrichand* v. *Hanmantrav Shivbákas* (1), by which it was decided that, under the words "proceedings commenced" in s. 6 of the General Clauses Act, the right of appeal to the District Court from a decree made before the Bombay Civil Courts Act, 1869, came into operation by a Principal Sadr Amin was not taken away by that Act. This case was argued before a Full Bench consisting of the then Chief Justice, and Warden, Gibbs, and Melvill, JJ. But judging from the report of this case, it does not appear to have been very fully argued, and the judgment itself is comparatively brief, and it does not appear to me to examine the question before it in a comprehensive manner. It would have been more satisfactory if the judgment had contained a more searching examination of the legal principles applicable to the question and of the rules of construction of Statutes adopted and applied by the Courts in England. For myself I cannot regard it as an authority binding on me, and I consider myself free to form my opinion on the case before me in my own Court irrespective of it.

The Full Bench judgment of my colleagues then proceeds to deduce an argument by analogy with regard to the prospective operation of laws from certain sections of the Code, ss. 311, 312, 283, and others. But such an argument I am quite unable to appreciate. At best it is far-fetched and fails in affording any material assistance in the solution of the question I am at present considering. The judgment then proceeds to allude to s. 588 of the new Code, and to state, for the reasons it gives, that it is not unreasonable to conclude that, in leaving the enactments of the new Code as they stand, the Legislature had in view the provisions

(1) 6 Bom. H. C. R. A. C. J. 166.

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of the General Clauses Act. In this conclusion, as will be seen, I concur, although not for the reasons assigned, nor to the extent argued for, by the judgment. I may be permitted here to observe (if the allusion may be allowed in a judicial exposition), that such a general conclusion, equally entertained by my colleagues and myself, although on different grounds and to a different extent, is curiously at variance with a recent official announcement(1) publicly made in another place by the Hon'ble Member of Council who is primarily responsible for the language of the new Code, that, in its preparation, there had been "a strange forgetfulness of the General Clauses Act." Now, although it might fairly be contended that this remark goes to show that a second appeal from orders was never intended or contemplated by the Legislature, I quite agree that we are not bound to consider that there was any such forgetfulness, but on the contrary, to assume that the same Legislature which passed both laws must be taken, when preparing the new Code of Procedure, to have had at the time in its mind the General Clauses Act; and it appears to me sufficient for this purpose to point out, as I have already done, that this same General Clauses Act, I of 1868, is passed over in silence in the new Code, and is not to be found in the schedule of repealed Acts.

The decision of the Bombay Court, as adverted to by Mr. Justice Green, is then referred to by my colleagues, and in connection with it the opinion is expressed "that an appeal is in fact a stage of a proceeding," which, however, as I have shown, is at variance with another opinion shortly after stated in the same judgment, that "the Code following the usage in this country does not treat appeals as mere stages in a suit."

The rest of the judgment is occupied with the exposition of views in which I am unable to concur for reasons I shall now proceed to explain.

(1) The announcement to which the learned Chief Justice probably refers is the speech of the Hon'ble Mr. Stokes on moving for leave to introduce a Bill to amend the Code of Civil Proceedure on the 20th of June last, when the Hon'ble Member is reported to have said: "It had not been thought necessary to provide" (in the amending Bill) "'against difficulties which had arisen from a strange forgetfulness'" (query in *construing* the Code) "of the provisions of the General Clauses Act, I of 1868, section 6, and the decision of the Bombay High Court (6 Bom. A. C. J. 166) on that section."

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The section of the new Code chiefly, if not solely, to be considered in the case now before me is s. 588, which forms the commencement of ch. xliii, and is headed "Of appeals from orders;" but before any further reference to that section, I would notice an opinion expressed by one of my colleagues, who, although he concurred in the conclusion approved by the other members of the Court who formed the Full Bench during my absence, simply recorded a brief judgment to that effect, and refrained from adopting the reasoning accepted by the others. The opinion in question was to the effect that, not only was there an appeal to this Court from such an order as he was then considering (and which was of the same nature as that now before me) under the old Code, Act VIII of 1859, as in his opinion kept alive by s. 6 of the General Clauses Act, but that the order was also appealable as an order falling within the definition of "decree" in s. 2 of the new Procedure Code, and that it was therefore appealable under s. 584. But with the greatest deference to my Hon'ble colleague such a view of that section has surprised me not a little, for that section, forming the beginning of ch. xlii, and headed "Of appeals from appellate decrees," plainly contemplates a decree determining the *merits* of the suit in which it is made, and has no application whatever to an order of this kind passed merely in execution of such a decree. And this to my mind is sufficiently shown by the express and peculiar provision made respecting appeals from orders by the subsequent s. 588. But as I have stated, my Hon'ble colleague justifies his opinion that such an order as this is appealable under s. 584, by referring to the definition of "decree" in s. 2 of the new Code, where that term is defined to mean "the formal order of the Court in which the result of the decision of the suit or other judicial proceeding is embodied;" and then, as an illustration of what is meant by this determination, it is added,—"an order on appeal remanding a suit for retrial is not within this definition," so that, according to the intention of the definition, a remanding order directing a re-trial of a suit on its merits is not within its meaning, although an order merely directing the execution of the decree, and not touching the merits of the suit, is within the definition! This surely is a little startling, and possibly on reconsideration my Hon'ble colleague may hesitate be-

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fore adhering to such a view. But further it is well known to lawyers and the Courts at home that legislative definitions or interpretations of this kind, being necessarily of a very general nature, not only do not control, but are controlled by, subsequent and express provisions on the subject-matter of the same definition, and that we cannot therefore apply this definition of decree to an order of the kind now before me, seeing that it belongs to a class of orders which, with reference to the remedy of appeal, are expressly and specially dealt with in a subsequent chapter and section, *viz.*, s. 588, to the provisions of which I hold the definition in question must yield. In Sir F. Dwarris' well-known Treatise on Statutes, second ed, 1848, page 509, there is the following observation :—"Interpretation clauses are by no means to be strictly construed, and convenience seems likely to lead to their being practically disregarded;" and then in support of such opinion he quotes from a judgment of Lord Chief Justice Denman, reported in 7 A. and E., page 480, in which, with reference to the contention for the strict application of a legislative definition, I find the following remarks :—" But we apprehend that an interpretation clause is not to receive so rigid a construction, that it is not to be taken as substituting one set of words for another, nor as strictly defining what the meaning of a word must be under all circumstances:" and again in the same judgment—" We cannot refrain from expressing a serious doubt whether interpretation clauses of so extensive a range will not rather embarrass the Court in their decision, than afford that assistance which they contemplate. For the principles on which they are themselves to be interpreted may become matter of controversy, and the application of them to particular cases may give rise to endless doubts." And there are other illustrations of the same kind in Dwarris all going to show that a legislative definition or interpretation clause must yield to enactments of a special and precise nature, and like words in schedules they are received rather as general examples than as overruling provisions. Applying these views, the demonstration is obvious that the kind of "order" that was before the Full Bench, and is now considered by me in the present case, is in no way appealable under s. 584.

The argument founded on s. 6 of the General Clauses Act, as modifying if not preventing the application of s. 588 to such a

case as this, is more pertinent, but as I shall show equally fallacious.

S. 588 provides that "an appeal shall lie from the following orders under this Code, and from no other such orders." These orders are then enumerated from (*a*) to (*w*) inclusive, and at the end of such enumeration there is the very distinct provision that "the orders passed in appeal under this section shall be final," and it is under (*j*) that the present case has to be considered. The orders therein described are "orders under section 244 as to questions relating to the execution of decrees of the same nature with appealable orders made in the course of a suit." For the order sought to be appealed against is clearly one falling under (*c*) of s. 244, being a question arising between the parties to the suit in which the decree was passed and relating to the execution of the decree. As to the words "of the same nature as appealable orders made in the course of a suit," I concur in the remark publicly made in another place, that it is not very easy to understand them; and it is satisfactory to know they have been left out in the Bill brought in to amend the Code, and I trust if the Bill passes into law, that it will be allowed to stand with this omission. The order then, being thus plainly one falling within not only the meaning but the express terms of (*j*) in s. 588, is on the face of that section not further appealable. But it is said that, because the decree for the execution of which the order was made was a decree passed under the old Code, it was a "proceeding commenced" within the meaning of s. 6 of Act I of 1868, the General Clauses Act. That is an opinion, however, which can only be maintained by holding that that Act, unless expressly repealed *in toto*, must be understood to override in their entirety the whole provisions of a subsequent Act dealing with the same subject-matter, no matter how carefully or specially such provisions may be expressed. Such a view of the law appears to me to be only stated in order to be at once rejected as an incongruity in the highest degree unreasonable. A reading of the law on the contrary, which would make the two Acts consistent, by allowing a subsequent one to modify the previous Act, is surely to be preferred. Nor do I find in s. 6 of Act I of 1868 anything to interfere with, much less to exclude, such a principle of construction,

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while it is strongly supported by the very clear and unmistakeable language of the new Code. Of the literal meaning of s. 588 on the face of it, there can be no doubt whatever. It is expressed in terms which, of themselves, are applicable to all possible cases, and it is not to be contradicted in this respect, in the sense of being abrogated, unless that intention appears, not by way of doubtful implication or inference, but by precise and express language; and the new Act and not the old should have the benefit of any such doubt. S. 6 of Act I of 1868 is in these terms:—"The repeal of any Statute, Act, or Regulation shall not affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings commenced, before the repealing Act shall have come into operation." There is nothing here said about *appeals*, and the force of the application of this section to the present case turns on the words" shall not affect any proceedings commenced;" and the argument appears to be that the expression" shall not affect" saves the right of appeal given by the old Code of Procedure, Act VIII of 1859, notwithstanding the express provisions of the new Code. But this section is clearly and literally capable of a construction which does not necessarily include an appeal, for the words "shall not affect any proceedings commenced" may be read with or without a limitation, that is, either to admit of its application to the full extent allowed by the law of procedure existing at the time of the passing of the General Clauses Act, or as limited by a subsequent Act, the provisions of which are on the face of them complete in themselves, although inconsistent with, because controlling, the full application of the former. On this principle of construction the expression" proceedings commenced" will have effect given to them up to the point where the new Act comes into operation, and then stop. And this is a reading of both Codes which is quite consistent with the ruling of the Bombay Court with respect to the period of imprisonment to be applied to judgment-debtors against whom process issued under the old Code, and in particular with the judgment of the Chief Justice, Sir Michael Westropp. For the warrant had issued under the old Code and execution of it had gone on for a considerable period, and there was therefore clearly a "proceeding commenced," if not something more. But an appeal is a different matter. In the present case the "proceedings com-

menced" ended with the order dated the 22nd September, 1877, and nothing in the new Act could invalidate them; but the appeal from that order was not taken till the 30th May, 1878, and the opinion I hold under these circumstances is that such appeal must be determined by the new and not by the old Code, in other words, that the appeal is inadmissible. This it is obvious is the only construction that can make the two Acts consistent, but I think that for that reason, if for no other, it ought to be favoured and allowed by legal interpretation to supply the law.

I have pointed out that there is nothing in s. 6 of the General Clauses Act about an appeal, and I have before shown that an appeal is not necessarily a mere stage in a suit, but a separate and independent proceeding, under the control of the parties, the original suit with the decree made in it being complete in itself and *pro tanto* finally operative. In the absence of express language, therefore, such a right of appeal is not, as an available stage in a suit, to be assumed, but ought to be expressly kept alive or expressly given. In the case of *Rex* v. *The Justices of Surrey* (1) Ashurst, J., said :—"The power of appealing from the judgment of the justices seems to be of this kind" (*i.e.*, by special provision), "and does not attach without being expressly given." In another case, *Reg.* v. *The Recorder of Bath* (2), Lord Denman said :—"As it seems to us hardly possible to suppose it to have been the intention of the Legislature that an individual interested and aggrieved should not have the power of questioning the validity of a vote at the sessions, we cannot avoid noticing with regret that recourse should have been had to the method of giving an appeal by reference to another statute, instead of giving it plainly and directly by the statute itself." And so also in *Reg.* v. *Stock* (3), it was held that a right of appeal cannot be implied, but must be given by express words. These considerations appear to me to acquire even increased force when the principle of interpretation so applied is used, not for the mere purpose of taking away a right which previously existed, but for reconciling and making consistent two separate Acts of the same Legislature, instead of making them opposed to and contradictory of each other.

(1) 2 Term Reports, 504. (2) 9 A. & E. 871.

(3) 8 A. & E. 405.

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Nor are we entitled to assume that the more recent Legislative measure, expressed as it is in language complete in itself, and capable of universal application, is of less weight and significance than a previous Act, the terms of which are loose and inexact. Any such assumption, indeed, would be opposed to every rule of construction that has ever been applied by the Courts to the combined interpretation of successive laws.

Such is the view I feel compelled to take of s. 588 of the new Code in relation to s. 6 of Act I of 1868, and it is a view which appears to me to be fully borne out by the general character and objects of the new Code. That Code is Act X of 1877, entitled "An Act to consolidate and amend the Laws relating to the Procedure of the Courts of Civil Judicature;" and the preamble is: "Whereas it is expedient to consolidate and amend *the Laws* relating to the Courts of Civil Judicature." By the expression "the Laws" in these two quotations I understand *all* the Laws, and there is thus afforded, as it appears to me, a key to the solution, to a considerable extent, of the legal question now raised. As I have stated, there can I imagine be no question that it means all the Laws in operation at the time of the passing of the new Code, and, therefore, not only the old Code, Act VIII of 1859, and the supplementary Act, XXIII of 1861, but the General Clauses Act, I of 1868, are here meant, for it could not have been intended that these laws were to be "amended" by being allowed to stand in their original condition, and in that condition to contradict, if not to abrogate, the provisions of the new law which purports to amend them. And this meaning and effect of the title and preamble, and especially of the preamble, of the Code, must be understood to overlie the whole Act, giving colour to and controlling its provisions, and by showing the intention of the Legislature supplying *pro tanto* the rule for the interpretation of these provisions. For if one thing is more clear than another and beyond all doubt, it is the distinct intention of the Legislature by this Code to abolish these second appeals from orders; and that intention being clear, it ought not to be defeated by the strained application of general expressions of a loose and doubtful nature contained in a previous law, such as the General Clauses Act.

For these reasons I am of opinion that a second appeal in the case before me does not lie, and I must refuse to admit it.