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manner been given effect to by an order in execution. Perhaps a proper degree of strictness was not applied to the operation of the decrees in those cases, and we go with the observation in the judgment in the last-mentioned case that "Care is needed in drawing up decrees by Courts of First Instance to provide for the payment of interest " or mesne profits." In every case in which the Court intends the payment of mesne profits or interest from the date of the suit, the decree should expressly so provide.

For these reasons the order appealed from must be affirmed and the appeal dismissed with costs.

Appellate Jurisdiction (a)

Civil Miscellaneous Regular Appeal No. 272 of 1868.

RAMANUJA AIYANGAR.....*Petitioner.*

VENKATA CHARRY*Counter Petitioner.*

The period of limitation provided by Section 20 of Act XIV of 1859 runs not from the date of a former application for process of execution to enforce the decree, but from the date of the order upon the application.

An application to enforce the execution of a decree was made on the 30th August 1865. The application was dismissed by an order of the Court dated the 14th October 1865. The second application was made on the 6th October 1868.

Held, that the second application was not barred by the Limitation Act.

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APPEAL from the order of E. B. Foord, the Civil Judge of Chingleput, dated the 13th October 1868.

Srinivassa Charyar, for the petitioner.

Sunjiva Row, for the counter-petitioner.

The material facts and dates are set forth in the following

JUDGMENT:—This is an appeal from an order dismissing the plaintiff's application for process of execution to enforce the decree in the suit, on the ground that Section 20 of Act XIV of 1859 was a bar to the issuing of such process. The undisputed facts are that the present application was made on the 6th October 1868, and that a previous similar application had been made on the 30th

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August 1865 which the Court dismissed by an order dated the 14th October 1865. Consequently more than three years had elapsed between the dates of the applications but not from the date of the former order, and the question is whether the period of limitation under Section 20 ran from the date of the former application, as the Civil Court has held, or from the date of the order dismissing it, and we think clearly from the latter date.

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The Section requires that some proceeding shall have been taken to enforce the decree or keep it in force within three years preceding the application, and so long as the former application remained on the file of the Court for consideration and determination it was a proceeding *de die in diem* to enforce the decree. Until the order of the Court disposing of it had been made a fresh application for the same purpose would not have been permissible. The application therefore was within the period of limitation, and the order appealed from must be reversed with costs.

Appellate Jurisdiction. (a)

Civil Miscellaneous Special Appeal No. 18 of 1869.

T. V. RAGAVA PISHARDI..... *Petitioner.*

AYUMANJIRI MANKAL THUPAN *alias* }
VALIA THAMBRAKLE... } *Counter-Petitioner.*

A decree-holder applied for the sale of certain property then under attachment in the suit. The Court refused to issue process for the sale on the ground that the property could not be sold as certain claims and suits respecting it were still pending. The claims and suits having been determined the application was renewed. More than three years had elapsed between the date of the order on the first application and the date of the renewed application.

Held, that the second application was not barred, the order upon the first application operating simply as a temporary stay of process for the sale of the property and there was a pending proceeding to enforce the decree during the stay.

A PPEAL against the order of J. C. Hannington, the Acting Civil Judge of Calicut, dated the 23rd October, 1868.

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The petitioner (the decree-holder) applied to the Court of the Principal Sadr Amin of Calicut praying, that the

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