ment in English, we find that such is the case, but then in the decretal order which is drawn up in the vernacular there is no provision made as to costs Under Section 189 of Act VIII. of 1859, the decree must state the amount of costs incurred in the suit, and by what parties and in what proportions they are to be paid, and this decree is to be signed by the Judge. The Judge appears to think that, because there is a schedule appended to the decree of the costs incurred by both the appellant and respondent, this is a sufficient compliance with the provisions of Section 189; but such is not the case, for there is no order as to what parties and in what proportion the costs are to be paid. The mere array of costs incurred, without saying who is responsible for these costs, is not a sufficient compliance with the Section above quoted. It is, therefore, with regret that we are obliged to remand this case in order that the decree-holder may take steps to have the decree amended. In doing so, the Judge must distinctly understand that he is not to go behind the original judgment, but simply amend the decree so that it may accord with the judgment.

With reference to the question of interest, under the ruling of the Full Bench published in Volume VI., Weekly Reporter, page 109, no interest can be awarded in execution.

Each party must bear his own costs of appeal.

Paul, J.—I concur.

The 4th January 1871.

Present:

The Hon'ble F. B. Kemp and G. C. Paul, *Judges.*

Execution—Bona fides.

Case No. 327 of 1870.

Miscellaneous Appeal from an order passed by the Judge of East Burdwan, dated the 5th July 1870, affirming an order of the Moonsiff of that District, dated the 21st January 1870.

Seetanath Mundul (Decree-holder), *Appellant,*

versus

Anund Chunder Roy and others (Judgment-debtors), *Respondents.*

Baboo Oopendro Chunder Bose for Appellant.

No one for Respondents.

If a person is to be concluded by the contention that his application to execute is not *bonâ fide*, he should be given an opportunity of explaining fully and clearly all his acts.

Paul, J.—In this case, it appears to us that the appeal should be allowed. An application was made on the 17th of January 1870 to execute a decree dating so far back as the month of March 1859. On the present application for execution being made, the Moonsiff called for a report from his seristah, and on a perusal of that report considered the application barred by limitation, and refused to issue execution. The Appellate Court, with some general observations with reference to the utility of applying a fixed principle of law in matters of this description, upheld the decision of the Moonsiff; but neither in the one Court nor in the other do I find that the facts of the case were at all investigated, or that the judgment-creditor was given any opportunity of explaining that matters which appeared to impute to him laches were *de facto* capable of explanation. In this case a certain application was made in 1865, and certain proceedings were held upon that application, on which, however, we have no very clear information. Again, in 1868, certain other proceedings took place, and it appears that through the apparent negligence of the judgment-creditor in not depositing some Ameen's fees, the sale fell through. It appears to us that, if a person is to be concluded by the contention that his application to execute is not *bonâ fide* he should be given an opportunity of explaining fully and clearly all his acts. In this case that opportunity has not been given, and it is, therefore, impossible to uphold either of the judgments of the Courts below. The decision of the Lower Court will be reversed and the case sent back for trial.

Kemp, J.—I entirely concur in this judgment. The Judge should send for the proceedings in the execution-case of 1865. He has the power and is bound to do so under Section 168 of Act VIII. of 1859.