

THE  
**INDIAN LIMITATION ACT**

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(ACT IX of 1908).

V. S. DESAI, B. A., LL. B.

*Price Rs. 2/-*

**The Indian Limitation Act.**  
**(ACT IX of 1908.)**

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INDIAN LIMITATION ACT  
(ACT IX of 1908).**

WITH

*Explanatory Notes, references to important All India Decisions upto  
November 1926, a short but exhaustive Summary of the sections  
and articles in the Act and answers to questions of the  
LL. B. Examinations of the Bombay and  
Nagpur Universities.*

WITH A FOREWORD

BY

Principal J. R. GHARPURE, B. A., LL. B. (Hons.).

BY

V. S. DESAI, B. A., LL. B.  
Pleader, Poona.

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**RIGHTS OF THE FIRST EDITION  
ARE RESERVED  
BY THE PUBLISHER.**

To  
**Anant Ganesh Desai, Esquire, *B. A., LL. B.***  
Pleader, High Court of Judicature at Bombay.

**THIS BOOK**  
IS  
**MOST RESPECTFULLY AND GRATEFULLY**  
**DEDICATED.**

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## Abbreviations used.

—:—

All. or A., Bom. or B., Cal. or C., Lah. or L., Mad. or M., Pat., R. or Rang.	}	Indian Law Reports—Allahabad, Bombay, Calcutta, Madras, Patna and Rangoon series respectively.
A. I. R. All. or A., Bom. or B., Cal. or C., Lah. or L., M. or Mad., Nag. or N., Oudh or O., Pat. or P., P. C., R., S.	}	All India Reporter—Allahabad, Bombay, Lahore, Madras, Nagpur, Oudh, Patna, Privy Council, Rangoon and Sindh respectively.
Bom. L. R.	...	Bombay Law Reporter.
A. L. J.	...	Allahabad Law Journal.
C. L. J.	...	Calcutta Law Journal.
C. W. N.	...	Calcutta Weekly Notes.
I. A.	...	Indian Appeals.
I. C.	...	Indian Cases.
Lah. L. J. or L. L. J.	...	Lahore Law Journal.
M. L. J. and M. L. T.	...	Madras Law Journal and Times respectively.
M. W. N.	...	Madras Weekly Notes.
N. L. J. and N. L. R.	...	Nagpur Law Journal and Reports respectively.
O. and A. L. R.	...	Oudh and Agra Law Reports.
O. C.	...	Oudh Cases.
P. L. R.	...	Punjab Law Reporter.
Pat. L. J. and Pat. L. R.	...	Patna Law Journal and Reports respectively.

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## PREFACE.

—:0:—

While studying for the LL. B. Examination, the want of an adequate hand-book on Limitation was very keenly felt. Some of the books on the subject were too exhaustive for students and were not helpful from the point of view of examination; while others intended to be mere summaries left the student quite helpless for getting any appreciable grasp of the subject. A book was needed which would give the student a thorough understanding of the subject, and would at the same time help him at the time of the examination. This book is intended primarily to answer this two-fold want. I believe, that such a want exists even at the date of the publication of this book.

The commentary has been so written as to give the student a thorough grasp of the subject. All important issues under the Act have been briefly discussed. The summary given at the end of the Act would help the student to memorize the subject at the time of the examination.

Nevertheless, it is sought to make the book useful to Practitioners. In that respect, there are no great pretensions. But as all important All India Decisions have been noted up to the end of October 1926, the book would be, it is hoped, of use to Practitioners as a book of ready reference.

Principal J. R. Gharpure has obliged me immensely by kindly writing a foreword to this meagre attempt in law.

I am thankful to Mr. D. G. Khandekar for the keen interest he has taken in the printing and publication of this book.

POONA,  
24th November 1926.

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V. S. D.

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## FOREWORD.

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In the following pages, Mr. Desai has given the text of the Indian Limitation Act. The text of each section or article is followed by short references to cases, throwing light on the text, and this has further annexed to it a short summary of the case-law on the point.

A Law of Limitation is one of those laws, which, while it is founded generally on the broad principles of law, equity and exigencies of human relations, is at the same time more or less arbitrary. For, while the Jurist would generally recommend that causes of action, the foundation and existence of which are likely to vanish soon, should be tried earlier than others which have more or less a lasting basis for their origin and continuation, the Legislator has to mark off the period somewhere and this has to be done more or less arbitrarily. There is no reason why a suit which was perfectly in time on the 31st of December upto 12 midnight, should get out of time immediately the midnight hour has chimed off. Here the Legislator has to cut the knot. An enactment of such a character, when presented to students can illbear a long train of cases or comments which would all be an encumbrance obscuring their vision. Mr. Desai has kept this in view and has tried to avoid such a block in the student's path. The importance and usefulness of the present compilation lies in the fact that it was prepared by a student while yet a student, and from the point of view of a student, and it is hoped that the student will find in it a helpful friend and guide. But although the book is frankly intended for the student, the busy practitioner will find a friendly gesture in the string of cases at the end of each section or article.

I wish the book every success, enabling Mr. Desai to undertake similar compilations.

LAW COLLEGE,

Poona, 21-11-26.

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J. R. GHARPURE.

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## ERRATA.

—:o—

*N. B.*—Readers are requested to make the following corrections (at least those marked with asterisks) before going through the Book.

				<b>Incorrect.</b>	<b>Correct.</b>
P.	1	from top lines 26 & 27—	for 'entered into a	'entered into in a	
			Native State	Native State'	
P.	4	"	"	28 —for 'force of facts'	face of facts
P.	6	"	"	26 & 27—for 'section be made'	section may be made
P.	6	"	"	8 —for Cest qui trust'	Cestui que trust
P.	6	"	"	11 —for 'is governed'	--are governed
P.	35	"	"	34 —, 'Limitation is reckoned	Limitation is reckoned
P.	39	"	"	23 —, 'loses'	—loses
P.	61	"	"	25 & 31—, 'barrowed'	—'borrowed'
P.	63	"	"	2 —, 'protect'	—protect
P.	66	"	"	22 —, 'waves'	—'waives'
P.	80	"	"	16, 24 —, 'recission'	—'recession'
P.	82	"	"	12 —, '16'	—'116'
P.	82	"	"	29 —, 'or purchase money'	—of purchase money
P.	97	"	"	18 —, 'conformed'	—confirmed
P.	98	"	"	13 —, 'for life estates'	—for life
P.	109	"	"	5 —, 'becomes'	—became
P.	112	"	"	1 —, 'laws'	—law
P.	115	"	"	1 —, APPLICATION	—APPLICATIONS
P.	117	"	"	36 —, 'by the'	—under the
*P.	119	"	"	23 —, 'article 18,'	—article 181
P.	131	"	"	1 —, 'order'	—application
*P.	131	"	"	32 —, 'Review'	—Revive
*P.	134	"	"	38 —, 'Preliminary'	—'Pecuniary
P.	137	"	"	27 —, 'date is specified'	—date so specified
P.	139	"	"	38 —, 'Pears'	—Years
P.	140	"	"	1 —, 'sec. 14 & sec 20'	—secs. 19 and 20
P.	140	"	"	33 —, 'amounting to	—amounts to
*P.	144	"	"	27 —, 'in the suit Pro- perty. During the pendancy &c.'	—in the suit property, during the pendancy &c.
*P.	144	"	"	10 —, 'titl: Defendant,'	—'title',

*N. B.*—For the word 'accrua' read 'accruer'

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Limitation.

## THE SECOND SCHEDULE.

Territories referred to in Section 31.

## THE THIRD SCHEDULE.

[Repealed.]

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# The Indian Limitation Act, 1908.

## ACT No. IX of 1908.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor-General on  
the 7th August 1908).*

An Act to consolidate and amend the law for the Limitation of Suits, and for other purposes.

WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows :—

### PART I.

#### PRELIMINARY.

1. (1) This Act may be called  
Short title, extent and commencement. the Indian Limitation Act, 1908.

(2) It extends to the whole of British India; and

(3) This section and section 31 shall come into force at once. The rest of this Act shall come into force on the first day of January, 1909.

#### Commentary.

The Act 'extends' to the whole of British India; this does not include the Indian Native States. A judgment of a Native State is a judgment of a foreign court and a contract entered into a native State is a contract entered into a foreign country within the meaning of section 11.

As stated in the preamble, this Act governs any proceeding in a court of justice instituted for the purpose of enforcing a demand.

#### Cases.

The Act does not disturb already vested or defeated rights 39 C. 506; 86 I.C. 757; Applicability 35 All. 227; 15 Bom. L.R. 489; 19 I. C. 291;

24 Bom. L. R. 659 ; 48 I. A. 335 ; 33 All. 356 ; 13 Bom. L. R. 427 ; 39 I. C. 833 ; Actions to be taken by Court without any motion by a Party 28 I. C. 211 ; Retrospective operation 20 L. C. 821 ; 39 M. 645 ; Letters Patent appeal 60 I. C. 737 ; Barred rights not revived 43 I. C. 50 ; 22 M. L. J. 419 ; Esquitable construction 47 I. C. 422 ; Limitation against the Crown 86 I. C. 757 ; Scope 85 I. C. 272 ; Preference in two articles 55 P. L. R. 1922 ; Section governs the articles 12 I. C. 695 ; 12 M. L. J. 1041 ; Does not bar defences 14 A. L. J. 1236, 31 I. C. 37 ; In first appeal, plea, 45 Bom. 920 ; Starting point of amended decree 43 All. 330 ; Decree incapable of execution 1922 Cal. 136 ; Amendment of plaint 63 I. C. 701 ; Pendency of arbitration Proceedings 61 I. C. 807.

## Definitions.

2 In this Act, unless there is anything repugnant in the subject or context,—

(1) "applicant" includes any person from or through whom an applicant derives his right to apply :

(2) "bill of exchange" includes a hundi and a cheque :

(3) "bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be :

(4) "defendant" includes any person from or through whom a defendant derives his liability to be sued :

(5) "easement" includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to, or subsisting upon, the land of another :

(6) "foreign country" means any country other than British India :

(7) "good faith" : nothing shall be deemed to be done in good faith which is not done with due care and attention :

(8) "plaintiff" includes any person from or through whom a plaintiff derives his right to sue :

(9) "promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of

money to another at a time therein limited, or on demand, or at sight :

(10) "suit" does not include an appeal or an application : and

(11) "trustee" does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

#### Commentary.

[ Definitions Nos. 1, 4, 7, 8, 10 and 11 should be specially noted, as they are the special types of the Limitation Act. ]

Definitions 1, 4, 8 :—The intention behind these definitions is that when time has begun to run against or in favour of a party—whether as a defendant or a plaintiff—it continues running against or in favour of all those who claim through that party. Statutory period running in favour of or against persons who claim through one another is to be tacked.

Reversioners in a Hindu Family :—It was held in 22 A. 33 (*Bhagwanta v. Sukhi*) that one reversioner does not claim through another reversioner and hence a suit which is time-barred against a nearer reversioner may not necessarily be time-barred against a remoter one. Also *cf.* 36 Mad. 570. But since 41 Mad. 659 there is a current of decisions that a suit for a declaration that an alienation by Hindu widow is invalid beyond her lifetime is a representative suit and if a reversioner who is competent to challenge it fails to do so or while doing so, the result is binding on his successors in the absence of fraud, collusion and other invalidating circumstances. For further discussion *cf.* notes on art. 125 (further).

#### Case.

Negligence of Legal advisor 3 P. L. J. 484.

## PART II.

### LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

3. Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

Dismissal of suits,  
etc., instituted, etc.,  
after period of limita-  
tion.

*Explanation.*—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer, in the case of a pauper, when his application for leave to sue as a pauper is made; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

#### Commentary.

Subject to the provisions of secs. 4 to 25, a suit, an appeal or an application preferred after the period of limitation will be dismissed even though limitation has not been set up as a defence.

‘Although limitation has not been set up as a defence’ :—

The Statute of Limitation is a rule of procedure. It has overridden all Hindu or Muslim laws of limitation and is independent of any status, race, religion or custom. The Statute is not defeated neither are its operations retarded by negotiations for a settlement pending between the parties. It is not within the competence of a court or the parties to ignore or waive the statute. A question of Limitation, when it arises, upon the facts before a court, must be heard and decided whether or not it is raised in the pleadings or in the grounds of appeal. *Hemchandra v. Birjundari*, 67 I. C. 387; *Dhanji v. Secretary of State*, 45 Bom. 920. It was laid down in 8 Bom. 525 that points of limitation not raised in first appeal cannot be raised in second appeal as it is construed to have been waived. But this decision no longer stands as good law in view of the F. B. decision in 34 Calcutta 94. In appeal the plea of limitation can only be urged if it is provable on the ‘force of facts’ and when there is no necessity of entering into new evidence.

**Pauper suits, &c. :**—The date when application for leave to sue as a pauper is made will be taken into consideration for purposes of checking limitation, only when leave is granted and not otherwise. The application must be granted and registered as a suit, 20 Bom. 508.

**Being wound up by the Court :**—This clause applies to a company which is being wound up ‘by the Court’ and hence a case of voluntary liquidation does not come within its contemplation.

[An amendment of plaint which substitutes a new relief and a new cause of action would not refer back to the original plaint. In such cases Limitation, as for the amended plaint, will be



checked from the date of the amended plaint and not from the date of the original one.]

**Applicability to defence :—**The Statute of Limitation is not applicable to a mere defence and therefore, a defendant may interpose a demand, although time-barred, as a defence to a suit. Thus where A as creditor has filed a suit against B in 1926 on a promisory note given to A by B in 1924 and the debt due upon the note is Rs. 100 and if B has such a promisory note for the same sum drawn by A in 1922, B may plead the credit of the latter note as a defence to A's suit. Thus whereas B could not have recovered from A the sum due on the latter note in 1926 (it being then time-barred) he can plead it as a defence to A's suit. Hence it is said that 'limitation does not extinguish the right but extinguishes the action.'

**Applicability to Criminal Proceedings :—**Though criminal appeals are specially provided for by a few articles in Division II of the first Schedule, no amount of delay will cure a crime. It is against the theory of law to say that Criminal Prosecutions will be silenced by any amount of delay. Once a crime is committed, the criminal is liable to undergo a punishment for that offence till death. Excepting criminal appeals (articles 150, 154, 155 and 157) the Indian Penal Code is above the Indian Limitation Act.

The Limitation Act has no application to functions of the court which are purely of a ministerial character. It is, therefore, that this Act does not govern probate proceedings.

When a plaint is presented to the proper officer of the Court, limitation ceases to run against the plaintiff. The plaint may not be presented in a proper form. It is only essential that the plaint is presented to a proper court. Insufficiency of court fees may be made good even after the period of Limitation. There must not, however, be an unnecessary delay in making good the deficiency in the Stamp, 2 B. 330; also *cf. Skinner v. Orde*. This was once a debated point, but s. 149 of the Civil Procedure Code of 1908 has finally solved the problem whether insufficiency of court fees should be allowed to be made good even after the period of Limitation or no.

#### Cases.

Insufficiently stamped plaint 123 P. R. 1907, Limitation as defence in second appeal 28 M. L. J. 115, 90 I. C. 827; 3 Pat. L. R. 132; A. I. R. Nag. 178, 89 I. C. 56, 80 I. C. 582, 78 I. C. 960; Section mandatory 38 I. C. 17, 28 B. 458; Court's duty 40 I. C. 661; 29 I. C.

476 ; 23 I. C. 360 ; 17 I. C. 638, 1920 Pat. 91 ; Onus to prove suit within Limitation on the Plaintiff 12 I. C. 453 ; Plea in appeal 1923 Cal. 283 ; 60 I. C. 280, 48 Cal. 455 ; 16 I. C. 418 ; 44 I. C. 490 ; When to be taken 13 I. C. 792 ; 35 I. C. 337 ; Waiver 56 I. C. 539 (P. C.) Contract against Limitation 18 I. C. 595, 38 Mad. 374 ; 1924 Oudh 127.

4. Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

Where Court is closed when period expires.

#### Commentary.

This section conveys that when a court is closed on the day when period of limitation for a suit expires, it being impossible to file the plaint on that day, proceedings ought to be taken on the day when the court reopens.

#### Cases.

Leave to appeal in *forma Pauperis* 30 C. 790 ; applicability 24 M. L. J. 214 ; Court closed or not a question of fact 25 Bom. L. R. 1296 ; Suit presented in wrong Court on the opening day 14 A. L. J. 310 ; 1923 M. 114 (2) ; 44 Mad. 817, 47 I. C. 624 ; 36 Mad. 131 ; 12 I. C. 58 ; Applicable to s. 77 of the Indian Registration Act 16 C. W. N. 20 ; Assignee of debt during vacation 15 Rom. L. R. 318.

5. Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Extension of period in certain cases.

*Explanation.*—The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

### Commentary.

This section is applicable to appellants and applicants only; the benefit conferred by the section does not extend to suits. The words 'any other application' have been extended to mean nearly all applications. An appeal or an application may be admitted after the period of limitation on being shown a sufficient cause for default. The section is applicable to pauper appeals.

The fact that the party was misled by the High Court in ascertaining or computing period of limitation is a sufficient cause.

**Sufficient cause:**—This is a discretionary clause and Judges ought to be very considerate in determining whether a cause shown is a sufficient cause or not. It is a question of fact. Where delay is caused through gross negligence, it will not be excused. While excusing an applicant or an appellant, no injustice should be done to the other party. *Karsandas v. Gangabai*, 30 Bom. 329; *Parvati v. Ganpau*, 23 Bom. 513, also 25 Bom. 699. It has been laid down in 42 Cal. 584 that a respondent who is prejudicially affected by the admission of a time-barred appeal or application is entitled to invoke the inherent powers of the High Court to set aside the admission. But superior courts ought not to interfere in the discretion used by a lower court unless the superior court believes, or has reason to believe, that discretion was used capriciously and without any legal material to support the decision. 23 Bom. 513.

Pendency of review proceedings, trying for leave to appeal as a pauper, cases covered by section 14 of this Act, *bona fide* prosecution of a proceeding in a wrong court have been held to be 'sufficient causes' within the meaning of this section.

**Mistake of law:**—Ignorance of law is not a sufficient cause. But if it has occasioned erroneous proceedings, the mistake may be excused. *Brij Indar Singh v. Kanshi Ram*, 45 Cal. 94 P. C.; also 12 Bom. 320. But in *Dadabhai v. Maneksha*, 21 Bom. 552, a *bonafide* mistake of law was considered a sufficient cause.

The test of a contention whether a certain thing is a sufficient cause or not, is whether a reasonable man with level intelligence will be prompted to act in the manner of the plaintiff.

### Cases.

Not applicable to Registration and Court Fees Acts. 16 C. W. N. 721; *ex parte* order excusing delay may be questioned by successor, 27 M. L. J. 147; meaning of sufficient cause, 10 C. L. J. 39; 20 Bom. 104;

25 Ind. cases 20; 19 I. C. 438; 21 Bom. 352; 23 Bom. L. R. 89; 29 A. 638; 18 B. 84; 41 B. 45; applicability to Pros. Insl. Act, 35 I. C. 730; Leave to appeal to P. C. 1923, A. 536; 1924 M. 400; 1923 Oudh 93; Liberal construction 31 I. C. 876; Discretion 159 P. W. R. 1913; Delay in getting copies of judgment 23 I. C. 874; 9 A. L. J. 15, 1922 Lah. 415, 9 I. C. 381; 22 I. C. 919; 10 I. C. 210; Effect of Laches 32 I. C. 579; Discretion 45 A. 432; 1923 Cal. 261, 39 I. C. 100; Interference by High Court 1922 Lah. 170; 35 I. C. 888; Forgetfulness of pleader, delay not excused 85 I. C. 693, Laches not excused 86 I. C. 270; Time spent in review 85 I. C. 996 (1); Good faith, diligence and the right of reply of the other party A. I. R. 1925, Cal. 175, Pleaders mistake 43 Bcm. 376, A. I. R. Mad. 1925, 462 (1); Mistake owing to rules of Court and practice 48 M. 631; Ignorance of law 87 I. C. 952; Inapplicable to suits 87 I. C. 17; Discretion 37 I. C. 815; Doubtful point of practice 58 I. C. 408; 58 I. C. 995, 52 I. C. 959; Minority of the applicant 26 C. 244; Inability 16 Bom. L. R. 444, 38 Bom. 653, 16 Bom. L. R. 441; Mistake of Court 16 I. C. 979; *Bonofide* mistake of counsel's clerk 59 I. C. 937; Mistake of fact 42 I. C. 343, 15 I. C. 420, of Law 45 Cal. 94, 19 Bom. L. R. 866, 18 I. C. 37; Mistake of pleader 44 All. 637; Not sufficient—mistake in calculation 46 I. C. 480; Laches 14 A. L. J. 212; Negligence of party 37 I. C. 828, 55 I. C. 271; Poverty 7 B. L. R. 90; Time taken in review 47 I. C. 677, 42 Bom. 295; Respondent can re-open the question if appeal is admitted *ex parte* 41 Mad. 412, 21 Bom. L. R. 541, 16 Bom. L. R. 516, 63 I. C. 726, 21 I. C. 746, 16 I. C. 486.

**6.** (1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule.

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after

both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is at the date of the death affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

*Illustrations.*

(a) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accrues. He may institute his suit at any time within three years from the date of his attaining majority.

(b) A right to sue accrues to Z during his minority. After the accrues, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(c) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

**Commentary.**

Scope :—This section applies to ‘suits and application for execution of a decree’ only. Appeals and applications for other purposes are beyond the contemplation of this section. *18 Mad. 464.* The section governs cases coming under the Limitation Act and not the periods of limitation as defined by other Acts. *37 Mad. 186.*

The disabilities are limited to minority, insanity and idiocy. This section does not confer benefit upon other disabilities, such as deafness, dumbness, blindness, &c. It seems to be the intention of the legislature that those disabilities in which there is an absence of “brain power or power of discrimination” should only be excused.

✓ The section is to be read with section 9 of this Act; so that when time has once begun to run, a subsequent disability will not check it.

The disability must be of a person entitled to and necessary for a proceeding and existing at the accrual of the cause of action.

The benefit is a personal one and cannot be taken advantage of by other persons even though claiming through the disabled persons, such as an assignee or a purchaser of his property. *Arjun v. Ramabai*, 40 Bom. 564. "A transferee of a minor cannot claim the benefit of this section unless he himself is under a disability at the date of the purchase and suit. Such a transferee can shield himself under the disability of his transferor if the suit is instituted in the name of the transferor and not otherwise.

It does not matter whether a minor has an appointed guardian or no; even in such a case he can claim the benefit of this section. *Moro v. Visaji*, 16 B. 536. The disability does not cease to protect him even though he has taken legal proceedings through the guardian. Thus if a minor has come out successful in a suit and has obtained a decree, he can claim the benefit of section 6 for execution of the decree and it need not be proceeded with within the ordinary period of limitation as long as the disability continues.

Cases:—*Vishnu v. Keshava*, 26 B. L. R. 426. A suit on a promissory note taken by the guardian of a minor must be instituted within 3 years from its date and s. 6 has no application to such a case.

#### Cases.

Scope 1923 Lab. 41; Subsequent disability 59 I. C. 678, 54 I. C. 838; Existence of next friend or guardian 22 I. C. 365, 16 B. 536; Assignee of a minor 26 B. 730; Right of party to acquire by adverse possession not affected 27 B. 515; Applicable in case of a minor plaintiff even though he is owner of a shop 77 I. C. 476; Does not protect persons subsequently born 20 O. C. 343 (P. O.), 79 I. C. 109, A. I. R. (1924) All. 912, 82 I. C. 307, 87 I. C. 662, A. I. R. 1925 All. 563, 27 Bom. L. R. 175.

7. Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes

Disability of one of several plaintiffs or applicants.

capable of giving such discharge without the concurrence of the others or until the disability has ceased.

*Illustrations.*

(a) A incurs a debt to a firm of which B, C and D are partners. B is insane, and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.

(b) A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

**Commentary.**

This section in a way limits the application of the preceding section. 'Any such disability' in this section means a disability as mentioned in section 6.

**Jointly interested:—**Several plaintiffs must be jointly interested in the subject-matter and reliefs of a suit. More than one person must possess the same substantial right.

**Discharge can be given:—**The party not labouring under a disability must be able to give a complete discharge and not a partial one. If a discharge from liability could be given without the concurrence of all persons entitled to claim a relief, section 6 cannot be pleaded.

**Can be given:—**Whether one of several plaintiffs can give a valid discharge is no province of the Limitation Act but depends entirely upon the personal law of the litigating parties. (An adult member of a joint Hindu family can give a valid discharge for all). "If there is an intention behind the obligation that each of the parties in whose favour the obligation is created is a creditor for the whole, and if one of such plaintiffs is not suffering from 'any such' disability, then time runs against all of them."

Where co-obligers are entitled to an obligation as tenants-in-common and where one of them is a minor, time does not run against his share; but it does run against the share of the non-disabled obligor.—22 *All. 155.*

A suit by a reversioner to set aside an alienation by a Hindu widow is a representative suit on behalf of all the reversioners, then existing or thereafter to be born, and all of them have but a single cause of action, which arises on the date of the alienation. 41 *Mad. 659 F. B.*

**Cases.**

Applicability 34 I. C. 86; Co-heirs 43 Mad. 842; Co-partners 52 I. C. 456; Discharge by adult brother 15 B. L. R. 867, 46 B. 535, 1922 B. 319, 45 Bom. 446, 22 Bom. L. R. 1923, 20 B. L. R. 461, 38 Bom. 94; By manager 44 I. C. 566; Decree in favour of father and minor sons, death of father, eldest son applying within 3 years of his attaining majority, application in time 47 M. 920, 47 M. L. J. 389, 36 M. 295 (P. C.); Eldest brother, manager of Joint Hindu family A. I. R. (1924) All. 738; Hindu father or eldest brother acting as next friend of plaintiff's cannot give a valid discharge 47 M. L. J. 389, 88 I. C. 268; Manager of Joint Hindu family 20 Bom. L. R. 161; One of two co-sharers can give a valid discharge 25 A. 155; Joint decree-holders or one of two joint heirs, 15 Bom. L. R. 882, 31 A. 156.

8. Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Special exceptions.

*Illustrations.*

(a) A, to whom a right to sue for a legacy has accrued during his minority attains majority eleven years after such accrues. A has, under the ordinary law, only one year remaining within which to sue. But under section 6 and this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(b) A right to sue for an hereditary office accrues to A who at the time is insane. Six years after the accrues A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under section 6 read with this section.

(c) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accrues, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. Section 6 read with this section



does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

### Commentary.

**Scope :—**This section lays down certain rules regarding the computation and ascertainment of the period of limitation under the disability clause.

✓ **Extent of the period :—**The rules contained in this section can be enumerated as follows :—

(1) The plaintiff may sue within three years of his removal of disability if the ordinary period was three years.

(2) If the ordinary period is longer and it has expired during the period of disability, or within three years of the cessation of disability, he may sue within three years of such cessation. *37 M. L. J. 256.*

(3) If the ordinary period is longer and it expires after three years from the cessation of disability, the suit must be brought before such period ends. The plaintiff may count the period of limitation in the ordinary manner. *24 Mad. 387 P. C.*

(4) If the ordinary period is less than three years, the suit must be brought within such 'prescribed period' from the cessation of disability. *Vinayakrao v. Deo Rao, 11 Bom. 473.*

**Deemed to extend :—**Any difficulty in understanding the concept of this section will be removed if we mark the expression 'deemed to extend.' This means that the plaintiff will in all cases have the ordinary period of limitation from the accrual of the cause of action. In no case will the ordinary period be shortened. The ordinary period is extended utmost till three years after the cessation of disability in cases falling within sections 6 and 7.

*Note* that a *right of pre-emption* is always enforceable within the ordinary period of limitation and is beyond the scope of sections 6 and 7.

**Cases :—**In order that disabilities under sections 6, 7 and 8 of the Indian Limitation Act may help a person it is necessary that the disability should exist at the time of the accrual of the cause of action. Four brothers born in 1886, 1891, 1897 and 1900 respectively instituted a suit in 1920 for possession of a village which was their ancestral property, alleging that the sale-deed in respect of it executed by their father in 1893, was executed without legal necessity. *Held*, that so far as the first two brothers the suit was barred on the expiry of 12 years from 1893 and as regards

the two others sections 6, 7 and 8 did not prevent limitation running, as they only contemplated persons in existence at the accrual of the cause of action, which those two were not. 27 B. L. R. 175.

✓ 9. Where once time has begun to run, no subsequent disability or inability to sue stops it :  
 Continuous running of time.

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

#### Commentary.

Scope :—Once time has begun to run, it runs continuously. The Limitation Act, however, provides for certain suspensions and renewals of the statutory period as we will note in the following sections. This section is to be read as qualified (or modified) by sections 13 to 20 (further).

When a debtor becomes an administrator of the estate of his creditor, he is the legal representative of the deceased as long as the administration continues. He is unable to institute a suit for the debt due to the estate from time, "as a person suing himself is a fiction unknown to Law."

#### Cases.

Continuous running of time 15 Bom. L. R. 489, 14 Bom. L. R. 387 & 29 I. C. 761.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration) for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

Suits against express trustees and their representatives.

#### Commentary.

Scope :—(Note the definition of 'a Trustee' in the Limitation Act which does not include a *banamidar* &c. Cf. definitions

in sec. 2.) The trust referred to in this section must be a trust expressed by writing or mouth and no other. *Cf. 9 W. R., 187 F. B. & 37 Bom. 447.* This section has no application to trusts created by implication or operation of law as enumerated in the last chapter of the Indian Trusts Act. 31 Bom. 222. According to English Law an express trustee cannot plead Limitation, but a constructive trustee can. An express trust is the relation between a trustee and *cest qui trust* as expressed by the creator of the Trust. A constructive trust is a trust by circumstance. *Soars v. Ashwoel*, 1893 Q. B. 390. A 'trustee *de son tort*' and a participator in the fraud of an express trustee is governed by this section. Neither the Directors nor the Liquidators are trustees of the company's property within the meaning of this section. The section does not apply to trusts in favour of creditors when the trust deed is not communicated to the creditors. The section applies only to suits between a Trustee and a beneficiary and not to suits between Trustees themselves, even though the suit be for an account of the Trust Property. 20 *Mad* 398; 32 *Bombay* 314; not so in 6 *Mad.* 54: When there are claims regarding express trusts and also regarding trusts which are not express, the suit is covered by this section in so far as the express trusts are concerned. The section may, therefore, have application to 'a part of the suit'. *Moosabhai v. Yakoobhai*, 29 *Bom.* 167.—Trustees *de son tort* are not governed by this section.

**Specific purpose** :— *Secretary of State v. Sahharam*, 24 *Bom.* 21. The Trust must be for some specific purpose and not in the nature of a general trust such as the law imposes upon executors and others who hold recognised fiduciary positions.

**For the purpose of following the Trust Property, &c.** :—The object of the suit must be 'following the trust property in his or their hands, or following the proceeds thereof, or for an account of such property' and no other. The nature of the trust, the parties to be sued and the object of the suit must all stand the test of this section before a litigant can take advantage of this section.

Suits to establish a right to administer a religious trust, or a suit claiming to vindicate the 'personal right' of a trustee to the possession of immovable property against another person claiming such right in the same character are not within the contemplation of this section.

#### Cases.

Scope 32 *Bom.* 394; Not applicable to implied or constructive trustees 8 *C.* 788; Resulting trustees 31 *B.* 222, 13 *Bom. L. R.* 717;

Co-trustees, suits between 74 I. C. 120, A. I. R. (1924) Mad. 125 ; Principal and agent 81 I. C. 505 ; Section not applicable to trustees *de son tort* 22 A. L. J. 866, (1924) A. I. R. All. 884 ; Administrator 40 I. C. 860 ; Assign 20 Bom. L. R. 441, 32 M. L. J. 85 ; Express Trust 50 I. C. 49, 44, M. L. J. 685 ; Implied trust 17 Bom. L. R. 641, 13 Bom. 447 ; *de son tort* 57 I. O. 805.

11. (1) Suits instituted in British India on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act.

(2) No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

#### Commentary.

Clause (1) of section 11 says that a suit instituted in British India on contracts entered into even in a foreign country are subject to the Indian Limitation Act. We have already stated that the Indian Limitation Act is a rule of procedure and it is hence that the procedure of the court in which a suit is instituted will be the procedure of the suit.

### PART III.

#### COMPUTATION OF PERIOD OF LIMITATION.

12. (1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

#### Commentary.

This and the following few sections lay down certain rules for computing the period of limitation. The following is an analysis of this section :—

- |     |   |   |  |
|-----|---|---|--|
| (1) | In Computing—Period for a suit, an appeal or an application.                  | { | The day from which the period is to be reckoned shall be excluded.   |
| (2) | " — " " or an application " for leave to appeal or for a review of judgment." | { | The day on which judgment was pronounced and period required for copying judgment & decree, shall be excluded. |
| (3) | " — " " an appeal or review of a decree.                                      | { | Time requisite for obtaining a copy of the judgment upon which it is founded shall be excluded.                |
| (4) | " — " " an application to set aside an award.                                 | { | Time required for obtaining a copy of the award shall be excluded.   |

The copy must be necessary for the proceeding. Period elapsing from the date of an application for obtaining copies to the date when the copies are ready for delivery, and not up to the date when the applicant applies for delivery of the copies, is excluded. The application for obtaining a copy must be made within limitation. 15 Bom. L. R. 681.

The section does not allow an appellant to apply for a series of documents one after the other and to claim that his time for appeal is extended merely because he has applied for all those

documents within successive periods of limitation. He must apply simultaneously for all essential documents.

Clause (1):—The day from which the period is to be reckoned refers to the day mentioned in the third column of the first schedule of this Act.

Clauses (2, 3, 4):—*Time requisite for a copy.*—Please note that if a copy is ready at a time when court is closed, say for vacation, the appellant or the applicant is entitled to the benefit of the whole period of such vacation, even though by reason of the copying department being open, the copy was available.

As to the proper time required for copying, practice in the copying department and the rules framed by the High Court are the determining factors. (According to some High Courts applications for copy of judgment and for copy of a decree must be sent in together; according to others, they can be sent on two different dates and both the periods may be added and excluded from the period of limitation. *Pramatha Nath v. Lee*, 49 Cal. 999. P. O. "No period can be regarded as 'requisite' which need not have elapsed had the applicant acted with reasonable promptitude and taken proper steps to obtain the copy.")

The application for a copy must be made before the period prescribed for the appeal or application has expired. *Ramey v. Broughton*, 10 C. P. 655.

If judgment is pronounced on a day during vacation, application must be made on the first day when the court re-opens. *Subramaniya v. Narasimham*, 43 Mad. 640.

Cases:—*Macmillan & Co. v. Cooper.*—Time taken in obtaining copies severally of judgment and decree; there is an exclusion of both the periods. 25 Bom. L. R. 1309 followed in 26 Bom. L. R. 362.

#### Cases.

Privy Council appeal included 18 C. W. N. 1006; Time for obtaining copy does not begin until application is made 6 Pat. L. J. 350; Inapplicable to application for leave to appeal as pauper 12 A. 79; Purpose of obtaining copies is immaterial 29 A. 264; Time taken by another party is not to be taken into account 12 M.L. J. 385; time taken by copies of judgment and formal order—both to be excluded A.I.R. 1924 All. 162; Application for leave to appeal to Privy Council, time requisite for a copy of the judgment, not to be excluded 78 I. O. 953, but see 48 Mad. 939, 90 I. C. 601, A. I. R. 1925 Mad. 1241; Applicability 49 Cal. 899, 42 A. 260; Applicable to pauper appeals 1923 Lah. 415, 79

I. C. 908 ; Time spent in obtaining translation 59 I. C. 965 ; Copies sent by Post 1922 Lah. 415, 14 I. C. 403 ; Decree later than judgment 49 I. C. 664 ; Copies ready during vacation 36 M. L. J. 62 ; Laches 50 I. C. 760, 49 I. C. 1000 ; Review 24 O. L. J. 235 ; Separate applications for copy of decree and judgment 25 Bom. L. R. 1309.

**13.** In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India and from the territories beyond British India under the administration of the Government shall be excluded.

Exclusion of time of defendant's absence from British India and certain other territories.

**Commentary.**

This section does not apply to appeals or applications as is evident from the expression 'prescribed for any suit.' (*Cf.* the definition of suit—section 2).

If there are separate intervals of absence, all such periods can be added and excluded from the total run of limitation. If some only of the defendants are absent, time will run in favour of those who are present in British India. *Palaniappa v. Veerappa*, 41 Mad. 446.

That the defendant has got an agent (*i. e.* a constructive habitation) in India is no bar to the provisions of this section. *Cf. Purnochandra v. Sason*, 25 Cal. 496, F. B.

**14.** (1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Exclusion of time of proceeding *bona fide* in Court without jurisdiction.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil pro-

ceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

*Explanation I.*—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

*Explanation II.*—For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

*Explanation III.*—For the purposes of this section, misjoinder of parties or of causes of action shall be deemed to be a cause of like nature with defect of a jurisdiction.

### Commentary.

**Scope:**—This section applies to suits and applications only. Filing of an appeal in a wrong court and then filing the same in the proper court after the period of limitation, may be excused under section 5 (sufficient cause), if after the exclusion of the period taken by the wrong proceeding from the total run of the statutory period the subsequent appeal is in time. "A plaintiff appeals against a decree of a lower court in a wrong court. The appeal is founded on the same cause of action, against the same party and in a perfectly *bona fide* manner. Subsequently he finds that he has appealed in a wrong court, and before he can take proceedings in the proper court, the statutory period has run against him completely. In such a case, the present section which is limited to suits and applications only, will not cure the delay; the plaintiff shall have no remedy except probably for the residuary 5th section.

It is necessary for the purposes of this section that the proceeding must be prosecuted with due diligence, against the proper party and must be founded upon the same cause of action. No allowance can be made for a proceeding against a wrong party.

Cluses (i) & (ii):—Cases of suits and applications are provided for in these two clauses. Except for the terms 'suits' and 'applications', the entire wording of both the sections is identical.



**Plaintiff:**—*Cf.* Definition section 2. Identity of parties is essential.

**Due diligence:**—Whether a proceeding was prosecuted with 'due diligence' or not is a question of fact and the courts must give rather a liberal interpretation to that expression. In *Govind-sami v Sami Padyachi* 43 Mad. L. J. 579, it was held that filing of a suit on the last day of limitation, and that too in a wrong court, disproves diligence. The relief is to be given on strict principles of equity and 'equity aids the vigilant' should not be forgotten.

**Civil Proceedings:**—This section further requires that the earlier wrong proceedings must be a proceeding in a Civil Court; so that in a case of defamation, (where both civil and criminal actions are open to the plaintiff), if the plaintiff prosecutes the defendant for libel, and having failed in that action institutes a suit for damages for torts, but after the statutory period has run out, section 14 will not come to his rescue.

**Court of First instance or in a Court of Appeal:**—This means that a plaintiff having instituted a suit in a wrong court may further prefer an appeal in the corresponding wrong court, and he may yet get relief under this section for the whole period occupied both by the suit and the appeal, provided that he fulfills the conditions of due diligence and *bona fides*. In such a case the period that passes between the suit and the appeal shall also be excluded.

**Defendant:**—Identity of parties is essential. *Cf.* sec. 2.

**Same cause of action:**—Identity of causes of action are essential. If plaintiff sues under one title in a wrong court, and then under another title in the proper court, the period occupied by the previous proceeding will not be excluded from the statutory period, as the two causes of action are not identical.

**Presented in good faith:**—*Cf.* Definitions—section 2.—Good faith is due care and attention. Good faith is essential. The basic principle of relief underlying this section is that it is not always possible for every individual to follow the right course of legal procedure. Mistakes are possible due to the complexities of legal procedure, or bad legal advice, or some ambiguous order or practice of the courts and so on. There must be a *bona fide* mistake of fact.

**Cause of a like nature:**—It is a question of fact whether a certain cause is 'a cause of a like nature or not.' Judges are to be guided by precedents and case-law. This section has no application where the plaintiff brought a suit in a foreign court,

which had no jurisdiction in respect of the litigation according to the laws of British India, 2 Mad. 407.

**Is unable to entertain it :—**The previous suit must have been dismissed for some defect of procedure and not on the merits of the case. Note the word 'unable' in the clause.

**Explanation (iii).—**This section covers misjoinder of parties and not non-joinder of parties.

#### Cases.

Appeal filed in wrong court owing to carelessness, not excused 79 I. C. 924; *Bona fides* A. I. R. 1924 Nag. 309; Good faith, due care and attention, ignorance of Law not excused 78 I. C. 482; The court must be a court in British India 76 I. C. 305; In an appeal, time spent in prosecuting an application for review should be excluded A. I. R. 1925 Lah. 534; Not applicable to sec. 77 of the Reg. Act 89 I. C. 884 (1); Defendant must be same in both the proceedings A. I. R. 1925 Oudh 369; Delay of 10 days after return of plaint for presentation to proper court, not excused 26 Punj. L. R. 342; identity of rights A. I. R. 1925 Mad. 676; Excludes appeals 23 C. 325, 25 B. 235; Ignorance of Law when excused 20 B. 139; Applicability—Insolvency 47 Bom. 244, 24 L. R. 509; Proceeding of a revenue court 26 I. C. 441, Civil Proceeding 1923 Bom. 218; Defect of jurisdiction 22 P. R. 1912; Due diligence 41 P. R. 1916; Good faith 18 Bom. L. R. 418, 40 I. C. 447; Prosecution of a proceeding 9 M. L. J. 315, 24 Bom. L. R. 509, 22 Bom. L. R. 1387.

15. (1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

#### Commentary.

**Scope :—**Clause (1) applies to suits and applications for execution of a decree, and not to appeals or 'other applications.'

Clause (2) applies to suits only. *e. g.* In suits against Government, notice is required to be given before the institution of a suit; such notices are contemplated by this section.

Section 15 of the Indian Limitation Act applies to an absolute stay and not to a limited stay, as would be ordered by notice under Order 21, rule 53 (1) (b) of the C. P. Code. 26 *B. L. R.* 317.

### Cases.

Applicability to s. 48 of O. P. C., 44 *Mad.* 785; Injunction 56 *I. C.* 1006; Attachment 42 *Mad.* 637; Notice 52 *P. R.* 1917; Stay of execution 40 *All.* 198; Decree against several defendants, stay against one 29 *M. L. J.* 57; Period of Insolvency 36 *M. L. J.* 104, excludes order of attachment 13 *A.* 76.

16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

Exclusion of time during which proceedings to set aside execution sale are pending.

17. (1) Where a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

Effect of death before right to sue accrues.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(3) Nothing in sub-sections (1) and (2) applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

### Commentary.

**Scope :—**Clauses (1) and (2) taken together mean, that if a party, who, if alive, could have taken legal proceedings or against whom legal proceedings could have been taken, is dead before the accrual of cause of action, limitation will be computed from the time when there is a legal representative capable of suing or being sued. Clause (3) further says, that this section has no application to pre-emption suits or to suits for possession of immovable property or a hereditary office. The section applies to suits and applications only. The death must happen before the accrual of cause of action.

As an executor is capable of taking proceedings before obtaining probate, the time taken by proceedings for obtaining a probate shall not be excluded. But when letters of administration are obligatory, time will not begin to run till they are obtained.

### Cases.

Admission must show existing jural relationship and must be conscious 86 I C. 745; A. I. R. 1925 Cal. 1227.

18. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application—

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

### Commentary.

**Scope** :—This is one of the various expositions of the legal maxim that ‘no one can successfully set up his own fraud as a defence.’ *Bonafides* and good faith are necessary both for a plaintiff and a defendant—and that is exactly where law coincides with morality.

A plaintiff kept in ignorance of his right, title or a ‘necessary document’ by the defendant or any one claiming through him otherwise than in good faith or valuable consideration, may exclude the ‘period of fraud’ from the statutory period. This is the substance of the section. The section is limited to suits and applications only.

**By means of fraud** :—There must be active fraud and the plaintiff must have been deceived by the fraud.

**Concealed from him** :—Concealment must also be active. It must be proved that but for the fraud or the concealment, the plaintiff would have acted otherwise. The plaintiff must have been defrauded while the right to sue subsisted.

What if fraud is antecedent to the accrual of the cause of action? (*Cf. Rai Kishori Das v. Mukundlal*, 11 Indian Cases, Cr. 295). It is submitted that even if the fraud be antecedent to the cause of action, the plaintiff should get relief under this section as it does not contravene any of the provisions of this section. But if the fraud has been perpetrated after the close of the statutory period, the case is taken out of the statute and the plaintiff has no relief.

“The fraud must involve moral turpitude and must have the effect of debarring or deterring the plaintiff from his action. It must be an abuse of some confidential position, some deliberate concealment of facts or an intentional imposition.” No one can avoid information which he is competent to procure and then claim exemption under this section. It is, therefore, open for the defendant to prove that the plaintiff either knew the real facts or had the means of knowing them. For the purposes of this section, agent’s knowledge is as good as the principal’s knowledge.

The plaintiff can claim this exemption against the actual perpetrator of the fraud or his accessory thereto, or any person claiming through him otherwise than in good faith and for valuable consideration.

### Cases.

Oous on the applicant 27 P. L. R. 1903, 36 C 654; What is fraud 17 B. 341 (P. C.), 14 Bom. L. R. 771; Burden of proof 80 I. C. 590 = A.

I. R. (1924) Nagpur 94, 78 I. O. 149; Execution sale, application to set aside—Limitation—Fraud—85 I. C. 622, A. I. R. 1925 Pat. 521; Cf. 47 A. 850, 52 Cal. 63; Applicability 9 I. C. 285; Fraud onus of proof 46 I. C. 221, 16 I. C. 547, 20 I. C. 538; Knowledge 49 I. A. 406.

19. (1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Indian Evidence Act, I of 1872, oral evidence of its contents shall not be received.

*Explanation I.*—For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

*Explanation II.*—For the purposes of this section, “signed” means signed either personally or by an agent duly authorized in this behalf.

*Explanation III.*—For the purposes of this section an application for the execution of a decree or order is an application in respect of a right.

#### Commentary.

**Scope** :—This is one of the most important sections of this Act, and, therefore, a thorough understanding of every clause in the section is necessary.

The section lays down that in case of a suit or an application regarding any right or property, a fresh period will be computed, from the date of an acknowledgment in respect of such a claim, given by the defendant or by any one through whom he claims. The second clause of the section is rather a rule of Evidence than of Limitation. Explanation I lays down that the form of the acknowledgment or the fact that it is addressed to some one else than the plaintiff does not matter.

Explanation II explains the meaning of the word 'signed' as used in this section, and Explanation III lays down that an application for execution of a decree is an application within the contemplation of this section.

**Before the expiration of the period :—**The acknowledgment must be written and signed by the defendant, and it must also be communicated to the plaintiff before the period of limitation expires. *Mahataxmibai v. Nageshwar*, 10 Bom. 71, also 26 Bom. 782.

**An acknowledgment of liability in respect of such property or right :—**It must be a distinct acknowledgment of a debt or a liability. *Gash v. Maclean*, 2 N. W. 403. The acknowledgment must be definite and unequivocal; this may, however, be by implication and may not be express. A letter expressing willingness to pay whatever may be found due on taking an account, is a sufficient acknowledgment. *Narayanam v. Chidambaram*, 12 Ind. Cases, 410. (Mad.) Statement in a plaint of a jural relationship between the plaintiff and the defendant is a sufficient acknowledgment. *Dharma v. Govind*, 8 Bom. 102. An unregistered mortgage deed, though inoperative as a mortgage, may still be a good acknowledgment of an existing debt. 26 Cal. 334. The acknowledgment must be in a principal document. A series of letters, in none of which there is any definite acknowledgment of liability of a debt, but from which it may be inferred that some debt was due, is not a sufficient acknowledgment. 6 Bom. L. R. 551.

It is not necessary that there should be a promise to pay. But (1) The document must acknowledge an 'existing legal liability.' A simple debt of honour acknowledged will not make the statute run afresh. (2) The acknowledgment must be in respect of a present debt. *Paragjiwandas v. Bai Mani*, 23 Bom. L. R. 294. (3) The acknowledgment must be unconditional or conditional with the condition duly fulfilled. 29 Mad. 591.

The acknowledgment must refer to the particular claim in the suit or application. But according to 9 Bom. L. R. 715,

acknowledgment of a debt generally, may be shown to be of a particular debt by implication.

**In respect of such property :—**If the defendant acknowledges a sum smaller than the actual debt, then the sum acknowledged is taken out of limitation.

**In writing :—**Acknowledgment must be in writing. *Ghasita v. Sultan*, 11 Indian Cases 445. Clause (2) of this section should now be read with this section. Oral evidence of the contents of the document cannot be received in contravention of section 92 of the Indian Evidence Act. The date of the acknowledgment may be proved orally.

**Signed by the party ... title or liability :—**(to be read with Expl. 2).

The acknowledgment must be signed by the principal debtor personally or by his authorised agent. *Note* that the agent must be specially authorized to sign such acknowledgments. (Per *Dinomoyi v. Rai Luchimipant*, 7 Indian App. 8.)

“The signature must be the introduction of the name of the maker of the instrument or of his authorized agent, so as to authenticate the instrument. It must be such as to make the person whose name is introduced (*i. e.* the person signing) privy to the deed.” The acknowledgment to be admissible in evidence must finally be in accordance with the requirements of the Evidence Act.

**Person through whom he derives title or liability :—**A reversioner in a joint Hindu Family derives title from the last male holder and not from the widow; therefore an acknowledgment by the widow of the last male holder will not bind him. *Soni Ram v. Kanhaya Lal*, 35 All. 227 P. C.

A Manager of a Hindu Family can acknowledge debts; but not a guardian of a minor. 17 Bom. 512.

“From the time when the acknowledgment was so signed :—” According to the principle laid down in 10 Bom. 71 (*Mahalaxmibai's case*), the acknowledgment must not only be written and signed, but actually communicated to the plaintiff before the expiry of the statutory period. But recent rulings go to hold that an acknowledgment need not be addressed at all, and if addressed, it may not be to the creditor. “A fresh period begins to run from the time when the *acknowledgment was so signed.*” This part of the first clause should be specially noted, as it fixes the time from which a fresh period is to be reckoned.



According to explanation 1, no particular form or no particular kind of contents are necessary for a valid acknowledgment.

[Sec. 25 of the Contract Act should be noted on this point. An acknowledgment given after the statutory period will not revive a time-barred debt. But a promise to pay a time-barred debt duly registered, and made even without consideration, does revive a barred debt. But the cause of action is afforded, not by the revival of the old debt, but by the new contract.]

"An acknowledgment of a mortgage contained in settlement records is not *prima-facie* evidence that the mortgage was a subsisting mortgage, and it is for the plaintiff relying on the acknowledgment to show, that it was given before the expiry of the period of limitation. 45 Bom. 934; 42 All. 575."

*Ganesh v. Dattatraya*, 25 Bom. L. R. 144. An endorsement on a promissory note by the promisor is an acknowledgment of liability.

#### Cases.

Meaning 17 A. L. J. 763; Suff. established by writing only 17 N. L. R. 209; Repudiation of liability is not acknowledgment 11 A. L. J. 601; Nor acknowledgment of barred debt 24 I. O. 407; Conditions of valid acknowledgment 32 Bom. 296, 33 Cal. 1047; May not be addressed to the creditor 33 O. 1047; By minor 59 P. R. 1901; By a Hindu widow 13 M. 189, 82 I. O. 1052, 86 I. C. 353; Authority to acknowledge, agent 13 Bom. L. R. 264; Karta of Hindu Family 19 O. W. N. 860, 32 I. C. 997; Co-debtors 22 I. O. 709, 13 I. O. 702; Partners 41 Mad. 427, 36 I. C. 225; Conscious admission of an existing debt 79 I. C. 914, 8 B. 99, 9 Bom. L. R. 115; Promise to pay not necessary 47 M. L. J. 840; Acknowledgment must be one signed by the defendant or his predecessor in title 78 I. O. 617; Subsisting liability 42 M. 637, F. B.; Admission in suit for accounts 80 I. C. 355; Acknowledgment in a mortgage A. I. R. (1924) All. 458, 22 A. L. J. 1018; Requisites 85 I. C. 584, A. I. R. (1925) Mad. 675, 23 A. L. J. 869, 89 I. O. 617, 48 M. 693, 85 I. C. 297; Mortgage suit 49 I. C. 118, 86 I. C. 434, 84 I. O. 5; Receiver of Insolvent's property 38 I. C. 169; Effect of acknowledgment 15 Bom. L. R. 489; Minor 52 I. C. 115, 33 M. L. J. 753; Fresh cause of action 56 I. C. 879; Essentials 42 All. 390, 42 All. 575, 34 All. 464, 23 Bom. L. R. 1186, 45 Bom. 934, 38 Bom. 47, 35 Bom. 302, 64 I. C. 988 (2); Form of acknowledgment 15 Bom. L. R. 483, 24 Bom. L. R. 713, 23 Bom. L. R. 606, 22 Bom. L. R. 943, 16 Bom. L. R. 20, 35 Bom. 383; Identity of right 26 Mad. 68; Implied acknowledgment 36 All. 408, 1922 Mad. 101.

20. (1) Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

Effect of payment of interest as such or of part-payment of principal.

or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

a fresh period of limitation shall be computed from the time when the payment was made :

Provided that, in the case of part payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same.

(2) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section (1).

Effect of receipt of produce of mortgaged land.

*Explanation.*—Debt includes money payable under a decree or order of Court.

#### Commentary.

**Payment of interest or part of the principal—**  
**Scope :—**The section lays down that in case of a debt or a legacy (which may be, according to the explanation, due under an order or decree of a court), the period of limitation begins to run afresh, if before the statutory period has expired, the defendant or his duly authorised agent pays 'a part of the principal money evidenced by the handwriting of the payor', or 'interest as such' to the plaintiff. In cases of mortgages with possession, receipt of rents of the mortgaged property shall amount to payment within the meaning of sub-section (1).

**Sub-section (1)—'as such':—**Interest must be paid as 'interest' on the debt or legacy. According to 35 All. 378, the payment may be of part of the interest due. It must be appropriated (within the meaning of the Indian Contract Act, *Cf.* sections on appropriation of payments) by the debtor, as interest. Circumstantial evidence that money paid was paid as interest, is sufficient. The payment must be made by the person

liable to pay or by his duly authorised agent. Payment of interest by principal keeps a debt alive against a surety. *Allison v. Fisby*, 43 Ch. D. 106, but not in so held 28 Bom. 248.

**Part-payment of principal :—**(To be read with the 4th clause "Provided that &c.")

The part-payment must appear in the handwriting of the payer, who should be none else than the person actually liable to pay or his duly authorised agent.

If a payment is not appropriated as part-payment of the principal by the debtor, the creditor may appropriate it on that account.

"Part-payment of principal is an acknowledgment of a greater liability, whereas a payment of interest is an acknowledgment of an existing liability." This is the principle underlying this section. Both the payments, *i.e.*, either of interest or of principal, must take place before the expiry of the statutory period. *Please note* that once the statutory period has elapsed without the happening of an event which would extend the ordinary run of that period, no further fact, howsoever important or significant, will revive the barred obligation. There is no rule of limitation which can revive a barred debt. A barred debt is only revived by the operation of s. 25 of the Indian Contract Act.

Part-payment of principal must be shown to be a part-payment of a larger sum, *i. e.*, it must be a payment made on account, and must not purport to be a payment in satisfaction of the entire debt. (The fact of the part-payment must be evidenced by the handwriting of the payor, and not of any other person howsoever authorized.) The payor is the person making the payment and he need not be the actual debtor. The payment may precede writing. The writing may take place even after the expiry of the period of limitation. Because it is not the writing but the actual payment that takes the debt out of the statute. The handwriting is a necessary fact which gives the payment an evidentiary value. (*Venkatsabha v. Appa Sundaram*, 17 Mad. 92).

Money must pass from the debtor to the creditor. But if there is a payment in any other mode, 'an agreement between the parties that payment in any other mode shall be accepted as good payment must be proved.' *Raghu v. Hari*, 24 Bom. 619.

The paramount fact in all discussions regarding section 20 of this Act is, that the payment, if of interest, must be of 'interest as such', and if part-payment of the principal, it must be evidenced by the handwriting of the payor.

“Where payments are made towards a debt, but there is nothing to show whether they had been made in respect of principal or interest, the court is entitled to find out on evidence as to the purpose for which the payments were made.—*Sakharam v. Kewal*, 44 Bom. 392.”

**Cases** :—If there is a joint khata by two persons and part-payment of principal appears in the handwriting of one of them and is signed by both, the part-payment saves limitation. 25 Bom. L. R. 354.

‘As such’—The payment must be made of interest ‘as such’ with a distinct specification. 23 Bom. L. R. 569.

#### Cases.

Successive payments give different starting points 11 M. 218; Meaning of ‘as such’ 27 C. L. J. 141; Payment by debtor does not extend time against surety 28 B. 248; One co-heir cannot bind others 14 I. C. 128; Appropriation 1922 Cal. 144, 44 Cal. 567; Authorised agent 3 Lab. L. J. 250; Handwriting 1923 Bom. 369, 41 Bom. 166; Illiterate person 62 I. C. 297; Authority to agent 54 I. C. 802; Payment of principal 44 Bom. 392, 38 I. C. 293; Payment by cheque 42 Cal. 1043; Payment by whom 41 All. 111; By karta 52 I. C. 436; Co-heirs 14 I. C. 128; Partners 9 I. C. 116, 41 Mad. 427; Receiver 16 M. L. T. 489; Partial payment of interest 35 All. 378; Receipt of rents and profits by sub-mortgagee 46 B. 1000, 45 Bom. 1206; Writing of payment need not be within limitation 17 M. 92; Agent transgressing his authority 87 I. C. 989; Payment by cheque 89 I. C. 508; Appropriation by creditor 87 I. C. 746; Part-payment by one partner after dissolution of partnership—effective 1925 M. W. N. 707.

21. (1) The expression ‘agent duly authorized in this behalf,’ in sections 19 and 20, shall, in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorised by such guardian, committee or manager to sign the acknowledgment or make the payment.

(2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them.

**Commentary.**

This section is an exposition of the word 'agent duly authorized' as used in sections 19 and 20. In case of persons under disability, their guardians or the agents of such guardians, authorised to make payments as contemplated by sec. 20 and to give acknowledgments as contemplated by sec. 19, are agents within the meaning of sections 19 and 20.

Sub-section (2) of this section does not admit the idea of 'implied agency' among co-debtors. Since acknowledgment and payment are two acts which make the statute run afresh, it would be injudicious to debar a debtor from the right of pleading the statute due to an act of a co-debtor. If the fact of agency among co-debtors is established, then alone an acknowledgment or payment by one will take the debt out of the statute as against all. But if no such agency is proved, the debtor signing an acknowledgment or making a payment will alone suffer a start of a fresh period of limitation against part of the debt pertaining to himself only.

**Cases.**

Lawful guardian 19 I. C. 362; Co-heirs 40 I. C. 858; Joint contractors 32 I. C. 608; Partners 45 I. C. 18.

Effect of substituting or adding new plaintiff or defendant.

22. (1) Where, after the institution of a suit, a plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

**Commentary.**

Scope :—All necessary parties to a suit must be joined before the expiry of the statutory period. It is not permitted to join one or a few plaintiffs and defendants at the outset of a suit and then to join the remaining parties at one's convenience. Sub-section (2) is an exception to the general rule laid down in sub-section (1). "If a plaintiff or a defendant is made a party owing to a transfer of interest during the pendency of a suit, or if a plaintiff is made a defendant or a defendant a plaintiff, then sub-section (1) has no application."

In case of joint claims (*i. e.*, where the claim is indivisible), joinder of all necessary parties is a necessary item in the institution of such a suit, and if some of the necessary parties are joined after the statutory period, the entire claim fails.

If the legal person is to remain identical and if only a misnomer of name is to be corrected, the mistake is out of the mischief of this section.

Whether the words 'plaintiff' and 'defendant' include an appellant and a respondent is a matter left open to discussion by judicial decisions. According to order 41, r. 20 of the Civil Procedure Code, the words are not so extensive. (9 Cal. 355); but Mahmood J. has refused to follow this interpretation in *Ranjitsingh v. Shevprasad*, 2 All. 487.

*Madan Lal v. Kishan Singh* 34 All. 572 :—A manager of a joint Hindu family is capable of suing or being sued against on behalf of all co-parceners; and as such, if the other co-parceners are impleaded after limitation has run out, it does not affect the suit. The crux of the question is whether the party joined after limitation was a necessary party or not; and whether the claim in the suit is divisible or indivisible. If the claim is indivisible and if the parties impleaded at a late stage were necessary parties, then the whole suit must fail.

*Note* that according to sub-section (2) transfer of interest must be 'during the pendency of a suit.'

*According to Gururayya v. Dattatraya* (28 Bom. 11) 'where a decree cannot be passed in favour of the plaintiffs who first instituted the suit, without the conjunction of the added plaintiffs, or against the defendants who were first sued without the addition of the new defendants, the whole suit must be dismissed as time barred, if the party is added after the expiry of the period of limitation.

45 Bom. 1019 :—Some of the heirs of the mortgagor sued to redeem a mortgage few days before the expiry of the period of limitation. To meet an objection raised for misjoinder of parties, the plaintiffs subsequently applied to make the remaining heirs parties. It was held that plaintiffs' right to redeem was not lost by that omission. They were necessary parties merely to save a multiplicity of suits. If the plaintiff's right were entirely lost only because he failed to comply with the provisions of order 34, r. 1, it would be subordinating justice to a technicality of Procedure.

Where a suit is originally brought in the name of a firm and afterwards being found that the defendants are not a firm, but an undivided Hindu family, the suit is instituted in their individual

names, there is no addition of parties but only a substitution in order to correct a misdescription, 27 Bom. L. R. 1122.

A suit brought by an insolvent after adjudication in his own name is not maintainable; and the substitution of the name of the official assignee at a later date amounts to an addition of a new plaintiff within the meaning of this section. 28 Bom. L. R. 554.

### Cases.

New defendants cannot be added after period of limitation, but defendants who refused to be plaintiffs may be 22 A. 226, Limitation not to be disregarded even if the addition is by court 50 O. 549; Change in the capacity of the Plaintiff 51 I. O. 845, 78 I. C. 569; Hindu Law, Joint family 33 All. 272, 35 Mad. 685, addition of parties 13 Bom. L. R. 1004, 50 O. 549; Assignee 32 M. L. J. 407, after time 35 I. C. 551; Applicability 14 I. O. 566; Addition of heirs 17 Bom. L. R. 685; Necessary party 23 Bom. L. R. 495, presumption 1924 Lah. 230; Suit against dead persons 47 I. O. 894.

23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Continuing breaches and wrongs.

### Commentary.

In cases of continuing breaches of contract and of continuing torts, every moment of the breach brings in a new cause of action. "A continuing breach is one arising from a repetition of acts or omissions similar to those in respect of which an action is brought." *Hole v. Chandunion* (1894) 1 Ch. 293. In ordinary cases, the statutory period begins to run from the time when the cause of action arises, *i. e.*, when a particular breach takes place. But in cases of continuing breaches or wrongs, it is not the beginning of the wrong, but the last ceasing of it from which the period of limitation reckoned.

24. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Suit for compensation for act not actionable without special damage.

*Illustration.*

A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

**Commentary.**

There are some wrongs, especially torts such as slander, which are not actionable without proof of a special damage. In such cases, the statutory period begins to run from the date of the 'special damage.' Statutory period will not begin to run unless there is an 'existing cause of action.' In cases contemplated by sec. 24, there are wrongs which become actionable only after the accrual of special damage. And so time will commence running from the date when the wrong becomes actionable.

Computation of time mentioned in instruments.

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

*Illustrations.*

(a) A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to suit on the note runs from the expiration of four months after a date computed according to the Gregorian calendar.

(b) A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiration of one year after a date computed according to the Gregorian calendar.

**Commentary.**

The Gregorian calendar is the calendar of our every day use, *i. e.*, the official calendar in British India.

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PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

26. (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption and for twenty years,

and where any way or watercourse, or the use of any water or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption, and for twenty years,

the right to such access and use of light or air, way, water-course, use of water, or other easement shall be absolute and indefeasible.

Each of the said period of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(2) Where the property over which a right is claimed under sub-section (1) belongs to Government, that sub-section shall be read as if for the words "twenty years" the words "sixty years" were substituted.

*Explanation.*—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

*Illustrations.*

(a) A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interrup-

tion from 1st January 1890 to 1st January 1910. The plaintiff is entitled to judgment.

(d) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion, during the twenty years, had asked his leave to enjoy the right. The suit shall be dismissed.

### Commentary.

This and the following sections (*i. e.*, sections 26 and 27) have been repealed by the "Indian Easements Act" as far as the Bombay Presidency is concerned.

The twenty years' enjoyment required by sub-section (1) must be enjoyed "as of right," and "openly." Thus no easement can be acquired by a secret user.

*Note* that a discontinuance of enjoyment for three or more years does nullify the enjoyment of the statutory period, *i. e.*, the user of the easement must continue till within three years before the date (previous to the date) of the institution of a suit.

As against government, an easement can be acquired by the user of 60 years. *Cf.* art. 149 (further).

The right of public to pass over a highway is not an easement, nor can it be acquired by prescription.

In 29 Cal. 393 it was *held* that a tenant of land, even if his tenancy is permanent, cannot acquire an easement by prescription in other land of the lessor.

27. Where any land or water upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Exclusion in favour of reversioner of servient tenement.

*Illustration.*

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C, a Hindu widow, had a life-interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with references to the provisions of this section, has only proved enjoyment for fifteen years.

28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

Extinguishment of right to property.

*Commentary.*

This section applies to persons who have lost their right to possession. Persons who are in possession and have no occasion to sue for it, are not governed by this section and they are not prevented from making use of any legal defence open to them for maintaining their possession. 14 Bom. 222. Adverse possession for the required period does not only extinguish the right of the true owner so as to debar him from bringing a suit for the recovery of the property, but creates a title by negation in the occupant which he can actively assert if he loses possession, even against the true owner.

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**PART V.**
**SAVINGS AND REPEALS.**

29. (1) Nothing in this Act shall affect section 25 of the Indian Contract Act, IX of 1872.

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply.

(3) Nothing in this Act shall apply to suits under the Indian Divorce Act, IV of 1869.

(4) Sections 26 and 27 and the definition of "easement" in section 2 shall not apply to cases arising in territories to which the Indian Easements Act, V of 1882, may, for the time being, extend.

30. Notwithstanding anything herein contained, any suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the Indian Limitation Act, XV of 1877, may be instituted within the period of two years next after the passing of this Act, or within the period prescribed for such suit by the Indian Limitation Act, 1877, whichever period expires first.

Provision for suits for which the period prescribed is shorter than that prescribed by the Indian Limitation Act, 1877.

31. (1) Notwithstanding anything contained in this Act or in the Indian Limitation Act, XV of 1877, in the territories mentioned in the second schedule a suit for foreclosure or a suit for sale by a mortgagee may be instituted within two years from the date of the passing of this Act, or within sixty years from the date when the money secured by the mortgage became due, whichever period expires first; and no such suit in the said territories instituted within the said period of sixty years and pending at the date of the passing of this Act, either in a Court of first instance or of appeal, shall be dismissed on the ground that a twelve years' rule of limitation is applicable.

Provision for suits by certain mortgages in territories mentioned in the second schedule.

(2) Where in the aforesaid territories the claim of a mortgagee for foreclosure or for sale has been wholly or in part dismissed or withdrawn after the twenty-second day of July 1907 and before the passing of this Act, either in a Court of first instance or of appeal, on the ground that a twelve years' rule of limitation applied to such claim, the case may be restored on an application in writing to the Court by which the claim was dismissed or in which it was withdrawn, provided the application is made within six months from the date of the passing of this Act; and on such restoration, the provisions of sub-section (1) shall apply.

32. [*Repealed by the Amending and Repealing Act XVII of 1914.*]

## THE FIRST SCHEDULE.

(See Section 3.)

### FIRST DIVISION: SUITS.

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#### PART I—30 DAYS.

*Art. 1.*—To contest an award *Thirty days*. When notice of the Board of Revenue under the Waste Lands (claims) Act, XXIII of 1863). the award is delivered to the plaintiff.

#### PART II.—90 DAYS.

*Art. 2.*—For compensation *Ninety days*. When the act or omission takes place. for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in British India.

#### Commentary.

This article protects persons who do any act or neglect to do any duty, under colour of the statute, with a *bona fide* intention of acting under its authority and privilege. The defendant should have a *bona fide* belief in facts which, if they had existed, would have justified him in his conduct.

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Art. 2 does not include a suit against Government to recover tax paid under protest 16 Bom. L. R. 121; Only suits for damages are governed by this article 6 Bom. 8 (F. B.); Refund of octroi duty is governed by article 120, 35 All. 555; Essentials (1924) Lah. 169; Articles 2 and 36—21 I. C. 426.

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## PART III.—6 MONTHS.

*Art. 3.*—Under the Specific Relief Act, I of 1877, section 9, to recover possession of immoveable property. *Six months.* When the dis-  
possession oc-  
curs.

**Case.**

Scope, 13 I. C. 541.

*Art. 4.*—Under the Employers and Workmen (Disputes) Act, XI of 1860, section 1. *Six months.* When the wages, hire or price of work claimed accrue or accrues due.

*Cf. art. 7.*

## PART IV.—1 YEAR.

*Art. 5.*—Under the summary procedure referred to in section 128 (2) (f) of the Code of Civil Procedure, Act V of 1908, where the provision of such summary procedure does not exclude the ordinary procedure in such suits and under Order XXXVII of the said Code. *One year.* When the debt or liquidated demand becomes payable or when the property becomes recoverable.

*Note*—This article is printed as amended by the Indian Limitation (Amendment) Act XXX of 1925.

**Case.**

Applicability 52 Cal. 954; 1925 Cal. 781.

*Art. 6.*—Upon a Statute, Act, Regulation or By-law for a penalty or forfeiture. *One year.* When the penalty or forfeiture is incurred.



*Art. 7.*—For the wages of *One year.* When the wages of a household servant, artisan or labourer not provided for by this schedule, article 4. accrue due.

#### Commentary.

The right covered by article 7, is a recurring right and there is a separate action as the wages for each month become due, which action is barred when one year has expired.

#### Cases.

Scope 26 O. C. 327; Does apply to—suit by cook 28 I. C. 956; Mechanical Engineer 50 I. C. 37; Weighman in a shop 23 A. L. J. 1059.

*Art. 8.*—For the price of *One year.* When the food or drink sold by the keeper of a hotel, tavern or lodging house. or drink is delivered.

*Art. 9.*—For the price of *One year.* When the price of lodging. becomes payable.

*Art. 10.*—To enforce a right *One year.* When the purchaser takes, of pre-emption whether the right is founded on law or general usage, or on special contract. under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.

**Commentary.**

**Third column:—**If the property is capable of physical possession, time begins to run from the date when the purchaser takes possession. If the property is sold under a registered instrument, time begins to run from the date of registration. Property not being capable of actual tangible possession and the sale not taking place by a registered instrument, the case is governed by article 120 and limitation begins to run from the date of the sale. The article also governs conditional sales, and limitation begins to run from the date when the mortgagee obtains an order absolute under s. 87 of the Transfer of Property Act.

**Cases.**

Rival pre emptors 14 Indian Cases 328, 80 P. B. 1912; Receipt of rent is not physical possession 20 A. 315 (F. B.), Impossibility of physical possession—Equity of redemption 9 A. 234, 50 I. C. 80; No sale-deed 40 M. L. J. 443; Share in undivided family 1923 Lah. 75; Possession prior to sale 48 I. C. 102; Subsequent vendee 28 I. C. 695; Articles 10 and 120, 62 I. C. 207; Mutation in document of sale 76 I. C. 202.

*Art 11.—*By a person, *One year.* The date of the order.  
 against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order :

- (1) Order under the Code of Civil Procedure, Act V of 1908, on a claim preferred to, or an objection made to the attachment of, property attached in execution of a decree ;
- (2) Order under section 23 of the Presidency Small Cause Courts Act, 15 of 1882.

### Commentary.

**Scope :—**This and Article 11-A govern suits brought under O. 21, rules 63 and 103, of the Civil Procedure Code.

**Investigation :—**For a case to fall within this article, there must be first an attachment and then an objection preferred thereto; the court has further to allow or disallow the objection *after proper investigation*. But since *41 Mad. 985 F. B.*, it has been held that for an order to follow, investigation is not necessary. *The court may adjudicate without investigation.*

**Starting point :—**The starting point of limitation is the order of the executing court. In case of a further appeal or revision, the date of any order passed on appeal or revision would be the starting point.

### Cases.

Applicability 50 I. C. 748, A. I. R. 1924 Cal. 744; Attachment before judgment A. I. R. 1925 Cal. 1147; Scope 83 I. C. 233.

*Art. 11A.*—By a person *One year.* The date of the against whom an order has been made under the Code of Civil Procedure, 1908, upon an application by the holder of a decree for the possession of immovable property or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser, to establish the right which he claims to the present possession of the property comprised in the order.

**Cases.**

When inapplicable 83 I.C. 923; Order under O. 21, r. 100 90—I O. 827, A. I. R. 1923 Cal. 601, 90 I. C. 575; Against a third person 60 I. O. 905; Sale subject to mortgage 18 Bom. L. R. 782; Applicability 50 I. O. 6; Order under O. 21, r. 58, disposed of without investigation 40 All. 325; Dismissal for want of prosecution 20 I. C. 369, 45 Cal. 785, arts. 11 and 29, 9 I. O. 773.

*Art. 12.*—To set aside any *One year.* When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.

of the following sales :—

- (a) Sale in execution of a decree of a Civil Court,
- (b) Sale in pursuance of a decree or order of a Collector or other officer of revenue ;
- (c) Sale for arrears of Government revenue, or for any demand recoverable as such arrears ;
- (d) Sale of a patni taluq sold for current arrears of rent.

*Explanation.*—In this article “patni” includes any intermediate tenure saleable for current arrears of rent.

### Commentary.

The article binds only parties to the original suit. If property belonging to a stranger to the proceeding is erroneously sold as the property of the judgment-debtor, article 12 has no application, as the real owner is unaffected by the sale to which he was not a party.

In case of a minor, this article is to be read with the provisions of ss. 6 and 7 if the minor was properly represented in the suit; article 12 is inapplicable if the minor was not properly represented in the suit. If the order of sale is passed by a court without sufficient jurisdiction, the article has no application. The article does not cover sales which are void altogether or are *ultra vires*.

**Starting point:**—Limitation begins to run from the date when the sale is confirmed or otherwise becomes final. 13 C. L. J. 339.

### Cases.

Void sale 24 I. C. 695; Confirmation of sale 13 C. L. J. 339; Inapplicable to strangers 71 I. C. 822, 67 I. C. 894; Minor 43 I. C. 712; Hindu Law—joint family 34 I. C. 288.

*Art. 13.*—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit. *One year.* The date of the final decision or order in the case by a Court competent to determine it finally.

### Commentary.

This article applies to orders which become final and conclusive if no suit is brought to set them aside. The order must have been passed by a competent court, in a proceeding other than a suit and must have been passed on merits of the proceeding.

### Cases.

Competent court, 1 All. 333 (F. B.); Merits of the case, 20 Cal. 607. Scope, 45 Bom. 561.

**Art. 14.**—To set aside any act or order of an officer of Government in his official capacity, not here-in otherwise expressly provided for. *One year.* The date of the act or order.

#### Commentary.

For an order to come within the perview of this article the following things are essential :—

- (a) The order must be within the power of the officer making it.
- (b) In passing the order a regular procedure ought to have been adopted after proper legal inquiry.
- (c) The order must not be *ultra vires*.

**Starting point:**—Starting point is the date when the order and communication of the same to the plaintiff is made; he must have a knowledge of an adverse decision. 12 Mad. 1.

#### Cases.

Applicability, 28 B. L. R. 641. Orders without jurisdiction, A. I. R. 1924 Cal. 913; acts *ultra vires* A. I. R. 1924 Cal. 913, 25 Bom. L. R. 1160, 36 Bom. 325; Officer not acting in his official capacity, 45 Bom. 920; Order of Collector for forfeiture of land for failure to pay rent, 44 Bom. 451; Order under secs. 65 and 66 of the Bom. Land Revenue Code, 17 Bom. L. R. 513.

**Art. 15.**—Against Government to set aside any attachment, lease or transfer of immoveable property by the revenue authorities for arrears of Government revenue. *One year.* When the attachment, lease or transfer is made.

**Art. 16.**—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears. *One year.* When the payment is made.

**Cases.**

Water cess, Illegal Levy of—A. I. R. 1925 Mad. 474, 46 Mad. 488, 59 I. C. 98.

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| <i>Art. 17.</i> —Against Government for compensation for land acquired for public purposes. | <i>One year.</i> | The date of determining the amount of the compensation. |
| <i>Art. 18.</i> —Like suit for compensation when the acquisition is not completed.          | Do.              | The date of the refusal to complete.                    |
| <i>Art. 19.</i> —For compensation for false imprisonment.                                   | Do.              | When the imprisonment ends.                             |

**Case.**

For arts. 19 and 23 *cf.* 40 Cal. 898.

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| <i>Art. 20.</i> —By executors, administrators or representatives under the Legal Representatives' Suits Act XII of 1855. | <i>One year.</i> | The date of the death of the person wronged. |
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**Commentary.**

This article has no application to suits in respect of wrongs which do not abate on death. 1 W. R. 251.

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| <i>Art. 21.</i> —By executors, administrators or representatives under the Indian Fatal Accidents Act XIII of 1855. | <i>One year.</i> | The date of the death of the person killed. |
| <i>Art. 22.</i> —For compensation for any other injury to the person.   | Do.              | When the injury is committed.               |

**Cases:**

Personal injury A. I. R. 1924, Bom. 290 25 Bom. L. R. 1160.

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| <i>Art. 23.</i> —For compensation for a malicious prosecution. | <i>One year.</i> | When the plaintiff is acquitted, or the prosecution is otherwise terminated. |
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**Cases**

Further proceedings after discharge, 24 Bom. L. R. 507, 57 I. C. 635; Arts. 2 and 23—89 I. C. 861.

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| <i>Art. 24.</i> —For compensation for libel.   | <i>One year.</i> | When the libel is published.  |
| <i>Art. 25.</i> —For compensation for slander. | Do.              | When the words are spoken, or if the words are not actionable in themselves, when the special damage complained of results. |

**Commentary.**

This article is governed by Sec. 24 of the Limitation Act.

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| <i>Art. 26.</i> —For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter. | <i>One year.</i> | When the loss occurs.     |
| <i>Art. 27.</i> —For compensation for inducing a person to break a contract with the plaintiff.                           | Do.              | The date of the breach.   |
| <i>Art. 28.</i> —For compensation for an illegal, irregular or excessive distress.  | Do.              | The date of the distress. |
| <i>Art. 29.</i> —For compensation for wrongful seizure of moveable property under legal process.                          | Do.              | The date of the seizure.  |



### Commentary.

This article applies to all cases of wrongful seizure of moveable property under legal process, 23 Mad. 621; where a seizure is under a writ of court, it is *prima facie* not wrongful unless a want of jurisdiction in the court or an execution of the writ against a person not a party to the suit is proved, 64 I. C. 513. If the wrongful seizure is not under legal process, but by a private person, article 49 applies. 4 Mad. 271.

### Cases.

Applicability, A. I. R. 1925 All. 131; Arts. 29, 36 and 40—81 Ind. Cases 1038; Arts. 29, 62 and 120—A. I. R. (1924) Nag. 248, 10 I. C. 658; Seizure of standing crops 18 I. C. 253, 18 M. L. T. 532, 25 M. L. J. 447; Attachment of debt 16 I. C. 914, Arts. 29 and 11—9 I. C. 773.

**Art. 30.**—Against a carrier *One year.* When the loss for compensation for losing or injuring goods. or injury occurs.

### Commentary.

Starting point:—Starting point is the date when goods ought to have been delivered. Where no time is fixed for delivery, the suit may be instituted within one year after the expiry of a reasonable time for the delivery of goods. 1923 A. 22 (2).

### Cases.

Actual loss and not mere non-delivery must be proved, 7 Bom. 478.

Arts. 30, 31 and 115, 1923 A. 22 (2), 44 Cal. 16, 1923 P. 298; Misdelivery and non-delivery 1923 P. 285; Railway Coy. 34 I. C. 130, A. I. R. 1925 All. 656.

**Art. 31.**—Against a carrier *One year.* When the goods for compensation for non-delivery of, or delay in, delivering goods. ought to be delivered.

### Cases.

Against Railway Company A. I. R. (1924) Mad. 567; Misdelivery 19 I. C. 477; Applicability, 51 I. C. 570; Arts. 31 and 48—A. I. R. 1925 Lah. 478.

## PART V.—2 YEARS.

*Art. 32.*—Against one who, *Two years.* When the perversion first having a right to use property for specific purposes, perverts it to other purposes. becomes known to the person injured thereby.

**Cases.**

Perversion of an easement, 1922 All. 320, 33 I. C. 90; Arts. 32 and 140, 89 I. C. 405.

*Art. 33.*—Under the Legal Representatives' Suits Act, XII of 1855, against an executor. *Two years.* When the wrong complained of is done.

*Art. 34.*—Under the same Act against an administrator. Do. Do.

*Art. 35.*—Under the same Act against any other representative. Do. Do.

**Case.**

For a suit barred under Act of 1877 cf. 37 Bom. 393.

*Art. 36.*—For compensation *Two years.* When the malfeasance, misfeasance or non-feasance independent of contract and not herein specially provided for. malfeasance, misfeasance or non-feasance takes place.

**Commentary.**

This article is a residuary article for cases of torts which are not specially provided for by other articles such as articles 19, 22 to 31, 37 to 40, 42, 48 and 49.

“Malfeasance is the commission of an act which is unlawful, misfeasance is the improper performance of some act which is

permitted to be done lawfully and nonfeasance is the omission of some act which is obligatory."

Starting point is the date of the tort. 33 Mad. 71, 34 I. C. 173.

Cases :—Suit for compensation for irregular sale in execution is governed by this article, 1924 L. 136, so also suits for compensation for attachment before judgment (38 M. L. J. 324), for wrongful attachment of moveables by a prohibitory order (35 I. C. 98), for depreciation of mortgage security. 3 L. W. 341.

Arts. 36, 39 and 49—A. I. R. (1924) Nag. 125; Applicability, A.I. R. (1924) Bom. 290; Misfeasance (1924) Lah. 285, 1923 Lah 58 (2); Attachment before judgment, 55 I. C. 786; Arts. 29, 36, 62 and 120—22 I. C. 870.

#### PART VI.—3 YEARS.

*Art. 37.*—For compensation *Three years.* The date of the obstruction for obstructing a way or a watercourse.

*Art. 38.*—For compensation *Do.* The date of diversion for diverting a watercourse.

*Art. 39.*—For compensation *Do.* The date of the trespass for trespass upon immovable property.

*Art. 40.*—For compensation *Do.* The date of the infringement for infringing copyright or any other exclusive privilege.

#### Case.

Translation is no infringement, 19 Bom. 557.

*Art. 41.*—To restrain waste. *Three years.* When the waste begins.

*Art. 42.*—For compensation *Do.* When the injunction ceases for injury caused by an injunction wrongfully obtained.

#### Case.

\* Injunction dissolved on appeal, 42 Cal. 550.

**Art. 43.**—Under the Indian Succession Act, 10 of 1865, section 320 or section 321, or under the Probate and administration Act, 5 of 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets. *Three years.* The date of the payment or distribution.

*N. B.*—The sections mentioned above correspond to s. 360 and s. 361 of the Indian Succession Act, 39 of 1925.

**Art. 44.**—By a ward who has attained majority, to set aside a transfer of property by his guardian. *Three years.* When the ward attains majority.

### Commentary.

**Scope:**—This article refers to transfers which are voidable and not to absolutely void transfers. 12 Cal. 69. Similarly this article has no application when the sale is not by a guardian but by an absolutely unauthorised person.

Under the Muhammadan Law, alienation by a minor's elder brother acting as a guardian (*de facto*) of property subject to a valid mortgage is void and need not be set aside, 34 A. 213. The article does not apply to an alienation by a *de facto* guardian wholly unauthorised to effect a transfer, 17 Bom. L. R. 1134; such suits are governed by art. 144 and not by art. 44, 1922 Lab. 386. Art. 144 also governs a suit to set aside an alienation by Hindu father during son's minority without benefit or necessity, 17 Bom. L. R. 1137. If the ward transfers his interest in land to third party and within the period of limitation sues to set aside a previous alienation by the guardian, *held* that art. 44 is applicable, if the suit is instituted in the name of the ward, 27 Bom. L. R. 211. An adult brother living with his two minor brothers as a manager of joint Hindu family is not their guardian, 27 Bom. L. R. 495.

**Cases.**

Alienation by unauthorised person, A. I. R. (1924) Cal. 1008=83 89 I. C. 602; Ind. Cas. 1046, 34 A. 213; Setting aside a compromise by a *guardian—ad litem* with permission of court, A. I. R. (1924) Lah. 427; Assignability of the right, prayer A. I. R. (1924) Mad. 322; Declaration that an apparent sale is a mortgage 25 Bom. L. R. 1209; Unofficial guardian, A.I.R. (1924) Bom. 517; Alienation by brother as manager, 27 Bom. L. R. 495; Ward transferring the property before suit, 27 Bom. L. R. 211; *De facto* guardian 17 Bom. L. R. 1134; 26 I. C. 813; Defence not barred, 42 Mad. 36; Arts. 44, 91 and 144—17 Bom. L. R. 1137; Arts. 44, 62 and 120—61 I. C. 762; Natural guardian, 42 Bom. 626. Void alienation by widow-mother 35 I. C. 551, 9 I. C. 377, 43 Mad. 436, Surrender, 42 I. C. 939. Testamentary guardian, 15 Bom. L.R. 882.

*Art. 45.*—To contest an *Three years.* The date of the award under any of the following Regulations of the Bengal Code : final award or order in the case.

The Bengal Land-revenue Settlement Regulation, Act 7 of 1822.

The Bengal Land-revenue Settlement Regulation, Act 9 of 1825.

The Bengal Land-revenue (Settlement and Deputy Collector's) Regulations, Act 9 of 1833.

*Art. 46.*—By a party bound by such award to recover any property comprised therein.

Do.

Do.

**Art. 47.**—By any person *Three years.* The date of the bound by an order respecting the possession of immovable property made under the Code of Criminal Procedure, Act 5 of 1898, or the Mamlatdars' Courts Act, Bom. Act II of 1906, or by any one claiming under such person to recover the property comprised in such order. final order in the case.

#### Commentary.

The following things are necessary for a case to come within this article :—

(1) A *regular suit for possession* is contemplated by this article. (2) It must not amount to a mere setting aside of the order. (3) The person suing must have an existing title to the property in suit. (4) The suit must be in respect of some immovable property, 6 Cal. 709. (5) Suit must be by a person bound by the order, or, by any one claiming through such person, 23 Cal. 731 (F. B). (6) There must be a formal written order of a competent court. 2 Agra 27.

#### Cases

One not party to the order, 23 M. L. J. 348, persons bound by such order, 23 Cal. 731; Assignee of a person defeated, 18 Bom. 348; starting point. Cri. P. C. S. 145—45 Bom. 455, 60 I. C. 160, 16 I. O. 735, 82 691.

**Art. 48.**—For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same. *Three years.* When the person having the right to the possession of the property first learns in whose possession it is.

#### Commentary.

Article 48 has a limited application. It only applies to property which is lost or acquired by theft &c. as particularly men-

tioned in the third column. All other cases of specific movable property are governed by article 49 (following). The latter is a general article for possession of movable property. Specific property is that which is capable of being recovered in specie. So money is not a specific moveable property and consequently is not governed by these articles, 8 Bom. 19. Government securities are specific moveable property.

Standing crops become moveable property as soon as they are cut, and so are governed by this article.

#### Cases.

Excludes money, 11 O. W.N. 862; Non-payment of rent 13, A. L.J. 81; Breach of trust by executor, 24 Bom. L. R. 513; Stolen property, 11 I. C. 446; Arts. 48 and 49, 38 Mad. 783, 27 L.O. 627, A. I. R. 1924 Lab. 71; breach of trust by an executor, when basis of liability is conversion, 24 Bom. L. R. 513.

*Art. 49.*—For other specific *Three years*. When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.

#### Cases.

Scoops, 69 I. C. 900; Arts. 49 and 145—34 I. C. 959; Arts. 49 and 115, 31 I.C. 335, Declaratory suit for movable property, 1923 Rang. 11.

*Art. 50.*—For the hire of *Three years*. When the hire animals, vehicles, boats or house-hold furniture becomes payable.

*Art. 51.*—For the balance of money advanced in payment of goods to be delivered. Do. When goods ought to be delivered.

#### Case.

Recovery of arrears of subscription to a news-paper, 7 Bom. L. R. 190.

*Art. 52.*—For the price of *Three years*. The date of the goods sold and delivered, where no fixed period of credit is agreed upon. delivery of the goods.

**Cases.**

Goods supplied from time to time, 24 Bom. L. R. 998; Exchange is kind, 1922 Lab. 271; Price of work done under contract, is governed by art. 120, 22 I. C. 576.

*Art. 53.*—For the price of *Three years*. When the period of goods sold and delivered to be paid for after the expiry of a fixed period of credit. of credit expires.

**Case.**

*Cf.* 48 Mad. 275, 85 I. C. 299.

*Art. 54* —For the price of *Three years*. When the period of goods sold and delivered to be paid for by a bill of exchange, no such bill being given. of the proposed bill elapses.

*Art. 55.*—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon. Do. The date of the sale.

*Art. 56.*—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment. Do. When the work is done.

**Case.**

Excludes a contract of work, 22 I. C. 576.



**Art. 57.**—For money pay- *Three years.* When the loan is  
able for money lent. made.

**Cases.**

Advance in kind and cash, 37 I. O. 300; Distinction between arts. 57 and 60, 57 I. O. 908; Suit on balance struck—Subsequent advance, 4 Lab. L. J. 69.

**Art. 58.**—Like suit when *Three years.* When the  
the lender has given a cheque is paid  
cheque for the money.

**Art. 59.**—For money lent Do. When the loan is  
under an agreement that made.  
it shall be payable on de-  
mand.

**Cases.**

Arts. 59 and 60,—25 Bom. L. R. 503, 66 I. O. 752, A. I. R. 1924 Bom. 28, 37 All. 292.

**Art. 60.**—For money deposit- *Three years.* When the de-  
ed under an agreement mand is made.  
that it shall be payable  
on demand, including  
money of a customer in  
the hands of his banker  
so payable.

**Commentary.**

In case of articles 57 and 59, money borrowed is either to be paid at once or on demand. Even when money is to be paid on demand, it is the duty of the defendant to pay it whether a demand is made or not. And hence in the case of those two articles time runs from the date of the loan. But article 59 governs cases wherein there is no complete cause of action without a demand first being made. So if money borrowed is to be paid 15 days after demand, it does not become due until an actual demand is made. Time, in such cases, runs from the date of demand only.

According to *Tild v. Overell* (1893) 3 Ch. 154. 'deposit is a payment of money with a request that it might be kept for the payee till he wants it.'

**Cases.**

Deposit with banker, 52 I. C. 25 ; Meaning of deposit, 19 I. C. 3 ; Arts 60, 66, 115 and 120—22 I. C. 60; Deposit with third persons, 34 I. C. 347. The borrower need not be a professional banker, 28 B. L. R. 73 ; Distinction between deposit and loan, 25 Bom. L. R. 503.

*Art. 61.*—For money payable to the plaintiff for money paid for the defendant. *Three years.* When the money is paid.

**Commentary.**

The payment by the plaintiff must have been made either at the express or implied request of the defendant or under circumstances which would be covered by sections 69 and 70 of the Contract Act.

**Cases.**

Money paid for defendant, 78 I. C. 738; Divorced wife claiming arrears of maintenance for child, 21 Bom. L. R. 713; Paying of a mortgage decree without interest, A. I. R. 1925 Oudh 132 (2); Arts. 61 and 115—1922 Cal 79; Meaning of payment, 35 I. C. 392; Starting point, 48 I. C. 336.

*Art. 62.*—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use. *Three years.* When the money is received.

**Commentary.**

Article 62 has application if the defendant has received it, either in fact or in point of law, for the plaintiff's use. Cases of money not received for the plaintiff's use, but which has been rendered so by the happening of subsequent events are not covered by this article but by the residuary article 120. If defendant receives money under a decree which is subsequently reversed, article 62 has no application. The article applies to case of a claim for refund of purchase money in case of a sale, void *ab initio*. Suit by a ward for money received by defendant as his guardian is within this article. Where one co-creditor collects the entire debt, a suit by other co-creditors against him to recover their shares is governed by this article.

**Cases.**

Arts. 115 and 62—2 Pat. L. R. 205; Money paid under protect, A. I. R. 1925 Bom. 435; Arts. 62, 120 and 123—74 I. C. 1010; Co-sharers, 13 Bom. L. R. 1014; Co-sharers, compensation for land acquisition, 2 Lah. L. J. 353; Money paid and received, 37 All. 40, 24 Bom. L. R. 513, 17 Bom. L. R. 259; Meaning of the same, 48 I. C. 756, 41 Mad. 923; Plaintiff's use, 52 I. C. 580; Account of profits from an agent, 41 All. 635; Refund of consideration in a void mortgage, 40 Bom. 614; Refund of purchase money not governed by this article, 15 Bom. L. R. 559; Refund of purchase money in a void sale, 46 I. C. 26.

*Art. 63.*—For money pay- *Three years.* When the in-  
 able for interest upon interest becomes  
 money due from the de- due.  
 fendant to the plaintiff.

**Commentary.**

The article governs payments which are recoverable as interest only and not as damages. A claim for interest is a recurring cause of action and the plaintiff can sue for the accruing interest from time to time.

*Art. 64.*—For money pay- *Three years.* When the ac-  
 able to the plaintiff for counts are  
 money found to be due stated in writ-  
 from the defendant to the ing signed by  
 plaintiff on accounts the defendant  
 stated between them. or his agent  
 duly autho-  
 rised in this  
 behalf, unless  
 where the debt  
 is, by a simul-  
 taneous agree-  
 ment in writ-  
 ing signed as  
 aforesaid,  
 made payable  
 at a future  
 time, and then  
 when that  
 time arrives.

### Commentary.

Stating of account is not mere admission of debt by the defendant, but a balance of account must be found due to the defendant. Such a balance is drawn by bringing the various items together and by drawing out a balance from stated accounts. The article requires mutual accounts and reciprocal demands. *Ganga Prasad v. Ramdayal*, 23 A. 502.

It is necessary that the account must be signed, otherwise the case would not come within the purview of this section. This is evident from the 3rd column of this article; whereas it is also argued "that the function of the third column of the articles is not to define causes of action" but merely to fix a starting point from which the period of limitation should run.

*N. B.*—"Account stated is that account where several items are brought into account on either side, and being set off against one another, a balance is struck, and the consideration for payment of balance is discharge on either sides."

### Cases.

Cause of action, A. I. R. 1925 Mad. 1147; What is a settlement of account, 52 I. C. 202; Account stated, 5 P. L. J. 34; Several accounts, 23 Bom. L. R. 1186; Reciprocity of demands not necessary, 1923 Cal. 578; Arts. 64 and 85—38 I. C. 227; Acknowledgment signed, whether account stated, 23 Bom. L. R. 1186.

*Art. 65.*—For compensation *Three years.* When the time specified arises or the contingency happens.  
for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.

*Art. 66.*—On a single bond, *Three years.* The day so specified for payment.  
where a day is specified

### Cases.

Arts. 66 and 115—Contract in writing registered, 22 I. C. 60; Meaning, 50 I. C. 117, 1923 Oudh 19.

*Art. 67.*—On a single bond, *Three years.* The date of executing the bond.  
where no such day is specified.

**Art. 68.**—On a bond subject *Three years.* When the condition is broken.

**Cases.**

Breach of several conditions, 76 I. C. 802 = A. I. R. (1924) Rang. 68; Agreement with stipulation of penalty to do a specified act, 30 I. C. 429; Suit on administration bond, 1924 Rang. 68; Administration surety bond not governed by this article, 56 I. C. 968.

**Art. 69.**—On a bill of exchange or promissory note payable at a fixed time after date. *Three years.* When the bill or note falls due.

**Art. 70.**—On a bill of exchange payable at sight, or after sight, but not at a fixed time. Do. When the bill is presented.

**Art. 71.**—On a bill of exchange accepted payable at a particular place. Do. When the bill is presented at that place.

**Art. 72.**—On a bill of exchange or promissory note payable at a fixed time after sight or after demand. Do. When the fixed time expires.

**Art. 73.**—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue. *Three years.* The date of the bill or note.

**Art. 74.**—On a promissory note or bond payable by instalments. Do. The expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment.

*Art. 75.*—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due.

Do. When the default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.

#### Commentary.

There is a considerable divergence of opinion regarding this point. The article lays down that if payment is to be made by instalments, and 'if a default is made, the whole is to be due.' Now let us suppose, that a sum of Rs. 10,000 is to be paid in 10 yearly instalments, and a provision is made that if a default is made the whole shall be due. The debtor pays the first three yearly instalments regularly. Then a default is made of the 4th instalment. The creditor has a cause of action but waves it. The debtor does not pay the 5th nor the 6th instalments, which defaults the creditor waives. Then he pays the 7th instalment, on the expiration of the 7th year. Then there is a default of the 8th instalment and the creditor sues for the whole. The debtor sets up limitation. The creditor contends that he has waived his previous causes of action, *i. e.*, of the 4th, 5th and 6th instalments and he now wants to exercise his option. The defendant contends that such a waiver is not permissible; the statute began running from the 4th default, that the debt was barred by limitation after the three successive defaults, that the payment of the 7th does not revive the cause of action as it was made after the statutory period had run out, and hence the whole claim is time-barred. "The creditor has no option but must exercise his right of claiming the whole when he is entitled to it. He cannot waive a cause of action." The position of the defendant has been very recently accepted by the Madras High Court, Allahabad High Court and the Calcutta High Court. An exhaustive summary of these decisions can be found in A. I. R. 1926 pages 49-51 (Journal).

"When a debt is payable by instalments and there is no default provision, a new cause of action arises upon each default

and plaintiff can recover in respect of instalments falling due within 3 years before suit. In case of instalment bonds a default in each periodical payment gives a new cause of action; but if it is stipulated that upon default in payment of one or more instalments, the whole amount is to become due, then upon the first default a cause of action accrues for the whole amount then due, and the statute forthwith begins to run.....So soon as the right of action is complete, whether the action is for the whole debt or for any instalment of the debt, the time commences to run against the right of action." (Rustomji).

#### Cases.

Applicability, 3 Lab. L. J. 522; Default effect, 65 I. C. 275; meaning of Default, Defendants' willingness to pay, no default, 24 I. C. 507; Starting point, 31 I. C. 479; Waiver, meaning, 35 All. 455, 30 I. C. 606, 20 I. C. 329; Acceptance of overdue instalments, 36 Mad. 66, similar bonds, 23 C. 228 (P. C.), 2 A. 32; Whether creditor can be compelled to sue for the whole, 30 A. 123; Waiver, 20 I. C. 329, 35 A. 178; Failure to waive, 35 A. 455; Failure to sue on first default whether waiver, A. I. R. (1924) Bom. 301; Cause of action, A. I. R. 1925 Nag. 298.

*Art. 76.*—On a promissory *Three years.* The date of the note given by the maker delivery to the to a third person to be payee delivered to the payee after a certain event should happen.

*Art. 77.*—On a dishonoured foreign bill, where protest has been made and notice given. Do. When the notice is given.

*Art. 78.*—By the payee against the drawer of a bill of exchange, which has been dishonoured by non-acceptance. Do. The date of the refusal to accept.

#### Commentary.

In a suit for recovery of money due on accounts, defendant sent to plaintiff a bundi and cheque which were dishonoured on presentation. Held that art. 78 of the Limitation Act did not apply to the case, 46 C. 168.

**Art. 79.**—By the acceptor of *Three years*. When the acceptor pays the amount of the bill against the drawer.

**Art. 80.**—Suit on a bill of exchange, promissory note or bond not herein expressly provided for. Do. When the bill, note or bond becomes payable.

**Cases.**

Writing fixing time for payment of money on a promissory note, starting point is date fixed, 39 Mad. 139, 42 All. 55.

**Art. 81.**—By a surety against *Three years*. When the surety pays the creditor the principal debtor.

**Cases.**

Meaning of payment, 50 I. C. 611 ; Date of payment uncertain, exercise of discretion, A. I. R. 1925 All. 164.

**Art. 82.**—By a surety against *Three years*. When the surety pays anything in excess of his own share.

**Art. 83.**—Upon any other contract to indemnify. Do. When the plaintiff is actually damnified.

**Commentary.**

When the contract of indemnity is registered, the limitation is enlarged to six years as per art. 116 read with this article. The starting point is the date of actual payment by the plaintiff and not the date when a judgment has been obtained against him.

**Cases.**

Contract Act, Sec. 222, Loss of agent owing to principal's default, 1923 Lah. 473, suit for value of goods supplied by commission agent, article applicable, 46 I. C. 541.



*Art. 84.*—By an attorney *Three years.* The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.

#### Commentary.

When there is a date fixed for payment to the Vakil or Attorney, the article applicable is 115 and not 84.

#### Case.

A suit by a legal practitioner for professional costs is governed by this article, 29 I. C. 763.

*Art. 85.*—For the balance *Three years.* The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.

#### Commentary.

An account current is an account which contains items between parties from which the balance due to one of them can be ascertained. It is open account in so far as it is unsettled. In a mutual account, if there is even one item within the period of limitation, it brings the whole of the account within the statutory period. In a one-sided account on the other hand, only the

items within the statutory period remain actionable. Where either party has received and paid on the other's account, there alone is a mutual account. There must be transactions on either side creating independent obligations on the other. Presence of credit and reciprocal obligations are necessary for a mutual account. When A supplies B with one kind of goods and obtains from him another kind, debiting him with the costs of the former and crediting him with the value of the latter, there is a mutual, open and current account. It is sufficient and necessary that the dealings of the parties have been such that the balance of accounts is sometimes on one side and sometimes on the other side. *Ganesh Sakharam v. Gyanu*, 22 Bom. 606; but *cf.* (1924) Pat. 107.—“It is sufficient that a shifting balance was a possible and likely incident of the mutual transaction with regard to which the account was kept.”

#### Cases.

Essentials, 24 Bom. L. R. 1284, 47 Bom. 128, 23 Bom. L. R. 540, 1923 Lab. 347, 1923 Nag. 108, 1922 P. 364; Arts. 85 and 88—29 I. C. 462. Advance of salary obtained by servant, Suit for excess of advance, by master, art. applicable, A. I. R. 1925 Nag. 295.

*Art. 86.*—On a policy of insurance, when the sum assured is payable immediately after proof of the death or loss has been given to, or received by, the insurers. *Three years.* When proof of the death or loss is given to or received by the insurer, whether by or from the plaintiff, or any other person.

*Art. 87.*—By the assured to recover premia paid under a policy voidable at the election of the insurers. *Do.* When the insurers elect to avoid the policy.

*Art. 88.*—Against a factor *Three years.* When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.

*Art. 89.*—By a principal Do. Do.  
against his agent for  
moveable property re-  
ceived by the latter and  
not accounted for.

#### Commentary.

**Death of agent:**—A suit for accounts against the representatives of the agent after his death, is governed by article 120 and not by article 88. The starting point in such cases is the date of the agent's death, 96 P. R. 1886, 31 A. 429, 5 Pat. L. R. 205.

**Death of principal:**—The representatives of the principal can bring a suit against the agent within the statutory period. 15 Bom. L. R. 1022, 44 Cal. 1.

**Demand and refusal:**—The question whether a mere failure to render accounts by the agent amounts to a refusal or no, depends upon the circumstances of each case. 53 I. C. 675. The refusal must be an express refusal on a definite date, and not a refusal by mere implication, 13 I. C. 930. A refusal by implication may, however, be established in some cases. 43 Cal. 248, 30 I. C. 697.

Money is moveable property within the meaning of this section. 39 Mad. 378.

#### Cases.

Arts. 89 and 11—18 I. C. 336; Arts. 89 and 62—22 Bom. L. R. 1289; Adjusted account, 40 I. C. 359; Money received and misappropriated by a servant, 28 I. C. 452; In case of no agency art. 120 applies, 1922 Mad. 150; Arts. 89 and 115—28 M. L. J. 140, 16 I. C. 414; Suit

by legal representative of principal, A. I. R. 1925 All. 682; Suit against heirs of agent, 1924 Mad. 840; Written agreement, A. I. R. 1925 Pat. 494.

**Art. 90.**—Other suits by *Three years*. When the neglect or misconduct becomes known to the plaintiff.

#### Cases.

Suit against agent for neglect of duty, 25 I. C. 706; Suit for misconduct, 25 I. C. 136.

**Art. 91.**—To cancel or set *Three years*. When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.

#### Commentary.

This article governs s. 39 of the Specific Relief Act (Act I of 1877). The instrument must be voidable and not void *ab initio*. *Ganpathi v. Siwamal*, 36 Mad. 575.

The relief claimed in the suit must be cancellation of an instrument primarily, and it must not be a relief ancillary to some other relief. *Baktaram v. Kharsetji*. 27 Bom. 500.

If possession of immoveable property depends upon the cancellation of an instrument, it is necessary that the suit be brought within the period of limitation as prescribed by section 91. Otherwise the suit may be within time for possession, yet cancellation being a preliminary and primary necessity, *i. e.* being the basis of the suit, it may become time-barred under this article. The suit must be between the parties to the instrument. The article is inapplicable when an instrument of transfer is beyond the legal competence of the executant, *i. e.*, is an unauthorised act. The instrument must be operative till it is set aside and must not be void *ab initio*. The executant, even when he is barred by limitation in a suit to set the instrument aside, may

plead the invalidity of the instrument in defence. Thus the article is inapplicable to defences.

#### Cases.

Suit to set aside alienation by guardian is not governed by this article but by art. 144, 17 Bom. L. R. 1137; A person who had no occasion to sue for possession of property cannot have his right to property extinguished by the lapse of the statutory period under article 91, 55 I. C. 407; Starting point is the date when the plaintiff becomes aware of facts which create in him a reasonable apprehension that he will suffer injury if the document is left outstanding, 47 I. C. 505; Article does not apply to a void document by a minor, 20 Bom. L. R. 802 (F.B.); Not applicable to sham transfers by a widow, 17 Bom. L. R. 698, 28 Bom. 420, 39 Mad. 456; Voidable document, avoidance of article 91 by a subsequent suit for declaration—not allowed, 1924 P. 284; Gift without possession by a Muhammedan is inoperative and article 91 has no application, A. I. R. (1924) All. 307; Alienation by a widow, son subsequently adopted, article does not apply, 20 Bom. L. R. 829; Inoperative transactions, 48 Bom. 166; Necessity of a suit under article 91, A. I. R. 1925 Pat. 625. In the case of a reversioner, it is not essential for him to set aside any alienation by the widow, but he can sue to enforce his right within the period of limitation after the widow's death, 20 Bom. L. R. 828.

*Art. 92.*—To declare the *Three years*. When the issue of forgery of an instrument issued or registered. or registration becomes known to the plaintiff.

*Art. 93.*—To declare the *Three years*. The date of the forgery of an instrument attempted to be enforced against the plaintiff. attempt.

#### Commentary.

The relief covered by these articles is merely that of a declaration and an omission to obtain it does not bar the plaintiff from claiming other reliefs which are open to him.

#### Cases.

Attempt of enforcing a forged deed, 17 Bom. L. R. 635, what it is, 60 I. C. 531. "An attempt to enforce a forged instrument against the plaintiff" is done only when a person institutes proceedings in which the

genuineness of the document is directly put in issue, and to which the person against whom it is sought to be enforced is a necessary party.

**Art. 94.**—For property which the plaintiff has conveyed while insane. *Three years* When the plaintiff is restored to sanity, and has knowledge of the conveyance.

**Art. 95.**—To set aside a decree obtained by fraud, or for other relief on the ground of fraud. *Do.* When the fraud becomes known to the party wronged.

#### Commentary.

Article 95 is applicable whenever a person desires to be relieved of a transaction in which he has been defrauded. The article governs parties to the transactions and not any third parties. The article is inapplicable to defence.

#### Cases.

No equitable relief claimed on ground of fraud, article inapplicable, 15 Bom. L. R. 192; Suit to set aside a fraudulent sale, 19 I. O. 5. Fraudulent decrees, 23 M. L. J. 1911; Decree and sale under it obtained by fraud, article applicable, 90 I. O. 866; Starting point, A. I. R. 1925 Cal. 819.

**Art. 96.**—For relief on the ground of mistake. *Three years.* When the mistake becomes known to the plaintiff.

#### Commentary.

The article is intended to apply to those cases in which the courts are asked to relieve parties from the consequences of mistakes committed by them in the course of contractual transactions. The article covers both mistakes of fact and of law. A mistake in partition is governed by this article, 45 Bom. 582.

#### Cases.

Excess of cess paid, a suit to recover, A. I. R. 1925 Pat. 765, 4 Pat. 448; Payment of excess price, a suit for refund, A. I. R. 1925 Mad. 1255.

**Art. 97.**—For money paid upon an existing consideration which afterwards fails. *Three years.* The date of the failure.

### Commentary.

**Starting point:**—The starting point of limitation is the date when the plaintiff tries to obtain the consideration and fails to get it. *Cf.* 19 Cal. 123 (P. C.). When there is an absolute failure of consideration at the date of sale, *i. e.*, when the consideration does not fail afterwards, whether the failure is manifest at the date of sale or no, article 97 has no application. In such a case the article applicable is 62. In 37 Bom. 508 it was, however, held that even in case of a void sale, if possession is delivered to the purchaser and if he is subsequently dispossessed, the starting point is the date of dispossession as the delivery of possession was no doubt an existing consideration, 31 M. 452.

### Cases.

Loss of actual possession as starting point, A. I. R. 1925 Mad. 749; Partial failure of consideration, A. I. R. 1924 Oudh 377; Suit by lessee for lessor's inability to secure him quiet possession, arts. 97 and 116, 78 I. C. 248, 10 I. C. 486; Failure of a suit for specific performance second suit for refund of purchase money, 45 A. 378; Failure of consideration, 18 Bom. L. R. 806; Suit for refund of purchase money in case of an unenforceable transfer by a Hindu Reversioner, 45 A. 179, 1922 P.C. 403. Failure of consideration, starting point, 19 I. C. 5, breach of contract distinguished, 9 I. C. 237.

**Art. 98.**—To make good out *Three years.* The date of the trustee's death, of the general estate of a deceased trustee the loss or, if the loss occasioned by a breach of trust has not then resulted, the date of the loss.

**Art. 99.**—F<sup>o</sup>r contribution *Do.* The date of the payment in excess of the plaintiff's own share. by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers.

### Commentary.

Suits for contribution are governed by Ss. 61, 82, 99, 100 and 107 and the residuary article 120. Article 115 is inapplicable to cases of contribution as the claim for contribution is not founded on any contract.

### Case.

Inapplicable to suits to enforce a charge, 33 All. 708.

*Art. 100.*—By a co-trustee *Three years.* When the right to enforce against the estate of a deceased trustee a claim for contribution to contribution accrues.

*Art 101.*—For a seaman's wages. Do. The end of the voyage during which the wages are earned.

*Art. 102.*—For wages not otherwise expressly provided for by this schedule. Do. When the wages accrue due.

### Commentary.

This is a residuary article for wages. Suits for salaries, *i. e.*, wages of the higher class are governed by article 115.

### Cases.

Applicability, 90 I. O. 120; A suit for commission by a broker against the principal is one for money under a contract and is governed by article 115, 39 All. 81.

*Art. 103.*—By a Muham- *Three years.* When the dower is demanded and refused or (where, during the continuance of the marriage, no such demand has been made) when the marriage is dissolved by death or divorce.  
(*mu'ajjal*).



## Cases.

Suit for prompt dower—starting point is the date of wife's demand coupled with husband's refusal, A. I. R. 1925 Oudh 267, 79 Ind. Cases 106.

**Art. 104**—By a Muhamma- *Three years.* When the marriage is dissolved by death or divorce.  
dan for deferred dower  
(*mu'wajjal*).

## Cases.

In case of a registered deed of dower, Article 116 applies to suit for dower by the heirs of the wife, 44 C. 759, 1923 Cal. 507; Suit for dower on a registered agreement is a suit for a breach of contract within article 116, 1923 Cal. 152; In case of a suit for dower after husband's death, followed by dispossession of the widow, the starting point is the date of dispossession, 33 All. 568.

**Art. 105**—By a mortgagor *Three years.* When the mortgagor re-enters after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.  
gagor re-enters on the mortgaged property.

## Cases.

When there is a claim for surplus of profits in a *redemption suit*, article 148 is applicable, 1922 C. 189; Suit by mortgagor for loss is governed by this article, 50 I. C. 102. So also is the case with suits for mesne profits, 2 O. L. J. 620.

**Art. 106**—For an account *Three years.* The date of the and a share of the profits dissolution.  
of a dissolved partnership.

## Commentary.

The article contemplates a suit for a partnership account and to recover plaintiff's share of the assets and property of the partnership business. Such a suit in the case of a non-dissolved partnership is governed by art. 120.

## Cases.

A rendering of final accounts amounts to dissolution, 36 Mad. 185, 15 Bom. L. R. 634; Starting point, 13 I. C. 23; Death of a partner,

old business amalgamated in a new one, accounts of the new business, old accounts can be taken, 27 I. C. 69; Suit by widow of a deceased partner for account, 25 Bom. L. R. 1256.

*Art. 107.*—By the manager of a joint estate of an undivided family for contribution, in respect of payment made by him on account of the estate. *Three years.* The date of the payment.

*Art. 108.*—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease. *Three years.* When the trees are cut down.

*Art. 109.*—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant. *Three years.* When the profits are received.

#### Commentary.

It is not necessary that the plaintiff should be the full owner of the property; even a mortgagee may claim mesne profits of the mortgaged property and he will in such a suit be governed by this article, 39 All. 200; also *cf.* 89 I. C. 1000; suit by a second auction-purchaser for rent received by a prior one, A. I. R. 1925 All. 52, "wrongfully received" includes a receipt of profit which cannot be legally substantiated, 1922 Cal. 235, mesne profits can only be received for a period of three years prior to the suit, (*i. e.*, filing of the plaint), 68 I. C. 903.

*Art. 110.*—For arrears of rent. *Three years.* When the arrears become due.

#### Commentary.

The article is applicable only to cases of suits between landlord and tenants. If the lease is registered, the article applicable is 116. A suit for compensation for use of land is governed by article 115.

**Cases.**

Registered Lease, 34 A. 464, 37 Bom. 656; Co-sharer holding property, suit for rent, governed by article 120, 39 Mad. 54; Suit by an assignee for arrears of rent is governed by this section, 63 I. C. 424.

*Art 111.*—By a vendor of *Three years*. The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.

*Art. 112.*—For a call by a company registered under any Statute or Act. Do. When the call is payable.

**Cases.**

Articles of the company creating liability to pay remaining calls lest a forfeiture, shares of defendant forfeited by a resolution—cause of action for suit to recover the amount of unpaid calls arises on the date of forfeiture, 27 Bom. L. R. 574, A. I. R. 1925 Bom. 321.

*Art. 113.*—For specific performance of a contract. *Three years*. The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

**Commentary.**

The article governs the specific performance of contracts. The article is applicable to agreements to lease, 1920 Pat. 17, and to agreement to sell in case of success in litigation, 66 I. C. 622.

The starting point of limitation is three years from the date when performance was due or when no such date is fixed from the date when the defendant refused performance, 43 Cal. 790; contract for sale of immovable property, no time fixed; purchase by a third party of the property in execution, sale with notice of the earlier contract—suit for specific performance—the purchaser pleaded more than three years from the date of the refusal by the original vendor, no proof of refusal by the purchaser of the property to perform the contract, *Held*, suit against him was in time (1920) M. W. N. 622, 38 M. L. J. 29.

The word 'contract' in Article 113 of the Limitation Act does not apply to an award, 51 I. C. 999. The limitation applicable to the enforcement of the relief given by the award is dependent on the nature of relief, 42 I. C. 116, 1923 Rang. 108; suit to be considered as for specific performance, 25 Bom. L. R. 640.

*Art. 114.*—For the rescission *Three years.* When the facts entitling the plaintiff to have the contract rescinded first become known to him.

#### Commentary.

The article applies to suits for rescission of a contract; rectification of a contract is governed by article 95 or 96.

*Art. 115.*—For compensa- *Three years.* When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.

'And not herein specially provided for.'—This (article 115) is consequently a residuary article for cases of breaches of contract which are not otherwise provided for by this Act.

'Continuing breach.'—"The nature of the remedy available to a tenant under a covenant or contract for quiet enjoyment depends upon the nature of the breach ; and the test as to whether a breach is a continuing one or not, is:—if the plaintiff can sue only for the damage actually done up to the date of the suit the breach is continuing, and if he can sue for past and future damages, the breach is single and final, *e. g.*, a breach of a covenant for title, 40 Mad. 910.

"Express Contract," &c.—Suits for compensation for breach of a contract that is expressed in a definite agreement, or which may be implied from circumstances surrounding a transaction, are governed by this article. The words 'implied contract' used in the English sense of the term and not in the sense as adopted by the Indian Contract Act, 28 Mad. 275.

Successive breaches.—Where a bond contains successive covenants, each breach gives a separate cause of action, but the date of the last breach is the starting point of limitation in a suit on the bond, when the bond is conditioned on the performance of several acts and the obligation to pay is enforceable till the last of the conditions is fulfilled. 27 I. C. 819.

#### Cases.

Articles 115 and 63—Express contract—agreement to deliver produce of land or a sum of money on default—suit for money, 1924 Lab. 149 ; Suit on a compromise fixing royalty in case of dispute as to mineral rights, 1924 P. 231 ; Uncertified payment in execution—damages—implied contract, 48 I. C. 810 ; Suit against agent not authorised to represent, 38 Mad. 275 ; claim by a Liquidator of a company, under s. 235 of Company's Act, 1925 All. 519, written agreement of agency, suit for account, 1925 Patna 484.

#### PART VII.—6 YEARS.

*Art. 116.*—For compensation *Six years.* When the period of limitation would begin to run against a suit brought on a similar contract not registered.

### Commentary.

**Scope.**—The article governs all registered contracts.

A suit to recover a specified sum of money on a bond is a suit for compensation within the meaning of this article.

**Contract.**—The word 'contract' in this article does not include an award. 19 I. C. 376.

**'Covenant for title'.**—A suit for damages for breach of an implied covenant for title in a registered sale is governed by article 116, 50 I. C. 673, 88 I. C. 699. Such a breach is entire and complete at the time of the execution of the sale and limitation begins to run from that date, 31 I. C. 877. *Note* that article 16 of the Limitation Act is applicable to cases of suits for recovery of money on contract, though not signed by both parties, *i. e.*, signed by the debtor only, 22 C. L. J. 311; similarly a suit for rent on a registered lease is governed by this article, 19 Bom. L. R. 459; 67 I. C. 939.

### Cases.

Usufructuary mortgage—possession not delivered—suit for possession and profits—breach of contract, 31 I. C. 804; Suit for account against heirs of an agent, 39 All. 355, 16 I. O. 414 F. B. Meaning of registered, 42 Mad. 33; Repairs to common wall under a registered deed—suit for contribution—14 Bom. 591, 22 Bom. L. R. 777; Registered dower deed, 27 C. W. N. 210; Suit for dividend—purchaser of shares in Court auction—Purchaser not registered—Limitation, A. I. R. (1924) Mad. 721; Compensation—meaning, 27 Bom. L. R. 637; Mortgagee deprived of mortgage security—suit for money, A. I. R. 1925 Rang. 223; Contracts express and implied, covered by article, A. I. R. 1925 Bom. 440, 27 Bom. L. R. 637 Registered sale deed—Vendee having no title fails to deliver possession—suit for refund or purchase money is governed by article 116—meaning of compensation, 27 Bom. L. R. 637.

*Art. 117.*—Upon a foreign judgment as defined in the Code of Civil Procedure, Act V of 1908. *Six years.* The date of the judgment.

*Art. 118.*—To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place. *Do.* When the alleged adoption becomes known to the plaintiff.

<p><i>Art. 119.</i>—To obtain a declaration that an adoption is valid.</p>	<p><i>Six years.</i></p>	<p>When the rights of the adopted son, as such, are interfered with.</p>
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### Commentary.

Articles 18 and 119 apply to adoptions, whether evidenced by an instrument or not. These articles govern the status of a person and involve an adjudication of a right in rem.

**Suit for Declaration and Possession:**—In a suit for possession involving the invalidity of adoption, the period of limitation applicable is the one under article 144, and not under article 118 of the Indian Limitation Act. *Kalyandappa v. Chanasappa*. 26 B. L. R. 509 P. C.

According to High Courts other than Bombay, a suit for declaration and possession was not governed by art. 118, but by art. 144. 45 A. I., 39 Cal. 418, 25 I. C. 429, 81 P. R. 1914, 44 P. R. 1911, 56 I. C. 620, A. I. R. 1925 All. 79, A. I. R. 1924 Nag. 142, 79 I. C. 971 (P. C.), 28 All. 727, 26 Mad. 296, 27 Cal. 212, 30 Mad. 208, 23 I. A. 156.

Though the Bombay High Court had held similarly in 8 Bom. L. R. 89, 24 Bom. L. R. 158 (F. B.), there was a current of decisions of the High Court, that, when in a suit brought to recover possession, plaintiff cannot succeed without displacing an apparent adoption, article 118 would apply; and similarly, if in such a suit, it is necessary for the plaintiff to prove the validity of an adoption, article 119 would apply. 15 Bom. L. R. 533, 37 Bom. 513, 41 Bom. 728, 24 Bom. 260 (F. B.), 14 Bom. L. R. 182, 25 Bom. 20, 32 Bom. 7. But this divergence in the decisions of the Bombay High Court has been put to rest by the decision of Privy Council in 26 Bom. L. R. 509, quoted above, which stands as final law on the point in all the High Courts. It is to be observed that after this Privy Council decision, the Bombay High Court has also held, that in a suit for possession challenging the factum of adoption, the article applicable was 144 and not 118 or 119. 26 Bom. L. R. 509, 28 Bom. L. R. 173.

But in a suit for declaration that an adoption under a registered deed was null and void, and for a further declaration that the plaintiff was a reversioner, is governed by article 118, 1923 All. 361 (1).

**Adoption not recognized:**—“Where adoption is not recognized by the personal Law of the parties, a suit for possession after six years of the illegal adoption is not barred.” 11 I. C. 96.

**Starting point:—**The starting point of limitation is the date of knowledge of adoption to the plaintiff, 44 Mad. 218.

**Cases.**

Knowledge of adoption, 29 I. C. 785; Knowledge of adoption by nearest reversioners is knowledge by remote reversioner, 28 I. C. 632, 24 Mad. 405; Interference under article 119 is something incompatible with the recognition of adoption, 22 Bom. L. R. 974, 43 B. 63; What is interference, 1924 Rang. 34.

*Art. 120.*—Suit for which *Six Years*. When the right no period of limitation is provided elsewhere in this schedule to sue accrues.

**Commentary.**

This is a residuary article and for a suit to be governed by this article all other special and semi-general articles must be exhausted, 14 I. C. 254, A. I. R. 1924 All. 828. This article is made applicable to the following suits:—A suit for construction of will, 1924 Cal. 411, suit to set aside a compromise unauthorised by a guardian *ad litem*, 2 Lah. 134, claims by remote reversioners, 38 I. C. 270, 37 All. 195, suit to set aside a document void *ab initio*, 26 C. W. N. 479, for declaration of invalidity of an alienation of equity of redemption, 17 I. C. 864, and a fraudulent transfer by debtor, 4 I. C. 551, claim to an office not hereditary, 32 C. L. J. 157, declaration of title in Revenue Records. 18 I. C. 463, 1923 Cal. 8, suit for rent against a co-owner, 39 Mad. 54, a suit for accounts against the manager of a Hindu family, 58 I. C. 877, suit for injunction, 20 Bom. L. R. 327, for restraining waste of moveables, suit by Reversioners, 44 Mad. 934, suit for share of moveables by a Mahomedan heir, 29 I. C. 275; suit on an award, 31 I. C. 816, (administration suit is governed by this article), suit by a co-parcener to set aside a sale by another co-parcener, A. I. R. (1924) Oudh 120, suit for injunction, 76 Indian Cases 585, suit for share of profits of the estate by one co-heir against another co-heir, A. I. R. (1924) Rang. 155, suit by mortgagee defendant claiming adverse possession against the mortgagor—adverse title obtained after the date of mortgage, A. I. R. (1924) Oudh 19, claim by a Liquidator under under sec. 235 of company's Act, 47 All. 669, A. I. R. 1925 All. 519, declaratory suit under sec. 148, Criminal Procedure Code, A. I. R. 1925 Nag. 236 (1), Ejectment suit, A. I. R. 1925 Lah. 391, Raising of party wall, trespass, 27 Bom. L. R. 503, 49 Bom. 586, correction in Record of Rights, A. I. R. 1925 Cal. 518 (2), Scope—Suit on an award, 49 Bom. 693, suit by reversioners to set aside alienation by widow, A. I. R. 1925, Lah. 654, suit to enforce obligations



arising under a decree, A. I. R. 1925 Mad. 1260, suit under sec. 53 of the T.P. Act, A.I.R. 1925 Mad. 68.

### PART VIII.—12 YEARS.

*Art. 121.*—To avoid incumbrances or undertenures in an entire estate sold for arrears of Government revenue, or in a patni taluq or other saleable tenure sold for arrears of rent. *Twelve years.* When the sale becomes final and conclusive.

#### Cases.

Interest acquired by adverse possession is not an incumbrance within article 121, 44 Cal. 412 ; But *cf.* 43 Cal. 779.

*Art. 122.*—Upon a judgment obtained in British India, or a recognisance. *Do.* The date of the judgment or recognisance.

*Art. 123.*—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate. *Twelve years.* When the legacy or share becomes payable or deliverable.

#### Commentary.

The article governs suits wherein there is a claim against the estate of the deceased against one who lawfully represents the estate of the deceased. A suit by an heir against a person who wrongfully retains property of the deceased is not within article 123. The property must be claimed as legacy as such.

**Third Column :—**The executor must actually have the share of the deceased person's estate in his hands for distribution. If there is litigation necessary to have the estate in the possession of the executor for distribution, or if some other condition has to be fulfilled before he can do so, time runs from the date when the litigation reaches its finality or when the condition is fulfilled, 27 Bom. L. R. 823.

Limitation for a suit by one of several Muhammadan tenants-in-common for a share in the property of a deceased Muham-

madan is not governed by article 123, but by article 144, and the starting point of limitation is the date when the defendant begins to hold adversely to the plaintiff, 45 Bom. 519; 22 Bom. L. R. 1429, 42 B. 943.

#### Cases.

Suit for undistributed share on intestacy, 43 Bom. 845; Also a suit for legacy is governed by article 123, 36 Bom. 111; Suit for share by one heir against another is not governed by article 123, 24 I.C. 45, 50 I. C. 746, A.I.R. (1924) Rang. 155, suit for distributive share of an estate is governed by this article, A. I. R. 1925 Rang. 233, time does not run until the person liable to deliver or to pay has the share or money in his hands, 27 Bom. L. R. 823, A. I. R. 1925 P. C. 105, 48 Mad. 312.

*Art. 124.*—For possession of *Twelve years* When the defendant takes possession of the office adversely to the plaintiff.

*Explanation.*—An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.

#### Cases.

There is no distinction between a claim for possession of property and for office, 39 All. 636; Tacking of periods during which the office is held by the defendant and his predecessors in the same title, 36 M. L. J. 93; Similar tacking by independent trespassers, 23 M. L. J. 134; what amounts to possession of a hereditary office, 10 I. C. 573.

*Art. 125.*—Suit during the *Twelve years*. The date of the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage. alienation.

#### Commentary.

This article governs suits by reversioners in a Hindu or Muhammadan Family. The purpose of the suit must be 'mere declaration' of the nullity of an alienation made by a limited female owner. Moreover, the suit must be instituted during the life-time of the limited owner, otherwise article 120 would apply. Alienation is nothing more than a transfer of the estate.

Such a suit is a representative suit and a remote reversioner must join as plaintiff with other nearer reversioners. (But *Cf.* 'article 125 covers suits for land and by first reversioners only,') 260 P. L. R. 1914, 25 I. C. 463.'

41 Mad. 659.—In respect of a Hindu widow's alienation, there is only one cause of action for a declaratory suit for all reversioners, near and remote, and when the suit on that cause of action once became barred by the lapse of twelve years under art. 125, no reversioner (whether in existence or not at the date of the alienation) could afterwards bring such suit. A suit by a Hindu Reversioner for a declaration that an alienation by the widow is not binding on him is barred under this article, where the plaintiff was born more than 12 years after the date of alienation. The cause of action in such a suit arises at the date of the alienation, jointly and simultaneously for the entire body of reversioners, whether existing or not, 46 I. C. 202.

"The cause of action for a reversioner to sue to set aside an alienation by a Hindu widow during her life-time is distinct from the cause of action for another reversioner to bring a like suit. The fact that one is barred by the law cannot be a bar to another against whom s. 6 of the Limitation Act had the effect of extending the period for bringing a like suit", 36 Mad. 570, 22 A. 33.

**Cases.**

The word 'land' does not include equity of redemption, 17 I. C. 864; A collusive court sale is governed by this article, 47 I. C. 578; Mortgage followed by a sale under mortgage, whether Reversioner bound to set aside mortgage before challenging the sale, Earlier and subsequent causes of action, A. I. R. 1924 Cal. 617 (2), 33 A. 356 (P. C.).

Note :—The decision in A. I. R. 1924 Cal. 617 (2) noted above has not been followed in A. I. R. 1925 Mad. 507 (88 I. C. 578). In a similar case the trial court held that a suit instituted within 12 years from the date of sale but after more than 12 years from the date of the mortgage was barred under art. 125. "The real alienation was when the mortgage took place and the subsequent sale was merely a consequential transfer." In appeal the suit was again remanded for disposal according to the principle laid down in 1924 Cal. 617. But a Letters Patent appeal was presented, in which the trial court's decision was confirmed.

*Art. 126.*—By a Hindu *Twelve years*. When the alienee governed by the law of the Mitakshara to set aside his father's alienation of ancestral property. takes possession of the property.

**Commentary.**

The alienation may not be for value and may be a disposition by the father, and yet it will be governed by this article. The starting point is the date when the vendee enters into possession. The words 'set aside' do not include a suit for mere declaration.

**After-born sons** :—After-born sons can take advantage of the cause of action that accrued to the sons living, but they acquire no fresh cause of action on their birth, 24 I. C. 330, 64 I. C. 757, 1923 Oudh 52, 15 Bom. L. R. 867, A. I. R. 1924 All. 1010.

A suit for redemption is not one to set aside an alienation within art. 126, as it is a claim for a relief under the alienation and not one in spite of it, A. I. R. 1925 Oudh 578; Identity of articles 91 and 126 is discussed in the same case.

**Starting point** :—“If possession is not taken under the transfer, but the transferee is already in possession under another transfer, which was valid, the sons need not sue within 12 years of the later invalid transfer to impeach it, A. I. R. 1924 Oudh 205.

*Art. 127.*—By a person ex- *Twelve years.* When the exclusion becomes known to the plaintiff.

#### Commentary.

*Essentials for the application of this article are:—(a)* A joint family. There must be a joint family and the onus to prove such a state of family is on the plaintiff. The article is applicable and restricted to Hindu families, and hence does not govern a Muhammadan family. *(b)* Joint family property. There must be joint family property belonging to the joint family. *(c)* Exclusion. The exclusion may be total or partial. The exclusion must, however, cover the properties comprised in the suit. *(d)* The family must be joint at the date of exclusion and suit. *(e)* The suit must be within the members of the joint family (*i. e.* without the inclusion of any strangers). *(f)* The claim in the suit must be 'enforcement of a right to share in the joint family property', 15 I. C. 394.

#### Cases.

Meaning of the term joint family property, 19 Bom. L. R. 579 (F.B.); 38 Mad. 1099; article not applicable to Muhammadans, 38 Bom. 449; Adverse possession between co-parceners, applicability, 37 Bom. 84; A suit by one converted to Islam for a share in the property of his uncle, 57 P. R. 1916; What amounts to exclusion 52 I. O. 725, 1923 Oudh 61; Suit for money realised by one member, not applicable, 1922 Oudh 15. Cf. 77 Ind. Cas. 691.

*Art. 128.*—By a Hindu for *Twelve years.* When the arrears of maintenance. rears are payable.

#### Commentary.

The article applies to claims for maintenance based on Hindu Law. Twelve years' dues of maintenance can be recovered by the plaintiff.

*Art. 129.*—By a Hindu for *Twelve years.* When the right a declaration of his right is denied. to maintenance.

#### Commentary.

Where there is no denial, there is no bar under article 129, 23 I. C. 831.

**Art. 130.**—For the resump- *Twelve years.* When the right  
tion or assessment of rent- to resume or  
free land. assess the land  
first accrues.

**Commentary.**

This article applies to rent-free tenures only, 47 I.C. 420, 1923 Cal. 392. A suit by a saranjamdar to levy assessment on rentfree land falls within this article, 23 Bom. L. R. 314. Claim by tenant of rent-free tenancy constitutes adverse procession, 39 Cal. 453.

**Art. 131.**—To establish a *Twelve years.* When the plaint-  
periodically recurring iff is first re-  
right. fused the en-  
joyment of the  
right.

**Commentary.**

To establish :—The words 'to establish' are not confined to a declaration of title, but include the recovery of arrears due to the plaintiff in respect of a periodically recurring right, 34 A. 246.

In case of a recurring right, there must be a demand and refusal. Otherwise there would not ensue a period of adverse possession, 18 Bom. L. R. 950. Where an Inamdar receives rent from a tenant which is lower than the actual assessment, he can institute a suit for the excess at any time. Limitation begins to run from the date when there is a demand for such excess followed by a refusal to pay it, 28 Bom. L. R. 633 (1925). The onus to prove the demand and refusal is on the defendant, 21 I. C. 179. A claim for enhancement of rent (a claim founded on contract and not on statute) is governed by this article, 1924 P. 193.

**Art. 132.**—To enforce pay- *Twelve years.* When the money  
ment of money charged sued for be-  
upon immoveable prop- comes due.  
erty.

**Explanation.**—The allow-  
ance and fees respectively  
called *malikana* and *haqq*  
shall, for the purpose of  
this article, be deemed to  
be money charged upon  
immoveable property.

### Commentary.

**Money charged upon immoveable property :—**Article 132 is wide enough to apply to all cases where there is an effective and binding charge upon immoveable property whether created under the T. P. Act or otherwise. Standing trees are immoveable property within the meanings of the article. A suit to enforce a puisne mortgage against balance of sale-proceeds in the hands of prior mortgagee is governed by this article, 41 Cal. 654, 16 Bom. L. R. 89. The article applies to a suit to enforce a second mortgage executed in consideration of a prior mortgage and a fresh advance. The article is inapplicable where the plaintiff seeks a personal remedy, 1923 Lah. 23.

Claim for interest being subsidiary to the claim for the principal, the security annexed to the principal must impliedly be available for interest also, 1923 Nag. 181.

**Malikana :—**A plaintiff coming into the court to claim Malikana must claim it as a charge upon the immoveable property concerned, 41 All. 259.

The article applies to an existing charge recognized at the date of the suit, 45 Bom. 597.

**Cases :—**Where one of several judgment-debtors pays off the debt due by the others also, he is subrogated to the rights of the decree-holder, and in the case of a mortgage, the period of limitation for a suit to enforce his rights runs from the date of payment by him and not from the date of decree-holder's mortgage, A.I.R. 1925 Oudh 613. A puisne mortgagee defendant paying off the decree amount in a suit by prior mortgagee, suit by the puisne mortgagee against the mortgagor for the recovery of that amount, art. 132 applies, 8 N. L. J. 232, 1925 Mad. 150, 84 I. C. 301.

### Cases.

Instalment bond—money due on default—obligation undertaken by the debtor, 63 I. C. 886; Acceptance of overdue instalment in a bond, 1924 Cal. 139; cause of action, 39 Mad. 981; Loan in kind, 51 I. C. 241; Payer of mortgage money to save the property being sold in execution has a charge on the mortgage property, A. I. R. 1924 Rang. 204; Instalment bond with a default clause, A. I. R. 1924 Lah. 702, A. I. R. 1924 Cal. 139; Charge for unpaid purchase money under s. 55 of the T. P. Act, A. I. R. (1924) Mad. 854.

*Art. 133.*—To recover move- *Twelve years.* The date of the  
able property conveyed or purchase.  
bequeathed in trust, de-  
posited or pawned, and  
afterwards bought from  
the trustee, depository or  
pawnee for a valuable  
consideration.

#### Commentary.

If the executor, who has deposited money in Bank on behalf of a minor legatee, thereafter commits breach of trust, the bank is not liable.—24 *Bom. L. R.* 513.

*Art. 134.*—To recover *Twelve years.* The date of the  
possession of immoveable transfer.  
property conveyed or be-  
queathed in trust or  
mortgaged and afterwards  
transferred by the trustee  
or mortgagee for a valu-  
able consideration.

#### Commentary.

(Note the wording of the 1st columns of Secs. 133 and 134).

**Scope:**—According to the Trusts Act (s. 64), where the defendant purchases trust property for valuable consideration and in good faith, he acquires an unimpeachable and absolute title. In case of a purchaser from a mortgagee, the purchaser has to prove the operation of article 134 in order that he may have an absolute title, 1923 *Oudh* 246. The transferees mentioned in this article can take advantage of the operations of the article only when possession is transferred, 1925 *Rang.* 377. Article 134 does not apply to sales in execution of a decree, 50 *Cal.* 49. Article 134 applies to purchasers for valuable consideration from the mortgagee and not to mere donees, 13 *I. C.* 375. The transferee from a mortgagee is not bound to inquire how his transferor obtained possession, nor is he required to prove *bona fides*. *A. I. R.* 1925 *All.* 707. This article limits the provisions of articles 140 and 148, 47 *All.* 803. Where a transferor is a mere mortgagee and the transferee has notice of that fact, a suit for possession by the mortgagor is governed by article 148. 27 *Bom. L. R.* 661.



**Good faith** :—A person who knows that his transferor is a mere mortgagee does not acquire absolute title under article 134, 37 All. 660. Only in cases where there are *bona fides* on the side of the purchaser and a representation by the transferor-mortgagee that he owns an absolute title, can the transferor acquire absolute title under this article. *Per* Macleod and Shah C. J. A. I. R. (1924) Bom. 417, also in 79 Indian Cases 274. The fact that subsequent to the transfer by the mortgagee, the transferee obtained knowledge of the limited interest of his transferor does not affect the operation of this article. Mere constructive notice without actual knowledge is not sufficient to deprive the purchaser of the benefit of the article, 1922 Oudh 7; but it will be an important piece of evidence in judging what interest the transferee intended to take, 40 Mad. 745. Trust property acquired under an execution-sale in execution of a decree against the trustee is governed by article 144, 1923 P. C. 175 (P. C.). 49 M. L. J. 534; A. I. R. 1926 Mad. 81 :—‘The omission in article 134 of the Act of 1908 of the words ‘in good faith’ is not without significance, and the onus is not thrown on the purchaser to prove that he acted in good faith before he can plead limitation under article 134.’

**Transferred** :—Grant of a permanent lease at a considerable annual rent is a transfer for valuable consideration, 43 Cal. 34; 40 Mad. 45. But this decision has been recently overruled in A. I. R. 1925 Mad. 796. “A permanent lease is not a transfer for consideration as contemplated by article 134.”

*40 Mad. 1040 F. B.* :—‘In this Full Bench case it was held that for a case of transfer of interest to come within the scope of this article, a transfer of possession is always necessary. The dissenting judges, however, took the view that transfer of possession was not necessary and the starting point of limitation is the date of the transfer of interest and not of possession.’ A sub-mortgagee is a transferee within the meaning of article 134, 1922 Bom. 350. But a mortgagee who sells the mortgaged property to a stranger, who again transfers the same to the mortgagee, cannot take advantage of this article and is governed by article 148, 22 Bom. L. R. 933.

#### Cases.

Article inapplicable to wakf, 25 Bom. L. R. 670, 50 I. A. 84; Art. 134 overrides article 141—44 Mad. 951; Limitation to set aside an alienation by a predecessor trustee, 38 Mad. 356, *but see* 15 I. C. 927 and 60 I. C. 689; When trust property is sold and possession transferred in execution of a decree against the trustee, time runs from the

date of the sale and transfer of possession, 25 Bom. L. R. 1275; Head of Mutt not a trustee, 44 Mad. 831; A Shebait is a trustee, so too Mutawalli, 60 I. C. 689.

*Art. 135.*—Suit instituted *Twelve years.* When the mortgagor's right to possession determines.

in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.

### Commentary.

**Scope :—**This article governs all suits instituted by a mortgagee for possession of the mortgaged property against a person in possession of the same. Consequently, the defendant may not necessarily be the mortgagor himself, 81 Ind. Cas. 581; A. I. R. 1924 Oudh 374. The institution of proceedings must be in a court not established by Royal Charter.

**For possession :—**The suit must be for possession of the mortgaged property and hence s. 20 of the Limitation Act is inapplicable. That section is applicable only to suits for the recovery of a debt or a legacy and not to suits for possession.

**The defendant :—**We have already noticed that the defendant in suit under article 135 may not be the mortgagor himself. Suit against all persons in possession of the property and claiming through the mortgagor are governed by this article. In case of a person who claims adversely to the mortgagor, and not through him, the mortgagee will be affected by such stranger's adverse possession if it is prior to the date of the mortgage; so that, after twelve years adverse possession, the person in possession will gain an absolute title to the property. But if adverse possession is subsequent to the date of the mortgage, a suit by the mortgagee for possession is governed by this article; and a suit by him within 12 years from the date when the mortgagor's right to possession determines would be in time, whatever may be the length of the stranger's adverse possession.

**Starting point :—**The starting point of limitation is the date when the mortgagor's right to possession determines and that can be ascertained from the nature of the mortgage and from any agreement by the parties as evidenced by the mortgage deed.

**Nature of possession :—**If after the date of the mortgage, the mortgagor remains in possession as a tenant of the mortgagee,

a suit against him for possession will not be governed by this article, but by article 139. (Further).

**Mortgage by conditional sale** :—"When under the terms of a mortgage-deed, the mortgagee is entitled to possession of the mortgaged property without first taking foreclosure proceedings, the right of the mortgagor to possession determines on the date of default, but when under the deed foreclosure proceedings are necessary for the determination of his right to possession, the mortgagor's possession does not become adverse until foreclosure proceedings have been perfected and the year of grace has expired." 45 I. C. 563.

#### Cases.

Instalment provision in mortgage-deed, starting point is the date of the first default, 63 I. C. 579; Scope, 10 I. C. 20; Symbolical possession, 6 L. L. J. 302.

*Art. 136.*—By a purchaser *Twelve years*. When the vendor is first entitled to possession of immoveable property sold when the vendor was out of possession at the date of the sale.

#### Commentary.

This article governs suits, by purchaser at *private sale*, for possession of immoveable property sold when the vendor was out of possession; the article does not govern cases of the sale of moveable property. If the vendor was in possession at the date of the sale, this article has no application. The suit must be instituted against a third party in possession, *i. e.*, the vendor must be out of possession even at the date of the suit. If, on the otherhand, he has obtained possession by the time of the suit, the article applicable is 144 and not 136.

**Private sale** :—This expression does not include execution sales. Execution sales are governed by article 137.

**Vendor** :—When there have been transfers by successive vendors out of possession, the term vendor refers to the first in the series of such vendors entitled to possession. 24 I. C. 216.

**Out of possession**.—This expression implies that some third person is in possession *adversely* to the vendor, (and not claiming through the vendor).

**Starting point** :—Limitation begins to run from the date when the vendor is first entitled to possession. If the third party is in possession of the property even when the vendor is entitled to possession, his possession will be adverse from that date and so would it be adverse to the purchaser. The purchaser has, therefore, to bring a suit within twelve years from that date. "The vendee must show that, supposing no sale had taken place, the vendor's title would have been alive at the date of the suit." If adverse possession is prior to the date of sale, the starting point is the date when such adverse possession started.

*Art. 137.*—Like suit by a *Twelve years*. When the judgment debtor is first entitled to possession. purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.

#### Commentary.

There is no difference between article 136 and article 137, save that the latter one governs execution sales.

#### Cases.

Suit for actual possession after symbolical possession, governed by article 144, 35 I. C. 87, *cf.* 1919 Pat. 298; Starting point in case of sales of life estates, 25 Bom. L. R. 456. (Arts. 140-141).

*Art. 138.*—Like suit by a *Twelve years*. The date when the sale becomes absolute. purchaser at a sale in execution of a decree, when the judgment-debtor was in possession at the date of the sale.

#### Commentary.

Article 138 contemplates suits against the judgment-debtor, in possession of the property at the date of the sale and also at the date of the suit. So there are variety of cases and for each case there is a separate article applicable.

- (a) *Private sale.*—Vendor in possession on the date of sale. (Article applicable 144).
- (b) *Private sale.*—Vendor out of possession on the date of sale and suit. (Article applicable 136).

- (c) *Private sale*.—Vendor out of possession on the date of sale but in possession on the date of suit. (Article applicable 144).
- (d) *Execution sale*.—Judgment-debtor in possession on the date of sale and suit. (Article applicable 138).
- (e) *Execution sale*.—Judgment-debtor in possession on the date of sale but not on the date of suit. (Article 144).
- (f) *Execution sale*.—Judgment-debtor out of possession both on the date of sale and suit. (Article applicable 137).
- (g) *Execution sale*.—Judgment-debtor out of possession on the date of sale but in possession on the date of suit. (Article applicable 144).

Article 138 is restricted to suits against the judgment-debtor or against persons claiming through him. 35 All. 432, 1922 Cal. 176.

**Starting point**:—The date when the sale is conformed, and not the date when the sale takes place, is the starting point of limitation for article 138. When the purchaser at an execution sale brings a suit against the defendant within twelve years from the date of the sale, and where the defendant is not the judgment-debtor but a third party in possession of the property from before the date of the sale, and for more than 12 years under an independent title, *held*, that article 138 does not save limitation. 40 I. C. 662.

#### Cases.

Symbolical possession and actual possession distinguished, 36 Bom. 373.

*Art. 139*.—By a landlord to *Twelve years*. When the tenant recover possession from a tenancy is determined.

#### Commentary.

The article contemplates only those tenancies which are terminable in their nature and hence does not cover cases of permanent tenancies. In cases of a lease or tenancy for any fixed period, the tenancy is determined only on a close of that period, and no action of the tenant during the continuance of the tenancy will make his title adverse to the landlord, as far as the starting of the statutory period against the landlord is concerned. After the expiry of the lease, however, the tenant may

set up an adverse title and acquire a right by prescription, in the land primarily rented to him.

Starting point of limitation in cases falling within this article is the date when the tenancy is legally determined by the completion of the period fixed, or by forfeiture or by a notice. In case of forfeiture under section 111 of the Transfer of Property Act, limitation commences to run from the date 'when the landlord acquiesces in the act of repudiation.'

**Holding over** :—When a tenant holds on after the expiry of the lease, whatever name may be given to him, time begins to run against the landlord from the date of the expiry of the lease, under article 139. A. I. R. 1925 All. 698. In case of tenancies for life estates, the heirs of the lessee do not hold on as mere tenants from year to year, but after the lapse of twelve years gain a title by prescription in the land. 1924 Pat. 313, 1925 Pat. 499. A tenant who holds over cannot set up an adverse title to the landlord, still the landlord can recover possession only if he sues within 12 years of the expiry of the lease. 1922 A. 423. While holding over, if the tenant does not pay rent, the landlord's title is barred after the lapse of twelve years. 24 Bom. 504, 1922 All. 318, 1923 Pat. 54. But according to sec. 116 of the Transfer of Property Act, payment of rent by the lessee and acceptance of the same by the lessor is a renewal of lease from year to year and there is no adverse possession against the landlord as long as the situation continues. 53 I. C. 212.

**Adverse possession** :—Mere non-payment or discontinuance of payment of rent will not render a tenant's possession adverse to the landlord. He must *openly disclaim* to hold as tenant, and must assert that he is holding the property as his own and must do other acts of ownership. 79 I. C. 59.

**Art 140.**-By a remainderman, *Twelve years*. When his estate  
a reversioner (other than falls into pos-  
a landlord) or a devisee, session.  
for possession of immove-  
able property.

#### Commentary.

**Scope** :—Any amount of adverse possession against a tenant for life is ineffectual as against the reversion, and consequently the starting point of limitation under article 140 is the date when the reversioner is entitled to the estate, 1922 All. 401. Reversioners of a Hindu or Muhammadan female are governed by art. 141 (following).

**Cases.**

Not applicable to a tenant, 15 I. C. 146; What is a life estate—English Law followed, 33 I. C. 371; Articles 140 and 141 distinguished, 22 I. C. 855; Article governs suits against a trespasser, 208 P. L. R. 1912; Difference between arts. 140 and 141—"art. 140 applies to a suit in which the plaintiff claims as a remainderman, &c. in the sense in which those terms are used in the English Law. Whereas article 141 covers cases of reversioners as creatures of the Hindu or Muhammadan Laws", 83 Ind. Cas. 812, A. I. R. 1924 Pat. 721.

*Art. 141.*—Like suit by a *Twelve years*. When the female Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female.

**Commentary.**

Scope :—Article 141 is an extension of the preceding article and specially refers to Hindu or Muhammadan reversioners succeeding to the estate after a female limited heir's death, 40 Bom. 239, 18 Bom. L. R. 14. Article 144 and not 141, applies to cases where the estate was vested in the female as full owner, 1923 Oudh 135. Article 141 has no application when a widow held possession as executrix of the will of her husband. In such a case, if her claims are barred, the heir-at-law is also barred from suing on those claims, A. I. R. 1924 Pat. 721. "Article 141 lays down a rule of limitation of suits, in which it is sought to recover estates which having once been estates in expectancy, have been vested in the heir of the last male owner, in termination of a limited estate held by a Hindu or Muslim female", 41 Mad. 538.

**Adverse possession:**—If possession was adverse in the life-time of the last male-holder, art. 141 has no application, and the incoming of the subsequent life-estate will not suspend the period of adverse possession. 77 Ind. Cas. 479, 27 I. C. 954, 1923 Bom. 364, 19 Bom. L. R. 919. Adverse possession against a female limited holder is ineffectual against the reversioners. 78 Ind. Cas. 65. The article governs cases of life-estates *legally* vested in a female. If the female is merely as trespasser, article 141 has no application.

**More limited heirs:**—If there are more life-estates than one preceding the reversion time begins to run from the date of the death of the last of such holders, 43 Mad. 855.

**Starting point** :—Limitation starts running from the death of the widow. Re-marriage of a Hindu widow is tantamount to her death within the meaning of this section, 29 I. C. 612.

**Alienation** :—The alienation by the limited owner may not necessarily be for value. Cases of gifts are governed by this article and are alienations within the meaning of the article, 52 P. R. 1912.

**Onus** :—The burden of proof is on the reversioner to show that the widow died within twelve years of the suit, A. I. R. 1924 Mad. 838, 39 I. C. 21.

**Note** :—If a widow institutes proceedings against the alienee during her life-time and fails subsequently, the decree is binding on the reversioners. But this decision has been criticised, and it has been held that a decree against the widow does not operate as *res judicata* against the reversioners, 42 I. C. 228, 32 M. L. J. 627.

#### Cases.

Suit by one co-life-holder for possession of property against other, not governed by this article, 27 I. C. 83; Cowidows-Limitation, 42 Bom. 714. Adverse possession against reversioners. A. I. R. 1925 Oudh 400.

[*N. B.*—(a) Whereas article 125 governs suits for declaration of the invalidity of such alienations, article 141 governs suits for possession after such alienations. It is not incumbent upon the plaintiff to institute a suit of declaration, so that, even if he fails to sue under article 125, he is not precluded from suing under article 141. (b) In the case of a suit by an adopted son, for possession of immovable property alienated by his mother before his adoption, time begins to run from the date of adoption and the article applicable is 144.]

**Art. 142.** --For possession of *Twelve years*. The date of the immovable property dispossession or discontinuance when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.

#### Commentary.

**Scope** :—Whenever plaintiff's prior possession is followed by dispossession or discontinuance, article 142 is applicable. *If there is no plea of prior possession, article 142 has no application.* The plaintiff must at the onset prove both his title and his possession within 12 years of the suit.



Distinction between arts. 142 and 144  
below article 144.

**Possession by the plaintiff:**—Possession by the plaintiff may not be 'actual'. If he has proved title and symbolical or constructive possession within twelve years of the suit, it is quite sufficient. In such a case, actual possession, which follows title, will be presumed in his favour.

**Dispossession of the plaintiff. Onus:**—The onus is on the plaintiff to prove not merely title, but also a title to the property in dispute subsisting at the date of the suit, 1922 Lab. 432, A. I. R. 1925 Oudh 42, A. I. R. 1925 Cal. 1230, 77 Ind. Cas. 506 (Per Martin and Fawcett *JJ.*), 79 Ind. Cas. 96, 1923 A. 418. Then the burden is shifted on the defendant to prove 12 years' dispossession or discontinuation prior to the suit. Dispossession occurs when a person ousts another person in possession and secures a possession for himself; discontinuance of possession occurs when a person in possession goes out and is followed into possession by others, 24 M. L. J. 424, 1923 Cal. 1. *The termination of the possession of the rightful owner must be followed by actual possession by the defendant*, 1922 Cal. 224. *An isolated act of trespass* does not amount to dispossession, 20 I. C. 79. A man may cease to use his land because he cannot use it or because he does not want to use it. Mere cessation in user is not dispossession, 32 M. L. J. 505 (P. C.) 19 Bom. L. R. 480. *The defendant must prove actual possession.* Mere constructive possession, which always follows title, is not sufficient for him. The defendant must show continuous and uninterrupted possession. If the dispossession of the plaintiff ceases even for a day before the lapse of the statutory period, the true owner's possession revives by construction. Defendant's possession must be adverse, *i. e.*, he must claim adversely to the true owner. If he is in possession by permission of the plaintiff, his possession does not constitute dispossession of the plaintiff. The possession of the defendant must be hostile and inconsistent or incompatible with the plaintiff's right of ownership; it must be so *open and notorious* as to operate as a notice to all persons, that it is under a claim of right. Excepting when the case comes within s. 18 of the Limitation Act, when a person takes possession and it in fact turns out to be adverse, the fact that the owner is unaware of the trespass will not render the possession fraudulent, so as to postpone the operation of the statute.

**Independent Trespassers:**—The latter of two trespassers could not be allowed to add to the period of his hostile possession, the period of possession of a former trespasser, 22 Bom. L. R.

... if the latter trespasser derives title from the 1450 one, then alone can the two periods of trespass be tacked. In such a case, however, they are not independent trespassers. In 45 Mad. 370, and 1922 Mad. 59, it has been *held*, that the adverse possession of successive independent trespassers can be tacked.

**Waste lands :—**In case of waste and unoccupied lands, the presumption is that possession follows title, A. I. R. 1925 Cal. 1230. However, the burden of proving adverse possession is not shifted to the defendant by the mere fact that the plaintiff can show title to land which was once waste, at however remote a period, 39 I. C. 971. "Possession is not necessarily the same thing as user. The nature of possession to be looked for and the evidence of its continuance must depend on the character and condition of the land in dispute. Where the land is incapable of actual enjoyment, as in the case of deluvion by a river, if the plaintiff shows possession up to the date of the deluvion, his possession is presumed to continue as long as the deluvion continues. Where the land is not incapable of actual possession, but may produce some trifling profit of occasional occurrence, as in the case of Jungle land, it would be unreasonable to look for the same evidence of possession as in the case of a house or cultivated land. All that can be required is that the plaintiff shows acts of ownership as are natural under the existing conditions of the land, and in such cases his possession is presumed to continue so long as the state of land remains unchanged, unless he is shown to have been dispossessed..... But where plaintiff comes to court alleging an exercise by him of acts of ownership, which he fails to prove, he cannot be allowed to turn round and rely on a presumption arising from title. For, that would apply only to cases where from the nature of the land, no definite acts of possession or ownership are possible", 1922 Cal. 557.

#### Cases.

Suit for alluvial law-limitation, 34 All. 612; Suit to set aside order under s.145 of the Cr. P. Code, 31 I. C. 242; Meaning of dispossession 22 C. L. J. 283; Suit for ejection, onus on plaintiff, to show title and actual possession, 1924 P. 341, 42 Bom. 357; recovery of possession of Jalkar, artical applicable, 34 I. C. 841; Suit resisted on the ground of possessory title-onus on defendant 1923, All. 565, 1923 Bom. 361; Alienation by co-sharer, suit by alienor for possession of a share in properties governed by this article, A. I. R. 1924 Lah. 682; Dispossession followed by subsequent regaining of possession and dispossessions again-limitation, A. I. R. 1925 Cal. 270; Article applies to an encroachment by a tenant under a claim adverse to a limited extent, 40. O L. J. 160; There can be no con-

structive possession of a trespasser, A. I. R. 1925 Cal. 270; Suit for partition within twelve years of a decree for joint possession is in time, 80 Ind. Cas. 827 (P. C.).

**Art. 143.**—Like suit, when *Twelve years*. When the forfeiture the plaintiff has become entitled by reason of any forfeiture or breach of condition, the forfeiture is incurred or the condition is broken.

#### Commentary.

This section governs cases falling within section 111 (g) and s. 112 of the Transfer of Property Act.

**Forfeiture, S. 111 (g)** :—“By forfeiture, that is to say (1) in case the lessee breaks an express condition, which provides that, on breach thereof, the lessor may re-enter, or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third person, or by claiming title in himself; and in either case the lessor or his transferee does some act showing his intention to determine the lease.

**S. 112** :—“A forfeiture under section 111, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting :

Provided that the lessor is aware and the forfeiture has been incurred :

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not waiver.”

It is often suggested that the effect of article 143 is to oblige the plaintiff to take advantage of a forfeiture on pain of losing his right of entry, and thus a party may be barred by his own clemency in not taking advantage of a forfeiture, or by his ignorance of its occurrence. But this does not seem to be correct. Ignorance of the lessor as to the occurrence of forfeiture does not postpone the starting point of limitation. The starting point is the forfeiture itself; there is nothing in the article regarding knowledge of the lessor, 1922 Mad. 29. But to say, that a lessor must take proceedings on the first forfeiture, is extending the meaning of the section, far too much than it was intended to mean. Such a construction will render s. 112 of the T. P. Act superfluous, for it would not allow the lessor to exercise his option of waiver.

The article should, therefore, mean, that if a lessor means to take advantage of a forfeiture, he must institute proceedings within the period of limitation prescribed by article 143. If he chooses otherwise, he may very well waive his right and continue the tenancy. A delicate position will, however, occur if the lessor does not, within 12 years of the cause of action, institute proceedings and also does not waive his right of forfeiture. As long as there is no waiver of his right, the possession of the lessee from the date of the breach of condition becomes and continues to be adverse. And hence, unless there is a definite waiver within the statutory period, the lessor's right to forfeiture and waiver, both, will be extinguished.

A landlord can condone the forfeiture of his tenant's right, caused by the latter's denial of his proprietary title, and afterwards bring a suit for possession within 12 years from the time when a separate and entirely distinct act occasioning forfeiture occurs, 35 I. C. 235, 141 P. L. R. 1916.

*Art. 144.*—For possession of *Twelve years*. When the possession of the immovable property or any interest therein not hereby otherwise specially provided for. defendant becomes adverse to the plaintiff.

#### Commentary.

**Scope** :—Article 144 is a residuary article for possession of immovable property and has application when a case is not governed by any other special article in this Act for possession of immovable property, 1923 A. 613 (1). It applies to the case of a dispossessed plaintiff who proves title to the property in suit. It is a general rule of law that possession follows title and where plaintiff has proved title and prior possession, a continuance of possession will be presumed in his favour and the burden of proving adverse possession is shifted on the defendant, 24 Bom. L. R. 373. The plaintiff has to prove title, and it then rests on the defendants to show that he and those under whom he claims have been in adverse possession for over 12 years, 1923 Nag. 2, A. I. R. 1925 Oudh 42. The claim must be based on title and not on contract only, 24 I. C. 911. The onus is on the defendant to plead and prove adverse possession for the statutory period, in a suit for declaration of title based on the defendant's alleged repudiation of it, 39 M. 6.7, A. I. R. 1924 All. 924. This article applies to a suit by an adopted son for recovery of immovable property alienated by his mother, 25 I. C. 692.

**Distinction between article 142 and 144 :—**Where the plaintiff alleges possession of land and it is found that part of the land is *de facto* in the possession of another person, the suit must fall under article 142. It is only where the plaintiff does not allege that he has ever been in possession that the case will fall under article 144, 39 Bom. 335, 17 Bom. L.R. 141, A.I.R. 1925 Nag. 370. 'The plaintiff proved that he had acquired lands in a certain year. Subsequently there was disappearance of the plaintiff's name from settlement records and the introduction of the defendant's name. The plaintiff did not plead dispossession as it was not found when he was actually dispossessed. Held, that the plaintiff having proved his title, article 144 would apply.' 47 All. 389. Wherever the plaintiff alleges prior possession, the suit is governed by article 142, A. I. R. 1925 Nag. 370.

**Possession of the plaintiff :—**When the plaintiff has once proved title, possession will be presumed in his favour, as possession follows title. 89. I. C. 995.

**Adverse Possession :—**(See notes below article 142). In order to extinguish the right of the plaintiff, adverse possession must be continuous, open and under colour of a title which is incompatible with the plaintiff's claim of ownership, 57 I. C. 716; mere grazing of cattle etc. in waste lands belonging to the plaintiff, a user which excites no particular attention, is not adverse possession, 1923 Lah. 25. In case of submerged lands or lands subject to seasonal submersion, continuous adverse possession is not possible, 19 Bom. L. R. 480, 32 M. L. J. 505 (P. C). Defendant's adverse possession must amount to actual possession and he cannot set forth a plea of constructive possession which always follows title, 1920 Pat. 146, when actual possession rests with no body, *i. e.*, whenever there is vacancy of actual possession, it is deemed to be with the rightful owner by construction, 1923 Rang. 23 (2); Amongst co-sharers, a co-sharer to maintain a successful plea of adverse possession must hold adversely for twelve years after an explicit denial and repudiation of the title of other co-sharers, 46 All. 377. When a person acquires title by adverse possession and then renounces his possession, the title of the dispossessed owner will not revive. He may, however, again acquire title by similar adverse possession, 76 I. O. 742. A tenant holding over acquires adverse possession from the date of the termination of the lease, if a creation of a new tenancy is not proved, A. I. R. 1925 Pat. 216; but in A. I. R., 1925 All. 698, it has been held that the article applicable in such cases is 139 and not 144.

In a suit for possession, involving the invalidity of adoption the period of limitation applicable is one under article 144 and not under 118. 26 Bom. L. R. 509.

**Immoveable Property :—**The article is restricted to suits for the possession of immoveable property. Suits for the possession of moveable property are governed by article 120. Debutter property, *i. e.*, lands attached to an idol (36 Bom. 135), the right to levy cess (36 Bom. 175), standing trees (24 I. C. 911) are immoveable properties, and fishery right in another's waters, though not immoveable property, is an interest in immoveable property within the meaning of article 144 (12 I. C. 305).

**Invalid Alienations :—**Where a transfer is inoperative and a mere paper transaction, a suit to recover possession ignoring the transaction will be governed by art. 144, 25 Bom. L. R. 1207, A. I. R. 1924 Bom. 174, but see A. I. R. 1925 Lah. 53. The possession of a purchaser under a void sale is adverse to the real owner, 47. I. C. 694.

**Starting Point of Limitation :—**Limitation begins to run from the date when possession is adverse, 17 I. C. 606 ; 1923 Lah. 642. In case of a remote reversioner, possession adverse against the nearer one is not adverse against him, and time begins to run against him only when his right to possession accrues. 1922 Lah. 37. Cf. 25 Bom. L. R. 456.

**Special note :—**We have already seen that in all cases of adverse possession, the possession must be a continuous one. There can be no patching up of different periods of adverse possession. If a party having an adverse possession over a property ceases to possess it before the statutory period elapses, even for an hour, the rightful owner's possession reverts as a matter of course. There is a break in the adverse possession and a fresh period begins to run in favour of the owner. A wrong-doer gains title to land "actually" possessed by him. His possession must be a *de facto* possession—a possession in fact. He must claim adversely to the rightful owner and not 'by his favour,' or 'through him.' Adverse possession must rest with the defendant for the full statutory period at a single stretch. The continuity of the full statutory period may be made up by more than one persons who claim through one another, *i. e.*, amongst whom privity exists.

A point of considerable legal nicety arises at this stage of discussion about adverse possession ; and that is, whether adverse possession of independent trespasses, *i. e.*, persons among whom there is no privity, can be tacked ? To illustrate :—

Supposing, A is the rightful owner of a land X. B holds adversely to A for a period of three years. Immediately after B - C who does not claim through B (*i. e.*, who is an independent trespasser), holds it for a period of five years. Immediately after him, D who is also an independent trespasser, holds it likewise for a period of eleven years. Then a suit is instituted by A against D for possession of the property. D claims that A was not in possession of the property for a period of 19 years (thus tacks the periods of adverse possession of all B, C and D), and hence the suit is time-barred. It appears on the face of facts, that according to article 142, where the starting point of limitation is the date of the plaintiff's dispossession or discontinuance, the plaintiff's claim is really time-barred. But according to article 144, which makes the statute run from the date of the adverse possession of the defendant, the plaintiff is entitled to judgment and possession, as the defendants' possession amounts to 11 years only. Even if the case falls within article 142, it is to be doubted whether the periods of adverse possession of the independent trespassers are to be tacked, so as to give the defendant an advantage of full 19 years' adverse possession. Conflicting are the views held in many Privy Council cases such as "*Doe v. Bernard*" 1894 13. Q. B. 945 '*Willis v. Howe*' 1893, 2 Ch. 545. *Solling vs. Broughton*, 1893, A. C. 556. Mr. Rustomji in his masterly and valuable treatise on Limitation comes to a conclusion as follows:—"The possession of a succession of independent trespassers, who were all wrong-doers as against the true owner cannot be tacked. The possession relied on as a bar must be continuous in itself. A claimant cannot tack together successive occupations, however peaceful, which are not connected as of right. A party cannot add to his own possession, that of the one who preceded him when the party trying to do so, did not enter into possession 'under or through' such predecessor. The successive possessions of several distinct occupants of land, between whom no privity exists, cannot be united to make up the period required to perfect title by possession." We have already noted that most of the Indian High Courts (as in 45 B. 570) are sticking to this view, though the Madras High Court has held otherwise in 45 Mad. 370, 42 M. L. J. 319, 32 M. L. J. 85 and so on.

#### Cases.

A title to limited interest in land may be acquired by adverse possession, 30 I. C. 948, 22 C. L. J. 153; A suit by an inamdar for assessment is governed by this article, 45 Bom. 638, article applicable to suit by heir to recover property from another claiming as heir, 45 Bom. 570, minor's suit to recover property by a person not his guardian, art. applies

1922 Lah.386, an adverse holder succeeding to one of the co-owners, his possession continues to be adverse against others, 38 M. L. J. 313 (P. O.). Suit for joint possession by a purchaser from a co-owner, governed by art. 144, 23 Bom. L. R. 60, article applies where the question is between a co-parcener in joint Hindu family and a stranger, 14 Bom. L. R. 931, 37 Bom. 84. Declaration of a public pathway—article applicable, 69 I.C. 910, Setting aside invalid alienation, 33 I. O. 441, 17 Bom. L. R. 1137; Partition suit by a Muhammedan heir is governed by this article, 44 Bom. 943, 1922 Lah. 193; Starting point, property in juridical person, 1922 P. 243; Possession—transfer in fraud of creditors—limitation, 11 O. L. J. 92. Suit between co-sharers to remove obstructions in a common passage—governed by article 144, 76 I. O. 328; Mortgagee taking possession as proprietor when no title exists in him, suit to recover possession from him, 79 I. O. 39; An over act is necessary to make possession of equity of redemption adverse, A. I. R. 1925 Bom. 9; Where plaintiff's title is proved in a suit against an alleged lessee, but the lease is not proved, article 144 applies, 1925 Mad. 834; Applicability, 47 All. 389; Starting point, 25 Bom. L. R. 456.

#### PART IX.—30 YEARS.

*Art. 145.*—Against a deposi- *Thirty years.* The date of the  
tory or pawnee to recover deposit or  
moveable property deposi- pawn.  
ted or pawned.

#### Commentary.

This article governs cases of deposits which do not amount to express trusts. A suit for redemption of a pledge is within the scope of this article.

**What is deposit:**—It is a deposit of goods to be returned in specie and to be held for the owner during the period of contract. 37 Mad. 175.

**Articles 145 and 49:**—Article 49 is a general article for the recovery of specific moveable property or for compensation for wrongfully detaining the same, etc. Article 145 is a special article to recover from the depository moveable property and time runs from the date of the deposit. The article governs cases of moveable property descending to the heirs of the depository. 69 I. C. 900.

“Where certain crops belonging to the plaintiff had been attached in execution of a decree against a third person, and were



left in possession of the defendant as temporary officer of the Court in charge of the attached property, and the defendant gathered the crops and subsequently plaintiff put in an objection to the attachment and the attachment was raised, the defendant becomes a depository of plaintiff's property and a suit by plaintiff against defendant for the property is governed by article 145, A. I. R. (1924) Nag. 12.

*Art 146.*—Before a Court *Thirty years.* When any part established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged. of the principal or interest was last paid on account of the mortgage debt.

#### Commentary.

Article 146 is restricted to suits against mortgagors. A suit under this article being a suit for possession, the provisions of sec. 20 ought to be in fact inapplicable to it, but due to the special provision in the third column of this article, part-payment of principal or payment of interest does keep the cause of action alive.

*Art. 146-A.*—By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession. *Thirty years.* The date of the dispossession or discontinuance.

#### PART X.—60 YEARS.

*Art. 147.*—By a mortgagee for foreclosure or sale. *Sixty years.* When the money secured by the mortgage becomes due.

#### Commentary.

This article applies to the one class of mortgages in which alone a suit can be brought for foreclosure or sale, and that class

is of the English mortgages. 30 Mad. 426 (P. C.). All other mortgages are governed by article 132 for the purposes of this section.

*Art. 148.*—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged. *Sixty years.* When the right to redeem or to recover possession accrues

Provided that all claims to redeem arising under instruments of mortgage of immoveable property situate in Lower Burma which had been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that province immediately before the same day.

### Commentary.

This article applies to redemption suits in all mortgages. It is intended to protect the interest of the mortgagor against the mortgagee in possession, or a person who holds interest as a mortgagee (including the heirs or assigns of the mortgagee). It governs redemption suits instituted against mortgagees or persons claiming under them, and does not apply to suits against strangers. 18 A. L. J. 995. It is applicable to redemption of usufructuary mortgages. 35 Mad. 114.

**Starting point:—**In the absence of a special provision allowing the mortgagor to redeem during the term of the mortgage, the right of redemption can only arise on the expiration of the specified period. Where there is no such specified period, time begins to run from the date of the mortgage. In cases of 'specified periods', the parties may agree that the mortgagor may discharge the debt during the specified period and take back the property; in such a case, the period of limitation for redemption commences as soon as the debt is discharged and not from the expiry of the term provided for in the deed. 36 All. 195, 16 Bom. L. R. 344, 26 M. L. J. 474. (P. C.).

**Onus:—**The plaintiff must primarily show that he has on the date of the suit, a subsisting right of redemption. The burden is not discharged by proving that such a right subsisted within twelve years before suit. 42 I. C. 119.

**Suit against co-mortgagor:—**If a co-mortgagor gets the mortgaged property redeemed from the mortgagee, a suit against him by another co-mortgagor for possession of his share will, according to 1922 All. 410, fall within the scope of this article. It was similarly held in 38 All. 540. But it has been held in 1923 Pat. 98, 46 Cal. 111 and 41 Mad. 650, that a co-mortgagor redeeming the whole of the mortgaged property is not a mortgagee, but a mere charge holder, and a suit by another co-owner is governed by article 144 and not by article 148. Such a suit must be brought within 12 years of the creation of the charge.

#### Cases.

Suit for accession to mortgaged property is not one for redemption, article applicable is 144, 42 I. C. 468; Retrospective effect of article 148, 27 Bom. L. R. 467, A. I. R. 1925 Bom. 339; Suit against transferee from mortgagee with constructive notice is governed by this section, 27 Bom. L. R. 661, A. I. R. Bom. 417.

**Art. 149.—**Any suit by or *Sixty years.* When the period on behalf of the Secretary of State for India in Council, of limitation would begin to run under this Act against like suit by a private person.

#### Commentary.

This article governs only 'suits' and does not govern appeals or applications by or on behalf of the Secretary of State for India;

as for the latter cases they are governed by the ordinary laws of limitation. It is necessary that the suit be instituted by or on behalf of the Government. This article does not enure to the benefit of assigns of the Government and to such bodies as the municipality which have purely civic functions of the state vested in them.

**Onus :—**A defendant claiming adverse possession against the government must prove adverse possession for full 60 years. Proof of less period does not shift the onus on the government to show that the defendant's possession began within 60 years, 18 Bom. L. R. 1007, 35 I. C. 90 : ( P. C. ), 39 M. 617. It was formerly held in 16 I. C. 626 that if the defendant proves 30 years adverse possession, the burden is shifted on to the government. But this is no longer correct. A suit for possession by government under S. 9 of the Specific Relief Act is also governed by art. 149 and not by article 3, A. I. R. 1925 Sindh 275.

#### Cases.

Suits by government against municipal councillors for embezzlements of municipal money by municipal servants is within article 149. 40 Bom. 106. All unoccupied sites are government property. 45 Bom. 78. 1923 Bom. L. R. 238.

#### SECOND DIVISION : APPEALS.

Description of appeal.	Period of limitation.	Time from which period begins to run.
<i>Art. 150.</i> —Under the Code of Criminal Procedure, Act V of 1898, from a sentence of death passed by a Court of Session.	<i>Seven days.</i>	The date of the sentence.
<i>Art. 151.</i> —From a decree or order of any of the High Courts of Judicature at Fort William, Madras, and Bombay or the Chief Court of the Punjab or the Chief Court of Lower Burma in the exercise of its original jurisdiction.	<i>Twenty days.</i>	The date of the decree or order.

**Commentary.**

The expression "date of decree" in the third column refers to the date when the judgment is pronounced, *i. e.*, when the decree is 'directed to bear' and not the date where the decree is actually prepared or signed. If there is a review or revision after judgment, and if the judgment sought to be reviewed &c. is modified or altered, then the date of such final order is the 'date of decree' for purposes of the third column, 17 C. W. N. 956, 25 I. C. 67, 38 Bom. 653.

**Art. 152.**—Under the Code *Thirty days*. The date of the  
of Civil Procedure, Act   decree or order  
V of 1908, to the Court   appealed from.  
of a District Judge.

**Commentary.**

The explanation of the expression "date of decree" given above is rendered more clear when article 152 is read with O. 20, r. 7, of the C. P. Code. It runs as follows:—"The decree shall bear date, the day on which the judgment was pronounced, and when the judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign it, 1922 Nag. 113.

**Case.**

A money-decree against different defendants at different dates is not a consolidated decree, 31 I. C. 917; But *cf.* notes below article 156, 34 I. C. 867.

**Art. 153.**—Under the same *Thirty days*. The date of the  
Code, to a High Court   order.  
from an order of a Sub-  
ordinate Court refusing  
leave to appeal to His  
Majesty in Council.

**Art. 154.**—Under the Code                         Do.                         The date of the  
of Criminal Procedure,   sentence or  
Act V of 1898, to any   order appeal-  
Court other than a High   ed from.  
Court.

**Commentary.**

An application under sec. 195 (6) of the Criminal Procedure Code is not an appeal within the meaning of article 154 of the Limitation Act. and such an application to the appellate Court

cannot be time-barred under the Limitation Act, 22 M. L. J. 419. (F. B.), 40 Cal. 239.

*Art. 155.*—Under the same *Sixty days.* The date of the Code to a High Court, sentence of except in the cases provided for by article 150 order appealed from. and article 157.

*Art. 156.*—Under the Code *Ninety days.* The date of the of Civil Procedure, Act V decree or order of 1908, to a High Court, appealed from. except in the cases provided for by article 151 and article 153.

#### Commentary.

The expression "appeals under Civil Procedure Code" means not only appeals the right to prefer which is conferred by the Civil Procedure Code, but also appeals, such as are contemplated by the Land Acquisition Act, Succession Act, &c., which are governed by the Civil Procedure Code so far as their procedure is concerned, 43 Mad. 51.

**A Date of Decree:**—When decree is to be passed subsequent to judgment and conditional upon to the plaintiffs complying with a certain condition, the date of the decree and not the date of the judgment is the 'starting point of limitation.' 34 I. C. 867. 'The reason is that such a decree is in substance and form, the monthpiece of the suit in its immediate result and without it the dispute between the parties would not be intelligible.'

#### Cases.

Review application admitted on dismissal of an appeal—second dismissal on other grounds—Starting point for limitation is the new decree, 27 I. C. 732: "If a party which is not affected by subsequent proceedings wants to appeal against the decree, the period must be computed from the date when the judgment is pronounced or when the decree is signed. Subsequent proceedings refer to proceedings such as amendment of decree etc." A. I. R. 1924, Cal. 898, 78 I. C. 525.

*Art. 157.*—Under the Code *Six months.* The date of the of Criminal Procedure, order appealed Act V of 1898, from an from. order of acquittal.

## THIRD DIVISION : APPLICATION.

Description of application.	Period of limitation.	Time from which period begins to run.
Art. 158.—Under the Code of Civil Procedure, Act V of 1908, to set aside an award.	Ten days.	When the award is submitted to the Court.

## Commentary.

This article governs applications under Schedule II, clause 15, para. C of the Civil Procedure Code. Under sec. 12, time for obtaining copy of the award is excluded in computing the period of limitation. (Cf. p. 17). The article has no application when the award is void *ab initio*.

**Starting Point:**—It has been held in many cases, that the starting point of limitation is the date when the award is submitted to the court and not the date when notice is given to the party of the submission of the award. So held in 28 I. C. 427, 27 I. C. 371, 13 I. C. 234. But recent decisions have overruled this view and the starting point of limitation is not the date of the submission of the award, but the date when notice is given to the party of such submission. 63 I. C. 399, 1924 R. 153, 42 I. C. 266.

A court has no jurisdiction to pass a decree in terms of the award before the ten days' period under this article has elapsed, 1922 Mad. 189 ; 76 Indian Cases 307 (1).

## Cases.

Statement of a special case : Limitation runs from the date when the court expresses an opinion, A. I. R. 1925 Bom. 22 ; Cf. 20 Bom. L. R. 836.

Art. 159.—For leave to appear and defend a suit under the summary procedure referred to in section 128 (2) (f) "or under Order XXXVII" of the same Code.	Ten days.	When the summons is served.
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\*The words "or under Order XXXVII" were inserted by the Indian Limitation (Amendment) Act, 1925 (Act 30 of 1925), s. 3.

**Art. 160.**—For an order under the same Code, to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing. *Fifteen days.* When the application for review is rejected.

**Art. 161.**—For a review of judgment by a Provincial Court of Small Causes or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction. *Fifteen days.* The date of the decree or order.

#### Commentary.

Application for review was made on the last day of limitation, but a deposit under s. 17 was made on the next day. *Held*, that the application was barred under article 161 as it failed to comply with s. 17 of the Provincial Small Cause Courts' Act, 56 I. C. 551.

**Art. 162.**—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras and Bombay or the Chief Court of the Punjab or the Chief Court of Lower Burma in the exercise of its original jurisdiction. *Twenty days.* The date of the decree or order.

#### Commentary.

The applicant must have knowledge of the proceeding, 47 I. C. 962.



**Art. 163** —By a plaintiff, for *Thirty days*. The date of the dismissal. The date of the dismissal.  
 an order to set aside a  
 dismissal for default of  
 appearance or for failure  
 to pay costs of service of  
 process or to furnish security for costs.

#### Commentary.

(*Cf.* O. 9, rr. 4 and 9 and O. 25, r. 2.) The provisions of this article are mandatory and the court has no discretion to enlarge the period of 30 days, 55 I. C. 485. According to 14 I. C. 221, an application for restoration of a suit dismissed for default, by the representative of the deceased plaintiff must be made within 30 days of the dismissal and is governed by article 163; this would be so even when there is a prayer in the application to bring their names on record. This decision has been reversed in 17 C. W. N. 829 P. C. and now the article applicable to such an application is art. 178 and not art. 163.

**Art. 164.** —By a defendant, *Thirty days*. The date of the decree or, where the summons was not duly served when the applicant has knowledge of the decree.  
 for an order to set aside a  
 decree passed *ex parte*.

#### Commentary.

(*Cf.* O. 9, r. 13.) The thirty days' period cannot be extended by the court, 1922 P. 479, even s. 5 and s. 6 of the Indian Limitation Act have no application to such an application as contemplated by article 164 (1922 Lah. 266).

**Scope:**—This article governs the case of a defendant only, 41 Cal. 819. The article governs orders in execution which have the force of a decree, 37 Mad. 462. It also governs decrees passed by the Arbitration Act, 1924 Sind 56.

**Starting Point:**—(1) *Date of the decree*—Time runs from the date of the decree when summons is duly served. A summons is duly served when it can give the defendant information of the proceedings taken against him. It is not necessary to serve sum-

mons so early as to give the defendant sufficient time to appear and contest the proceedings. The expression 'duly served' requires that the summons should be served before the passing of the decree, 42 I. C. 611. A substituted service is due service within the meaning of this article, 1925 Lah. 639. (2) Even in case of inability of the defendant to appear and contest the proceedings taken against him, time runs from the date of the decree when summons is served, 27 Bom. L. R. 690, A. I. R. 1925 Bom. 444, Cf. 26 Bom. L. R. 388.

(2) *Not duly served*:—When there is due service intimating the first hearing of the suit, a notice of an adjourned hearing thereafter is not essential, 1924 Lah. 666, 76 Ind. Cas. 14. In case of substituted service, the applicant may prove that substituted service ought not to have been ordered, and when he proves it, such substituted service will be deemed not to be due service, 1923 Nag. 13, 1924 L. 191.

(3) *Knowledge*:—The burden of proving want of knowledge is on the applicant, 46 I. C. 477. Knowledge must be 'a certain and clear conception of the decree in the particular case,' and not of a decree, 11 Bom. L. R. 1298, 38 Cal. 394 (Cf. 25 Bom. L. R. 74).

#### Cases.

No appeal lies over an order under art. 164, 1922 Pat. 61; Unwarranted substituted service is not 'due service' 1924 L. 191; There must be a finding that application was within time before setting aside an *ex parte* decree, 1925 Lah. 577. Legal representative of a deceased defendant may apply under article 164 even before he is brought on record, 10 O. 1001.

**Art. 165.**—Under the Code *Thirty days*. The date of the  
of Civil Procedure, Act V  
of 1908, by a person dis-  
possessed of immoveable  
property, and disputing  
the right of the decree-  
holder or purchaser at a  
sale in execution of a  
decree to be put into pos-  
session. dispossession.

#### Commentary.

This article does not apply to an application by a judgment-debtor (1 Lah. L. J. 230).

**Art. 166**—Under the same *Thirty days*. The date of the Code to set aside a sale in . . . sale. . .  
execution of a decree.

Section 5 or 6 of the Limitation Act (*Cf.* O. 21, rr. 72, 89, 90, 91) has no application to a proceeding under art. 166; 57 I. C. 224, 43 Mad. 313, 1925 Oudh 411. The article has no application where the sale is void *ab initio*, 41 Bom. 357. An application to set aside sale on the ground of illegality or irregularity is governed by article 166, 18 L. W. 780, 1922 Mad. 95.

**Fraud** :—In case of fraud in the sale proceedings, an application to set aside the sale is within article 164 and the applicant is also allowed to take advantage of s. 18 of the Limitation Act. A mere statement that an application is brought under s. 47 of the C. P. C. would not evade the application of this article. 1922 Pat. 269, 51 I. C. 447. Article 163 is applicable to all applications in which it is sought to set aside an execution sale, 61 I. C. 823, 1924 Rang. 124, 1924 Mad. 817, 45 M. L. J. 829.

**Starting Point** :—Starting point of limitation in cases falling within article 166 is not the date of the confirmation of sale, nor of the deposit of 25 per cent., but the date of the sale itself, 1924 Nag. 108.

[An application to set aside a sale on the ground that the sale was without jurisdiction is governed by article 187 and not by article 166 (46 M. L. J. 104 F. B.).]

**Art. 167**.—Complaining of *Thirty days* The date of the  
resistance or obstruction . . . resistance or  
to delivery of possession . . . obstruction.  
of immoveable property  
decreed or sold in execu-  
tion of a decree.

#### Commentary.

The court has no power to extend the period of limitation under this article and s. 6 of the Limitation Act is inapplicable to cases falling within this article. The article refers to applications under order 21, rule 100.

**Art. 168**.—For the re-admis- *Thirty days*. The date of the  
sion of an appeal dismiss- . . . dismissal.  
ed for want of prosecution.

#### Commentary.

(*Cf.* O. 41, r. 12.) The period of limitation prescribed by this article does not apply to cases where the order of dismissal is

*ultra vires* and is not communicated to the parties (1924 Lah. 279, 1924 Mad. 14). The starting point of limitation under this article is the date of the order and not the date of the knowledge (58 I. C. 789). In the case of an application to set aside a court sale, the starting point is the date of the sale, 28 Bom. L. R. 510.

**Art. 169.**—For the re-hearing of an appeal heard *ex parte*. *Thirty days*. The date of the decree in appeal or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree.

Commentary.

(Cf. O. 41, r. 21.) 'The date of the decree'—(Cf. notes below article 151.)

**Art. 170.**—For leave to appeal as a pauper. *Thirty days*. The date of the decree appealed from.

Commentary.

(Cf. O. 44, r. 1).

**Art. 171.**—Under the Code of Civil Procedure, Act V of 1908, for an order to set aside an abatement. *Sixty days*. The date of the abatement.

Commentary.

(Cf. O. 22, r. 9). When there are more legal representatives than one, and if one of them is brought on record within time, the others may be brought on record subsequently. 12 Bom. 48.

**Art. 172.**—Under the same Code by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal. *Sixty days*. The date of the order of dismissal.

## Commentary.

(Cf. O. 9, r. 2).

*Art. 173.*—For a review of *Ninety days*. The date of the judgment except in the cases provided for by article 161 and article 162. decree or order.

## Commentary.

(Cf. O. 47, r. 1). 'The date of the decree'—Cf. Notes below article 151.

*Art. 174.*—For the issue of *Ninety days*. When the payment of adjustment is made. a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.

## Commentary.

(Cf. O. 21, r. 2). A decree-holder can certify a payment outside court after any lapse of time and no amount of limitation will affect it. But if the judgment-debtor has to invoke the aid of a court to issue notice under this article, *i. e.*, under O. 21, r. 2, he is bound by the provisions of article 174 of the Limitation Act.

The provisions of this article are mandatory. 1925 Nag. 374; 1925 Lah. 566.

Scope :—This article applies to application by a judgment-debtor only. 35 C. L. J. 71.

*Art. 175.*—For payment of *Six months*. The date of the the amount of a decree by instalments. decree.

## Commentary.

(Cf. application by a judgment-debtor, O. 20, r. 11 (2)).

- \**Art. 176.*—Under the same *Ninety days.* The date of the Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party. death of the deceased plaintiff or appellant.
- \**Art. 177.*—Under the same Do. The date of the Code to have the legal representative of a deceased defendant or of a deceased respondent made a party. death of the deceased defendant or respondent.

### Commentary.

(*Cf. O. 22, rr. 3 and 11, article 176, and O. 22, rr. 4 and 11, article 177*). Section 5 of the Limitation Act is made applicable to cases falling within article 177 by Order 22, rule 9 of the Civil Procedure Code. But section 5 and section 6 are not applicable to cases falling within article 176. (35 I. C. 438).

If the representatives of the deceased party are not joined within the period of limitation prescribed by these articles, the suit abates. The abatement can, however, be set aside under article 171.

**Execution proceedings** :—Article 177 has no application to execution proceedings. 10 I. C. 405, 73 I. C. 387, A. I. R. 1924 Lah. 82.

**Amending Act XXVI of 1920** :—This amending Act has reduced the period of 6 months prescribed for articles 176 and 177 by the Act of 1908 to ninety days. 1923 Bom. 299 (1), 1924 Cal. 74. Also see 77 I. C. 474, 50 Cal. 549.

But it has been held by the High Court of Lahore in 1924 Lah. 65 and 1922 Lah. 211, that period of limitation *under article 177* is six months, and is not reduced to 90 days by the amending Act. Also see 78 I. C. 771.

Latest decisions of the Lahore and Madras High Courts have also held that the amending Act of 1920 has not altered the period of limitation under article 177, and it remains 6 months as it was previously. 1925 Lah. 88, 49 M. L. J. 363, 1925 All. 77.

**Cases** :—The article is applicable to proceedings in insolvency. 7 A. 734.

- \**Art. 178.*—Under the same *Six months.* The date of the Code for the filing in Court of an award in a suit made in any matter referred to arbitration by order of the Court, or of an award made in any matter referred to arbitration without the intervention of a Court. award.

#### Commentary.

The starting point of limitation under this article is the date when the award is delivered to the parties, 48 I. C. 711.

- \**Art. 179.*—By a person desiring to appeal under the same Code to His Majesty in Council for leave to appeal. *Ninety days.* The date of the decree appealed from.

#### Commentary.

(*Cf.* O. 45, r. 2, C. P. Code). Section 6 of the Indian Limitation Act has no application to cases falling within this article.

Time required for obtaining copies can be deducted. 1922 P. 255. (The period has been reduced by Act XXVI of 1920).

- Art. 180.*—By a purchaser of immoveable property at a sale in execution of a decree for delivery of possession. *Three years.* When the sale becomes absolute.

#### Commentary.

(*Cf.* O. 21, rr. 95 and 96, C. P. Code). The decree-holder purchaser is not bound to apply for possession within the period prescribed by this article, but may institute a regular suit within 12 years of the sale.

Starting point :—The starting point of limitation is the date when the sale becomes absolute, (1925 Oudh 106), and the

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\* The period prescribed before Act XXVI of 1920, Limitation Amendment Act, was six months in Arts. 176, 177 and 179.

date of an issue of sale certificate, 17 I. C. 242. The starting point may, however, be postponed by agreement.

If there is an agreement that the decreed amount be paid by instalments and on default of an instalment, the sale should become absolute, time runs from the date of such default, 22 I. C. 497.

If a proceeding follows such sale or confirmation of sale, the starting point depends upon any order passed in such proceeding. (*Cf.* 43 Mad. 185, F. B.).

An application by a decree-holder purchaser for delivery of possession of the properties purchased by him is not an application to execute a decree and is governed by this article, 32 I. C. 993.

**Art. 181.**—Applications for *Three years*. When the right which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, Act V of 1908. to apply accrues.

#### Commentary.

**Scope** :—This article applies to all applications under *the Civil Procedure Code of 1908*, which are not specially provided for by any other article in this Act. It is necessary that the application should be a step requisite before the court can move, *i. e.*, the court must be incapable to entertain any proceeding on that point of its own accord. “Article 181 applies to all applications for making of which the C. P. Code gives authority and to no others.” (55 I. C. 820, 2 L. L. J. 291).

**Application** :—(a) The article applies to application in a mortgage suit to make a preliminary decree final. The starting point of limitation is the date of the preliminary decree. When there is an appeal over the preliminary decree, the date of such appellate decree is the date for purpose of “starting” point of limitation. A. I. R. 1924 Lah. 582; so held also in 1923 All. 29, 1924 A. 203; 1923 Cal. 389, 39 All. 641, 38 All. 21, 25 Bom. L. R. 459, 15 B. L. R. 841, 1922 Mad. 65. Starting point in cases of an amendment, 1922 Nag. 217, 84 I. C. 641, 17 S. L. R. 255; but *cf.* 42 Bom. 309. Applications for final decree are applications within the suit itself and are not execution applications within the meaning of article 182. 56 I. C. 563.



As regards starting point of limitation for such an application in a mortgage suit, it has been held that such right accrues at the end of the period of grace allowed in the preliminary decree. 1919 Pat. 272.

It has been, however, held by the Madras H. C. in 39 Mad. 544, that such an application is governed by article 182 and not by article 181.

(b) Article 181 does not govern application for final decree in a partition suit. 60 I. C. 433.

(c) *Mesne profits* :—Article 181 applies to application for determination of mesne profits and the starting point of limitation is the date of the final decree which awarded mesne profits. 1922 Oudh 197. It has, however, been held in 77 I. C. 197, that when a preliminary decree awards past and future mesne profits to be ascertained by inquiry, no application is necessary to invoke the court to proceed from the stage of such preliminary decree to a final decree. So an application for ascertainment of such mesne profits has no bounds of limitation.

But, if at all there is to be a period of limitation for such applications, it would be one under article 181 only. An application for ascertainment of mesne profits is not an application in execution and is a part of the suit and continuation thereof. Under O. 20, r. 12 of the C. P. Code the right to apply for ascertainment of mesne profits arises either when the delivery of possession is actually given, or when 3 years expire from the date of the preliminary decree, whichever event occurs first. A. I. R. Pat. (1924) 781. But such an application was held to be an application in execution and governed by article 182 in 25 Bom. L. R. 810, 1923 Bom. 366.

The article is also applicable to an application for making a legal representative of a deceased person, who was himself not a party, party to a proceeding. 1924 L. 316. The article is also applicable to application by the decree-holder for recording part-payment and for execution for remaining amount due, 1922 Cal. 30; for revival of execution proceedings dismissed for default, 1924 Oudh 31; application to set aside an execution sale under s. 47 of the Civil Procedure Code, 24 I. C. 366, 42 Mad. 753; to an application under O. 34, r. 6 (2) of the Civil Procedure Code, 42 Mad. 52; for restitution of property attached, but not covered by decree, 1922 Bom. 271, 1924 Lah. 166, 1919 Pat. 282; for restoration of a suit under the inherent powers of a Court, 47 I. C. 137; for issue of fresh proclamation. 9 I. C. 634; application to certify payment under decree, 38 B. 47; application for time, 14 Bom. L. R.

765; application to transfer decree, 35 A. 389; for restitution, 73 I. C. 200 (F. B.)—but *cf.* 1923 Pat. 1 where article 182 was held applicable; 45 Bom. 1137, 23 Bom. L. R. 480.

The article is not applicable to applications which are not within the Civil Procedure Code. It is inapplicable to applications in insolvency Proceeding, 17 M. L. J. 347, 1924 Lah. 331, 79 I. C. 443; under the Succession Act, 10 I. C. 130, Arbitration Act, 7 Bom. 316; application under the Criminal Procedure Code, 10 All. 350.

**Query:**—*Whether this article governs application to enforce an injunction, 46 Cal. 103, and for leave to appeal to Privy Council where a criminal appeal is decided by a High Court, 1924 Cal. 388.*

**Art. 182.**—For the execu- *Three years*; 1. The date of tion of a decree or order or *where* a the decree or of any Civil Court not *certified copy* order, or provided for by article *of the decree* 183 or by section 48 of *of order has* 2. (where there the Code of Civil Pro- *been register-* has been an cedure, Act V of 1908. *ed, six years.* appeal) the date of the final decree or order of the appellate Court, of the withdrawal of the appeal, or

3. (where there has been a review of judgment) the date of the decision passed on the review, or

4. (where the decree has been amended) the date of amendment, or

*Art. 182.*—For the execu- *Three years*; 5. (where the tion of a decree or order or *where a* application of any Civil Court not *certified copy* next herein provided for by article of *the decree* after mentioned 183 or by section 48 of *or order has* has been made) the Code of Civil Pro- *been register-* the date of ap- cedure, Act V of 1908.— *ed, six years.* plying in ac- (Ctd.) cordance with law to the proper Court for execution, or to take some step-in-aid of execution of the decree or order, or

6. (where the notice next herein after mentioned has been issued) the date of issue of notice to the person against whom execution is applied for to show cause why the decree should not be executed against him, when the issue of such a notice is required by the Code of Civil Procedure, Act V of 1908, or

*Art. 182.*—For the execu- *Three years; or*  
tion of a decree or order of *where a cer-*  
any Civil Court not pro- *tified copy of*  
vided for by article 183 or *the decree or*  
by section 48 of the Code *order has been*  
of Civil Procedure, Act V *registered, six*  
of 1908—(Ctd.) *years.*

7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date.

*Explanation I:—*

Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 5 of this article shall take effect in favour only of such of the said persons or their representatives as it may be made by. But where the decree or order has been passed jointly in favour of more persons than one, such

*Art. 182.*—For the execu- *Three years;* application, if  
tion of a decree or order *or where a* made by any  
of any Civil Court not *certified copy* one or more of  
provided for by article *of the decree* them, or by his  
183 or by section 48 of *or order has* or their repre-  
the Code of Civil Pro- *been register-* sentatives, shall  
cedure, Act V of 1908.— *ed, six years.* take effect in  
—(*Contd.*) favour of them  
all.

Where the de-  
cree or order has  
been passed  
severally  
against more  
persons than  
one disting-  
uishing por-  
tions of the sub-  
ject-matter as  
payable or de-  
liverable by  
each, the appli-  
cation shall take  
effect against  
only such of  
the said per-  
sons or their  
representatives  
as it may be  
made against.  
But where the  
decree or order  
has been passed  
jointly against  
more persons  
than one, the  
application, if  
made against

*Art. 182.*—For the execu- *Three years;* any one or  
tion of a decree or order *or where a* more of them,  
of any Civil Court not *certified copy* or against his or  
provided for by article *of the decree* their represen-  
183 or by section 48 *of or order has* tatives, shall  
the Code of Civil Pro- *been register-* take effect  
cedure, Act V of 1908.— *ed, six years.* against them  
(*Cld.*) all.

*Explanation II.*—  
“Proper Court”  
means the  
Court whose  
duty it is to  
execute the de-  
cree or order.

#### Commentary.

**Scope :—**This section governs applications for execution of a decree which are not provided for by article 183 or by sec. 48 of the Civil Procedure Code. The effect of sec. 48 of the Civil Procedure Code is not, however, to supersede the law of limitation. Sec. 48 merely fixes a period of limitation after which execution of a decree, though not barred by the Limitation Act, may not be granted.

An application for execution is governed by the law of Limitation in force when the application is made. The Court must of its own accord decide all questions of limitation evident before it or arising before it, and has no power to alter the law of limitation, and neither the Court nor an agreement between the parties can enlarge the time allowed by law for execution of a decree.

The article governs execution applications. Such applications are to be made within 3 years of the date of the decree (and if the decree is registered, then within 6 years).

(a) The starting point of limitation varies if there have been some further proceedings over the decree.

(b) There must necessarily be an *executable decree*, 40 M. L.J. 1. (P.C.). “There must be some inherent defect in the decree which makes it incapable of execution,” otherwise limitation will not begin to run against the decree-holder. (c) “When an application being made no final order is passed on that application, the original application is deemed to be pending; there is a continuation

of proceedings and a further order for revival of those proceedings is not affected by any period of limitation. A subsequent application praying in substance that the pending execution may be revived and carried on will not be governed by article 181 or 182, and there is no question of limitation in such a case (10 O. and A. L. R. 1285.)”

**Scope :—**An application to enforce an order of the Privy Council in accordance with sec. 144 of the Civil Procedure Code is governed by article 182 (60 I. C. 806, 33 M. L. J. 413); limitation for execution of a decree which does not fix any date for payment of the mortgage amount is within article 182 (19 I. C. 481); preliminary decree under sec. 88 of the Transfer of Property Act is governed by this article (39 Mad. 544); so also an application for restitution (1923 P. 371, 45 Bom. 1137); also an application for ascertainment of mesne profits (1923 Bom. 366, 25 B. L. R. 810); also application under O. 34, r. 6, of the Civil Procedure Code (10 I. C. 21).

**Mortgage suits :—**(1) Article 182 governs cases of ‘final decree for sale’ in mortgage suits. (2) A decree directing a sale on non-payment within a fixed time is neither governed by article 182, cl. 7 or cl. 1, but by the residuary article 181. (3) An application for a final foreclosure decree is governed by article 181. (4) An application to execute personal decree against the mortgagor is governed by article 182. (5) A redemption decree is governed by article 182. It is executable at the date of its passing and hence comes within the purview of clause 1 of this article.

**Continuation of proceedings :—**When proceedings are suspended by the court, or at the instance of a stranger and for no fault or act of the decree-holder, the proceedings will be deemed to have continued, 1924 Mad. 178, 1923 All.471, 1923 All.600-37 A. 518, 1924 Cal. 419. To construe a second application for execution merely as an application to review or continue an application made previously, it must be proved that the interruption to the previous execution proceeding was not attributable to the decree-holder himself, 10 O. and A. L. R. 973. If the stay is due to the decree-holder’s admission that his claim was satisfied, the proceedings will not be deemed to have continued, A. I. R. 1925 Cal. 207. The circumstances under which a previous execution proceeding is suspended ought to be such that the decree-holder must have had no control over them, or it must have been due at the instance of the judgment-debtor, 35 C. L. J. 135, or owing to an injunction obtained by the judgment-debtor, 27 A. 334.

Whereas, if they are suspended owing to the decree-holder’s default, there is no continuation, 1920 P. 109.

When the previous application was in time and was interrupted for no fault of the decree-holder's, a second application can be made at any time. An application for revival and continuation of a previous application is not governed by any limitation. But it is essential that the second application must be identical in its scope and character to the first application. "An application can only be construed as continuation of a previous proceeding, if it is similar in scope and character to the former application", 1923 P. 488, 89 I. C. 886. "An application for execution may be treated as one in continuation or revival of a prior one, similar in scope and character, the consideration of which has been interrupted by the intervention of objections subsequently proved to be groundless or suspended by reason of an injunction or a similar obstruction", 1925 Cal. 1185.

**Limitation :—**When an application is for execution of a decree which is not governed by article 181, 183 or s. 48 of the C. P. C. and is not a mere continuation or revival of a prior proceeding, and when the decree is *executable* at the date of the application, the period of limitation for such an application is three years, and 6 years if the decree is registered. This period of limitation begins to run from the date of the decree, 2 M. W. N. 258. But if some further proceedings are taken over the decree or order, then the starting point is varied according to the nature of the proceedings taken, as indicated in the third column of this article.

**Starting Point :—**

*Clause 1.*—If no proceedings are taken over the decree or order, time begins to run from the date of the decree or order. The date of the decree is the date when judgment is pronounced, (19 I. C. 410, 5 Pat. L. J. 490). In case of preliminary decrees which are not executable unless they are made final (such as decrees in suits on mortgages), the date of decree is the date of the final decree or order absolute (23 M. L. J. 675). Similar is the case with final decrees in partition suits (23 Bom. L. R. 308). In case of instalment decrees, the starting point is the date of the first default unless it is waived (42 Bom. 728, 25 B. L. R. 153). In instalment decrees default in payment of one instalment can be waived and time begins to run from the date of an actual default (A. I. R. 1925 Cal. 1012). The mere fact of the decree-holder not enforcing the right given to him under the decree of realising the total amount which is due at the date of such default does not of itself amount to a waiver (85 I. C. 784). Time for an application under sec. 15 of the D. A. R. Act with



reference to each instalment should be counted when each is payable, 27 B. L. R. 196.

If there are objections in the way of an application for execution, time will commence running when such objections are removed, 89 I. C. 836. In case of a joint decree, an application to execute it against some defendants saves time as against all of them, 88 I. C. 1039, 1925 Mad. 152. But an application against a judgment-debtor does not save time as against the surety, 60 I. C. 265. In case of an application which is defective as it has failed to comply with provisions of O. 21 rr. 11 to 24, and which is amended at a subsequent date, the date of the original application is nevertheless the proper date of the application, A. I. R. 1924 Ondh 399.

*Clause 2.*—Where there has been an appeal, the date of the final decree or order of the appellate Court, or the withdrawal of the appeal is the starting point of limitation. The date of the appellate decree or order, in such cases, provides a starting point of limitation against the judgment-debtor and even against the sureties of the original decree, 44 Bom. 34. When there are several defendants, an appeal against some of them will prevent time running against others also, 22 I. C. 685 77 I. C. 357. If a revision petition is rejected, there is no fresh starting point, 20 I. C. 563. If pending an appeal the respondent decree-holder dies and if the appeal abates thereafter, the date of the decree is the date when the appeal came to an end, A. I. R. 1924 Cal. 686, 1925 Pat. 585. If there is an appeal by some of the defendants and it is probable that it would imperil the entire decree, time begins to run from the date of the appellate decree, 79 I. C. 477, A. I. R. Patna 40. Time fixed for the payment of instalments in case of an instalment decree which is confirmed on appeal, should be reckoned from the date of the confirmation of the decree, 49 Bom. 305, 27 B. L. R. 196.

*The expression 'appeal' contemplates an appeal against a decree or order in the suit, and does not contemplate an appeal against an order made on application to set aside that decree, 44 I. C. 575, 1922 Nag 199. The appeal must also be competent in law. 1923 Cal. 288. If an appeal is dismissed for want of prosecution, time runs from the date of the original decree, 24 B. L. R. 659, 1922 P. C. 187. An order dismissing an appeal for default does not deal judicially with the suit and is not an order adopting, confirming or varying the decision appealed from. The appellant (decree-holder) is in the same position as if he had not appealed at all. 27 M. L. J. 1 (P. C.)*

If appeal is dismissed for deficiency in Court fees, the date of such dismissal is the date of the starting point, 1924 Cal. 349.

*Clause 3.*—If there has followed a review proceeding on a decree, the date of the review affords a starting point of limitation. The application for review ought to be heard and a fresh decision confirming, modifying or varying the original order ought to be pronounced, 3 Pat. L. J. 119.

*Clause 4.*—In case the decree is amended, the date of amendment is the starting point of limitation. The amendment must, however, be before the expiry of the starting period, 1924 Lah. 329.

*Clause 5.*—*If an application in accordance with Law or to take some step in aid of execution has followed the decree, then such an application affords a starting point of limitation. "If the applying complies with the form and procedure prescribed in that behalf, the applying is in accordance with law, and not the less so because, on the merits of the application, whether for one reason or another, the application had to be refused. The words 'in accordance with law' have no reference to the likelihood of the application succeeding or to the competency of the court to grant any particular relief prayed for. (Per Chandavarkar and Batchelor JJ.) 37 Bom. 42, 14 B. L. R. 861.*

An application with a *bona fide* belief that the court can grant the application prayed for is one in accordance with law, A. I. R. 1925 Oudh 77. An application does not cease to be in accordance with law merely because it has been dismissed, 79 I. C. 880; or because the applicant fails to comply with certain conditions imposed by the decree, A. I. R. 1924 Bom. 64; nor because of mere superfluity or incorrectness in the reliefs asked for, A. I. R. 1924 Pat. 471. If a debtor has not paid his debt, the words "in accordance with law" should not be too liberally construed in his favour, 1925 Oudh 77.

The words 'a step in aid of execution' mean a step taken for the propose of obtaining execution. To consider whether a step taken is a 'step in aid' or not, the test of *bona fides* should be applied which is an important factor in such determination, 90 I. C. 938. The court in which the application is made must have proper preliminary and territorial jurisdiction in respect of the execution of the decree, 1922 Bom. 359, 20 B. L. R. 872, 1922 Pat. 183.

The following have been construed to be 'step in aid of execution':—

An application for execution to a proper court which loses its jurisdiction over the property subsequently, 27 B. L. R. 649; an oral

application to court to pay money in satisfaction of a decree, 27 B. L. R. 671; application for arrest of the judgment-debtor, 1925 Oudh 453, 3 All. L. R. 523; to reject objections to execution, 19 A. L. J. 641, 40 All. 668; for time to ascertain the address of judgment-debtor, 50 I. C. 278, 38 All. 690; for transfer of a decree, 35 All. 389, 42 Bom. 420; to certify payment, 1925 Rang. 26, L. R. 393, 38 All. 529, 38 Bom. 47, for issue of a fresh proclamation of sale, 9 I. C. 634, one out of time when it is accepted by the court, 23 B. L. R. 1013, 37 Bom. 317. *Cf.* 37 Bom. 42; for bringing on record legal representative of the judgment-debtor, 26 M. L. J. 83, 85 I. C. 657, 79 I. C. 880; an oral application to court for execution, 1923 Nag. 11 (1), 18 I. C. 236, asking assistance for recovery of payment under a decree, 24 B. L. R. 284; for ascertainment of judgment-debtor's share in the properties attached, 23 B. L. R. 107, to certify payment out of court, 1924 Nag. 185, 34 I. C. 625, 1925 Rang. 26; for sending for records, 1925 All. 394; by an assignee of a decree to be brought on record, 1925 Nag. 362; an affidavit as evidence of attachment process, 4 Pat. L. J. 521; application for substituted service, 36 All. 439; for transfer of decree, 42 Bom. 420, 20 B. L. R. 421; for extension of time for *bona fide* purposes, 1923 Cal. 572, 37 Bom. 317, 36, Bom. 638; for payment of money deposited in court, 13 B. L. R. 661, 27 B. L. R. 649, 1925 Bom. 414, for revival of previous proceedings, 64 I. C. 727; for notice to the judgment-debtor to show cause why the decree should not be executed, 54 I. C. 433; by an assignee of a decree to get his name substituted, 1924 Oudh 172; even though insufficiently stamped, 1924 P. 23; or allied with any other formal irregularity, 17 B. L. R. 203; 40 Mad. 949, (but *cf.* 63 I. C. 971, 1924 P. 333, 20 B. L. R. 172); for *decree nisi* in cases governed by the Deccan Agriculturists' Relief Act, 24 B. L. R. 269; step to remove any obstacle thrown by the judgment-debtor in the way of the realisation of a decree, 1925 Pat. 459; mere long delay does not invalidate an otherwise proper step in aid of execution, 1925 Mad. 714; an application for execution of a decree by a transferee of the decree, even though the transfer was subsequently vitiated, is a step in aid of execution, 1924 Mad. 673; to make an instalment mortgage decree final, 1924 Bom. 71; for summoning witness for contesting a claim raised to attached properties, 79 I. C. 411; payment of Batta with application for attaching moveables, 89 I. C. 894 (1), A. I. R. 1925 Mad. 880, but *cf.* 1925 All. 646; an execution application even if it states the number of suits wrongly, 1925 Lah. 525; for bringing on record the legal representative, even if the name is wrongly stated, 90 I. C. 1050, filing of a list of witnesses, 44 I. C. 604; appeal by a decree-

holder against an order declaring the judgment-debtor insolvent, 16 B. L. R. 612; even an informal application for execution, 23 I. O. 99.

The following are held *not to be steps in aid* of execution :—

An affidavit to prove service of summons, 54 I. O. 1; application against a discharged judgment-debtor, 1924 Bom. 180; for ascertaining mesne profits, 47 Bom. 778; for a succession certificate by the successor of judgment-debtor, 15 B. L. R. 557; to a court from which decree has been transferred, 1923 Pat. 384; to withdraw an application, 1919 Pat. 80; a compromised application for postponing execution, 25 B. L. R. 490; to a court which transferred a decree to transfer the already transferred decree, 1922 Bom. 359; plaintiff defending an appeal of the judgment-debtor in an execution proceeding, 48 I. O. 187; an appeal to the High Court against an order in execution, 1923 Bom. 431; application to be put in possession by a decree-holder who purchases property in execution, 1923 Pat. 22; payment of mere *batta* for attachment without an application, 1925 All. 646; a defective application returned for amendment, 54 I. O. 933; an application to a court without jurisdiction, 1923 P. 384, 38 Mad. 640; for stay of proceedings at the instance of the plaintiff, 1923 Bom. 213; for a copy of decree to be executed, 60 I. O. 117; asking for a relief not granted by the decree, 43 I. C. 537 (but *cf.* 35 I. O. 614); an application which fails to mention the decretal amount and the awarded cost, 65 I. O. 120; a superfluous repetition of a written application, 1924 Mad. 186; payment of process fee for warrant of arrest without a prayer for the issue of such process, A. I. R. 1924 Mad. 906, 82 I. C. 497; to a court without jurisdiction owing to a transfer of decree, 1924 Pat. 362; a mere payment out of court. 1925 Mad. 131, 82 I. C. 743; mere filing of an affidavit without an application for execution, A. I. R. 1924 All. 811; if properties under execution lie in two different districts, an application for transfer certificate is not a step in aid relating to properties within the district itself, 90 I. O. 274; one not giving particulars as to how the court is to assist the decree-holder, 1925 Cal. 1135; mere payment of process fee for an attachment of property in execution of a decree, 1925 All. 646; an application by the assignee of the plaintiff's rights in the suit pending the suit, 28 Bom. L. R. 761; application for postponing a *Darkhast*, 25 B. L. R. 518; application against a discharged insolvent is not a step in aid, 25 B. L. R. 1237.

In cases of steps in aid of execution, the starting point is the date of the application and not the date when the application is

disposed of, nor when the court actually gives the aid, 17 C. L. J. 422, 1922 Nag. 166. It can only be vitiated by material defects, 1919 Pat. 121.

“Where an amount of money is in court to the credit of a suit, not being the proceeds of execution, an application for payment of such amount is not a step in aid of execution. An application to be a step in aid of execution should be one made in a pending *execution application*.” 45 Mad. 466, 1925 Mad. 703.

*Clause 6.*—If the C. P. Code of 1908 requires a notice to be issued against the judgment-debtor, inviting him to show cause why the decree should not be executed against him, then limitation begins to run from the date of issue of such notice. The notice must actually be issued by the court. The plaintiff has to apply for execution and the court *suo motu* issues such notice. The date of the actual issue of notice, and not the date when an order issuing a notice was passed, is the starting point of limitation. 20 B. L. R. 351, 1917 Pat. 52, 1918 Pat. 130, (but *cf.* 40 All. 630 F. B.).

The notice contemplated by this article is the notice in accordance with Order 21, r. 22 of the C. P. Code. The notice must be *necessary in law*, and must not be improper. The execution application upon which such a notice follows, may not be in accordance with law. 90 I. C. 817, but it is essential that the application should be to a proper court. 78 I. C. 241, 39 Mad. 923.

*Clause 7.*—When the decree directs payment at a certain date, then the date is specified. This clause governs instalment decrees and other decrees which fix time for payment of money due under a decree. In case of an instalment decree, default in payment can be waived and time begins to run from the date of the *actual default*; but *cf.* 13 A. L. J. 666, 36 I. C. 978, 36 All. 482 and 37 I. C. 916, which lay down that there is no option of waiver and time begins to run from the date of the first default, when the whole amount then due under the decree becomes recoverable. Mere abstinence on a decree-holder's part to execute a decree is not waiver. As regards the Bombay High Court, it has ruled in 27 Bom. 1, F. B., that a waiver by a decree-holder gives him a new start of limitation from a *fresh* default.

Cases:—Where the decree directs ascertainment of mesne profits, time runs from the date of such ascertainment, 40 All. 211. In instalment decrees, the decree-holder has an option of waiver, 1919 Pat. 46; what is waiver—45 I. C. 324.

*Explanation I.*—When there is a joint decree, but the executable portions against each of the defendants are distinguished in the decree, then a step in aid as against some of them will not be one as against others. But when the several judgment-debtors are jointly and severally liable under a decree, an application as contemplated by clause 5, as against one of them will affect the interest of all of them. So too is the case with joint decree-holders. If the joint decree-holders have got distinguishable claims under the decree, an application under clause 5, by one of them will not save time in favour of others; whereas if the decree awards joint and several reliefs to co-decree-holders, then an application by one will enure to the benefit of all. (*Cf.* 26 C. L. J. 118). A surety who pending an appeal stands surety for the judgment-debtor and thereby enables him a stay of execution is not a joint decree-holder within the meaning of explanation I, article 182, 85 I. C. 637.

*Explanation II.*—Usually the proper court is the court which passed the decree, but when there is a transfer of decree, it is a question left open by conflicting legal decisions as to which is the Proper Court. It has been held sometimes, that unless the court to which a decree has been transferred, issues a certificate under s. 41 of the C. P. Code of 1908, that court is the proper court and the transferring court is not the proper court. In 188 P. R. 168, however, a contrary view has been taken.

*Art. 183*—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council. *Three years.* When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right:

Provided that when the judgment, decree or order has been revived, or some part of the principal money secured

*Art. 183*—To enforce a judgment, decree or order of any Court, established by Royal Charter in the exercise of the ordinary original civil jurisdiction, or an order of His Majesty in Council. (*Ctd.*)

*Three years.* thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest or his agent, to the person entitled thereto, or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment or the latest of such revivors, payments or acknowledgments, as the case may be.

#### Commentary.

This article provides for a special period of limitation in case of decrees or orders passed by the High Courts established by Royal Charter in the exercise of their *original civil jurisdiction*, or an order of His Majesty in Council. The date of the starting point is the date of such decree, and period of limitation is 12 years from such date. If some voluntary acts of the judgment-debtor

falling within sec. 14 and sec. 20 of the Limitation Act have followed such a decree and before the statutory period elapses, the date of such an act would give a starting point of limitation. The same is the case if there is a revivor owing to other circumstances. All orders and decrees passed by the Privy Council whether on first or second appeal are governed by this article even when the execution proceedings are carried in a subordinate court.

**Cases :—**It was *held* in 42 Cal. 776, that an application to make a preliminary decree final in a mortgage suit, passed by the High Court in exercise of its original civil jurisdiction was one "to enforce a judgment or decree" and was governed by this article. (also *cf.* 47 Cal. 746 for the execution of an order absolute.)

Where a preliminary decree is passed by the P. C. and the making of a final decree by the District Judge is purely a ministerial function, *held* that the execution of such a decree was governed by article 183, 78 I. C. 766.

**Revivor :—**When a court decides on an application that the decree is still enforceable, there is a revivor of the decree from the date of such order, 36 I. C. 633, where execution cannot start without the permission of the court, the granting of such permission is revivor, 23 C. L. J. 641. But it is essential that the notice of such revivor must go to the judgment-debtors against whom it is sought to revive the decree, 40 I. C. 618. 40 Mad. 1127; the notice must be issued to all judgment-debtors concerned, 38 Mad. 1102; 1 Pat. L. J. 385 "To amount to an order of revivor, the order must be one deciding that the decree is still capable of execution and that the decree-holder is still entitled to execute it." 78 I. C. 1001. A decree which does not create community of interest in all the decree-holders will not allow an order in execution, operating as a revivor in favour of one of the decree-holders, to be of avail to any of the others.

Neither an application to transfer a decree, nor an application under order 21. r. 22, amounting to a revivor of the decree, 11. I. C. 216. The words 'step in aid of execution' in article 182 and the words 'revivor' in article 183 are not identical in their meaning or co-extensive in their application, 1925 Cal. 668. An execution by a prior mortgagee does not amount to a revivor of a puisne mortgagee's right (1925 Cal. 834 F. B.); nor is an order recognising the assignee of the decree-holder and transmitting the decree to another court for execution, a revivor of the decree, 39 C. L. J. 590, 87 I. C. 61.

*Please note that explanation 1 to article 182 does not apply to revivor of original decrees, 40 I. C. 618.*



Payment :—“Where a court orders payment out of the sale-proceeds realised in execution, the court so acting is the agent of the judgment-debtor and an actual payment out of Court in obedience to such an order would give a fresh starting point of limitation.’ 1924 Mad. 638, 78 I. C. 832. (*Cf.* 22 Bom. 340). Under article 183 of the Limitation Act, the payment is not required to be made either by the judgment-debtor or by some person acting on his behalf; even if payment is made for the judgment-debtor, or on his account, it will be a payment competent to afford a fresh starting point of limitation under article 183, A. I. R. 1925 Mad. 1131, 90 I. C. 1028.

*N. B.*—An application for a personal decree in a mortgage suit is not one for enforcing a judgment or decree within the contemplation of article 183 and hence that article has no application, A. I. R. 1925 Cal. 834 (F. B).

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### THE SECOND SCHEDULE.

TERRITORIES REFERRED TO IN SECTION 31.

(*See section 31*).

The Presidency of Fort St. George.

The Presidency of Bombay.

The Sambalpur District of the Bengal Division of the Presidency of Fort William.

The United Provinces of Agra and Ondh.

Burma .

The Central Provinces.

Ajmer-Merwara.

### THE THIRD SCHEDULE.

[*Repealed by the Amending and Repealing Act XVII of 1914.*]

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APPENDIX A.  
SUMMARY.

(A General Outline of the Act.)

The Law of Limitation is an adjective law and is a special part of the procedural law which lays down periods of limitation for suits, appeals and applications to courts. It is obligatory for a person, after he has a legal opportunity (*i. e.*, a cause of action) for taking proceedings at law, to take them within proper limits of time. The main function of the law of limitation is to prescribe such periods of limitation. "The statute discourages litigation by burying in one common receptacle all the accumulations of past times which are unexplained and have now from lapse of time become inexplicable. It is better that a negligent owner, who has omitted to assert his right within the prescribed period should lose his right, than that an opening should be given to interminable litigation, exposing parties to be harassed by stale demands, after the witnesses are dead, and the evidence of title lost. The statute of limitation assumes the existence of a cause of action and does not define or create one."

Such a law in India, termed the Indian Limitation Act of 1908, and extending to the whole of British India (s. 1), therefore, is a law passed to serve the expediency of consolidating and amending the law relating to the limitation of suits, appeals and applications to courts (preamble).

The Indian law of limitation does prescribe periods of limitation for taking proceedings in a court of law; but it goes further than that and provides for rules of acquiring by possession the ownership of easements and other property (preamble). In short, it lays down rules of limitation and prescription, both. "Limitation properly so called, is negative in its operation, depriving a person of a property which he before possessed. Prescription, on the other hand, is affirmative in its operation, conferring on a person a right to that which he has hitherto enjoyed in fact only. .... Prescription against personal claims is acquired by the debtor without any act on his part, and results merely from the creditor not having instituted any action; the prescription of right to property is that, by which a person who has possessed an estate for a given number of years as his own, acquires the property of the estate, although he does not show any title. This prescription, instead of being acquired, like the former, by the mere nonfeasance of the creditor, without any act

of the debtor, is on the contrary acquired by the fact of possession in the person who prescribes." By prescription, after a certain lapse of time, ownership without possession fades away in a nullity, and possession without title ripens into ownership.

The Indian Limitation Act has a twofold purpose to serve, *e. g.*, that of prescribing periods of limitation for taking action in a court of law, and of providing for rules of acquiring property by possession. We have, therefore, to study it with a twofold vision.

### I. Rules of Limitation.

Prescribing rules of limitation is the primary function of the Act. The intention of the law of limitation is not to give a right where there is none, but to interpose a bar after certain period to a suit to enforce an existing right. The Act is a law of Procedure and, as such, the law, *prima facie*, applicable to a suit, is the law in force at the date of the institution of the suit or any other proceeding, and not the law under which the right accrued, in the absence of circumstances indicating an intention on the part of the legislature to affect retrospectively existing causes of action.

It should be noted that the law only governs the taking of proceeding in a court of law, but does not put a bar to any defence in any case, except where a suit falls under sections 26 and 28 of the Act. Similarly, the Act has no application to cases in which the court moves *suo motu*.

The words 'plaintiff', 'defendant' and 'applicant', as used in this Act, include any person through whom the plaintiff derives his right to sue, the defendant his liability to be sued and an applicant his right to apply. The words 'suit', 'an appeal' and 'an application' are mutually exclusive. (S. 2).

Any proceeding taken after the period (which is to be counted according to the Gregorian Calendar, S. 25), prescribed on that behalf in the 3rd column of the 1st Schedule appended to this Act, shall be dismissed although limitation has not been set up as a defence. (S. 3).

All suits instituted and proceedings taken in British Indian Courts are subject to the Indian Limitation Act. If a case is based on a contract entered into in a foreign country, this Act would apply if the proceedings are taken in British India. A foreign rule of limitation will not be recognised in Courts in British India, except where the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule. (S. 11).

This Act does not affect the following suits:—(a) Cases coming within the purview of S. 25 of the Indian Contract Act; (b) Cases governed by any special or local law, prescribing special periods of limitation and the modes of their application; (c) Cases under the Indian Divorce Act, (S. 29); (d) A suit instituted for the purpose of following trust property, or the proceeds thereof, or for an account of such property or proceeds, in the hands of an express trustee, (not being a *benamidar*, a mortgagee remaining in possession after the mortgage has been satisfied or a wrongdoer in possession without title Defendant), or against his legal representative or assigns (not being assigns for valuable consideration). No period of limitation will be a bar to such suits. (S. 10).

The day mentioned in the third column of the 1st Schedule refers to the day when there is a complete cause of action for taking proceedings, and proceedings ought to be taken before the expiry of the period mentioned in the second column of the 1st Schedule, as counted from the day mentioned in the third column. If proceedings are not taken within these limits, the right of action will be extinguished. (S. 28).

The date of the institution of a suit is deemed to be the date, (i) when the plaint is presented to the proper officer of the court, (ii) or when application for leave to sue as a pauper is made (in case it is granted), (iii) or when a claim is registered in the office of the official liquidator, in case of a company in compulsory liquidation, (explanation to S. 3), (iv) except in case of a transfer of interest in the suit property. During the pendency of a suit, or except in case where a plaintiff is made a defendant or a defendant a plaintiff, if during the pendency of a suit, a new party is added, then the suit would be deemed to have been instituted against such added party on the date when he was so made a party (and not when the suit was first instituted). (S. 22).

The day mentioned in the 3rd column is, however, postponed in some cases, in some cases there is an exclusion of a special period from the total run of limitation and in some cases, there is afforded a fresh starting point even after a partial run of statutory period. A postponement of limitation occurs when the period of limitation starts running at a date subsequent to the day mentioned in the 3rd column. Exclusion of a special period occurs when a special period is excluded from the total run of the statutory period from the date of the cause of action. A fresh starting point is afforded when the period of limitation, as prescribed in the 2nd column, is made to run afresh.

(A) *A Postponement of the Period of Limitation* is afforded in the following cases :—

(1) If the Court is closed on the day when the statutory period prescribed for a proceeding expires, proceedings may be taken on the very next working day of the court. (S. 4).

(2) Proceedings in an appeal or an application may be taken even after the expiry of the period of limitation, if the person taking them satisfies the court that he had a sufficient cause, as in the case of a misleading order or practice of the High Court, for not taking them at an earlier date. (S. 5 and *Expl.*).

(3) (a) If, at the date of the accrual of the cause of action in case of a suit or an execution application, the person entitled to take proceedings is suffering from minority, insanity or idiotcy, or from more than one of these disabilities, either simultaneously or continuously, he may take proceedings within the same period of limitation after the cessor of such disability or disabilities. It is necessary in case of continuous disabilities, that there should be no gap of an intermittant period of ability between them. For, the moment there is an ability to take proceedings, Limitation begins to run, and when it once begins to run, a subsequent disability does not stop it. (S. 9). If the person entitled to take the proceedings suffers from such disabilities upto the end of his life, then his legal representative may take proceedings within the period. The same concessions of disabilities are extended in the case of such a legal representative, if he is so disabled at the date when his predecessor in title dies. (S. c.).

(b) If more persons than one have a right to take proceedings in a suit or in an execution application, and if some of them can validly give a discharge, then the concession does not enure to the benefit of any one of them; but if the non-disabled persons cannot give a valid discharge without joining the disabled ones in the proceedings, then the disability of some of them enures to the benefit of all. (S. 7).

*N. B.*—The provisions as regards disability do not apply to pre-emption suits, or do not extend the ordinary period of limitation to more than 3 years from the cessation of the disability or disabilities. (S. 8).

(4) Where a debtor holds the letters of administration of the creditor, time will begin to run from the close of the administration proceedings in case of debts due from him. (S. 9).

(5) In case of a suit for compensation for wrongs which become actionable only on proof of special damage, the period

will be computed from the date when the special damage occurs, and not from the date of the wrong. (S. 24).

(6) Except in cases of suits of pre-emption, and for possession of immoveable property or a hereditary office, if before the accrual of the right to institute a suit or make an application, the person who would have been able to take proceedings, or against whom proceedings could have been taken dies, time would run from the date when there is a competent legal representative to sue or to be sued. (S. 17).

(7) In case of suits and applications, if the person having a right to take proceedings is by means of fraud kept away from the knowledge of such right, or the title over which such right is founded, or of a document necessary to establish such right, then time would begin to run from the date when he comes to know of the fraud, or has means of producing or of compelling to produce the document, in respect of suits against a person guilty of such fraud, or accessory thereto, or against a person claiming through such person otherwise than in good faith and for a valuable consideration. (S. 18).

*B. Exclusion of a Special Period of Limitation* takes place in the following cases:—

1. (a) The day from which there is a cause of action for taking proceedings shall always be excluded. (b) In case of an appeal, an application for leave to appeal, an application for review of judgment or for setting aside an award, the day of judgment and the period requisite for obtaining copies of the decree, sentence or order over which further proceedings are to be taken, or of the award which is sought to be set aside, shall be excluded. In case of appeal or review proceedings, time requisite for taking the copies of the judgment upon which such proceedings are founded, shall also be excluded. (S. 12).

(2) In case of a suit, the time during which the defendant was absent from British India and the territories beyond British India under the Government administration, shall be excluded. (S. 13).

(3) The period during which the plaintiff was, during the statutory period prescribed for any suit or application, prosecuting another fruitless civil proceeding against the same defendant and founded on the same cause of action, or was resisting an appeal, shall be excluded from the total run of the period of limitation. The plaintiff must have been prosecuting such proceeding in good faith—(which is due care and attention. *Cf.* Definition), and the proceeding must have proved fruitless owing to the court having

no jurisdiction, due to misjoinder of parties or causes of action, or for a cause of a like nature. In counting such period, the day of the beginning and of the termination of the proceeding shall also be excluded. (S. 14).

(4) In case of a suit or an execution application, if the proceedings are stayed owing to an injunction or order, the period from the beginning to the termination of the suspension shall be excluded (S. 15).

(5) If before the institution of a suit, notice is required to be given in accordance with the requirements of any enactment, the period of the notice shall be excluded. (S. 15 (2)).

(6) In case of a suit for possession of a property by an execution purchaser, the period taken by a proceeding to set aside the execution sale, shall be excluded. (S. 16).

C. *A Fresh Period of Limitation* begins to start in the following cases :—

(1) In case of a suit or an application in respect of a property or a right, if before the expiry of the statutory period, the person against whom such property or right is claimed, or a person through whom such person derives his title or liability, gives an acknowledgment,—(which would be sufficient, even if it omits to specify, the exact nature of the property or right, or contests the time for payment, delivery, performance or enjoyment, or is accompanied by a refusal to pay, or is addressed to a wrong person)—in writing and duly signed, in respect of the liability or right, a fresh period of limitation begins to run from the date when the acknowledgment is signed.

N. B.—The signature may be made personally by the person who acknowledges or by an agent duly authorised to acknowledge and sign. Oral evidence of the contents of an acknowledgment may be given subject to the provisions of the Indian Evidence Act. (S. 19).

(2) In case of a suit for a legacy or a debt, if before the expiry of the period of limitation, 'interest as such,' is paid by the debtor or by the person liable to pay the legacy, or by his duly authorised agent in this behalf, or if a part-payment of the principal in respect of the debt, as evidenced by the handwriting of the person making the same, is made by the debtor or by his duly authorised agent in this behalf, a fresh period of limitation begins to run from the date of the payment. (S. 20).

NOTE :—(a) Debt includes money payable under a decree or an order. (b) In case of mortgages with possession, receipt of

rent by the mortgagee shall be deemed to be payment. (c) In case of persons under disability, the guardians of the disabled persons, or the authorised agents of such guardians, shall be deemed to be agents duly authorised. (S. 21; but one of joint partners, contractors, executors or mortgagors shall not be presumed to be agents for these purposes, unless the fact of the authorised agency between them is substantially proved. (S. 21).

(3) In cases of continuing torts or breaches of contracts, a fresh period of limitation begins to run every moment of the time during which the breach continues. (S. 23).

## II. Rules of Prescription.

(N. B.—This part of the provisions of the Act is repealed in the territories to which the Indian Easements Act is extended).

So far, the Limitation Act provides for the limitation of suits, appeals and applications to courts. A second object of the Act is to lay down certain rules for the acquisition of ownership by possession. It lays down the following rules in that behalf:—

(1) When any affirmative or negative easement has been peaceably and openly enjoyed as of right, and without interruption,—(which must amount to an actual discontinuance of the possession or use owing to obstruction by the act of some one else than the claimant of the easement, who submits to the obstruction, or acquiesces for ‘at least one year after he has notice of the obstruction, and of the person who obstructs’), and for a period of twenty years, a right to such an easement shall be absolute and indefeasible. An easement can thus be acquired by the uninterrupted and open use, under assertion of a right, for a period of 20 years. It is necessary that the user should continue till within two years before the institution of any suit in which it is sought to contest any claim to such an easement.

If the servient tenant is Government, then the period is to be reckoned for a term of 60 years. (S. 26).

N. B.—If the land upon, over or from which an easement has been enjoyed or derived was, during the period of prescription, subject to the limited interest of a life tenant or of a tenant for a period of more than 3 years, the period of enjoyment during the continuance of such tenancy, shall be excluded from the total period of prescription, if the claim to the easement is resisted by the reversioner within 3 years of the termination of the limited interest. (S. 27).



An easement includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit, any part of the soil belonging to another, or any thing growing in, or attached to or subsisting upon the land of another. (*Def. S. 2*).

Easement includes a *profit a prendre*.

After the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to the property shall be extinguished. (*S. 28*).

### NOTE.

#### *The Second Column.*

The Limitation Act provides for variations in the 3rd column of the first Schedule. But the 2nd column is always unaffected, however, with the following exceptions:—

(a) If the period prescribed by this Act for any particular suit is shorter than the one prescribed for such suit by the Act of 1877, then the suit may be instituted within the period of two years next after the passing of this Act, or within the period prescribed by the Act of 1877, whichever expires first.

(b) In so far as the territories mentioned in the second Schedule are concerned, a suit for foreclosure or for sale by a mortgagee, may be instituted within two years of the passing of this Act, or within 60 years from the date when the mortgage-money became due, whichever expires first, unless such suit is pending at the date of the passing of this Act.

## SCHEDULE I.

### Summary of Important Articles.

#### FIRST DIVISION—(SUITS).

Period of time.	Nature of the Suit.
PART I—30 DAYS. ...	{ Contesting an award under the Waste Land's Act. (1).
PART II—90 DAYS. ...	{ Compensation for a wrong of commission or omission, under an alleged pursuance of a statutory enactment. (2).
PART III—6 MONTHS....	{ (a) for possession under Specific Relief Act, s. 9. (3). { (b) under Employer's and Workmen's Act. (4).

FIRST DIVISION (SUITS)—*Contd.*

Period of time.	Nature of the suit.
PART IV—1 YEAR. ...	<ul style="list-style-type: none"> <li>(a) on summary procedure on negotiable instruments. (5).</li> <li>(b) for penalty or forfeiture. (6).</li> <li>(c) for wages of household servant or artisan. (7).</li> <li>(d) for price of food, drink, and lodging in a Hotel. (8, 9).</li> <li>(e) pre-emption suits. (10).</li> <li>(f) for setting aside sales in pursuance of orders of Government, the Revenue Authorities or a Civil Court. (12).</li> <li>(g) against orders of Government, Revenue Authorities, Land Acquisition Officers and of a Civil Court in a proceeding other than a suit. (11, 11A, 14 to 18).</li> <li>(h) compensation suits for torts of personal injury, defamation, seduction, distress, and by carriers; such suits by legal representatives. (19-31).</li> </ul>
PART V—2 YEARS. ...	<ul style="list-style-type: none"> <li>(a) against perverted use of property. (32).</li> <li>(b) against legal representatives. (33-35).</li> <li>(c) compensation for torts of misfeasance, nonfeasance and malfeasance, generally. (36).</li> </ul>
PART VI—3 YEARS. ...	<ul style="list-style-type: none"> <li>(a) compensation for torts relating to property. (37-42).</li> <li>(b) by a ward to set aside a sale by his guardian. (44).</li> <li>(c) for recovery of specific moveable property. (48-49).</li> <li>(d) for hire of animals. (50).</li> <li>(e) for refund of a legacy. (43).</li> <li>(f) by an attorney or vakil for charges. (84).</li> <li>(g) all suits for recovery of money—based on negotiable instruments, credit transactions, bonds, contracts of sale, &amp; balance of accounts. (51 to 64, 66 to 80, 85).</li> <li>(h) suits on contracts of agency, indemnity, guarantee, on voidable contracts; and for contribution, for rent and meane profits. (106-112, 81 to 83, 86 to 90, 94 to 100).</li> </ul>

FIRST DIVISION (SUITS)—*Contd.*

Period of time.	Nature of the suit.
PART VI—3 YEARS. ...	(i) suits under the Specific Relief Act. (91 to 93, 113, 114).
	(j) for wages not otherwise provided for, and for seamen's wages. (101, 102).
	(k) suits on Muhammadan dower. (103, 104).
	(l) for compensation for breach of a promise and breach of contract, not in writing, and not registered. (65, 115).
PART VII—6 YEARS. ...	(a) suits for compensation for breach of contract, registered. (116).
	(b) upon a foreign judgment. (117).
	(c) declarations as to validity or invalidity of adoptions. (118, 119).
	(d) residuary article for suits which are not specially provided for. (120).
PART VIII—12 YEARS.	(a) upon a judgment obtained in British India. (122).
	(b) for possession of hereditary office and legacies. (123, 124).
	(c) for periodically recurring rights, such as maintenance. (128 to 131).
	(d) against purchasers from trustees and mortgagees. (133, 134).
	(e) all suits for possession of immoveable property, and joint family property. (125 to 127, 136 to 144).
	(f) 'by a mortgagee in a court not established by a Royal Charter', or for money charged on immoveable property. (135).
PART IX—30 YEARS...	(a) for recovery of moveable property deposited or pawned. (145).
	(b) for possession of a public street by or on behalf of a local authority. (146A).
	(c) a suit by a mortgagee in a court established by Royal Charter, for recovery of immoveable property. (146).
PART X—60 YEARS. ...	(a) all redemption suits. (148).
	(b) suits by or on behalf of the Secretary of State for India. (149).
	(c) suits by a mortgagee on English mortgage for foreclosure or sale. (147).

A Classification of Articles in the 1st  
Division of 1st Schedule.

Suits for :—	Period of limitation.
<i>Compensation :—</i>	
—for an act or omission under alleged statutory enactment, 2 ... ..	90 days.
—for land acquisition, 17, 18; false imprisonment, malicious prosecution, defamation, other personal injuries, distress, and against carriers and by legal representatives, 19 to 31 ... ..	1 year.
—for malfeasance, misfeasance or nonfeasance and against legal representatives, 33 to 36 ... ..	2 years.
—for torts to property, 37 to 42 ... ..	3 years.
—for breach of a promise, and of a contract not registered, 65, 115... ..	3 years.
—for breach of a contract registered, 116 ... ..	6 years.
<i>Immoveable property :—</i>	
—by a mortgagor to recover surplus collections by a mortgagee, 105 ... ..	3 years.
—for possession of immoveable property and of joint family property, 125 to 127, 134, 136 to 144 ... ..	12 years.
—On mortgages—	
—by a mortgagee for possession in a court not established by Royal Charter, 135 ... ..	12 years.
—by a mortgagee either for foreclosure or sale, 132... ..	12 years.
—by a mortgagee for possession, in a court established by Royal Charter, 146 ... ..	30 years.
—redemption suits, 148 ... ..	60 years.
—by English mortgagee for foreclosure or sale, 147... ..	60 years.
<i>Judgments :—</i>	
—on a foreign judgment, 117 ... ..	6 years.
—on a judgment obtained in British India, 122 ... ..	12 years.
<i>Money suits :—</i>	
—on negotiable instruments, summary procedure, 5 ... ..	6 months.
—for prices of food, drink, lodging, 8, 9 ... ..	1 year.
—on negotiable instruments and bonds, 66 to 80 ... ..	3 years.
—on credit transactions, 57 to 64, 85 ... ..	"
—contribution suits, 99, 100, 107 ... ..	"
—on contracts of sale, 51 to 56, 111 ... ..	"
"  "  agency ... ..	"

	Suits for :—	Period of limitation.
<i>Money suits :—</i>		
—indemnity and other contracts, 81 to 84, 86 to 88 and 90	... ..	3 years.
—for profits of a dissolved partnership, 106	... ..	"
—for profits of immoveable property, wrongfully received by the defendant, 109	... ..	"
—rent suits, 110	... ..	"
—for assessment of rent free land, 130	... ..	12 years.
—for arrears of maintenance, 128	... ..	"
<i>Moveable property :—</i>		
—for recovery of specific moveable property, 48, 49	... ..	3 years.
—by a Principal against Agent for moveable property not accounted for, 89	... ..	"
—for following in the hands of a purchaser from a trustee, 133	... ..	12 years.
—from depository or pawnee	... ..	30 years.
<i>Specific Relief Act :—</i>		
—under s. 9 of the Specific Relief Act, 3	... ..	6 months.
—declaration of forgery, 92, 93	... ..	3 years.
—specific performance, 113	... ..	"
—cancellation of instrument, 91	... ..	"
—recession of voidable contracts, 114	... ..	"
—declaration of validity or invalidity of adoptions, 118, 119	... ..	6 years.
—for declaration by a revisioner, 125	... ..	12 years.
—declaration of right to maintenance, 129	... ..	"
<i>Trusts :—</i>		
—to make good out of a deceased trustee's estate a loss by his breach of trust, 96	... ..	3 years.
—by a co-trustee for contribution against the estate of a deceased trustee, 100	... ..	3 years.
—following property in the hands of a purchaser from a trustee, 133, 134	... ..	12 years.
<i>Wages :—</i>		
—of household servant, artisan, 7	... ..	1 year.
—of seaman, 101	... ..	3 years.
—residuary for, 102	... ..	"

<i>Miscellaneous</i> :—	Suits for :—	Period of limitation.
—against orders of Government, Revenue Authorities and Courts, 11 to 16	... ..	1 year.
—pre-emption suits, 10	... ..	1 year.
—on voidable contracts, 94 to 98	... ..	3 years.
—on Muhammedan Dower, 103, 104	... ..	3 years.
—residuary for suits, 120	... ..	6 years.
—a periodically recurring right, 128, 131	... ..	12 years.
—hereditary office, 124	... ..	12 years.
—by local authorities for possession of a public street, 146	... ..	30 years.
—by or on behalf of Secretary of State for India, 149	... ..	60 years.

### SECOND DIVISION—(APPEALS.)

7 DAYS—	} 20 DAYS—	} 30 DAYS—
—from a sentence of death by a Court of Session. (150).	} —from a decree or order of the High Courts in the exercise of their original Civil jurisdiction. (151).	} —under the Civil Procedure Code to the Court of a District Judge (152). —under the Civil Procedure Code to the High Court for leave to Appeal to H. M.'s Council, against a refusal by a Sub-ordinate Court (153). —Criminal appeal to any Court other than a High Court. (154).
60 DAYS—	} 90 DAYS—	} 6 MONTHS.—
—Criminal appeal to High Courts except those coming within the purview of articles 150 and 157. (155).	} —Civil appeal to High Court, except cases coming under articles 151 and 153. (156).	} —Criminal appeal from an order of acquittal. (157).

### THIRD DIVISION—(APPLICATIONS.)

I. 10 DAYS—	—for setting aside an award, and for leave to attend and defend cases of summary procedure on negotiable instruments (158, 159).
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THIRD DIVISION—(APPLICATIONS.)—*Contd.*

II. 15 DAYS—	{ Reviews. {	(1)	—for restoring a review application to file rejected owing to the applicant's absence on the day of hearing. (160).
		(2)	—for a review of a judgment by a Court invested with the powers of a Provincial Court of Small Causes. (161).
III. 20 DAYS—		(3)	—for review of judgment by the High Court in the exercise of their original Civil jurisdiction. (162).
IV. 90 DAYS—	{	(4)	—for other reviews (residuary). (173).
		—to show cause why payment or adjustment of decretal amount be not certified. (174). —for bringing on record the legal representative of a deceased party. (176-177). —under the Civil Procedure Code for leave to appeal to P. C. (179).	
V. 30 DAYS—	{		—against decrees in suits or appeals heard <i>ex parte</i> or dismissed for any other default (163, 164, 168, 169).
		—complaints in execution sales. (165 to 167)	
		—for leave to appeal as a pauper. (170).	
VI. 60 DAYS—	{		—for setting aside an abatement. (171).
		—for setting aside dismissal of a suit or an appeal; application by receiver of an insolvent plaintiff or appellant. (172).	
VII. 6 MONTHS—	{		—for payment of a decree by instalments. (175).
		—for filing of an award. (178).	
VIII. 3 YEARS—	{		—by a purchaser at an execution sale for delivery of possession. (180).
		—for which no special period is prescribed. (181).	
		—for execution of a decree not provided for by article 183, or by sec. 48 of the Civil Procedure Code, and not registered (182); but—	
IX. 6 YEARS—	—		—If such a decree is registered. (182).
X. 2 YEARS—	{		—for execution of a decree or order of the Chartered High Courts (Original Civil jurisdiction), or of H. M's Council (183).

## APPENDIX B.

## All India Decisions till end of October 1926.

- S. 5—Every mistake of a pleader is not covered by this section, A. I. R. 1926 N. 162.
- S. 5—If exercise of discretion by Lower Court is not correct, the High Court can interfere under sec. 100 of the C. P. C., A. I. R. 1926 L. 445; but *cf.* A. I. R. 1926 A. 252.
- S. 7—If there is a bar of limitation against one major son, it does not affect other sons, 1926 A. I. R. P. C. 16.
- S. 10—As per requirements of this section, vesting of the trust property in the trustee is essential, A. I. R. 1926 Cal. 568.
- S. 10—Improper alienation by a trustee, A. I. R. 1926 Mad. 769.
- S. 12—If copies are applied for on the re-opening day of the Court after vacation, and if time for appeal expires on the same day, appeal filed on the day when the copies are obtained is in time, A. I. R. 1926 All. 111.
- S. 14—If a prayer of possession is not made in a suit for declaration, and if such a suit is dismissed as unmaintainable, the period required by it can be deducted in a subsequent suit for possession, A. I. R. 1926 Cal. 1140.
- S. 14—Is sufficient cause under sec. 5, A. I. R. 1926 A. 252.
- S. 19—Acknowledgment under sec. 19 does afford a fresh starting point, but it is in no way equivalent to a new promise. It in itself cannot be a basis of suit, A. I. R. 1926 All. 155; A. I. R. 1926 Cal. 1140.
- S. 19—An acknowledgment bearing mere initials is insufficient, A. I. R. 1926 Mad. 827.
- S. 19—Court can take evidence as to whether payment was made as principal or as interest, A. I. R. 1926 Cal. 150.
- S. 19—If a pro-note fails as a pro note, it is nevertheless an acknowledgment of liability, A. I. R. 1926 Mad. 452.
- S. 19—One co-sharer cannot pass an acknowledgment for another co-sharer, A. I. R. 1926 All. 85.
- S. 20—A payment of Government dues by a mortgagor, who remains a tenant of the mortgagee under a possessory mortgage, is equivalent to payment, A. I. R. 1926. M. 1061.



- S. 20—In case of payment of interest, there must be a mention as to appropriation, A. I. R. 1926 Bom. 423.
- Art. 10—Does not apply to a suit to pre-empt a lease; the article applicable is 120, A. I. R. 1926 All. 549.
- Art. 44—Does not apply to a sale by a guardian who is *non de jure*, A. I. R. 1926 N. 124.
- Art. 60—The Banker may not be a professional banker, A. I. R. 1926 Bom. 168.
- Art. 116—Applies to suits for compensation under all registered covenants, A. I. R. 1926 Mad. 255; Nag. 109. It also governs a personal decree against a mortgagor, where the mortgage is registered, A. I. R. 1926 N. 449.
- Art. 120—A suit by a creditor under sec. 53 of the Transfer of Property Act is governed by this article and the starting point is the date when he exercises his option, A. I. R. 1926 Mad. 66.
- Art. 132—Time begins to run in all cases from the date of a default, A. I. R. 1926 All. 493, Mad. 160; but *cf.* All. 142.
- Art. 132—Under this article, the word 'charge' is more extensive than under T. P. Act, 1926 Mad. 141.
- Art. 132—Does not govern a redemption suit by a prior mortgagee against a subsequent mortgagee, A. I. R. 1926 P. 337.
- Art. 132—When foreclosure or redemption is to be at will, starting point is the date of the mortgage, A. I. R. 1926 L. 225.
- Art. 134—Applies to a case of a transferee who had notice of the limited interest of his transferor; or to a suit to recover property from a mortgagee's transferee, A. I. R. 1926 O. 547 F. B.
- Art. 134—Does not apply where the plaintiff is a Trustee of the Property, A. I. R. 1926 Mad. 193.
- Art. 142—The dispossession alleged by the plaintiff may be of his predecessor-in-title, A. I. R. 1926 Mad. 181.
- Art. 144—When the tenancy expires, in absence of proof of fresh tenancy, the possession of the tenant becomes adverse to the landlord from the date of the expiry of the lease, 28 B.L.R. 1357.
- Art. 177—The period in second column is 6 months, A. I. R. 1926 Mad. 65.

- Art. 181—When appeal is filed against preliminary decree, starting point is appellate decree, A. I. R. 1926 P. O. 93.
- Art. 182—Mere passive waiver is not sufficient ; unless there is waiver by payment and acceptance of overdue instalments, the starting point is the date of the default, A. I. R. 1926 Cal. 212.
- Art. 182—Application to receive costs incidental to execution, is not a step in aid, A. I. R. 1926 All. 440 ; but *cf.* Oudh 289.
- Art. 182—Date of amendment is the date of the order of amendment, A. I. R. 1926 Mad. 747.
- Art. 182—Colourable application—only to save limitation—is not a step in aid, A. I. R. 1926 All. 95.
- Art. 182—Application for attachment of property of a deceased in the hands of his Legal Representative is a step in aid, 28 B. L. R. 1322.

APPENDIX C.  
Questions and Answers.

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University of Bombay—1921-1926.

LL. B. (Final).

April 1921.

1. What is the period of limitation prescribed for the following suits and from what point of time is it to be calculated?

(a) Suit to recover possession of immoveable property under s. 9 of the Specific Relief Act. (Art. 3, p. 44).

(b) Any suit by or on behalf of the Secretary of State for India in Council. (Art. 149, p. 111).

(c) Suit for compensation for libel. (Art. 24, p. 52).

(d) Suit for the balance due on a mutual, current and open account. (Art. 85, p. 69).

2. When is an account stated to be mutual, current and open? (pp. 69-70—Commentary).

3. When would a foreign rule of limitation be a good defence to a suit? (Sec. 11, p. 16). Is there any class of suits under the Indian Limitation Act which cannot be barred by any length of time? (Yes, *cf.* s. 10, pp. 14-16).

4. A right to sue for an hereditary office accrues to X who at the time is insane. Seven years after the accruer X dies, his insanity continuing upto death. The period of limitation for such a suit is 12 years. To what extension of time is X's representative in interest entitled? (5 years, if he is not suffering from any disability at the time of X's death. Otherwise he may institute a suit after three years of the cessor of his disability. pp. 9, 10, 12, 13).

October 1921.

5. A borrows Rs. 10,000 from B in January 1916, the rate of interest being 6 per cent per annum. A repays Rs. 1,000 in January 1917 and Rs. 1,000 in January 1918 on account. B files a suit against A in January 1920 to recover the balance. Is the suit in time? (If the part-payments are evidenced by the hand-writing of A or his authorized agent, the suit would be in time. Sec. 20, pp. 30-32).

6. A right to sue for a legacy accrues to A during his minority. 6 years after the accruer A attains majority. Within

what time must A file a suit to recover the legacy after attaining the majority? (Article applicable is 123, p. 85. He can sue within six years after he becomes major under s. 8, pp. 12, 13).

### March 1922.

7. State the circumstances in which an acknowledgment or part-payment of the principal extend the period of limitation. (Cf. sec. 19 and sec. 20, pp. 26-30 and 31, 32).

8. On 1st January 1918 A passed a promissory note, payable on demand, in favour of B for Rs. 5,000 for value received. On 20th December 1918, A gave his own cheque to B for Rs. 2,000 in part-payment and the same was duly honoured. B files a suit against A for the balance on 1st December 1921. Is the suit in time? Give reasons. (The suit is in time according to s. 20, pp. 30-32).

9. A files a summary suit against B on a promissory note signed by B in favour of A. B is served with a summons on 20th March 1921. On 2nd April 1921, B applies for leave to defend the suit and swears that he could not apply before that as he had an accident and was ill in a hospital. Is his application in time? If not, what is his remedy? [Under s. 5 the extension will not be granted, as the cause is not sufficient (sec. 5, pp. 6-8); the remedy is to get the decree set aside under art. 164. (pp. 117-118)].

### October 1922.

10. Specify clearly the circumstances and the extent to which Fraud or Minority extend the period of limitation. (For fraud, cf. s. 18, pp. 24, 25; for minority, cf. ss. 6, 7, 8, pp. 8-14).

11. Define clearly the test of a mutual, open and current account. (pp. 69-70, art. 85).

12. A obtains an *ex parte* decree against B on 31st July 1922. The summons was properly served. On 1st September 1922 B applies to have the *ex parte* decree set aside, on the ground that he was unable to defend as he met with an accident in railway which made him unconscious from 29th July to 20th August. Is application in time? (No. cf. art. 164, pp. 117, 118).

13. In 1912, A obtained a decree in Salem Court in Madras Presidency. In 1914 A got the decree transferred to Surat Court. In 1916 A applies to Salem Court for a transfer of the decree to the Munsif at Indore. Nothing having been done at Surat, the Surat Court in 1918, returned the decree unexecuted. In 1919 Salem Court again transferred the decree for execution to Surat.

A, thereafter, in June 1919 applied to Surat Court to execute the decree. Is application in time? Give reasons. (Yes; successive applications within three years for a transfer of a decree are steps in aid within the period of limitation. Art. 182, p. 155. Cf. 35 All. 389).

### March 1923.

14. Explain adverse possession. (Cf. pp. 101, 105, Arts. 142 and 144).

15. Distinguish between limitation and prescription. (Cf. Appendix A, pp. 142, 143).

16. Limitation bars the remedy, prescription extinguishes right. (pp. 142, 143).

### October 1923.

17. When will an acknowledgment of a debt and payment in part serve to extend the period of limitation? (Secs. 19, 20, pp. 26-32).

18. What is the period of limitation prescribed for the following:—

- (i) A suit under section 9 of the Specific Relief Act to recover possession of immoveable properties. (Art. 3, p. 44).
- (ii) A suit by a Hindu governed by *Mitakshara* to set aside his father's alienations of ancestral property. (Art. 126, p. 88).
- (iii) An application by a defendant to set aside an *ex parte* decree. (Art. 164, p. 117).
- (iv) An application to have the legal representative of a deceased plaintiff to be brought on record of a suit. (Art. 176, p. 122).

### March 1924.

19. What is legal disability and how does it affect the question of limitation prescribed for a suit or application? What other acts of the plaintiff or defendant besides legal disability go to extend the period of limitation? (Secs. 6-8, pp. 8-14; for other extensions of limitation, cf. Appendix A—under extension of periods of limitation, pp. 145-148).

20. (1) A contracted to sell certain immoveable property to B and agreed to convey the same within a certain date. The

time expired but nothing was done. B then called upon A to perform the contract. A refused. Within what time should B get the performance of the contract from A? What would be the difference in the period for getting the performance if no date is fixed for the performance of the contract? (*Cf.* art. 113, pp. 79, 80).

(2) A obtained a decree against B for Rs. 5,000. In execution of that decree he attached B's house. C, who had purchased the house from B objected to the attachment, but his objection was disallowed by the Court. Within what period should C establish his right to the property under attachment? (Art. 11 (1), p. 46).

(3) A applied in May 1918 for execution of a decree obtained by him against B. In August 1918, both parties presented a joint application asking for time, to enable them to compromise. In June 1921, A applied to execute the decree and relied upon the application of August 1918 as a step in aid of execution and contended that his application was in time. Is the contention right? Give reasons. (Yes, the application was in time as the application of 1918 was a step in aid; but it was otherwise held in 25 Bom. L. R. 490, *cf.* p. 135).

### October 1924.

21. When would a foreign rule of limitation be good defence to a suit? (Sec. 11, p. 16).

22. Is there any class of suits under the Indian Limitation Act, which cannot be barred by any length of time? (Sec. 10, pp. 14-16).

23. A right to sue for an hereditary office accrues to A, who at the time is insane. Six years after the accruer, A recovers his reason. A files a suit more than three years after he recovers his reason. Is the suit within time? (Yes, if he files within six years, art. 124, p. 86 and ss. 6 and 8, pp. 8-10, 12-14).

24. What is the period prescribed for the following and from what date time begins to run in each case?

(1) A suit on the balance due on a mutual, open and current account where there have been reciprocal demands between the parties. (Art. 85, p. 69).

(2) A suit by a landlord to recover possession from a tenant. (Art. 139, p. 97).

(3) A suit by a Hindu for a declaration of his right to maintenance. (Art. 129, p. 89).

(4) An application for leave to appeal as a pauper. (Art. 170, p. 120).

### April 1925.

25. A passed a promissory note on 10th January 1913 payable on demand to B and Company of which, B, C, D were partners. Immediately after B became insane. D who was a minor attained majority on 1st January 1917. On 10th February 1917, C (aged 25) and D filed a suit on promissory note against A. A contended that the suit was barred by limitation. Is the contention valid? (Yes; cf. ss. 6 and 7, pp. 8-12 and art. 73, p. 65).

26. A and B passed a promissory note to C in January 1920. A alone makes part-payment in December 1922. C files a suit both against A and B in October 1924 to recover the balance due under the promissory note. B contends that the suit is out of time against him. Will C succeed in the suit against both? (No; the partpayment is not evidenced by handwriting of the payer. cf. Secs. 20 and 21, pp. 30-33).

27. What is the period of limitation for the following and when does the period commence in each case:—

(1) A suit to set aside an order of an officer of Government passed by him in his official capacity. (Art. 14, p. 50).

(2) A suit to recover an amount due under an award. (Art. 120 p. 24, Cf. 31 I. C. 816).

(3) A suit by a Hindu governed by the Mitakshara to set aside his father's alienation of ancestral property. (Art. 126, p. 85).

(4) An application for an order to set aside abatement of a suit. (Art. 171, p. 120).

### October 1925.

28. What do you understand by legal disability? How does it affect the period of limitation? (Secs. 6-8, pp. 8-14).

29. A lent Rs. 5,000 to B in January 1916. In December 1918 B gave his own cheque for Rs. 500 as partpayment. In November 1921, B acknowledged his liability to pay the debt and thereafter for one year owing to illness he lived at Baroda. In September 1925 A files a suit to recover the balance. How will you decide the case? (Suit is within time. Payment of December 1918 is governed by s. 20, p. 31; Acknowledgment of November

1921 is governed by s. 19 (pp. 26-29), and his stay at Baroda is governed by s. 13, p. 19).

30. The partnership business of A, B and C was dissolved in 1920. In making up the accounts disputes arose between the partners. In 1924 A was obliged to pay a partnership debt. In 1925 A wants to file a suit for contribution and B wants to file a suit for general accounts. How will you advise A and B? (B's suit is governed by article 106 (p. 77) and is barred. A's suit is governed by article 99 (p. 75) and is in time.

31. Within what period should a suit be filed in the following cases :—

(1) For the balance due on a mutual, open and general account where there have been reciprocal demands between the parties (Art 85, p. 69).

(2) For a legacy bequeathed by a testator. (Art. 123, p. 85).  
April 1926.

32. (a) A lent and advanced Rs. 1,000 to B and C jointly on the 1st April 1920. No part of the debt having been repaid by B or C, B executed an acknowledgment of the debt in favour of A on the 5th January 1923. In March 1923, C sent Rs. 200 to A in part-payment of the debt with a letter recording the payment but not saying that it was in part satisfaction of the said debt. In 1924 A sued B and C for the balance of Rs. 800. Is the suit barred by limitation against either B or C, or both?

(Cf. sec. 19 and sec. 20 and sec. 21, pp. 26 to 33. It is not proved that either the acknowledgment by B, or the part-payment by C was made by B and C respectively, as the agent of his co-debtor, as such, under sec. 21, p. 33, limitation is not saved. If the payment by C was valid, the court would have been entitled to find out on evidence as to the purpose for which the payment was made, 44 Bom. 392. p. 32).

(b) A, B and C carrying on business in partnership in the name of X and Co. lent Rs 10,000 to D on the 1st January 1921. On the 15th December 1923 the partnership was dissolved and A commenced to wind up his affairs. On the 25th December 1923 A filed a suit against D for recovery of the loan of Rs. 10,000. On the 10th March 1924, B and C were added as plaintiffs in the suit. D's defence was that the suit was barred by limitation. Was he right?

(Yes; after 15th December 1923, there was a dissolution of partnership and an end was put to X and Company. Thereafter the assets were vested in A, B and C jointly, and the relation of



implied agency between partners was also at an end as there was no present partnership. As such, B and C who were necessary parties, being joined after the lapse of 3 years from the date of the loan, the suit was time-barred. *Cf.* sec. 22, pages 33-35 and article 57, p. 61).

(c) A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years, but B shows that during ten of these years C, a Hindu widow, had a life-interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim. How would you decide the suit?

(Under section 27, illustration, p. 39, the suit ought to be dismissed).

33. What is "legal disability" under the Indian Limitation Act? What are the provisions contained in the Act as to persons suffering from such disability? (*Cf.* Sections 6-9, pages 8-14).

### October 1926.

34. (a) State and illustrate the rule of the Indian Limitation Act for computation of the period of Limitation in cases of

(a) Continuing breach. (Sec. 23; *cf.* page 35).

(b) Fraud. (Sec. 18; *cf.* pages 24-26).

(b) A attained majority 8 years after his right to sue for a legacy had accrued. Within what time must A bring his suit for the legacy? (*Cf.* sec. 6 and article 123, pages 8-10 & 85-86. A can sue within 4 years after he attains majority. *Cf.* p. 13).

A attained majority 11 years after his right to sue for possession of immoveable property had accrued and immediately thereafter became insane. A became sane 12 years after attaining majority. Does the law allow any time to A to bring his suit and, if so, what? (Under sec. 6(2), A can bring a suit within 3 years after he becomes sane. *Cf.* pages 6-8).

35. What is the period of limitation for the following and from what point does time run?

(a) Wages of a household servant. (*Cf.* article 7, p. 45).

(b) For an order to set aside an abatement under the Civil P. C. (article 171, p. 120).

- (c) For recovery of a distributive share of the property of an intestate. (Article 123, pages 85-86).
- (d) To enforce payment of money charged on immoveable property. (Article 132, pages 90-91).
- (e) By a landlord to recover possession from a tenant. (Article 139, pages 92-93).

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UNIVERSITY OF NAGPUR.

*LL. B. (Final) Examination.*

October 1925.

1. What are the necessary elements of a valid acknowledgment? (Sec. 19, *cf.* pages 27-29).
2. What are the essential conditions of a debt being saved from Limitation by (a) payment of interest and (b) partpayment of principal? (sec. 20 *Cf.* pages 30-32).
3. Does the law of limitation make any, and, if so, what allowance in favour of a plaintiff on the ground that one of the persons jointly entitled with him was a minor? (sec. 7, *Cf.* pages 10-11).

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