brother Pontifex, that I rather doubt much whether, in a sub-
stantive suit brought by a minor to set aside a compromise
obtained by fraud or mistake, it is the province of the Court to
enquire whether it would or would not be beneficial for the
minor that the compromise should be set aside. I rather think
that this is a question for the advisers of the minor only; and
that the minor has a right, at his option, to the relief prayed,
if it is proved that there are proper grounds for it.

It might be a different matter, if an application were made
to the learned Judge in the former suit who sanctioned the
compromise to set it aside on a motion for review. He might
then have to consider, perhaps, whether it was proper in the
minor's interest to interfere. But here is a substantive suit to
set aside a compromise on the ground of equitable fraud; and
if the minor *has a right* to the relief prayed, I doubt whether
the Court has any power to consider whether it would be bene-
ficial to him to grant the relief.

This, however, will be a question for the Court below to con-
sider when the case comes again before it.

Appeal allowed and case remanded.

Attorney for the appellant : Mr. *Pittar*.

Attorneys for the respondents : Messrs. *Harriss & Co.*

APPELLATE CIVIL.

Before Mr. Justice Morris and Mr. Justice Tottenham.

IN THE MATTER OF THE PETITION OF ISHAN CHUNDER ROY.*

Application for Probate—Limitation Act (XV of 1877), sched ii, art. 178.

The Limitation Act is not applicable to an application for probate; such
an application, therefore, is not barred by art. 178 of sched. ii of that Act.

THE facts material to this report sufficiently appear in the
judgment.

- * Appeal from Original Order, No. 76 of 1880, against the order of W. F.
Meres, Esq., District Judge of Tippera, dated the 31st March 1880.

1881

BIBEE
SOLOMON
v.
ABDOOL
AZEEZ.

1881
Jan. 28.

Baboo *Troyluckyanath Mitter* and Baboo *Grish Chunder Chowdhry* for the appellant.

The judgment of the Court (MORRIS and TOTTENHAM, JJ.) was delivered by

TOTTENHAM, J.—This is an appeal from an order of the District Judge of Tippera, rejecting, on the ground that it was barred by limitation, an application for probate of the will of one Obhoy Chunder Roy, who died on the 23rd of Pous 1281 (corresponding with the 6th January 1875).

The application was made on the 11th March 1880,—that is, five years and two months after the death of the testator. The Judge appears to have called for an explanation of the delay, and to have considered that no sufficient reason was made out. He rejected the application as being barred under art. 178, sched. ii of the Limitation Act.

We think that the lower Court was mistaken in applying the Limitation Act to a petition for probate. If the article quoted be read alone, it does indeed seem capable of the widest extension to every possible application that can be made to the Court, " for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure, s. 230."

But the preamble to the Act distinctly shows that it is not intended to apply to all, but to *certain*, applications to Courts: and an examination of the 3rd division of sched. ii, which deals with applications, shows, that every article therein contained, No. 178 only excepted, specifically relates to some case pending or already decided.   Article 178 must be construed with reference to the wording of the other articles, and can relate only to applications *ejusdem generis*, and therefore not to such an application as the one now before us.   We find this principle has already been enunciated in this Court on the Original Side in the case of *Govind Chunder Goswami* v. *Kungunmoney* (1). It is to be observed, that in the previous Limitation Acts, XIV of 1859 and IX of 1871, no such article as this article (No. 178) was included, and under those Acts no question of limitation could have arisen in respect of an application for probate.   It

(1) *Ante*, p. 60.

may fairly be presumed that, had the Legislature intended to apply for the first time a period of limitation to such applications, there would have been some provision in regard to them similar to that contained in s. 2 in respect of suits for which the new Act prescribes a shorter period of limitation than was previously allowed.

Altogether we are of opinion that no law of limitation governs applications for probate. Of course long unexplained delay may, in certain cases, throw doubt on the genuineness of the will propounded ; but that is a different thing from saying that probate is barred by limitation. The appellant is entitled to have his application decided on its merits.

The lower Court's order is, therefore, set aside ; and the case will be returned to it to be dealt with according to law.

Appeal allowed.

1881

IN THE MAT-
TER OF THE
PETITION OF
ISHAN
CHUNDER
ROY.

Before Mr. Justice Morris and Mr. Justice Tottenham.

KANGALI CHURN SHA AND ANOTHER (DEFENDANTS) *v.* ZOMUR-
RUDONNISSA KHATOON (PLAINTIFF).*

1881
Jan. 28.

*Limitation—Possession, Suit for—Limitation Act (XV of 1877), sched. ii,
art. 47.*

In a dispute between *A* and *B* concerning the possession of a certain taluq, the Criminal Court made an order under s. 530 of the Code of Criminal Procedure retaining *B* in possession ; and this order was, in a proceeding under ss. 295, 296 of the Code of Criminal Procedure, confirmed by the Court of Session. *Held*, that a suit by *A* for the recovery of the land must be brought within three years from the date of the Magistrate's order, and not from the date of the order passed by the Court of Session.

Article 47 of sched. ii, Act XV of 1877, refers to immoveable as well as moveable property.

Akilandammal v. *Periasami Pillai* (1) approved.

IN this case the plaintiff sued for possession of a certain taluq, which she had purchased, in 1871, at an auction-sale in

---

* Appeal from Order, No. 218 of 1880, against the order of Baboo Jeebun-kishto Chatterjee, Subordinate Judge of Pubna, dated the 15th June 1880, reversing the order of Baboo Juggobundhoo Gangoolee, Munsif of Bogra, dated the 18th December 1879.

(1) I. L. R., 1 Mad., 309.