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STUDENTS'
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BY

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*Compiler of Students' Hand-Book of Roman Law,
and Students' History of Roman Law.*

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*To the memory
of
my maternal-uncle
Late Shriyut Hanmant Krishna Kulkarni
this little book is
most respectfully dedicated.*

PREFACE.

No apologetic word seems necessary to present this little book on the Law of Limitation to the law-students of the Indian Universities, for well arranged and cheap annotated hand-books on the subject suited to the capabilities of young learners are few and far between.

I have endeavoured, in the small compass of this book, to state and explain as fully and clearly as possible the principles of the Law of Limitation, and it is hoped a critical study of this book alone will enable the students to tackle any question that may be set at an examination and will also impart to them a clear and sound knowledge of the law on the subject.

As the Universities usually prescribe for students only the Sections of the Indian Limitation Act and not the Schedule I have divided the book in two parts. This is the first part. In this part the principles contained in the Sections have been dealt with in a way which it is hoped will facilitate the study of the Act. The second part of the book contains the Articles. Students for whom the Schedule is not prescribed will find the second part of the book useful when they commence practice.

Exhaustive notes have been added to each section and article elucidating all difficult matters and emphasising all important points. A thorough analysis of the Act given at the end of the book will help the students to memorise the subject at the time of the examination.

Marginal notes have been very carefully prepared and important questions set at the various law-examinations are methodically arranged in the margin with the object of directing the attention of the students to portions demanding special care for purposes of examination.

The notes are compiled from various sources which are generally indicated in the body of the book. I must express my special and great obligation to the learned works of Banning, Starling, Rustomji, U. N. Mitra, H. C. Mitra, Rivaz and Sen. I have made frequent references to them in the body of the book.

I should like to add that I have everywhere devoted greater attention to clearness of exposition than to brevity and I shall consider my labour amply compensated if the plan and the arrangement of the book prove satisfactory and render the mastery of this difficult subject easy for the students for whom the book is particularly written.

This book in all its stages from the pen to and through the press is done hurriedly; hence any flaw that may be met with may be passed over lightly.

All suggestions to increase the utility of the book from the student's point of view will be very thankfully received and considered.

Bombay, }
November, 1931. }

A. G. K.

List of Abbreviations.

All.	Indian Law Reports , Allahabad series.
Bom.	" " " , Bombay series.
Cal.	" " " , Calcutta series.
Lah.	" " " , Lahore series.
Luck.	" " " , Lucknow series.
Pat.	" " " , Patna series.
Rang.	" " " , Rangoon series.
A. I. R.	All India Reporter.
A. L. J.	Allahabad Law Journal.
A. W. N.	Allahabad Weekly Notes.
B. H. C.	Bombay High Court Reports.
Ben. L. R.	Bengal Law Reports.
Bom. L. R.	Bombay Law Reporter.
Bur. L. J.	Burma Law Journal.
Bur. L. T.	Burma Law Times.
C. L. J.	Calcutta Law Journal.
C. L. R.	Calcutta Law Reports.
C. W. N.	Calcutta Weekly Notes.
W. R.	Weekly Reporter (Calcutta).
I. C.	Indian Cases.
Lah. L. J.	Lahore Law Journal.
M. L. J.	Madras Law Journal.
M. L. T.	Madras Law Times.
M. W. N.	Madras Weekly Notes.
Mad. H. C.	Madras High Court Reports.
L. W.	Law Weekly (Madras).
N. L. R.	Nagpur Law Reporter.
N. W. P.	North-West-Prov. High Court Reports.
O. C.	Oudh Cases.
O. L. J.	Oudh Law Journal.
O. W. N.	Oudh Weekly Notes.
P. L. J.	Patna Law Journal.
P. L. R.	Punjab Law Reports.
P. L. T.	Patna Law Times.
P. L. W.	Patna Law Weekly.
P. R.	Punjab Record.
P. W. R.	Punjab Weekly Reports.

A. U.	Allahabad University.
A. C. E.	Articled Clerks' Examination.
A. E.	Advocates' Examination.
B. U.	Bombay University.
C. U.	Calcutta University.
P. U.	Punjab University.

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THE INDIAN LIMITATION ACT.

ACT 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.**

Preamble:—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:—

Scope of the Act.—The preamble makes it clear that the Act has been divided into two parts.

- (a) Containing the law relating to the limitation of suits, appeals and certain applications to Courts. Sections 3 to 25.
- (b) Providing rules for acquiring by possession the ownership of easements and other property. Sections 26 to 28.

Object of the Act:—Statutes of limitation have been found in every part of the world and in every civilised country. They have for their object the prevention of the rearing up of claims at great distances of time when evidences are lost and in all well regulated countries, the quieting of possession is held an important point of policy. They rest upon sound policy and tend to the peace and welfare of society. Their object is to quiet long possession, to extinguish stale demands, to suppress fraud and perjury, to check dilatoriness and to supply deficiency of proofs arising from the ambiguity and obscurity or antiquity of transactions. They discourage litigation by bringing in one

Why is the Limitation Act said to be the statute of repose? (A.U. 1921).

Explain the statement.

"The statute of limitation is a statute of repose" (A.U. 1926)

"The laws limiting suits are statutes of repose to quiet titles, suppress fraud, and

to supply the deficiency of proofs arising from the ambiguity and obscurity of the antiquity of transactions." Explain, discuss and illustrate (C U 1923)

"The law of limitation, it is said, is based upon public policy and equitable considerations" Elucidate and explain (C U 1928)

What are the objects of the Limitation Act? Is limitation a dishonourable plea?

(A E Aug-1930)

Must be interpreted in accordance with the fair meaning of the language used

Ought to receive such a construction as the language in its plain meaning imports.

No equitable construction should be put upon it

The tendency of modern decisions--the language of the Act--strictly construed and the exceptions or exemptions--construed liberally.

common receptacle all the accumulations of past times which are unexplained and have now from lapse of time become inapplicable. They proceed upon the presumption that claims are extinguished or ought to be extinguished whenever they are not litigated in the proper forum within the prescribed period.

The Act has been passed for the purpose of establishing fixed periods after the lapse of which the Courts will not entertain suits, appeals and certain applications. The object of the Act is not to create or define causes of action but simply to prescribe the fixed periods within which existing rights can be enforced in Courts of law. Its object is to compel people (on pain of losing their right to action) to sue with due promptitude. *Vigilantibus, non dormientibus, jure subveniunt*: (The laws assist those who are vigilant, not those who sleep over their rights). Its intention is not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right.

Construction of the Act:—"A statute of limitation, like any other statute, must be interpreted in accordance with the fair meaning of the language used, and a litigant who relies upon it must bring his case within its terms as so interpreted". (1) The Privy Council has held (2) that statutes of limitation, like all others, ought to receive such a construction as the language in its plain meaning imports; that in construing these statutes the ordinary rules of interpretation must prevail and no equitable construction should be put upon them. The Act is a statute of repose and it should be administered as strictly as possible in order to strengthen the repose at which it aims. The Court cannot on equitable grounds and *ex ratione legis* (i. e. from a consideration not of the wording of the section, but of the reasoning supposed to be underlying the law), extend the time prescribed by the Act, or postpone its operation, or introduce exceptions not expressly mentioned in the Act.

The tendency of the modern decisions is to narrow materially the difference between a strict and liberal construction. The language of the Act is strictly construed but the exceptions or exemptions from the operation of the Act are construed liberally and in favour of the right to proceed.

[1] Lightwood's Time Limit on Actions, P. 2

[2] Lachmee v Runjeet, 20 W R 375, 377 (P C)

The Act of limitation, being restrictive of the ordinary right to take legal proceedings, must, where its language is ambiguous, be construed with reasonable strictness and in favour of the right to proceed. (1) The Act should be interpreted so as not to restrict or curtail rights, unless it is clear that the Legislature intended that this should be done. (2)

Construed with reasonable strictness and in favour of the right to proceed, when language ambiguous

In construing the Act the provisions of other statutes which are in *pari materia* may be referred to as a guide.

Acts in *pari materia* may be referred

Applicability of Sections and Articles:- The applicability of particular sections of the Limitation Act must be determined by the nature of the thing sued for and not by the status, race, character or religion of the parties to the suit.

Depends on the nature of the thing sued for

If there is a conflict between two periods of limitation, one of which, the longer, is applicable to all circumstances, and the other, the shorter, to special circumstances only, the longer term given by the statute to bring the suit ought to be applied unless there is clear proof of special circumstances which would make the shorter term applicable. (3)

When there is conflict between two periods, the longer period to be applied unless clear of proof of the applicability of the shorter period

If there be two Articles of the Act which may cover the case, the one, more general, and the other, more particular, or specific, the latter *prima facie* applies. (4)

More particular or specific should govern and not the more general

But if two Articles limiting the period for bringing the suit are wide enough to include the same cause of action, and neither of them can be said to apply more specifically than the other, that which keeps alive rather than which bars the right to sue should generally, and apart from other equitable considerations, be preferred. (5)

When two Articles wide enough to include the same cause of action, that, which keeps alive the right to sue, should be preferred

Effect of Amendment or Change.—The law of limitation is not always a law of procedure, i.e., a purely adjective law, for amongst its other consequences it has the creation of rights by prescription,

Amendment or change cannot revive barred rights

[1] *Umeshanker v Chhotalal*, 1 Bom 19(22), *Balwant v Secretary of State*, 29 Bom 480 (498), *Venkanna v Venkata Krishnaiah*, 41 Mad 18 (22)

(But see the view of the Allahabad High Court in 8 All 475 (484), 10 All 587 (597, 596) and 10 All 524 (529)) When the language is ambiguous, the construction should be strictly in operation of the Act, i.e., against the right to take legal proceedings. The Act is intended to check dilatoriness and therefore it must have strict operation. The moment it is not administered strictly, it ceases to be a statute of repose and frustrates the very object which it aims at)

View of the Allahabad High Court. Construction strictly in operation of the Act, i.e., against the right to take proceedings.

[2] *Jogeshur v. Ghanasham*, 5 CWN 356

[3] *Tara Nath v Iswai Chandra*, 16 CWN 398 (401)

[4] *Sharoop v Joggesur*, 26 Cal 564 (FB), *Narmadabai v. Bhavanishanker*, 26 Bom 430

Chuanjilal v. The Bengal Nagpur Ry Co., 52 Cal. 372, *Venkatasubba Rao v. Asiatic Steam Navigation Co.*, 39 Mad 1 [FB], *Secretary of State v. The Dunlop Rubber Co. Ltd.*, 6 Lah. 301

[5] *Tofa Lal v. Moinuddin*, 4 Pat. 448.

and if those rights have vested in individuals under one law of limitation, they cannot be divested by the introduction of a new law of limitation, or by an amendment in the law. (1) When once a title has been acquired, or a right to sue has become barred under any earlier Limitation Act, no change of the law of limitation can weaken the title so acquired, or revive the right to sue which had become barred.

Presumption against retrospective application in cases of barred rights.

May be retrospectively applied for unbarred causes of action.

Presumption against a retrospective construction when applicable and when not.

Broadly the rule may be stated to be that there is a presumption against the retrospective application of the Act when such an application would deprive a plaintiff of a vested right or a defendant of a right to treat the claim against him as already barred: but it may be retrospectively applied as to the period for unbarred causes of action. (2)

The presumption against a retrospective construction of a statute has no application to enactments which affect only the practice and procedure of Courts even when the alteration which the statute makes has been disadvantageous to one of the parties. No suitor has a vested interest in the course of procedure or a right to complain if during the litigation the procedure is changed provided no injustice is done. When the statute ceases to be one of mere procedure and operates to the destruction of existing and enforceable rights, the presumption against a retrospective construction of the statute becomes applicable, unless the coming into operation of the statute has been postponed so as to allow reasonable time for enforcement of existing causes of action.

Change in the law during pendency does not affect proceedings

Pending Proceedings — Unless there is a distinct provision to the contrary, the law of limitation applicable to a suit or proceeding is the law in force at the date of its institution and not a subsequent law which comes into operation during the pendency of the suit or proceeding. (3)

The Act does not apply to criminal proceedings unless made applicable by express provisions.

Criminal Cases :—Rules of Limitation are foreign to the administration of criminal justice, and it is only by express statutory provision that any rule of limitation can be made applicable to criminal cases. Certain criminal appeals are specially provided for in Articles 150, 150A, 154, 155 and 157.

[1] *Gajanan v. Waman*, 12 Bom. L.R. 881, *Moro v. Balaji*, 19 Bom. 809 (814).

[2] *Khondhar v. Chandia*, 56, Cal. 1117: "The principle is that the effect of an amendment is to regulate and not to confiscate a vested right."

[3] *Maula Baksh v. Bhaba Sundari*, 19 C.L.J. 187 (188).

"Suits":—The Act is applicable to suits brought by the plaintiff; it does not apply to a right set up by the defendant in defence. A defendant can set up a right by way of defence, even if he could not have done so as plaintiff by way of substantial claim. But where a suit by the defendant would have been barred under sec. 26 or 28, the defendant cannot set up his right by way of defence. (1)

The Act applicable to suit brought by the plaintiff—not applicable to a right set up by the defendant in defence.

Certain applications :—The preamble shows that the Act is not intended to apply to all but only to certain applications mentioned in the 1st schedule. The following applications are not covered by the Act :

The Act does not apply to all but only to certain applications.

- (1) An application for a certificate to collect debts due to the estate of a deceased person.
- (2) An application for probate.
- (3) An application for letters of administration.
- (4) An application under the Religious Endowments Act or an application for the appointment of a new trustee.
- (5) An application to a Court to exercise the functions of a ministerial character (*e.g.* an application for the grant of a sale-certificate.)
- (6) An application to a Court to do what the Court is bound to do and has no discretion to refuse to do (*e.g.* an application for a certificate of sale by a purchaser of land at a Court-sale.)

General plan of the Act :—The Act contains 29 sections with a schedule comprising of 183 Articles arranged in a tabular form under three divisions, *viz.*, suits, appeals and applications, with their several descriptions and periods of limitation denoted in the columns.

The Act contains 29 sections and a schedule of 183 Articles.

Sections 1—2.....Preliminary matters—short title, extent, commencement of the Act and the definitions of certain terms.

Sections 3—26.....Limitation of suits, appeals and certain (of which sec. 22 is applications. rather an interpretation section) and the schedule.

Sections 26—27.....Acquisition of easements (including *profits à prendre*) by positive prescription.

Sections 28.....Indirect acquisition of the ownership of corporeal property by extinctive prescription.

Section 29.....Extent of the applicability of the Act to cases coming under Local or Special Laws.

The schedule deals with the periods of limitation, ranging from 7 days to 60 years. A rough analysis of the Articles therein may be stated thus: Articles 1 to 149 deal with suits, 150 to 157 with appeals, 158 to 183 with applications.

PART I.

PRELIMINARY.

1. Short title, extent and commencement.—(1) This Act may be called 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.

2. Definitions.—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, 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 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.

NOTES.

Defendant.—A purchaser at an auction-sale acquires the right, title and interest of the judgment-debtor and in virtue of that, is put in possession by reason of which he becomes liable to be sued by the true owner. He, therefore, derives such liability within the meaning of this section from or through the judgment-debtor. (1)

Defendant includes auction-purchaser of right, title, etc. of the judgment-debtor.

[1] *Ali Saheb v. Kaji Ahmed*, 16 Bom. 197 (199); see also *Hari Prasad v. Sourendra*, 1 Pat. 506 (521); *Basant Kumar v. Secretary of State*, 44 Cal. 858 (874) (P O)

Does not apply where Act V of 1882 applies.

Easement.—Compare this definition with that given in Easements Act (V of 1882). This definition does not apply to Madras, the Central Provinces, Bombay, Coorg, the N. W. Provinces and Oudh where Act V of 1882, as amended by Act VIII of 1891 is in force, See Sec. 29.

State the ingredients of the right of easement. Can you distinguish easement from a *profit à prendre*? (C U. 1926)

"Easement," according to the English law, "is a privilege without profit, which the owner of one tenement has a right to enjoy, in respect of that tenement in or over the tenement of another person by reason whereof the latter is obliged to suffer or refrain from doing something on his own tenement for the advantage of the former" (1)

The word "easement" as defined in this section has a much more extensive meaning than the word bears in the English law for it includes a *profit à prendre* (2), i. e., a right to enjoy the profit out of the land of another.

Does not include Native States.

British India.—The Native States in India come within the category of "foreign country."

Act follows the definition of good faith laid down in sec. 52 I.P.C.

Good faith.—The Limitation Act follows the definition laid down in sec. 52 of the Indian Penal Code. According to the General Clauses Act, 1897, "a thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not."

Seems stricter than the definition in G.C. Act

The definition of "Good faith" in the Limitation Act seems to be stricter one, because it expressly excludes acts done without due care and attention.

Must begin with plaint.

Suit.—A suit must begin with a plaint. Therefore a proceeding which is capable of terminating in a decree or an order having the force of a decree, cannot on that ground alone, be deemed to be a suit. (3)

[1] Goddard.

[2] "A right by which one person is entitled to remove and appropriate for his own use any part of the soil belonging to another man, or anything growing in or attached to or subsisting upon his land for the sake of the profit to be gained from the property hereby acquired in the thing removed is commonly called a *profit à prendre*" (Goddard.)

[3] Venkatachandrappa v. Venkatarama, 22 Mad. 256 (258).

PART II.

LIMITATION OF SUITS APPEALS AND APPLICATIONS.

3. Dismissal of suits, etc. instituted, etc., after period of limitation.—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.

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.

NOTES.

Scope of the Act.—The section contains the general rule of limitation and is subject to the other provisions of the Act. The general rule is that (a) the instituting of a suit, or (b) the preferring of an appeal, or (c) the making of an application should be within the period prescribed by the Act. The section compels the Courts to dismiss barred suits, appeals or applications, although the defence of limitation has not been set up. The Legislature has expressly declared that, whether the defence of limitation be pleaded or not, the Courts, whether of first instance or of appeal, are bound to give effect to the law of limitation.

It is the duty of the Court to look into the question of limitation itself and it is not relieved from the duty of doing so by the fact that the parties or one of them has agreed not to plead limitation. (1)

It is settled that there can be no estoppel against an Act of the Legislature. An agreement not to plead limitation, in case a suit has to be filed, is inoperative and invalid, since its effect is to defeat the provisions of this Act and as such falls within sec 23 of the Contract Act. (2) Such an agreement will not prevent the Court from interfering and dismissing the suit. (3)

Plaintiff brought a suit in 1927 for a breach of a contract made in 1924. He relied on a letter written to him by the defendant in which the defendant had agreed that he would not raise the point of limitation to a suit. The letter was written in 1926. The Court awarded the claim holding that though the plaint was filed in 1927, the defendant was precluded from raising the said question. Would it make any difference if the letter was written in 1924 i. e., within 3 years of the breach? (A. E. Aug. 1927)

[Ans. The decree is not right. The letter by the defendant agreeing not to raise the point of limitation would not preclude the Court from raising that point of its own accord. It does not matter whether the letter was written in 1924 or 1926.]

What is the effect of an agreement not to plead limitation on the period of limitation?

(A. E. Aug. 1929.)

[1] Midnapur Zemindary v. Deputy Commissioner, 44 I. C. 370 (Pat)

[2] Ramamurthy v. Gopayya, 40 Mad. 701 (705)

[3] Chaturbhuj v. Muhammad, 54 I. C. 36 (38) (Pat)

Suit is said to be instituted when plaint is presented to the proper officer at proper time and place.

“Suit instituted”.—A suit is said to be instituted in ordinary cases when the plaint is presented to the proper officer at the proper time and place.

Proper officer : The “proper officer” mentioned here must be the officer authorised to receive plaints.

Proper time : The “proper time” to present a plaint is when the Court is sitting. If the Court is closed on the day on which the period of limitation expires, the plaint may be presented on the day on which it re-opens.

Proper place : The “proper place” at which to present a plaint is the Court of the Officer authorised to receive plaints.

If presented within limitation, the Court is bound to grant time to make good the deficiency. The suit not barred if deficiency is supplied within period fixed by Court.

Plaint insufficiently stamped.—The date of the institution of the suit for the purposes of limitation must be taken to be the date of the first presentation of the plaint. If it is presented within limitation but is unstamped or deficiently stamped, the Court is bound to grant time to make good the deficiency in Court-fees, and if the deficiency is supplied within the period fixed by the Court, the suit is not time-barred, even though the limitation period may then have run out. (1)

The suit barred if deficiency is supplied after limitation and after period fixed by Court.

If the deficiency is supplied after expiration of the period of limitation and after the expiry of the term fixed by the Court for supply of the deficiency it will be liable to rejection and the suit will be considered barred. (2) [Compare sec. 149 of the C.P.C. and sec. 28 of the Court-fees Act.]

The date of institution of the suit is the date on which the plaint was originally presented & not the date of its amendment.

Amendment of the plaint.—For the purpose of computing limitation, a suit must be considered to have commenced from the date on which the plaint was originally presented and not from the date of its amendment. (3)

[1] Dhondiram v. Taba, 27 Bom. 330, 5 Bom. L. R. 198.

[2] Brahmomoyi v. Andl Si, 27 Cal. 376 (378).

[3] Patel Mafatlal v. Bai Parson, 19 Bom 320 (323).

"If the Court specifies a date for presentation of the plaint after amendment, and the amended plaint is presented within that date (even though it is a date beyond the period of limitation), the plaint is deemed as filed within time, the date of the original presentation being the date material for the purpose. But if the Court specifies a date for amendment which is beyond the period of limitation and the amended plaint is presented beyond that date, the date of subsequent presentation will be treated as the date of presentation, and the plaint will be deemed as filed out of time. It is a settled rule of law that the date of amendment is immaterial, unless indeed the time expressly allowed by the Court has been exceeded". (1)

The plaint is deemed as filed within time if presented on the date specified by Court for presentation of the same after amendment.

If court specifies a date for amendment beyond period of limitation and the amended plaint is presented beyond that date, the plaint is deemed as filed out of time.

"Appeal preferred".—An appeal should be preferred within the period prescribed by the Act. It is said to be "preferred" when it is presented by a proper person to the proper Court at the proper time. It is not presented within the meaning of this section, unless, it is accompanied by the copies prescribed by the C.P.C.

Appeal is said to be preferred when presented by proper person to the proper Court at proper time.

Under the provisions of sec. 420 Cr. P. C., presentation of the petition of appeal by a prisoner in jail to the officer in charge of the jail is equivalent to presentation to the Court (2).

Appeal insufficiently stamped.—"Where an appeal, which is originally filed in time, is deficiently stamped, and the Appellate Court, in its discretion (*Vide* sec. 149 of C.P.C., 1908) allows the deficient Court-fee to be brought in within a time to be fixed by the Court, the appeal is not time-barred merely because the period of limitation may have expired at the time when the deficient Court-fee was put in. Section 149 of C. P. C., 1908 is quite general and applies to plaints, memoranda of appeals, applications for review, etc., and it would seem that when a plaint, appeal etc., is wholly or partially unstamped, and the stamp duty is made good (by order of the Court under sec. 149) even after expiry of the period of limitation, the payment would have a retrospective operation and validate the original presentation of the plaint, appeal etc." (3)

If preferred within time, the Court in its discretion grants time to make good the deficiency. Appeal not barred if deficiency is supplied within period fixed by Court.

[1] *Durgagir v. Kollu*, 7 N. I. R., 33, 10 I. C. 731 (733). H. C. Mitra's I.L.A. (10th Ed.) P. 15.

[2] *Queen v. Lingaya*, 69 Mad. 258 (259)

[3] *Rustomji's Law of Limitation* (Students' Edition) PP. 5-6. *Patcha Saheb v. Sub-Collector*, 15 Mad 78; see also *Chennappa v. Raghunath* 15 Mad 29. *Contin* 19 Cal. 747 and 12 All. 129 (142) (F.B.) where it has been held that an appeal cannot be said to be properly presented, if the memorandum of appeal is not properly stamped, when originally presented and the representation of the appeal after supply of proper stamps beyond the period of limitation is ineffectual to save limitation. The Patna High Court also holds that if an appellant deliberately without any excusable ground and to suit his own convenience pays on his appeal insufficient Court-fee the Court is not bound to accept the appeal and give the appellant time to make good the deficiency—*Ram Sahay v. Lachmi Narayan*, 3 P.L.J. 74, 42 I.C. 675

Memorandum of appeal returned for correction without specifying any date, was again presented after period of limitation, *held to be in time*, the date of its presentation being the original date.

Appeal returned for correction.—Where an appellant presented a memorandum of appeal within the period of limitation prescribed therefor, but the Appellate Court returned the memorandum for correction without specifying a time for such correction, and it was afterwards presented after amendment at a time when the period of limitation had expired, it was held that the date of the first presentation, and not the date of the subsequent presentation after amendment, should be taken as the date of presentation of the memorandum of appeal and the appeal was, therefore, presented in time. (1)

Application should be made within time and to the proper officer and must be in accordance with law.

"Application made".—An application should be made within the time prescribed by the Act. It must be in accordance with law and must be made to the proper officer. For the purposes of limitation applications may be made at any time in the day.

Two applications—application defective in particular and supplemental application giving such particulars — to be considered as one made on the date of first.

When an application for execution is defective in some particulars and a supplemental application giving such particulars is made, the two applications may be considered as one application made on the date of the first. (2)

The amendment relates back to the original presentation of an application.

If an application is presented within time but is returned by the Court for amendment, and is again presented after amendment and after the period prescribed, the amendment relates back to the original presentation. (3)

Shall be dismissed though party does not raise the plea.

"Shall be dismissed".—"Reasons of public policy having dictated the enactment of the law of Limitation, the Indian Legislature has expressly declared that, whether the defence of limitation be pleaded or not, the Courts whether of first instance or of appeal are bound to give effect to such law. The bar of limitation cannot be waived, and suits and other proceedings must be dismissed if brought after the prescribed periods of limitation." (4) "A law of limitation and prescription may appear to operate harshly or unjustly in particular cases, but where such a law has been adopted by the State, for reasons which justify the rule in the majority of cases, it must be applied with stringency, and no individual case to which these reasons are inapplicable can be excepted from its operation. The general good of

Must be dismissed if brought after the prescribed period

A law of limitation must be applied with stringency.

[1] Jagannath v. Lal Mohan, 1 All. 260

[2] Mac Gregor v. Tarini Ohurn, 14 Cal. 124 (127).

[3] Shama Prasad v. Taki Mullik, 5 O.W.N. 816 (817).

[4] U. N. Mitra's Limitation (5th Ed.), P. 38.

the community requires that even a hard case should not be allowed to disturb the law. The rule must be enforced even at the risk of hardship to a particular party. The judge cannot, on equitable grounds, enlarge time allowed by the law, or postpone its operation or introduce exceptions not recognised by it." (1)

In England, on the other hand, the bar of limitation must be expressly pleaded by the defendant, even though the plea on the face of it is time-barred. But this rule applies only to those cases where limitation merely bars the remedy without extinguishing the very right itself and not to cases where the very right itself (and not merely the remedy) is barred. (2)

Plea of limitation when can be taken.—In the Court of first instance, if the plea of limitation is taken by the defendant before the issues are fixed, the Court must give effect to the plea if it is well founded. But if, after the issues in the case have been fixed and the case has proceeded to some length, the defendant raises the question of limitation, and the Court finds that in order to decide that question fresh issues of fact have to be gone into and additional evidence taken, then the Court has the option of refusing to entertain the plea.

An Appellate Court is justified in refusing to entertain a plea of limitation which was not taken in the First Court nor in the grounds of appeal in the Appellate Court but is urged for the first time in argument in the latter Court, where the plea for its proper decision involves further enquiry into facts. (3)

But if the point of limitation arises upon the facts of the case, or is obvious on the record, and does not stand in need of being developed by evidence, it must be heard and determined by the Appellate Court, though it does not appear on the pleadings or in the grounds of appeal. (4)

When a plea of limitation was not taken in either of the Courts below, it cannot be entertained for the first time in second appeal where such entertainment would involve the taking of additional evidence (5), or where the determination of the question would involve a fresh investigation of facts. (6)

The rule must be enforced even at the risk of hardship to a particular party.

In England the bar of limitation must be expressly pleaded by defendant in cases where limitation merely bars the remedy.

The Court must give effect to the plea if it is taken by defendant before issues are fixed and if it is well founded.

The Court has option of refusing to entertain a plea when fresh issues of fact have to be gone into.

Appellate Court may refuse to entertain plea urged first time in argument, where plea involves further inquiry.

But if plea arises upon facts of case or is obvious on record Appellate Court must consider it

Plea cannot be entertained for first time in second appeal where such entertainment involves fresh investigation of facts

[1] U. N. Mitra's Limitation [5th Ed.] P 248.

[2] Banning on Limitation, 3rd Ed. P. 10.

[3] Shah Muhammad v. Piara, 84 P. R. 1911, 13 IC 792.

[4] Deo Narain v. Webb, 28 Cal. 86; Dulo v. Md. Nathu, A.I.R. 1926 Lah 451.

[5] Pirsab v. Gurappa, 38 Bom. 227; 16 Bom. L. R. 111.

[6] Shivapa v. Dod Nagaya 11 Bom. 114, Khub Lal v. Juglish Pershad, 1 Pat. 23; A.I.R. 1922 Pat 398.

Plae can be urged for first time in second appeal if its legitimacy can be determined on pleading.

Judgment-debtor can take objection at any stage during pending execution proceedings

The explanation refers to cases when application is granted

Payment of Court-fees gives a retrospective effect if the application was alive at the date of payment.

No retrospective operation if application disposed of and payment made after period of limitation

But it can be urged for the first time in second appeal, if it be certain that its legitimacy can be determined on the pleading and that it depends on no possible question of fact regarding which the party adversely affected might have adduced evidence. (1)

It is only when the point of limitation is concluded by proceedings in a previous execution that the judgement-debtor is not allowed to take the objection of limitation in a subsequent execution of the decree. But so long as an execution application is pending, the judgement-debtor can show at any stage that the application is barred, and the Court will have no option but to dismiss the application under this section. (2)

Pauper suit.—The explanation to this section refers only to cases where the application for leave to sue as a pauper is granted.

Where a person, being at the time a pauper, petitions for leave to sue as a pauper, but subsequently, pending an enquiry into his pauperism, obtains funds which enable him to pay the Court-fees, and his petition is allowed upon such payment to be numbered and registered as a plaint, his suit shall be deemed to have been instituted from the date when he filed his pauper petition, and limitation runs against him only up to that date. (3)

In the case of *Skinner v. Orde* (3) just quoted the application (for leave to sue as a pauper) was alive at the date of the payment into Court, and such payment operated on the application so as to give it a retrospective effect. But where petition has been heard on the merits and dismissed, before payment of the Court-fee, there is nothing on which the payment can operate and the suit will be barred, if the payment is not made until after the period of limitation has expired. (4) Similarly the Allahabad High Court has held, where an application to sue as a pauper has been refused and a subsequent suit has been brought on the same matter for the full Court-fee, that for the purposes of limitation, the suit dated from the time of filing the plaint and not from the date of the application for leave to sue as a pauper. (5) This decision was followed by the Calcutta High Court. (6)

[1] *Peruma v Rama*, 20 M. L. J. 115, 28 L.C. 378 (379). See also 46 Cal. 455

[2] *Atul Krishna v. Brundaban*, 9 Pat. 306.

[3] *Skinner v. Orde*, 2 All. 241 (P.O.). See also 28 Cal 427 (431), 28 Mad. 493

[4] *Keshav Ramachandra v. Krishnarao*, 20 Bom. 508 (510)

[5] *Naraini v. Makhan*, 17 All. 526 (528).

[6] *Abhoya v Bissesswari*, 24 Cal 889 (891).

The same rule has been held to apply where after an application for leave to appeal as a pauper had been rejected a regular appeal was filed after the period of limitation had expired. (1)

The same rule applies in cases of pauper appeals

But if at the time of rejecting the application for leave to appeal as a pauper, the Court grants time to the applicant to file a regular appeal and such time happens to be beyond the period of limitation prescribed for the appeal, it is an exercise by the Court of a discretion vested in it under sec. 5. Therefore, the appeal filed within the time granted would not be barred by limitation. (2)

But Appellate Court has discretion to allow the appeal to proceed with under sec 5.

Laches and acquiescence.—Laches is merely passive, while acquiescence implies almost active consent. Where there is a statute of limitation, the objection of simple laches does not apply until the expiration of time allowed by the statute. But acquiescence is a different thing, it means more than laches. If a party who could object lies by, and knowingly permits another to incur an expense in doing an act under a belief that it would not be objected to, and so a kind of permission may be said to be given to another to alter his condition, he may be said to acquiesce. Acquiescence depends on knowledge, capacity and freedom, i.e., a person acquiescing must be fully cognizant of his right to dispute the claim, he must be under no disability and lastly must be free from all undue influence or pressure. The rule with regard to this equitable doctrine of laches and acquiescence may be stated as follows : that mere delay is not by itself, but delay which amounts to a waiver of the plaintiff's right by acquiescence or conduct inducing a party to place himself in a position in which he would not otherwise have placed himself, may be sufficient to disqualify a plaintiff from asserting rights which are not actually barred by limitation.

Laches is merely passive while acquiescence implies almost active consent.

Acquiescence depends on knowledge, capacity and freedom

4. Where Court is closed when period expires:—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.

NOTES.

Principle.—The general principle of law is this : When parties are prevented from doing a thing in Court on a particular day not by any act of their own, but by the act of the Court itself, they are entitled to do it

The general principle explained.

[1] Bishnath v Jagannath, 13 All. 305 (308).

[2] Girwar v Lakshmi, 26 All 329.

at the first subsequent opportunity. (1) If the law or a Court directs a thing to be done within a period fixed by it and it is impossible of performance on the last day fixed for no fault of the party required or directed to do the act, it will be recognised as properly done if it is done on the next day it is possible of performance. (2) To cases where this section is not directly and in terms applicable, the broad principle which it embodies would be applicable. [See sec. 10 of the General Clauses Act which provides for nearly all cases to which this section cannot be directly applied.]

"Court" means "Court" having jurisdiction to entertain the suit.

Court closed:—The word "Court" must be taken to mean only the "proper Court" having jurisdiction to entertain the suit and not any other. Therefore, the period, during which the Court in which a suit was wrongly instituted was closed, will not be excluded.

The language of section is very wide.

The language of the section is very wide, and therefore whether the Court is closed on an authorised holiday or a working day is quite immaterial.

Court closed—when?

A Court is said to be closed even though the Judge holds the Court on a Gazetted holiday, or if the Court is closed in an unauthorised manner.

Court not closed—when?

A Court is not closed if the presiding officer is on tour. In such cases the plaint should be presented to such officer in his camp.

A Court cannot be considered as closed on dates when arrangements are made and notified for the reception of plaints etc. (3)

If the office remains open, the Court is to be considered as open.

Where a District Court was adjourned for two months but the notification stated that the Court would be open twice a week for an hour for the reception of plaints, petitions and other papers, it was held *per Curiam* (Innes, J. dissenting) that the Court was not closed till the last day of the adjournment, within the meaning of this section so as to allow an appellant to present the appeal on the day the Court re-opened after the adjournment, the appeal time having expired during the adjournment. (4)

[1] Peary Mohun v Anunda Charan, 18 Cal. 631, Dharamsi Moraji Chemical Co. v. Ochhavalal, 51 Bom. 848. See also 23 Mad 389 (397).

[2] Surendra v. Souravini, 10 C.W.N. 535.

[3] Parvatheesam v. Bapanna, 13 Mad 447 (at P 451).

[4] Nachiyappa v. Ayyasami, 5 Mad. 189 (F. B)

Acknowledgment during holidays.—As to whether an acknowledgment given during the vacation of the Court but after the period of the limitation can save limitation, see Notes under sec. 19.

Acknowledgment during holidays—see notes under sec. 19.

Assignment of debt during holiday:—When the period prescribed for a suit to recover a debt expires during the Court vacation, and before re-opening, the debt is assigned, the suit brought by the assignee on the re-opening day is within time. (1)

Assignment of debt during holidays allowed.

5. Extension of period in certain cases:—Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may 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.

What applications can be admitted after the period of limitation prescribed for them when the applicant satisfies the Court that he had sufficient cause for not making the application within such period?

(A E. Aug. 1929).

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.

NOTES.

Change.—By the Limitation Amendment Act X of 1922, the words “by or under any enactment” have been substituted for the words “by any enactment or rule.” The reason has been thus stated :

Change introduced by the Limitation Amendment Act X of 1922.

“We think that the words ‘made applicable by any enactment or rule’ are, in so far as they apply to rules, vague inasmuch as there is no definition of the term ‘rule.’ The intention no doubt is to refer to a statutory rule or a rule having the force of law, *e. g.*, rules contained in the schedule in the Code of Civil Procedure and in particular O. 22, r. 9. We would therefore amend sec. 5 by substituting the words ‘by or under any enactment’ for the words ‘by any enactment or rule.’ (2)

[1] *Visram v. Tabaji*, 15 Bom. L. R. 348.

[2] Report of the Select Committee (Gazette of India, 1922 Part v, page 78).

As to the effect of this amendment see the Full Bench case *Krishnamachariar v. Srirangammal*. (1)

Applies to appeals and certain applications mentioned in the section and not to suits.

Scope of the Section.—The section applies only to appeals and certain applications mentioned in the section. It should be noted that it does not apply to suits. The reason is that the period prescribed for the most of the suits extends for three to twelve years, while that prescribed for appeals and applications mentioned in this section does not exceed six months; some concession has, therefore, been allowed in respect of these appeals and applications.

Discretion must be exercised in the way in which judicial power and discretion ought to be exercised

Judicial discretion :—Under the section the Court has a discretionary power, but that discretion must be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood, the words “sufficient cause” receiving a liberal interpretation so as to advance substantial justice, where no negligence, nor inaction, nor want of *bona fides* is imputable to the appellant. (2)

The High Court can interfere when exercise of discretion by the Lower Appellate court is judicially unsound

The High Court is competent to consider the sufficiency of the reasons given by the Lower Appellate Court for extending or refusing to extend time.

“It is the duty of the second Appellate Court to see whether the duty cast upon the Judge of the Lower Appellate Court as regards the determination of the question whether the appeal is within limitation has been properly discharged by him, and to interfere if by a wrong, improper and judicially unsound exercise of discretion under this section he has admitted an appeal which was barred by limitation.” (3)

Where the Lower Appellate Court has exercised its discretion capriciously or arbitrarily, the High Court will interfere. (4)

Mere difference of opinion as to the mode in which discretion ought to have been exercised by the Lower Appellate Court is no ground for High Court's interference

“A mere difference in view as to the mode in which the discretion ought to have been exercised under this section by the Lower Appellate Court is in itself no ground for interference by the High Court; but where facts which are material for the purpose of enabling the Lower Appellate Court to exercise the discretion under this section have not been considered, the exercise of discretion is judicially unsound and the High

[1] 47 Mad. 824, A.I.R. 1925 Mad. 14.

[2] *Seth Narbada Pershad v. Nathuram*, 8 C.L.R. 121.

[3] *Beehi v. Ahsanullah*, 12, All. 461 (483).

[4] *Bhimrao v. Ayyappa*, 31 Bom. 33.

Court can interfere. Before the Court can interfere, it ought to be satisfied that the exercise of the discretion of the Lower Court was judicially unsound. The test is, has the discretion been exercised after appreciation and consideration of all the facts which are material for the purpose of enabling the judge to exercise a judicial discretion, and after the application of the right principle to these facts? " (1)

Sufficient cause.—No hard and fast rule can be laid down for determining what is and what is not a "sufficient cause". What constitutes sufficient cause must be determined by a reference to all the circumstances of each particular case (2)

It is difficult and undesirable to attempt to define precisely the meaning of the words 'sufficient cause' or sufficient reason. To do so would be to crystallize into rigid definition that judicial power and discretion which the Legislature has, for the best of all reasons, left undetermined and unfettered. (3)

The "sufficient cause" apparently means, not only the circumstances (such as the party being a minor or insane or the Court being closed) which are expressly recognised as extending time, but also such circumstances as are not expressly recognised, but which may appear to the Court to be reasonable looking to all the facts of the case. (4)

When the time for appealing is once passed, a very valuable right is secured to the successful litigant, and the Court must, therefore, be fully satisfied of the justice of the grounds on which it is sought to obtain an extension of the time for attacking the decree, and thus, perhaps, depriving the successful litigant of the advantage he has secured. (5)

The true rule as to the exercise of discretion under this section is to consider whether, under the special circumstances of each case, the appellant or applicant acted under an honest, though mistaken, belief formed with due care and attention.

Illness.—Illness of a serious nature may be sufficient cause. It must be proved that the appellant or applicant was utterly disabled to attend to any duty. Illness of the pleader, and the client's ignorance of it, is a sufficient cause. But illness in the family and consequent delay in making arrangement for the appeal or application is no sufficient cause.

Cannot be determined by hard and fast rules

Difficult and undesirable to attempt to define 'sufficient cause'

'Sufficient cause,' apparently means not only circumstances expressly recognised as extending time but also circumstances appearing reasonable to the Court

Court to be satisfied of the justice of the grounds.

The true rule as to exercise of discretion

Illness of a serious nature may be a sufficient cause

[1] *Kachilappa v. Ramanujam*, 25 Mad 166.

[2] *Shib Dayal v. Jagannath*, 44 All. 636 (640) See also 33 Cal. 1323.

[3] *In re Manchester Economic Building Society*, 24 Ch. D. 488, *Ambica v. Manikganj Loan Office*, 55 Cal. 798.

[4] *Karsandas v. Gangabai*, 7 Bom. L.R. 905, See also 17 C.L.J. 596.

[5] *Dund Bahadur v. Deonandan*, 17 C.L.J. 596

Imprisonment may be sufficient cause.

Mere ignorance or mistake of law is not sufficient cause.

A *bona fide* mistake may be sufficient cause.

Is a "mistake of law" or "negligence of counsel" sufficient ground for extending the period of limitation for appeal? (P.U. 1296)

Mistake of counsel if made *bona fide* is sufficient cause.

A, an appellant having *bona fide* accepted the advice of his pleader B as to the procedure to adopt in the course of a litigation and misled by that advice, fails to file the appeal in time. Will A have any remedy? (C.U. 1925 & 1927)

Imprisonment—Imprisonment in a criminal jail may be considered as a sufficient cause and the time spent in jail may be deducted.

Mistake or ignorance of law.—A mistake or ignorance of law is not a sufficient cause. Mere ignorance of law cannot be recognised as sufficient cause for delay, for that would be a premium on ignorance. (1)

But if the mistake be *bona fide* it will be considered as sufficient cause within the meaning of this section. The true rule is, whether under the special circumstances of each case the appellant acted under an honest though mistaken belief formed with due care and attention. (2) Before a mistake of law can be accepted as sufficient cause, it is necessary to satisfy the Court not only that the mistake was honestly made, but also that it was made despite due care and attention on the part of the appellant or his pleader. (3)

While it might be permissible to regard a "mistake of law" as amounting to "sufficient cause" within the meaning of this section in certain circumstances on the ground that an amendment of an Act was not fully appreciated by the Bar, it cannot be so regarded where the alteration of law is proved to be known to the party seeking to take advantage of the plea especially when the delay is a long one. (4)

Mistake of counsel.—In England there is a good deal of authority that a mistake of counsel is no ground for indulgence but in India there seems to be a strong authority for the opposite view. A legal adviser's mistake if made *bona fide* is a sufficient cause. The mistake must be *bona fide* i.e. made in spite of due care and attention. The mistake must be one which might have easily occurred even if reasonably due care and attention has been exercised by the pleader. (5)

The papers for an appeal were handed over to the appellant's advocate in the morning of the last day of filing. The advocate through pressure of urgent work did not look into the papers till the evening of that day, when he found that was the last day. *Held*, that was a sufficient cause

[1] *Sitaram v. Nimba*, 12 Bom. 320 (per West J.)

[2] *Krishna v. Chathappan*, 33 Mad. 269 (271).

[3] *Fakir Chand v. Municipal Committee*, 59 P R 1913; 18 I.C. 37, H. C. Mitra's I.L.A. (10th Ed.) P 38.

[4] *Secretary of State v. Tirath Ram*, 9 Lah 76; *Gyanaji v. Ningappa*, 52 Bom. 434.

[5] *Tin Tin Nyo v Maung Ba Saung*, 1 Rang. 584, A.I.R. 1928 Rang. 148, See also 45 Bom. 607; 43 Bom. 376. (P.C.); 55 Cal. 798.

to grant the appellant an extension of a day under sec. 5 of the Indian Limitation Act. *Held*, also, that it is enough if the appellant satisfies the Court that for sufficient cause he was prevented to file the appeal on the last day and his action during the whole of the period need not be explained. (1)

Where the delay of the appellant is *bona fide* due to the mistaken legal advice and there is no failure of proper diligence on his part it is sufficient cause as clients ought not to be allowed to suffer through a *bona fide* mistake of their legal advisers.

Wrong proceedings taken in good faith.—“Where a person believing in good faith that a petition for revision, and not an appeal, was the proper remedy, and in pursuance of that belief presented the petition, it was a sufficient cause for subsequently preferring an appeal after the period of limitation. (2) But if he does not act in good faith, i. e., if he knows properly well that he ought to file an appeal but still he files an application for revision, it will not be considered a sufficient cause for afterwards filing an appeal out of time.” (3)

Wrong proceedings taken in good faith may be a sufficient cause.

Application for review.—The causes accounting for delay in applying for, and intended to justify the grant of, a review, must be of grave importance.

Just and reasonable delay in applying for a review may be a ‘sufficient cause’.

Where a party applying for a review of judgment after the expiry of the period of 90 days allowed by the Code, had not shown any just and reasonable cause for not preferring his application within the prescribed period, the order admitting the review was held by the Privy Council to have been improperly granted, and was set aside with all subsequent proceedings thereon. (4)

Appeal after application for review.—The true guide for a Court in the exercise of the discretion is whether the appellant has acted with reasonable diligence in prosecuting his appeal and where the time has been spent in prosecuting any other civil proceeding, such as a review, then it only remains to see whether the proceedings

True guide for the exercise of the discretion.

[1] *Karalicharan v. Apurbakrishna*, 58 Cal. 549.

[2] *Balwant v. Guman*, 5 All 591.

[3] *Umed Ali v. Municipal Committee*, 2 Lah. 1 (4). See also *Nariman v. Hasham* 49 Bom. 149 where delay was excused when a review was applied for instead of an appeal being preferred at once. H.C. Mitra's I.L.A. (10th Ed.) P. 39.

[4] *Luchman v. Tirbani*, 14 Bom. L. R. 373. See also A.I.R. 1928 Lah. 964—Application for review must be on reasonable grounds.

Under what circumstances would the filing of a review by the aggrieved party be a sufficient cause for excusing the delay in filing an appeal?

[A E. Aug 1927.]

When can appeal be admitted after the period of limitation.

[B U. Oct. 1928]

Appellant must adduce distinct proof of the sufficient cause.

Appellate Court should record reasons for admitting an appeal out of time

The High Court is not precluded from considering the question of limitation.

Procedure to be followed in admitting an appeal preferred out of time

If *bona fide* prosecuted, may afterwards be admitted

The appellant must satisfy that mistake is *bona fide*

in the review were reasonably prosecuted and in good faith; and the appellant ought ordinarily to be deemed to have acted with reasonable diligence, when the whole period between the date of the decree appealed against and the date of presenting the appeal, does not, after excluding the time spent in prosecuting with due diligence a proper application for review of judgment, exceed the period prescribed by law for presenting the appeal. (1)

Where an appellant seeks the benefit of the section, he must adduce distinct proof of the sufficient cause on which he relies and must furnish a detailed affidavit explaining the cause of the delay.

An Appellate Court should not admit an appeal after the period of limitation prescribed therefor without recording its reasons for being satisfied that there was sufficient cause for not presenting it within such period.

Where a respondent fails to object to the decision of an appeal by a Lower Appellate Court under this section, the High Court is not precluded from considering the question of limitation. Even an agreement between the parties that the objection should not be raised would not prevent the High Court from interfering.

The practice of admitting appeals out of time provisionally without notice to the respondent and allowing objection to its admission to be taken at the hearing should be discontinued. Provision should be made for the final determination at the stage of admission of any question of limitation affecting the competence of the appeal.

Appeal preferred in wrong Court.—Presentation of an appeal to a wrong Court, under a *bona fide* mistake may be sufficient cause within the meaning of this section, (2) but the belief must be formed with due care. (3)

In order to claim the benefit of this section the appellant must satisfy that the mistake is *bona fide*, i. e., made under an honest though mistaken belief formed with due care and attention that he was appealing to the right Court; otherwise it will not be considered as a sufficient cause. (4).

[1] Karim Baksh v. Daulat Ram, 183 P. R. 1888, followed by the Privy Council in Brij Indar v. Kanshi Ram, 45 Cal. 94 (105, (P.C.)

[2] Dadabhai v. Maneksha, 21 Bom 552. See also 23 Cal. 526.

[3] Sarat Chandra v. Saraswati, 34 Cal. 216.

[4] Jagal v. Har Narain, 10 All. 524. See also A. I. R. 1923 All. 364.

Amendment of decree.—When a decree is amended it continues to bear its original date, and therefore the time for appeal against such amended decree runs from that date and the circumstance that the decree was amended is not *per se* a sufficient cause for delay in appealing. Whether there is sufficient cause must depend upon the circumstances of each individual case. If the grounds on which the appeal is based are intimately connected with the amendment of the decree, or if the grounds are directed against the decree only in so far as it has been amended, the fact of the amendment may be sufficient cause. (1)

Amendment of decree may be a 'sufficient cause' -- Depends upon circumstances of each individual case

Pauper appeal.—The Court has a discretion under this section to enlarge for sufficient cause the period prescribed by Art. 170 for an application for leave to appeal in *forma pauperis*. Pendency of *bona fide* proceedings for leave to appeal in *forma pauperis* constitutes sufficient cause for delay in appealing.

Pendency of *bona fide* proceedings for leave to appeal in *forma pauperis* constitutes sufficient cause for delay in appealing

Appellant applied for leave to appeal as a pauper. Enquiry held by the D. J. who reported the appellant to be pauper. After the report and after expiry of period of limitation appellant inherited property on death of father—Appellate Court held that he was not a pauper and in compliance with the Court's order he paid fees, *Held* that the appellant was entitled to the benefit of this section. (2)

Although section 78 of the Provincial Insolvency Act makes this section applicable to appeals and applications under it, it does not extend the application of this section to petitions to adjudicate a person as insolvent, not being included under applications as used in section 78. Thus any delay in presenting the petition beyond 3 months will not be excused hereunder.

Sec 78 of Pro Ins Act makes this sec applicable to appeals and applications and not to petitions to adjudicate a person as insolvent

Inability to get stamps.—"The last day of filing an appeal was 13th July, but on that day the appellant would not get a stamp. The next day was a holiday. The appeal was filed on the 15th. It was held that the delay was excusable under this section. (3) But in a

'When 'Inability to get stamps' may be a 'sufficient cause, and when not.

[1] *Brojo Lal v. Tara Prosonna*, 3 C. L. J. 188 (192) Sec. 43 All. 580.

[2] *Shadi Khan v Umdad Begaum* 52 P. L. R. 42, 1912, 13 I.C. 73 See 26 Cal. 925.

[3] *Kesho Prasad v. Harbans*, 1 P. L. J. 163, 37 I.C. 211.

later Patna case it has been laid down that where the party is guilty of procrastination, *e. g.*, where the law has provided a time limit within which a particular step is to be taken, and the party waits until the last moment before beginning to take action, he is not entitled to the Court's indulgence if an unforeseen accident (*e.g.* inability to get stamps) prevents the step from being taken within the time prescribed by law. (1) In a Nagpur case also it has been held that the appellant who wilfully leaves the preparation and presentation of the appeal to the last day of the period of limitation is guilty of negligence and is not entitled to an extension of time, if some unexpected and unforeseen contingency (*e.g.* inability to get stamps) prevents him from filing the appeal within time. This section is not provided to encourage negligence, procrastination and laxity. " (2)

Unintentional mistake or sudden accident may be a sufficient cause

Unintentional mistake or sudden accident.—Extention of time should be granted *ex debito justitiae* in all cases, where the delay was necessitated through *bona fide* mistake, error or carelessness, and no damage has been done to the opposite party, which cannot be repaired by payment of costs or otherwise. If there has been any misleading through any conduct of the other side or an officer of the Court or some sudden accident which could not have been foreseen, time will be enlarged. Where delay is caused by gross carelessness, laches or dilatoriness, it will not be excused. (3)

What is not sufficient cause?

Poverty, illness, infancy, pardanashin.—Poverty of the appellant or applicant, or a mere plea of illness, is not a sufficient cause. The mere fact of the appellant being a *pardanashin* lady is not a sufficient cause, unless she was thereby actually prevented from appealing herself or engaging a counsel for that purpose. Appellant's infancy is not *per se* a sufficient cause. When the next friend or the guardian of a minor has for his own advantage or by negligence allowed time for appeal to run out, the Court may enlarge time for appeal in the infant's favour. (3)

What is legal 'Disability' and what is its value for the purposes of the Limitation Act? Are there any cases where it has no value whatsoever? Give an illustration.

6. Legal disability.—(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

[1] Seth Jahar v Pritchard, 4 P.L.J. 381, 52 I. C. 225.

[2] Kedarnath v. Zumberlal, 12 N.L.R. 171, 37 I-C. 503;
H. C. Mitra's I.L.A. (10 Ed.) P. 44.

[3] Rustomji-Students, Ed. P. 10.

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.

tion to show "When once time has begun to run no subsequent disability or inability to sue stops it.

(B.U. April, 1919.)

[Ans. See also Sec. 9]

Specify clearly the circumstances and the extent to which fraud and minority extend the period of limitation. (B.U. Oct. 1922)

[Ans. See also sec. 18]

What is legal disability and how does it affect the question of limitation prescribed for a suit or application? (B.U. March, 1924)

What do you understand by Legal Disability? How does it affect the period of limitation for filing suits?

(B.U. Oct. 1925)

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? (B.U. Oct. 1926)

[Ans. A can bring a suit within three years after he becomes sane.]

NOTES.

State briefly to what extent, if any, is the period of limitation prescribed for a suit or an application affected by [a] legal disability, [b] absence of defendant from British India

(B.U. Oct 1929.)

[Ans See sections 6-8 and sec 13]

What special provisions are made under the limitation Act for suits by persons under legal disability? (B.U April, 1931)

Clauses (1) and (2) re-stated.—

Where a person entitled

- (1) to institute a suit or
- (2) to make an application for execution of a decree

is { (a) (i) minor, (ii) insane or, (iii) idiot,
(b) (i) affected by two such disabilities, or
(ii) before his disability has ceased affected by another disability,

he can institute the suit or make the application within the same period as would otherwise have been allowed from the time prescribed therefor, in case (a) after the disability has ceased, and in case (b) after both disabilities have ceased.

What are the privileges conferred by the Limitation Act on persons under legal disability?

(A.E. Feb. 1924)

What privileges are granted to minors by the Indian Limitation Act? State whether the following suits are in time. [i] A promissory note is passed in favour of the guardian of a minor in 1912. The minor attained majority in 1916. In 1917 he files a suit to recover the amount on the promissory note. (ii) A right to an immoveable property accrued to a minor in 1912. He attained majority in 1923. He sold the property to B in 1925. Immediately B files a suit to recover the said property on the strength of the sale-deed

(A E Feb. 1925)

Construction.—This is an enabling section to enable persons under disability to exercise their legal rights within a certain time, and it should be construed liberally rather than narrowly. (1)

Object of the section.—Generally limitation begins to run from the accrual of the cause of action. This section is one of the exceptions to the general rule. In this and similar cases the period of limitation does not run from the date of the accrual of the cause of action, but runs from a subsequent date, i.e., the day on which the disabilities cease. The object of the section is not to place minors under a special disability as compared with majors, but to make a special concession in their favour. It is clear from the section that minority or lunacy would not prevent limitation from running as against the minor or lunatic, but it simply gives to the minor or lunatic an extended period for filing a suit or application. The section merely means that no limitation will apply to a case in which the person suing was disqualified at the time when the cause of action arose, provided the suit is brought within three years of the time of the disqualification ceasing. The section is, however, subject to the other provisions of the Act (See sections 7, 8, and 9).

Scope and Application.—Sec. 7 of the old Act applied to the case of a person entitled to make *any* application, but this section has been limited to the case of a person entitled to make only an application for the execution of the decree. The effect of the substitution of the words “make an application for the execution of a decree” in place of the words “make any application” in sec. 7 of the old Act is that the privilege enjoyed by a minor of making an application within the prescribed period after the cessation of disability has been taken away, and now any application by the minor except an application for the execution of a decree has to be made within the prescribed period from the time when the right to apply accrued (1)

This section applies only to cases dealt with by the Act itself, i. e., to those suits and applications for execution of decrees which are mentioned in the first schedule. It is not applicable to cases for which a period of limitation is prescribed by other Acts. Thus, the provisions of this section would have no application to a case where a decree is barred by sec. 48 of C.P.C. (2). The Bombay High Court has, however, held that although this section applies only to cases dealt with by the Act itself and as such does not apply to cases under the C. P. C., still the provisions of C. P. C. must be deemed to be subject to the general principle of law as to the disabilities of minors, viz., that time does not run against a minor. Therefore an application for execution, though barred under sec. 48 of C. P. C., is in time if made within three years after the minor attains majority. (3) But this view has not been approved by other Courts. Moreover, this section is limited only to suits and applications for execution of decrees. It does not operate in favour of an appellant under disability. But infancy may, under certain circumstances, enlarge time for appeal. (See sec. 5). This section is confined to suits and applications for execution of decrees *by* a person under disability. There is no saving in favour of a plaintiff on account of any disability of the defendant.

No disqualification other than those mentioned in the Act can save limitation. War and rebellion, for instance, do not check limitation.

[Ans. See Sections 6-8, (1) The suit on the pro-note is time-barred. When the pro-note is taken in the name of the guardian, the minor cannot on attaining majority claim the benefit of this section. The pro-note having been given to the guardian, he is the person entitled to sue on it, and not the minor and the suit is barred, because it is not instituted by the guardian within three years of its date, i.e. before 1915. *Vide* Vishnu v. Keshav 26 Bom L.R. 426, (n) The suit is barred by limitation. Sec 6 gives only a personal privilege to the minor. It applies to the minor himself or his legal representatives but not to his assignees *Vide* Mahadev v. Babi, 26 Bom 730]

What do you understand by the term “Legal Disability”? Explain its effect on the period of limitation.

(A.E. Aug 1925)

Explain the term ‘legal disability’ and state what concessions are made by the Limitation Act in favour of persons suffering from such disability and to what extent? (A.E. Feb. 1927)

D obtained a decree for money against a minor in 1912. D subsequently assigned the decree to R. R applied in execution to attach a book-debt due to the minor judgment-debtor and the attachment was made in 1913, the debt being due in 1911. R brought it to sale and purchased it in Court-auction and obtained a sale certificate in Feb 1915. As the purchaser of the debt, R brought a suit in March, 1915 to recover it from the defendant debtor. Discuss R's position. (A. E. Feb 1924)

[1] Khondkar Mahomed v. Chandra Kumar, 56 Cal. 1117.

[2] Ram Nath v. Chatarpal, 37 All 639, following 37 Mad 186.

[3] Moro v. Visaji, 16 Bom. 536.

[Ans The sec 6 does not apply to suits *against* minors. A suit against a person under disability must be instituted within the ordinary period. It is therefore following the correct method of law.]

Some property was sold by a Hindu during the minority of his son in 1911. The son attained majority in 1923. Immediately afterwards the son purported to transfer some of the properties alienated by the father to B. He then filed a suit to set aside the alienation and recover possession of the whole property including that transferred to B and joined B as co-plaintiff with him. Would the claim be in time so far as B's claim was concerned? If not, why not? The suit was filed within 3 years of the son attaining majority.

(A E. Aug. 1927.)

[Ans: Vide *Sitla Bux v. Ram Nirwaz*, A I R 1926 Oudh 20]

What is a legal disability under the Indian Limitation Act, and how does the Act provide for persons suffering from such a disability?

(A E Aug 1930)

(a) What is legal disability? How does it affect limitation?

(b) A, who becomes entitled to some property in 1900, dies the next year without suing for its possession. He leaves a minor son B. Within what time must B sue to recover possession of this property? (A U. 1911)

Minority: Burden of proof.—The question as to who is a minor must be determined by the Indian Majority Act. In cases where that Act is inapplicable (e.g., in case of foreigners not domiciled in British India), the question is to be determined by the law of the domicile. The onus is on the plaintiff. It is for him to establish affirmatively and clearly that he is under the age of 21 (18+3 years under sec. 8) at the time of institution of the suit.

Benefit of section is personal.—The privilege which this section allows is entirely personal and can be claimed only by a person under disability or his representative after his death. If a guardian lends money out of a minor's estate and takes a pro-note in his own name, limitation runs against the guardian, and the minor, not being the payee or holder, cannot claim exemption under this section. (1) If, during the minority of a person, or if, after attaining majority and within three years thereof, such person assigns all his rights and interests to a third party, who is *sui juris*, the latter cannot claim exemptions accorded to the minor by this section but is subject to the ordinary law of limitation, governing suits in which relief of the same nature is claimed. (2) Where a person sues to set aside a transfer effected by his father during his minority, within three years of his attaining majority and joins with him as co-plaintiff an assignee to whom he sells a portion of the property in suit, that person may be in time by making use of sec. 6, but his co-plaintiff being only an assignee is not entitled to its privilege, and is beyond time (3)

Accrual of cause of action.—The plaintiff must be a minor when the cause of action first accrued and the cause of action must have accrued to the minor himself: Otherwise he cannot claim any exemption under this section. If the cause of action had arisen before the birth of a minor he would not be entitled to claim the benefit of the section. The minor must be in existence at the time when the cause of action accrued. Similarly when a cause of action accrued to the minor's father, the minor cannot secure any extension of time under the provisions of this section.

[1] *Vishnu v. Keshav*, 26 Bom L. R. 426, *Ramannja v. Sudagopa*, 28 Mad. 205.

[2] *Rudra Kant v. Nabokishore*, 9 Cal 663 (F.B.), *Mahadev v. Babi*, 26 Bom. 730.

(3) *Sitla Bux v. Ram Newaz*, A I R. 1926 Oudh 20; 90 I C 741

Where a cause of action accrued to a person when he was in embryo, he cannot get the advantage of this section as he cannot be deemed to be a minor in existence on the date of the conception. (1)

But the law is otherwise in the case of reversioners. Where there are several reversioners entitled successively under the Hindu Law to an estate held by a Hindu widow, no one such reversioner can be held to claim through, or derive his title from another, even that other happened to be his father, but he derives his title from the last full owner. If, therefore, the right of the nearest reversioner for the time being to contest an alienation or an adoption by the widow is allowed to become barred by limitation as against him, this will not bar the similar rights of other subsequent reversioners. (2) "This was also the view of the Madras High Court in *Govinda v. Thayammal* (3), *Narayana v. Rama* (4), and *Venkata Row v. Tulja Ram Row* (5); but all these cases have now been overruled by the Full Bench decision in *Varamma v. Gopaladasayya* (6). In this case it has been held that if the reversioners existing at the time of alienation are barred, the reversioners born thereafter are equally barred, as the cause of action is but one. The Lahore High Court likewise holds (following 41 Mad. 659) that the right to sue for a declaratory decree is vested in the whole body of reversioners in existence at the time of alienation jointly and severally, and the time begins to run simultaneously against them all, and a reversioner born after the date of alienation does not obtain a fresh cause of action from his birth; because when the time has once begun to run, no subsequent disability stops it". (7)

Continuity of disability.—The plaintiff can claim an exemption only if there is a continuous disability. If a person entitled to file a suit is a minor and before he attains majority, he becomes insane, time would be extended. Again if he died during his insanity, and

[Ans. [b] Limitation has already commenced to run in A's life time and therefore B's minority will not prevent its running [sec.9] So B must sue, if the property is moveable within three years and if it is an immoveable property within 12 years since 1900 when the right to sue first accrued]

What privileges does the law confer on persons attaining majority in regard to (a) suits, (b) applications (c) appeals, for which the period of limitation expired during minority?

(A U 1912)

A right to sue for possession of certain property accrues to A in 1900. He becomes insane in 1902, and the disability continues up to 1913. He brings a suit in 1914. Is the suit within time? Kindly give reasons for your answer.

(A U. 1916)

[Ans: The suit is time barred, because sec. 6 provides that the disability must be existing at the date when the right to sue accrues. No subsequent disability can have the effect of extending limitation.]

A becomes indebted to B, a minor in a sum of money which is due and payable at once. B, on the day of attaining majority makes a valid assignment of the debt to C. C sues A for the money within three years of the date of assignment but beyond three years from the date when the debt becomes

[1] *Mahomed Khan v. Ahmed Khan*, 10 Lah 713

[2] *Bhagwanta v. Sukhi*, 22 All 33; *Abinash v. Harinath*, 32 Cal. 62 (71); *Das Ram v. Tirtha Nath*, 51 Cal. 101 (108).

[3] 28 Mad. 57.

[4] 38 Mad 396.

[5] 1917 M. W. N. 30 (36)

[6] 41 Mad. 659 (F.B.)

[7] *H.O. Mitra's I. L. A.* (10 Ed.) P. 60. *Chiragh Din v. Abdulla*, 6 Lah 405.

due. Is the suit in time? (Give reasons. (A.U. 1918),

[Ans. *Vide* 9 Cal, 663, (F.B.), 26 Bom 730]

What is the effect of minority or insanity on the law of limitation as applicable to suits? (A.U. 1922)

What are the legal disabilities known to the law of limitation? Explain and discuss their effect upon the rights of parties (1) when a legal disability exists at the date of the accrual of the right to sue, (2) when a legal disability supervenes after the accrual of such a right (P.U. 1925)

Discuss legal disability as affecting limitation (A.O.E. Sept 1930)

State the nature of the privilege given by the Limitation Act, in favour of persons under disability?

(C.U. 1920, 1922 (a) 1924, 1926, 1927)

What is the effect of legal disability upon a person's right to institute a suit within the period of limitation prescribed by the L.A.?

(C.U. 1920)

A minor brings a suit under the guardianship of his next friend. He is still a minor when the period of limitation to execute the decree expires. Can he execute the decree after attaining majority?

(A.U. 1922)

his legal representative is a minor, the extension of time would be allowed both to the minor and his legal representative. But the disabilities must overlap each other. If there is any interval, however short, between the termination of the first disability and the supervening disability, time will begin to run on determination of the first disability and the second disability would have no effect. If, for instance, the minor becomes insane even two days after he attained majority, he would lose the benefit of this section.

Initial, not subsequent, disability.—"In order to be effectual to suspend the operation of the statute, the disability must have existed at the time when the right of action first accrued. When the statute has been once attached to the claim, it overrides all after-accruing disabilities and intermediate acts and events, and, therefore, disability supervening after the right of action accrued will be of no avail. Thus if at the time when right of action accrues a man is of full age, the fact that he shortly afterwards became insane will not check the operation of the statute. When a cause of action arises in favour of an adult, the minority of a person upon whom the cause of action devolves does not prevent limitation running." (1)

Effect of guardianship.—The fact that a guardian or next friend might have maintained a suit on the minor's behalf during minority does not deprive the minor of the protection given to him by the section. (2) Again, the extension of the period of limitation, conceded to a minor on account of legal disability, is not affected by the fact that during his minority he has been represented by a guardian. (3)

Execution of decree.—A plaintiff who has obtained a decree during his minority, has the option either of applying through his guardian to execute the decree during minority, or to wait until the expiration of his minority before executing his decree. The application of the guardian is the application of the infant. The minor is under disability during the whole period of his minority. His dis-

[1] Rustomji's Limitation (Students, Ed.) P. 12.

[2] Jagadindra v Hemanta, 32 Cal. 129 (142) (P.C.)

[3] Anantharama v. Karuppanan, 4 Mad 119.

ability does not cease, because he, through his guardian, makes two or more applications for execution, however long the interval between them, provided they are all made during his minority. (1)

If a person entitled to apply for execution is under disability at the time when any of the starting points referred to in column third of Art. 182 begins, the operation of the statute is suspended during the continuance of the disability. Art. 182 provides several points of time, from which the period of three years shall begin to run, and for the purposes of the Limitation Act, the period which begins from each point is a separate period, and if the person entitled is under disability at the time, when any of such periods commences, the operation of the Act is suspended during the continuance of the disability by the operation of the sec. 6. (2)

Person suing in a representative capacity.—The benefit of this section can be claimed by a person suing in a representative capacity, e. g., *shebait* of an idol. The right of action is vested in the *shebait*, not in the idol ; therefore, if, at the time when the cause of action for a suit for recovering possession of property dedicated to an idol accrued, the *shebait* was a minor, he could bring such suit within three years after attaining majority. (3)

The benefit of this section can be claimed by a person suing in a representative capacity.

Insanity.—When insanity is once proved to have existed, it is presumed to continue until it is proved to have ceased ; and a very strict burden of proof lies on the party who alleges recovery.

Insanity is presumed to continue until it is proved to have ceased

A lucid interval is a temporary cessation of lunacy and it cannot be treated as a recovery unless it is of sufficient length of time to enable the person to do an intended rational act.

Other disqualifications.—Under the Limitation Act, no other cause of disqualification than those mentioned in the Act can be admitted to save limitation and the only disqualifications that sections 6, 8 and 9 of the Act recognise are minority, insanity and idiocy. A disqualification under the Court of Wards Act is not such a legal disability as is recognised and enumerated in the Act and the fact that the plaintiff was a disqualified proprietor, whose estate was

A, a Hindu, sentenced to 11 years' imprisonment, is informed 16 months after his conviction that his undivided brother has refused to maintain his wife and minor children. He is not able to secure any legal advice or assistance in jail. He claims however his

[1] *Mon Mohan v. Gunga*, 9 Cal. 181 ; *Moro v. Visaji*, 16 Bom. 536, *Ramakrishna v. Ramachandra*, 32 Bom. L. R. 1093 ; *Zamir Hassan v. Sundar*, 22 All. 199 (F.B.) ; *Kashinath v. Govind*, 32 Bom. L. R. 1299,

[2] *Lalit Mohan v. Janoky*, 20 Cal 714.

[3] *Jagadindra v. Hemanta*, 32 Cal 129 (141) (P.C)

hare within 8 years of his release. Is the suit barred? Give reasons.

(A. E. Aug 1923)

Is the period of limitation enlarged by reason of the disability of one of several plaintiffs?

(P. U. 1926)

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?

(C U 1908, 1909, 1917, 1921)

A passed promissory note on 10th Jan. 1915 payable on demand to X and Company of which X and Y and Z were partners. Immediately after, X became insane. Z who was a minor attained his majority on the 1st Jan 1919. On the 10th of Jan 1919, Y (aged 39) and Z filed a suit on the promissory note against A. A's defence was that the suit was barred by limitation. Is his defence proper? (B U. Oct 1919)

[Ans. A's defence is good. Here Y could have given a discharge of the debt without the concurrence of X and Z. Time, therefore, ran against them all.]

A passed a promissory note on 10th Jan. 1913 payable on demand to B and Company of which B, C and D were partners. Immediately after, B became insane. D who was a minor attained his majority on 1st Jan. 1917. On 10th Feb 1917 C (aged 25) and D filed

under the charge of the Court of Wards, did not prevent the running of time against the plaintiff during the period the Court of Wards remained in charge. (1)

7. Disability of one of several plaintiffs or applicants.—

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 one of them until one of them becomes 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 either E or F becomes sane, or G attains majority.

NOTES.

Scope and Object:—The sections 6 and 7 are not mutually exclusive. The latter supplements the former. The two sections should be read together. The general rule that a minor is entitled to the extension of time is qualified by the provisions of sec. 7, i.e., a minor is entitled to the extension of time only if there is nobody who can give a valid discharge on his behalf without his concurrence. If the discharge can be given without his concurrence, he cannot take

[1] *Kuarmani v. Wasif*, 19 C.W.N. 1193, 23 L.C. 818; *Rani Kuar Mani v. Nawab of Murshidabad*, 46 Cal. 694 (P.C.)

advantage of sec. 6. The principle of this section is that if there are some persons in existence who are adults who could have safeguarded the common rights of themselves and of others similarly situated, the failure of the persons who are to litigate the right will start the cause of action not only against themselves but also against persons in similar circumstances. The section applies only to cases where the joint creditors or claimants are persons whose substantive right is joint, i.e., where more than one individual possess the same identical substantive right; it does not apply to persons whose rights are distinct and different, but who are permitted to enforce such separate rights by one judicial process to which all are parties, or by a process instituted by one on behalf of all (e.g., persons entitled to compensation under the Fatal Accidents Act). (1)

“ This section applies only to cases where the joint debt or claim is of such a character that a discharge can be given by one creditor or claimant without the concurrence of others. This section does not apply where the debt or claim, though joint is of such a character that a single creditor or claimant cannot give a discharge so as to bind others. The test to be applied is, whether it is the intention of the parties that each of the persons in whose favour the obligation is created is a creditor for the whole; if so, a payment to one liberates the debtor against all the creditors; if not, each is a creditor for his own share and cannot give a discharge for the whole obligation.” (2)

Joint Hindu family : power of manager to give full discharge.—

In the case of a joint Mitakshara family where a right is vested in all the members jointly, the managing member can, within the meaning of this section, give a discharge without the concurrence of the minor members and time may, therefore, run against all the members of an undivided family including the minor members thereof,

In an Allahabad case it has been held that if a joint Hindu Mitakshara family consists of brothers alone, the elder brother cannot give a valid discharge without the concurrence of others unless he

a suit on the promissory note against A.

A contended that the suit was barred by limitation. Is the contention valid?

(B. U. April 1926)

[Ans. The contention is valid as C was major and capable of giving a valid discharge. *Vide Art. 73*].

When does time begin to run for computing the period of limitation:

(a) Where one of several persons jointly entitled to institute a suit is under a legal disability? (A.C.E. Sept. 1928).

A is indebted to a firm the partners in which are X, Y and Z. X and Y are insane and Z is a minor. When will time run for a suit against A to recover the debt. (A.C.E. Sept 1929)

When does time begin to run against the plaintiffs in the following cases:

(a) When only one of the 3 plaintiffs is under a disability

(b) When all the 3 plaintiffs are under one or other disability. Give your reasons and also illustration

(P. U. 1923)

Can the manager of a joint Hindu family give a discharge of a joint claim without the concurrence of the other members?

(P. U. 1919)

[1] *Johnson v. The Madras Ry. Co.*, 28 Mad. 479 (485). See also *Harihar v. Bholi*, 6 C.L.J. 383.

[2] *Harihar v. Bholi*, 6 C.L.J. 383. H.O. Mitra's I.L.A. (10th Ed.) P. 66.

How would you decide the following case:

In 1915 three brothers in a joint Hindu family sued to recover the possession of property after setting aside a sale-deed passed by their mother during their minority on 28th July 1905. The eldest brother was more than 21 years of age on the date of the suit. The suit having been brought more than 3 years after the attainment of majority by the eldest brother, is barred by limitation. On the other hand, the younger brothers contend that their minority save limitation. (A. E. Aug. 1922.)

One can give valid discharge without the concurrence of others

Where one of the co-obligees is a minor, limitation will run against the other who is not a minor.

acts as the manager, i.e., unless he takes active steps in the management of the affairs of the family. (1) And this view has been affirmed by the Privy Council. (2)

But the other High Courts are of opinion that in a Hindu family consisting of brothers, the elder brother must be deemed to be the managing member of the family and can give a discharge on behalf of the minor brother; (3) and this view has now been adopted by the Allahabad High Court also in the cases of Rati Ram v. Niadar (4) and Shiamlal v. Moolchand. (5)

In a joint *Dayabhaga* Hindu family of brothers, the eldest brother cannot give a valid discharge to bind his minor younger brothers. (6)

When the father or the managing member of a joint Hindu family is also appointed as the guardian *ad litem* of the minor members, the powers of the father are controlled by the provisions of O. 32, r.6, C.P.C., and he cannot, without the leave of the Court, do any act in his capacity as father or managing member of the joint family which he is debarred from doing as guardian *ad litem*. He therefore cannot give a valid discharge on behalf of the minor members of the family without the leave of the Court. (7)

Co-partners.—Two illustrations show that one of several co-partners can give a valid discharge without the concurrence of others.

Co-obligees.—In the case of co-obligees of a money-bond in the absence of anything to the contrary, the presumption of law is that they are entitled to the debt as tenants-in-common in equal shares. Hence, where one of them is a minor, limitation will run against the other who is not a minor, and this section will not apply. (8)

[1] *Ganga Dayal v. Moni Ram*, 31 All 156, followed in *Jugul Kishori v. Butto Kristo*, 55 Cal. 608. See also A.I.R. 1925 Nag. 385.

[2] *Jawahir Singh v. Udai Prakash*, 48 All. 152 (P.C.), 28 Bom. L.R. 851.

[3] *Doraisami v. Nondisami*, 38 Mad. 118 (F.B.); *Mahabaleswar v. Ramachandra*, 38 Bom. 94; *Bapu Taty v. Bala Raoji*, 45 Bom. 446. See also 43 Mad. 842 and A.I.R. 1928 Mad. 42.

[4] 41 All. 435.

[5] A.I.R. 1925 All. 672.

[6] *Nabin Chandra v. Chandra Madhab*, 44 Cal. 1 (9) (P.C.)

[7] *Ganesh Row v. Tulja Ram Rao* 36 Mad. 295 (303) (P.C.) H.C. *Mitra's I.L.A.P.* 68.

[8] *Manzur v. Mahmud-unnessa*, 25 All. 155.

Co-trustees.—One of several co-trustees can give a valid discharge without the concurrence of others. Therefore, where an adult joint trustee takes no steps to protect the trust and his right to take steps becomes barred, the rights of other joint trustees, even though minors, become barred. (1)

One can give valid discharge without the concurrence of others.

Co-Mortgagors.—The right to redeem is an indivisible right, and one mortgagor cannot give a valid discharge without the concurrence of the other co-mortgagors. (2)

One A died leaving him surviving two sons M and K. M was born on the 27th March 1891 K was born on 8th Oct. 1898. On the 22nd June 1917 M alone filed a suit to redeem the mortgage executed by A. K was added as plaintiff No. 2 on the 24th March 1918. Discuss whether in your opinion both M and K or only K is entitled to redeem (A.E. Feb 1922.)

Decree-holders.—The provisions of the section apply to joint decree-holders, wherever one of them can act in the matter on his own responsibility without the concurrence of others. Such a case arises, for instance, where the joint decree-holders are brothers in a joint Hindu family, some of whom are minors; in such a case the adult brother representing the entire family can execute the decree on behalf of himself and the minor brothers, and can give a valid discharge on behalf of all the minor brothers. (3)

If, however, the adult decree-holder is not competent to give a discharge on behalf of minor decree-holders, as for instance, in a case in which the adult decree-holder does not purport to act as the manager of the joint family of which the minor decree holders are members, time does not begin to run until all the minor decree-holders attain majority. (4)

Under the Muhammadan Law, the uncle is not the legal or natural guardian of the property of a minor, and so if a joint-decree is passed in favour of an adult uncle and his two minor nephews, the adult decree-holder is not competent to give a valid discharge so as to bind the interests of the minor decree-holders (5)

Receiver.—When a receiver is appointed the decretal debt vests in the receiver and the minority of one of the decree-holders ceases to have any importance, for the rights of the minors no less

Application for execution more than 3 years after the appointment of the receiver is barred.

[1] *Thiyagaraja v. Ratnasabapathi*, 34 Mad. 284 (287).

[2] *Gulam Goss v. Shriram Pandurang*, 43 Bom. 487 (491), 21 Bom. L. R. 353; *Bai Keval v. Madhu Kala*, 46 Bom 535, 23 Bom. L R 1191

[3] *Rati Ram v. Niadar*, 41 All. 435 (440); *Shiam Lal v. Mool Chand* A.L.R. 1925 All. 672; 87 I. C. 177. See also *Sapdu v. Sakhamam*. 52. Bom. 441.

[4] *Jugal Kishori v. Butto Kristo*, 55 Cal. 608.

[5] *Court of Wards v. Abrar Ali*, A. L. R. 1924 Lah. 681; 78 I. C 235.

than the rights of the majors are all absorbed by the receiver and an application for execution more than 3 years after the appointment of the receiver is barred.

One cannot give a discharge without the concurrence of others—but this rule is not an inflexible one

Joint right to sue for tort.—As a general rule when a joint right to sue arises out of a tort one or some of the holders of such right cannot give a discharge without the concurrence of the others, unless they are all partners or executors or members of a joint Hindu family, the manager of which has implied authority to bind all the members by a discharge given by him. (1) But this rule is not an inflexible one.

A right to sue for an hereditary office accrues to X who at the time is insane. Seven years after the accrual 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?

(B U April, 1921)

[Ans. Five years would be allowed to X's representative in interest. No extension would be allowed.]

A right to sue for an hereditary office accrues to A who at the time is insane. Six years after the accrual A recovers his reason. A files a suit more than 3 years after he recovers his reason. Is the suit within time? (B U, Oct 1924)

[Ans. Yes, if he files within six years. The period for such a suit is 12 years according to the Art. 124]

A Hindu mother, acting as the natural guardian of her infant son, alienates his immoveable property without legal necessity. The son attains majority in 1901. He institutes a suit in 1916 to set aside the alienation. Is the suit brought within the period of limitation? (B.U. Oct, 1920).

8. Special exceptions.—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.

Illustrations

- (a) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accrual. 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 a suit.
- (b) A right to sue for an hereditary office accrues to A who at the time is insane. Six years after the accrual, 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 land-lord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accrual, 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.

[Ans: The suit is barred because the son ought to have brought the suit within 3 years of his having attained majority.]

NOTES.

Object of Section—The section provides two special exceptions to the general rule contained in sections 6 and 7 namely:

- (a) A right of pre-emption is beyond the scope of sections 6 and 7.
- (b) The period is, in no case, to be extended for more than three years after the cessation of the disability.

A attained majority 8 years after his right to sue for a legacy had accrued. Within what time must A bring his suit for legacy? (B U. Oct 1926)

[Ans: A can sue within 4 years after he attains majority. See Art 123.]

Extension of time.—This section must be read together with each Article in schedule I and when the period prescribed by the latter extends to three years or more and expires within three years from the date of attainment of majority, the intention is that the late minor should have the full term of three years, but when the prescribed period is less than three years and the minor gets that period (according to section 6) from the date of majority, the prescribed period is not to be enlarged to three years (1)

A right to sue for possession of immovable property accrues to A, who is insane. A dies 12 years after his right to sue accrues, his insanity continuing up to his death. 7 years after A's death, his legal representative, B, sues for possession. Is the suit barred by limitation? (1) if B is under no disability at the time of A's death? (2) if B is insane at the time of A's death, and recovers 3 years after? (3) if B is sane at the time of A's death? Give reasons for your answer. (A.U. 1914)

The effect of section 6 is that a person under disability may sue after the cessation of disability within the same period as he would otherwise have been allowed under the schedule; and the present section adds a proviso that in no case can the period be extended to anything beyond three years from the cessation of disability. (2)

[Ans: In cases (1) and (3) the suit would be barred by limitation, because sec 8 provides that the period of limitation cannot be extended more than 3 years from the death of the person affected thereby. In case (2) also the suit will be barred by

Rules as to the period of limitation deduced from the combined operation of sections 6 and 8:

- (1) If the ordinary period expires more than three years after the cessation of the disability, the suit must be brought before such period ends. The plaintiff must sue within the ordinary period computed from the

[1] Subramanya v Shiva Subramanya, 17 Mad. 316 (323)

[2] Vasudeo v Maguni, 24 Mad 387 (395) (P.C.)

limitation, because according to sections 6 and 8, the suit ought to have been brought within three years of the cessation of B's disability].

A right to sue accrues to A when he is a minor. The period of limitation for the suit is 12 years. A dies 11 years after the accrual while still a minor. Within what time should his legal representative file the suit? (A.C.E. Sept. 1929)

[Ans: 3 years from A's death] Explain and illustrate briefly the effect of legal disability due to minority on limitation (A U 1915).

How does the minority affect the running of limitation? (A. U. 1916).

A right to sue as landlord to recover possession from a tenant accrues to X, who is an idiot. X dies three years after the accrual of the right, his idiocy continuing up to the date of his death. The representative in interest of X has, under the ordinary law, nine years from the date of death of X, within which to bring a suit. Does the provision of sec 8 of the IL Act extend that time? Give reason in support of your answer. (C. U. 1919)

A minor acquired a cause of action to sue for possession of lands and died within 3 years after attaining majority but before the expiry of three years from the date of the cessation of his disability. Twelve years had expired since the

original accrual of cause of action and not from the date of the cessation of the disability. [See *Illustration (b)* to section 8.]

- (2) If the ordinary period expires within three years after the cessation of the disability, in such a case,—
 - (a) if the ordinary period is three years or more, the plaintiff will be allowed full three years computed from the cessation of the disability;
 - (b) if the ordinary period is less than three years, the plaintiff will be allowed the ordinary period computed from the cessation of the disability. The prescribed period is not to be enlarged to three years. (1)
- (3) If the ordinary period has already expired before the cessation of the disability, in such a case,—
 - (a) if the ordinary period is three years or more, the plaintiff is allowed three years from the cessation of the disability. [See *Illustration (a)* to section 6.];
 - (b) if the ordinary period is less than three years, the plaintiff has the ordinary time computed from the time of the disability. *e.g.*, a right to set aside an execution sale accrues to A who is a minor. He attains majority five years after the right accrues to him. Under the ordinary law the time allowed is only one year from the accrual of cause of action within which the suit can be filed. A has only one year computed from the date of his attaining majority within which to sue (and not 3 years).

"From the cessation or death".—The day of the cessation of the disability or the day of death is to be excluded from computation. (2)

Right of the legal representative.—When a minor acquires a cause of action to sue for possession of property (Art. 142) and dies after majority but before the expiry of three years from the date of

[1] *Vinayakrao v. Deorao*, 11 Bom. 473

[2] *Jagmohan v. Luchmeshwar*, 10 Cal 748 (751).

cessation of his disability of minority, his legal representative can institute a suit at any time within the three years' period which has already commenced in the life-time of the deceased, although more than twelve years have elapsed from the accrual of the cause of action. (1)

If the minor dies before attaining majority, his representative would have either the total period due from the cause of action or three years from the date of minor's death, whichever is longer, but he is not entitled to claim the same period of limitation to which the minor would have been entitled if he had lived, unless, being himself under a disability, he comes under sub-section (1) and (2) of section 6.

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

NOTES.

Principle.—The rule of the section has been taken from the English law. The principle of this section is that "when the time has once begun to run, it will continue to do so, even should subsequent events occur which render it an impossibility that an action should be brought." (2)

Scope of Section.—The section is in express terms restricted to suits but the general principle which it embodies is equally applicable to applications for execution. (3)

When time runs.—"Time runs when the cause of action accrues, and the cause of action accrues when there is in existence a person who can sue and another who can be sued, and when all

accrual of the cause of action. Can the personal representative of the minor bring a suit on the same cause of action within three years' period which had already commenced in the lifetime of the deceased minor? (A.E. Feb. 1923).

Explain and illustrate.
"When once time has begun to run, no subsequent disability or inability to sue stops it" (B. U Oct, 1928.) (A. E. Aug. 1922.) (A. U. 1921.) (C. U. 1920.)

What are the various exceptions to the rule "When time has begun to run, no subsequent disability or inability to sue stops it"? (A. E. Aug. 1923). (A. E. Feb. 1926, (P. U. 1926).

[1] Arjun v. Ramabai, 40 Bom. 564 (567), 18 Bom. L. R. 579.

[2] Darby and Bosanquet on Limitation (2nd Ed.) P. 25

[3] Muthu Korakki v. Madar Ammal, 43 Mad. 185 (207).

the facts have happened which are material to be proved to entitle the plaintiff to succeed." (1)

A executed a promissory note in favour of B on the 1st of Jan 1921. B died on 23rd Dec. 1923, leaving C, his minor son, who was born on 1st Feb. 1907. Till what time could C bring a suit against A on the promissory note? (A.U 1927).

[The suit must be filed by 1st Jan 1924. The fact of minority of C will not make any difference in this case, A promissory note is payable on demand and the cause of action to institute the suit accrued to B himself on the very day on which it was executed. Time began to run and the subsequent disability of his son would not make any difference.]

X borrows Rs 5000 from M on a demand promissory note. Shortly thereafter M dies leaving A, a child aged 7 years. A files a suit against X immediately on attaining majority. Is the suit barred? (A.C.E. March 1931)

[Ans. Yes. See Art 73 and Sec. 9.]

The holder of a promissory note dies leaving an infant heir. State its effect upon the period of limitation affecting pro-note.

(C.U. 1929 (a))

What is legal disability and what is its value for the purposes of the Limitation Act?

(a) A decree obtained on the 17th Feb 1898 was sought to be executed in 1901 by the decree holder.

Disability or Inability.—The Legislature did not mean the same thing by the use of two words 'disability' and 'inability'; Disability is want of legal qualification to act. Inability is want of physical power to act. (1) Disability to sue for the purpose of the Act is the state of being a minor, insane, or an idiot; whereas illness, ignorance, poverty etc. are instances of inability.

The disability or inability contemplated by the section is confined to such cases as are mentioned in the Act itself, and new exceptions cannot be recognised.

Section 6 is intended to provide for cases of initial disabilities *i.e.* those existing at the time of the accrual of the cause of action. This section deals with cases of subsequent disability *i.e.* cases where the disability has occurred after the accrual of the cause of action. The following illustrations will make the meaning of this section clear.

- (a) A right to sue for a debt accrues to A when he labours under no disability; but subsequently he becomes insane. Time runs against him as usual, from the date of the accrual of the right, and his subsequent disability (*viz.* insanity) is no bar to the running of time.
- (b) A right to sue accrues to A during his minority. After some years he attains majority. Soon after attaining majority he becomes insane. Time will run against him from the date of his attaining majority and his subsequent insanity does not bar the operation of limitation.

Where a decree-holder died, leaving a minor son, who on attaining his majority nine years after the date of the decree, applied for execution, it was held that the application was barred, as time began to run in the original decree-holder's life-time. (2)

[1] Coburn v. Colledge [1897] 1. Q. B. 702.

[2] Bhagat v. Ramnath 27 All. 704; Bhagwant v. Kaji, 36 Bom. 498.

Similarly, where a decree-holder after making various applications for execution of a decree, each of which was within time, died. His son, a minor, made an application for the execution of the decree within three years after his father's death but more than three years after the date of the deceased father's last application, it was *held* that this section applied and the minor's application was time-barred. (1)

But where the original decree-holder who obtained a decree in May 1886 died in June 1888, leaving three minor sons, and on the 30th April, 1889, the sons, still minors made an application for execution, but no further proceedings were taken till the 1st October, 1904, when another application was made. *Held* that the present application was within time on the ground that although limitation had commenced to run against the father from May, 1886, the application made by the minors on the 30th April, 1889 was a step-in-aid of execution and time began to run again from that date and then minority suspended it. (2)

Where a right to sue had accrued to the plaintiff's father, after whose death and while plaintiff was a minor, defendants made certain acknowledgments of their liability, it was *held* that the effect of the acknowledgments was to create a new period of limitation and not merely to extend the old period. That therefore time did not begin to run against the minor, until he attained majority, and that this section did not deprive him of this privilege, as it was not a subsequent disability which stopped the time already running, but the operation of law consequent upon the giving of the acknowledgment. (3)

This section also makes no exception in favour of alien enemies who are prevented from suing in consequence of a declaration of war. (4)

Suspension of running of time :—It is a rule of law of limitation that if once the time has begun to run, no subsequent cir-

As the decree-holder died thereafter leaving a minor son, further applications to execute the decree were filed by the minor's guardian, all within time. He attained majority in 1910. He then applied for extension of the period of 12 years for the execution of the decree prescribed by sec 48 of the C.P.C. on the ground of his minority between 1901 and 1910. How will you decide?

(A. E. Feb, 1922).

Is the running of time suspended by war?
(A. E. Aug 1930.)

No universal principle of suspension of limitation outside the limitation Act

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- (1) *Jivraj v. Babaji*, 29 Bom. 68; *Kala Bakhsh v. Ram Charan*, 40 All. 630 (F. B.)
 - (2) *Sri Ram v. Het Ram*, 29 All. 279. *cf.* *Lalit Mohan v. Janoky*, 20 Cal. 714 (716).
 - (3) *Venkataramayyar v. Kothandaramayyar*, 13 Mad. 135.
 - (4) *Deutsche Asiatische Bank V. Hira Lal*, 46 Cal. 526.

cumstances can suspend its running ; it is to run continuously. "The cases in which the running of limitation can be suspended are contained in the sections of the Act. It would be dangerous to lay down generally that there is some principle outside the Limitation Act under which limitation can be suspended. Such a conclusion would be quite contrary to the intention of legislature. The express enactment of sec. 9 clearly indicates that the period of limitation cannot be suspended once it has begun to run, unless that suspension is itself provided for in the Act. We are, therefore, unable to accept any universal principle of suspension of limitation outside the limitation Act." (1)

In a suit on a promissory note executed in his favour by the defendant, the plaintiff, in order to get over limitation, sought to exclude the time during which the defendant sued for a declaration of the invalidity of the pro-note, as having been obtained from him through fraud and undue influence, in which he succeeded in the first Court, though lost in appeal. It was held that there was no 'suspension' of limitation, there having been no prayer for or grant of injunction in defendant's suit, so as to prevent the plaintiff from suing earlier. (2)

When the same person becomes the hand to receive and the hand to pay the running of the statute is suspended during such union of rights.

Praviso : Its Principle—The principle of the proviso is this : When the right to sue and the right to be sued vest and unite by act of law in the same person, i. e., when the same person becomes the hand to receive and the hand to pay, the running of the statute is suspended during such union of rights. When Letters of Administration to the estate of the deceased creditor have been granted to his debtor the time between the grant of the Letters of Administration and the completion of the administration of the estate is excluded in computing the period of limitation for a suit to recover the debt.

This exception has been introduced lest the debtor-administrator by intentionally omitting to pay or sue for the debt might make the statute a cloak for his own fraud, The proviso applies only to an administrator under the grant of letters where he is a debtor of

[1] Ram Charan v. Mota Prasad, 4 All. 565.

[2] Satyanarayan v. Sethayya, 50 Mad. 417.

the deceased. It does not apply to a case where there has been a fusion of the interests of the mortgagor and the mortgagee in the same person, (1)

10. Suits against express trustees and their representatives :— 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.

For the purposes of this section, any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of such property shall be deemed to be the trustee thereof.

NOTES.

Section re stated.—No suit shall be barred by any length of time against (a) a person in whom property has become vested in trust for any specific purpose, or

(b) his legal representatives, or

(c) his assigns (not being assigns for valuable consideration),

for (d) the purpose of following in his or their hands such property, or the proceeds thereof, or

(e) an account of such property or proceeds.

Scope of the Section.—To claim the benefit of sec. 10 the suit must be brought against the persons indicated in the section and the object of the suit must be to follow the property or proceeds or for account

The section speaks of the only case where a suit is not barred by any length of time.

Is there any class of suits under the Indian Limitation Act which cannot be barred by any length of time ?

(B U April, 1921)

(B U Oct. 1924).

State and illustrate the rule of the Indian Limitation Act for computation of the period of limitation in the case of trusts

(B U Oct 1926).

Can a legal representative of an express trustee plead limitation ?

(B. U April 1929)

State what class of suits cannot be barred by limitation

(B U Oct. 1929).

What is the period of limitation for a suit against a trustee ?

(B. U April, 1931).

The predecessors-in-title of the plaintiffs who were managers of a temple made a gift of a portion of the temple property to the defendant predecessors in 1868, in consideration of certain religious services to the temple. In 1913 the plaintiffs averring that they were not willing to accept the services of the defendants in connection with the temple sued to recover possession of land. The defendants contended that the suit was barred. Will this contention prevail ?

(A. E Feb 1922).

[1] *Lala Som Ram v. Kanhaiya Lal*, 35 All. 227 (P.C.)

[Ans : See *Ramacharya v Srinivasacharya*, 20 Bom L R. 441. Where the plaintiffs, who were managers of a temple made a gift of a portion of the temple property to the defendants in consideration of the latter performing certain religious services, it was held that the latter were assignees for valuable consideration. A suit to recover possession of such property is governed by Art. 134 B]

In what cases suits against trustees are not barred by lapse of time ?

(A E Aug 1927)

Explain and illustrate the rule of limitation with regard to a trust for any specific purpose ?

(A U 1913)

Discuss the precise effect and meaning of sec 10 of the Limitation Act

(A U 1918).

What is the period of limitation for a suit by a "Cestui-que-trust" against the trustee regarding the property vested in the latter for a specific purpose

(P U 1927)

Describe fully the nature of the suits which are not barred by any length of time. (A U 1924)

State the cases to which the law of limitation is inapplicable.

(C U 1929),

In order that a suit may not be barred by any length of time it is necessary that :

- (a) there must be a trust for a specific purpose i.e., express trust,
- (b) the property must be vested in the trustee, or his legal representatives or assigns (without valuable consideration),
- (c) the suit must be to follow trust property or its proceeds or for accounts,
- (d) in the hands of such trustee or his representatives or assigns.

Sec 10 and Art. 134 are to be read together. In fact sec. 10 controls Art. 134, and gives clue to its meaning. The effect of sec 10, read with Art. 134, is, that time is no bar to an action against the trustee himself, or his representatives or assigns, except an assign for valuable consideration ; but, as regards the latter, the period of 12 years from the date of purchase is to be the period within which the suit must be brought. (1)

The section is intended to meet a suit brought for the purpose of following misapplied trust-funds for the benefit of trust. It is wide enough to cover a case by one of two trustees who claims against the other that the property ought to be managed by both. It does not refer to all fiduciary relations whatsoever. Thus the position of agents, factors and benamidars is a fiduciary one. Agents and factors are specially provided for (Arts. 88, 89, 90), and benamidars are expressly declared (see sec. 2) not to be trustees.

Property. - Property in sec. 10 includes money. (2)

"Vested".—The word implies that a person must have an estate in the subject-matter of the alleged trust and not the mere power of controlling or directing it. The mere fact that a person has got with him the control or management of the property will not vest the property in him. "Vesting" implies property or ownership in the subject matter. Therefore, the directors of a company are not trustees, because they are not persons in whom the property of the company may be said to have been vested under this section. (3) In respect of an application by a liquidator under sec. 235 of the

[1] *Shamacharan v. Abhiram*, 3 C L J. 306.

[2] *Bhurabhai Jamnadas v. Bai Rukmani*, 32 Bom 394, 10 Bom L R 540

[3] *Kathuwar Trading Co. v. Virchand*, 18 Bom 119.

Indian Companies Act against the directors of a company seeking to recover certain moneys by way of compensation for their acts of misfeasance, limitation begins to run from the date of the commission of the alleged acts of misfeasance and not from the date of the order directing the winding up of the company. (1) So also the manager of a joint Hindu family is not a trustee, since the property does not vest in him.

But the Madras High Court has taken a different view and held that in sec. 10 "vesting" means "properly having control of the property." (2)

Religious Endowment.—The second para of this section is new. It has been recently added by the Indian Limitation Amendment Act (Act I of 1929). The Bill was prepared in 1927 (Council of State Bill No 8 of 1927), to make the necessary amendments, and this Bill passed into law as Act I of 1929. The Statement of Objects and Reasons runs as follows. —

Hindu, Muhammadan and Buddhist religious as well as charitable endowments are included within the scope of sec 10 by the Indian Limitation Amendment Act (Act I of 1929)

"The (Civil Justice) Committee's recommendation refers, it is understood, to the decisions of the Privy Council in *Vidyavaranthi v. Balusami* (44 Mad. 831) and *Abdur Rahim v. Naran* (50 Cal. 329), which lay down that a Dharmakarta, Mohant or manager of a Hindu religious property or the Mutawalli or Sajjadanashin in whom the management of Muhammadan religious endowments is vested are not trustees within the meaning of the word as used in sec. 10 of the Limitation Act, for the reason that the property does not vest in them. The result is that when a suit is brought against a person, not being an assign for valuable consideration, endowments of this nature are not protected. The Committee's recommendation is that section 10 of the Act should be amended so as to put Hindu and Muhammadan religious endowments on the same footing as other trust funds which definitely vest in a trustee. After consulting the Local Governments, the Government of India have come to the conclusion that Hindu, Muhammadan and Buddhist religious as well as charitable endowments should be included within the scope of section 10 of the Act. The Bill gives effect to this conclusion. (3)

[1] *Narasimha v. Official Assignee of Madras*, 54 Mad. 153

[2] *Krishappa v. Lakshmi*, 44 M. L. J. 431, A. I. R., 1923 Mad 778, *Pachaiyappa v. Sivakami*, 44 M. L. J. 468, A. I. R. 1926 Mad, 109.

[3] *Gazette of India*, 1927, Part V P. 223.

The expression applies to trusts created for some definite or particular purpose or object.

“ In trust for any specific purpose ”.—The expression applies to trusts created for some definite or particular purpose or object as distinguished from trust of a general nature such as the law imposes upon executors and others who hold recognised fiduciary positions.(1)

The phrase “ trust for specific purpose ” is merely a more expanded mode of expressing the same idea as that conveyed by the expression “ express trust ” in English Law. It is used in contradistinction to trusts arising by implication of law—trusts resulting and trusts constructive. (2) A specific purpose is a purpose that is either actually and specifically defined in the terms of the deed by which the trust is created or a purpose which from the specified terms can be certainly ascertained. (3) Thus, where on the death of her husband in 1904, a widow handed over a certain sum of money to her brother for the benefit and education of her two sons and the brother applied part of the trust moneys for that purpose but put the balance amounting to Rs. 1,600 and upwards into his pocket. On his death, his representatives were called on to refund this balance and to account: *held*, that the money being vested for specific purpose, a suit for account and refund of the trust property cannot, according to sec. 10, be barred by lapse of time (4).

The trust must be express.

The trust must be express:—To create an express trust, two things must combine : there must be a trustee with an express trust and the estate or interest must be vested in the trustee. Express trust means a trust which has been expressed either by writing or by word of mouth, and not a trust which arises out of the acts of the parties by implication of law, *i.e.*, a resulting, implied or constructive trust.

Resulting trust section does not apply

When a trust has been created but its object is uncertain or undiscoverable, a resulting trust is created. A resulting trust is not an express trust or a trust for a specific purpose under this section. The language of the section is especially framed so as to exclude resulting trusts. So that where the specific purpose, for which the defendant became a trustee, is held invalid, this section does not apply. Where a specific purpose is invalid, a

[1] Greender v Mackintosh, 4 Cal. 897.

[2] Vjundravandas v. Cursondas, 21 Bom. 646 (665); see also 31 Bom 222

[3] Mahomedsa v. Khadirsa, 29 Bom. L. R. 241.

[4] Chintaman v Khanderao, 52 Bom. 184, 30 Bom. L. R. 45.

resulting trust arises by operation of law in favour of the settlor or his heirs, and a suit by them to enforce such resulting trust is not governed by this section. (1)

Where there is a trust covering the whole estate and the bequests do not exhaust the estate, the trustees are express trustees of the residue for the heir of the testator. Where testator gave land producing profit rental of £ 60 per annum to trustees upon trust to pay an annuity which was less than the rental, *held*, that the implied or resulting trust of the surplus in favour of the testator's heirs was, for purposes of limitation, an express trust, as it arose upon the face of the instrument itself. (2)

Where the trusts declared do not exhaust the whole property, the resulting trust is an express trust.

When a trust is such that its existence is inferred from the particular facts or fiduciary relations, it becomes an implied trust. Such implied trusts are excluded by this section.

Implied trust—the section does not apply

The section does not apply to constructive trusts. "Thus, where a person directs another to acquire property for him (the person directing) and furnishes some money for the purpose, but after some time he withdraws from the venture completely, but the person directed continues his exertions and entirely as the result of those exertions acquires the property, there is only a constructive trust, and sec. 10 does not apply. (3)

Constructive trust — the section does not apply.

Trustee de son tort.—When a person assumes, with or without consent, to act in a fiduciary relation with regard to trust property, or knowingly assists a trustee in a fraudulent or dishonest disposition of property, he becomes constructively, and will be treated by the Court as an express trustee. (4) and the benefit of this section can be claimed against such person.

Benefit of the section can be claimed against trustee de son tort

[1] *Kherodmoney v. Doorgamoney*, 4 Cal. 455 (465); See also 37 Bom 447.

[2] *Mojlal v. Gourishankar*, 35 Bom. 49.

[3] *Harihar Prasad v. Kesho Prasad (Dumraon Case)* 5 P.L.T. Supp. 1 A.I.R. 1925. Pat. 68.

In one Allahabad case (*Durga Prasad v. Aas Ram*, 2 All 361) the principle of this section was applied to a constructive trust; but see 5 All. 608, at P. 614 where it is stated that 2 All. 361 should not be treated as laying down any general principle to be applied to all cases of constructive trust.

[4] *Moodabhai v. Yacubhai*, 29 Bom. 267. *Contra Damodar v. Dayal*, 11 Bom. L. R. 1187; *Bihari Lal v. Shiva Narain*, 47 All 17—*Held* that in the case of trustee de son tort Art 120 applies, and such a trustee is only liable to render accounts for six years preceding the suit.

In March 1903, A. purchases a certain trust property for valuable consideration but with notice of the trust. B, the beneficiary under the trust files a suit to recover the property in June 1916. Is the suit barred? Give reasons.

(A. E. Aug. 1923).

Assigns for valuable consideration.—The exemption contained in this section in favour of assigns for valuable consideration does not extend to an assign who is a mere volunteer (e.g. a donee or legatee from the trustee), even if he takes without notice. All assigns for value are excluded from the operation of this section and consequently suits against them would be liable to be barred by one of the Articles in the schedule. Art. 134 would apparently cover all such cases. When the property is moveable, Art. 138 (now 48A) would apply.

The question of 'good faith' and 'without notice of the trust' does not at all arise. A purchaser of trust property, although he bought with notice of the trust, is an assign for value within the meaning of this section and he is entitled to rely on lapse of time as a defence. Article 134 would cover such cases.

The words "assigns for valuable consideration" include lessees and mortgagees as well as purchasers. It also includes auction-purchasers. A suit against an auction-purchaser acquiring trust property for valuable consideration at a sale in execution of a decree is subject to the ordinary rule of limitation.

Meaning of
"following property"

"For the purpose of following etc."—In *Balawant Rao v. Puran Mal* (1) the question of the interpretation of the phrase "following the property" in this section came before the Privy Council, and their Lordships laid it down that the expression means "for the purpose of recovering the property for the trusts in question, that, where property is used for some purpose other than the purpose of the trusts in question, it may be recovered without any bar of time, from the hands of the persons indicated in the section." The section is in the main designed to meet a suit brought for the purpose of following misapplied trust funds for the benefit of the trust.

Meaning of
"the proceeds thereof"

"Or the proceeds thereof"—It is not necessary that the suit should be to follow the original trust property only. The property may be that originally entrusted or it may be the property substituted in the place of the original trust property so long as the

metamorphosis can be traced. It may also be the profits or fruits of the original or substituted property.

Suit for account.—Section 10 of the old Act did not apply to a suit for account. But the present Act extends the application of this section to suits for accounts. But of course though lapse of time is not a bar under the present Act, the doctrine of laches and acquiescence would apply in appropriate cases to limit the account to a reasonable period.

Suit for account—lapse of time no bar.

The Article applicable to an equitable claim against a trustee, liable to account, for an account and ascertainment of what may be due, is the residuary Article 120, and not Article 62 and the limitation does not begin to run until the "right to sue" accrues, i.e., until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant. Consequently, the plea of limitation fails when the defendant is unable to specify the particular date at which the claim to an account was denied by him. (1)

What is the limitation for a suit for accounts when instituted against an express trustee? When does the period begin to run?

(A E Aug 1920).

Representative.—Representative in sec. 10 means the person who as heir or executor or administrator represents the estate of the deceased trustee and who has received, as such representative, the specific trust property which is the subject of the trust. If property, which is the subject of trust, has after the trustee's death, passed into the hands of his representative, as part of his estate, the *cestui que trust* can without bar of limitation recover from his hands that specific property. But if it has been sold by trustee in his life-time or has in any way disappeared and can no longer be traced and the suit is brought against the representatives to make good the loss out of the general estate, such suit is subject to the plea of limitation under the Limitation Act, and time runs from the trustee's death. Article 98 seems to provide for such case. (2)

Meaning of Representative

Adverse Possession.—As between *cestui que trust* and express trustee no length of time is a bar: for the possession of the one is the possession of the other and there is no adverse title. The rule that statute of limitation does not bar an express trust holds only as between *cestui que trust* and trustee on

(a) What is the period of limitation for a suit by a "Cestui que trust" against the trustee regarding the property vested in the latter for a special purpose?

(1) *Annamalai Chettiar v. Muthukaruppan Chettiar*, 33 Bom. L. R. 168 (P. C.).

[2] See *Rustomji's Limitation* (4th Ed.) P. 101

(b) Would the period of limitation, applicable to the above, apply, if the suit by the *Cestui que trust* is against a stranger who has become possessed of the trust property?

(P. U. 1927).

the one side, and the strangers on the other. Sec. 10 only prevents the statute running in favour of a trustee or persons claiming through him otherwise than as assigns for value. In case of a mere stranger to the trust encroaching on the trust property and claiming adversely both to the trustee and *cestui que trust*, the fact of the trust existing would not prevent the statute running in his favour. Where a trustee while in possession has been dispossessed by a stranger and 12 years have run after the dispossession, the trustee and *cestui que trust* are both barred, the limitation applicable in such case being the ordinary law of limitation (Art. 142) unaffected by the provisions of sec. 10.

The rule applicable as between express trustee and his *cestui que trust* applies also as between the co-beneficiaries. Thus, where a trustee is himself in possession and (by mistake) pays or overpays rent to A, who is his *cestui que trust*, instead of paying it to B, who is also his *cestui que trust* and that continues for (say 13 years), in such case A does not thereby acquire adversely against B. But where trustee is not in possession, one beneficiary may acquire adversely against another beneficiary. (1)

Mere appointment as executors or administrators does not make them trustees

Executors and Administrators.—Mere appointment as executors or administrators does not make them trustees. This section will only apply if they are appointed for a specific purpose.

Suit against an executor of a will for accounts will be governed by Art. 120 and will not come under this section. All the circumstances have to be seen. If the property vests for a specific purpose this section would clearly apply.

The Government and the Secretary of State cannot be trustees within the meaning of this section.

Government.—The Government and the Secretary of State cannot be trustees within the meaning of this section. Suit against the Secretary of State to recover a village of which the Government had been in possession for over 50 years, held that the Government not being in possession of property as trustee for an indefinite time on behalf of the rightful owner, sec. 10 was inapplicable and the suit was time-barred. (2)

But under certain exceptional circumstances the Government can be a trustee within the meaning of this section. Thus, it was held in *Secretary of State v Bapuji Mahadeo* (3) that under the special

[1] *Rustomji's Limitation*. PP. 101, 108.

[2] *Secretary of State v. Sakharani*, 24 Bom. 23.

[3] 39 Bom. 572

circumstances of the case, money lying in deposit in the Government treasury as surplus sale-proceeds was money vested in Government in trust for a specific purpose, and the suit to recover the money was not barred by any length of time. The same view has been expressed in a recent case by the Madras High Court. (1)

English law compared.—The rule of English law that time could never run in favour of an express trustee has now, by the English Trustee Act, 1888, been considerably modified in favour of innocent trustees, who can now plead the statute of limitation to a claim in respect of a breach of trust from which they have not derived any personal benefit.

The English Trustee Act, 1888 protects innocent trustees.

The words of this section are certainly not wider, and it would seem they are somewhat narrower than those of the English Statute. It is a necessary condition precedent to the applicability of this section that property should be vested in a trustee and accordingly this section renders inapplicable many of the English decisions as to directors and others being express trustees of money over which they have control. (2)

The words of the section are somewhat narrower than those of the English Statute.

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

What rules of limitation are applied to suits instituted in British India on contracts entered into a foreign country? (B U April, 1929)

(2) No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into 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.

NOTES.

Scope of the Section.—This section is in express terms confined to suits on foreign contracts, but apparently the principle underlying the section is one of universal application and should be extended to all foreign obligations. Thus, when decrees of Courts of Native States are transferred to Courts of British India, it is the law of limitation prevailing in Courts of British India that is applied. (3)

The principle underlying the section should be extended to all foreign obligations.

[1] Secretary of State v. Radhika Prasad Bapuli, 46 Mad. 259.

[2] 1898 P.R., 34

[3] Hukum V. Gyanendar, 14 Cal. 570.

"It has become almost an axiom in jurisprudence that a law of limitation is a law having reference only to the *lex fori*." Develop the above statement.

(A. U 1920).

In what conditions is the *lex loci* preferred to the *lex fori* for the purposes of limitation? Discuss the justice of the rule

(P. U 1920)

[Ans. The general principle of Private International Law is that matters, which relate to the order of procedure, as in case of limitation, including not only the mode of proceeding but also the forms of remedies, are governed by the *lex fori*, while those touching the essentials of a right of action regulating the obligation itself are governed by the *lex loci*

Where the remedy is extinguished but not the right, the action to enforce the right is rightly governed by the law of the forum

However, if the right itself is extinguished by the foreign law, and not merely the remedy to enforce it by suit, there is left no obligation upon which action can be founded any where, and thus the plaintiff is barred *in limine* and cannot appeal to the law of the forum which can only help him in realising his existing right. Under such a case the *lex loci* is preferred because the *lex fori* can only help when according to the *lex loci* there is a subsisting right to be enforced.]

Principle.—"It is a rule that personal contracts are to be interpreted according to the law of the place, where they are made. It is a rule equally well settled that remedies on contracts are to be regulated and pursued according to the law of the place where the action is instituted, which law is commonly called the *lex fori* and not by the law of the place of the contract." The reason for this rule, according to Mr. Justice Story, is obvious—"Courts of law are instituted by every nation for its own convenience and benefit, and the nature of the remedies and the time and manner of the proceedings are regulated by its own views of justice and propriety, and fashioned by its own wants and customs. It is not obliged to depart in a matter of procedure from its own notions or judicial order for mere comity of any foreign nation. As a rule, statutes of limitation are to be considered to fall within these remarks. In cases, therefore, where an action is brought in one country upon a contract made in another, a plea of the statute of limitation existing in the place of contract is not a good bar but a plea of the statute existing in the country, where action is brought is a good bar."(1)

"The rule which applies to the case of contracts made in one country and put in suit in the Courts of another country appears to be this, that the interpretation of the contract must be governed by the law of the country where the contract was made, the mode of suing and the time within which the action is to be brought must be governed by the law of the country where action is brought." (2) It is only *lex fori* which determines the time during which a suit must be brought.

This principle is contained in this section which lays down that contracts entered into a foreign country are subject to the provisions of this Act

Sub-section (2).—"Extinguished the contract" means "extinguished the right resulting from the contract." If the right itself has been extinguished by the law of the country in which the contract was made, then the benefit of the law of such country can be claimed but where only the remedy has been barred by the

[1] Banning, 3rd Ed., P.11

[2] Per Tindal, C. J in Timbey v. Vignier, 1 Bing N S. 151

foreign law, a suit can be brought in British India, if it is not then barred by the Indian Law of Limitation.

A rule of foreign law can be pleaded if the following conditions are satisfied.

- (1) that the rule extinguishes the right or obligation itself and
- (2) that both the parties were domiciled in such country during the period prescribed by such rule.

When would a foreign rule of limitation be a good defence ?

(B. U. April, 1921).

(B. U. Oct 1924)

(A C E. Sept. 1929).

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

12. Exclusion of time in legal proceedings.—(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.

State clearly the circumstances under which time will be excluded in computing the period of limitation (B U Oct 1931)

(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.

In what cases is time excluded from the computation of the period of limitation in suit ?

(C U 1916).

(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.

What is the rule relating to the exclusion of the period requisite for obtaining copies in computing the period of limitation prescribed for an appeal ?

(P. U. 1922).

(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.

A wishes to appeal against an order of a Sub-Judge. Would the time spent in obtaining the copy of the order be excluded in computing the period of limitation prescribed for the appeal ? Give your reasons.

(P. U. 1924)

NOTES.

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

In case of	The period to be excluded in computing the period of limitation.
1 any suit, appeal or application.	{ 1 The day from which such period is to be reckoned.
2 (a) an appeal (b) an application for leave to appeal (c) an application for review of judgment	{ 1 The day on which the judgment complained of was pronounced. 2 Time requisite for obtaining a copy of the decree, sentence or order.
3 (a) an appeal from a decree (b) review of a decree	{ 1 Time requisite for obtaining a copy of judgment on which the decree is founded.
4 an application to set aside an award	{ Time requisite for obtaining a copy of the award.

No discretionary power under sec. 12.

Difference between sec. 5 and sec. 12.—Section 5 is discretionary but section 12 is mandatory. Under section 12 the Court is not given any discretion and the litigant is entitled, as of right, to exclude the period spent in obtaining the copies.

Meaning of sub-sec. (1)

Sub-Section (1).—It means that the date of the accrual of of the cause of action should be excluded. Thus, in a suit on bond where a day is specified for payment, the period of limitation is to be computed from, and exclusive of, the day so specified, as being the day on which the right to sue accrues. Similarly, in the case of a promissory note payable on demand, the day on which the note was executed is to be excluded.

The rule is to exclude the first and include the last day.

Day.—In computing a calendar month or year it is sufficient to go from one month or year, to the corresponding day in the next, and to exclude from the computation the day "from" which the month or year is calculated, so that two days of the same number are not included. (1)

As a general rule Courts refuse to take notice of the fraction of a day. When *so many clear days*, or *so many days at least* are given to do an act, or *not less than so many days* are to intervene, both the terminal days are excluded from the computation. In other cases, it would seem, the rule is to exclude the first and include the last day. "Time requisite" must be computed by whole days, not by hours. Days must be reckoned from midnight to midnight, and if appellant is entitled to deduct any part of a day, he is entitled to deduct the whole of that day.

Time requisite for obtaining a copy.—The time taken actually in obtaining copies is to be deducted in calculating the period of limitation, but the time must be requisite, *i.e.*, properly required, in other words, time which is taken reasonably and with proper steps, using all due diligence. "Time requisite" begins when application for copy is made to the proper official and ends when it is ready for delivery. Any period outside these two limits falls beyond the purview of sec. 12. This is the general rule. But what is time requisite for obtaining copies must of necessity depend upon the practice and rules in force in each Province and it is difficult to formulate any general principles on this question.

"Time requisite" begins when application for copy is made to the proper official and ends when it is ready for delivery

Application for copy—when to be made.—Exclusion under this section can only be claimed if the application for the copy is made at a time when the right to present an appeal subsists. If the time within which an appeal may be presented is allowed to expire, the subsequent presentation of an application for copy cannot entitle the appellant to present an appeal by excluding from computation the time requisite in obtaining the copy.

Application for copy must be made before period for appeal expires

Who must obtain copies.—The words "time requisite for obtaining a copy" in the second and third paragraphs of this section are not confined to cases where the person appealing has in person or by a properly authorised agent applied for a copy of judgment or decree. The language of the section is general. It does not say by whom the copy is to be obtained. It is not necessary that the application for the copies should be made by the appellant or some duly authorised agent nor is it necessary to show for what purpose the copies were obtained. (1)

The language of the section is general. It does not say by whom the copy is to be obtained

[1] Ram Kishan v. Kashi Bai, 29 All 264, Aminuddin v. Pyari, 43 Mad 633.

Delay caused by the neglect of officials would be allowed.

The period between the date of judgment and the date of signing the decree—when to be excluded and when not.

Aggregate period to be deducted

Time overlapped to be excluded once

Time from date of application till re-opening of Court to be deducted.

Negligence and delay in making copies.—Delay caused by the neglect of officials who issue copies or who are required to give notice when such copies are ready would be allowed but delay caused by the negligence of the applicant himself cannot be allowed.

Where decree not signed.—In computing the time to be excluded under this section from a period of limitation, the time requisite does not begin until an application for copies has been made. If, therefore, after judgment, the decree remains unsigned, such interval is not to be excluded from the period of limitation, unless an application for copies having been made, the applicant is actually and necessarily delayed through the decree not having been signed. (1) Although an application for a copy is made before the decree is signed, the entire time during which it remained unsigned cannot be deducted, but only the time from the date of the application till the signature of the decree, non-signature prior to the application having no effect at all. (2) But where the application for a copy is made after the decree is signed, no allowance whatever can be made for any part of the period during which it remained unsigned.

Separate applications for copies of judgment and decree.—Applications for copies of the judgment and the decree must be made before the expiry of the time for filing an appeal. Where applications for copies of judgment and decree are made at different times, the aggregate of the periods, required to grant the copies, after the applications are made, can be excluded. (3)

The time taken in obtaining a copy of the judgment and the time taken in obtaining a copy of the decree must both be excluded except when these two periods overlap each other; and where they do overlap, the time overlapped should be excluded only once. (4) Questions of this nature probably depend more or less upon the practice of each Court.

Court closed when copy ready.—The time from the date of application till re-opening of the Court after vacation should be

[1] *Bechi v. Ahsanullah*, 12 All. 461 (471) (F. B.),

[2] *Yamaji v. Antaji*, 93 Bom. 442.

[3] *Macmillan and Co., Ltd. v. Cooper*, 88 Bom. 292, *Timappa v. Manjaya*, 48 Bom. 433.

[4] *Rajani Kanta v. Kali Mohan*, 21 C W N. 217; *Ramzan v. Md. Ishaq*, 47 All 509; *Hadshah v. Pandurang*. 26 N. L. R. 66 (F. B.), A.L. R. 1930 Nag. 113.

deducted as time requisite for obtaining a copy, though notice of readiness was posted on board during vacation, as the applicant was not bound to take cognisance of the notice. (1)

But where in accordance with the High Court's Rules, a notification had been published that arrangements would be made for granting copies during the vacation, *held* that all steps for obtaining copies must be taken during the vacation, and the period between the date on which the copies were ready for delivery during the vacation and the day of re-opening of Court will not be deducted as time requisite for obtaining copies. (2)

Copy sent by post.—"Where a copy of the judgment and decree is applied for and sent by post in accordance with the rules for the supply of copies through the post, the period intervening between the completion and the despatch of copies should be included in the time requisite for obtaining the copies, that is, the time to be allowed for getting copies should be calculated from the date of application up to the date when the copies are despatched, and not up to the date when the copies are ready for delivery." (3)

It is submitted that where copies are sent by V. P. P. the time up to the tender of the V. P. P. to the applicant should be deducted.

Closing of Court after delivery of judgment.—Where judgment was delivered in a case on the afternoon of the last Court day before the vacation, when it was too late to apply for a copy of the judgment, and such application was made on the day of re-opening and appeal was filed afterwards which could have been in time if the period when the Court was closed were allowed to be deducted, the appellant was held entitled to deduct that period. (4)

Where the Court was closed on and from the day following that on which the decree was signed and a copy was applied for on the next re-opening day, the time during which the Court was closed should be excluded for the purpose of calculating the period

But if arrangements are made by a notification for granting copies during vacation, all steps for obtaining copies must be taken during vacation

The period intervening between the completion and the despatch of copies should be included in the time requisite.

Meaning of 'Time requisite' when judgment was delivered on the afternoon of the last Court day

Meaning of 'Time requisite' where there is a long vacation just after signing of the decree or delivery of judgment.

[1] Khub Chand v. Harmukh, 34 All. 41.

[2] Appalaswami v. Narayanswami, 36 M. L. J. 61.

[3] Allah Bakhsh v. Municipal Committee, A. I. R. 1926 Lah. 223, 92, I.C. 966.

[4] Saminatha v. Venkatasubba, 27 Mad. 21; Abdul Ghaffar v. Rasulunnissa, A. I. R. 1922 Oudh 39.

of limitation for preferring an appeal in addition to the period between the date of delivery and the date when the decree was signed. (1)

Where a judgment was passed on 27th Sept. 1913 and the decree was prepared and signed on the same day and the annual vacation began on the following day and the Court re-opened on 1st Nov. and the appellants applied for a copy of the judgment on 3rd Nov. and for a copy of the decree on 13 Nov. and both copies were ready and were delivered on 21st Nov. and the appeal was filed on 28th Nov. in the Lower Appellate Court: *Held* that the whole of the time from the delivery of judgment to the re-opening of the Court on 1st Nov. was part of the time requisite for obtaining copies of the judgment and decree and that this must be so whether the appellant applied for copies on the day on which the Court re-opened or on some later date. The date on which the application for copies was made has no bearing on the question whether or not the period of vacation should be deducted. (2)

The appellant is entitled to the benefit of this section in such case^a

Application for copy made after re-opening while right of appeal subsists.—Provided that copies of judgment and decree have not been obtained previously, if the period prescribed for the presentation of an appeal expires on a day on which the Court is closed, and if the appellant applies for such copies on the date of the re-opening of the Court, whilst his right of appeal is still alive, he is entitled to the benefit of the time requisite for obtaining the copies, and if his appeal be presented before the expiry of that time, it is not barred by limitation. (3)

This section is applicable to applications for leave to appeal to Privy Council.

Application for leave to appeal to privy council.—This section is applicable to applications for leave to appeal to Privy Council ; hence time occupied in obtaining copies of the decree and judgment of the High Court will be excluded from computation under sub-sections (2) and (3).

[1] *Sri Chandan v Haroo Seth*, 13 C. L. J 544.

[2] *Debi Charan V Mehdi Hussain*, 1 P.L.J. 485 (490), 35 I.C. 188. *Munshi Mahton V. Lachman*, 10 P.L.T. 545, A.I.R. 1929 Pat. 615 (616).

[3] *Attri V. Ramkishan*, 11 Lah 111, A.I.R. 1930 Lah. 216, *Pandharinath V. Sanker*, 25 Bom. 586; *Tukaram V. Pandurang*, 25 Bom 584 (585).

Time spent in taking unnecessary copies:—In reckoning the time for presenting an appeal, the time required for obtaining a copy of the decree and judgment must be excluded, even though by the rules of the Court it is not necessary to obtain such copies. (1)

“In a second appeal, the time requisite for obtaining a copy of the decree of the Court of first instance cannot be deducted, such copy not being required to be filed along with the memorandum of second appeal. (2) So also, the time occupied in obtaining a copy of judgment of the Court of first instance will not be deducted in Computing the period of limitation for a second appeal, because it is not a judgment on which the appellate decree is founded within the meaning of the sub-section (3), and a copy of it is unnecessary even though the High Court makes a rule under which the memorandum of second appeal is required to be accompanied by a copy of the judgment of the Court of first instance, such a rule cannot have the effect of altering the period of limitation prescribed by this Act. Therefore, inspite of the existence of such a rule the appellant before the High Court will not be entitled to deduct the period requisite for obtaining a copy of the first Court's judgment. (3) This is also the view of the Rangoon High Court, but that High Court is also of opinion that in certain exceptional cases the Court may in its discretion excuse the delay caused in obtaining the judgment of the Court of first instance.” (4) See also the decision of the Lahore High Court in a recent case: An applicant in the second appeal is not entitled as of right to deduct the period spent in obtaining a copy of the first Court's judgment, but the Court may make an allowance, if he had applied for it before expiry of limitation for filing the second appeal. (5)

Time to be deducted even though by the rules of the Court it is unnecessary to obtain copies.

In a second appeal time requisite for obtaining copies of the decree and judgment of the Court of first instance cannot be deducted

In certain exceptional cases the Court may excuse the delay in obtaining the judgment of the Court of first instance.

Where a judgment passed on review does not give all the facts of a case and modifies a portion of the first judgment, the two judgments are really one and copies of both are necessary and the time spent for such can be deducted.

[1] Jyibhoy N Surti v. T. S. Chettiar Firm, 6 Rang 302 (P.C.), 30 Bom. L.R. 842

[2] Pirathi v. Venkataramanayyan, 4 Mad. 419.

[3] Narsingh Sahai v. Sheo prasad, 40 All. 1 (F.B), Chunilal v. Dahyabhai, 32 Bom. 14.
Jagun v Daulat, A. I. R. 1928 Lah. 755 (756), 112 I.C. 46.

[4] Maung PO Aung v. U Bya, 3 Rang 310. See H.C. Mitra's I.L.A. P.P. 111-112.

[5] George Gowshala v. Balak Ram. 103 I. C. 498, A. I. R. 1917 Lah 717.

Time taken in forwarding an application for copy and in transmitting the same from Court to jail is to be excluded.

Appeal by prisoner.—Time taken in forwarding an application for a copy on behalf of an appellant in jail and in transmission of such copy to the jail as well as the time occupied in the actual preparation of the copy, is time requisite—the period beginning from the date of his application and ending on the date when the copy is delivered to him in jail.

A lends Rs 100 to B on 1st Jan. 1925 in Bombay. B thereafter is employed in Baroda and resides there. A files a suit against B in Bombay to recover the amount due to him on 1st Jan 1929. Is the suit barred by limitation?

(B U April, 1929)

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

NOTES.

[Ans: No, the time during which B was absent from British India is to be excluded; and the suit will be in time, if B was absent for more than a year.]

State briefly to what extent, if any, is the period of limitation prescribed for a suit or an application affected by—

- (a) legal disability,
- (b) absence of defendant from British India

(B U Oct 1929).

A passed a promissory note payable on demand in favour of B on the 1st of June 1915. A was absent out of British India from 1st Jan 1916 and returned to India on the 31st Dec 1918. B filed a suit on the 1st Dec 1920. The suit was dismissed as time-barred. Would you advise the client to go up in appeal?

(A E. Feb. 1926)

Scope of the Section.—This section applies to the absence of the defendant only. There is no provision for the plaintiff's absence in the Limitation Act, whether it be voluntary, *e.g.*, absence after attaining majority or involuntary, *e.g.*, by transportation. The absence of the plaintiff cannot help him at all, he must sue within the time allowed through an agent, if necessary.

Absent:—The words "absent from British India" should be construed broadly and not limited in their application only to such persons as have been present there, or would ordinarily be present or may be expected to return. The word 'absent' includes a person who had never been present in British India. Absence does not necessarily imply a previous presence. Even where the defendant pays occasional visits to British India, this section will apply.

Absence of defendant out of British India must be strictly proved. Where a plaintiff said that a defendant was absent from British India for a certain period and that he was entitled to deduct that period, *held* that all this should have been specifically pleaded and that the plaintiff would be required strictly to prove the period, which he is entitled to deduct under this section. (1)

[1] *Pennyanna v. Arasu* 9 M. I. T. 217, 9 I. C. 568.

The section applies even when to the knowledge of the plaintiffs, the defendants, partners in a firm, are, during their period of absence, carrying on business in British India through an authorized agent. (1)

If the defendant actually returns to British India, the plaintiff's ignorance of the fact of such return does not prevent the operation of limitation. (2)

Presumably in suits against the Secretary of State for India the defendant is not considered as absent from British India. So also as a prince can be sued through his agent, his absence from British India cannot be deducted. (3)

Execution proceedings, applications and appeals.—It should be noted that the section is restricted to suits and does not apply to proceedings in execution of a decree. So also it does not apply to applications or appeals as is evident from the expressions "prescribed for any suit."

Several defendants—absence of one.—The period of the defendant's absence can be excluded as against him only and not also as against his co-defendants, i. e., absence will save limitation only as against the absentee defendant, and not also as against those who are within the jurisdiction. (4)

Absence after accrual of cause action.—This section is not affected or qualified by the sec. 9 and therefore if even after limitation has commenced to run defendant leaves British India the period of absence can be excluded. But it is otherwise in English law. In England if the cause of action accrued at the time when the defendant was in England, his subsequent absence would not operate to save limitation.

So also this section does not cause the exclusion of time of the defendant's absence from British India to cease altogether when he returns thereto so as to prevent a plaintiff taking ad-

[Ans. Yes, I would advise the client to appeal against the order of dismissal. Excluding the period during which A was absent from British India, i. e., from 1st Jan 1916 to 31st Dec 1918 B has filed the suit within the period of limitation, viz., 3 years.]

A partnership firm consisting of A, B, and C carries on business in Bombay. On 10th March 1925 the firm in the usual course of business borrows in Bombay a sum of Rs 10,000 from D on a demand promissory note. It is found as a fact that from 1st Jan 1926 to 31st Dec. 1927 A resided in Bhavnagar. On 1st Jan 1930, D files a suit in the High Court of Bombay against A, B and C. Is the suit within time, and if so against whom?

(A C E Sept 1931)

The period should be excluded, notwithstanding that such period had begun to run before the defendant left British India.

[1] *Poolna Chunder v Sassoon*, 25 Cal 496

[2] *Mahomed v Clarajone*, 2 N W P 173.

[3] *Sayaji Rao Gaikwar v. Madhavrao* 53 Bom. 12, 30 Bom. L. R. 1463.

[4] *Palaniappa v Vuerappa* 41 Mad 446—Suit against a partnership firm—One partner absent from British India Deduction of time as against absentee defendant alone.

vantage of a subsequent absence of the defendant, but allows the whole time occupied by any number of absences to be counted, and that, whether the time had begun to run before the first absence or during it. (1)

A place out of British India which is merely in military occupation by an army despatched by the Government of India is not a 'territory under administration of Government'

Special case considered when the subject-matter is out of British India

Territory under administration of Government.—Plaintiff is entitled to deduct the time during which the defendant was staying in Basra as that place was not under the administration of British India except for military occupation. (2)

Special case.—Where the land, the subject of the suit, had been transferred to foreign territory by a sudden change in the course of the river Beas, it was held that the defendants, who cultivated the land, were certainly absent from British India during the period for which the land remained in foreign country. (3)

What are the conditions which would entitle a plaintiff to the exclusion of time during which he has been prosecuting another civil proceeding against the defendant in a Court which, for defect of jurisdiction, is unable to entertain it?

(P U 1926)

When and to what extent may the time spent in taking proceedings in a wrong Court be excluded in computing the period of limitation for a suit or application?

(A. U. 1923).

(a) On 5th Jan 1921, A institutes against B a suit for possession of agricultural land. The period of limitation prescribed for the suit expired on 15th Nov 1920. A contends that he has been prosecuting mutation proceedings about the same land before the Revenue officer and that excluding that period the suit is within time. Is the contention sound?

14 Exclusion of time of proceeding bona fide in Court without jurisdiction.—

(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.

(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 proceeding, 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.

[1] *Beake v. Davies*, 4 All 530, *Hanmantram v. Bowles*, 8 Bom. 661.

[2] *Fakhrullah v. Ramsarup*, 45 All. 18.

[3] *Gulab v. Pira*, 34 P. R. 1889

Explanation I.—In excluding the time during which a former suit or application was pending, the day on which the 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 a like nature with defect of jurisdiction.

NOTES.

Conditions.—In order that this rule may apply the person claiming the benefit of it must have fulfilled all its conditions.—

- (a) The proceeding which he was prosecuting must have been a civil proceeding.
- (b) In the earlier civil proceeding all the defendants in the latter suit should have been parties.
- (c) The suit in which the plaintiff claims the benefit of this rule must be founded on the same cause of action as the former civil proceeding.
- (d) The former civil proceeding must have been prosecuted with due diligence.
- (e) In prosecuting the earlier civil proceeding in the wrong Court the plaintiff must have acted in good faith.
- (f) The incapacity of the Court in which the earlier civil proceeding was instituted must have been due to (i) want of jurisdiction, or (ii) other cause of a like nature.
- (g) The expression "is unable to entertain" means is , unable to go into the merits of the case.

Give your reasons.

(b) If in the same suit the contention of A be that he has been prosecuting proceedings about the same land, though on a different cause of action in the Court of the munsiff, would the time spent in these proceedings be excluded? Give your reasons. (P. U. 1924.)
[Ans: (a) the contention is not sound, Mutation proceedings are not civil proceedings in the terms of the language of sec 14, nor does the Revenue Officer constitute a Court. As a matter of fact the Revenue Officer entertains such proceedings as an executive officer of Government. Vide 26 All 382.]

(b) Here too, sec 14 cannot help the litigant. Time spent in proceedings on a different cause of action cannot be excluded.]

- (h) The period which the rule permits to be excluded is:—
- (i) the time during which the earlier suit or application was pending or being made,
 - (ii) the day on which the suit or application was instituted,
 - (iii) the day on which the proceeding terminated, and,
 - (iv) the period between the decision of the first Court and the disposal of an appeal therefrom, provided the latter was prosecuted in good faith.

Principle underlying the section explained.

Principle.—In a Full Bench case (1) Strachey, C.J. explains the true principle underlying this section. "It is" said His Lordship, "the protection against the bar of limitation of a man honestly doing his best to get his case tried on the merits but failing through the Court being unable to give him such a trial, it is applicable not only to cases in which a man brings his suit in the wrong Court, i.e., a Court having no jurisdiction to entertain it, but also where he brings his suit in the right Court but is nevertheless prevented from getting a trial on the merits by something which, though not defect of jurisdiction, is analogous to that effect."

Sec 5 allows discretion and sec 14 allows no such discretion.

Difference between sec. 5 and sec. 14.—Sec. 5 allows a discretion the wording being "may be admitted" while sec. 14 allows no such discretion the wording be "shall be excluded".

Section applies to suits and applications and not to appeals

Scope of the Section.—This section applies to suits and applications only and not to appeals. Circumstances contemplated in this section may, and ordinarily would, constitute a sufficient cause in the sense of sec 5. The reason why this section is limited to Courts of original jurisdiction is merely because the earlier section [sec. 5] gives a large and more unfettered power in the same behalf to Appellate Courts. The reasonable principle of this section may, therefore, be applied to appeals. (2) So also on the analogy of this section, the time spent in a suit wrongly filed for

But the reasonable principle of this section may be applied to appeals

[1] Mathura V. Bhavani, 22 All. 253

[2] The sec. has been applied in 49 All 555 and A. I. R 1928 Lah. 136 where the appeal was filed in a wrong Court through a *bona fide* mistake and there was no lack of due diligence when the mistake was found out.

getting on order set aside might properly be deducted in computing the period of limitation for subsequently filing an appeal from such an order. (1)

Prosecuting.—The plaintiff is “prosecuting” a civil proceeding within the meaning of this section during the whole time that he was so engaged whether in appeal or otherwise, and when he has appealed, during the interval between the decision appealed from and the filing of the appeal. He has been equally “prosecuting” a civil proceeding when he was defendant in the former suit, and in that suit he was urging the same claim as that which he prefers in the second suit as plaintiff.

The meaning of “prosecuting”.

Due diligence.—Whether a proceeding was prosecuted with ‘due diligence’ or not is a question of fact depending upon the circumstances of each case. No hard and fast rule can be prescribed for determining it. In *Goviindsami v. Sami Padyachi* (2) 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 principle of equity and “Equity aids the vigilant” should not be forgotten.

No hard and fast rule can be prescribed for determining ‘due diligence’

“Civil Proceeding” in a “Court”.—This section requires that the proceedings must be “civil proceedings” and also they are proceedings of a “Court”. In order to decide whether a proceeding should properly be termed a civil proceeding in a Court, it is necessary in each case to examine the precise nature of the proceeding and the constitution of the authority before whom such proceeding is taken. The expression “civil proceeding” is used in this section as opposed to a criminal proceeding. It includes a proceeding by way of appeal or revision. The section makes no distinction between a Civil and a Revenue Court, and accordingly the prosecution of infructuous civil proceeding in a Revenue Court (as distinguished from a Revenue Officer) can be excluded (3)

The precise nature of the proceeding and the constitution of the authority before whom such proceeding is taken should be considered in determining the meaning of “Civil proceeding in a Court”.

An application for mutation of names is not a civil proceeding. An application to the Collector to take action under sec. 11 A of the Bombay Hereditary Offices Act is not a civil proceed-

[1] *Sitaram v. Nimba*, 12 Bom. 320.

[2] 43 M. L. J. 579.

[3] *Govindo v. Man-on*, 15 B. L. R. 56 (*Contra*: A proceeding in a Revenue Court is not a civil proceeding—33 P. R. 1914, 26 I C 441).

nig in a Court within the meaning of this section. Hence, time taken up in such proceeding cannot be excluded.

The meaning
of 'Court.'

Court.—The 'Court' in this section refers to a Court in British India and does not include a foreign Court, such as a Court in a Native State.

Civil proceedings in a Court cover civil proceedings before arbitrators whom the parties substituted for the Court of law to be the judges of the dispute between them. An arbitrator should, therefore, exclude the time spent in prosecuting in good faith the same claim before an arbitrator who was without jurisdiction. (1)

A proceeding before an Official Assignee is a proceeding in an Insolvency Court. Therefore the Insolvency Proceeding before an Official Assignee is a civil proceeding. (2)

The Settlement Officer, the Commissioner, and the Board of Revenue are not Courts but executive officers of Government.

Under the rules framed by the Bombay High Court, the Collector is not a Court for the purpose of setting aside a sale under sec. 311 of C. P. Code (1882).

A Conciliator acting under sections 10, 11, 11 B of the Deccan Agriculturists' Relief Act is acting purely as an administrative officer and not as a Court.

A Collector appointed under the Deccan Agriculturists' Relief Act is not a Court. The time occupied in proceedings before a Revenue Officer (and not before a Revenue Court) cannot be deducted under this section.

Identity of parties is
essential.

"Against the defendant".—Identity of parties is essential (*c.f.* sec. 2). The section allows no deduction of time occupied in litigation against a wrong party, but it will be allowed if the first suit was against two defendants and the second against one of them. (3)

No exclusion of time
allowed where there are
several defendants in the

Where there are several defendants in the second suit, and the former suit was instituted against only one of them, no exclusion of

[1] Ramdutt Ramkissen v. E. D. Sassoon & Co., 56 Cal. 1048 (P.C.)

[2] N. K. M. Chetty v. Lutchman, 12 Bur. L. R. 83, 52 I. C. 934 (935.)

[3] Seth Kahandas v. Dahiabhai, 3 Bom. 182.

time will be allowed. *e. g.*, In a suit by A against B and C the defendants plead limitation. A answers that he was prosecuting a suit on the same cause of action against B and that suit was dismissed for want of jurisdiction. He is not entitled to a deduction of time as the first suit was against B alone and the second suit is against B and C. (1)

second suit, and the former suit was instituted against only one of them.

Same cause of action.—It is not necessary that the second suit should be a 'literal copy' of the first. But there must be substantial identity of the causes of action in both suits. The person claiming the benefit of this section must be claiming in both suits on the same title. If plaintiff sues under one title in wrong Court and then under another title in the proper Court, the period occupied by the previous proceeding will not be excluded as two causes of action are not identical.

There must be substantial identity of the causes of action in both suits

Identity of causes of action is essential, *e. g.*, A sued for redemption, and in that suit he claimed to deduct a certain sum of money which he alleged B, the mortgagee, had orally agreed to be due to him on an account stated. The suit was dismissed. A then sued B for the amount alleged to be due on the account stated. As the first suit was on the mortgage and the second suit was on the alleged account stated, A was not allowed to deduct the time spent in prosecuting the redemption suit. (2)

Prosecuted in good faith.—A person who acts on an honest though mistaken belief will be said to have acted in good faith provided that belief was formed with due care and attention. "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."

Indulgence under this section should be granted only in cases where the error is one that might be committed by a reasonable and prudent man exercising due diligence and caution.

Ignorance of law or ill advice of a pleader does not necessarily or *prima facie* establish a want of good faith. This section is appli.

The time should be deducted if prosecuted *bona fide* and with due diligence

X, a resident of Bombay advanced at Bombay Rs 1,000 to Y, a resident of Ahmednagar on the 1st Jan. 1923. Y did not return the loan and X sued him (Y) for his money in the Presidency Small Causes Court at Bombay on the 10th Nov 1925. Y resisted the suit on the ground that he was an agriculturist and therefore the Bombay Court had no jurisdiction to try the suit.

The Small Causes Court held that Y was an agriculturist and returned the

[1] Nilmadhab v. Krishtodoss, 5 W. R. 281.

[2] Mangu Lal v. Kandhi Lal, 8 All. 475.

plaint for presentation to the proper Court on the 11th Jan. 1926. X presented the plaint in the Ahmednagar Court on 1st Feb. 1926 and claimed exclusion of time taken up by the proceedings in the Small Causes Court at Bombay. During the trial it was found that X was aware of the status of Y as an agriculturist but filed a suit at Bombay to harass him (Y). Is the suit in the Court at Ahmednagar in time?

(A. E. Aug 1930)

A filed a suit for recovery of money on the day when the Court opened after summer vacation. It was held that the Court, in which the suit was filed was not the proper Court and therefore, the plaint was ordered to be returned to the plaintiff for being presented to the proper Court but the plaint was actually delivered to the plaintiff some time after. Plaintiff filed the plaint in the proper Court on the same day. It was contended that the plaintiff should not be allowed to deduct the days of vacation as the suit was filed in a wrong Court as also the days intervening between the order to return the plaint and the actual return. The suit was accordingly dis-

cable when there is a *bona fide* mistake of law. (1) Proceeding in a wrong Court through the *bona fide* mistake of the counsel may be excused under this section, where the party has throughout prosecuted his case with due diligence. (2) A litigant who takes action without going to the trouble and expense of taking legal advice cannot be said to have exercised due diligence. A litigant who consults a legal practitioner of inferior standing and little experience is in no better position. But when the advice is that of a pleader of the Bar, and is given after due deliberation and is followed, the Court, cannot, simply because the advice was utterly wrong, hold that litigant has not exercised due care and diligence. (3)

When a Court is by express rule or legislation declared to have no jurisdiction in a matter, the time spent in prosecuting that matter in such a Court cannot be said to be *bona fide*, *e. g.*, the Small Causes Court Act declares that suits of certain descriptions shall not be tried by a Court of Small Causes. If the plaintiff institutes a suit of one of these descriptions in such a Court, it will naturally be dismissed and the plaintiff will not be entitled to deduct the time between the institution and dismissal of such suit. (4)

Closing of wrong Court.—According to this section it is only the period during which a suit is actually prosecuted in a wrong Court that can be excluded in favour of the plaintiff. If the period of limitation expired during the period of recess of the wrong Court wherein the suit was filed on the day of its re-opening, the suit must be held to be barred.

The last day for filing a suit was 14th June 1908. But as the Court in which the suit was sought to be filed was closed from 14th June to 5th July, the suit was filed on 6th July 1908. On 17th Feb. 1909 the Court found that it had no jurisdiction and returned the plaint to the plaintiff for presentation to the proper Court. The plaintiff presented it to the proper Court on the next Court day, *i. e.* 19th Feb. 1909. It was held that under sec. 14 the plaintiff was entitled to the deduction of time between 6th July 1908 and 17th Feb 1909, *i. e.*, the time during which the suit was actually prosecuted in the wrong Court, but not to a deduction of the period

[1] *Ram Ravi v. Pralhad* 20 Bom. 133.

[2] *Ram Sahu v. Imdad*, 22 O. C. 39 51 L. 590

[3] *Fuzhur Ali v. Sahib Nur*, 25, P. L. R. 1913, 20 I. C. 3.

[4] *cf. Narayan v. R. Sulkhan*, 23 Bom. 531.

between 14th June and 5th July 1908, during which the wrong Court was closed; *held* further, that the plaintiff could not invoke the aid of sec. 4 for deducting the latter period, as the word "Court" in that section does not include a wrong Court. *Per* Spencer J, "Although the word "Court" in sec. 4 is not qualified by the adjective "proper" as it is in other parts of the Act, it would not be reasonable to take account of the closing and re-opening of any other Court than that in which the suit was rightly instituted", (1) But in *Basavanappa v. Krishnadas* (2) it was held that the period during which the wrong Court was closed should also be deducted.

Defect of Jurisdiction.—The term "jurisdiction" implies (a) territorial limits of jurisdiction, (b) pecuniary limits of jurisdiction, (c) jurisdiction with reference to the nature of the class to which the case belongs and (d) presence or absence of a positive authority or power conferred by the law upon tribunals in cases which satisfy the three preceding conditions. (3)

Defect of jurisdiction means a defect of jurisdiction in the particular Court where the former proceeding is instituted and not an inability shared by that Court in common with all the other Courts to entertain the proceeding. (4) The words "defect of jurisdiction" do not cover such mistakes as the presentation and prosecution of an appeal which does not lie in any Court (5)

"Other cause of a like nature".—The words "other cause of a like nature" mean some cause analogous to defect of jurisdiction. It is a question of fact whether certain cause is a "cause of a like nature or not". Judges are to be guided by precedents and case-law.

Inability of a Court to entertain the former suit, owing to any cause not connected with want of good faith or due diligence in the plaintiff, such as a *bona fide* mistake of law, procedure or fact, is a cause of a like nature. (6)

missed by the Court. Is that decision correct?

(A E Feb. 1926.)

[Ans: As to the contention the plaintiff should not be allowed to deduct the days of vacation as the suit was filed in a wrong Court see 36 Mad. 131 and 45 Bom 443 The days intervening between the order to return the plaint and the actual return may be excluded for the plaintiff is in no way responsible for the delay]

The expression means some cause analogous to defect of jurisdiction

[1] *Mira Mohideen v. Nallaperumal*, 36 Mad 131. See also 44 Mad 817, A. I. R. 1929 All 677; 11 Lah. 12.

[2] 45 Bom. 443.

[3] *Dhan Singh v. Basant*, 8 All. 519 (529).

[4] *Sultan v. Ala Bakash*, 45 P. R. 1993

[5] *Moti Singh v. Maghan* 22 P. R. 1912.

[6] *Mathura Singh v. Bhawani*, 22 All, 218 (F. B.)

The words "other cause of a like nature" mean some unavoidable circumstance over which no one has any control, or something incidental to the Court itself and unconnected with the default or negligence of the plaintiff. (1)

The section does not contemplate cases where questions of want of jurisdiction arise from simple ignorance of the law, the facts being fully apparent, but is limited to cases where from *bona fide* mistake of fact the plaintiff has been misled into litigating in a wrong Court. The phrase "other cause of a like nature" in the section is vague, and cannot be held to release a person from the obligation to know the law of the land. (2)

Mis-joinder includes non-joinder.

Misjoinder and non-joinder.—Explanation III to the section has apparently made no provision for the case of a non-joinder. According to earlier rulings, if a suit is dismissed for non-joinder (e. g. of a necessary plaintiff) this section has no application. A recent ruling, however, is in conflict with this view. "The word 'misjoinder' in Explanation III includes 'non-joinder'. For the purposes of this section there is no distinction between misjoinder and non-joinder. They are only variations of the same defect. Therefore, where one of the several decree-holders applied to execute the decree without impleading the other decree-holders as parties, and the application was dismissed, whereupon a subsequent application for execution was properly presented, *Held* that the time occupied in prosecuting the earlier application in good faith should be deducted under this section." (3)

The section does not apply where the suit or application is withdrawn.

Withdrawal of previous suit or application.—This section applies only to cases where the previous suit or application was dismissed by the Court itself because it was unable to entertain it; it does not apply where the previous suit or application was voluntarily abandoned or withdrawn by the plaintiff or applicant.

The section applies to special or local laws.

Application of the section to special or local laws.—According to sec. 29 as now amended by the Indian Limitation Amendment Act (1922) this section applies although the case is governed

[1] Chunder Madhub v Bissessuree, 6 W. R. 184, Bai Jamna v. Bai Ichha, 10 Bom. 604.

[2] Rajiwan v Chand Mal, 10 All. 587. *cf.* Brij Mannu, Mohan v. Manu 19 All. 348 (F.B.).

[3] Seth Ibrahim v. Firm of Ghulam Husain, 15 S. L. R. 11, 62 I. C. 507.

by a special or local law of limitation, unless it is expressly excluded by the special or local law.

This section does not apply where the special Act provides special rule of limitation which derogates from the provisions of the general rule embodied in this section. (1)

15. Exclusion of time during which proceedings are suspended —

(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.

NOTES.

Section (1) re-stated.—In computing the period of limitation prescribed for,

- (a) any suit, or
- (b) an application for the execution of a decree the institution or execution of which has been stayed by (i) injunction or (ii) order,

the following shall be excluded:

- (a) the time of the continuance of the injunction or order,
- (b) ~~the day~~ the day on which it was issued or made, and
- (c) day on which it was withdrawn.

[2] *Ram Lochan v. Jagat Narain*, A. I. R. 1927 All. 181, 98 I. C. 1050.

Clause (1)—suits and applications for execution of a decree. Clause (2)—suits only.

The section relates to injunctions or orders of Court

Injunction does not include an order of attachment under O 21, r 46, or notice to show cause against stay

Views of Lahore and Patna High Courts as regards the order granting time to judgment-debtor for payment of decretal amount

The section can be extended to orders which indirectly but effectively cause delay

An order should be clear one and it should be for an absolute stay

Scope of the section.—Clause (1) applies to suits and applications for execution of a decree. Clause (2) applies to suits only.

Injunction or order.—The section relates to injunctions or orders of Court and not to Royal Proclamations which prevent the institution of suits by alien enemies.

Injunction does not include an order of attachment under sec. 268 (O. 21, r 46) of C. P. C. (1) or notice to show cause against stay. (2) An order granting time to judgment-debtor, for payment of decretal amount, though with consent of parties, cannot operate as a stay order under this section. (3) But see a recent Patna case. An application for execution was made on 21st. Sept. 1923, the judgment debtor paid Rs 50 in part-payment and prayed for a week's time for payment of a sum of Rs. 200. The Court granted time to the judgment-debtor to pay the money up to 29th Sept 1923. No payment was, however, made on this date and the execution case was dismissed on 3rd Oct. 1923. On 24th Sept. 1926 an application for execution was filed. *Held* that the application was not barred. The order granting time prevented decree-holder from taking any further step and the order of 21st Sept. must be considered to be an order of stay of execution and not in furtherance of execution (4)

The section is not confined to cases of direct stay or injunction, but can be extended to orders which indirectly but approximately and effectively cause delay (5).

An order staying the execution of a decree must be a clear one, but it is not necessary that the order should be in writing. (6) Further the order should be for an absolute stay and not for a limited stay as would be ordered under O. 21, r. 53. (7)

[1] Rangasami v. Thangavelu, 42 Mad 637,

[2] Chanbasappa v. Holibasappa, 48 Bom. 485 (491), 26 Bom L R 317

[3] Amin Chand v. Khali, A I R 1927 Lah. 106, 100 I C 475

[4] Ganga Singh v. Sheo Prasad, 7 Pat. 329, A I R 1929 Pat. 36 (37).

[5] Pandey Satdeo Naram v. Radha Kuar, 53 I C 9, 5 P.L.J. 39—The requirement of security from a decree-holder operates as a stay, being against his unconditional execution.

[6] Vishvanath v. Narsu, 28 Bom L. R. 107.

[7] Chanbasappa v. Holibasappa, 48 Bom 485 (491), 26 Bom. L R. 317. *Contra* 30 I C 587 (Cal)

If the stay be partly by injunction and partly by order, the time covered by both is allowable. If the stay be against some of the items of mortgaged property, the exclusion of time can be as against all

Period which should be excluded from computation because there was a stay order against one judgment-debtor should not be excluded from computation as against the other judgment-debtors when there is no stay order against them. (1)

Section 48 C P. Code, 1908. -Twelve years' period mentioned therein is not the period of limitation in strict sense and consequently this section of the Limitation Act cannot apply to it. Hence an application for execution of a decree stayed by injunction or order of Court, filed after 12 years from the date of the decree, cannot be saved by excluding under this section the time during which the execution was stayed (2)

This section cannot apply to 12 years' period mentioned in sec. 48 of C P C, 1908

Sub-Section (2) —Notice —Sub-section (2) is intended for cases in which the plaintiff is under a statutory obligation to give a notice before he can institute a suit. When it is necessary under the law to give the person intended to be sued notice of such intention, the period between the service of the notice and the expiry of the time prescribed for the notice is excluded in computing the period of limitation for suits, *e.g.*, Sec. 80 of C.P.C. 1908, which provides that no suit shall be instituted against the Secretary of State or against a public officer etc. until the expiration of two months next after the notice in writing has been given.

The sub-section will apply not only to suits against Government, but to all suits of which notice has to be given *e.g.*, against a Corporation

(a) A wishes to bring a suit for damages against B. It is required by Law that before doing so, he must give B a written notice. Could the time required for such notice be computed? Give your reasons

(b) B wishes to sue A for damages. But before doing so he was advised to give a notice to A to settle up the matter within two months. By Law it was not essential for him to do so. Could the period of this notice be computed? Give your reasons

(P U 1923)

In a single suit brought against several defendants if the plaintiff is entitled to deduct a certain period from the period of limitation in respect of one defendant, he is also entitled to the same period of limitation in respect of the other defendants. (3)

[1] *Parameswaram v. Seshan*, 51 Mad 583. *Contra* *Vellayyan v. Muthayya* A. I. R 1921 Mad 16—If the stay be against one of the joint judgment-debtors, the exclusion of time can be as against all.

[2] *Subbarayan v. Natarajan*, 45 Mad. 785.

[3] *E. I. Ry v. Rahimullah*, 9 Lah 519, *Khanderao V. Channmallappa*, 26 Bom L R 364.

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

NOTES.

Section should be read with Arts. 137 & 138.

Proceeding includes suits as well as applications

Scope of the Section.—This section should be read with Articles 137 and 138. It applies only to suits brought by a purchaser at a Court-sale. The word proceeding is comprehensive enough to include a suit as well as an application. The exclusion of the period is allowed during which the validity of the sale is in controversy, whether the sale is impeached by suit or application. (1)

When does time begin to run for computing the period of limitation. (b) when a person who could, if he were living, have a right to institute a suit, dies before the right accrues: (c) where a person against whom, if he were living, a right to institute a suit would have accrued, dies before the right accrues? (A. C. E. Sept. 1928).

State the effect on limitation of death before or after the right to sue accrues.

(C U 1921)

17. Effect of death before right to sue accrues.—(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.

(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.

NOTES.

Principle.—The general principle underlying the section is that a cause of action cannot exist unless there be also a person in existence capable of suing. Hence, if a person to whom a cause of action would have accrued, if he were living, die intestate before the cause of action accrues, the statute does not begin to run till administration has been taken out. So also no one has a complete cause of action, until there is some body that he can sue. If therefore a person is dead, at the time when the cause of action would have arisen against him, the time does not begin to run against the plaintiff, until there is a legal representative in existence whom the plaintiff may sue.

The principle of the sec. is that in order that a right of suit or cause of action may exist, there must be in existence a person capable of suing and another capable of being sued.

This section adopts the general rule that a complete cause of action cannot accrue unless there be a person in existence who is capable of suing and another who can be sued.

Illustrations.

- (1) A dies on the 1st March leaving a minor son as his sole legal representative. Had A lived until the 15th March a right to sue would have accrued to him. Limitation does not begin to run until the minor son attains majority.
- (2) A right to sue B will accrue to A on the 15th March. B dies on the 1st March leaving as his legal representative a person who is absent from British India. Limitation does not begin to run until the legal representative returns to British India.

Scope of the Section.—The section applies to suits as well as to applications. It does not apply to suits:

- (1) to enforce rights of pre-emption, or
- (2) for the possession of immoveable property, or
- (3) for the possession of an hereditary office.

The section does not apply to appeals also.

The section applies to suits as well to applications and not to appeals.

"Before the right accrues".—To bring this section into operation death must occur before the right to sue or make an application accrues. The effect of death before the right to sue

Death must occur before the right to sue or to make an application accrues.

accrues is to prevent the running of limitation until there is a legal representative of the deceased plaintiff or defendant capable of suing or being sued, or capable of making the application or against whom the application may be made. If the death happens after the right to sue has accrued, the running of time is not prevented because according to sec. 9 when once time has begun to run, no subsequent disability or inability stops it.

Cases explaining the effect of death before right to sue accrues

Where a creditor dies intestate on the day on which a debt becomes payable to him, and there is no evidence to show whether he died before or after the time when the debt became payable, the statute of limitation does not begin to run against the administrator until letters of administration have been taken out. (1)

Where one of the partners died and contest ensued as to the right to take out letters of administration to her estate, and in the meantime the surviving partners got in the partnership estate and subsequently the administration of the deceased partner's estate was granted to the Administrator-General, who then sued the surviving partners to recover the deceased partner's share of the assets of the business, this section was held to apply, the Administrator-General being held to have sued on behalf of the infant heir. (2)

A manager is bound to account to his employer whenever he is called upon to do so under reasonable circumstances. On the death of such manager a fresh right to an account accrues to the employer as against the manager's representatives. In a suit for such an account accruing to the employer on the death of his manager limitation will not under this section commence to run until administration has been taken out to such manager's estate. (3)

The meaning of "legal representative"

Legal representative.—Legal representative means a person who in law represents the estate of a deceased person. *Vide* sec. 2 (11) of C. P. C. An executor or administrator of a deceased person is his legal representative for all purposes. (4) A person in possession of the estate of a deceased Hindu is his legal representative for certain purposes, until some other claimant comes forward. (5)

[1] *Atkinson v Bradford Building Society*, 25 2. B. D. 377

[2] *Bhagwandas v. Rivett Carnac*, 23 Bom 544 (P. C.), affirming 20 Bom. 15.

[3] *Lawless v. Calcutta Landing and Shipping Co.*, 7 Cal. 627.

[4] Sec 211 Indian Succession Act, XXXIX. of 1925.

[5] *Prosunno v. Krishto* 4 Cal 342

“Capable of instituting or making etc.”—Section 6 must be read along with this section. Thus the words “a person capable of instituting or making etc.” in this section mean a person not under such disabilities as are mentioned in sec. 6. The expression “capable of suing” is the equivalent of “not under legal disability to sue.” It cannot refer to incapacity arising from want of means or absence of other physical causes. What legal disabilities incapacitate from suing are pointed out in sec. 6, amongst which infancy is the foremost. (4)

The expression means “a person not under such disabilities as are mentioned in sec. 6.”

The “capacity to sue” for an executor arises from the death of testator (5), and so where a testator dies without executing his decree, his executor will not be entitled to deduct the time spent in obtaining probate of the testator’s will, in his application for execution, to save the bar of limitation. (6), but an administrator gets his title only from the actual grant of the letters of administration and so his capacity to sue does not arise before he gets this grant. (7)

‘Capacity to sue’ for an executor arises from the death of testator.

‘Capacity to sue’ for an administrator does not arise before the actual grant of the letters of administration

A certificate of administration under Bombay Reg. VIII of 1827 only confers a right of management and does not constitute the holder a representative of the estate for the purpose of distributing it among the co sharers; consequently, the existence of such a certificate does not make the holder a person against whom a sharer can institute a suit for his share. (1)

18. Effect of fraud.—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,

Specify clearly the circumstances and the extent to which Fraud or Minority extend the period of limitation. (B U Oct 1922)

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 :—

State and illustrate the rule of the Indian Limitation Act for computation of the period of Limitation in the case of fraud.

(U Oct 1926)

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

[1] *Rivett-Carnac v. Goculdas*, 20 Bom. 15 (at 44).

[2] *Balkrishnadu v. Narayanswamy*, 37 Mad 175.

[3] *Burn v. Paul*, A. I. R. 1923 Rang. 98.

[4] *Megappa Chetty v. Subramania Chetty*, 20 C W. N. 883 (P.C)

[5] *Keshav v. Narayan*, 14 Bom, 236.

What is the effect of fraud upon the question of limitation for bringing suits and making applications for execution of decrees ?

(P. U. 1925)

How is the period of limitation computed in cases of fraud ? (A.C.E Sept 1929)

State the effect of fraud in extending the period of limitation prescribed by the Indian Limitation Act. Give an illustration. (C.U 1919)

State the effect of fraud on the right of a person to enforce his remedy by suit or application. (C U. 1920).

Illustrate the operation of fraud on the question of limitation (C U. 1921).

What is the effect of fraud on limitation ?

(C U 1925, 1927)

"In a case where fraud is proved, length of time ought not upon principles of eternal justice to be admitted to repel relief" State briefly the provisions of the Indian Limitation Act regarding the same

(C U 1930)

(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.

NOTES.

Principle.—The principle on which this section is based is that the right of a party defrauded cannot be affected by lapse of time or by anything done or omitted to be done by him, so long as he remains, without any fault of his own, in ignorance of the fraud which has been committed. (1) "In a case where fraud is proved, length of time ought not on principles of eternal justice to be admitted to repel relief. On the contrary, length of time during which the fraud has been successfully concealed and practised is rather an aggravation of the offence and calls more loudly upon a Court to grant ample decisive relief. It is plaintiff's duty once the fraud has been discovered to claim relief promptly. If there has been laches or acquiescence after discovery of fraud, the Court will be entitled to refuse relief, even though the period of limitation has not elapsed since discovery of the fraud." (2)

Scope of the section.—The section is limited to suits and applications only. It applies to three classes of cases, viz.

- (1) Where the right to sue or make an application has been fraudulently concealed from the plaintiff by the fraud of defendant;
- (2) where the title on which such right is founded has been so concealed;
- (3) where any document necessary to establish such right has been fraudulently concealed.

As regards the first two classes of cases, the period of limitation shall be computed from the time when the fraud first became known to the plaintiff (or to the person injuriously affect-

[1] Darby and Bosanquet. 2nd Ed. PP. 261, 262.

[2] Rustomji's Law of Limitation (Students' Ed.) P. 32.

ed thereby), and not from the time when, with reasonable diligence, it might have been known or discovered. In the third class of cases, it shall begin from the time when the plaintiff or applicant first had the means of producing or compelling its production and not from the date of the discovery of the document.

The time runs against the person who is guilty of fraud or against the person who is accessory thereto. It runs also against a person who claims through him. But if the claim is made in good faith and for valuable consideration, time will not run against him.

Fraud.—“Such fraud as will in equity prevent the bar of the statute must be distinct in its characteristics, and mere wrongful entry or possession is not equivalent to fraud, unless there is designed concealment of important circumstances to the rightful owner,” (1) “In order to constitute fraud, it is not sufficient that there should be merely a tortious act unknown to the injured party or enjoyment of property without title while the rightful owner is ignorant of his claims, there must be some abuse of a confidential position, some intentional imposition or some deliberate concealment of fact.” (2)

What Constitutes
fraud.

The term fraud as used in this section means active deceit in defrauding or endeavouring to defraud a person of his right by artful device. (3) Mere silence is not fraud. The mere withholding of information which ought to be communicated to the party entitled is not a fraud, unless it is withheld with the direct purpose of throwing plaintiff over the period of limitation. To constitute fraud it is not enough that the right to sue shall be merely unknown to the plaintiff but there must have been some intention, imposition or some deliberate concealment of facts by which the ignorance of the plaintiff was brought about. (4)

Whose fraud—The fraud mentioned in this section must be committed by the party against whom a right is sought to be enforced. If the fraud has been committed by a third person this section would not apply.

Fraud by whom?

[1] Banning. P. 240

[2] Darby and Bosanquet, p. 193.

[3] Ghulam Raza v. Sardar Khan. 4 p. L. R. 1903.

[4] Lokenath v. Chintamani, 16 I. C. 547.

Knowledge must be of such a character as will enable the person defrauded to seek his remedy in Court.

Knowledge.—Knowledge required by this section is not mere suspicion. It must be knowledge of such a character as will enable the person defrauded to seek his remedy in Court. The mere act of fraud is immaterial. The plaintiff or applicant must show that he has by means of fraud been kept from the knowledge of his right to institute a suit or make an application. The knowledge of the right and the exercise thereof are fundamentally different things. The words "kept from the knowledge of his right" make it clear that this section applies only when the plaintiff or the applicant has been kept from the knowledge of his right to do a certain thing by fraud of the other party, and not where he is so kept from exercising his right.

The person who seeks the benefit of this section must prove fraud clearly and specifically.

Burden of Proof.—The person who seeks the benefit of this section must prove fraud. The party who alleges fraud must do so clearly and specifically and with detailed particulars. General allegations of fraud, however strong, are not sufficient. The charge of fraud must be proved as said in the plaint. If one kind of fraud is alleged in the plaint, the plaintiff cannot, on failure to prove the particular fraud, be allowed to substitute another kind of fraud for it. Where a suit or application is on the face of it barred, the burden of proving fraud is on the plaintiff or applicant. But when once the fraud has been established, the burden is shifted on to the other side, and it is for the defendant who sets up limitation to show that the plaintiff had had clear knowledge of the facts constituting fraud at a time which is too remote to allow him to bring the suit. (1)

But when once fraud has been established, the burden is shifted on to the other side

The applicant can come in after the confirmation of sale if he can show fraud

Application to set aside sale.—When judgment-debtor makes an application to have an execution-sale set aside under O. 21, r. 90 C. P. C. after the expiry of the period of limitation, he must bring his case within this section. He must show that the existence of his right to set aside the sale has been kept concealed from his knowledge by the fraud of the decree-holder. Ordinarily the provisions of sec. 311 of C. P. C. of 1882 (O. 21, r. 90 of 1908) can be availed of only when the sale has not been confirmed, and within the period of 30 days from the date of sale; but, if the right of the applicant to apply under the section was concealed from him by fraud, he would, by operation of this section, and notwithstanding the confirmation of

[1] *Rahimbhoy v. Turner*, 17 Bom. 341 (P.C.)

sale, have thirty days within which to make his application from the date on which the fraud first became known to him. (1)

Where irregularities affecting the validity of the sale have, by the fraud of the judgment-creditor or other parties to the sale, been kept concealed from the judgment-debtor, he is entitled to make, whether the sale has been confirmed or not, as against the party guilty of the fraud or accessory thereto, such application under sec. 311 C. P. C. of 1882 (O. 21, r. 90 of 1908) as he may be entitled to make, his time for making it being computed from the time when the fraud first became known to him. The confirmation of the sale ought not to be used as a shield for the fraud by which the Court has been induced to make the sale itself. (2)

Fraud antecedent and subsequent to sale.--Whoever desires to avail himself of this section has to establish in the first place that there has been fraud and in the second place that by means of this fraud he has been kept from the knowledge of his right to make an application but it is not essential to prove that there has been fraud subsequent to the date of sale. (3) It is sufficient if fraud antecedent to the sale is proved. (4)

The question of fraud should be considered as a whole

Fraud antecedent to the sale cannot be excluded from consideration. "Fraud is a continuing influence and until that influence ends it retains its power of mischief." (5) Although proof of fraud antecedent to the sale does not necessarily indicate the continuance of the fraud subsequent to the sale, it may have an important bearing on the determination of the question whether there was fraud subsequent to the sale sufficient for the purpose of this section. The question of fraud should be considered as a whole. (6)

Necessary document.--In one sense every document may be said to be necessary, if the word 'necessary' is to mean anything which it would be more prudent to be provided with. But a limit should be placed on the meaning of the term and a document which is mere useful in evidence cannot be considered a necessary document.

A limit should be placed on the meaning of the term 'necessary.'

[1] *Golam Ahad v. Sudhistion*, 17 C. W. N. 305;

[2] *Mahendra v. Gopal*, 17 Cal. 769 (F. B.) overruling 14 Cal. 679 *Sheo Ram v. Ikramunnisa*, 45 All. 316.

[3] *Jotindra v. Brojendra*, C. W. N. 553.

[4] *Sarvi Begam v. Ramchandra*, 47 All. 850

[5] *Per Jenkins C. J. in Narayan v. Mohanth Narayan*, 16 C. W. N. 894.

[6] *Tookoomani v. Dwarka*, 17 C. W. N. 478.

Protection is given to *bona fide* purchasers for valuable consideration

State the circumstances under which an acknowledgment or part-payment of the principal extend the period of limitation

(B. U. March, 1922)

When will an acknowledgment of a debt and payment in part serve to extend the period of limitation?

(B. U. Oct 1923)

A lent Rs. 5,000 to B in January 1916. In Dec 1918 B gave his own cheque for Rs. 500 as part payment. In Nov 1921, B acknowledged his liability to pay the debt and thereafter for one year owing to illness he lived at Baroda. In Sept 1925 A files a suit to recover the balance. How will you decide the case?

(B. U. Oct. 1925)

[Ans. B's own cheque is a part-payment in his own hand-writing and the time will run from Dec 1918. As in Nov. 1921 there is a fresh acknowledgment, time runs again from Nov. 1921. B's plea of limitation is not good. The suit is in time because one year's absence from British India will be excluded in computing time according to sec 13.]

Protection of bona fide purchaser.—Before a purchaser can obtain the benefit of this section he must show (i) that he is a purchaser according to the strict meaning of the term; (ii) that he is a purchaser *bona fide* and (iii) that he is a purchaser for valuable consideration. (1)

19. Effect of acknowledgment in writing.—(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, 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 authorised 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.

NOTES.

Essential of a valid acknowledgment.—To get a fresh start of limitation under this section acknowledgment must satisfy the following conditions:

- (1) It must be made before the expiration of the prescribed period of limitation.
- (2) It must in terms be a sufficient admission of liability.
- (3) It must be in writing.
- (4) It must be duly signed. No particular form is necessary provided the admission of liability appears in a writing duly signed. The identity of the debt, property or right in respect of which the acknowledgment is made, the name of the creditor or the person entitled to the right or property need not appear on the face of the writing but may be proved by oral evidence.
- (5) It must be made by the proper person.
- (6) It must, in the case of an application for enforcing a judgment, decree or order governed by Art. 183, be made to the proper person. The acknowledgment mentioned in Art. 183 must be addressed or at least given to the person entitled to the decree or order, the right to which is thereby acknowledged.

Before expiration of period.—An acknowledgment, to be operative, must be made before the period of limitation. Therefore, before the benefit of this section can be claimed it must be proved that limitation has not already run out fully. When the statutory period has fully run out, the mortgagor's title is extinguished and an acknowledgment by the mortgagee thereafter is ineffectual to revive the title so lost. The expression 'period prescribed' is not confined to the schedule alone but extends to the sections also. (1)

What is the period of limitation in the following case.—

Suit on a promissory note dated the 1st of Jan. 1920, the debtor having acknowledged his liability by a writing dated the 1st of Jan. 1924?

(B. U. April, 1928.)

When and to what extent will an acknowledgment of a debt and part-payment save limitation?

(B U Oct. 1929.)

Under what circumstances does an acknowledgment of liability and the payment of interest save limitation?

(B U Oct. 1931.)

What are the essentials of a valid acknowledgment under the Indian Limitation Act.

(A E Aug 1922)

A who had borrowed Rs 5,000 from B in 1913 made an entry in his own book in 1915 over his signature stating that he borrowed the sum from B. The entry is not addressed to any person. B institutes a suit against A in 1917 for the recovery of the sum. Is this suit in time?

(A E. Aug 1922.)

[Ans. See Maniram Seth v Seth Rupchand, 33 Cal. 1047 (P. C.) and Hiralal v. Narulal, 37 Bom 326 (P.C.). Acknowledgment is not required to be addressed to any person, much less to the creditor, or some person through whom he claims. The entry in the book in 1915 over the signature of the defendant is a good acknowledgment. The suit of 1917 is therefore, in time.]

and includes also the special period prescribed by sec. 31 (1) and the vacation during which the actual period expires, (2)

On the same day, the 1st Oct. a debtor passes to the creditor, the following two notes on an 'adjustment of accounts' running from the 15th March 1914 to the 15th June 1918:

(1) I acknowledge that a sum of Rs 2000, has been found due to you, Vithaldas Ramji, on an adjustment of account.

(2) I promise to pay to you, Vithaldas Ramji, Rs. 2,000 which on an adjustment of accounts has been found due to you'

What is the legal effect on the operation of limitation, of the two above notes? Give reasons.

(A. E. Aug 1923).

[Ans. The acknowledgment is not valid as it is made after the period of limitation prescribed for. Both the notes are invalid]

Under what circumstances can an acknowledgment enlarge the period of limitation in favour of a creditor.

(A. E. Feb. 1924).

Acknowledgment.—Acknowledgment means a definite, clear admission of existing liability. It is not necessary that there should be a promise to pay, the simple admission of a liability is sufficient. In this respect the Indian law differs from the English law. In England the acknowledgment must be such admission of liability that a promise to pay may be inferred from it, so that the requirements of English law are more stringent than those of Indian law. (3) Under the Indian law a mere acknowledgment of liability suffices and no promise (express or implied) to pay is required.

The distinction between an "acknowledgment" under sec 19 of the Limitation Act and a "promise" within sec. 25 of the Contract Act is of great importance. Both must be in writing signed by the party or his agent authorised in that behalf, and both create a fresh starting point of limitation. But while an acknowledgment under the Limitation Act is required to be made before the expiration of the period of limitation, a promise under sec. 25 of the Contract Act may be made after the limitation period. (4) If a debt is time-barred there can be no acknowledgment of the debt; there can only be a promise to pay that sum. Such a promise would amount to a new contract. It is open to the borrower to make a promise in writing, signed by himself, to pay a debt of which his creditor might have enforced payment but for the law for the limitation of the suit. This is recognised by sec. 25 (3) of the Contract Act. (5)

[1] Sheo Partab V. Tajammal, 49 All 67.

[2] Jhanaklal V. Gulabchand, A I R. 1928 Nag. 192. But see Bai Hemkore V. Masamali, 26 Bom. 782 (784) and Debendia Nath v Kaitic, 55 Cal. 1210 where it is stated that the word 'prescribed' means the period prescribed in the 1st schedule, and not the period, within which the plaintiff may bring his suit. See also Anisuddin v. Kalipada, 58 Cal. 1148. On a true construction of sec 19, the words 'prescribed for a suit' can have reference only to the period prescribed in the 1st schedule of the Act. Special provision which has been made applicable to suits, by reason of the Court being unable to entertain a suit, an application or appeal, on the day the Court is closed, cannot be made applicable by acknowledgment under sec. 19 of the Act.

[3] Maniram V. Seth Rupchand, 33 Cal. 1047 (P.C.)

[4] Pollock on Contract. 2nd Ed. P. 158.

[5] Guljar v. Sariman. 36 C L J. 228, A. I. R. 1923 Cal. 71. Vasudev Ramkrishna, 24 Bom. 394.

An acknowledgment must be a conscious and distinct admission of an existing liability, though it need not be express, but even implied provided it is clear and unequivocal (1) and not a mere matter of inference. (2)

An acknowledgment must relate to an existing right or property. An admission of past liability cannot in all cases be interpreted as an admission of a subsisting liability. Each case must be treated on its own merits, and from the language used and the circumstances in which the acknowledgment is made it must be decided whether it amounts to an implied acknowledgment of a subsisting liability. (3) An admission of one debt is not an acknowledgment of a different debt, *i. e.*, the acknowledgment relied upon must relate to the right or property which is the subject-matter of the suit.

An acknowledgment of a conditional liability will not give a fresh start so long as the condition remains unfulfilled. There must be an unqualified admission, or an admission qualified by a condition which is fulfilled. (4) An unqualified admission and an admission qualified by a condition which is fulfilled stand precisely upon the same footing, and both are within sec. 19, and an acknowledgment of the existence of open and current accounts was held to be an acknowledgment of liability to pay if on an account being taken the balance should turn out against the party making such acknowledgment. (5)

In writing.—The acknowledgment must be in writing. Therefore, a verbal admission of the correctness of an account struck which is not signed by the debtor is not sufficient.

Any writing containing an admission of the right or liability, and signed, is sufficient as an acknowledgment, *e. g.* a plaint, a memorandum of appeal, a petition filed in Court, an application by a debtor to postpone a sale, a deposition of a witness signed by him, a written

State the conditions under which an acknowledgment in writing saves the period of limitation.

(A. E. Ang 1925).

Discuss the conditions under which (i) an acknowledgment and (ii) payment in part serve to extend the period of limitation.

(A. E. Feb 1927)

What conditions must an acknowledgment satisfy in order that it should give a fresh starting point of limitation?

(A. E. Aug 1927).

What conditions must an acknowledgment satisfy to extend the period of limitation?

The plaintiff brought a suit on Dec. 22, 1920 on a *khata* dated Dec. 20 1914. The plaintiff attained majority on July 26, 1916. He relied on an acknowledgment dated Jan. 4, 1918. Is his suit barred?

(A. E. Aug 1929)

What are the essentials of a valid acknowledgment? (A. E. Aug 1930)

A promissory note is dated 5th March 1893. The drawer gives an acknowledgment in respect of it on 5th April, 1896 and makes part-payment on 9th Sept. 1897. The payee files a suit on the note on 6th Sept. 1900. Is the suit within time?

(A. C. E. March 1928)

[Ans. Vide Art. 73. Any suit on the note becomes barred after 5th March 1896. The acknowledgment made afterwards on 5th April 1896 will not avail, nor the subsequent part-payment.]

[1] *Hukumat v Nenumal A I R 1928 Sind 45 Bhagwan v Madhav, 46 Bom 1000, 24 Bom L R 713.*

[2] *Luchman Das v Ahmad Hassan, 39 All 357.*

[3] *Kandasami v Suppammal, 45 Mad 443 (447)*

[4] *Aronachella v Rangiah Appa, 29 Mad. 519.*

[5] *Maniram v Sheth Rup Chand, 33 Cal 1047 (1058) (P. C.).*

When does an acknowledgment save limitation?

(A. C. E. Sept 1930)

A trading partnership firm consists of A, B & C. During the continuance of the partnership A passes written acknowledgment of a debt, due to D. Is the acknowledgment effective against B and C?

(A. C. E. Sept 1931).

[Ans: See sections 18 and 21.]

(a) What are the requisites of an acknowledgment in order that it may have the effect of extending the period of limitation?

(b) A writes a letter to B in which he admits his liability for a debt due to C. There is no date written in the letter. Can C rely on the letter to save his claim from being barred by limitation?

(A. U. 1912).

[Ans: C may rely upon the letter to save his claim from being barred by limitation, firstly because the acknowledgment need not be addressed to the person entitled, and secondly, because the date of acknowledgment may be proved by oral evidence. Vide *Hartley v Wharton* 11 A & E 934, *Narayana v. Venkatramana*, 25 Mad. 220 (F. B.)]

Explain what do you understand by the expression "acknowledgment". Is it necessary that the acknowledgment must be one which,

statement or replication in Court either in the suit or in a previous suit, an entry in a Record of Rights prepared at Settlement and signed by the person sought to be charged with liability, a will etc.

Signed.—The acknowledgment must be signed either personally or by an agent authorised in this behalf. Question often arises as to what is proper signing. Initials constitute sufficient signature.

(1) The affixing of a seal or stamp on which the name of the signatory is impressed is a sufficient signing within the meaning of this section. (2)

It is not necessary that one must write one's name. Making his mark by an illiterate debtor is sufficient. "*Sign* should, with reference to a person who is unable to write, include his mark". (3)

The signature need not necessarily be at the end. As long as the document is signed in such a way as to make it appear that the acknowledgment is that of the principal and that he is the real author of it, it does not matter what the form of the instrument is or in what part of it the signature occurs, and it matters not whether the agent signs in the name of himself or of his principal. (4)

The signature need not be formally subjoined or added, unless it appears that such signature was intended or, unless the writing would be incomplete in itself as an admission without a signature.

(5) So the writing of specified words at the top and bottom of a letter, and shown to be the usual way by persons of a certain class of authenticating a letter, was held to be sufficient signature within the meaning of the section. (6) So also, according to the custom and practice of *Natukottai Chetties*, who do not sign their letters at the foot but begin by saying that the letter is from such and such a firm, the name so written is a sufficient signature. (7)

[1] *Ammayee v Yalumalai*, 15 Mad. 261 (264). *Contra Lakshmanachayulu v. Venkataramanuja*, A. I. R. 1926 Mad. 827—held an acknowledgment merely bearing initials instead of signature is not proper.

[2] *Gursahai Ram v Sadak Muhammad*, P. R. 185 of 1883

[3] Sec 3 of the General Clauses Act

[4] *Mohesh Lal v Busat Kumaree*, 6 Cal 340.

[5] *Kwaja v Venkatrayai*, 2 Mad. H. C. 79.

[6] *Gangadhar v Shidamappa*, 18 Bom 586.

[7] *Muthu v. Kuttayan*, 18 M. W. N. 42, 43 I. C. 20.

Rajahs, Maharajas and great Zemindars often sign without any name. They simply put down the words "Sree" or "Maharaja" or the name of the place. Such a signature is sufficient.

Acknowledgment to whom.—According to the terms of Explanation 1 "an acknowledgment may be sufficient though it.....is addressed to a person other than the person entitled to the property or right." An acknowledgment to whomsoever made is a valid acknowledgment, if it be an acknowledgment pointing out with reasonable certainty to the liability in dispute or the rights out of which that liability arises as a legal consequence. (1) An acknowledgment is not required to be addressed to *any* person, much less to the creditor or some person through whom he claims. (2)

"Against whom the right is claimed."—The section does not require that the person making an acknowledgment should have an interest in the property, in respect of which the acknowledgment was made at the time when the acknowledgment was given. It is sufficient if the acknowledgment has been made by the person against whom the right is claimed. (3)

Unstamped acknowledgment.—The admissibility of a written acknowledgment in evidence is sometimes questioned on the ground that the writing does not bear a stamp. An unstamped acknowledgment of a debt, which requires to be stamped under Art 1 of the Stamp Act, cannot be used for any purpose, and accordingly it is valueless to save the statute of limitation. An acknowledgment of liability under this section is not, merely as such, liable to a stamp duty under Act. 1 of the Stamp Act. Whether the document comes under Act. 1 of the Stamp Act is a question which depends in each case upon the writer's intention. It must have been written with the intention of supplying evidence of a debt. (4)

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- [1] *Guru Charan v Surendra*, 19 C W. N. 263
See also *Bhagwan v. Madhav*, 46 Bom. 1000, 24 Bom. L. R. 713.
 - [2] *Mannam v Seth Rupchand*, 33 Cal 1047 (P C), *Hiralal v. Narsilal*, 37 Bom. 326 (P C)
 - [3] *Jugal Kishori v. Fakrudin*, 29 All. 90.
 - [4] *Mulji v. Lingu*, 21 Bom. 201 (F. B.). See also 39 Cal 789, A. I. R. 1925 Mad 1215. Art. 1 of the Stamp Act: "An acknowledgment of a debt, exceeding Rs. 20 in amount or value written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper, when such book or paper is left in the creditor's possession must bear one anna stamp, provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property."

is addressed to the creditor? (A. U. 1913)

(a) What are the requisites of an acknowledgment which has the effect of extending the period of limitation?

(b) A debtor in a letter to his creditor says, "If I have to stump up the sooner it is done the better though it would be against all my ideas of justice and right" Is this a sufficient acknowledgment?

(A. U. 1919)

[Ans: (b) This acknowledgment is insufficient. The statement in the letter is too vague and indistinct. There is practically no admission of any existing liability. See 6 All. H. C. 306.]

State the conditions under which an acknowledgment of liability can be effective in giving a fresh period of limitation

(A. U. 1924)

Explain and illustrate the following. "An acknowledgment vitalises the old debt for another statutory period dating from the time of acknowledgment"

(A. U. 1927)

What suffices to give a fresh start to the period of limitation in the case of a debt due?

(P. U. 1918)

(a) What are the requisites of a good acknowledgment?

(b) A writes to B, 'I admit your promissory note but it was unstamped and I am not going to pay.' Is this a good acknowledgment? (P. U. 1920)

[Ans: (b) This is an illustration of sufficient acknowledgment. The fact that there is a refusal to pay is quite immaterial. See Expl. L.]

What is the period of limitation prescribed for a

suit extended by acknowledgment?

(C. U. 1923)

(C. U. 1927)

What do you understand by acknowledgment of liability under the Indian Limitation Act? What is the effect of it?

(C. U. 1926)

State the requisites of a valid acknowledgment of liability for the purpose of renewing the period of limitation. Can an infant make a valid acknowledgment?

(C. U. 1928)

Discuss the requisites of a valid acknowledgment which would give a fresh start of limitation under I. L. A.

(C. U. 1930)

Can a Ruzukhata or an acknowledgment of liability signed by the debtor and made within the period of limitation form the basis of a suit?

(A. E. Aug 1926)

[Ans Such an acknowledgment implies a promise to pay the debt and can form the basis of a suit. Vide *Chunilal v Laxman*, 23 Bom. L. R. 606.]

Unregistered acknowledgment.—The fact that an acknowledgment of a pecuniary liability is found in an unregistered deed relating to land does not prevent the deed being given in evidence in respect of the pecuniary liability (1) If, however, the acknowledgment were in respect of a right in immoveable property, the provision of the Registration Act would have to be taken into consideration, and its admissibility would depend upon whether it was required to be registered or not. (2)

Successive acknowledgments.—Where there has been a series of acknowledgments extending through a number of years, each within three years from the date of that immediately preceding, a suit brought for the recovery of the debt, within three years from the last acknowledgment, is within time. (3)

Ruzukhata.—The Ruzu or adjustment of an account can operate either as a revival of an original promise or as evidence of a new contract. If it is to be used as an acknowledgment giving a fresh starting point computing a new period of limitation, it must be made in writing and signed before the expiry of the period prescribed. If it is to be used as evidence of a new contract furnishing a basis for a new cause of action, it must contain a promise in writing as required by sec. 25 of the Contract Act.

Effect of a valid acknowledgment.—The effect of a valid acknowledgment is not to extend the period of limitation, but to give an entirely new period running from the date of the acknowledgment. In calculating such period the date of the acknowledgment will have to be excluded.

If an acknowledgment is made in favour of a minor, the new period of limitation is to be computed from the date when the plaintiff becomes a major.

An acknowledgment of a part of debt will keep it alive to that extent.

[1] *Nundo v. amsooke*, 5 Cal 215.

[2] *Faki v. Khotu* 4 Bom. 590.

[3] *Mohesh v. Busant*, 6 Cal. 340

Sub-section (2).—This must be read to-gether with sections 65 and 91 of the Indian Evidence Act.

Explanation 1.—This explanation points out certain circumstances which would not affect the validity of an acknowledgment. An acknowledgment would be sufficient and valid even if it

Points out certain circumstances which would not affect the validity of an acknowledgment,

- (a) omits to specify the exact nature of the property or right, or
- (b) avers that the time for payment, delivery, performance or enjoyment has not yet come, or
- (c) is coupled with a claim to a set off, or
- (d) is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or
- (e) is addressed to the person other than the person entitled to the property or right.

"Agent duly authorised."—This is explained in sec. 21, clause (1). The words "duly authorised in that behalf" do not mean "expressly" or "specially" authorised: they are merely the proper description of an agent acting within the scope of his powers, ordinary or special. The authority contemplated in this section may be even implied; it need not be in writing.

The meaning of "agent duly authorised."

An acknowledgment by the guardian, committee or manager of a person under disability, by an agent duly authorised by such guardian etc. is within this section.

A guardian appointed under the Guardians and Wards Act is an "agent duly authorised" within the meaning of this section and is competent to sign an acknowledgment of liability in respect of a debt, provided it be shewn that the guardian's act was for the benefit of the ward. (1)

An acknowledgment by a guardian appointed under the Guardians and Wards Act will give a fresh start for limitation.

Similarly, an acknowledgment by a natural guardian will give a fresh start for limitation, if it be shewn that the acknowledgment was for the benefit of the minor. (2)

So also an acknowledgment by a natural guardian.

The manager of a joint Hindu family has the same authority to acknowledge as he has to create debts on behalf of the family.

Can the manager of a joint Hindu family extend

[1] Annapaganda v. Sangadigya, 26 Bom. 221 (F B)

[2] Bhull v. Nanalal, 8, Bom. L.R. 812; Ram Charan v. Gaya, 30 All 429 (F.B.,

limitation by acknowledgment of a joint liability ?

(P. U. 1919)

An acknowledgment by the Court of Wards gives a fresh starting point of limitation.

So also an acknowledgment by a receiver of a partnership firm.

Similarly an acknowledgment by a legal practitioner.

An acknowledgment by defendant's ex-agent cannot prevent the operation of limitation, if agency is terminated to the knowledge of the plaintiff.

The Courts of first instance are entitled to take judicial notice of the invariable practice of trade creditors in South India.

(Vide the new sub-section (3) of sec. 21 recently added by the Amendment Act of 1927.) But where a creditor deals not merely with the *Karta* of the family, but with all the members as co-obligors, he cannot rely on an acknowledgment made by the *Karta* as an acknowledgment made on behalf of all the members. (1)

The Court of Wards has power to make acknowledgment of a debt due by the ward which would bind the ward and give a fresh starting point of limitation. (2)

A receiver of a partnership firm may be a person authorised to make an acknowledgment binding on the firm, if the acknowledgment was necessary for the preservation of the partnership assets. His power to acknowledge a debt depends upon the power conferred on him to do so. (3)

An acknowledgment by a legal practitioner will be a valid acknowledgment to bind his clients. An attorney is a duly authorised agent and an admission made by him in a letter to the attorney of the opposite party is a sufficient acknowledgment. (4)

An acknowledgment signed by the defendant's ex-agent, whose agency has terminated to the knowledge of the plaintiff, cannot prevent the operation of limitation. (5) But if the termination of agency (by death of the master) had been unknown to the plaintiff, the acknowledgment made by the *gomasta* after the death of the master would be valid and would save limitation. (6)

As to acknowledgments made by a Hindu widow, one of several joint-contractors, partners, executors or mortgagees see sec. 21.

Judicial notice—It is almost invariable practice of trade creditors in South India to insist on a written acknowledgment in their books being made by the debtors as a condition of giving credit and engaging in further transactions. This is a matter of daily

[1] *Narayana v. Venkataramana*, 25 Mad. 220 (F.B.)

[2] *Rashbehary v. Anand*, 43 Cal. 211.

[3] *Lakshumanan Chetty v. Sadayappa Chetty*, 35 M.L.J. 571, 48 I. C. 179.

[4] *Rungo Lall v. Wilson*, 26 Cal. 304.

[5] *Dinomoyi v. Luchmiput*, 6 C.J.R. 101 (P.C.)

[6] *Ebrahim v. Chunalal*, 35 Bom 302, 13 Bom. L.R. 264.

experience of Courts of first instance and they are entitled to take judicial notice of it if relevant and need not require it to be proved by evidence in each case. (1)

Illustrations of sufficient acknowledgments of liability.—

Illustrations of good acknowledgments.

- (a) "I am ashamed that the account has stood so long." (2)
- (b) "Please send in the account made up to Christmas last." (3)
- (c) "The promissory note which I gave is unstamped and I will not pay it" (4)
- (d) "I cannot afford to pay my new debts much less the old debt I owe you." (5)
- (e) "I admit the existence of a running account
My representatives will compare accounts and pay what may be found to be due " (6)
- (f) As we have informed your client, we are quite willing to pay him the rent due under our *mourasi pattah* if he can shew a title to give us a good receipt for it that will satisfy our lawyers. If he is unable to produce a perfect title, we are still willing to pay him the rent on his giving us a substantial indemnity, (7).
- (g) "I am willing to pay you the sum due by instalments."

Illustrations of insufficient acknowledgments.—

Illustrations of invalid acknowledgments.

- (a) A letter "enclosing a remittance of Rs. 100 to old account" does not show that a further sum is due. (8).

[1] K. R. V. Fum v. Sutharama, 37 Mad. 146.

[2] Cornford v Smithard, (1859) 5 H & N 13.

[3] Quincey v. Sharpe, (1875) 1 Ex. D 72.

[4] A good acknowledgment. The fact that there is a refusal to pay is quite immaterial

[5] The expression of inability to pay is immaterial.

[6] Sant Lal v Beni Prasad, A I R. 1925 All 340

Joharmal v Hiralal, 7 Pat 238, A I R 1928 Pat 221.

[7] Rungo Lal, v Wilson. 26 Cal 204 An acknowledgment of liability is good, even if it is accompanied with a demand of evidence of title.

[8] Shearman v. Fleming, 5 Ben L R An acknowledgment must relate to an existing right or property. An admission of past liability is not such an acknowledgment.

- (b) "I wish to look to your accounts ; in my own account I do not see any amount due to you. Please, therefore, send the account. (3)
- (c) "I admit the loan, but I have since repaid the amount." (4)
- (d) A letter written by a railway company to the plaintiff informing the latter that the goods have been rightly delivered to a third person under an indemnity bond, and that the plaintiff's claim cannot be entertained is not an acknowledgment of liability. (5)
- (e) The plaintiff consigned some bags to be delivered to the consignee but they were not delivered, and the Railway Company wrote a letter to the plaintiff informing that the bags were lying at a certain place and that the plaintiff might take delivery if he liked.—The letter did not amount to an acknowledgment. (6).

The section applies to applications for execution

Explanation III—This part of the section is new and is intended to make it clear that the provisions of the section apply to applications for execution.

A borrows Rs. 10,000 from B in Jan 1916, the rate of interest being 6 per cent per annum. A repays Rs 1,000 in Jan 1918 on account. B files a suit against A in Jan. 1920 to recover the balance. Is the suit in Time?

(B. U Oct. 1927)

[Ans. The suit would be in time provided the acknowledgment of the payment of the principal appears in the hand writing of, or in a writing signed by, A or his duly authorised agent]

20 Effect of payment of interest as such or of part payment of principal.—(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 authorised in this behalf,

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 authorised in this behalf,

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

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- [3] There is no admission of the existence of a debt
 - [4] Rangasami v. Thangavelu. 42 Mad 637 An allegation that a debt has been discharged is not an acknowledgment, because it is tantamount to a denial of the debt.
 - [5] Ludhomal v Secretary of State, 13 S. L. R. I.
 - [6] Mutsaddi Lal v B. B. & C. I. Ry. Co. 42 All 390 (393).

Provided that, save in the case of a payment of interest made before the 1st day of January 1928, an acknowledgment of the payment appears in the hand-writing of, or in a writing signed by, the person making the same.

Effect of receipt of produce of mortgaged land.—(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).

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

NOTES.

Sub-section (1) explained.—This section provides that a fresh period of limitation will be computed in the following cases of payment :

(1) Where interest is paid on a debt or legacy provided that

- (a) it is paid as such,
- (b) it is paid before the expiration of the prescribed period,
- (c) it is paid by the person liable to pay the debt or legacy, or by his agent duly authorised in this behalf,

(d) save in the case of payment made before the 1st day of January 1928, an acknowledgment of the payment appears in the hand-writing of, or in a writing signed by, the person making the same.

(2) Where part of the principal is paid provided that

- (a) it is paid before the expiration of the prescribed period,

State the circumstances in which an acknowledgment or part-payment of the principal extend the period of limitation.

(B. U. March 1922.)

When will an acknowledgment of a debt and payment in part serve to extend the period of limitation?

(B. U. Oct 1923)

A & B jointly passed a Khata to C and borrowed Rs 500 in 1917. A made certain part-payments thereafter to C, in 1918 and 1919 and made endorsements about the payment in his own hand in the Khata. B only put his signature below the endorsements. C filed a suit in 1921 on the balance of the account against both. B objected on the ground that the part-payments made by A did not save limitation as against him and the suit was consequently barred against him. Would the contention prevail? Give reasons.

(B. U. Oct. 1923)

[Ans. The contention would not prevail. It is enough if the writing is made by the debtor (A) paying the debt and is signed by both the debtors, because under this section it is sufficient if the fact of payment appears in the hand-writing of the persons making the same. Vide *Devchand v. Jamshedji*, 25 Bom L. R. 354. A. I. R. 1923 Bom. 369.]

(b) it is paid by the debtor or his agent duly authorised in this behalf,

(c) an acknowledgment of the payment appears in the hand-writing of, or in a writing signed by, the person making the same.

A lent Rs. 5,000 to B in Jan. 1916. In Dec 1918 B gave his own cheque for Rs 500 as part-payment. In Nov 1921 B acknowledged his liability to pay the debt and thereafter for one year owing to illness he lived at Baroda. In Sept 1925 A files a suit to recover the balance. B pleads limitation. How will you decide the case?

(B U Oct 1925)

[Ans. Suit is within time. Payment of Dec 1918 is governed by sec 20, acknowledgment of Nov 1921 is governed by Sec. 19 and his stay at Baroda is governed by sec 13.]

When does payment of interest extend the period of limitation?

(B U Oct 1928)

When and to what extent will an acknowledgment and a part-payment save limitation?

(B U Oct. 1929)

Sections 19 and 20 compared.—“Section 20 does not prevent the operation of section 19, and the two sections are not mutually exclusive. A payment though it may be ineffectual as payment under sec. 20 may nevertheless be treated as an acknowledgment under sec. 19, if it fulfils the requirements of that section. Sec. 19 only operates against the person who makes the acknowledgment, but sec. 20 makes part-payment good in favour of any suit on that liability. An acknowledgment under sec 19 need not be addressed to the person entitled, but a part-payment under sec. 20 must be made only to the person entitled to payment.” (1) Sec. 20 deals with part-payments and so is confined to debts and legacies, while acknowledgments under sec. 19 being general, apply to any right or property.

Before the expiration of the prescribed period.—As in the case of acknowledgment, payment must be made before limitation has run out. The words ‘prescribed period’ in the section mean, not the period prescribed for the payment of the debt, but the prescribed period of limitation for the suit. (2)

The word “prescribed” means the period prescribed in the 1st schedule, and not the period within which the plaintiff may bring his suit. Therefore, if interest is paid after the expiration of the period of limitation, though before the plaintiff can bring a suit owing to the intervention of the vacation, it is of no avail. (3)

Interest.—The word ‘interest’ means interest or any part of the interest due.

[1] H. O Mitra's I. L. A. P 182. Venkatakrishnaiah v. Subbarayudu, 40 Mad. 698.

[2] Ramsebuk v. Ramlal, 6 Cal. 815.

[3] Debendra v. Kartic, 55 Cal. 1210. *Contra*, 49 All. 67; A I. R. 1928 Nag. 192. Vide P. 84.

Interest as such.—The principle underlying the provisions of the section is that any payment of interest as such is an acknowledgment of the existence of the debt and from such payment the law raises an implication of a promise to pay the principal just as it does from a simple acknowledgment in writing.

The payment must be such that from it the promise to pay can be inferred in fact and not merely implied by law, in other words, the payment must be of an unambiguous character. If the payment is of ambiguous character and if it is open to the creditor to make an appropriation according to his choice, the payment cannot be treated as a payment of interest as such. To bring a case within this section it is not essential that the debtor should, on the occasion of every payment, state specifically that the payment is made on account of interest as such, it is sufficient if circumstances exist which make the conclusion irresistible that the payments must have been made on account of interest. (1)

The payment of interest must be as such, *i. e.*, that the amount should be paid with the intention that it should go towards interest and there must be something to indicate that intention. The conduct of the parties may be looked into but the mere appropriation by the creditor of these payments to interest is not such an indication. (2)

The question whether a payment of interest can be said to be interest as such is a question of fact in each case.

When 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 the evidence for what purpose the payments were made. (3)

It has been repeatedly held by the Courts in India that if a general payment should be made by a debtor, and a creditor should appropriate a portion of it towards interest, that would not amount to any payment by the debtor of interest as such and would not have the effect of saving the claim from the bar of limitation. (4)

A passed a rent note for one year to B on the 1st of Jan 1909. The date fixed for the payment of rent was 31st Dec. 1909. On the 1st of Jan. 1911. A made part-payment of the rent. B wrote it on the rent note, and A signed the endorsement. B sues for the remaining rent on the 1st of Dec. 1914. Is the suit in time?

(B. U. March, 1920)

[Ans.] The suit is not in time. The reason is that the suit is filed more than three years after the part-payment.]

On Nov 12, 1913, D executed a promissory note in favour of G for Rs. 1,500. On the back of the promissory note were endorsed the amounts and the date of payment. The last payment was made on 21st April, 1916. On the 6th Nov. 1916 D wrote in his own hand-writing on the back of the promissory note the words "Total Rs 671/12, Vasul dated 6th Nov 1916" and puts his signature. On the 24th Sept 1919, G sued D to recover the balance under the promissory note. D contends that the suit is barred by limitation. Test the soundness of the contention (A. E. Feb, 1924).

[Ans.] The period of limitation is extended under sec 20. The contention of D is not sound.]

[1] Charu Chandra v. Karam Bux, 43 I C. 812, 27 C L. J. 141.

[2] Mohammad v. Bank Instalment Co. Ltd. 31 All. 495.

[3] Hemchandra v. Purna, 44 Cal 367.

[4] Ammalu v Narayan, 50 Mad. 549.

When and in what way does the payment of interest save limitation? Has part-payment of principal any effect on the limitation? If so, under what circumstances? (A. E. App. 1925)

A debtor, who could write, made a payment towards the debt. That payment was recorded by a servant of the creditor on the back of the bond and the same was signed by the debtor.

The endorsement merely stated that the amount was paid towards the debt but it did not appear whether it was principal or interest. Would the endorsement be sufficient to give a new starting point of time? If not, would it be of any use otherwise to give a starting point of limitation? (B. E. Feb 1926).

[Ans: Payment by a debtor to his creditor in reduction of the general balance of account against him but without intimating that any such payment was to be appropriated in satisfaction of the interest due is not payment of interest "as such" *Damodar v. Jankibai*, 5. B. L. R. 350. At the time where this question was asked, i.e., in 1926 the payment could not operate as part payment because it was not in the hand-writing of the debtor, but under the present amended sec 20 of the Limitation Act the payment would operate as part-payment for it is signed by the debtor. It may also operate as an acknowledgment.]

Under the terms of the bond any money paid was to be applied first in payment of interest and next in payment of principal. The debtor paid several sums from time to time. *Held* that having regard to the terms of the bond and finding of the Court that payments were appropriated on account of interest, it might be safely assumed that payments were made on account of interest as such. (1)

A debtor paid a certain sum on a certain day to his creditor without declaring whether it should be appropriated towards interest or principal but with knowledge that according to the usual practice the payment would be appropriated to the interest then due. *Held* that the Court should have drawn the inference that a payment so made was made with the intention that it should be so appropriated. (2)

If a debtor places the creditor in the possession of the former's property under an agreement that the creditor is to appropriate the rents and profits in lieu of interest, the appropriation by the creditor is sufficient payment of interest as such.

So, when a mortgagee in possession appropriates the rents and profits in lieu of interest (under an express agreement to that effect), there is sufficient payment of interest as such. (Cf. sub section (2) of sec. 20).

The rendering of service is equivalent to payment of interest under this section. (3)

Part-payment of principal. — "The words 'as such' should not be read into the second para of sub-section (1); the law does not require that the part-payment of principal should be made as such; i. e., the law does not require that the words 'part-payment of the principal, should appear in the entry; it is the fact of payment which should appear in the writing of the person making the same. Therefore, where a sum of money in part-payment of the principal was sent by the debtor to the creditor along with a letter

[1] *Gopinath v. Hardeo*, 31 All. 285.

[2] *Siva Kumari v. Bishwambhar*, 46 I. C. 532.

[3] *Swaminatha v. Mandiayan*, 35 I. C. 480.

in the hand-writing of the debtor, but it was not expressly stated that the amount was paid 'in part-payment of principal,' *held* that the payment was a good payment and saved limitation" (1)

"The proviso requires not that the part-payment of the principal as such should appear in the hand-writing of the person making the payment, but the fact of payment should so appear. It is to be observed that the words 'as such' have been expressly applied by the earlier part of the section to the case of a payment of interest. The omission of these words in the proviso relating to a part-payment of principal would seem to imply that all that is required to be attested by the hand-writing of the person making the payment is the fact of payment." (2) By the Amendment Act I of 1927, the words "fact of payment" have been changed into the words "acknowledgment of payment."

Under this section the payment is viewed from the standpoint of the debtor and hence the determining factor is the intention of the debtor in making the payment and not that of the creditor in appropriating it. Where, therefore, the debtor makes payment to his creditor, whom he owed two debts, the mere appropriation of the payment by the creditor, to one of the debts, cannot, in the absence of evidence to show debtor's intention, save limitation in respect of that debt (3)

"If the part-payment is made within the period of limitation, the mere fact that the writing evidencing the payment was made after the period of limitation had expired would not render such hand-writing useless for the purpose of saving a claim from the limitation bar. This section requires that the *payment* must be made within the period of limitation, it does not require that the *writing* should be made before the expiration of this period. It only requires a writing as the mode of proving the fact of payment." (4)

Mode of payment.—The section does not specify any particular mode or form of payment and there are many modes in which payments may be made. It can be made in any form which may

When does payment of interest serve to extend the period of limitation?

(A E Aug 1929)

Under what circumstances will part-payment of the principal in the case of a debt extend the period prescribed for bringing suit?

(A E Sept. 1931)

Has the payment of interest or part-payment of principal any effect on the period of limitation provided for the recovery of a debt? If so, under what circumstances?

(A. U. 1911)

State concisely the law with regard to the debt in giving a fresh starting point of limitation

(A. U. 19'4)

What is the effect of part-payment of principal or payment of interest on limitation?

(A U 1917)

When does the payment of interest or part-payment of principal give a fresh starting point of limitation?

(A U 1923)

State the requisites of part-payment of the principal, so that the period of limitation provided by the Indian Limitation Act may be extended

(C U 1924, 1926)

Discuss the effect of payment of interest or part-payment of principal on the period of limitation. Is there any special provision as to part-payment of the principal to save limitation?

(C U. 1925)

[1] *Curlender v. Abdul Hamid*, 43 All. 216 (219) H C Mitra's I L. A. P 187.

[2] *In re Ambrose Summers*, 23 Cal 592

[3] *Panna Lal v. Ram Sing*, 10 Lah. 750.

[4] *Venkatasubba v Appusundaram*, 17 Mad 92, *Ramprasad v. Bansilal*, 19 N. L. R. 6, 71 I.C. 17. H C. Mitra's I. L. A P 188

[Ans: Before the Amendment Act I of 1927, there was a special provision as to part-payment of the principal of a debt to save limitation. It was provided that the part-payment of a debt must appear in the hand-writing of the person making the payment. By the Amendment Act of 1927 this provision has also been extended to the case of interest. In other words, while under the old law, the hand-writing of the payer was necessary in the case of part-payment of principal alone, under the new law, the hand-writing of, or a writing signed by, the payer shall be necessary in the case of payment of interest also.]

On 1st Jan 1918 A passed a promissory note, payable on demand, in favour of B for Rs 5,000 for value received. On 20th 1918 Dec 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 21st Dec 1921. Is the suit in time? Give reasons.

(B U March, 1922)

Payment of interest by a person liable to pay the debt or legacy or by his duly authorised agent. Part-payment of the principal by the debtor himself or by his duly authorised agent.

be agreed upon between the parties. It must be of such a nature that it would be a complete answer to a suit brought by the creditor to recover the amount: Payment may be in goods, in the shape of a new bond passed for interest, by settlement of accounts between the parties or by receipt of produce of land.

Payment by Cheque.—With respect to payment by cheque there is a difference of opinion in the High Courts.

The Calcutta High Court has held that cheque signed by a debtor in part-payment of the principal and received by the creditor as such would save limitation as contemplated by the proviso. [1] Time runs from the date of the cheque and not from the date of its encashment. But if a cheque is handed over to the creditor on the 5th January after banking hours, the Court will presume that the payment was made on the 6th January. (2)

In a Punjab case it was held that a simple payment by cheque was a mere order for payment and not payment itself and so unless it is proved that it was given as a part-payment, it will not save limitation. (3)

Madras and Allahabad High Courts held that the only evidence of endorsing a cheque by the debtor's hand-writing was not sufficient to keep alive the creditor's claim. (4)

The Allahabad High Court, however, observes that if there is evidence that the cheque was in fact received by the creditor as payment, and his account was credited with the amount of the cheque, then of course the cheque operated as a payment to save limitation. (5)

By whom payment must be made.—Under the section payment of interest on a debt or legacy must be made by a person liable to pay the debt or legacy or by his duly authorised agent; and a part-payment of the principal of a debt must be made by the debtor himself or by his duly authorised agent.

[1] Kedar Nath v. Dinobandhu, 42 Cal. 1043.

[2] Maurice v. Morley, A. I. R. 1925 Cal. 937.

[3] Sirdar Bachittar Singh v. Jagan Nath, I. P. R. 1897.

[4] Mackenzie v. Tiruvengadathan 9, Mad 271, Ramchandrar v. Chandu Prasad, 19 All. 307.

[5] M. B. Singh & Co., v. Sircar & Co., A. I. R. 1930 All. 392 (394).

"Person liable to pay" is not confined to a person personally liable to pay the debt. The purchaser of the equity of redemption of property subject to a mortgage is, so long as he retains the ownership of the equity of redemption, comes hereunder and a payment of interest by him gives a fresh starting point of limitation to recover the mortgage debt. (1)

Payment may be made by any person who is liable, or interested or, entitled to pay, or who is in such a relation to the debtor that a payment by him operates as an admission by the debtor.

Payment by a stranger is not sufficient. If a person transfers his property to another absolutely (e. g. by way of gift), he is thereafter a mere stranger, and consequently payments made by him after the transfer, ought not, on principle, to be binding on the transferee.

Where the common agent of the joint-debtors paid interest on the joint debt out of joint funds under express instructions contained in the instrument of his appointment, it is such a payment as is contemplated by the section.

A part-payment, by one of several persons liable to pay cannot keep alive the right of the creditor against any of the persons so liable other than the person making it. (2) But a payment of interest by the managing member of a joint Hindu family saves limitation as against the other members of the family as he is their agent within the meaning of this section. (3) (See sec 21.)

Agent duly authorised.— See notes under sec. 21.

Payment to whom.—Unlike Art 183, this section does not expressly say to whom the payment must be made, but it is submitted that payment must be made to the creditor or his duly authorised agent under this section. A payment to the person having no authority to receive it is not sufficient. In other words, payment to a stranger is ineffectual.

Payment must be made to the creditor or his duly authorised agent. Payment to a stranger is ineffectual.

[1] *Phuban Mohan v Ram Gobinda*, 54 Cal 179.

[2] *Ahasan v. Dakhini*, 27 Al., 375.

[3] *Sharda Charan v. Durgaram*, 37 Cal 461.

Payment to a third party is sufficient, if made at the creditor's request and under an agreement that it shall go in part-liquidation of the debt.

The proviso has been substituted by the Indian Limitation Amendment Act I of 1927

Proviso : old and new compared.—The proviso to sub-section (1) has been substituted by the Indian Limitation Amendment Act, 1927 (Act I of 1927) in place of the old proviso which stood as follows :

“Provided that, in the case of part-payment of the principal of a debt, the fact of the payment appears in the hand-writing of the person making the same ”

This substantial change has been introduced in the section in pursuance of the following recommendations of the Civil Justice Committee : ‘ With regard to section 20, we think that the provisions of clause (1) as they stand lead to a number of frivolous suits long after the period of limitation prescribed. It is easy in the first place for the plaintiff to say that within the time fixed the defendant paid him one rupee and two rupees as interest. He attempts to prove such payment by adducing oral evidence which takes up much valuable time, but ultimately the suit is, in most cases, dismissed. There is no reason why the payment of interest should stand on a different footing from the part-payment of the principal of a debt. In the latter case the proviso to clause (1) enacts that the fact of payment should appear in the hand-writing of the person making the same. It seems to us that the payment of interest should also be subject to the same conditions as the part-payment of principal. There does not seem to be any reason for providing for payment of interest *as such*, so long as any portion of the sum paid can be appropriated for that interest. Moreover, having in view our recommendation that the payment of interest should be also in writing, the words ‘*as such*’ would lose much of their importance.”

(1)

Under the old proviso the hand-writing of the payer was necessary in the case of part-payment of the principal alone. But under the new proviso, the hand-writing of, or a writing signed by, the payer shall be necessary in the case of payment of interest also from the 1st day of Jan. 1928.

The words "or in a writing signed by the person making the payment" also constitute a salutary change. The mere fact of acknowledgment being signed by the person making payment will be sufficient and it will not be necessary that the whole fact of payment should appear in the hand-writing of that person. In cases of illiterate persons the putting of thumb or other marks will be sufficient.

The Amendment Act came into force on the 1st day of Jan. 1928. It has got no retrospective effect and the payment made towards interest prior to that date would be valid and good without it being written and signed by the person making it provided it satisfies the other conditions prescribed by the section. The change is an important one and therefore the Legislature allowed time of about one year in order to enable the public to have full knowledge of it.

Sub-Section (2).—The scope of sub-section (2) is limited ; while it extends the period allowed to a mortgagee, it does not confer a like indulgence to the mortgagor suing to redeem it.

This sub-section is intended to extend the time for a suit by the mortgagee to recover a debt secured by a usufructuary mortgage. It does not apply to a suit for redemption by the mortgagor. The mortgagor cannot, under the provisions of this section, obtain an extension of time for the redemption of a mortgage. The period provided for a suit for redemption of a usufructuary mortgage can be extended by an acknowledgment of liability made in writing under sec. 19. (1)

The receipt of the produce of land held under a deed of mortgage required to be, but not, registered, cannot be deemed to be a payment for the purpose of this section, because the deed is not admissible to prove that the rents were received as interest. (2)

Explanation. - This explanation has been added in the New Act to remove conflict of rulings existed on the point whether the word 'debt' in the section included what may be called a judgment-debt .

A mortgages his Zamindari to B for Rs. 5,000 and agrees to pay interest at the rate of 12% per annum. Subsequently A puts B in possession of the mortgaged property. In a certain year B realises Rs 25 as income from the mortgaged property and A pays a further sum of Rs 100 in the same year to B. Would either of these payments affect the question of limitation for a suit which B might bring to enforce his mortgage ?

(A. U 1923)

[Ans. Sub-section (2) of sec 20 is intended to make the receipt of produce or rent stand on the same footing as a payment by the debtor himself. The provision does not go beyond this. The receipt of usufruct by the mortgagee would be treated as payment by the mortgagor but all the conditions

[1] *Khilanda v. Jhinda*, 37 P.R. 1893 (at P, 115) ; *Anwar v. Lalmir*, 26 All. 167 (189); *Bhagwan v. Madhav*, 46 Bom. 1000, 24 Bom. L. R. 713.

[2] *Pichandi v. Kandasami*, 7 Mad 539; *Venkeji v. Shidhramapa*, 19 Bom 663

which are necessary to make the payments effective in giving fresh start to limitation will have to be satisfied. In this case all the conditions as regards payment are not satisfied. Therefore the receipt of usufruct or payment of Rs. 100 does not affect the question of limitation.]

The Calcutta and the Madras High Courts answering it in the negative, and the Allahabad and the Bombay High Courts in the affirmative.

The explanation lays down that the word 'debt' includes money payable under a decree or order of Court.

Uncertified payment towards a decree.—If the payment is in fact made within the period of limitation (i.e. before time for execution runs out,) the mere circumstances that it is certified after the period is immaterial. It may be certified by a decree-holder at any time, in as much as there is no period of limitation fixed for that purpose, and he (decree-holder) may certify the payment in the very application for execution and thus take the benefit of of this section. But an uncertified payment towards a decree must satisfy the requirements of this section (*e. g.*, the payment must be endorsed on the back of a certified copy of the decree); otherwise the decree cannot be saved,

Successive payments allowed.

Successive payments.—This section does not restrict its operation to a single payment. Each payment causes the statute to run anew.

Burden of proof is upon the plaintiff

Burden of proof.—The burden of establishing the fact of payment of interest or a part-payment of the principal and all the elements requisite to give it effect is upon the plaintiff,

A owes B Rs. 100 principal and Rs. 50 interest on a promissory note. C, who is the agent of A, remits to B Rs. 25 on behalf of A, with a letter written by himself. Can a fresh period of limitation be computed from the time when the payment is made?

(A. U. 1915)

21. Agent of person under disability.—(1) The expression "agent duly authorised 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.

Acknowledgment or payment by one of several joint contractors, etc.—(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.

[1] Narayan v Kunhi Raman, A. I. R. 1925 Mad. 131. *Contra*: Jatindra Kumar v. Gagan Chandra, 46 Cal. 22 (24)

(3) For the purposes of the said sections:—

- (a) an acknowledgment signed, or a payment made, in respect of any liability, by, or by the duly authorised agent of, any widow or other limited owner of property who is governed by the Hindu Law, shall be a valid acknowledgment or payment, as the case may be, as against a reversioner succeeding to such liability; and
- (b) Where a liability has been incurred by, or on behalf of, a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family

NOTES.

Sub-Section (1).—The section is an explanation to sections 19 and 20. It is an exposition of the words “agent duly authorised” as used in sections 19 and 20. The persons named in the sub-section (1) can acknowledge liability or make a payment on behalf of persons under disability.

The section is an explanation of sections 19, and 20.

Lawful Guardian —The expression “lawful guardian” is not limited to a guardian appointed by the Court, but includes any person who is entitled to act as a guardian according to the personal law of a minor.

The expression “lawful guardian” includes any person who is entitled to act as a guardian according to the personal law of a minor.

A guardian merely of the person, and not of the minor's property, is not an agent for the purposes of sub section (1). A guardian, appointed under the Guardian and Wards Act, can make an acknowledgment or payment so as to enlarge limitation as against his ward, provided that his act is for the protection or benefit of the ward's property and is within the powers of a

Limitation enlarged by acknowledgment or payment,—if the guardian's act is for the benefit of the ward's property.

guardian under Sec. 27 of Guardian and Wards Act. The same observations apply to a guardian not so appointed under the Act, *i.e.*, to a case of a natural guardian

May be express or implied

Agents authority.—It is not necessary that the authority should be in writing. It may be express or implied and it may be general or special.

A and B passed a promissory note to C in Jan 1920. A alone makes part-payment in Dec 1922. C files a suit against A and B in Oct 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?

(B U April 1925)

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 Jan 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 it was a 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?

(B U April, 1926)

A, B and C passed a promissory note dated 1st Jan. 1921 for Rs 5,000 to a firm of which X, Y, Z were partners. At that date X was insane and Y was 17 years of age. On 1st Jan 1922 A paid interest on the promissory note. On 1st Jan 1923 B wrote to Z asking for further time to pay the debt. C was residing in a Native State from 1st Jan 1922 to

Sub-section (2).—This section enumerates those cases in which the act of one member of a class is liable to be taken as the act of all. In respect of these cases it provides that acknowledgment or payment by one shall not by itself be taken as an acknowledgment or payment by the other, but that there must be something else (e.g., express or implied authority)

Co-contractors—Co-debtors.—The sub-section (2) abolishes the doctrine of implied agency as between co-debtors. Since an 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, acknowledgment or payment by one of several joint debtors will give a fresh start of limitation against him alone. Payment by one of two joint debtors, though professedly made on behalf of both, will not prevent the statute running in other's favour, unless it appears that he either authorised or adopted it as a payment by him as well as by his co-debtor. Payment by one joint debtor with knowledge, consent and ratification of the other arrests the statute as to both.

Partners.—The word 'only' in the sub-section (2) is emphatic. It is not to be treated as a surplusage. It means the mere writing or signing an acknowledgment by one partner does not necessarily of itself bind his co-partner unless he had otherwise power to bind that partner for the purpose. (1)

The principle on which each partner binds all his associates is the principle of agency, and in a going mercantile concern the authority of a partner to sign acknowledgments etc., on the

firm's behalf is to be presumed as an ordinary rule. (1) But this presumption can be rebutted, and if it can be shown that the acknowledgment of liability by one of the partners was not an act necessary for or usually done in carrying on the business of the partnership, the case will fall under the general rule contained in the sub-section (2). (2)

Direct evidence that the partner making the acknowledgment or payment had authority is not necessary, but such authority can be inferred from the surrounding circumstances. In the absence of direct evidence that a co-contractor or partner had authorised his co-contractor or partner to make an acknowledgment or payment saving limitation on his behalf, such authority can be inferred from other circumstances such as the position of the other co-contractors or partners in the business, though it cannot be laid down which circumstances should be deemed sufficient to warrant the inference. (3)

"If, when the acknowledgment or payment is made, the partnership has been dissolved or been discontinued, or has ceased to be a working concern, no business being carried on by the firm, it must be proved that the party had been expressly authorised to act for the other partners in making the payment or acknowledgment. Such authority may be given to him by express or implied agreement between the partners at the dissolution. Even after a partnership has been dissolved, so far as strangers are concerned a partnership dissolved is a partnership in being, unless and until they receive notice of dissolution, and, in the case of old customers with the partnership, express notice is necessary, and in the absence of notice an acknowledgment or payment of principal or interest by one partner is binding for the purpose of limitation (sections 19, 20) on the other partners". (4)

30th June 1924. A suit was filed on the promissory note on 20th Dec. 1925 when X was sane. Is the suit time-barred?

(B. U. Oct. 1930).

[Ans. A pays interest on the promissory note on 1st Jan 1924. The period of limitation is extended from that date for a further period of three years (i. e., up to 1st Jan. 1925). The suit against A is, therefore, barred on 20th Dec. 1925. On 1st Jan 1923 B writes to Z asking for further time to pay the debt. This is an acknowledgment of liability. The period of limitation as against B is, therefore, extended for a further period of three years from 1st Jan 1923. The suit against B is in time. As C was absent from British India from 1st Jan 1924 to 30th June 1924, that period of his absence is to be deducted in computing the period of limitation. The suit as against C is also in time. Note.—(1) One of several co-partners can give a valid discharge without the concurrence of others. (2) A promissory note creates a joint and several liability and hence one promisor has no authority to bind his co-promisors by any acknowledgment of liability.]

[1] *Premji v Dossan*, 10 Bom 358

[2] *Dalankharam v Kalidas*, 26 Bom 42

[3] *Veeranna v. Veerabhadrasami*, 41 Mad. 427 (F.B.)

See also *Mahadev v. Ramakrishna* A I R. 1926 Mad. 114.

[4] *Rustomji's Limitation* (4th Ed.) P. 243.

When can a partner be said to be an agent for the other partners to acknowledge a debt or make a part-payment so as to give a new starting point of limitation? What must the creditor prove to bind the other partners?

(A. E. Feb 1926)

Where the mortgage is a joint one an acknowledgment by one mortgagee is of no use even as against him

But if authorised by his co-mortgagees, the acknowledgment would be effectual.

One of several co-contractors cannot make an acknowledgment or payment on behalf of the others

But if authorised, the acknowledgment or payment would be effectual

The expression "joint-contractor" applies also to a surety.

Is a reversioner bound by an acknowledgment of liability made by a Hindu widow? Give reasons for your answer. (A U. 1925)

Co-executors.—For the purposes of sections 19 and 20 an executor or administrator may be an agent of the persons beneficially interested in the estate. Payment of interest by the deceased debtor's executor stops the statute. The acknowledgment of the executor must be made by him in his representative character. An acknowledgment by one of several executors only keeps alive the debt against the assets of the testator, but is not sufficient by itself to make the other executors personally chargeable. So also in the case of a payment by one executor.

Co-mortgagees.—Where the mortgage is a joint mortgage and not capable of being redeemed piecemeal, an acknowledgment by one of several mortgagees is of no use and cannot save the statute even as against the mortgagee giving the acknowledgment. But if the mortgagee making the acknowledgment is authorised by his co-mortgagees to acknowledge the liability as an agent on their behalf, the acknowledgment would be effectual. Apart from cases where the mortgage is one and indivisible, acknowledgment by one of several joint mortgagees bars the statute as against him.

Co-contractors.—One of several co-contractors (co-debtors, Co-mortgagors, etc.) cannot make an acknowledgment or payment on behalf of the others. In case of co-contractors, jointly and severally liable, an acknowledgment of liability or payment by one of them does not deprive the other of the benefit of limitation, unless the payer is authorised to make the payment by the other as an agent on his behalf. (1)

Surety.—The expression "joint-contractor" applies also to a surety. The principal debtor and the surety are often in the position of joint contractors, and under this section one joint contractor is not bound by an acknowledgment or payment made by another. A payment by the debtor does not keep alive the action against the surety, nor can a payment by the surety keep alive the debt against the principal debtor. (2)

Sub-section (3).—This sub-section has been newly added by the Indian Limitation Amendment Act 1927 (Act 1 of 1927), in pursuance of the following recommendations

[1] Oudh Commercial Bank v Bishambhar Nath 1926 Oudh 601 96 I C 353, H. C. Mitra's J. L. A. P 201.

[2] U. N. Mitra's Limitation (4th Ed). P. 753.

of the Civil Justice Committee: "It will save considerable unnecessary litigation and prevent vexatious pleas if limited owners under the Hindu law, and also the *Karta* or manager of a joint Hindu family are enabled to make acknowledgments and payments so as to attract the provisions of sections 19 and 20. Conflicting views are held with reference to the power of a widow to make an acknowledgment binding any interest excepting her own. A limited owner like a Hindu widow fully represents the estate for many purposes; a judgment properly obtained against her will constitute the subject-matter of the suit *res judicata* in a suit by the ultimate reversioner. There appears to be no reason why in the normal course of her administration of the estate of the last male owner she shall not have authority to acknowledge a debt." (1)

22 Effect of instituting or adding new plaintiff or defendant.—(1) Where after the institution of a suit, a new 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.

NOTES.

Scope of the Section.—Section 22 refers to cases where the suit is ultimately brought by or against parties other than those originally on the record, i.e., where new plaintiff or defendant is substituted or added. In such a case the suit as regards such added party is deemed to be instituted as regards the added party when he is so added, i.e., if the suit as regards the added party is time-barred when he is added, the suit as regards him fails. Whether it will or will not fail as regards the parties originally impleaded depends upon whether the presence of the added party was necessary to enable the Court to decide the

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 28th December 1923 A filed a suit against D for the 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?

(B. U. April 1926).

[Ans: After the dissolution of partnership on 15th December 1923 the assets were vested in A, B and C jointly. Similarly on account of the dissolution of partnership the relation of implied agency between the partners ceased to exist. B and C who were the necessary parties were joined after the lapse of 3 years from the date of the loan (Vide Art. 57) and hence the suit was time-barred.]

[1] Civil Justice Committee Report, P. 489.

matters in issue between the parties to the suit as originally framed. If a decree cannot be passed in favour of the plaintiff who first instituted the suit without the conjunction of the added plaintiff, or against the defendants who were first sued without the conjunction of the added defendant, the whole suit is time-barred, unless the added party is impleaded before the expiry of the prescribed period of limitation.

The section extends only to the particular parties who are subsequently added. It contemplates of cases in which an action is defective by reason of the person or one of the persons in whom the right of action is vested not being before the Court at the time when the suit is first instituted.

A, B and C are partners in a firm. X files a suit against A and B to recover a sum of money lent and advanced by him to the firm. The suit against A and B is within the period of limitation. After the period of limitation expired C is added as a party defendant to the suit. Will X be successful against C?

(B U April 1929).

A lends a sum to B and C on 1st March 1927. A files a suit against B for the sum lent on 1st March 1930. On 15th March 1930 A adds C as a co-defendant in the suit. Is the suit barred?

(B. U. April, 1931.)

[Ans: Yes, as against C. But the suit against B, which is in time, may be proceeded with. See Sec. 43 of contract Act.]

Where a suit is instituted within limitation, how does the fact that the defendant dies after the expiry of the period of limitation prescribed for the suit and his legal representatives are substituted as defendants in his place affect the question of limitation?

(P. U. 1922)

The section applies to cases where the added or substituted plaintiff wants to litigate a right for himself independently of the rights of the original plaintiff and so when a plaintiff is added in consequence of the assignment of the rights of the original plaintiff, his right to a decree is not affected hereunder. (1) The defect must be due to the right of persons not being added in the first instance. If the party added is not a necessary party, nor a proper party, but only a *pro forma* one the section does not apply.

This section is confined to suits only, and does not apply to proceedings in execution. The word 'suit' in this section includes only the stages of a suit down to its termination by the decree of the trial Court, and does not include the subsequent proceedings such as execution or appeal.

Effect of subsequent addition or substitution.—The test to be applied is—whether the suit was properly constituted at the date of the plaint so as to enable the Court to adjudicate as between the parties impleaded. A suit is not said to be properly constituted unless all the necessary parties are impleaded in it. By necessary parties are meant those parties who ought to be joined and who are indispensable, as without them no decree at all can be made. If these parties are not joined, then the suit is bad for non-joinder, and the addition of these parties after the period of limitation will necessitate a dismissal of the suit. If however the necessary parties are impleaded, the non-joinder of other persons

[1] *Arunachella v. Orr*, 40 Mad. 722.

who are not necessary or indispensable but whose joinder is only desirable to safeguard their rights and the rights of others, and to prevent further litigation, does not render the suit as improperly constituted, and the joinder of those persons after limitation will not necessitate the dismissal of the suit." (1)

Addition of parties by Appellate Court.—It is competent to a Court under O. 41, r 20 to add a person as respondent in an appeal, though the time within which an appeal might have been preferred as against such person has expired. There is no provision in the Limitation Act for the action of the Court in that matter: and it makes no difference whether the respondent is added on the application of the appellant or by the Court *suo motu*. The power of the Court in this particular is discretionary

[Ans. Sec. 22 (2) of I L A is quite explicit on this point]

Is there any exception to the rule, that when, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall as regards him be deemed to have been instituted when he was made a party? Discuss it briefly and give an illustration

(P. U 1923)

Misdescription.—Formal amendments, such as the substitution of its members in place of an unregistered institution or substitution of a different capacity (a principal changing himself as an agent) or the mere transposition of the parties being only cases of misdescription, will not be affected by the section. In cases of misdescription it is not really a question of adding or substituting a new plaintiff or defendant at all, and consequently, the provisions of this section have no application, and no question of limitation arises.

Formal amendments will not be affected by this section.

Sub-section (2).—It gives certain exceptions to sub-section (1) The sub-section (1) has no application to the following cases :

The sub-section (2) gives certain exceptions to sub-section (1).

(1) Where a party is added or substituted owing to—

(a) an assignment, or

(b) devolution of an interest during the pendency of the suit, or

(2) where a plaintiff is made a defendant, or

(3) where a defendant is made a plaintiff.

[1] *Shaha Saheb v Sadashiv*, 43 Bom. 575 (580, 581) Vide H C. Mitra's I L. A. P 204. See also 27 Bom L. R 1168; 38 Mad 837 (842) *Contra*. *Mathewson v Ram Kana*, 36 Cal. 675 where it is stated that this section applies where the party subsequently added is a proper party, even though he is not a necessary party, and he cannot be added after the expiry of the period of limitation

State and illustrate the rule the Indian Limitation Act for computation of the period of limitation in the case of continuing breach.

(B. U. October, 1926)

Explain and illustrate: A continuing case of action". When does the period of limitation begin in the case of a continuing breach of contract?

(A. U. 1927)

When does limitation begin to run in the case of a continuing wrong independent of contract? Illustrate

(C. U. 1921)

What is the period of limitation for the following

Suit for the restitution of conjugal rights?

(A. E. Aug. 1929)

23. Continuing breaches of wrongs.—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.

NOTES.

Continuing breach.—The rule contained in this section is a rule for computation of the period of limitation, and this section contemplates cases like the covenant by a tenant to keep the tenanted building in repairs, cases in which the obligation created by the contract is *ex necessitate* of a continuing nature; and the right of action therefore naturally arises every moment of time during which the breach continues.

Continuing cause of action.—A continuing cause of action is one arising from the repetition of acts or omissions similar to those in respect of which an action is brought,

Contracts admitting of continuing breach.—A covenant for quiet possession is one of those covenants which admit of a continuing breach and the suit will not be barred as long as the breach continues. (1) This section refers to cases of continuing breach of contract, and not to cases of successive breaches of contract. (2)

Continuing wrong.—The following are some instances of continuing wrongs, giving rise to a fresh starting point at every successive repetition of it.

- (1) Trespass (3)
- (2) Causing obstruction to the immemorial egress of the plaintiff's rain-water over the defendant's land. (4)
- (3) Draining water on plaintiff's land without acquiring easement. (5)
- (4) An infringement of a trademark or copyright. (6)

[1] Raju Balu v. Krishnarao, 2, Bom. 273 (293).

[2] Bhojraj v. Gulshan, 4 All 493 (496).

[3] Sheo Prasad v. Manger, 12 A. L. J. 1150, 25 I. C. 185

[4] Punja v Bai Kuvar, 6 Bom. 20.

[5] Ramphal v. Misree, 24 W. R. 97.

[6] Abudu Salam v. Hamdullah, 97 P. R. 1913, 15 I. C. 116.

- (5) Every fresh appropriation of the income of a property by one co-sharer to the exclusion of others. (1)
- (6) Refusal of a wife to return to her husband and allow him the exercise of conjugal rights. (2)
- (7) The disturbance of a right of ferry. (3)
- (8) The interference with the right of irrigation (4).

Cases in which this section does not apply.

No continuing breach or wrong.—The right to recover rent is not a recurring right under this section. Thus, where more than twelve years after giving his tenant notice to quit on a certain date or pay an enhanced rent the Inamdar sued the tenant to recover the latter, it was held, that this section has no application (5) Refusal of the revenue authorities to register names under the Land Registration Act is neither a continuing breach of contract or wrong. [6] Similarly the following have been held to be cases in which this section does not apply : (1) Non-payment of interest annually as agreed, (2) wrongful distraint ; (3) breach of covenant for twelve years to pay certain fees annually in default of which the vendor was to have possession of certain land ; (4) Non-payment of interest on principal on the date agreed upon.

Declaratory suit.—The principle of this section has no application to a declaratory suit. The section applies to a continuing wrong and not to a continuing right. A declaratory suit under sec. 42, Specific Relief Act, can be brought when the plaintiff's title is denied by some person, and the denial itself gives a cause of action for a declaratory relief. To such a suit this section cannot apply. (1)

The principle of this section has no application to a declaratory suit

24. Suit for compensation for act not actionable without damage.—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.

A is the owner of a building and B is the owner of an adjacent land. B digs a tank on his land without causing any immediate apparent injury to the building but at last a portion of the building subsides. A wants to sue B for compensation for the injury done to the building. When

[1] *Harnam Singh v. Makhan Singh*, 21 P. L. R. 198, 44 I. C. 31.

[2] *Bai Sari v. Sankla*, 16 Bom. 714.

[3] *Nityahari v. Dunne*, 18 Cal. 652.

[4] *Kaula v. Narain*, 177 P. W. R. 198, 50 I. C. 299.

[5] *Gopalrao v. Mahadev* 21 Bom. 394.

[6] *Shyamanand v. Raj Narain*, 4 C. L. J. 508, 572, 11 C. W. N. 186.

does the period of limitation for his suit begin to run? Give reasons for your answer.

(C U. 1926)

[Ans: The period of limitation runs in this case from the time of the subsidence. vide sec. 24 of I. L. A.]

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.

NOTES.

Principle :—In ordinary cases time usually runs from the commission of the wrong and not from accrual of damage. But where cause of action lies, not in a specific act or omission, but in the resulting damage, time runs when plaintiff sustains loss

Specific Injury :—In cases where “specific injury” is the gist of an action for damages limitation runs from the date when the injury results or is suffered e.g., in an action for damages for the use of abusive language the plaintiff is not entitled to succeed unless he proves specific injury. The cause of action accrues on the date on which such injury results from the abusive language. Similarly, in the case of a public nuisance, a private person has no cause of action unless and until he sustains specific injury.

25. Computation of time mentioned in instruments.—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 a suit on the note runs from the expiration of four months after 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 date computed according to the Gregorian calendar.

NOTES

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

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

26. Acquisition of right to easements.—(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, 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, watercourse, use of water, or other easement shall be absolute and indefeasible.

Each of the said periods 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

What is the period of limitation prescribed for the acquisition of an enforceable right to easements, and how is that period to be computed in case of an institution of a suit to establish or contest such a right?

(B U. April, 1930.)

How is a right to an easement acquired under the limitation Act?

(B. U. October, 1930)

How is a right of way or water-course acquired under the provisions of the I L A ?

(C U, 1923 (b).)

Write a note on the acquisition and extinction of easement under the Indian Limitation Act, giving illustrative examples.

(C U. 1929 (a))

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 authorising 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 interruption from 1st January 1890 to 1st January 1910. The plaintiff is entitled to judgment.
- (b) 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 has asked his leave to enjoy the right. The suit shall be dismissed.

NOTES.

Easement defined—Sec 4
of the Indian Easements
Act

Easement defined.—Section 4 of the Indian Easements Act (V of 1882) defines an easement as “ a right which the owner or occupier of certain land (1) possesses, as such, for the beneficial enjoyment (2) of that land, to do and continue to do something (3) or to prevent and continue to prevent something being done in or upon, or in respect of, certain other land not his own.”

This definition has not, however, been incorporated in the Limitation Act which merely provides that 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 anything growing in or attached to, or subsisting upon the land of another ’ (4)

[1] ‘Land’ includes also things permanently attached to the earth.—(Easements Act, Sec. 4 Explanation).

[2] ‘Beneficial enjoyment’ includes also possible convenience, remote advantage and even a mere amenity.

[3] ‘To do something’ includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage, or anything growing or subsisting thereon.

[4] Sec. 2 (5).

The definition of 'easement' given in the Easements Act will prevail only in those provinces (viz. Madras, C. P. Coorg, Bombay and U. P.) to which the Easements Act applies. The other provinces will be guided by the definition given in sec. 2 of this Act.

On the other hand, the present section and the one following as well as the definition of easement in sec. 2 will not apply to those provinces to which the Easements Act extends. See sec. 29, sub sec. (4).

An easement : English Law compared.—"An easement may be defined to be a privilege without profit, which the owner of one tenement has a right to enjoy in respect of that tenement in or over the tenement of another person by reason whereof the latter is obliged to suffer or refrain from doing something on his own tenement for the advantage of the former." (Goddard). The word 'easement' as used in the Indian Limitation Act has a very much more extensive meaning than the word bears in the English law for it includes a "*profit à prendre*," i. e. a right to enjoy a profit out of the land of another. (1)

The word easement as used in I L A has a very much more extensive meaning than the word bears in English law, for it includes "*profit à prendre* "

Conditions.—The following conditions must be satisfied for the acquisition of right to easements :

Conditions to be satisfied for the acquisition of right to easements

- (A) In the case of the access and use of light or air to and for any building: that they have been enjoyed therewith
(1) peaceably, (2) as an easement, (3) as of right,
(4) without interruption, (5) for 20 years (or in case of Government property for 60 years).

- (B) In the case of any way, or water-course or the use of any water or any other easement : that it has been enjoyed therewith

- (1) peaceably, and (2) openly (3) by any person claiming title thereto, (4) as an easement, (5) as of right,

[1] *Chundee v Shib*, 5 Cal 945; *Hill & Co., v Sheoraj*, I Pat. 674

A right by which one person is entitled to remove and appropriate for his own use any part of the soil belonging to another man, or anything growing in or attached to or subsisting upon his land for the sake of the profit to be gained from the property hereby acquired in the thing removed is commonly called a *profit à prendre*. (Goddard).

(6) without interruption, (7) for 20 years (or in the case of Government property for 60 years).

The section is concerned only with the acquisition of easement.

The object of the section is to provide a convenient mode of acquiring easement.

The I. L. A. places light and air on the same footing

Scope and object.—The section is concerned only with the acquisition of the easement and does not purport to measure the extent of the right or to indicate the remedy by which a disturbance of the right is to be vindicated. It is neither prohibitory nor exhaustive and does not exclude or interfere with other titles and modes of acquiring easements. The object of the section is to provide another and more convenient mode of acquiring easement—a mode independent of any legal fiction and capable of easy proof in a Court of law. (1).

Light and air.—The Indian Limitation Act, unlike the English Prescription Act, places light and air on the same footing. The only amount of light for a dwelling house which can be claimed by prescription or by length of time, without an actual grant, is such an amount as is reasonably necessary for the convenient and comfortable habitation of the house.

The right of air is co-extensive with the right of light. To give a right of action for an interference with the access of air, the obstruction must be such as to cause what is technically called a nuisance to the house; in other words, to render the house unfit for the ordinary purposes of habitation or business. The “45-degree rule” is not a positive rule of law, but is a circumstance which the Court may take into consideration, and is especially valuable when the proof of the obstruction is not definite or satisfactory. (1)

A man is not necessarily entitled to the whole of the light and air to which he has been accustomed; a neighbour may come and share in these gifts of nature provided he does not unreasonably diminish the amenities of the plaintiff.

Whether the user has been peaceable or not is a pure question of fact. The enjoyment must be open and manifest.

Peaceably and openly.—Whether the user has been peaceable or not is a pure question of fact. Repeated obstructions or interruptions by or on behalf of the servient owner show that the enjoyment has not been peaceable.

There is a difference in the description of the enjoyment of light and air and of other easements. Light and air must have been enjoyed

[1] The Delhi and London Bank v. Hem Lal, 14 Cal. 839.

peaceably, other easements peaceably and openly. The probable reason of the difference is that every one can see what light and air his neighbour is enjoying by looking at the outside of his neighbour's house but other easements, such as right of way, may be used clandestinely.

"Openly".—Not clandestine or by stealth. The enjoyment must be (except in the case of light and air), open and manifest, not clandestine, furtive or invisible. It must be such that the servient owner, but for his laches, must have known what the enjoyment was, and how far it went. If the enjoyment be not open, it may not amount to enjoyment as of right. It is not necessary, however, that the enjoyment of the easement should be actually known to the servient owner, provided it be not clandestine. (1)

The enjoyment must be open and manifest.

Where the claimant himself has created some obstruction of a permanent character on his own property which renders the enjoyment of the easement impossible so long as the obstruction continues, he cannot be said to have openly enjoyed it, e.g., blocking up a door in his house which led to a path across his neighbour's land. (2)

"As an easement".—The right must have been enjoyed as an easement. If there is unity of possession and ownership, the enjoyment would not be as an easement. While unity of possession and ownership lasts, no question of easement can arise, as the person in possession is entitled to the soil itself.

The right must have been enjoyed as 'easement'

"As of right"—"As of right" does not mean "rightfully" or an enjoyment under a strict legal right, i.e., enjoyment without trespass, but it refers to enjoyment by a person under a claim in assertion of a right. The acquisition of a right may commence with an act which is a pure trespass, but the enjoyment, though it may continue to be a trespass, may nevertheless be as of right, so as to ripen into a prescriptive right.

The expression "as of right" refers to enjoyment by a person under a claim or assertion of a right.

"As of right" means claiming a right thereto against all persons, and especially as against the owner of the servient tenement. Mere permissive possession cannot be the basis of a right of prescription. If the user is with consent and connivance

[1] *Arzun v. Rakhai Chunder*, 10 Cal. 214 (318).

[2] *Sham Churn v. Tarney*, 1 Cal. 422 at P. 430

or with sufferance of the tenants or with their permission it cannot be "as of right". An accidental enjoyment is not as of right. The onus is on the person setting up the easement to prove that the enjoyment was as of right.

The right must have been enjoyed without interruption.

Without interruption:—the right must have been enjoyed without interruption. In order to be an interruption within the meaning of the section, there must be—

- (a) actual discontinuance of the possession or enjoyment of the right;
- (b) the discontinuance must be the result of an obstruction by the act of some person other than the person claiming the right,
- (c) Such obstruction must be submitted to or acquiesced in by the claimant for one year;
- (d) the period of one year does not begin to run until the claimant has notice of the obstruction and of the person making or authorizing the same to be made.

Interruption means obstruction by some one acting adversely to the claimant, but not voluntarily discontinuance. The mere cessation of user does not amount to an interruption if it be accidental.

The term "interruption" means an obstruction or prevention of the user of the easement by some person acting adversely to the person who claims it. The expression is altogether inapplicable to any voluntary discontinuance of the user by the claimant himself. Similarly mere protest or verbal denials of the right claimed, not followed by any act to prevent the user, will not constitute an interruption of the right. Again, mere existence of a physical obstruction is not sufficient; the person interrupted must have actual notice of the person causing or authorizing the obstruction to be made.

The mere cessation of user does not amount to an interruption if it be accidental and not intentional, as of a water-course in a dry season or of the easement of grazing cattle during a time when the claimant has none to put out to graze, of an easement which can only be used in the rains.

Whether an interruption is submitted to or acquiesced in is a question of fact.

Whether an interruption is submitted to or acquiesced in within the meaning of the section is a question of fact. In order to negative acquiescence within the meaning of Explanation to sec. 26, it is not necessary that the party interrupted should have sued or taken any active step to remove the obstruction. It is

enough if he has communicated to the party causing the obstruction that he does not to submit to or acquiesce in it, any conduct indicative of resistance being sufficient.

Proof of cotinuous enjoyment:—This section does not mean that there should be actual or physical user; it is sufficient if the dominant owner has the amenity or advantage of using whenever he chooses to do it. In the case of discontinuous easements, there may be days and weeks and months during which the right may not be exercised at all, and yet, during all these days, weeks and months, the person claiming the right may have been in full enjoyment of it. (1)

Enjoyment does not mean actual user or exercise.

No rule can be laid down as to what would or would not constitute "a continuance of the enjoyment as of right" of a right of way when there has been no exercise of it for any given period; that must depend upon the circumstances of each case and the nature of the right claimed. There must, when there is no user for a long time, be circumstances, from which the Court can infer the continuance of enjoyment as of right over the whole statutory period, and the cessation of the user must be at least consistent with such continuance. The question of continued enjoyment is an inference to be drawn from facts and if there are no facts to sustain the inference, a decision in favour of such enjoyment cannot stand.

No fixed rule as to continuance of enjoyment.

Must depend upon the circumstances of each case

The question of continued enjoyment is an inference from facts rather than one of fact

Enjoyment within 2 years of suit. —Enjoyment for 20 years must be proved. In case of Government property the period is 60 years and not 20. The period of enjoyment must be full 20 years ending within two years next before the institution of the suit wherein the claim is contested. The effect of this is that when a right has been enjoyed for 20 years and then an interruption takes place, the claimant must institute a suit to establish his right within two years of the interruption and in that suit he must prove that he has enjoyed the right for 20 years.

The claimant must institute a suit to establish his right within two years of the interruption and in that suit he must prove that he has enjoyed the right for 20 years

The following illustration will make the meaning clear:—

A brought a suit in 1925 for obstructing a right of way. He proved that he had enjoyed the right peaceably and openly, as an easement and as of right, without interruption since 1902 for

[1] *Koylash v. Sonaton*, 7 Cal. 132

20 years, B, the defendant, admitted the enjoyment for 20 years but proved that the right was not enjoyed since 1922. The suit must be dismissed.

An easement may be established independently of the provisions of this section.

Easements acquired independently of sec. 26.—The rule in section 26 is only remedial. It is neither prohibitive nor exhaustive. A man may acquire a title under it who has no other right at all, but it does not exclude or interfere with other titles and modes of acquiring easements. An easement may be established independently of the provisions of this section, *e.g.*, the Court may, where immemorial enjoyment and user can be referred to a legal origin, presume that a grant or agreement, had been made creating an easement. Where a plaintiff's claim to an easement fails under this section, he may nevertheless succeed if enjoyment on his part has been of such character and duration as to justify the presumption of a grant or other legal origin of his right.

Proper issues to be framed under this section.

Issues in suits to establish easements.—In a suit to establish an easement when limitation is pleaded, the proper issues to be framed under this section are:—

- (i) whether the easement in question was peaceably, openly and as of right, enjoyed by the plaintiff or those through whom he claims within two years of the institution of the suit, and
- (ii) in the event of the above issue being found in the negative, whether there is evidence of enjoyment on the part of the plaintiff, or those through whom he claims, of such a character and duration as to justify the presumption of a grant or other legal origin of the plaintiff's right independent of the provisions of this section. (1)

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

27. Exclusion in favour of reversioner of servient tenement.—Where any land or water upon, over or from which an easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term

[1] Achul v. Rajun, 6 Cal. 812.

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.

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? (B. U. April 1926).

Illustration.

A sues for 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 reference to the provisions of this section, has only proved enjoyment for fifteen years.

NOTES.

Scope and object.—The section is entirely for the benefit of reversioners. The object of the section is the prevention of easement being acquired under the Act against interested persons who are incapable of resistance.

The section is entirely for the benefit of reversioners

The section does not apply to a donee or transferee from a Hindu widow in virtue of her powers as representing the estate, since in such a case, the transferee succeeds the widow in her capacity as full owner and not as upon the determination of her life-interest.

Not applicable to donee or transferee from a Hindu widow:

Section—explained.—When during the period of prescription the servient tenement has been held by—

In order to claim the benefit of the section a reversioner must show:

(a) a tenant for life, or

(b) a lessee under a lease for a term, the term of which exceeded three years, and the claim is contested within three years from the determination of the interest of the life-tenant or the term

(1) that the land or water which is the subject of the easement has been held under or by virtue of

(a) any interest for life or

- (b) any term exceeding three years from its grant;
- (2) that the claim is resisted by him within 8 years of the determination of such interest or term.

of the lease, the period during which the servient tenement was held by the life-tenant or lessee is excluded in computing the period of 20 years.

28. Extinguishment of right to property.—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.

NOTES.

~~Does the Indian Law of Limitation merely bar the remedy or extinguish the right itself?~~

(A. U. 1919.)

When does the expiry of the period of limitation extinguish a right?

(A. E. Aug. 1929.)

"The law of limitation does not extinguish the right but bars the remedy," State how far this is true.

(A. C. E. March, 1931.)

Scope of the section.—The section clearly contemplates that the person, whose right is extinguished by lapse of time, should be the person entitled to institute a suit for possession of property. The section applies to all property moveable and immovable for the recovery of possession of which a suit can be instituted; but it does not apply to claims other than to property which can be recovered *in specie* e.g., debts whether ordinary or judgment-debts. A suit for recovery of a debt is not a suit for possession of property; therefore limitation only bars the remedy but does not extinguish the right to the debt. Suit for declaration of title to property not being a suit for possession within the meaning of this section, where such a declaratory suit is barred, it does not thereby extinguish the right and title of true owner to property.

This section only applies to persons out of possession. To persons who are in possession, and have no occasion to sue for it, the section can have no application, and does not prevent them from making use of any legal defence open to them in order to maintain their possession.

The section in terms applies only to suits and not to applications; it does not say that at the determination of the period of limitation for an application any right shall be extinguished. It has, however, been held that the principle underlying the section is of a wider application. So also, it has been held that the section does not itself apply to cases under any special or local law, yet its principle can be safely applied.

What the section requires.

"At the determination"—The section requires that it should be established that the period limited for instituting a suit for possession of property had determined.

"Possession."—Possession in this section is not limited to physical possession. It embraces both actual possession and possession in law and the title to immoveable property may be affected by this section although physical possession of the property is not in question. (1)

What it embraces.

Extinguishment of right—The Indian Limitation Act lays down a rule of substantive law in sec. 28. It declares that after the lapse of the period provided by this enactment, the right itself is gone and the title ceases to exist, and not merely the remedy.

After the lapse of the period the right itself is gone

If an owner, whose property is encroached upon, suffers his right to be barred by the law of limitation, the practical effect is the extinction of his title in favour of the party in possession. It is of the utmost consequence in India that the security, which long possession affords, should not be weakened. As between private owners contesting *inter se* the title to the lands, the law has established a limitation of twelve years, after that time it declares not simply that the remedy is barred, but that the title is extinct in favour of the possessor

Right to redeem.—In *Lalla Kanhoo v. Musst. Manki* (2) it has been held by the Calcutta High Court that an equity of redemption like other equitable states in land is capable of being extinguished by the operation of the statute of limitation; that the word "possession" in this section embraces both actual possession and "possession in law;" and the title to immoveable property may be affected by sec. 28 of the Limitation Act although the physical possession of the property is not in question, but in *Krishna v. Kesavan* (3) it has been held by the Madras High Court that such a right is not capable of possession within the meaning of sec. 28 of the Limitation Act.

Views of Calcutta and Madras High Courts

Vendor's lien.—In a suit by the purchaser against the unpaid vendor for possession of the property sold, defendant is entitled to retain possession till payment of the purchase money notwithstanding that his right of action to enforce his lien is then time-barred, in as much as the lien is not thereby extinguished by this section. (4)

A lien is a right of defence—not a right of action and consequently can be claimed in respect of a statute-barred debt.

[1] *Lalla Kanhoo v. Musst. Manki*, 6 C.W.N. 601, 611 *contra* *Krishna v. Kesavan*, 20 Mad. 305.

[2] 6 C.W.N. 601, 611.

[3] 20 Mad. 305. see also 21 Mad. 153.

[4] *Subramania Aiyar v. Podvan*, 27 Mad. 28.

Period begins to run when the owner of the property is aware that some one else in possession is holding adversely to himself.

When time begins to run.—Mere absence of possession does not cause extinction of ownership. An owner of property does not lose his right to property under this section merely because he happens not to be in possession of it for twelve years. His right under this section is only extinguished at the determination of the period limited by the Act for instituting a suit for possession of property. It must be, therefore, that the period cannot be determined unless it has commenced to run and the period will not commence to run until the owner is aware that some one else in possession is holding adversely to himself. (1)

PART V.

SAVINGS AND REPEALS.

29 Savings.—

- (1) Nothing in this section shall affect section 25 of the Indian Contract Act, 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 sec. 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 shall not apply.

[1] *Swamirao v. Bhimabai*, 23 Bom. L.R. 416, 45 Bom 1020 (1023)
see also A.I.R. 1929 Oudh 402 (405)

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

(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, 1882, may for the time being extend.

NOTES.

Change in the law.—Sub-section (2) has been amended by the Indian Limitation Amendment Act (X of 1922).

Change in the law by the Indian Limitation Amendment Act (X of 1922).

It originally stood thus :

"Nothing in this Act shall affect or alter any period of limitation specially prescribed for any suit, appeal or application by any special or local law now or hereafter in force in British India."

The Select Committee gave the following reasons of the change :
 "We have carefully considered each section in parts II and III of the Act for the purpose of deciding whether it should apply to periods of limitation prescribed by special or local laws or not. We think provision should be made that section 4, sections 9 to 18 and section 22 should apply, unless they are expressly excluded by special or local law, and that the remaining provisions of the Act should not apply".

The phrase "the remaining provisions of this Act shall not apply" can only mean the remaining provisions of this Act shall not apply unless they are expressly made applicable by the special or local Act.

The amendment of sec. 29 of the Act in 1922 has extended the scope of the Act. Before the amendment none of the provisions of the Limitation Act were applicable unless they were expressly included by the special or local Acts. After the amendment, some of them are applicable without being expressly included, unless

The amendment has extended the scope of the Act.

they are expressly excluded; the rest remain, as before, applicable only when they are expressly included in the special or local Acts. (1)

The term "expressly excluded" means specially mentioned as excluded.

The term "expressly excluded" means specifically mentioned as excluded. Unless an express reference is made in the special or local law to the sections of the Limitation Act and by that reference they are expressly excluded, they would apply to the special or local law. (2)

Sections 30, 31. [Repealed by the Repealing and Amending Act, VIII of 1930].

These sections (which provided a special period of limitation for those suits for which the period prescribed by the Act of 1908 was shorter than the period prescribed by the Act of 1877, as well as for suits for sale on simple mortgage) have been omitted, as they are obviously spent.

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

[1] *Madhavrao V. Palaji*, 91 I. C. 563, A. I. R. 1926 Nag 236, where sec. 6 of the Limitation Act was applied in a suit for village profits under sec. 160 of C. P. Land Revenue Act.

[2] *Raja Sati Prasad V. Govinda*, 33 C. W. N. 227 (229), A. I. R. 1929 Cal. 325.

APPENDIX I.

Analysis

[In a Tabular Form]

1 Scope of the Act:—

- The Act has been divided into two parts:
- | | |
|--|--|
| <p>(a) containing the law relating to the limitation of suits, appeals and certain applications to Courts. Sections 3 to 25:</p> | <p>(b) providing rules for acquiring by possession the ownership of easements and other property. Sections 26 to 28.</p> |
|--|--|

[P 1]

2 Object of the Act:—

- | | |
|--|---|
| <p>1 to quiet long possession, to extinguish stale demands, to suppress fraud and perjury, to check dilatoriness and to supply deficiency of proofs arising from the ambiguity and obscurity or antiquity of transactions.</p> | <p>2 to quicken diligence and to discourage litigation.</p> |
| <p>3 not to give a right but to interpose a bar after a certain period.</p> | <p>[PP. 1-2]</p> |

3 Construction of the Act:—

- | |
|---|
| <p>1 Must be interpreted in accordance with the fair meaning of the language used.</p> <p>2 Ought to receive such a construction as the language in its plain meaning imports.</p> <p>3 No equitable construction should be put upon it.</p> <p>4 The tendency of modern decisions—the language of the Act—strictly construed and the exceptions or exemptions—construed liberally.</p> |
|---|

Construction of the Act.

[N.B. - As regards the construction and interpretation there is a difference of opinion: (1) View of the Allahabad High Court in certain cases—construction strictly in operation of the Act, i e. against the right to take legal proceedings, when language ambiguous. (2) The Bombay, Calcutta and Madras High Courts favour the right to proceed]

[PP. 2-3.]

4 Applicability of Sections and Articles :—

5 Effect of amendment or change :—

1 Depends on the nature of the thing sued for 2 When there is a conflict between two periods, the longer period to be applied unless clear proof of the applicability of the shorter period. 3 More particular or specific should govern and not more general. 4 When two Articles wide enough to include the same cause of action, that which keeps alive the right to sue should be preferred.	Applicability of Sections and Articles. Retrospective effect. 1 There is a presumption against the retrospective application of the Act when such an application would deprive a plaintiff of a vested right or a defendant of a right to treat the claim as time-barred : But it may be retrospectively applied as to the period for unbarred causes of action. [P 3] [PP. 3, 4]
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6 Pending Proceedings —

1 Unless there is a distinct provision to the contrary, change in the law during pendency does not affect proceedings.	Pending proceedings [P 4]
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7. Criminal Cases :—

- Criminal Cases : {
- 1 The Act does not apply to criminal cases unless it is made applicable to them by express provisions.
 - 2 Certain criminal appeals are specially provided for in Articles 150, 150A, 154, 155 and 157.
- }

[P. 4]

8. Suits, appeals and certain applications :—

- The Act : {
- 1 Is applicable to suits brought by the plaintiff.
 - 2 Does not apply to a right set up by the defendant in defence.
 - 3 Is applicable to appeals.
 - 4 Does not provide for all kinds of applications to Courts, but is limited to certain applications.
- }

[P. 5]

9. General plan of the Act :—

- General plan of the Act : {
- The Act contains 29 sections with a schedule comprising of 183 Articles arranged in a tabular form under three divisions, *viz.*, suits, appeals and applications, with their several descriptions and periods of limitation denoted in the columns.
 - Sections 1—2.....Preliminary matters—short title, extent, commencement of the Act and the definitions of certain terms.
 - Sections 3—25 Limitation of suits, appeals and of which sec. 22 is certain applications (rather an interpretation section) and the schedule.
- }

Sections 26-27.....Acquisition of easements (including *profits a prendre*) by positive prescription.

Section 28 Indirect acquisition of the ownership of corporeal property by extinctive prescription.

Section 29.....Extent of the applicability of the Act to cases coming under Local or Special Laws.

General plan of the
Act (*Continued*).

10. General rule of limitation :—

[PP. 5-6]

Every	{ 1 suit instituted (including suits instituted in British India on contracts entered into a foreign country, sec. 11 (1)), 2 appeal preferred, 3 application made,	{ after the period of limitation prescribed therefor by the first schedule shall, subject to the provisions contained in sections 4 to 25 (both inclusive), be dismissed although limitation has not been set up as a defence.
-------	--	--

[Sec. 3]

Explanation 1.

- | | |
|--|---|
| { 1 in ordinary cases--when the plaintiff is presented to the proper officer ;
2 in the case of a pauper--when his application for leave to sue as a pauper is made ;
3 in the case of a company which is being wound up by the Court--when the claimant first sends in his claim to the official liquidator ; | { |
|--|---|

A suit is instituted

[Explanation-sec. 3]

A suit is instituted (Continued) 4 in cases in which a new plaintiff or defendant is substituted or added (then as regards him)—when the plaintiff or defendant was so made a party.	Exception : Nothing in (4) would apply to a case [Sec 22 (1)]	(i) where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit, or (ii) where a plaintiff is made a defendant or a defendant is made a plaintiff, [Sec. 22 (2)]
--	---	--

Explanation II.

No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into a foreign country, unless

- 1 the rule has extinguished the contract, and
 - 2 the parties were domiciled in such country during the period prescribed by such rule.
- [Sec 11 (2)]

11 Extension of period and postponement of limitation :

[Besides legal disability, what are the acts of the plaintiff or defendant, which go to extend the period of limitation? B.U. Oct 1919]

[In what cases is the period of limitation extended and what circumstances are allowed to save the bar of limitation? B.U. Oct 1937]

[Under what circumstances can the period of limitation be extended? A. E. Feb. 1928]

1 Court closed.

When the period prescribed for any

(i) suit, (ii) appeal or (iii) application expires on a day when the Court is closed, the (i) suit, (ii) appeal or (iii) application may be instituted, preferred or made on the day when the Court re-opens.

[Sec 4]

2 Sufficient cause.

(a) appeal or
(b) application for a review of judgment or
(c) application for leave to appeal or
(d) any other application to which this section may be made applicable by or under any enactment for the time in force,

may be admitted after the period of limitation prescribed therefor,

when the (i) appellant or (ii) applicant satisfies the Court that he had sufficient cause for not (i) preferring the appeal or (ii) making the application within such period.

[Sec. 5]

[What are principal causes which may operate to postpone, suspend or extend the running of limitation? (A. U. 1910)]

[What are the grounds of exemption from the operation of limitation? A. U. 1918]

[State under what circumstances the operation of limitation may be (a) suspended, or (b) prevented, or (c) interrupted. (A. U. 1920, 1926)]

[Under what circumstances can the period of limitation for a suit be extended? (C. U. 1923)]

[Discuss the conditions which affect enlargement of the period of limitation. Give examples. (C. U. 1929)]

[State the important grounds of exception recognised by the I. L. A. which extend the period of limitation by preventing, suspending or interrupting the running of time. (C. U. 1930)]

[State the seven important exceptions that extend, suspend or interrupt the running of time. (P. U. 1919)]

Explanation :

(a) any order,
(b) practice or
(c) judgment of the High Court

The fact that the

(i) appellant or (ii) applicant was misled by

in ascertaining or computing the prescribed period of limitation

may be a sufficient cause within the meaning of this section.

[Explanation—Sec 5]

3 Legal disability. A.—of a plaintiff or applicant.

Where at the time from which the period of limitation is to be reckoned, a person entitled to (1) institute a suit or (2) make an application for execution of a decree is

(a) (i) a minor,
(ii) insane or
(iii) an idiot
(b) (i) affected by two such disabilities, or
(ii) before his disability has ceased affected by another disability,

he may institute the suit or make the application within the same period as would otherwise have been allowed from the time prescribed therefor

in case (a) after disability has ceased and in case (b) after both disabilities have ceased.

[Sec 6—Sub-Sections (1) and (2)]

B.—Of his legal representative.

1 Where the disability of the plaintiff or applicant continues up to his death his legal representative would be allowed the same period after his death as would otherwise have been allowed.

Legal disability of the legal representatives.

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

[Sec. 6—Sub-Sections (3) (4)]

C.—Of one of several plaintiffs or applicants.

Where one of several persons jointly entitled to (1) institute a suit, or (2) make an application for the execution of a decree

is under any such disability, time will run against

- (a) all of them—if a discharge can be given without the concurrence of such person ;
- (b) None of them (until one of them becomes capable of giving such discharge)—if no such discharge can be given.

[Section 7.]

Exceptions.

- 1 do not apply to pre-emption suits ;
- 2 do not extend the period of limitation, for more than three years from the cessation of the disability or the death of the person affected thereby.

Sections 6 and 7

[Section 8]

Explanation :—Where once time has begun to run, no subsequent disability or inability to sue stops it.

[Section 9.]

4. Death before right to sue accrues :—

Where a person :

- (a) who would, if he were living, have a right to institute a suit or make an application,
- or
- (b) against whom, if he were living, a right to institute a suit or make a 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

(a) capable of instituting or making such suit or application or (b) against whom the plaintiff may institute or make such suit or application,

[See 17 (1) and (2)]

Exception :

The section 17 has no application to suits

- (a) to enforce rights of pre-emption,
- or
- (b) for the possession of immoveable property,
- or
- (c) for the possession of an hereditary office.

[See 17 sub-sec (3)]

5. Fraud :—

- (1) 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
- (2) 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 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

- in case (1) when the fraud first became known to the person injuriously affected thereby,
- or,
- in case (2) when he first had the means of producing it or compelling its production.

[See 19.]

6 Cases requiring special damage.

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. [Sec. 24.]

11 Exclusion of time.

[Enumerate the grounds, recognised in the Indian Limitation Act on which periods of time can be excluded in computing the period of limitation.]

(B U. October, 1920)]

[What time is excluded in computing the period of limitation prescribed?

A. E. Aug. 1924]

[In what cases is time allowed to be excluded in computing the period of limitation prescribed for a suit? A. E. Feb 1926.]

[What time can be excluded in computing the period of limitation?

A. E. Feb 1928]

[What time can be excluded in computing the period prescribed in the Limitation Act for a suit or an application? A. E. Sept. 1931]

In case of

The period to be excluded in computing the period of limitation.

1 The day from which such period is to be reckoned.

1 Any suit, appeal or application

2 (a) An appeal,
(b) an application for leave to appeal,
(c) an application for a review of judgment

1 The day on which the judgment complained of was pronounced;
2 Time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed.

3 (a) an appeal from a decree
(b) a review of a decree

1 The time requisite for obtaining a copy of the judgment on which the decree is founded.

4 any application to set aside an award

1 The time requisite for obtaining a copy of the award.

[Sec 12.]

{ 1 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.

[Sec 13.]

{ (i) a civil proceeding whether in a Court of first instance or in a Court of appeal;
(ii) in case (a) against the same defendant; or in case (b) against the same party;
(iii) in case (a) founded on the same cause of action or in case (b) for the same relief;
(iv) prosecuted in good faith;

{ (v) prosecuted in a Court which was { (1) a defect of jurisdiction or
unable to enter- (2) other cause
tain it from of a like nature.

[Sec. 14]

{ The time during which the plaintiff or applicant has been prosecuting with due diligence another proceeding shall be excluded

6 (a) Any suit,
or
(b) any application

Explanation 1.—

The day on which a former suit or application was instituted or made and the day on which the proceedings therein ended shall be excluded.

2.—

A plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

3.—

Misjoinder of parties or of causes of action shall be a cause of a like nature with defect of jurisdiction.

[Sec. 14—Explanations.]

7 (a) Any suit or
(b) Any application for execution of a decree

{ the institution or execution of which has been stayed by injunction or order. }

{ (1) the time of the continuance of the injunction or order ;
(2) the day on which it was issued or made, and
(3) the day on which it was withdrawn. }

[Sec 15--Sub-sec. (15)]

8 A suit of which notice has been given in accordance with the requirements of any enactment for the time being in force

{ (1) The period of such notice. }

[Sec 15--Sub-sec. (2).]

9 A suit for possession by a purchaser at a sale in execution of a decree

{ (1) The time during which a proceeding to set aside the sale has been prosecuted }

[Sec. 16.

10 A suit to recover a debt in cases in which letters of administration to the estate of the creditor have been granted to his debtor

{ (1) The time during which the administration continues. }

[Sec. 9--Proviso]

12 Fresh start to limitation.

A fresh period of limitation begins to start in the following cases :

1 Acknowledgment :

[In what cases is the period of limitation extended, and what circumstances are allowed to save the bar of limitation ? (B.U. Oct. 1927).]

[Under what circumstances is a fresh period of limitation said to begin to run under the Limitation Act?

A. E. Aug. 1924].

Where an acknowledgment of.....A fresh period of limitation shall be computed from the time when the acknowledgment is signed

- (i) it is made before the expiration of the period prescribed for the suit or application in respect of such property or right ;
- (ii) it is made in respect of the same right or property for which the suit is instituted or application made ;
- (iii) it is made in writing ;
- (iv) it is signed by
 - (a) the party against whom such property or right is claimed or
 - (b) some person through whom he derives title or liability.

[Sec. 19—Sub-sec. (1).]

provided that

If the writing containing the acknowledgment is undated, but, subject to the provisions of the Indian Evidence Act, 1872, oral evidence may be given when it was signed, evidence of its contents shall not be received.

[Sec. 19—Sub-sec. 2]

Explanation : [1]

- | | |
|---|--|
| {
An acknowledgment
may be sufficient
though | (a) it omits to specify the exact nature of the property or right, |
| | (b) it avers that the time for payment, delivery, performance or enjoyment has not yet come; |
| | (c) it is accompanied by a refusal to pay, deliver, perform or permit to enjoy; |
| | (d) it is coupled with a claim to a set off, or, |
| | (e) it is addressed to a person other than the person entitled to the property or right. |

- (1) 'Signed' means signed either personally or by an agent duly authorised in this behalf.
- (3) An application for execution of a decree or order is an application in respect of a right.

2. Payment of interest :—

- | | | | |
|---|---|--|---|
| {
When interest is
paid on a debt
or legacy: | {
a fresh period of
limitation shall
be computed
from the time, | {
when the pay-
ment is made,
provided that | (a) it is paid as such, |
| | | | (b) it is paid before the expiration of the prescribed period, |
| | | | (c) it is paid by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, |
| | | | (d) save in the case of a payment of interest made before the 1st of January 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the same. |
| | | | [Sec. 20 Sub-sec. (1)] |

3. Part-payment of principal :—

Where part of the principal debt is paid. { a fresh period of limitation shall be computed from the time, when the payment is made, provided that

- (a) it is paid before the expiration of the prescribed period,
- (b) it is paid by the debtor or by his agent duly authorised in this behalf,
- (c) an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the same.

[Sec 20 Sub-sec. (1)]

Explanations :—

1. 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.

[Sec. 20—Sub-sec (2)]

2. Debt includes money payable under a decree or order.

[Sec 20—Explanation]

Explanations to Sections 19 and 20 :

- (1) 'Agent duly authorised in this behalf' shall in the cases of a person under disability include
 - (a) his lawful guardian, committeee, or manager,
 - (b) an agent duly authorised by such guardian, committeee or manager to sign the acknowledgment or make the payment.

[Sec 21 - Sub-sec. (1)]

(2) Nothing in the sections 19 and 20 renders one of the 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.

[Sec 21—Sub-sec (2)]

(3) (1) An acknowledgment signed, or (2) a payment made, in respect of any liability, (i) by any widow or other limited owner of property who is governed by the Hindu law or (ii) by the duly authorised agent shall be

(a) a valid acknowledgment or
(b) payment, as the case may be, [Sec 21—Sub-sec. (3a)]
as against a reversioner succeeding to such liability.

(4) Where a liability has been incurred (i) by a Hindu undivided family or (ii) on behalf of a Hindu undivided family (a) an acknowledgment or (b) payment made

(i) by the manager of the family for the time being, or (ii) the duly authorised agent, [Sec 21 Sub-sec (3b)]
shall be deemed to have been made on behalf of the whole family.

4. Continuing breaches and wrongs :

In the case of a

- (a) continuing breach of a contract and
- (b) continuing wrong independent of a contract.

at every moment of the time during which the breach or the wrong, as the case may be, continues.

a fresh period of limitation begins to run.

[Sec 23]

13. Summary of the rules.

1 Suite.—

- (1) postponement of *terminus ad Quem*.—

Court closed

The summary of the rules relating to the (a) postponement of *terminus ad Quem* i.e., the point of time to which limitation runs, or, to put in other words, the point of time after which the remedy is barred, (a) postponement of *terminus a Quo*, i.e., the point of time from which limitation begins to run and (c) exclusion of time, in the case of suits, appeals and applications.

- (2) Postponement of *terminus a Quo*.—

- (i) Legal disability (a).
- (ii) Defendant's absence.
- (iii) Other civil litigation.
- (iv) Death (b)
- (v) Fraud

- (3) Exclusion of time.—

- (i) Acknowledgment.
- (ii) Payment of interest (c).
- (iii) Part-payment of principal (d).
- (iv) Administration of estate (e).
- (v) Defendant's absence.
- (vi) Statutory notice.
- (vii) Stay or injunction.

[a] This rule does not apply to suits to enforce a right of pre-emption

[b] This rule does not apply to a suit to enforce a right of pre-emption or to suits for possession of immovable property or of an hereditary office

[c] This rule applies only to suits for recovery of legacies or debts.

[d] This rule applies only to a suit to recover a debt.

[e] This rule applies when the suit is to recover a debt due to the estate of a deceased person when that estate is being administered by the debtor himself.

2 Appeals. (a).—

{ Summary of the rules }
(continued).

- | | | |
|---|------|--|
| { | (1) | Postponement of <i>terminus ad Quem</i> .— |
| { | (i) | Court closed. |
| { | (ii) | Sufficient cause. |
| { | (2) | Exclusion of time.— |
| { | (i) | Time requisite for obtaining copies. |

3 Applications.—

- | | | |
|---|-------|---|
| { | (1) | Postponement of <i>terminus ad Quem</i> .— |
| { | (i) | Court closed. |
| { | (ii) | Sufficient cause. (b) |
| { | (2) | Postponement of <i>terminus a Quo</i> .— |
| { | (i) | Legal disability. (c) |
| { | (ii) | Other civil litigation |
| { | (iii) | Death |
| { | (iv) | Fraud |
| { | (3) | Exclusion of time. — |
| { | (i) | acknowledgment |
| { | (ii) | Time requisite for obtaining a copy
of—(1) decree, sentence or order (d)
(2) judgment (e)
(3) award. (f) |
| { | (iii) | Stay or injunction. (g) |

[a] None of the rules relating to the postponement of *terminus a Quo* apply to appeals

[b] The only applications to which this rule relates are applications for review of judgment or for leave to appeal. Sec. 5

[c] The only application to which this rule relates is an application for execution of a decree

[d] The only applications to which this rule relates are applications for leave to appeal and for review of judgment.

[e] The only application to which this rule relates is an application for review of judgment.

[f] The only application to which this rule relates is an application for setting aside an award.

[g] The only application to which this rule relates is an application for execution of a decree.

1. No. limitation :

No suit shall be barred
by any length of time
against

(a) a person in whom property has become vested in trust for any specific purpose, or (b) his legal representative, or (c) his assigns (not being assigns for valuable consideration)	for (a) the purpose of following in his or their hands such property or proceeds thereof, or or (b) an account of such property or proceeds.
--	--

Explanation.

Any property comprised in a Hindu, Muhammdan or Buddhist religious or charitable endowment	shall be deemed	to be property vested in trust for specific purpose and,	the manager of any such property	shall be deemed	to be the trustee thereof.
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15 Acquisition of easements
(including profits a
prendre) by positive
prescription.

(a) Where the access and use of
light or air to and for any
building have been enjoyed

and

(b) Where any way or water-
course, or the use of any
water, or any other easement
(whether affirmative or nega-
tive) has been enjoyed,

(i) peaceably, (ii) as an easement, (iii) as of right, (iv) without interruption, and (v) for 20 years (or in the case of Government property for 60 years),	the right to such access and use of light or air, way, watercourse, use of water, or other easement shall be absolute and indefea- sible.
(i) peaceably, (ii) openly, (iii) by a person claiming title thereto, (iv) as an easement, (v) as of right, (vi) without interruption, and (vii) for 20 years (or in the case of Government property for 60 years),	

Explanation :

- 1 unless there is an actual discontinu-
ance of the possession or enjoyment
by reason of an obstruction by the
Act of some person other than the
claimant, and
- 2 unless such obstruction is submitted
to or acquiesced in for one year after
the claimant has notice thereof and
of the person making or authorising
the same to be made.

Nothing is an interruption

Rules for the computation of the period of 20 years :—

(1) It 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 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

provided that
 { 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.

[Sec. 27.]

16 Extinguishment of right to property.

{ Indirect acquisition of the owner-
 ship of corporeal property by
 { extinctive prescription.

{ 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.

[Sec. 28].

APPENDIX II.

Limitation and Prescription.

A law of limitation limits the time after which a suit or other proceeding cannot be maintained in a Court of Justice (*Vide* PP. 1-2).

A law of prescription prescribes a period of time at the determination of which a substantive right is (subject to certain conditions) acquired or extinguished. Prescription is founded more upon utility than upon equity. We cannot say that the latter is almost neglected. Prescription like a law of limitation is a humane thing. "If time destroys the evidence of title, the laws have wisely and humanely made length of possession a substitute for that which has been destroyed."

E. M. M. M.

The difference between a law of limitation and a law of prescription is :—

- (1) A law of limitation merely bars the remedy. It does not destroy rights, nor does it create rights.
- (2) A law of prescription not only destroys rights but creates rights in others, e.g., such a law may provide (i) that after a certain lapse of time the right shall cease to exist, or (ii) that on enjoyment of a right for a certain period by a person who is not entitled to it, the latter shall become absolutely entitled to it.

The Indian Limitation Act, 1908, embodies rules of limitation as well as rules of prescription, i.e.,

- (1) in some cases it merely bars the remedy without affecting the right ;
- (2) in some other cases it extinguishes the right of a person who has not enjoyed it for a given period of time ;
- (3) in other cases it creates an absolute title in favour of a person who has enjoyed such right for a given period of time.

Prescription may be affirmative or negative, Section 26 of the Indian Limitation Act, 1908, deals with affirmative or positive prescription while section 28 treats of negative or extinctive prescription.

Section 26 positively lays down that an enjoyment of an easement for the statutory period creates an indefeasible and absolute right.

Section 28 lays down that the right of the true owner is extinguished after the lapse of a certain period, i.e., it creates by negation a title in the stranger.

Practically speaking the effect of both these sections is the same. To establish a right of easement twenty years' user must be proved but if the right is claimed [against the Government sixty years' enjoyment has to be shown.

“ Sufficient cause. ”

What is or is not a “sufficient cause” is a question fact and will have to be decided on the facts and circumstances in each case. The explanation to sec. 5 is not at all exhaustive. It merely indicates what may constitute “sufficient cause” within the meaning of the section. The question of determining where in any particular case there is a “sufficient cause” or not is left entirely to the discretion of the Court, but the discretion will have to be judicially and properly exercised.

The principle underlying the sec. 5 is that the rigour of the law is relaxed in certain cases where common sense and sound judgment require redress to be given (*Vide* PP. 18-19).

Legal disability.

Disability means want of legal ability and is quite different from inability to sue which is want of physical power to act.

The only disabilities the Act recognises are minority, insanity and idiocy.

The definition of a minor:—Every minor of whose person or property or both a guardian other than a guardian for a suit, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of 18 years and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age shall.....be deemed to have attained majority when he shall have completed his age of 21 years and not before.

Every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of 18 years. (Indian Majority Act, IX of 1875).

Insanity is the same thing as unsoundness of mind or lunacy. A temporary loss of understanding or memory, or mere mental weakness on account of serious bodily injury is not insanity ; nor the suffering from a mere delusion, unless it can be shown that the delusion has affected the particular contract or disposition of property which is in question.

A lucid interval is a temporary cessation of lunacy and it cannot be treated as a recovery unless it is of sufficient length of time to enable the person to do an intended rational act.

Idiocy is a congenital and perpetual infirmity involving loss of understanding.

Persons affected by a disability or supervenient disabilities are protected. If there any interval or breaks between the cessation of one disability and commencement of another time would at once begin to run and no subsequent disability or inability would stop it.

The sec. 6 refers to initial disability and not to subsequent disability. It is only plaintiffs and applicants for the execution of decrees that are protected under this section. Defendant's disability does not stop the running of time.

The privileges conferred by the sections 6, 7, and 8 are purely personal and an assignee or transferee from the minor cannot take advantage of these provisions. (For further explanation refer to sections 6, 7 and 8 and notes thereunder.)

Trust for specific purpose.

A trust is defined in sec. 3 of the Indian Trust Act II of 1802, which is reproduced below:

“ A trust is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another and the person, for whose benefit the confidence is accepted, is called the beneficiary”. (*Vide* sec. 2 of the I. L. A.)

The phrase “trust for specific purpose” is an expanded expression of the term “express trust” of the English law. Express trust means trust which has been expressed either by writing or by word of mouth, and not a trust which arises out of the acts of the parties by implication of law, i. e., a resulting, implied or constructive trust.

A specific purpose is a purpose that is either actually and specifically defined in the terms of the deed by which the trust is created or a purpose which from the specified terms can be certainly ascertained.

The sec. 10 is intended to protect the rights of beneficiaries under an express trust against the wrongful acts of a trustee. Suits against express trustees for recovery of trust property or proceeds or for an account thereof can be brought after any length of time and the bar of limitation cannot be pleaded in defence, assigns for valuable consideration being always protected. (See also sec. 10 and notes thereto).

Fraud.

In order to constitute fraud, it is not sufficient that there should be merely a tortious act unknown to the injured party, or enjoyment of property without title while the rightful owner is ignorant of his claims, there must be some abuse of a confidential position, some intentional imposition or some deliberate concealment of facts.

The term 'fraud' as used in the sec. 18 means active deceit in defrauding or endeavouring to defraud a person of his right by artful device.

In cases where fraud is proved, length of time ought not on principles of eternal justice to be admitted to repel relief. It is plaintiff's duty once the fraud has been discovered to claim relief promptly. If there has been laches or acquiescence after discovery of fraud, the Court will be entitled to refuse relief, even though the period of limitation has not elapsed since the discovery of the fraud. (*Vide* sec. 18).

Acknowledgment.

Acknowledgment means a definite, clear admission of existing liability. To get a fresh start of limitation under sec. 19 an acknowledgment must be a conscious and distinct admission of an existing liability, even though it need not be express but even implied provided it is clear and unequivocal and not a mere matter of inference.

It is not necessary that there should be a promise to pay. The simple admission of a liability is sufficient.

An acknowledgment of a conditional liability will not give a fresh start so long as the condition remains unfulfilled. There must be an unqualified admission, or an admission qualified by a condition which is fulfilled.

The distinction between an "acknowledgment" under sec. 19 of the Limitation Act and a "promise" within sec. 25 of the Contract Act is of great importance.

"An agreement without consideration is valid if it is a promise, made in writing and signed by the person charged therewith, or by his agent generally or specially authorised in that behalf to pay wholly or in part of a debt of which the creditor might have enforced payment but for the law of limitation for suits." (Contract Act, sec. 25 (3)).

A time-barred debt may be revived by a promise to pay falling within sec. 25 (3) of the Contract Act. But there can be no acknowledgment of a debt barred by limitation. Again, an acknowledgment does not confer any new rights on the parties, it merely enlarges the time prescribed by the Limitation Act. Whereas a promise to pay under sec. 25 (3) of the Contract Act creates a new contract and a fresh cause of action arises on the date of the promise. A mere unconditional acknowledgment cannot be a promise to pay under sec. 25 (3) of the Contract Act which requires an express undertaking to pay. (As to all essentials of a valid acknowledgment refer to sec. 19 and notes thereto.)

Payment.

The payment of interest on a "debt or legacy" or of a part of the principal of a "debt" (not legacy), if made before the expiry of the prescribed period gives the plaintiff a new period of limitation, according to the nature of the original liability. (sec. 20).

Payment of interest must be as such, i.e., that the amount should be paid with the intention that it should go towards interest and there must be something to indicate that intention. The question whether a payment of interest can be said to be interest as such is a question of fact in each case.

The law does not require that the part-payment of principal should be made as such, i.e., the law does not require that the words 'part-payment of the principal' should appear in the entry.

Payment of interest made before 1928 may be proved by any (including oral) legal evidence but the fact of payment of a part of the principal must appear in the hand-writing of the debtor or his duly authorised agent.

By the amendment of 1927 (Act I of 1927) the distinction between the two is abolished and both should appear in the hand-writing of the payer, or in a writing signed by him. The payment, of interest or part principal, need not necessarily be made in actual money. It may be made in any form which may be agreed upon between the parties. It must be of such a nature that it would be a complete answer to a suit brought by the creditor to recover the amount. (See sec. 20 and notes thereunder).

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