reference to the Gregorian calendar, the intention of the parties being quite irrelevant.[11] There is no saving of cases in which it appears on the face of the contract that lunar months were intended by the parties.[12]

2. Conflict as to dates given in instrument. The section has no application to a case where two different dates relating to different calendars are given in an instrument and they do not tally, because in that case the Court has in first place to determine the exact date of the instrument and for that purpose the Court may take evidence and decide the case. Thus where a promissory note bore two dates, one according to Native calendar and other according to British calendar and the dates did not tally with each other the correct date should be ascertained by the Court on taking evidence.[13]

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

the right to such access and use of light or air, way 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 [14][the [15][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

---

11. 1971 DLC 239 + AIR 1958 Ker. 326 = ILR 1957 Ker. 887 (DB) *(Obiter)*.
12. AIR 1924 Nag. 208 + 6 Bom. 83 + AIR 1927 Mad. 917 (DB) + AIR 1936 Oudh 270 = 12 Luck 109 (DB) + AIR 1931 Oudh 357.
13. AIR 1941 Mad. 587.
14. Subs. by the A.O., 1937, for "Govt.".
15. Subs. by the P.O., 1961 (1 of 1961), Art. 2 and Table (with effect from the 23rd March, 1956), for "Crown".

some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or 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, 1899 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, had asked his leave to enjoy the right. The suit shall be dismissed.

Synopsis

1. Easements Act--applicability.
2. Acquisition of easement by presumption.
3. Acquisition by other modes.
4. Acquisition of rights other than easements.
5. Who can acquire easement.
6. Easement of light and air.
7. Right of way.
8. Right to watercourse or use of water.
9. "Any other easement."
10. "Enjoys."
11. Peaceably.
12. Enjoyment should be open.
13. As an easement.
14. "As of right."
15. "Without interruption."
16. "For twenty years."
17. Easement against Government.
18. Plea of easement.
19. Onus of proof.
20. Parties to suit.
21. Acquisition of easement.
22. Revival of easement after separation of title in dominant and servient tenement.

1. Easement Act--applicability. In Provinces where the Easements Act applies; the law of easement in all the aspects is solely governed by the Easements Act.[16] The extent, incidents, extinction and disturbance of easement as well as other modes of acquisition of easements, are not affected by this Act and are governed by the principles of English law as it stood before the Prescription Act in England where the application of such principles is suited to the usages and habits of the people.[17]

2. Acquisition of easement by prescription. The Law of Limitation is different from the law of prescription. Whereas the latter prescribes the period on the expiry of which not only the judicial remedy is barred but a substantive right is extinguished by one and acquired by the other, the former does not destroy the right but only extinguishes the remedy. Except in cases covered by sections 26 and 28 of the Limitation Act, 1908, the Law of Limitation only takes away the remedy by action or by set off.[18]

16. AIR 1939 Sind 39 = ILR 1942 Kar. 225.
17. 39 Cal. 59 (DB) + 19 Bom. 797 (DB) + 18 Bom. 616 (DB) + 14 Cal. 839 + AIR 1927 Lah. 492.
18. PLD 1981 Pesh. 46 (DB).

For acquisition of easement by prescription, user must be peaceable, open and without interruption.[19]

Acquisition of an easement under this section is independent of the capacity or incapacity of the servient owner to make a grant of the easement.[20]

3. Acquisition by other modes. Grant or other legal origin can be presumed from long user and relief may be granted on that basis though the plaintiff is unable to establish his right to an easement under this section.[1] Thus an easement such as a right of way may be acquired, as regards a portion of the way by grant and as regards another portion by prescription.[2]

4. Acquisition of rights other than easements. A right may be acquired by custom and in that case it is not necessary to prove immemorial user.[3] A prescriptive right may also be acquired on the presumption of lost grant. In that case a period for acquisition is not prescribed by law, proof of user for less than twenty years would not ordinarily be sufficient.[4]

5. Who can acquire easement. Only a person other than the owner of a servient tenant can acquire an easement. The very concept of easement implies that the servient tenement does not belong to the person claiming the easement.[5]

Acquisition by tenant. A tenant of the owner can acquire an easement for the benefit of the dominant tenement in his possession and the owner may thus gain a prescriptive right.[6]

6. Easement of light and air. A right under the section can be acquired even where one wall of the dominant tenement through the aperture of which light comes belongs to the owner of the adjoining servient tenements.[7] Where an easement of light and air is infringed, in judging whether diminution of light and air amounts to nuisance regard must be had not merely to the room in which apertures are situated but to the entire building.[8]

7. Right of way. There are three classes of right of way. *First,* there are private rights vested in particular individuals or the owners of particular tenements. *Secondly,* there are rights belonging to certain classes of persons.

19. PLD 1981 SC (AJ&K) 31 = PLJ 1981 SC (AJ&K) 32 = NLR 1981 SCJ 112 + AIR 1917 Lah. 382 + AIR 1957 Pun 238 (DB) + AIR 1931 Lah. 395 (DB).
20. AIR 1938 Pat. 423.
1. 6 Cal. 394 = 7 Ind. App. 240 (PC) + AIR 1919 P.C. 52 = 43 Ind. App. 509 = 46 Ind. App. 302 + AIR 1959 Pat. 463 = 38 Pat 443 (DB).
2. AIR 1920 Cal. 600 (DB) + 17 Cut L. T. 120. (The mere fact that the plaintiff's right to take water was recorded in the settlement entry within 20 years of the suit will not mean that plaintiff began his user from that date and will not negative his right by immemorial user) + AIR 1949 Him. Pra. 4 + AIR 1948 Mad. 222 (DB).
3. AIR 1939 Nag. 193 = ILR 1941 Nag. 450 (DB). (Right to way or to bury dead can be based on custom raising presumption of grant) + AIR 1938 Cal. 202 (It must be shown that village pathway was used by villagers as of right and not as members of general public) + AIR 1945 Pat. 118 (DB) + 7 DLR 464.
4. AIR 1946 Cal. 444.
5. AIR 1939 Lah. 28 + AIR 1939 Rang. 421 = 1940 Rang. L. R. 93.
6. AIR 1915 Cal 403 + AIR 1934 Mad. 575 + AIR 1918 Oudh 296 = 21 Oudh Cas. 78.
7. AIR 1932 Cal. 249 = 59 Cal. 260 (DB) + AIR 1923 Lah. 249.
8. AIR 1945 Cal. 438 (DB).

Thirdly, there are public rights for the benefit of all the subjects.[9] A right to go upon another's land for the purpose of repairing a wall or a house can be acquired under section 26 of the Limitation Act.[10]

Public right over public way. This section applies to easement only. Where the case of the petitioner was not about the right of easement, but it was about public right over a public way, S. 26 was not applicable.[11]

Pathway, use of. A customary right to a village pathway is not an easement.[12] Mere user of a pathway by a party for long cannot create prescriptive right in his favour unless it is shown that such user has been as of right, peaceably and without any interruption.[13]

Passage of boats. A right for passage of boats through another man's channel is analogous to a right of way.[14]

8. Right to watercourse or use of water. A right, which is an interference with the natural rights of riparian owners to the use of river water for ordinary purposes, can be acquired by prescription.[15] Thus where the plaintiff and his ancestors had been in the sole exclusive and undisputed enjoyment of all the waters flowing through a channel and watercourses flowing into *R* tank and to the entire water in the tank itself for over 60 years, and they had become so entitled not merely by reason of their unchallenged and unchallengeable ownership but also by immemorial user custom and prescriptive right. It was held that the plaintiff had made out a good title by prescription.[16]

Right to water of well. Where the plaintiff claimed a right of easement to irrigate his land from the defendant's well and proved user for twenty years, the right was held to have been acquired as an easement.[17]

Artificial watercourses. In the case of artificial watercourses any right to the flow or the use of water must rest on some grant or arrangement proved or presumed.[18] The natural right for the flow of the water from higher ground to the lower one is confined to the flow of natural water generally through natural streams or drains and under some very special circumstances through artificial streams or drains. It can never extend to the discharge of artificial water brought upon the higher land by artificial means, specially to the discharge of all kinds of water from a house. Such a right cannot be claimed for the discharge of artificial water, such as, water used in a house for domestic purposes either through a

9. 15 Cal. 460 (FB)+AIR 1930 Cal. 286=57 Cal. 526. (A public right of way is unconnected with any dominant tenement).
10. PLD 1956 Lahore 781. *Rel.* 40 C.W.N. 222.
11. AIR 1965 Manipur 39.
12. AIR 1938 Cal. 202.
13. 1973 Dhaka L.R. 327.
14. 7 Cal. 145 (DB).
15. 35 Cal. 851 (DB)+1958-1 Cal. L. Jour 40. (Water baled out from tank flowing through channel.).
16. PLD 1947 Privy Council 299.
17. PLD 1958 Lah. 337.
18. 4 Cal 633=6 Ind. App. 33 (P.C.)+AIR 1923 Lah. 253+AIR 1926 Mad. 419 (FB)+AIR 1928 Nag. 184+AIR 1962 All. 159.

defined channel like drain or otherwise, except by way of easement.."[19] Thus an easement may be established of the right to cause river water to flow across the servient tenement on to the dominant tenement for the purpose of irrigation by means of an embankment erected on the dominant tenement.[20]

Where a watercourse though artificial is intended to be a permanent one, a prescriptive right to the use of water can be acquired by prescription.[1]

9. "Any other easement." The section is not exhaustive, it covers other easements apart from those specifically mentioned in the section. Thus the right to stack manure on the land of another can be acquired by prescription.[2]

10. "Enjoys." The section contemplates only rights enjoyed by the dominant owner himself as of right, it does not cover any advantage or benefit he may derive from the act of a third person done by such person in his own right. Thus where a scavenger, a municipal servant passes over *A's* land for conserving *B's* latrines, *B* does not enjoy a right of way as contemplated by this section.[3]

11. Peaceably. The word "peaceably" means that the dominant owner has neither been obliged to resort to physical force himself at any time during the period of enjoyment nor had he been prevented by the use of physical force by the defendant in his enjoyment of such right.[4] In other words it means enjoyment without interruption by the servient owner sufficient to defeat the enjoyment.[5]

12. Enjoyment should be open. An easement can be acquired only where the enjoyment is open, because only then can it be said that the servient owner had acquiesced in the right. User which is secret raises no presumption of acquiescence on the part of the servient owner, and no presumption of right on the part of the dominant owner.[6] Requirement that the user should be open shows that it must be of a nature from which a presumption that the owner of lands had knowledge and had acquiesced in the right might be drawn.[7] It is however to be noted that where exercise of right is open, actual knowledge is not necessary on the part of the servient owner of the right enjoyed by the dominant owner.[8]

Enjoyment which a man cannot prevent can raise no presumption of consent or acquiescence.[9]

13. As an easement. An easement by prescription is capable of being acquired only if the user during the statutory period had been with the animus of

---

19. AIR 1963 Pat. 76.
20. 30 Cal. 1077 (DB).
1. 4 Cal. 633 = 6 Ind. App. 33 (P.C.) + AIR 1948 Mad. 222 (DB) + 7 Mad. 530 + 14 C.P.L.R. 145 (DB) + 30 Cal. 281.
2. AIR 1947 Lah. 79.
3. AIR 1939 Rang. 34 (DB).
4. AIR 1916 Mad. 1001 (DB) + AIR 1931 Lah. 395 = 12 Lah. 741 (DB).
5. AIR 1919 Bom. 94 (DB).
6. 27 W.R. (Eng.) 623 = 4 QBD 162.
7. AIR 1939 Rang. 34 (DB) + AIR 1929 Bom. 144 (DB).
8. AIR 1939 Rang. 34 (DB) + 10 Cal. 214 (DB) + 1889 Bom. P. J. 196. Reprint p. 273 + AIR 1916 Mad. 1001 (DB).
9. 28 W.R. (Eng.) 200 = 11 Ch. D. 852 + 4 L.T. 445 = 30 L.J.C.P. 384 + (1859) 7 H.L.C. 349 = 29 L.J. Ex. 81.

enjoying the easement as such on the land of another. The basis of the right of easement by prescription is user of another man's land without any right till the user is ripened into a right by prescription.[10] The section applies only where a right is claimed as an easement. Where the right is claimed in any other capacity or on any other ground, the section does not apply. Thus where two *nalas* in plaintiff's lands through which water flowed into the defendant's tank across agal portion were natural channels. As the water accumulated in the agal portion, the defendant, with a view to transfer the evil of any injury to his lands constructed an embankment or a *bundh*, thereby diverting the flow of water of the channels in another direction. That obstructed the flow of water through those channels into the tank and resulted in the diversion of accumulated water into plaintiff's plot. It was held that the right that the plaintiffs claimed was not one of easement but was based on the Law of Torts. That being so, the provisions of section 26 of the Limitation Act, which relate to acquisition of rights to easements, have no application to the facts of the case.[11]

Where there is unity of possession or ownership in the same person of both the dominant and servient tenements, there cannot be any enjoyment as an easement during the period of unity.[12] Where ownership of property vests jointly in several persons, the mere fact that each is exclusively enjoying some portion which is undivided from the rest cannot enable one to acquire a right of easement over another plot held exclusively by the other co-sharers.[13] Even where the acts done by the person claiming the easement are only referable to a purported character of owner, they cannot sustain a subsequent claim for an easement in respect of the property.[14] But where the acts were not purported to be done is exercise of the rights of an owner, the mere fact, that in litigation the claimant puts forward a claim of ownership, which is found to be not true, is not conclusive on the question whether the right was enjoyed as an easement or not and will not necessarily entail dismissal of the suit.[15]

Acts done in exercise of statutory duty. An act done in the exercise of a statutory duty or right cannot be relied on to create an easement.[16]

Only particular person can acquire easement. An indeterminate and fluctuating body of persons like villagers of three villages cannot prescribe for an easement under S. 26.[17]

10. PLD 1981 SC (AJ&K) 31 = PLJ 1981 SC (AJ&K) 32 = NLR 1981 SCJ 112.
11. AIR 1963 Pat. 455.
12. 15 Rang. L. R. 361 + 15 All. 270 (DB) + 1883 All. W.N. 66.
13. AIR 1925 Pat. 492 (DB) + AIR 1930 Sind. 34 = 24 Sind L. R. 208 (DB) + AIR 1944 Pat. 261 = 23 Pat. 115 (DB).
14. AIR 1926 Mad. 728 = 49 Mad. 820 (DB). (AIR 1916 Mad. 718. *Overruled:* 34 Cal. 51 and 20 Mad. L. Jour 306. *Dissented from*) + AIR 1939 Rang. 34 (DB) + AIR 1939 Sind 110 = ILR 1939 Kar. 307 (DB) = AIR 1932 Bom. 513 = 56 Bom. 427 + 16 Bom. 592 (DB) + AIR 1927 Nag. 386 + AIR 1930 Pat. 7 (DB).
15. AIR 1920 Cal. 940 (DB). (16 Bom. 592. *Not followed:* AIR 1916 Mad. 718 and 34 Cal. 51 (FB) *Followed*) + AIR 1939 Sind 110 = ILR 1939 Kar. 307 (DB).
16. AIR 1939 Rang. 34 (DB).
17. AIR 1960 Manipur 18.

14. "As of right." The qualification "as of right" lies in the words *nec precario* and mean without permission or favour.[18] It is user in the assertion of a right,[19] a user claimed against the will of the person over whose property it is sought to be exercised.[20] In other words enjoyment of a benefit in such a manner as not to involve the admission of any obstructive right in the owner of the servient tenement is an enjoyment as of right.[21]

Right need not be lawful in the beginning. "As of right" does not mean "rightfully" or an enjoyment without trespass and under a strict legal right but it refers to enjoyment by a person under a claim or an assertion of right. The acquisition of right may commence with an act which may be a pure act of 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 title.[1] An open user continued without interruption for a long time and not shown to be attributable to permission or sufferance on the owner's part is prima facie evidence of enjoyment as of right. The presumption is that a party enjoying an easement acted under a claim of right, until the contrary is shown. The question whether the enjoyment for the necessary period has been "as of right" must depend not only on the circumstances of each particular case, but also on the habits of people. The enjoyment of the right must be for the whole statutory period for the character of an easement.[2]

Permissive act. A permissive user is not a user as of right and cannot be the basis of any prescriptive right.[3] The mere fact that one person walks over the land of another, does not raise any presumption that he has a right to do so. Numerous people pass over the lands of their neighbours, friends and relations with their tacit permission. Such user, though continuous, and long, is seldom understood as being an assertion of any right. In a suit for prescriptive right of way the plaintiffs, must show that his user was such as was sufficient to put the servient owners on notice that the enjoyment was not attributable to his tacit permission or favour.[4] For the same reason user on the basis of grant is not purported to be the character of user to be ascribed in order to prove acquisition of the right of easement by prescription. If the enjoyment claimed is consistent with two reasonable inferences, the enjoyment as of right is not established.[5]

---

18. ('10) 8 Ind. Cas. 1196 (Low Bur) + AIR 1918 Oudh 296 = 21 Oudh Cas. 78.
19. PLD 1959 Dacca 491 = 11 DLR 97 + AIR 1939 Rang. 34 (DB) (User as of right does not mean a rightful user or a user without trespass.) + AIR 1938 Pat. 423 + ('75) 23 Suth W.R. 52 + AIR 1931 Lah. 395 = 12 Lah. 741 (DB). ('As of right' is not synonymous with rightfully'.)
20. AIR 1917 Lah. 382 + 1917 Pun. Re. No. 4.
21. ('83) 7 Bom. 522 (DB).
1. PLD 1959 Dacca 491 = 11 DLR 97.
2. PLD 1981 SC (AJ&K) 31 = PLJ 1981 SC (AJ&K) 32 = NLR 1981 SCJ 112.
3. AIR 1938 Pat. 423 + AIR 1917 Lah. 382 = 1917 Pun. Re. No. 4 + ('93) 16 Mad. 304 (DB) + (1870) 5 Beng. L.R. (App.) 12 (DB) + AIR 1924 All. 50 (DB) + 1889 Bom. P.J. 196. Reprint p. 273 (DB) + ('72) 17 Suth W.R. 11 (DB) + AIR 1937 Lah. 320.
PLD 1963 Dacca 201 = 14 DLR 640.
5. 1959 Dacca 491 = 11 DLR 97.

Act traceable to statutory right. An act which is traceable to a statutory right will not be deemed to be adverse so as to create a prescriptive right under this section.[6]

Test as to nature of user. Whether a user was as of right or not must be decided on a consideration of the character of the ground (in the case of a right of way), the space of time for which the right is claimed; the relations between the parties and the circumstances in which the user took place.[7] Where long open user is proved, the presumption is that it has been as of right.[8] Thus where the findings of fact were that the plaintiff was using the disputed pathway openly and peaceably to the knowledge of the defendant without any interruption for over twenty years, the presumption would be that they had been using the same as of right, particularly when the defendant had never pleaded that such user was a permissive one or by sufferance.[9]

Landlord and tenant. Under this Act a tenant cannot acquire by prescription any easement against his landlord.[10] Even a permanent tenant cannot acquire an easement against his landlord.[11] Where there are two tenants of the same landlord, one cannot acquire any easement against the other.[12]

15. "Without interruption." No easement can be acquired where there has been no user at all.[13] Where there has been user, exercise of the right need not be continuous.[14]

Cessation of user is not always inconsistent with continuance of enjoyment of a right.[15] If the circumstances are not such as to indicate an intentional abandonment of the right, it would not, even if such non-user extends to two or three years, be sufficient to destroy the right.[16] Thus where in process of acquisition of easement of light and air through windows, the dominant tenement was burnt down and was rebuilt with windows corresponding to the old windows, the temporary discontinuance of the enjoyment would not be an "interruption."[17] Similarly the mere filling up of a channel would not constitute obstruction if no

6. AIR 1939 Rang. 34 (DB).
7. AIR 1929 Bom. 144 (DB) + AIR 1939 Sind 39 + AIR 1938 Pat. 423 + ('22) 65 Ind. Cas. 509 (DB) (Cal.) + ('11) 15 Cal. L. J. 316 (DB).
8. AIR 1926 Oudh 237. (Reputable presumption is raised.) + AIR 1926 Lah. 522 (DB) + AIR 1917 Mad. 380 (DB) + AIR 1921 Nag. 127 + AIR 1922 Mad. 5 = 45 Mad. 633 (DB) + AIR 1934 Pat. 11 (DB) + AIR 1922 Upp Bur 23 = 4 Upp Bur Rul 9 + AIR 1925 Nag. 270 + AIR 1935 Lah. 937 + AIR 1932 Cal. 249 = 59 Cal. 260 (DB) + AIR 1937 Pat. 589.
9. AIR 1960 Orissa 95 = ILR 1959 Cut 77.
10. ('92) 14 All. 185 (FB) + AIR 1947 Nag. 175 = ILR 1947 Nag. 254 + AIR 1930 Lah. 119 + AIR 1917 Cal. 681 (DB) + AIR 1923 Cal. 8 = 50 Cal. 356 (DB) + AIR 1934 Pat. 11 (DB) + AIR 1930 Pat. 7 (DB) + AIR 1936 Sind 61 = 30 Sind L. R. 32 (DB).
11. AIR 1920 Mad. 125 (DB) + AIR 1915 Cal. 403.
12. ILR (1954) 6 Assam 237.
13. 1890 Bom. P. J. 184. Reprint p. 402.
14. AIR 1946 Cal. 444 + AIR 1935 Cal. 282.
15. AIR 1924 All. 97 + AIR 1915 Cal. 594 (DB) + AIR 1919 Cal. 357 (DB) + AIR 1929 All. 497 + AIR 1935 Cal. 282. (Non-user must be the effect of a prevention of the user by some person acting adversely to the claimant) + AIR 1918 Oudh 296 = 21 Oudh Cas. 78.
16. 1880 Pun Re No. 68, p. 159 + 1886 Pun Re No. 38, p. 66 + ('10) 7 Ind Cas. 813 (Cal.) + AIR 1919 Pat. 185.
17. AIR 1922 Bom. 3 = 46 Bom. 448 (DB).

water for purposes of irrigation was required at that time and there was no refusal by the defendants to reopen the channel when wanted.[18]

Non-user may amount to abandonment. Although a mere non-user of an easement is not an interruption of the enjoyment, it may show that the right has been abandoned at the easement thus destroyed.[19]

Interference or obstruction by servient tenant. proof of circumstances which merely negative assent on the part of the servient owner to the enjoyment of the easement claimed, or evidence of dissent is not sufficient to support a plea of interruption.[20] Thus where there is a right of way between fixed *termini* and servient owner points out a different pathway there is no interruption of the easement.[1]

16. **"For twenty years."** A right to an easement is not indefeasibly established by an enjoyment for less than twenty years.[2] At any time within twenty years the owner of the servient tenement may sue for redress and the claimant to the easement cannot rely on a plea of prescription in answer.[3] Where interruption has been caused by the servient owner in the enjoyment of a right, time begins to run again after the interruption or obstruction comes to an end. The user prior to the interruption cannot be added on to the period subsequent to the interruption.[4]

Alteration of or addition to right claimed. Where during the course of enjoyment the easement is altered so as to impose additional or new burden on the servient tenement, a fresh period of twenty years' enjoyment is necessary to acquire the right.[5] Where only minor changes are made in the mode of enjoyment, and the benefit remains substantially the same it cannot be said that there has been an alteration or an addition to the right claimed. Thus where the light received through new apertures is the same or substantial part of the cone of light received through them is the same as received from the old windows, easement cannot be considered to have been latered so as not to constitute the same easement.[6] Where *A* had enjoyed an easement over *B's* lane for allowing *A's* sweepers to walk and cleanse *A's* privy for a number of times a year. During the

18. AIR 1914 Cal. 907.
19. AIR 1925 Rang. 137 = 2 Rang 534 (DB) + 1886 Pun. Re. No. 38. p. 66.
20. AIR 1919 Bom. 94 (DB) + AIR 1931 Lah. 395 = 12 Lah. 741 (DB) + AIR 1916 Mad. 1001 (DB).
1. AIR 1921 Pat. 124 (DB).
2. ('75) 7 N W P H C R 293 (DB) + AIR 1918 Lah. 23 = 1918 Pun. Re. No. 48 + ('78) 2 Bom. 660 (DB) + ('71) 16 Suth W R 198 (DB) + ('75) 25 Suth W R 15 + AIR 1946 Cal. 444.
3. ('75) 7 N W P H C R 293 (DB) + AIR 1924 Lah. 628 + AIR 1922 Bom. 83 = 46 Bom. 827 (DB) + AIR 1928 Bom. 312 (DB) + ('72) Ind App (Sur Vol) 175 (PC).
4. AIR 1938 Pat. 423 + AIR 1914 All. 323 (DB).
5. 26 Bom. 374 (DB). (Easement in respect of new windows is different from that in respect of old windows.) + AIR 1926 Nag. 474 + AIR 1920 Cal. 268 (DB) + 65 Ind Cas 579 (DB) (Cal). (User of a way for horses may include the right to lead smaller animals as well but not larger animals or loads.) + 19 Ind Cas 981 (All) (Passage used for the sweepress, maids and ladies of a household could not be used as a passage for males also.) + AIR 1924 Lah. 387. (Defendant acquired right to use roof over plaintiff's rooms as open space. He will not be justified in building over that portion and increasing burden on servient tenement) + 97 Ind Cas 169 (DB) (All) + AIR 1925 Bom. 446 (DB). (No easement can be claimed to spread branches or roots of tree on neighbour's land.) + 5 Nag. L.R. 52 (Do.).
6. 7 Bom. L. R. 73.

course of enjoyment the Municipality made a rule that municipal servants should clean privies daily and such servants began thereafter to cleanse *A's* privy daily. The easement did not become any different.[7] Where the same channel was used to take water from a tank, but the water was taken through different openings, the easement did not become different.[8]

Dominant owner and trespasser. Though an enjoyment by the dominant owner for less than twenty years does not give him any right against the servient owner, he has sufficient interest as against trespassers to maintain a suit against them for relief.[9]

Calculation of twenty years. It is the filing of the suit that enables the easement to be acquired.[10] Therefore the period of twenty years or more of enjoyment must end within two years before the institution of the suit.[11] Where construction of last floor was made in 1964 the suit was filed on 22-10-69. It was held that the suit was instituted much beyond the said period of two years mentioned in the above section.[12]

Customary right of easement. Requirement of twenty years user is not applicable to an easement that may be acquired by custom.[13]

Taking of enjoyment of easements. The principle that one trespasser cannot tack on his possession to that of another for claiming a prescriptive title to the ownership of the property does not apply to easements.[14] Therefore it is not necessary that the same person or individual should have enjoyed the easement for the whole of the twenty years.[15] In such cases one can rely on the user of his predecessor-in-interest to complete the period under section 26 of the Limitation Act.[16]

17. Easement against Government. The words "belongs to the Government" refer to the period during which the easement is enjoyed and not to the time of the suit.[17] If the property is in the ownership of the Government on the date when the claim is made sub-section (2) will apply, even though the property may be in the possession of a tenant or other person with a limited right.[18] But if on the date of the suit Government is not the owner but has transferred the property, the sub-

7. 13 Cal. 136 = 13 Ind. App. 77 (P.C).
8. 13 Cal. L. Jour 670 (DB).
9. AIR 1916 Mad. 442 (DB) + 34 Mad. 173 (DB) + AIR 1914 Sind 24 = 8 Sind L. R. 218 (DB).
10. AIR 1929 Cal. 542 = 56 Cal. 927 + AIR 1920 Mad. 541 (DB) + AIR 1916 Mad. 1001 (DB). (Case under Easements Act) + AIR 1916 Sind 29 = 9 Sind L. R. 101 (DB) + AIR 1923 Oudh 29.
11. 1973 DLR 438 + AIR 1914 All 68 (DB) + AIR 1915 Bom. 284 = 40 Bom. 401 + 1878 Pun. Re. No. 25. p. 112 + AIR 1919 Cal. 357 (DB).
12. 1973 Dhaka L.R. 438.
13. 2 Bom. L. R. 454 (DB) + 20 Mad. 389 (DB) + 20 Ind. Cas. 467 (Oudh) + AIR 1945 Pat. 118 (DB) + AIR 1946 Cal. 444.
14. AIR 1937 Nag. 38.
15. AIR 1937 Nag. 38 + AIR 1922 Upp. Bur 23 = 9 Upp. Bur. Rul. 90 + AIR 1918 Oudh 296 = 21 Oudh Cas. 78.
16. PLD 1959 Dacca 491 = 11 DLR 97.
17. AIR 1918 Mad. 120 = 41 Mad. 622 (DB) + AIR 1942 Lah. 124 = ILR 1943 Lah. 129 (DB).
18. AIR 1934 Mad. 575 + AIR 1924 All 724 + AIR 1928 Oudh 17.

section will not apply.[19] In such a case a person claiming an easement against the transferee from the Government would have an option. He could either base his claim upon user for a period of 60 years against the Government and transferee as such of the Government, or if he so preferred he could ignore the period of prescription against the Government and base his claim entirely upon user for a period of 20 years while the property was in the possession of the transferee.[20]

18. Plea of easement. A plea of easement should be taken at the earliest and must clearly state that easement is claimed by prescription. A claim to a right on a ground other than that of easement by prescription is not covered by this section. Thus a plea that the party has been using water from a particular source from time immemorial does not amount to setting up a right of easement.[1] Similarly where a suit is merely to establish a right of ownership of property, it is not competent for the Court to enter into and decide the question of a right to an easement over such property.[2]

Alternative pleas. A party can set up alternative claims to ownership of the servient tenement, and to an easement thereon.[3] But where suit is merely to establish a right of ownership of property, it is not competent for the Court to enter into and decide the question of a right to an easement over such property.[4]

Plea cannot be taken in second appeal. A plea of prescriptive right cannot be taken for the first time in second appeal.[5]

19. Onus of proof. The onus is on the claimant to an easement to prove all the points necessary to establish an easement under this section.[6]

Where an obstruction is proved to have taken place, the burden is on the person obstructed to show that he did not submit to or acquiesce in it.[7]

20. Parties to suit. A suit for a declaration of a right to an easement should be instituted against all the owners of the servient tenement where there are several of them.[8] But for a suit to remove an obstruction created by one of the owners of the servient tenement only, the others are not necessary parties.[9]

Where several persons are separately affected by the use of a right by the dominant owner, and he is obstructed in the exercise of his right, he can sue only the owner of the servient tenement next to him. If he succeeds and the servient

---

19. AIR 1929 All. 382 + AIR 1942 Lah. 124 = ILR 1943 Lah. 129 (DB).
20. 4 Sau L.R. 73.
1. AIR 1923 Lah. 605.
2. 15 Mad. 489 (DB).
3. AIR 1939 Bom. 149 = ILR 1939 Bom. 140 (DB) + AIR 1939 Sind 110 = ILR 1939 Kar. 307 (DB) + 34 Cal. 51 (FB) + AIR 1930 Pat. 7 (DB).
4. 15 Mad. 489 (DB).
5. AIR 1928 Nag. 203.
6. AIR 1939 Sind 39 + AIR 1958 Orissa 248 = ILR 1958 Cut. 104. (Person claiming right of way should prove that user was as of right) + AIR 1925 Lah. 297 + AIR 1927 Lah. 885 + 1890 Bom. P.J. 184 + AIR 1935 Pat. 188 + 8 Cal. W.N. 359 + AIR 1914 All. 407 + 1 Cal. 422 (DB).
7. AIR 1920 Nag. 26 = 16 Nag. L. R. 76.
8. AIR 1924 Cal. 369 + 1957 All. W.R. (H.C.) 186 + 1921 Cal. 622.
9. AIR 1915 Cal. 403 + AIR 1923 Pat. 65 = 2 Pat. 110 (DB).

owner is burdened by his act, it was for him to sue the person with respect to whom he is the dominant owner. Thus where *A* carries water by a drain on *B's* land which then goes on to *C's* land, *A* cannot sue *C* to allow water to flow to *C's* land. *A* can sue *B* for a right to discharge water on *B's* land. If *B* wants in turn to discharge it upon *C's* land, he must sue *C*.[10]

'Benamidar' of dominant owner may sue. A *benamidar* for the dominant owner can sue for removal of an obstruction to access to light and air to the dominant tenement.[11]

21. Acquisition of easement. It is the filing of the suit that enables the easement to be acquired.[12] Where the right is established in a suit it becomes absolute and indefeasible.[13] It cannot thereafter be challenged on any ground of convenience or necessity. Thus the fact that light exists from other sources than that which is acquired by prescription, is no answer to a suit for infringement of a prescriptive right to light and air which has been established.[14]

Excessive user of right. Where *A* has established a right of easement but makes an excessive user of it to which user he had not acquired a prescriptive right, the servient owner can obstruct and prevent the excessive user but he has no right to obstruct and prevent the rightful user.[15]

Interference with exercise of right. Where a right of way has been acquired, the mere stoppage of the passage in no way adversely effects the rights of the respondents already acquired by prescription. It is a settled principle of law that unless such right is intentionally abandoned, it does not affect the right already acquired by prescription.[16]

22. Revival of easement after separation of title in dominant and servient tenement. Easement may be revived, after it has been extinguished by the union of the dominant and servient tenements in one owner, by their subsequent severance, provided the easement is apparent, continuous and essential to the enjoyment of the dominant tenement.[17]

27. *Exclusion in favour of reversioner of servient tenement.* 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

---

10. 1930 Mad. W.N. 611.
11. AIR 1921 Cal. 560 (DB).
12. AIR 1929 Cal. 542 = 56 Cal. 927 + AIR 1920 Mad. 541 (DB) + AIR 1916 Mad. 1001 (DB) (Case under Easement Act) + AIR 1916 Sind 29 = 9 Sind L. R. 101 (DB) + AIR 1923 Oudh 29.
13. 3 Bom. 174 (DB). (Custom cannot override the provisions of this Act.) + AIR 1944 Pat. 262 = 23 Pat. 115 (DB). (Mortgagee whose mortgage was prior to suit not impleaded--Decision does not bind mortgagee).
14. 39 Cal. 59 (DB) + AIR 1928 Pat. 106.
15. AIR 1929 Cal. 350 (DB).
16. PLD 1981 SC (AJ&K) 124 = PLJ 1981 SC (AJ&K) 49.
17. AIR 1923 Cal. 8 = 50 Cal. 356 (DB).

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.

Illustration

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

Synopsis

1. Person entitled.
2. Limitation for suit.

1. **Persons entitled.** The section operates only for the benefit of the person entitled on determination of the limited interest. Any other person can make use of the section to extend the period of limitation. Thus where a Hindu widow in possession makes a transfer of the land in favour of another by virtue of her powers as representing the estate, the transferee is not a "person entitled on the determination of the interest" of the widow.[18]

2. **Limitation for suit.** Where in a suit for a declaration that the defendants have not acquired any right of easement of light and air over certain plot, the plaintiff contends that the period during which the tenants of the plaintiff and their predecessors were occupying the plots should be excluded in computing the prescriptive period, it is necessary for the plaintiff to plead and prove the leases and their term and their determination within three years of the suit.[19]

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.

Synopsis

1. Principle of section.
2. "At the determination of the period."
3. "Suit for possession."
4. "Any person."
5. "Any property."
6. "Shall be extinguished."
7. Plea of title.

1. **Principle of section.** This section is an exception to the general principle that limitation bars only the remedy and does not extinguish the right so far as suits for possession of property are concerned.[20] The Law of Limitation is

18. AIR 1918 Cal. 1028 (DB). (Obiter).
19. AIR 1952 Nag. 103.
20. AIR 1930 All. 858 = 52 All. 979 (DB) + AIR 1960 Cal. 446 + AIR 1959 Pun. 328 = ILR 1958 Punj. 2356 + AIR 1957 Bom. 178 = ILR 1958 Bom. 39 (DB) + AIR 1957 Ker. 117. (Loss of right of redemption—Right to recover rent is also lost) + ILR (1955) 1 All 128. (The Law of Limitation only bars the remedy of a person by means of a suit; it does not deprive him of

different from the law of prescription. Whereas the latter prescribes the period on the expiry of which not only the judicial remedy is barred but a substantive right is extinguished by one and acquired by the other, the former does not destroy the right but only extinguishes the remedy. Except in cases covered by sections 26 and 28 of the Limitation Act, 1908, the Law of Limitation only takes away the remedy by section or by set off.[1] The Law of Limitation as regards possession and dispossession of property, has always been a law of prescription.[2]

The effect of section 28 of the Limitation Act, 1908, is that after the efflux of the period prescribed by the Act "for the possession of any property" the right of the owner in that property is extinguished. This is different from merely barring the right for the enforcement of the right as in the case of a mere "Chose-in-action" as distinguished from a right in property.[3]

Muslim Law. Islam does not permit usurpation of one's right. But if a person neglects or chooses not to press his claim within prescribed period, machinery of law will refuse to help him. Therefore fixing a time limit for presenting or proving a particular claim, is not repugnant to injunctions of Islam.[4]

2. "At the determination of the period." An owner of property does not lose his right to it merely because he happens not to be in possession of it for twelve years but only when somebody else is in possession against whom a suit for possession could have been filed but had not been filed within the time prescribed.[5] Where the names of the plaintiffs and defendants are shown in the record as owning the land in equal shares but the acts of the appellants or their forefathers show that they had always been treating the land in dispute as their own because they had been keeping the same under their possession as owners. It was held that they had acquired right of ownership in the land by prescription.[6] Where the owner filed a suit for possession before the defendant had acquired any right by prescription, the question of acquiring title by prescription did not arise.[7]

Period must be prescribed by Limitation Act. The section applies where the period for institution of a suit is provided for in the Limitation Act itself and not in any other law for the time being in force. This is clear from the word "hereby" used in the section.[8]

---

his right if it can be exercised in any other manner than by means of a suit) + AIR 1954 Trav-Co. 451 = ILR 1954 Trav-Co. 267 (DB) + AIR 1950 All 7 = ILR 1950 All 564 + AIR 1949 All 195 = ILR 1949 All. 331 (DB) + AIR 1949 East Punj. 29 = ILR 1948 East Pun 365 (DB) + AIR 1947 Bom. 375 = ILR 1947 Bom. 143 (DB) + AIR 1924 All. 551 = 46 All 775 (FB) + AIR 1918 Mad. 657 (DB) + AIR 1931 Lah. 668 (DB) + AIR 1937 Sind 273 = 31 Sind L. R. 180 (DB) + AIR 1940 Nag. 49 = ILR 1940 Nag. 348 (FB). (The section provides that the bar of the remedy shall operate to extinguish the right) + AIR 1943 Bom. 265 (Do.).

1. PLD 1981 Pesh. 46 (SB).
2. AIR 1929 Cal. 149 (DB) + AIR 1941 Cal. 223 = ILR (1940) 2 Cal. 393 (DB).
3. PLD 1975 SC 311.
4. PLJ 1989 FSC 74 = NLR 1989 SD 826.
5. PLD 1975 SC 311 + AIR 1921 Bom. 368 = 45 Bom. 1020 (DB) + AIR 1944 Oudh 250 = 19 Luck 531 (DB) + AIR 1926 Oudh Cas 313 = 29 Oudh Cas. 131 + AIR 1925 Cal. 981 (DB).
6. 1981 CLC 812 (AJ&K) (DB).
7. 1983 CLC 934 (DB).
8. PLD 1969 Lahore 404.

Limitation of institution of suit. The words "at the determination of the period" etc., imply that limitation has begun to run against the person for instituting the suit and has expired.[9] This section would not apply where the period to file an application for possession has lapsed.[10]

Where a person could not or need not have sued for possession, there is no question of any determination of the period limited to him for instituting a suit for possession.[11] Thus where property is in possession of usufructuary mortgagee and a third person trespasses on such property, the mortgagor cannot sue the trespasser for possession, that right accrues to mortgagor only from the date of redemption. Therefore question of expiry of limitation does not arise till after redemption.[12] Where a person as tenant is entitled to be in possession for a particular period, a person entitled to property after the expiry of the period cannot sue for possession before such expiry. The right of the person entitled to the property cannot be extinguished by a failure to sue for possession before the expiry of the term.[13]

Mortgaged evacuee property. Limitation for redemption of a mortgage is 60 years in ordinary cases but in case of evacuee property limitation time of 60 years for redemption of mortgage relating to evacuee property, ceased running on 1-3-47 when property stood vested in Custodian by operation of law. It re-started only after date of allotment of mortgaged evacuee property under Settlement Laws. A transferee under Settlement Laws cannot avail of benefit of Art. 148 and S. 28 where after exclusion of time between 1-3-47 and date of transfer total period does not exceed 60 years.[14]

Defendants relying on his possession in defence. The section cannot apply where a person in possession as a defendant seeks to rely upon his possession as a defence to the suit.[15]

Attached property. Where plaintiff's property is under attachment under S. 146 of the Criminal P.C. his title cannot be extinguished, however long the attachment may continue.[16]

---

9. AIR 1935 Bom. 326 = 59 Bom. 502 + AIR 1920 Lah. 504.
10. PLD 1969 Lahore 404.
11. AIR 1935 Mad. 914 = 59 Mad. 51 + AIR 1943 Oudh 296. (The section refers to a suit by a person who is capable of instituting a suit and not one suffering under any disability.) + AIR 1915 Cal. 653 (DB). (Where possession of defendant in law is possession of plaintiff--Plaintiff is not bound to sue for possession) + 13 Mad. 490 (DB) + AIR 1914 Bom. 296 = 38 Bom. 53 (DB).
12. AIR 1935 All. 542.
13. PLD 1923 P.C. 118 = 50 Ind. App. 202 = 26 Oudh Cas. 231 = 45 All. 419 + 58 Mad. L. Jour 226 (P.C.).
14. NLR 1988 CLJ 23 = PLD 1987 Pesh 125 = PLJ 1987 Pesh 176 + PLD 1986 SC 35 = PLJ 1986 SC 1.
15. PLD 1969 Pesh 161 = PLR 1960 (1) W.P. 657 + AIR 1928 Cal. 163 = ILR (1938) 2 Cal. 328 (DB) + AIR 1949 East Punj. 29 = ILR 1940 East Punj. 365 (DB) + AIR 1935 Bom. 326 = 59 Bom. 502 + AIR 1916 Lah. 229 = 1916 Pun Re No. 1 (DB) + 27 Mad. 28 (DB) + AIR 1916 Mad. 350 = 38 Mad. 321 (DB) + AIR 1931 Lah. 668 (DB) + AIR 1926 Nag. 99 + AIR 1921 Bom. 257 = 45 Bom. 45 (DB).
16. 26 Mad. 410 (DB) + AIR 1929 Mad. 38 (DB).

Right extinguishes on expiry of full period of limitation. The title of the true owner is not extinguished in favour of the wrongdoer before the full period prescribed for a suit for possession has expired.[17]

3. **"Suit for possession."** The section in terms applies only where suits for possession of property become barred by limitation.[18] Where a mortgagee of land for over 60 years does not bring a suit for possession of land and the land remains in the possession of the mortgagors the title of the former is extinguished by virtue of this section.[19] It does not apply to an application for possession,[20] or to an application for execution of a decree.[21] Therefore where a person in possession has obtained a declaratory decree as to his ownership, execution of the decree was not required at all and decree though not executed, was yet alive and effective *qua* rights acknowledged in it.[22] Where the decree-holder had obtained a decree for possession in a pre-emption suit but he did not apply for execution within the period of limitation, his right and title in the property which he acquired by virtue of the decree for pre-emption was not extinguished. He continued to be the owner of the land notwithstanding that he did not file an application for execution. Failure on the part of the decree-holder to take delivery of possession within the time limited by Article 182 of Schedule 1 of the Limitation Act only bars his remedy to seek assistance of the Court in order to put him into possession. In spite of his failure in that behalf he may get into possession by an amicable arrangement with the judgment-debtor or in any other way.[23]

Bar of proceedings other than suits, if extinguish rights. Where proceedings which must precede a suit or which almost amount to suits are barred by limitation, the right which is the subject of such proceedings is extinguished. Thus where a person is bound to set aside a document before he can sue for possession a failure to sue to set it aside within the time prescribed will extinguish his rights to the property.[24] Similarly as a suit for recovery of possession on redemption of a mortgage on the property is virtually a suit for possession, on the expiry of the period of limitation for such suit, the mortgagor's title to the property will be

17. 7 Ind. App. 73 (P.C.)+AIR 1935 Pat. 164=14 Pat. 424 (DB)+AIR 1934 Pat. 485 (DB).
18. PLD 1969 Lah. 404+AIR 1918 Pat. 492=3 Pat. L. Jour 478 (DB)+AIR 1930 All. 866 (DB)+AIR 1929 Nag. L. R. 74 (DB)+1909 Pun Re. No. 69, p. 227+PLD 1969 Lah. 404.
19. PLJ 1984 Pesh. 89=PLD 1984 Pesh 202=1984 LN 784+PLD 1979 Pesh. 87=PLJ 1979 Pesh. 143.
20. PLD 1973 Lah. 207 (DB)+25 Mad. 300 (FB)+AIR 1955 All. 526=ILR (1956) 1 All. 209 (DB). ('Suit' does not include application for restitution under S. 151, Civil P.C.)+AIR 1955 Cal. 400 (DB). (Auction-purchaser not taking possession within three years of confirmation of sale--Title not extinguished.)+AIR 1955 Cal 369=ILR (1955) 1 Cal. 295 (DB). (Article 180 merely prescribes period of limitation for an application for delivery of possession to the auction-purchaser and hence S. 28 will not apply.)+AIR 1951 Cal. 481=ILR (1949) 1 Cal. 378 (DB)+35 Bom. 79 (DB)+11 Bom. L.R. 1093 (DB)+1 Cal. W.N. 569 (DB)+1887 Pun Re. No. 3, p. 7 (DB)+AIR 1944 Cal. 328 (DB). (Failure to make application under O. 21, R. 95 does not extinguish title).
21. 1981 CLC 1202.
22. PLJ 1989 Lah. 99=PLD 1989 Lah. 103+AIR 1930 Lah. 803.
23. PLD 1973 Lah. 207 (DB).
24. AIR 1933 Bom. 42 (DB)+AIR 1919 Cal. 404 (Suit to set aside invalid alienation by certificated guardian)+AIR 1918 Mad. 724=41 Mad. 102 (DB)+21 Mad. L. Jour 1041 (DB)+AIR 1914 Oudh 338=17 Oudh Cas. 52.

extinguished.[25] A suit for pre-emption is a suit for possession within the meaning of this section.[26]

Period if must be prescribed under the Act. This section does not apply to suits for possession for which no limitation is provided in this Act.[27] But the principle of the section is of general applicability and has been applied to cases under local laws for which no limitation is provided in this Act.[28]

Instances of suits not covered by this section.

(*a*) Suit to enforce maintenance.[29]

(*b*) Suit for realization of a debt.[30]

(*c*) Suit for partition by a co-sharer.[1]

4. **"Any person."** The section applies to any person, irrespective of the literacy or gender of the person involved.[2] Therefore a title by adverse possession can be obtained against a *math*. The fact that during the period of prescription the *math* had no lawful manager will not affect the operation of the section.[3]

Minors. Where time has begun to run before minors acquired a right in the property. When they acquired a cause of action to seek possession they did not move the Court for possession. The disability provisions of sections 6 to 8, can be of no avail to minors and title to suit land in such case is extinguished by virtue of S. 28.[4]

5. **"Any property."** To fall under this section the property must be one recognized by law.[5] The following have been regarded as property for which a title can be acquired by the operation of this section:

(*a*) An exclusive right of fishery.[6]

(*b*) A right to maintain a projection over the neighbour's land.[7]

(*c*) A right to levy assessment on rent-free lands.[8]

(*d*) A right to a Buddhist monastery.[9]

---

25. AIR 1925 Bom. 339 (DB).
26. AIR 1934 Oudh 303=9 Luck 475.
27. PLD 1969 Lah. 404+AIR 1935 Mad. 914=59 Mad. 51. (Suit brought in the revenue Courts.)+21 Mad. 134 (DB) (Do.)+AIR 1943 Oudh 296. (Suit under Oudh Rent Act).
28. 14 Cal. L. Jour 292 (DB)+AIR 1949 East Punj. 414+AIR 1933 Pat. 6=11 Pat. 701 (DB)+21 All. 204 (DB)+AIR 1935 Lah. 787=II.R 1937 Lah. 517 (DB)+AIR 1930 Cal. 225 (DB)+27 All 372.
29. AIR 1924 Cal. 364 (DB).
30. AIR 1962 Punj. 256 (FB).
1. AIR 1961 Bom. 266.
2. 1979 CLC 882.
3. 18 Bom. 507 (DB).
4. 1979 CLC 882 (SC AJ&K).
5. 28 Bom. 399 (DB).
6. AIR 1932 Cal. 300=59 Cal. 344+AIR 1923 Pat. 58=1 Pat. 674 (DB)+AIR 1930 Mad. 679.
7. AIR 1925 Bom. 335.
8. AIR 1921 Bom. 303=45 Bom. 694 (DB).
9. AIR 1923 Rang. 40.

(*e*) A right to non-transferable occupancy holding.[10]

(*f*) A jagir (right to collect rent).[11]

(*g*) A right to an office of profit.[12]

A "right to property" would include a right to the joint enjoyment of the property as well as a right of survivorship to the property.[13]

Permanent tenancy and occupancy rights. The opinion on the question whether right of occupancy tenancy is an interest in immovable property is uniform. Being a generally heritable and transferable right, though it may be subject to certain conditions, it is undoubtedly an interest in the immovable property.[14] Where a defendant took possession of suit land and continued in uninterrupted possession of the same for more than 12 years in assertion of his title as a tenant on due payment of rent; the suit was not brought within 12 years from the date of dispossession of the true owner. Suit by successor-in-interest of true owner to recover actual possession would be barred.[15] It follows that generally a permanent tenancy is subject to the right provided by Article 144 read with section 28 of the Limitation Act, but a contrary view may be taken in relation to a particular Statute of which the occupancy right claimed by a party by adverse possession, is a creation.[16]

Property must be immovable. This section is confined to immovable property.[17] Where in the case of immovable property a right to claim possession becomes time barred, title to the property itself is extinguished by virtue of S. 28. But in the case of movable property though the right to sue itself is extinguished yet the title does not cease to exist and therefore, where a suit is brought for declaration it is possible to decree the claim for compensation while holding that the claim for declaration is time barred.[18] Similarly a debt does not cease to be due because it cannot be recovered after the expiration of the period of limitation provided for instituting a suit for its recovery. In all personal actions, the right subsists although the remedy is no longer available.[19] A right to redeem a usufructuary mortgage is not property for the purpose of this section.[20]

6. **"Shall be extinguished."** Where a person who could have sued for possession of property allows the period of limitation prescribed for the suit to expire, his title is destroyed.[1] Thus when an order of ejectment from property is

10. PLD 1961 Dacca 57 = 12 DLR 552.
11. AIR 1961 Pat. 219 (DB).
12. 23 Mad. 271 = 27 Ind. App. 69 (PC). (Where land is attached to the Office as appurtenant to it and the right to the Office is barred the right to the land also will be extinguished).
13. AIR 1921 Mad. 24 = 44 Mad. 131 (DB) + AIR 1937 All. 300.
14. PLD 1978 Lah. 1228 = PLJ 1978 Lah. 475 = 1978 Law Notes 613.
15. 1970 DLC 228.
16. NLR 1979 Rev. 43 (Lah.).
17. AIR 1939 Bom. 494 = ILR 1939 Bom. 685 + AIR 1922 Pat. 346 = 6 Pat. L. Jour 488 (DB).
18. PLD 1986 AJ&K 158 + AIR 1956 All. 680 (DB).
19. PLD 1986 AJ&K 158 + AIR 1959 Punj. 328 = ILR 1958 Punj. 2356 (AIR 1962 Punj. 256 (FB)).
20. ('97) 20 Mad. 305 (DB).
1. PLD 1973 Lah. 206 (DB) + AIR 1963 Punj. 393 + AIR 1942 P.C. 64 = 69 Ind App 137 = ILR 1942 Kar. (P.C.). 166 + AIR 1924 P.C. 121 = 51 Ind. App. 171 = 5 Lah. 192 + AIR 1929 P.C.

made against a tenant his possession over the same thereafter becomes hostile and unauthorised and if the possession is not obtained by the owner or the landlord from the tenant within twelve years of the date of decree, then he loses his right to execute the decree and the tenant can set up a claim of adverse possession.[2] Where the defendant a daughter of the deceased continued to hold exclusive possession of property left by her father for more than twelve years under claim of custom though existence of such custom in family is not proved and the reversioners fail to prove joint possession; a suit for possession of such property by reversioners would be barred by limitation.[3] It must however be noted that failure to exercise a non-existing right cannot result in an extinguishment of the rights of the plaintiff in the property as contemplated by S. 28.[4]

The extinguishment of the title of the rightful owner will operate to give a good title to the wrong-doer.[5] Where the right of the person affected by the Act is extinguished under S. 28, he will be left with no right which he can enforce.[6] Where the title of a person is extinguished in favour of the wrongdoer, it is not revived by that person again getting into possession.[7] In the latter case the person who has perfected his title by adverse possession can sue for restoration of possession through Court from the true owner.[8]

Effect of acquisition of title. A person acquiring a title by the operation of this section can maintain a suit for :

(*a*) A declaration of his title.[9]

(*b*) Possession of the property if he is dispossessed of it.[10]

Nature of right acquired. The acquisition of the title by the wrongdoer is the corresponding effect of the right to the property being extinguished, if the one does not take place, the other does.[11] Thus where *A* mortgages by a simple mortgage his property to *X*, and *A* is thereafter dispossessed by *B* who remains in

---

228 = 51 All. 675 = 56 Ind. App. 330 + AIR 1958 Pat. 217 = 36 Pat. 1198 (DB) + AIR 1956 Pat. 193 + AIR 1957 Pat. 502 = 36 Pat. 753 + AIR 1955 Pat. 292 (DB) + AIR 1954 Trav-Co. 451 = ILR 1954 Trav-Co. 267 (DB) + AIR 1954 Hyd. 45 = ILR 1953 Hyd. 593 (FB) + AIR 1949 Mad. 826 + AIR 1941 Pesh. 76 + AIR 1942 All. 42.

2. 1990 MLD 83.
3. PLD 1971 AJ&K 108.
4. AIR 1958 Ker. 178 = ILR 1958 Ker. 389 (FB).
5. AIR 1942 P.C. 64 = 69 Ind. App. 137 = ILR 1942 Kar. (P.C.) 166 + 33 Pat. 955 + ILR 1950 Nag. 877 (DB) + AIR 1941 Pat. 181 = 19 Pat. 852 (DB) + AIR 1940 Nag. 49 = ILR 1940 Nag. 348 (FB) + AIR 1938 Lah. 369 (FB) + AIR 1942 All. 42. (Stranger in adverse possession without explanation--Possession prima facie must be presumed to be as full owner) + AIR 1931 All. 635 = 54 All. 299 (FB) + AIR 1943 Bom. 265.
6. AIR 1958 Assam 93 = ILR (1956) 8 Assam 166 = 1958 Cri. L. Jour 1125 (DB) + AIR 1958 S.C. 328 = 1958 S.C.R. 1122 + AIR 1957 All. 575 (DB).
7. AIR 1963 A.P. 121 (DB) + AIR 1935 Pat. 164 = 14 Pat. 424 (DB) + AIR 1920 Cal. 800 (DB) + AIR 1942 All. 42 + 21 All. 204 (DB) + AIR 1930 Cal. 225 (DB) + AIR 1927 Nag. 401 + AIR 1928 Nag. 280 + AIR 1935 Lah. 787 = ILR 1937 Lah. 517 (DB) + AIR 1934 Pat. 485 (DB) + AIR 1925 Oudh 20 (DB) + AIR 1926 Rang. 95.
8. PLJ 1987 SC 142 = PLD 1987 SC 130 = 1987 PSC 265.
9. 2 Cal. 418 (DB) + AIR 1919 Pat. 447 (DB) + AIR 1915 Sind 4 = 9 Sind L.R. 1 (DB).
10. AIR 1920 Pat. 538.
11. AIR 1931 All. 635 = 54 All. 299 (FB) + ('09) 3 Sind L.R. 228 (FB) + AIR 1953 Madh B 184 (DB) + ('97) 21 Bom. 509 (DB).

adverse possession for twelve years, *A*'s title is extinguished. But *A*'s title is only to the equity of redemption in the property and it is only that right that will be extinguished. The right of *X* in the property cannot be extinguished.[12]

By virtue of S. 28 of the Limitation Act the limited right of a mortgagee can be acquired by adverse possession. It can be so acquired even if a mortgagee has obtained possession under a void or inoperative mortgage deed.[13]

Right claimed by adverse possession. In cases where title is claimed on basis of adverse possession it was imperative for person setting up such title to disclose actual owners against whom adverse title was claimed and whose right had been extinguished under S. 28. Where person in possession neither established an overt act, nor gave notice nor even indicated to owner that he denied his title over suit land. Evidence on record did not disclose claim to suit land as open, overt and hostile to owners. Defendants alleged in written statement that they had acquired title in property by adverse possession and that they inherited such property as owners. The Court refused to accept that any title had been acquired by adverse possession.[14] Where an adverse possessor does not claim total right of the true owner, he would acquire only those rights which he claims and no more. Thus where, though the owner has absolute title to the property, the adverse possessor claims to be entitled only to a limited interest, it is only such interest of the owner that is extinguished.[15]

Rights accessory to ownership--effect on. Where the right to property is extinguished, rights accessory thereto and inseparable from it would also be extinguished.[16] Thus a right to partition and recovery of a share cannot be claimed where the right to sue for joint possession is lost.[17] Where a right to recover possession of land from tenant is lost the landlord cannot recover rent from any period after the extinguishment of his right to property;[18] and even for a period prior to such extinguishment.[19]

Order under S. 145, Cr.P.C.--Suit not brought within three years. Where an order under S. 145, Criminal P.C. is passed declaring one of the two parties to be entitled to and in exclusive possession of the property in dispute and no suit for possession by the other party is filed within the time limited by Art. 47 of the Act,

12. AIR 1916 Mad. 990=39 Mad. 811 (FB)+('12) 34 All. 640 (DB)+AIR 1918 Cal. 933=44 Cal. 425 (DB).
13. AIR 1960 Raj. 1=ILR (1959) 9 Raj. 1121 (SB). (AIR 1958 Raj. 102. *Overruled;* View in AIR 1938 Pat. 479, held obiter and *dissented from*).
14. 1985 CLC 2238.
15. AIR 1939 Pat. 587 (DB)+AIR 1930 Lah. 504=11 Lah. 424 (DB)+AIR 1928 Cal. 130=55 Cal. 448 (DB)+AIR 1927 All. 274+AIR 1929 Lah. 327+AIR 1925 All. 369+35 Cal. 470 (DB)+('94) 18 Bom. 509 (DB)+('12) 16 Ind. Cas. 960 (DB) (Mad.)+AIR 1933 Oudh 92=7 Luck. 320 (DB)+AIR 1914 Nag. 81=10 Nag. L.R. 35+AIR 1916 Oudh 156.
16. AIR 1930 Nag. 142=26 Nag. L. R. 160 (A right to property includes a right to its joint enjoyment.)+AIR 1957 Ker 117. (Loss of right of redemption--Right to recover rent is also lost.)+AIR 1921 Mad 24=44 Mad. 131 (DB). (A right of survivorship is incidental to the right to joint possession).
17. AIR 1913 Cal. 612 (DB).
18. AIR 1935 Mad. 377 (DB).
19. ('03) 26 Mad. 410 (DB). (Extinguishment operates retrospectively.)+AIR 1930 Nag. 142=26 Nag. L. R. 160.

his right is extinguished whether such right is for exclusive possession or for joint possession.[20] But where the party in possession does not claim to be in adverse possession but claims possession as a licensee only, the licensee's right does not ripen into full owner's right; and the onus is on party asserting adverse title that conditions necessary under Art. 47 and S. 28 are satisfied.[1]

7. Plea of title. Where a plaintiff pleads title it is not necessary for him to say that the defendant has lost his title by adverse possession,[2] and he must state all the material facts on which the plea has been based.[3] Thus where land is in possession of Receiver under the Criminal P.C., S. 145; in a suit for a declaration of title the defendant must prove that plaintiff's title under first settlement was extinguished and title to the land was completed by the defendant by adverse possession under S. 28.[4] But that does not mean that even where a party has acquired title by adverse possession he can be denied his right if he does not plead it.[5]

PART V

SAVINGS AND REPEALS

29. *Savings.* "[(1) Nothing in this Act shall effect section 25 of the 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 section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to

---

20. AIR 1964 All. 377 + ('12) 15 Ind. Cas. 24 (DB) (Mad) + AIR 1948 Nag. 382 = ILR 1948 Nag. 50 (DB) + AIR 1937 All 300 + AIR 1935 Pat 164 = 14 Pat. 424 (DB) + AIR 1930 Nag. 142 = 26 Nag. L. R. 160 + AIR 1930 Cal. 612 (DB) + AIR 1920 Mad. 545 (DB) + AIR 1943 Cal. 67 = ILR (1942) 2 Cal. 332 (DB). (*But see* AIR 1964 A.P. 109 (DB)).

1. AIR 1944 Oudh 250 = 19 Luck 531 (DB) + AIR 1958 Pat. 217 = 36 Pat. 1198 (DB). (If, however, when the Magisterial order is passed, the plaintiff had no legal right to institute a suit to ejectment against the defendants, and he obtained such a right only after the passing of the Magistrate's order, then in such a case of course, Art. 47 would not bar the subsequent suit.) + AIR 1957 Pat. 213 (The limited interest of a *zorpeshgi* mortgage like any other interest in property can be acquired by prescription under S. 28) + AIR 1946 Bom. 193.

2. ('01) 24 Mad. 387 = 28 Ind. App. 81 (P.C.).

3. AIR 1949 Nag. 265 = ILR 1948 Nag. 978.

4. AIR 1942 P.C. 47 = ILR 1942 Kar. (P.C.) 122.

5. 7 DLR 94 + 24 Mad. 387 (P.C.) + AIR 1942 P.C. 64.

6. Subs. by the Indian Limitation (Amendment) Act, 1922 (10 of 1922), S. 3, for the original sub-section (1).

which, they are not expressly excluded by such special or local law; and

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

[7][(3)] Nothing in this Act shall apply to suits under the Divorce Act.

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

Synopsis

1. Sub-section (2).
2. "Expressly excluded."
3. "The remaining provisions of this Act shall not apply."
4. Special or local law.
5. Applicability of the Act to periods fixed by C.P.C.
6. Sub-section (3).

1. Sub-section (2). The whole of sub-section (2) should be read together, and it should be construed as a whole. It would be most unjust if this sub-section is divided into two portions.[8]

Section 29 (2) embodies the general principle enunciated in the well-known maxim *"generalia specialibus non-derogant"*.[9] Therefore where special or local law provides for a period different from the period prescribed by the first schedule, provisions of the Limitation Act will not apply to the extent expressly specified in this section.[10] In that case only section 4, section 9 to 18 and section 22 of the Limitation Act shall be deemed to apply unless the application is expressly excluded by the special law and the remaining provisions of the Limitation Act including section 5 of the same shall not apply.[11] Before the amendment of the W.P. Urban Rent Restriction Ord. repealing the provision as to second appeal, it was held that the time allowed for appeal by sub-section (4) of section 15 of West Pakistan Urban Rent Restriction Ordinance, 1959 is thirty days, whereas under Article 156 of the Limitation Act, it is ninety days. The time allowed for filing the second appeal by the special law, *i.e.*, West Pakistan Urban Rent Restriction Ordinance, 1959, is, therefore, different from that given in the Limitation Act. In

7. The original sub-section (2) and (3) were re-numbered as (3) and (4), *ibid.*
8. PLD 1964 Karachi 399 + AIR 1964 S.C. 1099.
9. AIR 1960 Raj. 196 = ILR (1959) 9 Raj. 614.
10. PLD 1973 Quetta 35 + PLD 1955 Lah. 288 = PLR 1955 Lahore 451. (Limitation provided under the Punjab Urban Rent Restriction Act--Limitation Act not applicable) + PLD 1971 AJ&K 33 (DB). (Land Acquisition Act is Special Act for the purposes of this section) + AIR 1940 Cal. 113 = ILR (1939) 2 Cal. 358 (DB). (Suit to recover possession of land claimed by plaintiff as raiyat is governed by S. 184, Bengal Tenancy Act, and not by S. 3 or S. 29 of this Act) + AIR 1960 Madh Pra. 184 (DB) + 1959-2 Andh W.R. 117 (DB) + AIR 1958 Raj. 48 = ILR (1957) 7 Raj. 927 = 1958 Cri. L. Jour 219 + AIR 1957 Cal. 483 = 1957 Cri. L. Jour 834 (DB). (The Mines Act is a special law dealing with mines so that S. 23 of the Limitation Act is expressly made inapplicable to cases under that Act) + 1957 M P L J 170 (Nag.).
11. 1987 Dhaka LR 164 (DB) + 1981 CLC 568 (DB) (Kar.).

such a situation, section 5 stands excluded by virtue of section 29 (2) of the Limitation Act, which permits the application of only sections 4, 9 to 18 and 22.[12]

Where the period prescribed by the special law is the same as that prescribed by the Limitation Act, this section will not apply.[13] The period of limitation may be different under two different circumstances. It may be different if it modifies or alters a period of limitation fixed by the first schedule to the Act. It may also be different in the sense that it departs from the period of limitation fixed for various appeals under the Act. If the first schedule omits laying down any period of limitation for a particular appeal and the special law provides a period of limitation, then to that extent the special law is different from the Act.[14] If a suit, appeal or application is made or filed after the period prescribed for it by a special or local law, it must be dismissed.[15]

Different limitation prescribed under Special Act and this Act. Where a period of limitation different from that prescribed by First Schedule to Limitation Act is provided by any special or local law, provisions of S. 3 of the Limitation Act, would apply as if such period provided in special law was prescribed therefor in that 1st Schedule to the Limitation Act.[16] Under the Sind Rented Premises Ordinance the period of limitation for filing an appeal is different from the period prescribed by Art. 156; therefore as provided in section 29 (2), the provisions of section 3 thereof would apply to such situation, but subject to the exclusion contained in section 29 itself. When section 3 is applied, the provisions of sections 4 to 25 would get (normally) attracted by virtue of section 3. But if it is a case covered by section 29, the provisions of sections 4 to 25 would apply to the extent that any of them had not been excluded by the combined reading of clauses (*a*) and (*b*) of section 29 (2). These two clauses when read together in the context of the Sind Rented Premises Ordinance, 1979 exclude section 5 of the Limitation Act.[17] Similarly Article 168 of the Act which prescribes the period for filing an application for restoration of an appeal dismissed for non-appearance is not attracted. However in the absence of any specific Article in the Act being applicable to such applications, the same should be filed within a reasonable time, which would appear to be the period prescribed in the residuary Article 181, as three years.[18]

No limitation prescribed by special or local law. If a special or local law does not prescribe a period of limitation, S. 29 (2) has no application.[19] Therefore this section does not apply where the special or local law only provides for a mode of computing the period of limitation.[20] The intention of the Legislature while

12. PLD 1979 Lah. 917 = 1979 Law Notes 345.
13. 1981 CLC 568 (DB) + PLD 1973 Quetta 35.
14. AIR 1953 Bom. 35 = ILR 1952 Bom. 1083 (DB).
15. AIR 1933 Cal. 132 = 60 Cal. 618 = 34 Cri. L. Jour 299 (DB) + AIR 1924 Oudh 127 = 26 Oudh Cas. 324 (DB).
16. 1990 MLD 211 + PLJ 1986 Pesh 104 = PLD 1986 Pesh 195 (DB).
17. PLD 1982 SC 572 = PLJ 1982 SC 222 + 1983 CLC 2219 = NLR 1983 AC 341.
18. 1983 CLC 2219 = NLR 1983 AC 341.
19. AIR 1959 Bom. 294 = ILR 1958 Bom. 1177 (DB).
20. AIR 1941 Oudh 276 = 16 Luck 512 + ILR 1960 Mad. 397 (DB) + AIR 1954 All. 171 (DB) + AIR 1953 Ajmer 59 + AIR 1953 Cal. 50 = ILR (1954) 1 Cal. 147 (DB) + AIR 1953 Bom. 35 = ILR 1952 Bom. 1083 (DB) + AIR 1950 Mys. 13 (DB).

enacting Arts. 4 and 5, Sch. 1 of the Court-fees Act was that applications for review must be filed as expeditiously as possible and that if a litigant filed one on or before the 90th day, he would have a facility, that he could do so on payment of half the court-fee only. If the petitioner however, allowed this time to pass, then he is required to pay the full court-fees leviable on the plaint or memorandum of appeal as the case may be. Nothing contained in this sub-section really affects his conclusion as the sub-section must be held to make a provision for limitation only in so far as a special or local law may prescribe for any suit, appeal or application, a period of limitation different from that prescribed under the Limitation Act.[1]

Clause (a). Sections 4, 9 to 18 and 22 would apply in so far as and to the extent to which they are not expressly excluded by a special or local law.[2] Therefore the provision of section 14 of the Act are clearly applicable to the pre-emption suits in view of clause (*a*) of sub-section (2) of section 29 of the Act.[3] Similarly section 14 of the Limitation Act is applicable to proceedings before the Income-tax Authorities.[4] It may be that in a certain case the provisions of one of the sections mentioned in this sub-section cannot be applied because it does not contain the facts to which the provisions of that section can be applied or, in other words, there may be a case in which though due regard is to be had to the provisions of one of those sections, no effect can be given to its provisions. In such a case, it is not competent to the Court to modify the language of the section in order to give effect to its principle or to apply it by way of an analogy.[5]

Application to 'persona designata'. Section 29 makes no distinction between proceedings before a Court or a Tribunal as such provisions of the Act are applicable to proceedings before a Tribunal as well.[6]

2. "Expressly excluded." The expression 'expressly excluded' means an exclusion by express words, that is by express reference to the section and not exclusion as a result of a logical process of reasoning.[7] Thus if a special or local

1. ILR (1955) 5 Raj. 765.
2. PLJ 1982 Lah. 106 + PLD 1971 AJ&K 34 (DB) + PLD 1964 Kar. 399 + AIR 1960 Bom. 499 (Land Acquisition Act is special law—S. 12, Limitation Act, applies) + AIR 1964 SC 1099 + AIR 1960 Pat. 212 (DB) (Language of S. 64A, Motor Vehicles Act, must be read in the context of S. 12(2), Limitation Act.) + AIR 1963 Pat. 406 (do) + AIR 1956 All. 305 = ILR (1956) 1 All. 53 (FB). (There appears to be no justification for holding that S. 29 enlarges the scope of the provisions made applicable by it to computation of period of limitation prescribed under a special or local law beyond the scope plainly laid down in those provisions when they are applied for the purpose of computing the period of limitation under the Indian Limitation Act itself. AIR 1954 All. 252, *Rel. on:* AIR 1930 Pat. 14, *Dissented from:* AIR 1952 All. 816 and AIR 1953 All. 558, *Overruled.*) + AIR 1956 Madh B 54 (DB) + AIR 1956 Mad. 79. (Appeal under S. 17(1), Payment of Wages Act—S. 12 of the Limitation Act applies) + AIR 1956 Orissa 34 = ILR 1955 Cut 258 (DB). (Section 12 of the Limitation Act applies to the provisions of the Orissa Agricultural Income-tax Act.) + AIR 1955 Him Pra 12.
3. PLJ 1982 Lah. 106.
4. PLD 1976 Lah. 1339 = 1976 Law Notes 370 (DB).
5. AIR 1954 All. 252 = 1954 Cri. Jour 512.
6. 1983 CLC 2219 + PLJ 1983 Lah. 578 (*Persona designata* under the Payment of Wages Act) + AIR 1954 Cal. 520 (*Persona designata*).
7. AIR 1940 Cal. 305. (Section 15(2), Limitation Act, is not expressly excluded by S. 146 of the Bengal Local Self-Government Act) + AIR 1956 Pepsu 40 (DB) + AIR 1950 Assam 101 = ILR (1950) 2 Assam 181 (DB) + AIR 1930 Sind 93 = 24 Sind L. R. 344 (DB) (Section

law is a complete code in the matter of limitation or if the phraseology of the sections enumerated in S. 29 (2), Limitation Act, makes those sections inapplicable to proceedings under a special or local law, the application of those sections to special or local law must be deemed to have been expressly excluded.[8] The Mortor Vehicles Act is a special law prescribing by S. 6-A, a period of limitation for a revision petition under that section. The Limitation Act does not prescribe any period of limitation for a revision petition under S. 64-A of the Motor Vehicles Act. Section 29 (2), Limitation Act therefore applies to S. 64-A, Motor Vehicles Act, Sections mentioned in S. 29 (2) (*a*) apply to applications under S. 64-A, Motor Vehicles Act since they are not expressly excluded. The words "expressly excluded" in clause (*a*) of sub-section (2) of S. 29 mean specifically mentioned as "excluded" and not the exclusion inferred as a result of logical process of reasoning.[9]

3. **"The remaining provisions of this Act shall not apply."** The words "the remaining provisions of this Act shall not apply" appearing in clause (*b*) of section 29, sub-section (2) is very significant, provisions of sections 4, 9 to 18 and 22 are applicable to special law and other provisions including section 5 of the Limitation Act are not applicable unless those are made specifically applicable by the special law.[10] The phrase "shall not apply" only means that the remaining provisions shall not apply by virtue of this Act and is not a provision prohibiting a special or local law from making those sections applicable by express reference.[11] Thus section 5 is not (applicable to appeals filed under S. 18, Displaced Persons (Land Settlement) Act (XLVII of 1958),[12] or to Cantonments Rent Restriction Act.[13] But where no period of limitation different from that prescribed by Sch. 1 is indicated by the special or local law the provisions of S. 29 (1) will not apply so as to exclude the provisions of S. 5 from being applied.[14] Though this sub-section does not include any provision for cases where the same period is prescribed both in Sch. 1, Limitation Act and in the special law no need was felt for any such special provision and it was taken for granted that where the same period is prescribed the provisions of Ss. 3 to 25, Limitation Act will apply to such a case.[15]

---

167 of the Bombay District Municipal Act does not expressly exclude S. 15 (2), Limitation Act.) + AIR 1932 Bom. 259 = 56 Bom. 135 (DB) + AIR 1942 Cal. 544 (Words "and not afterwards" in S. 535 (2), Bengal Municipal Act, do not amount to express exclusion within S. 28 (2) (*a*).

8. 1990 SCMR 164 + AIR 1942 All 429 = ILR 1943 All. 84 (FB).
9. AIR 1961 Madhya Pradesh 75 (DB).
10. 1990 MLD 211 + 1987 Dhaka L.R. 164 (DB).
11. PLD 1970 Lah. 6 = PLR 1970 (2) W.P. 986 (DB) + AIR 1941 All. 207 = ILR 1941 All. 356 (DB). (S. 5, Limitation Act, does not apply to appeal under S. 29, Cantonments (House Accommodation) Act of 1923) + AIR 1958 Pat. 609 = 37 Pat. 1155 + AIR 1957 Andh Pra 473. (The words "remaining provisions of this Act shall not apply" would mean that they are not to apply *proprio vigore*) + AIR 1956 Mad. 79. (Appeal under S. 17(1), Payment of Wages Act) + AIR 1955 Pat. 430 = 34 Pat. 577 (DB).
12. PLD 1970 Lahore 6 = PLR 1970 (2) W.P. 986 (DB).
13. 1990 MLD 211.
14. AIR 1946 Mad. 351 (DB).
15. AIR 1955 Cal. 578 (DB).

The phrase 'the remaining provisions of this Act shall not apply' occurring in sub-clause (*b*) of clause (2) of S. 29, Limitation Act restricts the scope of S. 19 and is a clear prohibition of the use of it in cases governed by the special law.[16]

4. Special or local law. It is not permissible to use the definition of 'special law' in the Penal Code as a guide to the meaning of that expression in this Act.[17] A 'special or local law' means special or local legislative enactment for special or local circumstances.[18] It is the law which gives rise to special causes of action and which itself provides for the method of enforcement of rights conferred by a Special Act or for redress of injuries suffered by the application of the provisions of that Act.[19] It has been held that S. 15 of the Easements Act is special law.[1] For other instances of local and special laws please see the following cases.[2]

Civil Procedure Code and Criminal Procedure Code. Generally on a question of limitation, the Limitation Act would be a general Act and all other Acts, in so far as they deal with questions of limitation, would be special laws.[3] Civil P.C. is not a special law even where it deals with a question of limitation.[4] Similarly the Code of Criminal Procedure is a general law relating to procedure and not a special law within the meaning of S. 29.[5]

Letters Patent appeal. The letters patent and the Rules made thereunder are a special or local law within the meaning of this section.[6]

5. Applicability of the Act to periods fixed by C.P.C. Section 15 of this Act applies to the twelve years' period prescribed under S. 8 of the Civil P.C.[7] and that

16. AIR 1958 Madh Pra. 81.
17. 34 All. 496 (FB). (Provincial Insolvency Act is a special law).
18. AIR 1934 Pat. 353 (DB).
19. AIR 1952 Mad. 186 = ILR 1952 Mad. 421 (FB).
1. PLD 1967 Dacca 135 = 17 DLR 360.
2. PLD 1967 Kar. 151 (Carriage of goods by Sea Act) + 18 DLR 599 (Do.) + PLD 1961 Dacca 39 = 19 DLR 418 (Do.) + AIR 1959 All. 787 = 1959 Cri. L. Jour 1393. (Factories Act. S. 106--Limitation under computation--S. 12, Limitation Act applies) + AIR 1956 Mad. 79 (Appeal under S. 17 (1), Payment of Wages Act--S. 12, Limitation Act applies) + AIR 1956 Trav-Co. 113 = ILR 1955 Trav-Co. 83 (DB). (The invocation of the aid of S. 12, Limitation Act, for excluding the time occupied in obtaining a copy of the order of the District Registrar refusing certain document to be registered, is of no avail to the plaintiff to save his suit for a decree directing the document to be registered from the rule of limitation prescribed in S. 77 of the Registration Act) + AIR 1926 Rang. 135. (Land Acquisition Act) + AIR 1920 Cal. 14 = 47 Cal. 300 (FB). (Indian Registration Act, 1908) + AIR 1942 All. 429 = ILR 1943 All. 84 (FB). (Provincial Insolvency Act).
3. AIR 1951 Pat. 462 = 30 Pat. 126 (DB).
4. AIR 1939 All. 403 = ILR 1939 All. 647 (FB) + AIR 1952 Mad. 186 = ILR 1952 Mad. 421 (FB) + AIR 1930 Rang 228 = 8 Rang 380 (FB) + AIR 1922 Mad. 268 = 45 Mad. 785 (DB) + 34 All 496 (FB). (Civil Procedure Code is a general law--1 Cal. 226 = 3 Ind. App. 7 (PC), *followed*) + 18 Cal. 631 (DB) + AIR 1934 Oudh 465 = 10 Luck 208 (DB).
5. AIR 1957 Andh Pra 406 = ILR 1956 Andh Pra 837 = 1957 Cri. L. Jour 923 + AIR 1958 Andh Pra 230 = 1958 Cri. L. Jour 475 (DB).
6. AIR 1962 S.C. 247 + AIR 1951 Pepsu 132 = 3 Pepsu L.R. 365 (DB) + AIR 1949 East Punj 299 + AIR 1921 Pat. 365 = 5 Pat L. Jour 701 (DB) + AIR 1941 Lah. 257 = ILR 1941 Lah. 191 (FB). (AIR 1935 Lah. 328 (FB), *Overruled*).
7. AIR 1915 Mad. 449 (DB) + AIR 1959 Madh Pra 269 + AIR 1959 Punj. 613 + AIR 1958 Cal. 539 (DB). (Appeal under S. 27, Calcutta Thika Tenancy Act--S. 5, Limitation Act, does not apply,) + AIR 1957 Trav-Co. 215 + AIR 1956 Nag. 200 = ILR 1956 Nag. 840 (DB). (Where

period cannot be extended by means of an acknowledgment of liability under S. 19 or a payment under S. 20.[8]

6. Sub-section (3). Though this Act is inapplicable to suits under the Divorce Act, delay in presenting or prosecuting a petition for dissolution of marriage under the Divorce Act is a ground for disallowing the petition.[9] But an objection on the ground of delay in presenting or prosecuting a petition for dissolution will not hold good in case where the marriage is *ab initio* void.[10]

Suit for dissolution of marriage by person not governed by Divorce Act. This sub-section will not apply to suits for dissolution of marriage by persons who are not governed by the Divorce Act.[11]

Appeals from decrees under Divorce Act. The prohibition in this sub-section will not apply to appeals from decrees in suits under the Divorce Act.[12]

30 and 31. [*Provision for suits for which the period prescribed is shorter than that prescribed by the Indian Limitation Act, 1877. Provision for suits by certain mortgagees in territories mentioned in the Second Schedule.*] *Rep by the Repealing and Amending Act, 1930 (VIII of 1930, S. 3, Sch. II).*

32. [*Repeals.*] *Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), S. 3 and Second Schedule.*

THE FIRST SCHEDULE

(*See section 3*)

FIRST DIVISION: SUITS

Description of Suits	*Period of limitation*	*Time from which period begins to run.*
Part I.--Thirty days		

---

the execution of a decree was stayed by the High Court and further the Revenue Court ruled that the decree was barred by time and could not be executed, the decree-holder is entitled to the exclusion of the period during which the decree was stayed and of the time during which the order of the revenue Court was in force to remove the bar of S. 48) + AIR 1952 Mad. 186 = ILR 1952 Mad. 421 (FB). (AIR 1922 Mad. 268; AIR 1928 Mad. 1154 and AIR 1945 Mad. 70. *Overruled*) + AIR 1955 Mad. 67 (DB). (AIR 1952 Mad. 186 (FB). *Foll*) + AIR 1955 Mad. 547 + AIR 1953 Orissa 13 = ILR 1952 Cut 522 (DB) + AIR 1954 Madh B 61 = ILR 1953 Madh B 143 + AIR 1952 Trav-Co. 500 = ILR 1952 Trav-Co. 602 (DB) + AIR 1955 Cal. 269 (DB). (Observations in 50 Cal. W.N. 12, held *obiter dicta*) + AIR 1949 East Pun. 213 + AIR 1948 Nag. 272 = ILR 1948 Nag. 230 + AIR 1932 Oudh 69 (DB) + 13 Oudh Cas 303 (DB) + AIR 1939 All. 403 (FB) + AIR 1939 Bom. 75 (DB) + AIR 1947 Nag. 101 = ILR 1947 Nag. 25 (DB) + AIR 1944 Nag. 155 = ILR 1944 Nag. 250 (DB).

8. AIR 1917 Pat. 485 = 1 Pat. L. Jour 214 (DB) + AIR 1954 Trav-Co. 369 = ILR 1954 Trav-Co. 479 (DB) + AIR 1934 Oudh 465 = 10 Luck 208 (DB) + 11 Oudh Cas. 220 (DB).
9. 3 Cal. 688.
10. 5 Cal W.N. 194 *n*.
11. AIR 1922 Oudh 109 + AIR 1945 Cal. 484 = ILR (1946) 1 Cal. 32.
12. 22 Bom. 612 (DB).

1.	To contest an award of the Board of Revenue under the Waste Lands (Claims, Act, 1863.	Thirty days ...	When notice of the award is delivered to the plaintiff.
		Part II--Ninety days	
2.	For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in [13][Pakistan].	Ninety days ...	When the act or omission takes place.

Synopsis

1. Scope and applicability.
2. Wrongful acts or omissions under contracts entered into under statutory powers.
3. Cases falling under this and another Article.
4. Doing or omitting to do.
5. "Alleged to be."
6. Compensation.
7. "Enactment in force."
8. Starting point of limitation.

1. **Scope and applicability.** This article is one of the provisions intended to afford protection to persons acting in pursuance of an enactment against stale claims.[14] Suits of this nature should be brought and investigated as promptly as possible.[15] For the same reason a specially short period of limitation is provided for such cases in order that such acts which are of a public nature shall not give rise to protracted litigation.[16]

Action must have been taken under a statute. For the application of this Article it is necessary that the defendant should have taken action under a statute. The defendant need not have any knowledge of the particular enactment under which he has acted.[17] Where compensation is sought for an act done under Ordinance, 21 of 1971, this Article would apply and the suit brought after more than three years of the act would be barred by limitation.[18]

Action must be 'bona fide.' The object of the article is the protection of public officials who, while bona fide purporting to act in the exercise of a statutory power, have exceeded that power and have committed a tortuous act.[19] The defendant is entitled to the benefit of the protection of the article if he honestly

13. Subs. by Ord. 21 of 1960. S. 3 and Second Sch.
14. 1909 Pun Re. No. 72. p. 240 (DB) + AIR 1936 Pat. 513 = 15 Pat. 510 (DB).
15. AIR 1918 All. 63 = 41 All. 219 (DB).
16. 16 Oudh Cas. 211.
17. (1853) 9 RR 769 = 22 L J C P 201 + (1863) 133 RR 791 = 33 L J Ex. 65.
18. NLR 1981 UC 206.
19. PLD 1962 Lah. 411 = 14 DLR W.P. 25 (DB) + AIR 1936 Pat. 513 = 15 Pat. 510 (DB) + AIR 1958 Pat. 512.

believed in the existence of a state of facts justifying his doing the thing complained of.[20] The reasonableness of the belief is immaterial if his belief is honest.[1] In other words this article will protect a person who has acted honestly as a man of ordinary care and intelligence.[2] Even an act done maliciously but under the honest belief that it is authorised by the enactment,[3] or an act done negligently but honestly in pursuance of an enactment falls within this article.[4]

Act done in contravention of statute. In order to attract the provisions of Article 2 of the Limitation Act, 1908, the act or the omission complained of must be relatable to a statute but the words "alleged to be" suggested that the act or omission must not be such as is required by the statute itself to be done or avoided. Thus this Article will apply in a situation when the act complained of is neither required nor forbidden to be done under the letter of an enactment, and yet it is also not wholly unrelated to the obligations that are implied in an enactment so as to attract the provision of Article 36. This can only happen when a functionary does or omits to do something in furtherance of prescribed statutory objectives, and in the process infringes private rights. It is to this situation that Article 2 applies, and the functionary is regarded as doing or omitting to do things "alleged to be in pursuance of any enactment.[5] The article will not apply where the defendant has acted knowingly and intentionally in contravention of an enactment merely using it as a cloak for private purposes.[6] Thus where an enactment under which a person purported to act did not authorise him to do the act complained of Article 2 did not apply.[7]

Act must be a tort and not one done in pursuance of an agreement. Article 2 can be made applicable only when the cause of action is based on a tort.[8] Where a person was unlawfully though under cover of office evicted from premises occupied by him, the authorities thought that the were entitled to evict the allottee, that they performed this act under colour of statutory duty and that their act was in itself a tort, this Article will apply.[9] Similarly this Article will apply to a suit for compensation for demolition of property by a Municipal Committee.[10] But

---

20. PLD 1951 Dacca 33 = PLR 1951 Dacca 106 = 3 DLR 87 + 1909 Pun Re. No. 72, p. 240 (DB) + AIR 1958 Punj. 351 = ILR 1958 Punj. 244 (DB) + ('51) 55 Cal. W.N. (3 DR) 97 + AIR 1952 All. 402 = ILR (1953) 2 All. 480 (DB). (Attachment of third person's property by interim receiver honestly believing same to be insolvent's—No orders under S. 20, Insolvency Act—Suit for damages for wrongful attachment—Suit is governed by Act. 2) + AIR 1935 All. 538 = 57 All. 935 (FB) + AIR 1925 Rang 311 = 3 Rang. 268 + AIR 1936 Cal. 653 + AIR 1937 Sind 281 = 32 Sind L. R. 106 (DB).
1. 1909 Pun Re No. 72, p. 240 (DB) + 1933 Pun Re. No. 160, p. 487.
2. 1880 Pun. Re. No. 65, p. 138.
3. AIR 1932 All. 16 (DB) + AIR 1926 All. 538 = 48 All. 560 (DB).
4. ('30) 122 Ind. Cas. 111 (Lah.) + AIR 1942 Mad. 539 = ILR 1942 Mad. 696 = 44 Cri. L. Jour 45 (DB).
5. 1979 CLC 673 (DB) (Lah.).
6. 1979 CLC 673 + PLD 1951 Dacca 33 = 3 DLR 87 + 1909 Pun. Re. No. 72, p. 245 (DB) + AIR 1954 Orissa 225 = 1954 Cri. L. Jour 1625 (DB) + AIR 1935 All. 538 = 57 All. 935 (FB) + AIR 1925 Rang. 311 = 3 Rang. 268 + ('01) 25 Bom. 387 + AIR 1937 Sind 281 = 32 Sind L. R. 106 (DB).
7. AIR 1935 Lah. 47.
8. AIR 1959 Punj. 173 (DB).
9. PLD 1959 Dacca 268 = 10 DLR 601.
10. PLD 1956 Lah. 689 = PLR 1957 (1) W.P. 322.

this Article does not contemplate an act done in pursuance of an agreement. Where a Government resumes land in pursuance of an agreement evidenced by a Government resolution and a suit is brought by a Municipal Corporation for compensation for land resumed; Art. 120 and not Art. 2 would be applicable.[11] Where a suit for recovery of Provident Fund money from a Local Board was withheld without authority, Art. 120 and not Art. 2 or Art. 36 applied.[12]

2. Wrongful acts or omissions under contracts entered into under statutory powers. This article will not apply to wrongful acts or omissions under contract entered into under the powers given by an enactment.[13] Where under a Municipal Act one month notice was necessary to file a suit against a municipality in respect of an act done in pursuance or execution of the Act; it was held that the wrongful act or omission under contract made under the said act was not in pursuance or execution of the enactment.[14]

Failure to act in accordance with a statute. The intention of Art. 2 is to meet those cases where the defendant does an act injurious or possibly injurious to another, under powers conferred or honestly believed to be conferred by some Act of the Legislature. It does not apply to a case where the damages arise not from the doing of the act or from the failure to do it, but from doing it in an improper manner out of malice and carelessness. Such a case would be governed by Article 36.[15] Similarly the failure of the authorities to act in accordance with the statute cannot be an omission in pursuance of the statute. Failure to maintain a canal bank in proper order cannot be said to be in pursuance of any statutory duty and similarly, failure to repair the canal bank cannot be in pursuance of any statute.[16]

Suit must be for compensation. This article applies only to suits for compensation. Where no compensation is claimed and only a wrongful act is sought to be set aside, this section will not apply. Thus where an attachment of property alleged to be wrongful gives a cause of action to the plaintiff, in case he desires to contest it in a Court of law. Under Art. 15, it is incumbent upon the plaintiff to sue for setting aside the attachment within one year of the date of attachment. It was held that if, in addition, he wants compensation, he should file the suit within 90 days of the date of attachment under this article.[17] Similarly where the owner of the goods, which were illegally seized under the Defence of India Rules, brought a suit for the return of the goods on the basis of his title, the appropriate article of limitation was art. 49 and not Art. 2.[18]

3. Cases falling under this and another Article. This article will not apply where there is another special provision provided for a particular case.[19] Thus if

11. AIR 1947 Sind 69.
12. AIR 1960 Assam 121.
13. AIR 1916 Mad. 310 (DB) + AIR 1937 Lah. 226 (DB).
14. ('01) 25 Bom. 387 (DB) + AIR 1914 Sind 125 = 8 Sind L.R. 294 + AIR 1916 Mad. 310 (DB) + ('97-98) 22 Bom. 637 (DB).
15. PLD 1959 Karachi 232 (*Foll.* 21 I.C. 426).
16. AIR 1965 S.C. 17 + AIR 1964 A.P. 360 (DB) + AIR 1960 Punj. 66 + ILR 1959 Punj 1799 (DB).
17. AIR 1956 Him. Pra. 9.
18. AIR 1959 Punj. 173 (DB).
19. AIR 1961 Pat. 64 (DB) + AIR 1937 Bom. 491 (DB) + AIR 1944 Cal. 4 (DB).

Article 36 applies to a situation, a mere allegation that the act was in pursuance of a statute, will not attract Article 2.[20] Where a Municipal Committee sued its agent for damages for negligence in the discharge of his duty under an enactment, this article would not apply.[1] Article 19 is specially meant for cases relating to false imprisonment where the suit of the plaintiff is for damages for false imprisonment. Art. 19 particularly applies to it. The maxim *"generalia specialibus non derogant"*--a general provision must yield to a special provision--is applicable in this connection.[2] Where a report is made by a police officer in compliance of an order of a Magistrate acting under Chap. 16, Criminal P.C. a suit brought for damages for defamation did not fall under this Article.[3] Similarly a suit for compensation against Government for the breach of an agreement to pluck and take away fruit from the trees growing in a forest is governed by Art. 115 and not by Arts. 2, 14 or 36.[4]

Limitation provided in special law. Where a special law prescribed a different limitation for suits mentioned in this article the special law applies to the suits and not this article.[5]

4. Doing or omitting to do. This article does not apply to cases where the damages arise from the doing of an act in an improper manner out of malice or carelessness.[6] Where a suit is filed against a police officer for damages for loss of goods lawfully seized by him but unlawfully left in the custody of another person without an order of the Magistrate, the unauthorised and illegal action of the police officer in handing over the custody of the goods to another person cannot be said to be an act of omission but is an act of commission and the suit will be governed not by Art. 2 but by Art. 48 or Art. 49.[7]

5. "Alleged to be." The Article does not speak of those deeds which are done in pursuance of an enactment but of deeds "alleged to be in pursuance of a statute". They may not be truly in pursuance of a statute provided the allegation that they are in pursuance of it is bona fide and not a mere pretention.[8] The purpose of the expression is to protect a person who, in good faith, has acted in pursuance of an enactment when it is found later on that he has exceeded his powers.[9]

The expression does not mean alleged by the plaintiff in his plaint or alleged by the defendant in his written statement.[10] It does not mean that the defendant at the time of doing the act must, in order to claim the protection of the article, openly allege or assert that he is acting in pursuance of a particular enactment.[11] On the other hand a mere allegation that a person acted or omitted to act in

20. 1979 CLC 673 (DB) (Lah.).
1. AIR 1924 All. 467=46 All. 175 (DB).
2. AIR 1961 Rajasthan 64 (DB).
3. AIR 1937 All. 90=ILR 1937 All. 390 (DB).
4. AIR 1959 Madh. Pra. 120 (DB).
5. AIR 1926 All. 538=48 All. 560 (DB).
6. ('13) 16 Oudh Cas. 211.
7. ('51) 55 Cal. W.N. (3 DR) 97.
8. PLD 1958 Karachi 596=PLR 1959 Karachi (2) W.P. 241.
9. AIR 1935 All. 538=57 All. 935 (FB).
10. 1979 CLC 673 (DB)+AIR 1935 All. 538=57 All. 935 (FB)+AIR 1958 Punj. 351 (DB).
11. 1909 Pun. Re. No. 72, p. 240 (DB)+AIR 1937 Lah. 748 (DB).

pursuance of an enactment is not enough to attract Art. 2[12] The Court cannot, without going into the facts, assume that the act was done in pursuance of an enactment and apply this article. It must be proved that the act was so done.[13] Thus where the plaintiff sued the Secretary of State for damages for wrongful conversion of his goods consigned to a Railway Company. The defendant alleged that goods were sold under S. 55, Railways Act. It was held that this article did not apply as the plaintiffs did not make such allegation.[14]

6. Compensation. A suit for return of moneys wrongfully levied by the defendant is one for compensation.[15] But this Article does not apply to a suit for return of duty legally levied by an authority acting under a statute.[16] Similarly where the plaintiff, a Housing Society, had been paying expenses on account of sweeping charges to Municipality and on account of street lighting to Electric Supply Company. The area of plaintiff Housing Society was subsequently included within the limits of the Municipal Corporation which thereafter became entitled to levy tax on properties and liable for sweeping and lighting in the area. The society demanded refund of the payments made by it earlier to the Municipal Corporation and the Electric Supply Company. It was contended that the claim was time-barred as it was governed by Article 2 of the Limitation Act, 1903 and not by Article 120. It was held, that the claims being for the refund and reimbursement of specified amounts spent by the Society, they cannot be treated as claims for compensation for doing or omitting to do an act. The Society could frame its suit so as to make it for the recovery of compensation and in that event it would have been governed by Article 2 of the Limitation Act, but it has framed it differently and demanded the refund of the money spent by it.[17]

Compensation must arise out of tort. To fall under this Article compensation must arise out of tort. Where a suit is for compensation only when the act or omission complained of is alleged to be in pursuance of any enactment in force in Pakistan, it will not apply to an act alleged to have been done which was not done in pursuance of any enactment.[18] Suits to recover statutory compensation independently of any question of tort are not governed by this article.[19]

7. "Enactment in force." This Article applies to suits for compensation only when the act or omission complained of is alleged to be in pursuance of any enactment in force. It will not apply to an act alleged to have been done which was not done in pursuance of any enactment.[20] Thus a mere allegation that a person acted or omitted to act in pursuance of an enactment is not enough to attract Art. 2.[1]

12. AIR 1942 Mad. 539 = ILR 1942 Mad. 696 = 44 Cri. L. Jour 65 (DB).
13. AIR 1927 P.C. 72 = 10 Lah. 161.
14. AIR 1934 Pat. 507 = 13 Pat. 752 (DB).
15. 1886 Pun. Re. No. 123, p. 283 + AIR 1935 Lah. 47 + ('84) 8 Bom. 17 (DB).
16. AIR 1914 All. 338 = 36 All. 555 (DB).
17. PLD 1970 Karachi 216 (DB).
18. AIR 1959 Assam 28 (DB).
19. AIR 1936 Pat. 513 = 15 Pat. 510 (DB) + AIR 1957 Cal. 44 (DB) + AIR 1939 Lah. 583.
20. AIR 1959 Assam 28 (DB).
1. AIR 1942 Mad. 696 = 44 Cri. L. Jour 65 (DB).

The enactment must be actually in force. It is not sufficient if the enactment is not in force, that the defendant honestly believed that is was in force and that he was acting under it.[2]

8. Starting point of limitation. When the act or omission does not *per se* give a cause of action unless damage results therefrom the period of limitation should be computed from the time when the injury resulted.[3]

Part III.--Six months

3.	Under the Specific Relief Act, 1877, section 9, to recover possession of immovable property.	Six months ...	When the dispossession occurs.

* * * * * *

Synopsis

1. Suit for possession. 2. Suit on title.

1. Suit for possession. Possession in law is a substantive right or interest, which exists and has legal incidents and advantages apart from the true owner's title.[5] Therefore a suit for possession, where one is dispossessed can be brought under S. 9, Specific Relief Act even when the plaintiff has no lawful title to property. Where the plaintiff is forcibly dispossessed by defendant and in a proceeding under section 145 of the Criminal P.C., his possession is maintained; the existence of an order is held to be no bar to the suit by the plaintiff under S. 9 of the Specific Relief Act.[6] The right to recover rent by a landlord from his tenant is immovable property and a suit for that purpose will be governed by this section.[7]

Addition of parties after six months. Where a suit is instituted within six months of the dispossession of the plaintiff against the persons who dispossessed him, the addition of any other proper parties after the period of six months would not non-suit him. Thus where the plaintiff filed a suit against his dispossession by the defendants from his land within 6 months from the date of his dispossession. The defendant's plea was that they were the *bargadars* of the co-sharers of the plaintiff and the plaintiff thereafter impleaded the co-sharers as defendants after six months from the date of dispossession. It was held that the suit had been brought within 6 months from the date of dispossession by the defendants dispossessing him, it was maintainable under section 9. The added defendants being not the persons who dispossessed the plaintiff, their addition after 6 months did not affect the validity of the suit, and S. 22 of the Limitation Act had no

2. 1886 Pun Re. No. 105, p. 251 (DB).
3. 1909 Pun Re No. 72, p. 240 (DB).
4. Article 4 relating to suits under the Employers and Workmen (Disputes) Act, 1860 omitted by the Repealing and Amending Act, 1937 (20 of 1937), S. 3 and Second Schedule.
5. 3 Sind L.R. 149 (DB).
6. 30 All. 331 (DB) + 26 Bom. 353 (DB).
7. AIR 1929 Bom. 467 = 53 Bom. 773 (DB) + 28 Mad. 238 (DB) + 8 Ind. Cas. 844 (Mad).

application to a case like that.[8] Where the suit was instituted within the period of limitation, but it was found subsequently that the defendant had transferred his interest in the property. The transferee of defendant's interest in the suit property was impleaded as an additional defendant after more than six months from the date of dispossession, but within six months from the date of transfer. It was held that the suit as regards such transferee must be deemed to have been instituted when he was so made a party by virtue of S. 22, Limitation Act. As the suit was instituted within six months from the date of which transferee's liability under S. 9 accrued, it was within limitation as regards the transferee.[9]

Calculation of period of limitation. The period of limitation is to be counted from the date of dispossession. Where the dispossession took place on 19-5-1957, the period of limitation would start running from 20-5-1957, and a suit instituted on 29-11-1957 would be barred by limitation.[10]

2. Suit on title. The fact that the summary remedy is not availed of by the person dispossessed will not disentitle him from availing himself of the other remedy and sue on his title, though the suit is brought after the six months period provided in this article.[11] But where a person bases his suit on title and fails to establish his title, a decree cannot be given on the basis of dispossession by treating the suit as one under s. 9 of the Specific Relief Act.[12]

[13]4. * * * * * * * * *

[14][*Part IV.--One year*]

5.	Under the summary procedure referred to in section 128 (2) (*f*) of the Code of Civil Procedure, 1908 [15][where the provision of such summary procedure does not exclude the ordinary procedure in such suits [* * *][16]	[17][One year] ...	When the debt or liquidated demand becomes payable or when the property becomes recoverable.

8. 2 DLR (1969) 354.
9. ILR (1951) 1 Cal. 324.
10. AIR 1961 Tripura 16.
11. AIR 1937 Nag. 281 + AIR 1915 Nag. 111 = 11 Nag. L.R. 31.
12. 33 All 174 (FB). (15 All. 384, *Overruled*) + 25 Mad. 448 (DB).
13. Article 4 omitted by S. 3 of Act 20 of 1937.
14. The heading "Part IV--one year" omitted by Act. 3 of 1925, S. 2.
15. Added by the Indian Limitation (Amendment) Act. 1925 (30 of 1925), S. 2
16. The words and figures "and under Order XXXVII of the said Code" omitted by the Civil Procedure and Limitation (Amendment) Ord., 1961 (9 of 1961), S. 3, (with effect from the 6th March 1961).
17. Subs. *ibid.*, for "Six months".

1. **Article 73 and this Article.** The language used in Articles 5 and 73 with regard to the starting point of the limitation for suits mentioned in the Articles is not the same but the reason for this difference is plain. Article 5 applies to suits based on all sorts of pronotes and bills of exchange while Article 73 deals only with pronotes and bills of exchange payable on demand and it is clear that the same language could not have been employed in both these Articles to indicate the starting point of limitation for the suit.[18]

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

Synopsis

1. Scope.
2. Who may sue.

1. **Scope.** A suit for a penalty in a bond,[19] or a suit for a debt is not one governed by this article.[20]

Suit for damages. A suit to recover damages caused by the misconduct of the defendant is not within this article, although such damages may be awarded by statute.[1]

2. **Who may sue.** A penalty created by statute, if nothing is said as to who may recover it, and if it is not created for the benefit of party aggrieved and the offence is not against an individual, belongs to the State and the State alone can sue for it.[2]

7.	For the wages of a household servant, artisan or labourer.[3]	[4][One year] ...	When the wages accrue due

Synopsis

1. Scope.
2. Wages.
3. Household servant.
4. Labourer.
5. "Artisan."
6. Starting point of limitation.

1. **Scope.** Article 14 of the Limitation Act, 1908 does not apply to a case where the order of the officer is null and void. The words in column 1 of the article cannot be construed to include void orders as well.[5] Therefore a suit by a

18. PLD 1953 Lahore 446.
19. 31 Mad. 54.
20. 3 Mad. 124 (DB).
1. 16 T.L.R. 296 = (1900) 1 Ch. 718.
2. 31 W.R. (Eng.) 677 = 8 App Cas. 354.
3. The words "not provided for by this Schedule, Article 4" omitted by the Repealing and Amending Act, 1939 (34 of 1939), S. 2 and First Schedule.
4. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Schedule for "Ditto".
5. AIR 1965 A.P. 188 + AIR 1951 Bom. 7 + AIR 1956 All. 114 + AIR 1958 Cal. 551 + AIR 1934 Mad. 147.

Government servant for a declaration that the order discharging him from service was null, void and inoperative and for consequential reliefs of reinstatement, damages and arrears of salary is governed not by Art. 14 but by Art. 120, Limitation Act, 1908, in so far as the relief of declaration is concerned and the plaintiff would be entitled to arrears of salary for a period of 3 years and no more under Art. 120, Limitation Act, 1908.[6]

2. Wages. "Wages" means the compensation agreed upon by a master to be paid to a servant or any other person hired to do work or business for him.[7] The term "wages" may generally be applied to all kinds of payments which are made periodically so long as the services of the employee are at the disposal of the master.[8] Ordinarily the word "wages" is used in connection with daily wages, but it would include the amount paid as monthly emoluments.[9]

Relationship of employer and employee necessary. The real test to find out whether an emolument is "wages" or no to see whether such emolument is payable by an employer to the employee.[10] ther words this article applies only to suits by an employee against the person le as employer in whose service he had been employed.[11] But the Article does not apply to a suit by one Government servant against another for the recovery of a sum of public money received by the defendant for disbursement to the plaintiff,[12] or to a suit by a goldsmith to recover the price of labour for making certain ornaments.[13]

The prices of pictures agreed to be sold by an artist are not wages within the meaning of this article.[14] A servant employed in a cloth business belongs to none of the categories mentioned in this Article which therefore does not apply to his suit for wages against his master.[15]

Class of employee. The word "wages" is confined to the earnings of servants of a lower class such as labourers or artisans.[16]

Acknowledgment of debt--effect. If the debt has been acknowledged by the debtor within the period prescribed by this article, the suit may be filed within a further period of one year prescribed by this article.[17]

3. Household servant. The word "servant" must be read as relating to a person whose personal services are employed in capacities similar to those of a

6. AIR 1965 A.P. 188 + AIR 1962 S.C. 8 + AIR 1947 F.C. 23.
7. AIR 1926 All. 122 = 48 All. 164.
8. AIR 1953 Mad. 433.
9. PLD 1965 Dacca 364 = 16 DLR 590 = PLR 1965 Dacca 795 + AIR 1918 Mad. 366 = 41 Mad. 528 (DB).
10. AIR 1935 Mad. 128 (DB) + AIR 1936 Mad. 149.
11. 4 Mad. H.C.R. 43 (DB) + AIR 1918 Mad. 366 = 41 Mad. 528 (DB).
12. 4 Mad. H.C.R. 43 (DB).
13. AIR 1938 Nag. 286 = I.L.R 1938 Nag. 592 + 1885 Bom. P. J. 252 (DB).
14. 2 Mad. H.C.R. 6.
15. AIR 1953 Mad. 433.
16. AIR 1926 All. 172 = 48 All. 164 + AIR 1917 All. 466 = 39 All. 81 (DB).
17. (1866) 5 Suth W.R. 7 SCC Ref) 3 (DB). (Case under Act XIV of 1859).

labourer or artisan.[18] The expression "servant" must be read *ejusdem generis* with the words, "artisan or labourer" which follow it.[19]

A domestic servant is the same as a household servant.[20] A 'household servant' is one who works within the house or does any thing in connection therewith. The question whether the position of a particular individual is that of a 'household servant' or an 'artisan' depends much on the type of the work that he undertakes or does in the family of the employer.[1] It has been held that a cook is "servant" though he may be an expert in cooking,[2] or a motor-car driver who was provided with boarding and lodging was a household servant.[3] But if a driver is also a mechanic he may be classified as an artisan.[4]

The following persons have been held to be not domestic servants.

(*a*) Person employed for collecting rents.[5]

(*b*) A companion on a journey.[6]

(*c*) A Mukhtear.[7]

(*d*) A wet nurse employed to suckle a child.[8]

(*e*) A teacher for teaching, fencing and wrestling.[9]

(*f*) A person providing flowers and garlands to the idol.[10]

(*g*) Village barbar.[11]

(*h*) Hotel servant.[12]

Relationship of employer and employee. A person is a household servant of the person who makes use of his services and not of the person through whom he is paid. Thus where *A* and *B* are both engaged by *C*, *A* is not a servant of *B* though he receives his remuneration through *B*.[13]

4. Labourer. A "labourer" is a person who performs physical labour as a service or for a livelihood.[14] A "labourer" indicates a person who is engaged in the

18. 4 Mad. H.C.R. 43 (DB).
19. AIR 1933 Oudh 393=8 Luck 119.
20. AIR 1936 Lah. 661.
1. AIR 1962 Patna 356.
2. AIR 1916 Mad. 633 (DB).
3. AIR 1962 Pat. 356+AIR 1936 Lah. 661+AIR 1927 Rang. 279=5 Rang. 477.
4. AIR 1962 Pat. 356.
5. AIR 1933 Oudh 393=8 Luck. 119+10 Suth W.R. 260 (DB).
6. AIR 1933 Oudh 393=8 Luck. 119.
7. 6 Suth W.R. (Civil Ref.) 11 (DB).
8. 17 Ind. Cas. 658 (All).
9. 8 Mad. H.C.R. 87 (DB).
10. 7 Mad. 99 (DB).
11. AIR 1941 Nag. 132.
12. AIR 1937 Mad. 340.
13. 13 Suth W.R. 150 (DB).
14. AIR 1935 Rang. 235+AIR 1949 Nag. 329=ILR 1949 Nag. 578+1949 Bur L.R. (HC) 55+AIR 1926 All. 172=48 All. 164+AIR 1914 All 194+1 Cri. L. Jour 1103=1904 Pun Re (Cr.) No. 28.

performance of unskilled labour, generally speaking. A person who is called upon to do some work which requires some amount of skill, however little that may be, is not to be regarded as a labourer, within the meaning of Art. 7. Thus an employee, who is entrusted with the duties not only of mixing sugar with water for preparing sodas and other drinks in a soda water factory but also of writing of accounts and of sales of aerated drinks, is not a 'labourer' within the meaning of Art. 7. A suit for arrears of salary by such a person will, therefore, not be governed by Art. 7 for purposes of limitation, but by Art. 102.[15] Where a person was employed to supervise work of raising, sorting, carting and stacking of manganese ore and he brought a suit for share of profits. It was held that supervision work could not be called wages of household servant, artisan or labourer.[16] A person who was employed at a certain salary per mensem and who had to take milk from the appellant as well as from other persons as instructed by the appellant from a certain place and then deliver the milk to such of the tea shops as were indicated by the appellant was held not to be a labourer and a suit filed by him was not governed by Art. 7.[17] Similarly it has been held that a weighman employed to work in a shop,[18] or a person employed as a salesman to assist the dealer in the shop,[19] or a watchman engaged merely to watch crops and see that they are not taken away,[20] or a carpenter[1] or a village barber[2] is not a labourer.

5. **'Artisan."** The word "artisan" means an artificer or one trained to mechanical dexterity in some mechanical art or trade.[3] Thus a carpenter[4] or a person engaged to drive an engine on board a steamer[5] or a motor-car driver is an artisan.[6]

Person holding position of responsibility. A person in a higher class of work involving responsibility and intellectual training, is not an "artisan".[7]

6. **Starting point of limitation.** Where the salary or wages are to be paid at the expiration of each month, limitation begins to run at the end of each month.[8] This does not change unless there is a definite acknowledgment of debt at a subsequent time or a separate agreement to pay the wages later on. Thus where an employee employed in a Bus Service Company is suspended from service but is

15. AIR 1961 Mad. 358.
16. AIR 1949 Nag. 329 = ILR 1949 Nag. 578.
17. 1949 Bur. L. R. (HC) 55.
18. AIR 1926 All. 172 = 48 All. 164.
19. AIR 1935 Rang. 235.
20. AIR 1935 All. 102 + AIR 1924 Oudh 189 = 26 Oudh Cas. 327.
1. AIR 1926 All. 172.
2. AIR 1941 Nag. 132.
3. AIR 1941 Nag. 132 + AIR 1933 Lah. 936 = 15 Lah. 26 + AIR 1962 Pat. 356.
4. AIR 1934 Nag. 260 + AIR 1953 Nag. 199.
5. ('08) 7 Cri. L. Jour 238 = 32 Bom. 10 (DB).
6. AIR 1941 Nag. 132 + AIR 1955 All. 707. (But driver is artisan) + AIR 1927 Rang. 279 = 5 Rang. 477 + AIR 1936 Lah. 661 + AIR 1936 Cal. 808. (Where however, a car driver is not a machanic it is doubtful whether he can be classed as an artisan—AIR 1962 Pat. 356).
7. AIR 1938 Nag. 286 = ILR 1938 Nag. 592 + AIR 1933 Lah. 936 = 15 Lah. 26 + AIR 1919 Sind 54 = 12 Sind L.R. 140 (DB). (Engineer employed to manage a boiler) + (1864) 2 Mad H.C.R. 6. (Artist employed to paint pictures).
8. ('66) 6 Suth W.R. (Civ. Ref.) 33 (DB).

later on reinstated in the service, the cause of action for the recovery of wages for the period of suspension accrues from the date of his reinstatement, unless he pleads the existence of a fresh contract of service, one of the terms of which was that the employee will pay him for the period of suspension.[9] Where the defendant promised to pay wages and a suit was brought for wages within one year of the promise but more than one year after the wages become due; the suit was held to be barred and the promise did not give a fresh cause of action.[10]

8.	For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house.	[11][One year] ...	When the food or drink is delivered.

Synopsis

1. Price of food and drink. 2. Tavern.

1. **Price of food and drink.** The expression "food or drink" in this article will only apply to articles of food or drink which are consumed on the premises or which if removed from the premises are intended for immediate consumption in the state in which they are sent out.[12] Therefore a suit for recovery of a certain sum of money due on account in respect of meals supplied, will not be governed by the shorter period of limitation of one year prescribed under Art. 8 as that article applies in terms only to recovery of the price of food or drink sold by the keeper of a hotel.[13]

2. **Tavern.** A village liquor shop is a "tavern".[14]

9.	For the price of lodging.	[15][One year] ...	When the price become payable.

1. **Lodger--Who is.** An occupier of a part of a house does not become a lodger merely by reason of the fact that the landlord resides on the premises and retains control of the passages and staircase and other parts used in common.[16] A lodger has not in law an exclusive occupation, although he may have a separate apartment, and is therefore in the position of a licensee if the landlord retains the general control and dominion of the house including the part occupied by the lodger.[17] Where the owner of a house takes some person into his house who occupies a room and has the right of egress and ingress but the owner retains his

9. AIR 1955 All. 707.
10. AIR 1920 Low Bur 136 = 10 Low Bur Rul. 332.
11. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Schedule for "Ditto".
12. AIR 1940 Rang. 17 = 1939 Rang. L. R. 626.
13. 1958 (2) Mad. L. Jour 590.
14. 1908 Pun. Re. No. 27. p. 147.
15. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Schedule for "Ditto".
16. 1906 (1) K.B. 60.
17. (1874) 9 Q.B. 180.

general character of master of the house, the person so occupying the premises is a lodger.[18]

10. To enforce a right of pre-emption whether the right is founded on law, or general usage, or on special contract.	[19][One year] ...	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.

Synopsis

1. Scope and applicability.
2. Starting point of limitation.
3. Physical possession.
4. Possession must be under the sale
5. Sale.
5. Of the whole of the property sold.
7. "Is registered."
8. Burden of proof.
9. Suits not within this Article.
10. Parties to suit.
11. *Lis pendens.*
12. Plea of right of pre-emption in defence.

1. **Scope and applicability.** Article 10 is not exhaustive of all cases of pre-emption.[20] The article is not applicable to cases of pre-emption in respect of a mortgage, a lease or a contract to sell.[1]

Addition of new vendee. The Article is applicable only where a suit is brought against the vendee, of the subject-matter of sale. Where a suit is brought against a person who had purchased the property but who had transferred it subsequently before the suit, this Article will not govern the suit, even though the subsequent vendee is also added as a party to the suit. Where *A* sells property to *B* and, before *X* brings a suit for pre-emption of such sale, *B* transfers the property to *C* and *C* is added as a party to the suit, the suit so far as *C* is concerned is not governed by this article.[2]

---

18. (1847) 5 C.B. 23.
19. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Schedule for "Ditto".
20. AIR 1956 Nag. 243 = ILR (1956) Nag. 116 (DB) + AIR 1950 All. 632 = ILR (1953) 1 All. 265 (DB).
1. 1885 All. 549 (DB) + AIR 1921 All. 154 (DB) + AIR 1922 Nag. 14.
2. AIR 1939 All. 158 = ILR 1939 All. 200 (DB) + ('13) 18 Ind Cas 70 = 1913 Pun Re. No. 31 (FB). (1903 Pun Re No. 25 and 1907 Pun Re. No. 106. *Overruled*) + AIR 1914 Oudh 216.

Oral sale of intangible interest in property. A suit for pre-emption in respect of an oral sale of an intangible interest in the Punjab, is not governed by this article.[3]

Validity of Article. Under this Article limitation time of one year for enforcement of pre-emption right through suit, ceased to have legal effect *w.e.f.* 31-7-1986 in the light of Supreme Court judgment reported in NLR 1986 SCJ 449 and PLD 1986 SC 360.[4]

Azad Jammu & Kashmir. The qualifications or conditions regulating commencement of limitation, as prescribed under Article 10 and Section 29. A.J & K Right of Prior Purchase Act indicate that the legislature prescribed such conditions to afford adequate notice of sale to all concerned. The delivery of physical possession to the vendee, registration of deed and attestation of mutations are constructive notice to the concerned pre-emptors. Where these qualifications are found absent it is permissible to resort to the residuary provisions of Article 120 of the Limitation Act. But where mutation on the basis of sale by a decree was duly attested by the Revenue Officer, the case would fall under Art. 10 and not under Article 120.[5]

2. Starting point of limitation. Where the subject of sale admits of physical possession on the date of sale, limitation will start from the time when the purchaser takes physical possession of the whole or part of the property which is subject of pre-emption.[6] Where the date of possession is different from the date of registration, limitation will start running from the date of possession. Thus where a sale deed was executed on 29th March, 1943 and the vendee obtained possession on the same day. The deed was registered on 10th May 1943. It was held, that limitation for pre-emption suit ran from 29th March 1943, the date of delivery of possession.[7]

Where a purchaser took possession but he was dispossessed. He however took back possession subsequently the date of commencement of limitation under this article is the date on which the defendant took possession under the sale for the first time.[8]

Where two independent sales, one completed in 1974 and the another in 1976 were pre-empted. Possession of land under the first sale was delivered immediately on completion of sale. Suit was not brought in time from the date of possession and therefore become barred by time, and the vendee become co-sharer in the *khata* under the first sale. Suit for second sale would fail because of the vendee having acquired equal rights in the land with the pre-emptor.[9] But where there was no cogent evidence in support of the alleged possession, the time would start from the date of attestation of mutation.[10]

---

3. AIR 1924 Lah. 394.
4. NLR 1987 Civ. 101 = PLD 1987 Lah. 71 = PLJ 1987 Lah. 1 = KLR 1987 CC 25.
5. PLD 1989 SC (AJ&K) 41 = NLR 1989 SCJ 289 = 1989 PSC 493.
6. PLD 1961 B.J. 1 = PLR 1961 (1) W.P. 929 + AIR 1964 Punjab 323 + AIR 1950 All. 290 + ILR (1950) Nag. 950 + ('49) 51 Pun LR 389.
7. AIR 1947 All. 252.
8. 1871 Punjab Rec. No. 34. p. 75.
9. 1983 Law Notes 668 (Pesh.).
10. NLR 1982 Civ. 483 (*Approved in* 1982 Law Notes 506 (SC)).

Different date of possession and mutation. If the date of possession is earlier than the date of attestation of mutation, the date on which possession of the property in fact was taken would be the date for the commencement of the limitation under Article 10 and not the date of attestation of mutation.[11] In such cases it has got to be proved by affirmative evidence and established beyond any shadow of doubt that actual physical possession has been delivered to and taken over by the vendee under the sale before the sale was formally given effect to.[12] Where the vendee failed to establish that he took physical possession of land under the sale before attestation of mutation of sale, a suit filed within one year of sanction of mutation would be within limitation.[13] It is to be noted in this context that before the possession of a vendee over the land involved in a suit for pre-emption can be taken into consideration for computing period of limitation it is to be ensured that his possession is under the sale which has been pre-empted by such suit. If the vendee was in possession of the land in any capacity other than that of vendee under the sale to which the pre-emption suit relates, his possession would have no bearing on the question of limitation.[14]

Registration. First part of Art. 10 relating to completion of sale through delivery of possession applies to a sale which is oral and is completed without execution and registration of sale-deed. Limitation time of one year for filing of pre-emption suit would run from the date when sale was made, completed and registered.[15] Limitation time for pre-emption suits in case where alienation of land is not made by a registered sale deed, commences from date of attestation of sanction of mutation which is followed by possession.[16] But if the sale is not made by a registered instrument, Art. 120 and not this article, applies.[17]

Fraud practised on pre-emptor. Where fraud is practised by vendor and vendee on the pre-emptor who is kept in ignorance of his right, the time begins to run from the date when the fraud first become known to him.[18]

Minority of pre-emptor--effect. Minority of pre-emptor is not a ground for extending the period of limitation prescribed by this article.[19]

3. **Physical possession.** The words "physical possession" mean lawful physical possession.[20] It must be a personal and immediate possession.[1] The

11. PLD 1960 Peshawar 32.
12. 1983 Law Notes 730 = PLD 1983 Lah. 416 = PLJ 1983 Lah. 498 + 1979 CLC 533.
13. PLD 1983 Lah. 416 = PLJ 1983 Lah. 498 + 1980 CLC 1753 + PLD 1981 Lah. 502 = PLJ 1981 Lah. 283.
14. PLJ 1981 Lah. 293 = PLD 1981 Lah. 502 + AIR 1924 Lah. 394 + ILR 3 Lah. 261 + 80 Punj Record 1918 + AIR 1923 Lah. 654.
15. NLR 1988 AC 448.
16. NLR 1988 SCJ 233 = PLD 1988 SC (AJ&K) 35 = PLJ 1988 SC (AJ&K) 27.
17. PLD 1959 Pesh 172 + PLD 1962 B J 33 (DB) + ('21) 62 Ind Cas 797 (Lah.) + AIR 1951 Punj 45 = ILR 1951 Punj 207 (FB) + AIR 1951 Nag. 295 = ILR 1950 Nag. 745 + 1913 Pun L R No. 230, p. 771 + ('12) 8 Nag. L R 68 + ('99) 2 Oudh Cas 9 + AIR 1927 Nag. 64 (DB) + ('06) 28 All. 424 + ('07) 10 Oudh Cas 374 + ('83) 1883 All W. N. 6.
18. AIR 1939 All. 113 + AIR 1934 Lah. 878 = 16 Lah. 408 (DB) + AIR 1937 Lah. 97 = ILR 1937 Lah. 202 (DB).
19. AIR 1919 Lah. 25 = 1919 Pun Re. No. 86 (DB) + AIR (1954) 4 Raj. 200 + AIR 1924 Mad. 57.
20. 1892 All W.N. 77 (DB).
1. AIR 1923 Lah. 94 + 24 All. 17 = 28 Ind. App. 248 (PC).

delivery of symbolical possession is not equivalent to the delivery of physical possession.[2] Therefore constructive possession of pre-empted land delivered to husband of vendee would not tantamount to physical possession within the meaning of Art. 10.[3] If a person was already in possession of a piece of land in some capacity other than that of an owner and that piece of land were sold to him, the fact that he was in possession before the sale will stand in the way of his claiming that the period of limitation should be considered to have started running from the date of the oral sale because the possession on which he relies is not physical possession under the sale of which the pre-emptors could have got any information from the fact that he was in possession of the property which was even before the sale in his actual physical possession.[4]

The words "admit of physical possession" have reference to the nature of the property sold and not to the ability of the vendor to deliver actual possession.[5] Land in the possession of a trespasser cannot be said to be property that does not admit of physical possession.[6] Where land was sold without crops growing thereon; it was held, that the land was not incapable of physical possession.[7]

Property not admitting of physical possession on date of sale. Where property does not admit of physical possession on the date of sale, the starting of limitation is not postponed till it becomes capable of possession. In that case limitation for pre-emption will commence from the date of registration of sale.[8]

Undivided share in property, sale of. An undivided share in property does not admit of physical possession.[9] Where the subject-matter of sale was a share in a joint holding and as the sale was not made by means of a registered instrument, this Article had no application, because the purchaser could not have taken possession of the whole of the property sold.[10]

Equity of redemption, sale of. An equity of redemption in property mortgaged with possession does not admit of physical possession.[11]

---

2. PLD 1961 B.J. 1 = PLR 1961 (1) W.P. 929 (DB) + AIR 1922 Pat. 601 = 1 Pat. 578 (DB) + AIR 1956 Pepsu 17 = ILR 1955 Patiala 494 + AIR 1923 Lah. 31.
3. 1986 CLC 855.
4. PLD 1961 B. J. 1 = PLR 1961 (1) W.P. 929 (DB).
5. AIR 1928 Nag. 89 = 23 Nag. L. R. 178 + AIR 1926 All 70 = 48 All. 12 (DB) + 1888 All W.N. 227 (DB).
6. AIR 1928 Nag. 89 = 23 Nag. L. R. 178 + AIR 1926 All. 70 = 48 All 12 + AIR 1921 Mad. 554 (DB).
7. AIR 1943 Nag. 90 = ILR 1943 Nag. 209. (Physical possession deemed delivered when crops were reaped).
8. 1986 CLC 855 + PLD 1961 BJ 1 + AIR 1945 Pesh. 9 (DB) + 1984 CLC 1953 + AIR 1915 Oudh 121 (DB) + 1892 All. W.N. 77 (DB).
9. AIR 1961 A.P. 31 (DB) + AIR 1930 All. 225 (DB) + 20 All. 315 (FB) + 4 All. 24 (FB) + AIR 1923 Lah. 75 + AIR 1923 Lah. 74 + AIR 1927 Nag. 64 (DB) + AIR 1928 Oudh 375 + 2 Oudh Cas 9 (DB).
10. PLD 1962 B.J. 33 (DB).
11. (1900) 3 Oudh Cas. 184 (DB) + AIR 1950 All. 632 = ILR (1935) 1 All. 265 (DB) + AIR 1932 Lah. 98 + AIR 1924 Mad. 57 + AIR 1919 Nag. 6 = 16 Nag. L. R. 37 (FB). (*Overruling* AIR 1917 Nag. 187) + AIR 1915 Oudh 121 (DB) + 62 Ind Cas. 797 (Lah.) + 9 All. 234 (DB) + 5 Ind Cas. 667 (All) + 4 Ind Cas 754 = 1907-09 Upp Bur Rul (Limitation Act), p. 3.

Lease, sale of. A lease does not admit of physical possession.[12] But where property under lease is sold with a stipulation that sale would be effective as termination of lease; it was held, that the property was capable of physical possession on the date of sale.[13]

Proof of physical possession. In a pre-emption suit to raise a plea of the suit being hit by limitation, it has to be proved by affirmative evidence and established beyond any shadow of doubt that actual physical possession had been delivered to and taken by the vendee under the sale, before the sale was formally given effect. The phrase "physical possession" as used in Article 10 of the Limitation Act or section 30 of the Punjab Pre-emption Act has been apparently used in the context of giving a notice to all persons concerned about the delivery of possession, *i.e.*, that the former owner had parted with the property in favour of some other person. An admission, therefore, by the vendor at the time of making a report to the *Patwari* or in a statement before the Revenue Officer that the possession had been surrendered earlier may be of some use between the parties to the transaction only but cannot be extended to bind a stranger, *i.e.*, pre-emptor.[14] The formal recital in the sale deed as to the delivery of possession is a very weak evidence even between the parties to the deed, but as against third persons it can have no evidentiary value.[15] Where agricultural land was sold by an oral transaction and a report of it was made by the vendor to the *patwari* to the effect that possession was delivered to the vendee on the same date, the report cannot be taken as evidence of the date of the delivery of physical possession to the vendee for computation of the period of limitation in a suit for pre-emption in respect of the land sold.[16]

4. Possession must be under the sale. The reason for fixing the *terminus a quo* of limitation from the taking of possession of the property by the vendee is that the assumption of possession under transfer is an overt act which constitutes a sufficient publication of the transfer to all the world.[17] Hence, if the physical possession is not taken "under the sale" it would not apply. In such cases the second part of Art. 10 would apply if the sale is effected by a registered deed.[18] Otherwise limitation for a suit for pre-emption will begin to run from the date when the purchaser does some overt act in pursuance of the sale.[19]

Where the vendee has entered into possession before the sale, his possession cannot be said to be possession under the sale, and Art. 10 of the Limitation Act does not apply to the sale.[20] Thus where the vendee was in possession as a tenant

12. 28 All. 424 (DB)+AIR 1915 Oudh 121 (DB)+AIR 1919 Nag. 155+AIR 1927 Lah. 784+8 Nag. L. R. 68+20 All. 315 (FB)+1908 Pun Re No. 49, p. 156 (1905 Pun Re No. 88, *Overruled*)+7 Oudh Cas 8 (DB).
13. 3 Nag. L. R. 142.
14. 1980 CLC 728 (Lah.).
15. AIR 1956 Pepsu 17=ILR 1955 Patiala 494.
16. AIR 1964 Punj. 323.
17. ILR 1950 Nag. 950.
18. PLD 1961 B. J. 1=PLR 1961 (1) W.P. 929 (DB)+AIR 1961 Punj 296+AIR 1925 Lah. 165+AIR 1925 Lah. 152 (2)+AIR 1924 Lah. 695+AIR 1923 Lah. 31 (2)+AIR 1922 Lah. 210+AIR 1918 Lah. 79.
19. PLD 1962 Dacca 540=13 DLR 381.
20. PLJ 1984 Lah. 154=1984 CLC 306+PLD 1959 AJ&K 1.

even before the date of sale, the property did not admit of physical possession, hence limitation would run from the date of registration.[1] It is to be noted that where the property sold is in possession of the vendee either as a lessee or as a mortgagee; the vendee does not take possession under the sale.[2] Similarly where a prospective vendee who is not a mortgagee or a lessee took possession of property under some arrangement and a sale-deed of that property was subsequently executed It was held that possession before the sale was not possession under the sale.[3]

Agreement of sale, possession under. Under Article 10, limitation starts from "sale" and not from "agreement to sell."[4]

Property not capable of physical possession. Where property is in possession of a third person without any rights and possession could not be taken under the sale; the property does not admit of physical possession and limitation will begin to run from the date of registration of the sale.[5]

Foreclosure, if amounts to sale. A mortgage by conditional sale becomes on foreclosure a "sale" within the meaning of this article.[6]

Possession taken after sale but before registration. When property is transferable only under a registered sale deed and the vendee is put in possession of the property on the basis of the sale deed. It cannot be said that the vendee did not get possession of the property under the sale-deed merely because the sale-deed is registered on a subsequent date.[7]

5. Sale. The word "sale" in this article is to be understood in the sense in which it is used under Muslim Law of Pre-emption and an oral sale of immovable property is valid.[8] But an oral sale of immovable properties of the value of more than one hundred rupees followed by delivery of possession or sale by unregistered instrument without delivery of possession of property of value of less than one hundred rupees is not a valid sale under T.P. Act wherever it applies, and will not give rise to a right of pre-emption.[9]

The article refers to an instrument which is not only in reality but also in terms a sale deed.[10] The Court can hold that an alienation purporting to be other than a sale is in effect a sale.[11] Thus where a real sale was effected but was called in the document a *hiba-bil-awaz;* it was a sale for the purposes of this article.[12] Where a sale deed was executed as a gift-deed instead of a sale deed to defraud the pre-emptor, Article 120 was held to be applicable.[13]

---

1. 1984 CLC 300 = PLJ 1984 Lah. 154 + PLD 1962 B. J. 33 (DB) + PLD 1963 AJ&K 75.
2. PLD 1967 Lah. 328 + AIR 1924 Lah. 394 + AIR 1925 Lah. 153.
3. AIR 1918 Lah. 79 = 1918 Pun Re No. 80.
4. KLR 1984 CC 693.
5. AIR 1922 Lah. 210 = 3 Lah. 261 (DB).
6. AIR 1951 Nag. 295 = ILR 1950 Nag. 745.
7. AIR 1950 All. 290.
8. AIR 1939 Nag. 35.
9. 19 Cal. 623 (FB). (16 Cal. 622. *Overruled*).
10. 27 All. 540.
11. AIR 1934 Lah. 878 = 16 Lah. 408 (DB). (Case under Punjab Pre-emption Act, 1913).
12. 12 Oudh Cas. 185 (DB).
13. 8 Oudh Cas. 288.

Where a sale is not complete it does not come within the scope of this section. Thus where the vendor retains a right to the property until certain conditions are fulfilled, the sale is not complete and does not give rise to any right of pre-emption.[14]

Agreement between parties. A subsequent agreement between the parties cannot convict what an out and out sale into any other transaction and thus take away the right of pre-emption which arose on the date of sale.[15]

Error in deed of sale. A mere error in the instrument of sale as to the property sold where there is no question as to what the parties intended to sell or purchase, will not alter the nature of the transaction.[16]

Date of sale gives starting point. Where a sale was effected, but its validity was questioned subsequently. A decree was passed holding the sale valid. It was held that time commenced from the date of the sale and not from the date of the decree.[17]

Execution sale. This article applies to execution sales.[18]

Foreclosure of Mortgage. A mortgage by conditional sale becomes on foreclosure a "sale" within the meaning of this article.[19] Thus where the mortgagee by conditional sale has not got possession on the date of the mortgage and gets physical possession after the purchase, this article will apply and time will run from the date of obtaining such possession.[20] But where a mortgagor is in possession of property under his mortgage at the time of foreclosure,[1] or where property does not admit of physical possession, Article 120 and not this article applies.[2]

6. Of the whole of the property sold. Where the subject of the sale admits of physical possession, limitation for a suit for pre-emption will not begin to run until physical possession is taken of the whole of the property sold.[3] If part of property is sold and it is not capable of physical possession, limitation commences from the date of registration of the sale deed.[4] Where there is no registered instrument evidencing the sale, this article does not apply.[5] In that case Art. 120 applies.[6]

---

14. 20 Suth W.R. 216.
15. ('95) 17 All. 451 + 1900 Punj. Re. No. 43 p. 153 (DB).
16. AIR 1916 Lah. 396 + AIR 1926 Oudh 475 + 8 Oudh Cas. 288.
17. AIR 1919 Lah. 79 = 1919 Pun Re No. 15 (DB).
18. AIR 1922 Pat. 601 = 1 Pat. 578 (DB) + 5 CPLR 67.
19. 24 All. 17 = 28 Ind App 248 (PC).
20. 4 CPLR 72 + 20 All. 315 + 12 Agra 364 (DB) + 14 Cal. 761 (DB).
1. AIR 1927 Oudh 212 + AIR 1951 Raj. 117 = ILR (1951) 1 Raj. 17 (DB) + 1906 Pun L. R. No. 32, p. 111 (DB) + 14 All. 405 (FB).
2. 24 All. 17 = 28 Ind App 248. (PC).
3. AIR 1956 Nag. 243 = ILR 1956 Nag. 116 (DB).
4. PLJ 1987 Lah. 113 = KLR 1987 CC 158 = PLD 1987 Lah. 133 + 1892 All. W.N. 77 (DB) + AIR 1956 Nag. 243 = ILR 1956 Nag. 116 (DB) + 1889 Pun Re No. 65, p. 207 (DB) + 1885 Pun Re No. 61, p. 128.
5. PLD 1967 Pesh. 166 = PLR 1968 (1) W.P. 302 + 20 All. 315 (FB).
6. PLD 1967 Pesh. 166 = PLR 1968 (1) W.P. 302 + AIR 1952 Nag. 40 = ILR 1969 Nag. 465 + AIR 1956 Nag. 243 = ILR 1956 Nag. 116 (DB).

7. "Is registered." Article 10 obviously applies to those cases where the sale is evidenced by a registered instrument.[7]

The words "when the instrument of sale is registered" mean the date when under S. 60 of the Registration Act, a certificate containing the word "registered" is made on the document.[8] For the purposes of this article the registration will not date back to the date of the execution of the document and limitation will not start to run from the latter date.[9] A document cannot be regarded as registered before a certificate is endorsed thereon and signed, sealed and dated in terms of section 60, Registration Act. Therefore limitation would commence not from the date when the document is presented for registration but from the date when it is actually registered.[10] A suit for pre-emption was filed on 10-6-1958. The sale-deed was executed on 30-5-1957 and though the deed was presented for registration on the same day it was actually registered by the Registrar on 12-6-1957. The vendee had already taken possession one day prior to the sale. It was held that the suit was not governed by the first part of Art. 10 but was governed by the second part and was within time.[11]

The mere fact that a copy is forwarded to the registering officer in accordance with S. 89 of the Registration Act and duly filed does not make the certificate a registered document.[12]

Property situate in different districts. Where property subject of sale is situate in different districts and instrument of sale of property situate partly in district *G* and partly in district *B* is registered at *G* on 6-10-1921. On intimation by registration officer at *G* to the Officer at *B*, entry was made by the latter in his register on 24-11-1921. It was held that the instrument was registered on 6-10-1921.[13]

8. Burden of proof. The plaintiff has to allege that he has a right of pre-emption and that his suit is within time. The defendant must show that he took possession of the property more than a year before the date of suit.[14] But where the suit is *prima facie* barred by limitation, the onus lies heavily on the plaintiff to show how his suit is within time.[15]

Fraud. Where fraud is alleged as a ground for extension of the period of limitation, the burden of proof of establishing the fraud is on the person alleging it.[16]

---

7. PLD 1951 Lahore 169 = PLR 1951 Lahore 331.
8. NLR 1983 Civ. 637 + PLD 1967 Lah. 378 + 1881 Pun. Re. No. 10. p. 18 (DB) + AIR 1952 Pepsu 63 + 1906 Pun Re No. 92. p. 331 (DB).
9. AIR 1922 Nag. 200.
10. NLR 1983 Civ. 637.
11. AIR 1961 Punj. 296.
12. 1908 Pun Re No. 142. p. 652 (FB).
13. AIR 1925 All. 324 (DB).
14. AIR 1943 Nag. 90 = ILR 1943 Nag. 209.
15. AIR 1947 Lah. 322.
16. (1874) 22 Suth W R 479 + 1902 Pun Re. No. 86. p. 352.

9. Suits not within this Article. A suit to set aside an invalid sale,[17] or a suit to enforce a contract which includes the recognition of a right of pre-emption is not a suit for pre-emption within the meaning of this article.[18]

10. Parties to suit. Where one pre-emptor sues another pre-emptor claiming to have preferential right of pre-emption, the suit will be governed by Art. 120 and not by this article.[19] Similarly where a rival pre-emptor is added as a party to a pre-emption suit, for the determination of the question as to which of the two had a better right of pre-emption, the suit, so far as such person is concerned, is governed, not by this article, but by Art. 120.[20]

Suit must be within limitation against all defendants. Where there are several defendants and the sale impeached is a joint sale to them all, the suit must be filed within one year of it against of them. Where *A* executed a joint sale to *B*, *C* and *D*, and a suit for pre-emption was filed within time against *B* and *C*, *D* was added as a party after the limitation period. It was held, that the suit must be dismissed against all.[1] Similarly where a sale was made in favour of three brothers, *G*, *M* and *P*; two-third of property being sold to *G* and *M* and one-third to *P*. Price was payable in lump sum. *G* died before institution of suit. His legal representatives were brought on record when the suit had become barred against *G*. The suit was held to be barred against all.[2] But where sale was in favour of two vendees with distinct specification of their shares and prices and a suit for pre-emption was filed against them. The suit against one was dismissed as time barred. It was held, that the suit against the other was maintainable.[3]

Transferee from vendees. Where the original vendee has transferred the property to another, a suit for pre-emption must be within one year of the first sale and not merely the second transfer. Thus where *A* transferred property to *B* who transferred the same to *C*. A suit was filed by *H* for pre-emption one year after the first transfer, but within one year of the second. It was held that the suit was barred against *B* and consequently no enforceable right against *C* existed.[4] The position is different when a suit has been filed against the first vendee within one year of the transfer to him, but transferee from him has not been impleaded. In such a case the period of limitation for the suit against the subsequent transferee from the vendee is governed by Art. 120 and not by Art.10.[5]

Minor. Where a minor who was a necessary party was made a party within time but his guardian was appointed after limitation; the suit was not time-barred.[6]

---

17. ('86) 1 C P L R 53+3 Low Bur Rul 7. (Authority to sell under certain conditions--Sale invalid without fulfilling such conditions.).
18. AIR 1921 Sind 118=17 Sind L R 1 (DB).
19. AIR 1936 Lah. 503+14 1 C 328=80 P R 1912=186 P W R 1912.
20. ('84) 7 All 187 (DB)+14 Ind Cas 328=1912 Pun Re No. 80 ('12) 9 All L. Jour 211 (DB)+1908 Pun Re No. 26. p. 130.
1. ('11) 8 All. L. Jour 814 (DB)+AIR 1921 Oudh 252.
2. 1896 Pun Re No. 66. p. 190.
3. 1909 Pun Re No. 6. p. 11 (DB).
4. 1905 Pun L. R. No. 86. p. 335.
5. NLR 1984 CCJ 237 (DB)+PLD 1974 (AJ&K) 1.
6. AIR 1927 All. 787=49 All. 869 (DB).

11. 'Lis pendens.' The doctrine of *lis pendens* applies to pre-emption suits.[7] Thus where a pre-emption suit is pending and the vendee enters into an agreement to sell the suit property to another pre-emptor with preferential right; the agreement cannot be enforced.[8]

12. Plea of right of pre-emption in defence. The right of pre-emption is an inchoate right and in order to be completed it must be exercised and if that right is not enforceable having been barred under Art.10. it cannot be a ground of a valid defence.[9] Thus where *A* mortgaged his estate to *B* and sold the equity of redemption to *C*, *B* had right of pre-emption in respect of sale to *C* which he allowed to become time-barred. When *C* filed a suit for redemption, *B* could not plead his right of pre-emption.[10]

11.	By a person against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order:	[11][One year]	The date of the order.
	(1) Order under the Code of Civil Procedure, 1908, on a claim preferred to, or an objection made to the attachment of, property attached in execution of a decree;		
	[12]* * * *		

Synopsis

1. Scope.
2. Suit on cause of action subsequent to date of order.
3. Third party cannot claim benefit of Article.
4. Order against plaintiff or his predecessor-in-interest necessary.
5. Order against minor.
6. Withdrawal or removal of attachment subsequent to order disallowing claim.
7. Withdrawal of attachment prior to inquiry into claim or objection.
8. Subject-matter of suit.

7. AIR 1939 Nag. 35+AIR 1934 Oudh 303=9 Luck. 474+AIR 1926 All. 180=48 All. 221 (DB).
8. AIR 1917 Oudh 193=20 Oudh Cas. 13.
9. AIR 1961 Andhra Pradesh 31 (DB)+ILR 24 Mad. 449+ILR 29 Mad. 336 (FB)+AIR 1934 Oudh 303+42 Cal. W.N. 1028.
10. ('12) 16 Ind Cas. 219 (DB) (All).
11. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Schedule for "Ditto".
12. Clause (2) omitted by the Federal Laws (Revision and Declaration) Act, 1951 (26 of 1951), S. 3 and Second Schedule.

9. "The property comprised in the order."
10. Clause (1).
11. Order dismissing claim or objection for default.
12. Order dismissing a claim or objection on ground of delay.
13. Order allowing withdrawal of claim or objection.
14. Consent order in claim petition.
15. Order in claim proceedings directing sale after notifying claim.
16. Order rejecting claim for want of jurisdiction.
17. Order dismissing claim by mortgagee.
18. Property must have been attached.
19. "Attached in execution of a decree."
20. Starting point of limitation.
21. Section 28 and this Article.

1. Scope. This Article does not extend the period of limitation in favour of the plaintiff, if, on the date of the suit his rights are barred and extinguished by the operation of some other article.[13]

Attachment before judgment. Article 11 of the Limitation Act does not govern attachment before judgment, as such attachment cannot be said to be in execution of a decree. The very wording of the Article makes it clear that it does not apply to a claim made under O. 38, R. 8, C.P.C. and there being no other specific article applicable to such a claim. Art. 120 springs into operation. A suit filed within six years of such an order would be in time.[14]

Orders passed by Collector. Article 11 applies to orders passed by Collector in exercise of the powers conferred on him by the Code. He has, however, no powers to consider objections to attachment.[15]

Suit barred, objection cannot be taken in defence. Where a suit is not filed within the period stipulated by this Article, a party cannot subsequently raise objection in defence on the basis of the dismissed claim. Thus where the claim of a person was disallowed in claim proceedings and the person failed to sue within time for establishing the right which he claimed to the property. A suit was filed against him by a person entitled to the benefit of the order in claim proceedings. It was held, that the former could not set up such right by way of defence to the suit by the latter.[16]

2. Suit on cause of action subsequent to date of order. This Article does not apply where the cause of action has arisen subsequent to the date of order. Thus where a Hindu reversioner preferred a claim unsuccessfully in execution of a decree against the limited owner. It was held that he was not debarred from filing the suit after the death of the limited owner.[17] Similarly where *A*, who is in adverse possession of certain property attached in execution of a decree but whose title

13. AIR 1919 Lah. 154 (DB) + ('17) 8 Bom. H C R (AC) 61 + AIR 1936 Lah. 394 = 17 Lah. 403 (DB).
14. AIR 1964 Andhra Pradesh 99 (DB).
15. AIR 1943 Bom. 12 = ILR 1943 Bom. 104 (DB).
16. AIR 1935 Rang. 161 + AIR 1918 Mad. 693 (DB).
17. ('95) 20 Bom. 801 (DB) + AIR 1932 Lah. 179 = 13 Lah. 524 (DB).

thereto has not ripended into ownership prefers a claim and his claim is allowed. The decree-holder files a suit to set aside that order allowing the claim, within one year of the date of the order, but by that time *A's* title by adverse possession has ripened into ownership; the suit is not maintainable.[18] But where in such a case, the claim of the adverse possessor was dismissed and he failed to bring a suit within one year of the date of the order; he was held to be estopped from questioning the order.[19]

3. Third party cannot claim benefit of Article. Only a person who was a party to the claim proceedings can take benefit of this Article. A person who was not such party could not do so. Thus where *A* made a claim against the attachment of certain property in execution of *B's* decree the claim was dismissed; *C*, another decree-holder of the same judgment-debtor could not contend that *A* ought to have filed a suit within one year of the order against him.[20] Similarly where in 1916, *A* transferred to *B* certain property which *C*, *D* and *E*, creditors of *A*, were entitled to set aside as being in fraud on creditors. *C* obtained a money decree against *A* and attached the property in execution of his decree. On objection by *B*, the property was released from attachment in 1922. In 1923, within one year of this, a suit was brought by *C*, *D* and *E* impeaching the transfer as being fraudulent. It was held that the suit was in time under this article, so far as *C* was concerned but as regards *D* and *E*, the other creditors, it was barred under Art. 120.[1]

Proceedings between third person and unsuccessful claimant. An unsuccessful claimant can file a suit against a third person after the expiry of one year from the date of the order against him.[2] Similarly an unsuccessful claimant even after the expiry of one year from the date of the order passed against him can defend a suit filed by a third person.[3]

Transferee of defendant claimant. A party to the claim proceedings cannot bring a suit against the successful claimant beyond a period of one year but if the claimant transfers his rights to another person after the successful conclusion of claim proceedings, the transferee cannot claim benefit of this Article. Thus where on a claim being allowed under O. 21, R.58, C.P.C., the decree-holder filed a suit under O. 22, R. 63, C.P. Code within one year. A person to whom the successful claimant had transferred his rights subsequent to the claim order was impleaded after one year. It was held that the suit against him was not barred.[4]

Transferees of property after failure of claimant. The transferee of property after the failure of the claim is not a third party and as such can take benefit of this section. Thus where claim to a property is disallowed, this article would apply to a suit by the defeated claimant against the purchaser of that attached property.[5]

18. ('01) II Mad L. Jour 344 (DB) + AIR 1926 Mad. 42 (DB).
19. ('86) 8 Mad. 506 (DB) + AIR 1924 Mad. 11 = 47 Mad. 160 (DB).
20. ('92) 15 Mad. 477 (DB) + ('96) 18 All 413 (DB).
1. AIR 1932 Lah. 516 (DB).
2. ('11) 34 Mad. 533 (DB) + ('05) 3 Cal. L. Jour 381 (DB).
3. 1913 Mad. W. N. 54 (DB).
4. AIR 1940 Lah. 497.
5. AIR 1935 Rang. 161 + AIR 1920 Mad. 191 (DB).

4. **Order against plaintiff or his predecessor-in-interest necessary.** If the claim or objection is allowed the decree-holder is the person against whom there is an order such as that referred to in this article and he must sue within the period prescribed by this article.[6] Where on an objection by a claimant the attachment is raised, the mere fact that adverse observations are made against the claimant will not make the order one against him.[7]

Judgment-debtor. The question whether a judgment-debtor is in fact a party to the claim proceedings is a question of fact depending upon the circumstances of each case.[8] Where the judgment-debtor is a party to the claim proceedings, he would be bound by the order passed in such proceeding.[9] If the judgment-debtor was not in fact a party to the claim proceedings, he will not become such by reason solely of his being the judgment-debtor.[10]

Predecessor-in-interest of plaintiff. The person "against whom an order has been passed" would include his representative-in-interest such as transferee or purchaser at court-sale.[11]

5. **Order against minor.** A minor, against whom an order in a claim petition has been passed can sue under O. 21, R. 63, Civil P.C. within one year after he attains majority.[12] But where the minor's estate is under Court of wards and claim proceedings are instituted on behalf of the minor without necessary sanction, and an order is passed against the minor, this article does not apply to a suit brought by the minor after attaining majority to recover property comprised in the order.[13]

6. **Withdrawal on removal of attachment subsequent to order disallowing claim.** Where attachment is withdrawn by Court subsequent to the order disallowing claim but before the expiry of one year,[14] or even after the expiry of one year from the date of the claim order, the defeated claimant need not file a suit as contemplated by this article.[15] Similarly where a claim petition is filed after an order of attachment is dismissed but it is subsequently found that the

---

6. ('88) 15 Cal. 521 = 15 Ind App. 123 (PC).
7. AIR 1915 Mad. 57 (DB).
8. AIR 1935 Lah. 534 = 16 Lah. 1100 (DB) + ('03) 13 Mad. L. Jour 367 (DB) + ('90) 13 Mad. 366 (DB) + ('93) 17 Bom. 629 (DB) + ('87) 11 Bom. 114 (DB).
9. AIR 1935 Lah. 534 = 16 Lah. 1100 (DB) + AIR 1920 Mad. 191 (DB) + AIR 1914 Lah. 447 = 1914 Pun Re. No. 84 (DB).
10. AIR 1924 All. 302 = 47 All. 45 + AIR 1922 All. 411 (DB) + AIR 1920 Mad. 187 (DB) + 110 Ind Cas 511 (DB) + (Mad.) + 15 Cal. 674 (DB) + 2 Beng. L. R. (App.) 49 + AIR 1929 Pat. 604 (DB) + 22 Bom. 875 (DB).
11. 35 Mad. 35 (DB) + AIR 1931 All. 139 = 52 All. 1032 (DB) + AIR 1928 Cal. 514 (DB) + AIR 1927 Lah. 631 = 9 Lah. 167 (DB) + AIR 1923 Nag. 282 = 19 Nag. L. R. 15 + AIR 1920 Mad. 191 (DB).
12. 1 Cal. 226 = 3 Ind App. 7 (PC).
13. 27 Cal. 242 (DB).
14. AIR 1924 Cal. 744 = 51 Cal. 548 (DB). (Decree-holder not pressing the execution application) + 94 Ind Cas 120 (DB) (Cal.) (Do.) + AIR 1934 All. 267 = 56 All. 537 (FB) (Do.) + AIR 1927 Mad. 893 (Do.) + AIR 1925 Mad. 1113 (DB) (Do.) + AIR 1926 Nag. 423 = 22 Nag. L. R. 94 (Do.) + AIR 1921 Bom. 35 + 45 Bom. 561 (DB) (Do.) + 110 Ind. Cas. 511 (DB) (Mad). (Supervening insolvency of the judgment-debtor) + AIR 1937 Mad. 44 (Some other cause).
15. 1937 Mad. 44 + 165 Ind Cas. 84 (DB) (Cal.) + AIR 1925 Mad. 1113 (DB) + AIR 1931 Lah. 74 + AIR 1945 Pat. 369 = 25 Pat. 462 (DB). (Suit for declaration not bound).

attachment was illegal, no suit need be brought by the defeated claimant within one year of the dismissal.[16]

Suit after withdrawal of execution proceedings by decree-holder. Where a claim against the decree-holder is allowed, the decree-holder, before the decree is satisfied, can maintain a suit against the successful claimant though he has allowed the execution proceedings to be withdrawn.[17]

7. Withdrawal of attachment prior to inquiry into claim or objection. Where an execution application was struck off for want of prosecution before the date fixed for disposal of claim petition, and an order was passed allowing the claim on the fixed date. It was held that the decree-holder need not set aside the order under this article.[18] Similarly where a decree-holder withdrew attachment before the disposal of the claim petition stating that he will bring a regular suit to have the property declared liable to attachment and sale; a subsequent order allowing the claim need not be set aside by the decree-holder under this article.[19]

8. Subject-matter of suit. The suits contemplated by O. 21, R. 63 of the Civil P.C. and by this article is a suit to establish the right claimed in the inquiry.[20] Therefore in order to apply provisions of Art. 11 it is necessary that the claim made under O. 21, R. 58, C.P.C. must be identical with the claim made in the suit, both in regard to the claimant and the nature and extent of the claim.[1] The suit is in essence, one to set aside the order in the claim proceedings[2] and is a continuation of the claim proceedings.[3]

Scope of suit. The suits under O. 21, R. 63, C.P. Code are substantive suits,[4] and the scope of an inquiry under them is much wider than the scope of the inquiry in the claim case,[5] because in such suit the question of title and not merely the question of possession is decided.[6]

Suit by defeated claimant. In a suit under O. 21, R. 63, C.P. Code, the claimant may thrash out his title in the fullest and most ultimate sense.[7] He must establish his title by a declaratory decree and then carry the decree to the Court by which the order of attachment was issued and such Court is bound to recognize the adjudication and govern itself accordingly.[8]

Suit by decree holder. In a suit by the decree-holder under O. 21, R. 63 of the C.P. Code, he must establish that on the date of the attachment, the judgment-

16. AIR 1962 Pat. 218.
17. 21 Bom. 58.
18. AIR 1922 Lah. 108 = 3 Lah. 7 (DB) + 7 Bom. 408 (DB).
19. AIR 1926 Lah. 348 = 7 Lah. 235 (DB).
20. 165 Ind Cas. 84 (DB) (Cal.) + 1913 Pun L. R. No. 179. p. 602 + AIR 1928 Mad. 840 (DB) + 7 Mad. 295 (FB). (5 Mad. 133 *Overruled*.) + 23 Cal. 302 (DB).
1. AIR 1962 Pat. 204 (DB) + AIR 1959 Pat. 449.
2. 8 All. 6 = 12 Ind App. 150 (PC).
3. AIR 1928 Mad. 1201 = 52 Mad. 465 + AIR 1925 Nag. 82 = 22 Nag. L. R. 67.
4. 12 Cal. 696 (DB) + 22 Ind Cas 676 = 1 Upp Bur Rul 181.
5. 165 Ind Cas 84 (DB) (Cal.).
6. AIR 1924 Cal. 744 (DB) + AIR 1920 Mad. 748 (FB).
7. AIR 1924 Cal. 744 = 51 Cal. 548 (DB) + AIR 1933 Mad. 328 (DB).
8. 4 Mad. 131 (DB).

debtor had a subsisting right to the property and the suit must be tried as if it were a suit by the judgment-debtor himself for possession.[9]

Consequential relief, if should be asked. The plaintiff may ask for mere declaration and the suit cannot be dismissed as offending the provisions of the proviso to S. 42 of the Specific Relief Act, 1877.[10] But that does not mean that the plaintiff cannot ask for consequential relief. As a matter of fact no particular prayer is excluded from the scope of this article,[11] and the plaintiff can establish the right effectively by obtaining appropriate reliefs for the infringement of plaintiff's rights.[12] In other words the words "to establish the right" cover not merely a declaratory suit but also one for consequential relief such as the recovery of the value of the property if it had been already sold,[13] or the relief of possession,[14] or the relief by way of damages for wrongful attachment.[15]

9. "The property comprised in the order." The order passed in the claim proceedings is conclusive only with reference to the specific property comprised in the order and not in respect of any other property.[16] But where the claim was preferred in respect of several items of properties attached and the Court acting under misapprehension ordered a few items only to be released from attachment. It was held that there was no order against the claimant with reference to properties not comprised in the order.[17]

Attached debt. Where a debt is attached, the attachment would fall under O. 21, R. 63 only if the garnishee admits the debt. If the garnishee denied its existence neither O. 21, R. 63 nor Art. 11 would apply.[18] Where however the garnishee admitted the debt but claimed to set off against it another debt owed to him by the judgment-debtor and the Court disallowed this objection. It was held that the garnishee must sue to establish his claim under this article.[19]

10. Clause (1). The order referred to in clause (1) is one passed under O. 21, Rr. 60, 61 or 62, Civil P.C. and not any other order passed in execution proceedings.[20] Thus where property was attached, but the judgment-debtor was declared insolvent and the official Receiver claimed that the property vested in him and was not available exclusively to the attaching creditor and the claim was

---

9. (11) 35 Bom. 79 (DB).
10. 29 Mad. 151 (FB). (*Overruling* 16 Mad. 140)+AIR 1934 Rang. 332=12 Rang. 670+AIR 1930 All. 395+4 Bom. 529 (FB)+AIR 1927 Lah. 631=9 Lah. 167 (DB)+AIR 1919 Lah. 364+AIR 1923 Pat. 564 (DB)+AIR 1931 Rang. 310=9 Rang. 367+AIR 1929 Rang. 104+AIR 1926 Rang. 124=4 Rang. 22 (DB).
11. AIR 1932 Lah. 516 (DB)+AIR 1918 Nag. 233+AIR 1919 Mad. 257=42 Mad. 143 (DB)+AIR 1928 Rang. 34=5 Rang. 699.
12. 16 Bom. 608 (DB)+AIR 1917 Mad. 393=40 Mad. 733 (FB).
13. AIR 1917 Mad. 393=40 Mad 733 (FB)+AIR 1931 Lah. 483=13 Lah. 143 (DB).
14. 16 Bom. 608 (DB)+11 Bom. H. C. R 174.
15. 19 All. 253 (FB)+12 Cal. 696 (DB).
16. 13 All. 53=17 Ind App 150 (PC).
17. 1 Ind Cas. 742=1909 Pun Re. No. 42.
18. AIR 1936 Mad. 152=59 Mad. 906 (DB).
19. AIR 1914 Bom. 299=38 Bom. 631 (DB).
20. AIR 1926 Nag. 423=22 Nag. L. R. 94+AIR 1959 Orissa 65 (DB). (AIR 1920 Pat. 123 and AIR 1952 Mys. 25. *Not foll.*)+AIR 1950 Pat. 25=28 Pat. 828+28 All. 418+AIR 1916 Bom. 179=41 Bom. 64 (DB)+AIR 1927 Bom. 234 (DB)+AIR 1924 Nag. 275=20 Nag. L. R. 145.

dismissed. It was held that the order dismissing the claim was not covered either by O. 21, R. 63, Civil P.C. or by this article.[1]

Order passed without investigation. An order would be hit by this Article even if it was not passed after investigation into the merits of the petition.[2]

11. Order dismissing claim or objection for default. An order dismissing a claim for default of appearance of parties is an order passed against the claimant within the meaning of this article.[3] Similarly an order dismissing a claim for failure to produce evidence is an order passed against the claimant within the meaning of this Article.[4] Such order need not have been passed on investigation into the merits of the case.[5] Therefore the Article will apply even when the order was passed on insufficient evidence.[6]

12. Order dismissing a claim or objection or ground of delay. An order of dismissal of a claim passed summarily under proviso to O. 21, R. 58, C.P. Code is an order against the claimant within the meaning of this article.[7] Where a claimant does not file a suit to set aside such order within the period specified under this article; the order is conclusive.[8]

13. Order allowing withdrawal of claim or objection. Where a claim was allowed to be withdrawn, the order dismissing the claim was not one against the claimant, and this Article would not apply.[9]

14. Consent order in claim petition. A consent order in a claim petition is an order against the claimant or the decree-holder as the case may be, within the meaning of this article.[10]

15. Order in claim proceedings directing sale after notifying claim. An order passed on a claim petition that "the claim put forward by the petitioner will be noted in the sale proclamation and that it does not require investigation is not

1. AIR 1922 Mad. 189=45 Mad. 70 (DB).
2. PLD 1970 Pesh. 194=23 DLR Pesh 18 (DB)+AIR 1965 Kerala 110+AIR 1940 Mad. 41 (FB)+AIR 1950 Pat. 25.
3. PLD 1970 Pesh. 194=23 DLR (Pesh.) 18 (DB)+AIR 1922 Cal. 164 (FB)+AIR 1920 Pat. 123 (DB)+AIR 1919 All. 247=41 All. 623 (DB)+19 All. 253 (FB)+1910 Pun L. R. No. 63. p. 168+1910 Pun Re No. 28+AIR 1927 Lah. 872+AIR 1921 Oudh 54=24 Oudh Cas. 213+H Oudh Cas 180+AIR 1924 Rang. 42=1 Rang. 48+8 Cut L. Tim 93.
4. AIR 1927 All. 593=49 All. 903 (DB)+AIR 1918 All. 72=40 All. 325 (DB)+32 Cal. 537 (DB)+1 Cal. L. Jour 296 (DB).
5. AIR 1933 All. 198=55 All. 266 (DB)+AIR 1950 Pat. 25=28 Pat. 828+AIR 1949 East Punj. 318+1930 All. L. Jour 1322 (DB)+AIR 1929 Lah. 865=11 Lah. 369 (DB)+AIR 1919 Cal. 835=45 Cal. 785 (DB)+AIR 1927 Lah. 680+AIR 1916 Mad. 443 (DB)+AIR 1918 Mad. 1054 (DB)+AIR 1923 Nag. 69+AIR 1926 Nag. 423=22 Nag. L. R. 94+AIR 1931 Oudh 1=6 Luck. 461 (FB)+AIR 1929 Pat. 116 (DB)+AIR 1920 Pat. 123 (DB).
6. PLD 1970 Pesh. 194=23 DLR Pesh. 18 (DB)+AIR 1917 Oudh 89=19 Oudh Cas. 357.
7. AIR 1961 Mad. 196+AIR 1928 All. 327 (DB)+AIR 1960 Pat. 80 (DB)+AIR 1923 All. 435=45 All. 438 (DB)+AIR 1933 Bom. 190=57 Bom. 213 (DB)+AIR 1935 Cal. 500 (DB)+AIR 1919 Mad. 738=41 Mad. 985 (FB)+AIR 1916 Lah. 273=1916 Pun Re No. 66 (DB)+AIR 1923 Nag. 187=19 Nag. L. R. 34+AIR 1935 Pat. 122.
8. AIR 1961 Mad. 196+AIR 1935 Cal. 500 (DB)+AIR 1925 Mad. 368.
9. AIR 1925 Mad. 265 (DB)+AIR 1935 Mad. 544+AIR 1925 Nag. 2=20 Nag. L. R. 106 (DB).
10. AIR 1915 Mad. 1128 (DB).

an order against the claimant.[11] But an order dismissing the claim under proviso to O. 21, R. 51, C.P. Code and further directing the claim to be notified in the sale proclamation is an order against the claimant.[12]

16. Order rejecting claim for want of jurisdiction. Where the Court declines to investigate a claim on the ground that it has no jurisdiction, there is no order against the claimant within the meaning of this article.[13] Where a claim was withdrawn because the Court had no jurisdiction to try it. It was held that there was no order against the claimant.[14] Where a claim petition was put in after sale, and was dismissed on the ground that the sale had already been concluded; it was held that the order was not one dismissing the claim on the ground of delay but really on the ground that the Court had no jurisdiction to hear it.[15] Where a tenant of the judgment-debtor raises an objection to the attachment, an order disallowing the objection does not fall within this article.[16] Similarly where an objection was filed on the date of sale but was dismissed for default subsequent to the sale. It was held that the order was without jurisdiction and a suit by the objector to establish title was not governed by this article.[17] Property under mortgage was sold in execution of a decree against the mortgagor. The mortgagee filed an application in the executing Court for setting aside the sale on the ground that as the property had been mortgaged to him it could not be attached and sold in execution of a decree against the mortgagor. The executing Court dismissed the application on the ground that it had no jurisdiction to entertain a claim under Order 21, Rule 58, C.P.C. after the execution sale had taken place. The mortgagee then filed a suit for enforcing his mortgage. It was held, that the suit was not barred by limitation under Art. 11 even though it was instituted after the expiry of one year from the date of the order of dismissal of the claim application for setting aside the sale because the suit did not fall under O. 21, R. 63. Article 132 governed the suit.[18]

Where the Court entertains a claim and enquires into it but eventually dismisses it because the claimant has no *locus standi* to make the claim, the order is one passed against the claimant within the meaning of this article.[19]

17. Order dismissing claim by mortgagee. Where a mortgagee objected to attachment in execution of a decree and the objection was dismissed. It was held that the mortgagee must bring a suit to establish the right claimed within the period prescribed under this article; he could not enforce his mortgage under Art. 13.[20]

---

11. AIR 1941 Mad. 77 (DB)+AIR 1959 Pat. 449 (DB). (AIR 1923 Mad. 295. *Rel. on*)+AIR 1923 Mad. 295 (DB).
12. AIR 1919 Mad. 738=41 Mad. 985 (FB).
13. AIR 1921 Mad. 488 (DB)+AIR 1952 Pat. 275=31 Pat. 256 (DB)+AIR 1937 Nag. 170=ILR 1938 Nag. 276.
14. AIR 1928 Mad. 878 (DB).
15. AIR 1964 M.P. 158 (DB)+AIR 1923 Mad. 76=45 Mad. 827.
16. AIR 1935 Mad. 547=58 Mad. 936 (DB).
17. AIR 1937 Cal. 390 (DB).
18. AIR 1964 M.P. 158 (DB).
19. AIR 1939 Pat. 109=17 Pat. 446 (DB)+AIR 1935 Pat. 31.
20. AIR 1927 All. 593=49 All 903 (DB)+AIR 1939 Pat. 21 (DB)+AIR 1929 Lah. 865=11 Lah. 369 (DB)+AIR 1926 Mad. 593 (DB)+AIR 1920 Mad. 191 (DB)+AIR 1943 Bom. 12=ILR 1943 Bom. 104 (DB). (Objection to have sale subject to objector's mortgage disallowed--

18. Property must have been attached. For purposes of this article, a claim must be preferred to, or an objection made to the attachment of property attached in execution of a decree.[1] The attachment must be valid in law. Where the attachment was found to be invalid after objection to it had been dismissed and a new attachment was made, where upon the objector filed new objections and on their dismissal filed a title suit. It was held that limitation for the suit commenced from the date of dismissal of the second objection and not that of the first objection because that attachment being null and void, any objection to it was also null and void.[2]

Where an objection to the attachment in execution of a decree is allowed but the High Court holds that the decree did not create any charge and directs a fresh suit to be filed for the purpose and the party files another suit and again attaches the property in execution of the decree obtained therein and an objection is again allowed, a suit for declaration that the property is liable to attachment filed within one year of the latter order is within limitation under Art. 11.[3]

Mortgage decree. No attachment is necessary in the case of an execution of a mortgage decree, and this article does not apply to claim arising out of execution of such decree.[4] Therefore where a mortgagee preferred a claim to attachment which was not valid under O. 21, R. 62, C.P.C. Code; and the claim was disallowed. The defeated claimant need not sue within one year as prescribed by this article.[5] But where a mortgagee decree-holder erroneously proceeds to execute the mortgage decree as a simple money decree and attaches the hypotheca in execution and a claim or objection is made to the attachment and the same is allowed, the order allowing the claim is conclusive and binding on the mortgagee decree-holder, unless he files a suit within on year of the order under this article.[6]

19. "Attached in execution of a decree." Where the property is attached before judgment and a suit, claim or an objection with reference to such attachment is allowed or disallowed, a suit to set aside that order is not governed by this article but is governed by Art. 120,[7] and the period of limitation for a suit for a declaration that the property is not liable to attachment and sale begins to run from the date when his objection petition filed during the proceedings for attachment before judgment was dismissed and not from the date on which the property is subsequently attached again in execution.[8]

Suit by objector not barred by Art 11)+AIR 1944 Mad. 417. (Mortgagee applying–Sale proclamation ordered with mortgage but notified as alleged to be colliusive–Suit by mortgagee after one year of the order, held barred).

1. 10 All. 479 (DB)+AIR 1924 Oudh 384.
2. AIR 1962 Pat. 218.
3. AIR 1952 Hyd. 54=ILR 1952 Hyd. 166 (DB).
4. AIR 1933 Lah. 75+4 Bom. 515 (FB)+14 Cal. 631 (DB)+AIR 1921 Cal. 479 (DB).
5. AIR 1928 P.C. 139=51 Mad. 349=55 Ind App. 256 (*Reversing* AIR 1922 Mad. 447).
6. AIR 1922 P. C. 341.
7. AIR 1921 Mad. 163=44 Mad. 902 (FB)+AIR 1954 Mys. 39=ILR 1953 Mys. 408 (DB). (51 Mys. H C R 448 and AIR 1945 Cal. 440. *Foll.*)+AIR 1945 Cal. 449=ILR (1945) 1 Cal. 547 (DB)+AIR 1934 Pat. 580 (DB).
8. AIR 1963 M. P. 261 (DB).

Where there is an order in execution for the sale of the property attached before judgment, a claim put in after that order may property be regarded as a claim to property attached in execution of a decree within the meaning of this article.[9]

Attachment by Provincial Small Causes Court. A claim proceeding under O. 21, R. 63 of the Code or order thereon with reference to an attachment before judgment of immovable property ordered by a Provincial Small Cause Court is a nullity and the defeated decree-holder is not obliged to bring a suit within the period of limitation prescribed by this article.[10]

20. Starting point of limitation. Time under this article begins to run from the date of the order in the claim proceedings, although the order was passed *ex parte*.[11] The period of limitation does not start from the date of the attachment or sale of the property.[12]

Exclusion of time spent in other proceedings. In computing the period of limitation, time spent in prosecuting some other proceedings may be excluded, in proper cases, under S. 14.[13] Thus where there was an appeal against an order, limitation starts from the date of the order of the Appellate Court.[14] Similarly time runs from the date of order passed in revision.[15] But in case of an infructuous revision petition limitation would begin to run from the date of order on the claim petition and not from the order on the revision petition.[16]

21. Section 28 and this Article. Section 28 of the Act does not apply to a suit to establish the plaintiff's right to property comprised in an adverse order passed in a claim proceedings and hence, the plaintiff's right to the property is not extinguished on his failure to bring a suit within one year under this article.[17]

11-A. By a person against whom an order has been made under the Code of Civil Procedure, 1908, upon an application by the holder of a decree for	[18][One year]	The date of the order.

9. AIR 1921 Mad. 163=44 Mad. 902 (FB)+AIR 1929 Nag. 128.
10. AIR 1924 Cal. 193 (DB)+AIR 1952 Orissa 182=ILR 1951 Cut 335.
11. AIR 1927 All. 420 (DB).
12. 4 Bom. 611 (DB)+AIR 1917 Mad. 393=40 Mad. 733 (FB).
13. AIR 1937 Nag. 1=ILR 1937 Nag. 291 (DB)+AIR 1933 Lah. 652+AIR 1928 All 10 (DB). (A doubt as to applicability of S. 14 to such proceedings was expressed in AIR 1963 Kerala 137 (FB)).
14. AIR 1916 Mad. 883=39 Mad. 1196 (DB).
15. AIR 1943 Mad. 633.
16. AIR 1963 Ker. 137 (FB)+AIR 1915 Low Bur 145=8 Low Bur Rul 146 (FB). (In case of unsuccessful revision application, time runs from the date of the original order).
17. 165 Ind Cas. 84 (DB) (Cal)+AIR 1935 Mad. 1015.
18. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch. for "Ditto".

	the possession of immovable property or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser, to establish the right which he claims to the present possession of the property comprised in the order.	One year.

Synopsis

1. Scope.
2. Article applies only to plaintiffs against whom an order has been passed.
3. Suit must be against a person in whose favour the order is made.
4. No order passed, article does not apply.
5. Order not under O. 21, Rr. 98, 99 or 101 of C.P.C.
6. "To establish the right which he claims to the present possession of the property."
7. Effect of not filing suit within one year.
8. Starting point.

1. **Scope.** The policy of fixing a short period under this article is to secure the speedy settlement of questions of title raised at execution sales.[19]

Case not falling O. 21, R. 103, C.P.C. Where O. 21, R. 103 does not apply to a particular case, this article will not apply.[20] Where an order was passed on an application to remove an obstruction and orders passed on an application for redelivery are not passed after investigation, they are not conclusive under O. 21,

19. 15 Cal. 521 = 15 Ind. App. 123 (PC) + AIR 1958 Ker 22 = ILR 1957 Ker. 724 (FB).
20. AIR 1922 Cal. 229 (DB) + AIR 1950 Cal. 555 = ILR (1950) 2 Cal. 617 + ILR (1949) 2 Cal. 372 + AIR 1924 All. 495 = 46 All 693 (FB) + AIR 1929 Pat. 553 (DB).

R. 103 and therefore are not required to be set aside within the period mentioned in Art. 11-A.[1]

Cases falling under S. 47, C.P.C. This Article does not apply to an order passed in a proceeding arising between parties to a suit under S. 47, Civil P.C.[2]

2. Article applies only to plaintiffs against whom an order has been passed. The article applies only to a plaintiff against whom an order has been passed and not to another person who was not a party to the earlier proceedings. Thus where an order, contemplated by this article, was passed against *A* who was a *benamidar* for *B*. *A* could file a suit within one year though *B* was impleaded after one year.[3]

Decree-holder, suit by. An order such as is referred to in this article may be made against a decree-holder.[4] The acquisition of forcible possession by the decree-holder after delivery of possession to the successful party under R. 101 of O. 21, Civil P.C. cannot operate to arrest the running of time against the decree-holder, nor can it invest him with a fresh right to reagitate the question of title which had already been extinguished.[5] But where on being resisted a decree-holder applied to the Court and his right to take possession was affirmed by the Court, he can enter and need not bring a suit as contemplated under this article.[6]

Joint Hindu family. Where the Manager of a joint Hindu family applies for redelivery of a house of which he is dispossessed and his application is dismissed and no suit is brought within one year; the joint family loses all rights to possession and no member has a right to claim his share.[7] But if the order is also passed against minor members of the family whom the manager did not represent in the above proceedings, the minors are not bound by the order and limitation under this article does not affect them.[8]

3. Suit must be against a person in whose favour the order is made. The Article applies only where the suit is instituted against a person against whom an order is made. Where a suit was filed against the person in whose favour the order was made within one year and on his representation certain persons were added as real owners after the said period; the suit against them was not barred.[9] It follows that where another person obtains possession of the property after the institution of such a suit, a prayer for amendment by bringing on record such person, made beyond the period of one year is not barred by limitation.[10]

1. AIR 1965 Kerala 110.
2. AIR 1927 Mad. 952 (DB) + AIR 1956 Nag. 93 = ILR 1955 Nag. 72 (DB).
3. 8 Mad. L. Tim 377 (DB).
4. 15 Cal. 521 = 15 Ind. App. 123 (PC).
5. AIR 1948 Oudh 22 = 22 Luck. 192.
6. 1879 Bom. P. J. 35 (DB).
7. AIR 1937 Oudh 401 = 13 Luck. 389 (DB).
8. 32 Bom. 404. (*Following* 10 Bom. 21).
9. 18 Mad. L. Jour 464 (DB).
10. AIR 1950 Cal. 566.

4. No order passed, article does not apply. Where a Court declines to pass an order at all, this article does not apply.[11] Similarly where the order does not grant the relief sought in a subsequent suit, the Article does not apply to the suit.[12]

5. Order not made under O. 21, Rr. 98, 99 or 101 of C.P.C. A suit by a person against whom an order O. 21 R. 95 or R. 96 of the Code has been made is not governed by this article.[13] In other words this article applies only to a suit by a person against whom an order has been made under R. 98, R. 99 or R. 101 of O.21 of the Civil P.C.[14] Thus where an order is passed against a person without any attempt by the Court to deliver possession[15] or an order is made against a person not actually dispossessed[16] or an order is made against a person where there was no overt act of resistance or obstruction; this article does not apply to a suit by that person.[17] *A* purchased half share of *G's* property at a Court auction. He applied for actual possession but was obstructed by *B*. *A*, thereupon, applied for being put in actual possession but his application was dismissed. A sued for possession of the share after more than one year; the suit was held to be barred.[18] Where an application under O. 21, R. 100, Civil P.C. was dismissed as not pressed on the basis of an endorsement on the application that the applicant was not prosecuting the application as he had got to prove possession of the property and that he would file a separate suit. Subsequently the applicant filed a suit for declaration of his title to the property and for an injunction against the decree-holder against his interference with his enjoyment. Alternatively it was claimed that the property in suit was not the same as that covered by the decree. The question was whether the suit was barred by limitation under Article 11-A, Limitation Act. It was held that Art. 11-A would apply only to suits instituted under O. 21, R. 103, Civil P.C. and as in the present case the order passed did not come under O. 21, R. 101, the suit filed by *B* could not be said to be one under O. 21, R. 103 and as such was not governed by Art. 11-A, Limitation Act.[19] Where an order is made against a purchaser of a share of a member of a Muslim family, in delivery proceedings and the purchaser sued him more than one year after the order; the suit was governed by this article.[20]

Order under O. 21, R. 95 or R. 96. A suit by a person against whom an order under O. 21, R. 95 or R. 96 of the Code has been made is not governed by this article.[1] Thus where delivery of possession was given under O. 21 R. 96 to a decree-holder against a person and the latter applied under O. 21, R. 100 and the Court ordered that the applicant be restored to possession. The decree-holder need not sue within the period prescribed by this article to establish his rights.[2]

---

11. 27 Mad. 25 (DB). (Case under Act of 1877).
12. 2 Cal. L. Jour 63 (Short Notes).
13. AIR 1965 Kerala 110 + 1930 Mad. W.N. 1051 + AIR 1924 All. 495 = 46 All. 693 (FB).
14. AIR 1924 All. 495 = 46 All. 693 (FB).
15. AIR 1933 Cal. 246 = 60 Cal. 8 (DB).
16. AIR 1940 Lah. 349 + AIR 1929 Pat. 553 (DB) + AIR 1923 Cal. 601 = 50 Cal. 311 (DB) + AIR 1924 Cal. 97 (DB) + AIR 1914 Mad. 121 (DB).
17. AIR 1924 All. 495 = 46 All. 693 (FB) + AIR 1924 Rang. 261 (DB).
18. 16 Nag. L. R. 103 (P.C.).
19. AIR 1962 All. 181 (FB).
20. AIR 1921 All. 92 (DB).
1. 1930 Mad. W. N. 1051 + AIR 1924 All. 495 = 46 All. 693 (FB).
2. AIR 1940 Cal. 16

Order under O. 21, R. 100. An order dismissing an application under O. 21, R. 100 is conclusive if no suit is filed within the period prescribed by this article.[3]

Order passed without investigation. A suit by a person against whom an order without any investigation is passed is not governed by this article.[4] But an order cannot be said to be passed without inquiry when the parties were present but no evidence was adduced on the date of hearing after notices[5] or where both parties were present and no evidence was adduced by them and only one party appeared as a witness or where the order was without opposition.[6]

Nature of investigation. Under this Article the investigation is restricted to the question of possession only and does not extend to question of title.[7] It must be one made on an application and not *suo motu* by the Court.[8]

6. "To establish the right which he claims to the present possession of the property." The suit contemplated by O. 21, R. 103, Civil P.C. and by this article is not confined to possession.[9] The fact that the plaintiff seeks to recover possession on redemption is no ground for holding that he does not claim the right to the present possession of the property.[10] Where hypothecated property is attached and purchased in execution of a money decree and subsequently the property is purchased in execution of the decree on a hypothecation bond and delivery is obtained and there is an obstruction by the purchaser in a prior execution sale which is dismissed--whereafter a suit for possession is filed, the contention that hypothecation did not cover whole of the property is rejected; the suit is one under R. 103, and is barred by limitation.[11]

A right to possession depending on some other right being established is not a right to present possession.[12]

Previous possession need not be proved. The right to present possession may be established without showing that, on the date of the summary order against him, the plaintiff was in actual possession of the property.[13]

Right based on mortgage. The right to present possession may rest on complete proprietorship or on a mortgage with possession or on a lease or even

3. AIR 1917 Bom. 133 = 42 Bom. 10 (DB).
4. AIR 1965 Kerala 110 + AIR 1940 Lah. 349 + AIR 1960 Pat. 231 (DB) + AIR 1959 Orissa 65 (DB) + AIR 1950 Pat. 25 = 28 Pat. 828 + 34 Cal. 491 (DB) + AIR 1917 All. 426 (DB) + AIR 1920 Bom. 64 = 44 Bom. 515 (DB) + AIR 1917 Nag. 53 = 14 Nag. L. R. 66 + AIR 1918 Mad. 554 (DB) + 1933 Mad. W.N. 924 + AIR 1922 Cal. 229 (DB) + AIR 1926 Nag. 423 = 22 Nag. L. R. 94 + 4 All. 131 (DB).
5. 20 Ind. Cas. 369 (All.) + 8 All. L. Jour 626.
6. AIR 1935 Cal. 267 (DB).
7. AIR 1937 Oudh 400 (DB).
8. AIR 1931 Lah. 686.
9. AIR 1929 Bom. 379 = 53 Bom. 668 (DB).
10. AIR 1939 Pat. 7 = 18 Pat. 155 (DB).
11. AIR 1953 Trav-Co. 455 (DB).
12. AIR 1927 Bom. 184 = 51 Bom. 158 (DB).
13. AIR 1921 Mad. 317 = 44 Mad. 227 (DB).

on mere possession unexplained.[14] But a suit to enforce a mortgage lien is not governed by this article.[15]

Suit for partition and possession. A suit for partition and possession is not covered by this Article. Where the claim of the applicant is under O. 21, R. 97, C.P.C. for possession of whole of homestead but the opposite party claims one-third share in it. The claim of the applicant was dismissed under O.21, R.99. A suit by applicant for partition and possession of fraction of homestead is not governed by this article.[16] Where a purchaser, at Court auction, of a share of a member of joint Hindu family, in certain property obtained possession of the whole property which was redelivered to other members on application and the purchaser sued for partition and possession of his share, this article did not apply.[17]

Suit by plaintiff in other capacity. Where the decree-holder or auction-purchaser does not sue as such, but in some other capacity, this article does not apply.[18]

7. Effect of not filing suit within one year. Where a suit is not filed within one year of the making of the order contemplated by this Article, the order becomes finally conclusive with the result that the right of the party in whose favour it is made becomes conclusive,[19] and the party against whom the order has become conclusive cannot set up his right again to the property comprised in the order in the suit.[20] A suit by such party after one year from the date of the order will be barred if it is in substance one for establishing the right to the present possession of the particular property which was the subject of the order.[1]

Right cannot be set up in defence. A party against whom an order with regard to property has become conclusive, cannot set up a right to that property by way of defence to a suit to enforce the rights in pursuance of the order.[2]

Suit based on title is not barred. A suit under O. 21, R. 103, Civil P.C., not being a suit for possession, S. 21, Limitation Act, does not apply and hence failure to bring the suit within the period prescribed by Art. 11-A cannot extinguish the title of the person against whom the order was passed to the property in question.[3]

---

14. 11 Bom. H. C. R. 147 (DB)+AIR 1929 Bom. 379=53 Bom. 668 (DB)+AIR 1920 Lah. 517=1 Lah. 57 (DB).
15. 29 Cal. 25 (DB).
16. AIR 1938 Cal. 384=ILR (1938) 1 Cal. 685.
17. AIR 1926 Mad. 683=49 Mad. 596 (DB)+AIR 1946 Mad. 324. (Sale of share of joint property by one owner–Property already mortgaged–Mortgagee purchasing it in execution of mortgage decree–Application in execution by the previous purchaser for re-delivery dismissed–Suit by him for redemption and delivery of properties–*Held* that S. 11-A did not apply).
18. AIR 1926 Cal. 377 (DB)+AIR 1929 All. 610.
19. AIR 1918 Mad. 165 (DB)+AIR 1957 Pat. 133+AIR 1920 Lah. 517=1 Lah. 57 (DB).
20. AIR 1924 Bom. 527 (DB)+AIR 1957 Pat. 133+AIR 1927 Cal. 916 (DB).
1. 16 Nag. L. R. 103 (PC).
2. 1889 Bom. P. J. 17+10 Mad. 357 (DB). (*Following* 4 Mad. 308).
3. AIR 1951 Cal. 481=ILR (1949) 1 Cal. 378 (DB).

8. Starting point. The starting point of limitation for a suit under R. 103, O. 21, Civil P.C., cannot be the date of order which would have been made by the Court upon an application under O. 21, R. 97, Civil P.C.[4]

Appeal or revision. Where the executing Court rejects an objection to delivery, time runs from the date of the order of such Court. Time cannot run from the date of the order passed on an infructuous and incompetent appeal or revision against the order.[5] Where a revision is taken against the order to the High Court and it is dismissed, time cannot be computed from the date of the order in revision.[6]

12. To set aside any of the following sales: (*a*) sales in execution of a decree of a Civil Court; (*b*) sale in pursuance of a decree or order of a collector or other officer of revenue; (*c*) sale for arrears of Government revenue, or for any demand recoverable as such arrears; (*d*) sale of a patni taluq sold for current arrears of rent. *Explanation.* In this article "patni"	7[One year]	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.

4. AIR 1959 Bom. 269=ILR 1959 Bom. 256.
5. AIR 1955 Trav-Co. 51 (FB).
6. AIR 1963 Kerala 137 (FB)+AIR 1938 Cal. 577+1958 B.L.J.R. 380 (DB)+AIR 1931 Nag. 17=27 Nag. L. R. 251. (*But see* AIR 1963 Pat. 62 and AIR 1943 Pat. 293 (FB). Wherein it was held that time spent in prosecuting revision petition may be deducted from period of limitation for suit).
7. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch. for "Ditto".

includes any intermediate tenure saleable for current arrears of rent.

Synopsis

1. Scope.
2. Setting aside a sale--meaning of.
3. Defence, applicability of Article to.
4. Setting aside sale on ground of fraud.
5. Clause (*a*).
6. Clause (*c*).
7. Time from which period of limitation commences.

1. **Scope.** This article will not apply to cases where the plaintiff would not be bound by the sale even if it were not set aside.[8] Where a sale is null and void, the plaintiff, can ignore such sale.[9] Where the purchaser at such sale dispossessed the plaintiff the plaintiff's suit for possession disregarding the sale is not governed by this article.[10]

Where a sale is null and void the plaintiff can get a declaration that such sale does not affect his interests.[11] Such a suit is not governed by this article.[12] It has

---

8. AIR 1939 Mad. 867=ILR 1940 Mad. 123 (DB)+AIR 1957 Mad. 194 (DB)+AIR 1955 Pat. 386 (DB). (A suit brought by a son after attaining majority for setting aside the sale of his share sold at an auction sale held in execution of a decree against the father is governed by Art. 12)+AIR 1954 Mys. 187=ILR 1955 Mys. 180 (Mortgaged property sold for arrears of revenue, due to default of usufructuary mortgagee–Mortgagee fraudulently purchasing property *benami* in the name of third person and continuing in possession even after the sale–Mortgagor can ignore the sale and need not sue for setting it aside within the period prescribed by Art. 12)+AIR 1954 Trav-Co. 60=ILR 1953 Trav-Co. 886 (FB)+AIR 1953 Mad. 624 (Trustees of a temple borrowing on promissory note–Absence of necessity–*Ex parte* decree on the promissory note and sale in execution thereof of temple property–Suit by succeeding trustees to recover properties without setting aside the sale in execution of the decrees–Article 12 does not apply)+AIR 1952 Bom. 217 (DB) (Execution against wrong legal representatives–Sale is void and not binding on real heirs–Sale need not be set aside–Article 12 does not apply)+AIR 1952 Pat. 421. (Redemption by mortgagor–Interference by mortgagee–Suit for declaration and confirmation of possession–Article 12 does not apply).+('98) 25 Cal. 179=24 Ind App. 170 (PC)+AIR 1926 Oudh 501.
9. ('05) 32 Ind App. 23 (PC)+AIR 1957 Mad. 194 (DB)+AIR 1950 Bom. 346.
10. ('07) 34 Cal. 711=34 Ind App 138 (PC)+AIR 1935 P.C. 139=14 Pat. 611=62 Ind App. 224+AIR 1957 Mad. 194 (DB). (Suit for possession of wakf property sold by fraud and collusion–Art. 144 applies.)+AIR 1956 Trav-Co. 70=ILR 1955 Trav-Co. 341 (DB). (Where a decree and the Court sale are void so far as a minor is concerned, he is not bound to sue for setting aside the sale. He can institute the suit for recovery of possession of the property within twelve years from the date of dispossession.).
11. AIR 1916 Pat. 315+AIR 1957 Mad. 194 (DB)+('96) 18 All. 141 (DB)+AIR 1919 Bom. 61=43 Bom. 412 (DB)+AIR 1914 All. 551+('88) 12 Bom. 18 (DB)+AIR 1918 Lah. 330+1918 Pun Re No. 113+AIR 1917 Mad. 616 (DB)+AIR 1916 Mad. 33=38 Mad. 1076 (DB)+AIR 1922 Lah. 447+('93) 15 All. 324 (DB)+AIR 1924 Pat. 504 (DB)+AIR 1928 Cal. 722 (DB)+AIR 1929 Cal. 454=56 Cal. 180.
12. AIR 1941 Cal. 333=ILR (1941) 1 Cal. 339+AIR 1957 Pat. 442=36 Pat. 381 (DB)+AIR 1917 Upp Bur 12=2 Upp Bur Rul 116+AIR 1942 Pat. 386 (DB)+AIR 1941 Pat. 490.

been held that where the plaintiff sues to set aside a sale that is null and void the suit, will be regarded as one for such a declaration.[13]

2. Setting aside a sale--meaning of. Whether a suit is instituted for setting aside a sale or not is to be decided from a consideration of the substance of the relief sought by the plaintiff.[14]

Where a sale is voidable by the plaintiff, application of this article cannot be avoided by seeking reliefs inconsistence with the validity of the sale.[15] Therefore the plaintiff cannot avoid the bar under Art. 12 by asking for a declaration that the sale is null and void instead of seeking the setting aside of sale.[16] Where a representative of a deceased mortgagor bound by a sale sues for redemption, the suit in effect is one for setting aside sale and is governed by this article.[17] Similarly where the plaintiff prays for possession of property purchased or alternatively for refund of purchase-money, the suit is one for setting aside a sale so far as the latter relief is concerned.[18]

Suit by minor. Where a decree passed against a minor is voidable at his instance, it would be good until set aside and execution levied before its being set aside would also be good. Hence, a suit to set aside a sale in execution of such a decree would be governed by Cl. (*a*) of this Article.[19] Where a minor impeaches a sale on the ground of fraud by the guardian and he sues for possession, the suit is really one to set aside sale.[20]

3. Defence, applicability of Article to. The Limitation Act applies only to the institution of suits and has no application to the defence set up by the defendant.[1]

4. Setting aside sale on ground of fraud. This Article does not apply to a sale sought to be set aside on ground of fraud.[2]

5. Clause (a). This clause does not apply where the plaintiff would not be bound by the sale even if it was not set aside. Therefore where one *G* was sued on a mortgage as the original defendant, but after his death his place was taken by his

13. ('98) 25 Cal 179 = 24 Ind App. 170 (PC) + ('07) 34 Cal. 811 (FB) + AIR 1957 Mad. 194 (DB).
14. ('86) 9 Mad. 57 (DB) + AIR 1950 Him. Pra. 1.
15. ('01) 25 Bom. 337 = 27 Ind App 216 (PC) + AIR 1952 All 181 (DB). (The mere fact that the decree was voidable and could be set aside would not by itself give a right to the plaintiff to ask for possession from the Court without also asking for the setting aside of the sale which took place in execution of the decree. AIR 1926 Mad. 1190 + AIR 1942 Oudh 33, *Rel. on.*) + AIR 1950 Mad. 358.
16. AIR 1950 Him. Pra. 1.
17. AIR 1929 Pat. 323 (DB) + AIR 1956 Punj. 139. (Decree against Hindu father--Sale of joint family property in execution--Suit by sons to set aside sale is governed by Art. 12 (*a*) + ('07) 6 Cal. Jour 719 (DB) + AIR 1917 Pat. 693 (DB) + AIR 1947 Mad. 72.
18. ('86) 10 Bom. 214 (DB).
19. AIR 1954 Trav-Co. 209 = ILR 1953 Trav-Co. 1090 (FB).
20. AIR 1920 Lah. 417 = 1 Lah. 27 + AIR 1949 East Punj. 20.
1. AIR 1921 Bom. 257 = 45 Bom. 45 (DB) + ('22) 67 Ind. Cas. 894 (DB) (Lah.) + AIR 1916 Lah. 229 = 1916 Pun Re. No. 1 (DB). (Suit by defendant to set aside sale dismissed as time-barred) + ('07) 30 Mad. 444 (DB).
2. ('86) 9 Mad. 457 (DB) + ('11) 34 Mad. 143 (DB) + ('84) 6 All. 406 (DB) + ('87) 11 Bom. 119 (DB) + ('07) 34 Cal. 241 (DB) + ('09) 13 Cal. W.N. 518 + AIR 1926 Pat. 401 = 5 Pat. 759 (DB) + AIR 1933 Pat. 473.

brother and in execution of the decree that was passed in the suit the mortgaged properties were auction-purchased by the mortgagee's son. It was held in a suit to set aside the sale that as the brother could not be the representative-in-interest of *G*, he could not represent *G's* estate and, therefore, the sale against him would be of no effect as against the plaintiff and hence Art. 12 was not applicable.[3]

Joint Hindu family. Where in execution of a decree against the father of a joint Hindu family, shares of sons in the joint property are sold, and a suit is filed by sons to recover the property; the suit is not governed by this article.[4] In such a case if the son's interest is found not to have been sold, execution sale is void as against him, Art. 12 can have no application.[5]

Mortgage decree. Article 12 (*a*) applies to a sale in execution of mortgage decree.[6] Where there is a mortgage decree against a Hindu father and there is a sale of joint family property, the sale is not binding on the sons; and Article 12 does not apply to a suit for possession by the sons.[7] It is to be noted that the fact that a sale in execution of a decree did not conform to the provisions of Civil P.C. cannot take away from the representative character of the father judgment-debtor. Such a sale held in contravention of O. 34, R. 14, Civil P.C. is therefore only voidable and not void and the sons can for proper reasons, bring a suit to avoid it, the limitation for such suit being that provided by Art. 12 (*a*).[8]

6. **Clause (c).** Where a property is sold for arrears of land revenue, the occupant or the owner of the property has to bring a suit to set it aside within the time provided by this article.[9] Where a sale is within jurisdiction, mere irregularities in procedure cannot be allowed to be raised to set it aside after the period of limitation provided by this article.[10]

Special provision in Local Act. Where there is a special provision made by a local Act, such provision will apply and not the one made in this article.[11] Thus in case of a certificate sale under the Bengal Public Demands Recovery Act, Article 12 will apply to a suit by a certificate debtor to set aside the sale.[12]

7. **Time from which period of limitation commences.** The Courts should be liberal in deciding the starting point of limitation.[13]

Provision for confirmation of sale. Where there is a specific provision for confirmation of sales, the period will commence from the date of such confirmation.[14] Where the parties are at issue as to whether a sale should be

3. AIR 1958 S.C. 706 = 1959 SCR 479.
4. AIR 1939 Mad. 867 + ILR 1940 Mad. 123 (DB).
5. AIR 1957 Ker. 126 = ILR 1957 Ker. 423 (DB).
6. AIR 1942 Oudh 33 = 17 Luck. 1 (DB).
7. AIR 1954 Mad. 961 = ILR 1954 Mad. 939 (DB).
8. AIR 1954 Mad. 675 = ILR 1954 Mad. 690 (DB). (22 Mad. 372, held on longer good law).
9. ('89) 13 Bom. 221 (DB) + ('67) 8 Suth W.R. 439 (DB). (A suit under Act of 1859) + ('86) 6 Mad. 148 (DB) + ('87) 7 Mad. 258 (DB).
10. AIR 1916 Mad. 332 = 38 Mad. 356 (DB).
11. AIR 1936 Cal. 715 = ILR (1937) 1 Cal. 437 (DB).
12. AIR 1941 Cal. 333 = ILR (1941) 1 Cal. 339.
13. ('11) 13 Cal. L. Jour 339 (DB).
14. ('03) 26 Mad. 495 (DB).

confirmed or not the period commences from the final order confirming the sale.[15]

Where the sale has been confirmed but proceedings by way of revision disputing the validity of sale are instituted; limitation runs from the date of confirmation of sale.[16]

No provision for confirmation of sale. In cases where there is no provision for confirmation of sales, the period will commence from the time when the sale would have become final if no suit to set aside the sale was brought.[17] Ordinarily the sale becomes final on payment of the full purchase-money in cases where there is no provision for confirmation.[18]

Plaintiff under disability. In the case of a person under disability such as a minor, the period of limitation commences from the time when he attains majority.[19]

13.	To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit	[20][One year]	The date of the final decision or order in the case by a Court competent to determine it finally.

Synopsis

1. Scope and applicability.
2. Orders in proceedings other than suits.
3. Setting aside order not necessary for obtaining relief.

1. Scope and applicability. This article applies only where the order sought to be set aside has been passed by a competent Court. Where the order was not made by a competent Court, this article does not apply.[1] Thus this article does not apply to an order made by a receiver.[2]

Order without jurisdiction. This article does not apply to an order made by a Court which had no jurisdiction to make that order.[3]

2. Orders in proceedings other than suits. This article relates to orders passed in disputes which did not begin with the filing of a plaint in a suit. The orders in disputes initiated by applications are not proceedings in suits.[4] Thus an

15. ('96) 23 Cal 775 = 23 Ind App 45 (PC).
16. AIR 1919 Lah. 79 = 1919 Pun Re. No. 15 (DB) + ('07) 30 Mad. 367 (DB).
17. ('11) 13 Cal. L. Jour 339 (DB) + ('82) 8 Cal. 329 (DB) + ('83) 6 Mad. 148 (DB).
18. ('83) 6 Mad. 148 (DB) + ('11) 13 Cal. L. Jour 339 (DB).
19. AIR 1918 Lah. 182 + AIR 1935 Mad. 1085.
20. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
1. ('76) 1 All. 333 (FB).
2. AIR 1917 Nag. 149 = 13 Nag. L. R. 210.
3. ('80) 5 Cal. 86 (DB) + ('71) 16 Suth W.R. 11 (DB).
4. AIR 1922 Mad. 189 = 45 Mad. 70 (DB) + 1954-2 Mad. L. Jour 708.

order on an application under O. 21, R. 89 of the Civil P.C. is an order in a "proceedings other than a suit" within the meaning of this article.[5] But an order passed by the Court on an application by the Official Receiver to release properties which had been attached before judgment in a suit [6] or an order in execution proceeding other than a suit is not such an order.[7]

3. **Setting aside order not necessary for obtaining relief.** Where a person can seek the relief he wants without altering or setting aside the order or decision of a Civil Court, a suit for such relief is not governed by this article.[8] Thus where there is an order of insolvency Court for sale of properties leaving open the question of title to those properties. A suit for a declaration of title to properties was not barred by this article.[9] Where the plaintiff sued the defendant (who had obtained a certificate of heirship on the strength of an alleged will) for recovery of property of deceased on the ground that he was intestate heir of the said deceased person. The plaintiff was not bound to have the order granting certificate set aside and the suit was not governed by this article.[10] But where the relief can only be obtained by setting aside the order this Article will apply. Thus where *A* was appointed member of temple committee by the order of the District Judge and the plaintiff's worshippers filed a suit for a declaration that the appointment was invalid and for injunction restraining *A* from performing the duties of a member. This article was applicable.[11]

14.	To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	[12][One year]	The date of the act or order.

Synopsis

1. "To set aside an act or order."
2. "Any act or order."
3. Order of an officer.
4. "Officer of the Government."
5. Starting point of limitation.

5. ('11) 33 All. 93 (DB).
6. AIR 1922 Mad. 189=45 Mad. 70 (DB)+AIR 1945 Cal. 449 (DB).
7. ('81) 25 All. 313=28 Ind. App. 203 (PC)+1954-2 Mad. L. Jour 708. (Hindu widow assigning her 1/6th share in mortgage decree in respect of agricultural lands—Order passed in execution for payment to assignee his share of the decretal amount realised—Suit for refund against assignee by other persons interested in decree—Art. 62 or Art. 120 and not Art. 13 applies).
8. AIR 1914 Cal. 167 (DB)+('90) 15 Bom. 438 (DB)+1898 Bom. P. J. 220 (DB)+AIR 1921 Pat. 1 (FB)+1894 All. W.N. 78 (DB)+AIR 1918 Mad. 640=41 Mad. 23 (DB).
9. AIR 1933 Cal. 263 (DB).
10. ('86) 10 Bom. 449 (DB).
11. ('93) 3 Mad. L. Jour 128 (DB).
12. Subs. by the Repealing and Amending Act, 1923 (11 of 1923). S. 2 and First Sch., for "Ditto".

1. **"To set aside an act or order."** The words "set aside" imply that the act or order is binding upon the plaintiff unless and until it is set aside.[13] Thus where the plaintiff was not entitled to seek the desired relief unless he sets aside the order or act, though suit is framed in a different manner it is governed by this article.[14]

Where relief may be claimed without setting aside order. The plaintiff need not set aside the act or order where it does not affect his right.[15] Where it is not necessary for the plaintiff to set aside the act or order, in order to obtain the relief which he claims, this article will not apply.[16] Thus where the Collector has passed an order dispossessing a person, who is an occupancy tenant, as a mortgagee. A suit by that person for prossession as an occupancy tenant is not governed by Art. 14.[17] Where the Collector has passed an order under the Bengal Estates Partition Act, a suit for a declaration filed in a Civil Court is not governed by this Article.[18] Similarly every suit brought by a mortgagor to establish his rights after his application under the Punjab Redemption of Mortgages Act (2 of 1913) has been dismissed is not a suit to set aside to order of the Collector. Where the Collector does not make a summary inquiry regarding the objections raised by the mortgagee but expressly says that the controversy is too complicated for him to settle and requires the parties to go to civil Court, there is nothing requiring to be set aside and the mortgagor's suit to establish his rights need not be brought within one year.[19] Art. 14 cannot apply to a suit which does not seek setting aside of an order of Collector against a mortgagor/plaintiff and decides nothing on merits. Such an order does not stand in the way of suit by him to establish his right in mortgaged land. Art. 148 applies to the case.[20]

Suit opposed to entries in Revenue Record. Simply because a suit is opposed to entries in Revenue Record, it is not meant to set aside those entries and therefore this section would not apply to it. Thus in a suit for a declaration that certain land is 'kasht' of plaintiff,[1] or in a suit for possession, an order of mutation

13. AIR 1956 Orissa 136 = ILR 1956 Cut 174 (DB). (Article 14 applies to acts or orders which need to be set aside.) + AIR 1951 Bom. 72 (DB).
14. AIR 1947 Sind 69. (Government resuming land under agreement with Municipal Corporation--Land resumed by order of Commissioner--Suit for possession by Corporation--Art. 14 or in any case Art. 120, held applied--In either case suit held was barred.) + ('02) 24 All. 467 (DB) + AIR 1934 Lah. 384 = 15 Lah. 389 (FB) (Plaintiff not seeking to set aside Collector's order. AIR 1923 Lah. 648, *Overruled*) + AIR 1938 Lah. 638 (DB). (Suit for redemption--Collector's refusal to grant it on application. AIR 1938 Lah. 512, *Reversed* and AIR 1929 Lah. 513 (DB) *Dissented from*) + AIR 1925 Lah. 385 = 6 Lah. 206 (DB) + AIR 1940 Bom. 294. (Order imposing penalty under S. 167, Sea Customs Act--Suit for refund) + AIR 1944 Sind 44 = ILR 1943 Kar. 404 (DB).
15. AIR 1936 Mad. 313 = 58 Mad. 141 (DB).
16. AIR 1940 Bom. 188 + AIR 1958 Pat. 512. (Suit for compensation for seizure of plaintiff's cloth and not for setting aside order of seizure--Art. 14 does not apply.) + AIR 1957 Madh Pra 93 = 1957 Cri. L. Jour 853 + AIR 1957 Trav-Co. 284. (Right or recover *jenmikaram*--Right is not affected by Jenmikaram Settlement officer's act or order.) + AIR 1939 Bom. 425 = ILR 1939 Bom. 564 (DB) + AIR 1957 Nag. 159 + 30 Cal. 20 (DB) + AIR 1946 Cal. 480 = ILR (1945) 1 Cal. 466 (DB).
17. AIR 1930 Lah. 506.
18. AIR 1931 Cal. 29 (DB).
19. AIR 1965 Punj. 502 + AIR 1943 Lah. 176 (FB).
20. NLR 1988 SCJ 186 = PLD 1988 SC 102 = PLJ 1988 SC 53.
1. AIR 1941 Pat. 50.

of revenue officer need not be set aside.[2] Where a suit is for a declaration that a certain mutation order is erroneous and for possession. The main relief for possession can be granted even in presence of wrong mutation entry; the claim for a declaration is governed by Art. 120 and not Art. 14.[3] Where an oral lease is for thirty years but mutation entry shows it to be for twenty years. The result of proceedings by lessee before revenue authorities has been unfavourable; a suit for a declaration in terms of the original lease is not governed by this Article.[4]

This Article does not apply to suits brought to challenge transaction though incorporated in revenue record on grounds which render a transaction void in law including fraud. Right to sue in such cases accrues from date of discovery of fraud.[5]

Amendment of settlement record--suit for. A suit for an amendment of settlement record adverse to the plaintiff is not governed by this Article.[6]

Order passed without jurisdiction. The plaintiff need not set aside an act or order where it is a nullity, as made without jurisdiction.[7]

Order passed behind back of party. If an order has been passed behind a person's back, Article 14 of the Limitation Act does not apply.[8]

Suit to set aside void and illegal sale-deed. Where a suit is filed for declaring a sale-deed illegal and not for cancellation of the entries in the record-of-rights. Such entries were made on the basis of an invalid sale-deed, therefore, the same were void. In those circumstances Article 14 is not applicable. The cause of action to the respondent arose when it became known to respondent that the appellants on the basis of void and illegal transactions had fraudulently got their names mutated in the records.[9]

Order which cannot or need not be set aside. Where the plaintiff prays for setting aside an order which need not be set aside or which cannot be set aside by a Civil Court, this article, does not apply.[10] Thus where relief is asked for on the strength of and in conformity with an act or order, this article has no application.[11] Where the orders of the Government were *void ab initio* and it was not necessary to set them aside in order to grant relief to the plaintiffs, Article 14 of the Limitation Act would not have any application.[12]

---

2. AIR 1939 Lah. 135 (DB).
3. AIR 1951 Ajmer 1.
4. AIR 1937 Pesh. 94.
5. 1984 CLC 238.
6. AIR 1930 Nag. 92.
7. 1983 CLC 144 + PLD 1960 Lah. 1179 + PLD 1960 Lah. 801 = PLR 1961 (1) W.P. 957 + PLD 1958 Lah. 458 = PLR 1958 (1) W.P. 316 + AIR 1940 Bom. 294 + AIR 1956 Orissa 136 = ILR 1956 Cut 174 (DB) + AIR 1951 Bom. 72 (DB) + AIR 1934 P.C. 108 = 61 Ind. App. 190 = 58 Bom. 306. (On appeal from AIR 1932 Bom. 319 (DB)) + AIR 1927 Nag. 10 = 22 Nag. L. R. 147.
8. 1982 CLC 620 = NLR 1982 Civ. 58 (Kar).
9. PLD 1982 Kar. 172.
10. 14 Ind. Cas. 50 (Cal) + AIR 1924 Nag. 142 + 29 Bom. 480 (DB) + AIR 1916 Cal. 594 (DB).
11. AIR 1926 P.C. 60 = 5 Pat. 735 = 53 Ind. App. 176.
12. PLD 1960 Lah. 801 = PLR 1961 (1) W.P. 957.

Where the plaintiff seeks a relief other than the setting aside of an order of the Government and such orders come under attack only incidentally, this Article does not apply. Thus Article 14 is not applicable where the declaration regarding the eligibility of the plaintiff to acquire proprietary rights in the suit land is the primary relief and pronouncement upon validity of the orders of the Collector/Additional Commissioner is just incidental.[13] Where a plaintiff was recruited for a post but a wrong date of birth was recorded in the order of recruitment and he sought correction of the record by a suit. As no challenge was made against the order of recruitment. The objection was only against the date of birth recorded therein. Consequently, the case is not covered by Article 14, and the residuary Article 120 will apply.[14]

2. "Any act or order." The act or order contemplated by this Article is a valid order passed by a competent authority under a statutory provision.[15] Therefore before deciding on the applicability or otherwise of this article to a suit the question whether an order or act of an officer of Government is *ultra vires or intra vires* should be decided.[16] In this context it must be remembered that there is a distinction between want of jurisdiction and excess of jurisdiction. Where the officer has no jurisdiction at all the act would be *ultra vires* but where on an investigation of the circumstances which would give him jurisdiction the officer decides or acts in a particular manner any mistake as to the facts of the deciding factor would not oust his jurisdiction.

'Intra vires' order. Where an order of an officer of Government is intra vires and valid, a suit to set it aside must be brought within one year from that order.[18] It was held that a suit for a declaration that the distinction of the order of British-India which was a military honour conferred upon the plaintiff has been unlawfully taken away from him by the Government and that he was entitled to the award of monetary allowance attached to that distinction, was governed by this article.[19]

'Ultra vires' orders. An act which is *ultra vires* and an order which is *ultra vires* stand on the same footing.[20] Where the order of an officer of Government is in excess of authority, it is a nullity.[1] If the act or order is illegal or *ultra vires* it does not require to be set aside and this article has no application.[2] Thus where the claim in the plaint is based on the fact that the levy of a duty was illegal. The recovery of such payment falls under Article 62 of the Limitation Act. Therefore Art. 14 does not apply to such a case.[3]

---

13. PLD 1978 Lah. 679 = PLJ 1978 Lah. 162 = NLR 1978 Rev. 171 = 1978 Law Notes 101.
14. PLD 1981 Lah. 433 = NLR 1981 Ser 162 = PLJ 1981 Lah. 271.
15. PLD 1967 Kar. 624 (DB) (Orders passed on the basis of a contract and not under any law are not covered by this Article).
16. AIR 1930 Mad. 710 + AIR 1920 Mad. 1013 (DB).
17. AIR 1956 Orissa 136 = ILR 1956 Cut 174 (DB).
18. AIR 1916 Mad. 984 + AIR 1928 Bom. 201 + AIR 1930 Sind. 150.
19. AIR 1956 Bom. 601.
20. AIR 1934 Mad. 147 = 57 Mad. 501 (DB) + AIR 1921 Bom. 381 = 45 Bom. 920 (DB).
1. AIR 1934 Bom. 434 (DB).
2. 1983 CLC 144 + PLD 1978 Lah. 679 = PLJ 1978 Lah. 162 = NLR 1978 Rev. 171 = 1978 LN 101 (Art. 120 applies) + PLD 1958 Lah. 458 + AIR 1917 P.C. 217.
3. PLD 1958 Dacca 472 = 10 DLR 258.

Suit for declaration that order of dismissal is nullity. Article 14 of the Limitation Act, 1908 does not apply to a case where the order of the officer is null and void. The words in column 1 of the article cannot be construed to include void orders as well. Therefore a suit by a Government servant for a declaration that the order discharging him from service was null, void and ineffective against his right is not a suit "to set aside any act or order of an officer of Government in his official capacity". Art. 14 of the Limitation Act, 1908 does not apply. Provisions of Art. 120, Limitation Act, 1908 are applicable to the case according to which the period of limitation is six years.[4] Where in the suit the prayer is for consequential reliefs of re-instatement, damages and arrears of salary is governed not by Art.14 but by Art. 102 in so far as the relief of declaration is concerned and the plaintiffs would be entitled to arrears of salary for a period of 3 years and no more under Art. 102, Limitation Act, 1908.[5] Where the plaintiff has not prayed for setting aside any order of an officer of the Government. His prayer is for a declaration that his posting as an Income-tax Officer, Class II, Grade III, in the circumstances stated in the plaint, was illegal, inoperative and not binding on him, apparently does not come within Article 14.[6]

3. **Order of an officer.** This article does not apply to a judicial order.[7] A judicial order is not an "act or order of an officer of the Government" within the meaning of Article 14 of the Limitation Act. The act or order of an officer of the Government referred to in Article 14 must necessarily refer to an executive act or an administrative act. In a given case it may perhaps cover a *quasi*-judicial act but certainly not the decision of a Court of law which is a judicial act.[8] Thus an order passed under S. 517 read with S. 520 of the Criminal P.C., cannot be said to have been passed in any administrative capacity and Art. 14 of the Limitation Act has no application.[9] Similarly a suit by the complainant to establish his right to the goods which had been the subject of theft and which had been forfeited to the Government by an order passed by a Criminal Court consequent on the acquittal of the accused who did not claim any title to the property is not a suit governed by this Article.[10]

4. **"Officer of the Government".** A suit to set aside an act of the Government done in official capacity is governed by the Article and a suit filed after one year of the doing of the act would be barred by limitation.[11] The Article applies only where an order has been passed by an officer of Government, and not otherwise. It has been held that the manager under the Sind Encumbered Estates Act,[12] and a Collector to whom a decree is transferred for execution is an officer of

4. PLD 1990 Lah. 153.
5. PLD 1969 Dacca 280 = 21 DLR 492 = PLR 1967 (2) Dacca 954 (DB) + PLD 1957 Lah. 378 = PLR 1957 (2) W.P. 448 + AIR 1965 A.P. 188.
6. PLD 1961 Dacca 616 (FB).
7. AIR 1940 Bom. 188.
8. AIR 1962 Punj. 142 + AIR 1963 Bom. 83 (DB) + AIR 1940 Bom. 294 + (1900) 24 Bom. 435 (DB) + AIR 1927 Mad. 1167 (DB) + 32 Cal. 1107 (DB) + AIR 1943 Mad. 501.
9. AIR 1963 Bom. 83 (DB).
10. AIR 1962 Punj. 142.
11. PLD 1978 Lah. 498 = PLJ 1978 Lah. 142 = 1978 Law Notes 173.
12. AIR 1930 Sind 150.

Government when he sets aside a sale held by his order in execution of the decree.[13]

Judge. A Judge exercising his judicial functions is not an officer of the Government within the meaning of this article.[14]

Governor of a Province. The Governor of a Province holds a constitutional office, he is not an officer of the Government under this Article.[15]

Statutory Tribunals. Sind Revenue Tribunal is a statutory body and represents the Government as an appellate authority to hear appeals against the Revenue Officers. It is obvious that Article 14 of the Limitation Act does not apply to the orders passed by such a Tribunal.[16]

5. Starting point of limitation. The period of limitation for a suit falling under Article 14 will start only from the date on which the person who wants to seek relief against that order in a Court of law came to know of it, because it cannot be expected that a person should come to Court to get relief against an order of the existence of which he had no knowledge.[17]

Date of enforcement of order. Where the plaintiff seeks to have an order which is illegal set aside limitation begins to run from the time when that order is enforced.[18] But it has been held in a Lahore case that limitation to challenge an order of resumption of land will run from the date of the basic order of the Board of Revenue and not from the order of Collector implementing such basic order.[19]

Act and order not contemporaneous. Where the act and order sought to be set aside are not contemporaneous, limitation for a suit to set aside the act would commence from the date of the act and not from the date of the order.[20] Similarly where an administrative order is passed but it requires a subsequent act to complete it, time runs from the date of the act.[1]

15.	Against Government to set aside any attachment, lease or transfer of immovable property by the revenue-authorities for arrears of Government revenue.	[2][One year]	When the attachment, lease or transfer is made.

13. 24 All. 467 (DB).
14. 10 Bom. L. R. 749 (DB) + AIR 1914 Cal. 167 (DB).
15. PLD 1969 Dacca 280 = PLR 1967 (2) Dacca 954 = 21 DLR 492 (DB).
16. PLD 1960 Karachi 385 = PLR 1959 (1) W.P. 1302 (DB).
17. PLD 1960 Lahore 1179 = PLR 1961 (2) W.P. 113 + PLD 1958 Lah. 458 = PLR 1958 (1) W.P. 316.
18. AIR 1927 P.C. 217 = 54 Ind App. 380 = 51 Bom. 330 (On appeal from AIR 1922 Bom. 18 (DB)) + 32 Cal. 1107 (DB) + 24 Cal. 149 (DB).
19. PLJ 1988 Lah. 9 = 1988 CLC 169 = 1988 Law Notes 30.
20. AIR 1922 Nag. 76 (DB).
1. (1900) 24 Bom. 435 (DB) + 3 N.W.P.H.C.R. 328 (DB).
2. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch. for "Ditto".

1. Attachment for arrears of land revenue. A suit to set aside attachment for arrears of land revenue is governed by this Article. The fact that Government goes a step further and forfeits the land within a period of one year from the date of attachment will not affect the applicability of the Article. Thus where *A*'s land was attached for arrears of land revenue and before the expiry of the period for application for restoration, the Government illegally forfeited the land. *A* sued for declaration that forfeiture was illegal. It was held that the suit was not governed by this article.[3]

Relief of compensation also claimed. Under this article it is incumbent upon the plaintiff to sue for setting aside the attachment within one year of the date of attachment. If, in addition, he wants compensation, he should file the suit within 90 days of the date of attachment under Art. 2.[4]

16.	Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	[5][One year]	When the payment is made.

Synopsis

1. Payment under protest.
2. Recovery as arrears of land revenue.
3. Illegal collection of taxes.
4. Taxes recovered under special laws.

1. Payment under protest. The Article applies only where payment has been made under protest, and the protest must have been simultaneous with the payment. Subsequent conduct may be taken into consideration to come to the conclusion that there was protest at the time of payment. But where admittedly the plaintiff stated that the amount demanded by the State might be adjusted out of the security he had paid to the Government and it was so adjusted and it was only some month after that that he appealed against the order demanding payment, it cannot be said that he paid the money under protest merely by the fact of his having preferred an appeal. Therefore his suit filed on the failure of the State to refund the amount as ordered by the appellate authority is not a suit for money paid under protest governed by Art. 16.[6] Similarly payment of revenue for a clear and admitted liability made to save the whole estate from sale is not a payment made "under protest".[7] But where revenue assessment is paid after

3. 16 Bom. 455 (DB).
4. AIR 1956 Him Pra. 9.
5. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch. for "Ditto".
6. AIR 1958 Orissa 148 = ILR 1958 Cut. 434.
7. 2 N.W.P.H.C.R. 52 (DB).

objection and appeal but pending appeal, subsequent payments are made without objection, it was held that all payments were made under protest.[8]

Where money is paid under threat of legal proceedings but not under protest this Article does not apply.[9]

Several payments made under protest:. Where money has been paid under protest for several years, only one year's amount can be recovered.[10] Where *A* sued Government for recovery of money paid under protest and the suit was decided in favour of the Government. *A* appealed but made similar payments before decision of appeal. Appeal was decided in favour of *A*. It was held, that *A* can recover only those payments which are made within one year before the suit.[11]

2. **Recovery as arrears of land revenue**. Article 16 has application to a case where the tax or demand is merely recoverable as arrears of land revenue, even when the claim is not made by the revenue authorities on account of arrears. Hence, where the duty has been paid. Art. 16 will apply where a suit was filed for refund of duty paid on timber, which was recoverable as arrears of land revenue.[12]

Illegal levies. Article 16 goes beyond the recovery of the amount paid as arrears of revenue. It takes in payments made on account of demands recoverable as such arrears. This article is of wide import taking in imposts whether legal or illegal and the article is not confined to levies legally made. Hence a suit for recovery of money illegally demanded by the revenue authorities as land cess and paid under protest is covered by this Article.[13]

3. **Illegal collection of taxes**. In order to apply Article 16, three conditions should be satisfied: (1) that the payment must be made in protest; (2) it should be in satisfaction of a claim made by the Revenue Authorities; and lastly (3) it should relate to arrears of revenue or demands recoverable as such arrears. Where advance payments of Sales Tax are made, it cannot be said that the payments were made in satisfaction of a claim made by Revenue Authorities. Article 16 has therefore no application to a suit for refund of payment so made on the ground that they were illegally collected. The case comes within Art. 62 and the suit filed within three years of the payment, is within time.[14] Similarly a suit for refund of sales tax paid under compulsion of law and which is found to be in excess of the amount actually assessed is not governed either by Art. 16 or by Art. 96 but is governed by the residuary Art. 120 of the Limitation Act.[15] Where a suit is brought for recovery of money wrongly realized by the Customs and Excise Department this Article does not apply. The correct article applicable to such suit is Art. 62 or Art. 120.[16]

8. 5 Suth W.R. 47 (DB). (Macpherson J., *Contra*).
9. AIR 1937 Mad. 559 (DB) + AIR 1934 Mad. 420.
10. 11 Bom. H.C.R. 1 (DB) + 5 Suth W.R. 47 (DB) + AIR 1920 Mad. 948 (SB).
11. AIR 1920 Mad. 948 (SB).
12. PLD 1974 Pesh. 18 (DB).
13. AIR 1961 Andhra Pradesh 20 (DB) + AIR 1923 Mad. 652 (DB) + AIR 1927 Mad. 350.
14. AIR 1959 Andh Pra 192 (DB).
15. AIR 1961 Madhya Pradesh 320 (DB).
16. AIR 1957 Raj. 396 = I.L.R (1957) 7 Raj. 139.

4. Taxes recovered under special laws. In a suit for refund of tax paid under protest, if the collection has been made legally under a special law providing for levy of the tax, then a claim to a refund should be made within the special period of limitation prescribed there. But if the collection or levy is one which is altogether outside that law, it cannot be held to be one made under it; and a claim to refund of that collection is governed not by that special law, but the general law.[17] If the taxing authority holds the collection of tax to be legal, the claim to refund comes into existence only when a competent authority declares it to be illegal. That way, it would be equitable to calculate limitation under the special Art not from the date of payment, but from the date when it was declared by the Court that it cannot be legally levied.[18]

17.	Against Government for compensation for land acquired for public purposes.	[One year][19]	The date of determining the amount of the compensation.

Synopsis

1. Compensation under Land Acquisition Act.
2. Requisition, compensation for.
3. Injury to land, compensation for.

1. Compensation under Land Acquisition Act. Suit to enforce an award given by Collector under the Land Acquisition Act is governed by this Article.[20] But where no amount of compensation has been determined a suit to enforce an award is not governed by this article.[1]

Suit against person who has been paid compensation. Where the Government on acquiring land paid compensation to a person entitled to it and a suit was filed against that person by another person interested in the land, the suit was not governed by this article.[2] Where the land which had been obtained in exchange by *P* from *D* was acquired by the Govt. and compensation thereof was paid to *D*, because the revenue authorities refused to sanction mutation of exchange and *D* continued to be recorded in the revenue papers as the owner of the land. In a suit by *P* against *D* for recovery of the amount of compensation, *D* contended that the claim of *P* could only be against the State and not against *D*, and therefore the correct article to be applied was Art. 17. It was held that the correct article to be applied was Art. 62 and not Art. 17. The State was only obliged to recognise the person recorded in the revenue records as the true owner to whom compensation was payable and was actuall . Hence *P* was rightly entitled to claim against *D* and not against the State.[3]

17. AIR 1952 Vindh Pra 32.
18. AIR 1952 Vindh Pra 32.
19. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
20. ('97) 22 Bom. 802 (FB).
1. ('07) 34 Cal. 470 (DB).
2. AIR 1935 Pat. 42 + AIR 1919 Oudh 26 = 22 Oudh Cas. 342.
3. AIR 1964 Punjab 451.

2. Requisition, compensation for. This article is intended to apply to cases where property is acquired absolutely, in the sense, that the title of the owner whose property is acquired is extinguished and the property vests in or the title is transferred to the person for whom the acquisition is made and the amount of compensation is payable once for all. The article cannot have application where only possession of the property is taken as under a requisition, and there is a recurring liability in respect of the compensation payable, so long as such possession continues to be with the Government.[4]

3. Injury to land, compensation for. Where a suit for compensation is filed against the Government on account of injury caused to the estate of the plaintiff by reason of its being in possession of the Army during the War, Art. 17 does not apply.[5]

18.	Like suit for compensation when the acquisition is not completed.	[6][One year]	The date of the refusal to complete.

1. Scope. Where land was vested in Government under the Land Acquisition Act and the Collector refused to make an order for compensation, a suit for compensation in respect of such land is not governed by this article but by Art. 120.[7]

Damages, suit for. A suit in respect of a claim for damages which could not be foreseen at the time of the acquisition proceedings under the Land Acquisition Act is not governed by this article.[8]

19.	For compensation for false imprisonment.	[9][One year]	When the imprisonment ends.

Synopsis

1. False imprisonment--What is. 2. Period of imprisonment.
3. Commencement of limitation.

1. False imprisonment--What is. False imprisonment takes place only where there is restriction on the movement of a person in all directions. When he is not confined to a particular place, as where the plaintiff is prevented from going along a public way, enclosed by the defendants but the plaintiff is at liberty to go back, he cannot bring an action for false imprisonment.[10]

---

4. 59 Cal. W.N. 405.
5. AIR 1957 Tripura 33.
6. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
7. ('03) 27 Mad. 535 (DB).
8. ('07) + 34 Cal. 470 (DB).
9. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
10. (1845) 68 R.R. 564 = 15 L.J.Q.B. 82.

Bail granted. A person cannot be said to be under imprisonment after his release on bail.[11]

Person remanded to custody. False imprisonment lasts only whilst the plaintiff is in ministerial hands set in motion by the defendant to take the plaintiff before a judicial officer and till the matter comes before him.[12] Even where the plaintiff was arrested on the order of a Magistrate but was discharged subsequently on the report of the police that no case could be made out against him and he filed a suit for compensation for false imprisonment; it was held that the suit was governed by Art. 19 and not by Art. 2.[13]

Where a person is wrongfully arrested and taken before a Magistrate who remands him to custody, he must sue, in respect of his imprisonment before the remand, in an action for false imprisonment.[14] Where the defendant arrested plaintiff on 27th October and on 30th October a Magistrate remanded him to Jail custody; it was held that false imprisonment ended on 30th.[15]

2. **Period of imprisonment.** False imprisonment is a continuing wrong within the meaning of S. 23 of the Act.[16] In this Article the words "when the imprisonment ends" make it clear that the plaintiff can claim compensation for the whole period of imprisonment, even though a portion of it may be beyond one year of the suit.[17]

3. **Commencement of limitation.** Limitation for the purposes of this Article commences on the day the imprisonment ends. Where the plaintiff was arrested under warrant on 28-11-1895 and released on bail on 30-11-1985. The warrant was cancelled and proceedings against plaintiff were set aside on 3-8-1897. The plaintiff's suit for damages for false imprisonment filed in July, 1898, was barred by time under this article.[18]

Joint tort. Where there is joint tort the proper action is on the tort against the joint tort-feasors.[19] Thus where *A* brings a suit for compensation for false imprisonment against *B*, *C* and *D*. *A*'s imprisonment ended on 27-6-1883 and *C* and *D* were added on 5-7-1884. It was held, that the suit was barred against *C* and *D*.[20]

20.	By executors, administrators or representatives under the Legal Representa-	[1][One year]	The date of the death of the person wronged.

11. 30 Cal. 872 = 30 Ind App 154 (PC).
12. ('70) 39 L.J.C. 260 = 5 CP 534.
13. AIR 1959 Assam 28 (DB).
14. ('04) 17 C P L R 41.
15. ('04) 17 C P L R 41.
16. ('04) 17 C P L R 41 + ('03) 6 Bom. L R 704.
17. ('04) 17 C P L R 41. (Defendant cannot plead limitation for portion of imprisonment that was beyond one year of the suit.) + ('93) 3 Mad. L. Jour 2.
18. ('03) 30 Cal. 872 = 30 Ind App 154 (PC).
19. AIR 1914 Cal. 396 = 40 Cal. 898 (SB).
20. ('84) 9 Bom. 1.
1. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2, First Sch., for "Ditto".

tatives' Suits Act, 1855.

21.	By executors, administrators or representatives under the Fatal Accidents Act, 1855.	[1][One year]	The date of the death of the person killed.

Synopsis

1. Representative. 2. Special Acts.

1. **Representative.** The father of the deceased would come within the term "representative".[2]

2. **Special Acts.** Where limitation for a suit under the Workmen's Compensation Act has been prescribed and it is different from the limitation prescribed by this Act, the limitation prescribed by the former will prevail. Thus where the plaint shows that the suit for compensation brought by the father of a deceased workman is brought under the provisions of the Workmen's Compensation Act and the Fatal Accidents Act, then if the proceedings are taken to have been started under the Workmen's Compensation Act, and as S.10 of that Act provides a period of limitation for proceedings before the Commissioner under that Act, that being a period provided by a special law, it will prevail over the general provisions of the Limitation Act.[3]

Motor Vehicles Act. Where the motor accident had taken place on 17-11-1947 and the Insurance Company had been made a party to the suit on 15-3-1950, on the terms of S. 96 (2), Motor Vehicles Act. The petition for amendment by the plaintiffs on 15-3-1950 as ordered by the Court for adding the Insurance Company as a party showed that the plaintiffs came to know of the existing insurance on the motor lorry when the matter was disclosed to them by the other defendants on the previous date. It was held, that no question of limitation arose at all as the Insurance Company was duly brought on the record within the terms of S. 96 (2), Motor Vehicles Act.[4]

22.	For compensation for any other injury to the person.	[5][One year]	When the injury is committed.

Synopsis

1. Scope and applicability.
2. Injury.
3. Period of limitation.
4. Suits against insurance company.

---

2. AIR 1957 Mad. 216.
3. AIR 1957 Mad. 216.
4. AIR 1955 Assam 157 (DB).
5. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Three".

1. Scope and applicability. If a plaintiff's cause of action can fairly fall under different articles of the First Schedule of the Limitation Act, the Court would construe any ambiguity in these articles in favour of the plaintiff.[6] Therefore where the question before the Court is as to whether the case falls under Article 22 or Article 36 and the plaintiff had merely alleged negligence without explaining as to how the accident took place. The Court rejected the plea of the defendant-respondent that the injury to the appellant was not an injury which could be described as an injury that had been committed within the meaning of Article 22, because the injury had not been caused by any overt act on the part of the respondent's servants and agents. It was held that as the words in the Article are only "when the injury is committed", nothing would turn on the question whether the injury had been committed by an overt act or whether it had been committed on account of the defendant's failure to take reasonable care to protect the rights of his neighbour. Article 22 was applicable to the case.[7]

Proceedings under Workmen's Compensation Act. A proceeding before the Commissioner under the Workmen's Compensation Act is not governed by this article.[8]

2. Injury. Suits for injuries not otherwise provided for are covered by this Article. Thus a suit for damages for injury caused to the plaintiff's eye by the defendant's throwing sulphuric acid on his face was governed by this article.[9]

The word "injury" in this article has a wider connotation than physical hurt.[10] Thus a suit for damages for injury caused to the reputation of the plaintiff by an assault will be governed by this article.[11]

3. Period of limitation. An action, if brought more than one year after the date of injury, will be barred.[12] Where in a suit for compensation of injury is governed by this Article, one of the defendants is impleaded one year after the date of injury, a suit against such defendant would be barred by limitation.[13]

Limitation commences on the date of injury and has no reference to the effects of the injury. Thus where the defendant threw sulphuric acid on the plaintiff's face and the plaintiff lost his eye after some months. It was held that the injury was committed when the acid was thrown and the continuance of the effect did not make it a continuing wrong.[14]

4. Suits against insurance company. If a suit as against the assured is barred by limitation under Art. 22, the suit as against the insurance company, which is made a co-defendant in the suit, would also be barred.[15]

---

6. 1980 SCMR 485 = PLJ 1980 SC 386 + 1970 SCMR 77 + PLJ 1981 Lah. 71 = NLR 1981 Lah. 59.
7. 1980 SCMR 485 = PLJ 1980 SC 386 (*Observation in* PLD 1970 Lah. 298 were held to be *obiter dicta*).
8. AIR 1934 Bom. 28 = 58 Bom. 128 (DB).
9. AIR 1924 Bom. 290 (DB).
10. AIR 1932 Mad. 432.
11. 5 Ind. Cas. 124 (DB) (All).
12. AIR 1935 All. 855.
13. PLD 1968 Kar. 376.
14. AIR 1924 Bom. 290 (DB).
15. AIR 1958 Andh Pra 309 = ILR 1958 Andh Pra 261.

Bus accident. A suit for compensation for injury suffered by the plaintiff in a bus accident against the bus owner, driver, and the insurance company which has covered third party risk is governed by Art. 22 and not by Art. 86 or Art. 115 of the Act. Hence a suit filed after expiry of one year from the date of injury is barred by limitation in view of Art. 22.[16]

23.	For compensation for a malicious prosecution.	[17][One year]	When the plaintiff is acquitted, or the prosecution is otherwise terminated.

Synopsis

1. Actions for malicious prosecution.
2. Acts done under Police Act.
3. "When plaintiff is acquitted."
4. "Prosecution."
5. "Prosecution is otherwise terminated."
6. Commencement of limitation.
7. Joint tort-feasors.
8. Action against Municipality.
9. Government servant, suit against.

1. Actions for malicious prosecution. The gist of an action for a malicious prosecution is damage actual or implied.[18] The foundation of an action for malicious prosecution lies in the abuse of the process of the Court by wrongfully setting the law in motion and it is designed to discourage the perversion of the machinery of justice for an improper purpose.[19] Therefore the plaintiff has *inter alia* to prove that the proceedings complained of terminated in his favour if from their nature they were capable of so terminating.[20]

Article 2 and Article 23. Where a statute contains general as well as special provisions, the special provisions are applicable in preference to the general provisions. Since there is a specific Article, *i.e.*, Article 23, which deals with cases of malicious prosecution, its provision shall have to be preferred to the general provisions contained in Article 2.[1]

2. Acts done under Police Act. A suit for damages for malicious prosecution brought against a police officer who conspired with other defendants to prosecute the plaintiff maliciously is governed by this article.[2]

3. "When plaintiff is acquitted." One view is that Article 23 deals with two alternative cases: one envisages acquittal and the other, termination of the prosecution. The latter governs such cases as those of discharge; the former

16. AIR 1964 Pat. 372.
17. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2, and First Sch., for "Ditto".
18. (1883) 52 L.J.Q.B. 488 = 11 B.D. 674 + AIR 1928 Cal. 1 (DB) + (1697) 1 Ld Raym 374. (*Cited in* AIR 1928 Cal 1).
19. AIR 1947 P.C. 108 = 74 Ind App. 193 = ILR (1948) 1 Cal. 256 = ILR 1947 Kar. (PC) 221.
20. AIR 1926 P.C. 46 = 29 Oudh Cas. 163 = 1 Luck. 215 + AIR 1947 P.C. 108 = 74 Ind App 193 = ILR (1948) 1 Cal. 256 = ILR 1947 Kar. (PC) 221.
1. PLD 1975 Lah. 1238.
2. AIR 1930 All. 742 = 53 All 44 (DB).

governs the cases of acquittal. Acquittal means acquittal from the trial Court or if there is conviction from a trial Court, then the order of acquittal passed in appeal or revision. In a case where acquittal has been ordered by the trial Court and the complainant has filed revision, the filing of revision cannot affect the order of acquittal already passed. It will remain an order of acquittal till the acquittal is converted into an order of conviction. Under Article 23 limitation would run from the date when the plaintiffs were acquitted by the trial Court or in appeal if there was conviction from the trial Court, filling of a revision against an order of acquittal cannot suspend the period of limitation, which started running from the date of the order of acquittal.[3] But the other view based on a full Bench decision is that where a revision against acquittal is dismissed, limitation for a suit for damages begins to run from the date of such dismissal.[4] Similarly where the plaintiff is discharged in a criminal case and the Government files a revision and the revision is dismissed limitation for a suit for malicious prosecution begins to run from the date of dismissal of the revision petition.[5]

4. **"Prosecution."** The word "prosecution" used in this article has a very wide significance.[6] The maintainability of a suit for damages for malicious prosecution does not depend on there having been a prosecution in the sense in which the term is used in the Code of Criminal Procedure.[7]

The word "prosecution" in this article relates only to a case where the criminal law is set in motion.[8] The prosecution commences as soon as the proceeding is instituted.[9] But so long as it is not set in motion no suit for damages for malicious prosecution lies. Thus a suit for damages for malicious prosecution does not lie on laying of an information before the police.[10]

For the application of this article the test is not whether the criminal proceedings have reached a stage at which they may be correctly described as a prosecution; the test is whether such proceedings have reached a stage at which damage to the plaintiff results.[11] An application in revision under S. 436 of the Criminal Procedure Code for ordering an inquiry or trial,[12] or an unsuccessful

3. AIR 1963 All. 547+AIR 1930 All. 326+AIR 1935 Oudh 392.
4. AIR 1938 Mad. 349=ILR 1938 Mad. 675 (FB). (23 Mad. 24, *Overruled.*)+AIR 1920 Mad. 151 (DB).
5. PLD 1975 Lah. 1238.
6. AIR 1930 All. 326=52 All. 553 (DB)+17 Cal. L. Jour 105 (DB)+AIR 1946 Nag. 46=ILR 1946 Nag. 358.
7. AIR 1922 Cal. 145=49 Cal. 1035 (DB)+AIR 1947 P.C. 108=47 Ind App 193=ILR (1948) 1 Cal. 256=ILR 1947 Kar. (PC) 221+AIR 1928 Cal. 691=56 Cal. 432 (DB).
8. AIR 1948 Mad. 446=ILR 1949 Mad. 29.
9. AIR 1915 Cal. 79 (DB)+AIR 1947 P.C. 108=74 Ind App 193=ILR (1948) 1 Cal. 256=ILR 1947 Kar. (PC) 221+ILR 1951 Mys. 71 (FB). (Petition to stop intended marriage of plaintiff, on the allegation that it contravened the Infant Marriages Prevention Act, made to Magistrate by defendant--Petition referred to Police for inquiry and report--Magistrate, on receipt of police report, dismissing complaint on ground that defendant had not substantiated the allegation--No notice issued to plaintiff at all--*Held* plaintiff could not be said to have been prosecuted and therefore, Art. 23 did not apply to plaintiff's suit for damages)+28 Bom. 226.
10. 24 All. 368 (DB)+AIR 1930 Cal. 392=57 Cal. 25.
11. AIR 1947 P.C. 108=74 Ind. App. 193=ILR (1948) 1 Cal. 256=ILR 1947 Kar. (PC) 221.
12. AIR 1930 All. 326=52 All. 553 (DB).

application for sanction to prosecute made before a civil Court amounts to prosecution and may supply a basis for a suit for damages for malicious prosecution.[13]

5. **"Prosecution is otherwise terminated."** A prosecution terminates by an order of the Magistrate declining to commit the accused to sessions,[14] or by an order of discharge.[15] When there is revision or appeal, the prosecution terminates when the proceeding in revision or appeal come to an end in favour of the discharged person.[16]

6. **Commencement of limitation.** Time begins to run from the date of the final judgment of the Magistrate.[17] Where prosecution case was closed, and accused No. 2 was discharged on 30-10-41, and the case against accused No. 1 continued and the Magistrate committed him to Sessions on 24-12-42, limitation for suit for compensation by accused No. 2 would begin on 31-10-41.[18]

7. **Joint tort-feasors.** Where a suit is filed against joint tort-feasors and it is barred by limitation as against one, it would be barred as against all.[19]

8. **Action against Municipality.** Where the Municipality acts with the knowledge that it had no power to act under any enactment, and a suit for compensation for malicious prosecution was filed against it, Article 23 and not Art. 2 would apply.[20]

9. **Government servant, suit against.** Article 23 applies to a suit for compensation for malicious prosecution against a Government servant.[1]

24. For compensation for libel.	[2][One year]	When the libel is published.

Synopsis

1. Scope.
2. Commencement of limitation.

1. **Scope.** Where a party brings a suit for defamation against a police officer submitting report in compliance with an order of the Magistrate, this article will apply.[3]

---

13. AIR 1922 Cal. 145 = 49 Cal. 1035 (DB) + AIR 1928 Cal. 691 = 56 Cal. 432 (DB).
14. AIR 1926 P.C. 46 = 29 Oudh Cas. 163 = 1 Luck. 215.
15. AIR 1922 Bom. 209 = 47 Bom. 28 (DB) + 6 Bom. 376 (DB) + AIR 1930 All. 326 = 52 All. 553 (DB).
16. AIR 1938 Mad. 339 = ILR 1938 Mad. 675 (DB), (23 Mad. 24, *Overruled*) + AIR 1938 All. 49 = ILR 1938 All. 89 (DB) + AIR 1930 All. 326 = 52 All. 553 (DB) + AIR 1942 Oudh 489 (DB) + AIR 1946 Nag. 46 = ILR 1946 Nag. 358.
17. 17 Mad. L. Jour 63 (DB) + 1912 Mad. W.N. 951 (DB).
18. AIR 1945 Mad. 288.
19. AIR 1914 Cal. 396 = 40 Cal. 898 (SB).
20. AIR 1925 Rang. 311 = 3 Rang. 268.
1. AIR 1944 Cal. 4 (DB).
2. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
3. AIR 1937 All. 90 = ILR 1937 All. 390 (DB).

Several plaintiffs. Where a suit is instituted by several plaintiffs within time and a subsequent amendment is made on ground of misjoinder and the names of all the plaintiffs except one are struck off, the amendment would not render the suit time-barred.[4]

2. Commencement of limitation. The starting point of limitation under this article is the date on which the alleged libel is published,[5] *e.g.*, where words constituting libel or slander are written or spoken.[6]

25.	For compensation for slander.	[7][One year]	When the words are spoken or, if the words are not actionable in themselves, when the special damage complained of results.

1. Slander, what is. A statement would amount to slander only when it has a defamatory content. A mere abuse which does not amount to a defamatory statement is not actionable as a slander.[8]

26.	For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	[9][One year]	When the loss occurs.
27.	For compensation for inducing a person to break a contract with the plaintiff.	[One year]	The date of the breach.

Scope. It is an actionable tort to induce intentionally and without lawful justification any one to break a contract made by him with another, thereby causing damage to the latter.[10] Malice or conspiracy is necessary to be established before an inducement to break a contract becomes actionable.[11] Where plaintiff and defendant were rival contractors for supply of camels to Military Department

4. 35 Cal. 495 (DB).
5. NLR 1989 CLC 486 (DB) + 24 All. 368 (DB) + 18 Cal. L. Jour 352 (DB) + 2 Agra 47 (DB).
6. NLR 1989 UC 486 (DB).
7. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
8. ('99) 26 Cal. 653 (FB) + (1900) 10 Mad. L. Jour 83 (DB).
9. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
10. (1853) 95 E R 501 = 22 L J Q B 463 + 1901 App Cas 495 = 70 L J P C 76.
11. AIR 1915 Bom. 300 = 39 Bom. 682 + AIR 1916 Bom. 51 = 41 Bom. 137 (DB).

of British Government. The plaintiff sued the defendant for damages for inducing his sub-contractors to break their contract with him; the suit was held to be governed by this article.[12]

28.	For compensation for an illegal, irregular or excessive distress.	[13][One year]	The date of the distress.

Synopsis

1. Scope. 2. Statutory distress.
3. Suit for refund for excessive amount.

1. Scope. A 'distress' is the same thing as a 'distraint'.[14] A distress not in conformity with the provisions of the statute under which the distrainer purports to act, will be an illegal, irregular or excessive distress.[15] An illegal, irregular or excessive distress may be an act alleged to be in pursuance of any enactment within the meaning of Art. 2 or a misfeasance or malfeasance within the meaning of Art. 36. In such cases this article applies and not Art. 2 or Art. 36.[16] Thus where *B* wrongfully distrained *A's* heaps of paddy, *A* sued *B* for return of equal quantity of grain or Rs. 250. It was held, that the suit was one for compensation and this Article would apply.[17]

2. Statutory distress. A suit for damages in respect of a distress effected under provisions of statutory enactments is governed by Art. 29.[18]

3. Suit for refund of excessive amount. Where *A* sued *B* to recover a sum which *B* has collected by distress in excess of the amount properly due to him; this article does not apply to the suit.[19] Where a suit was filed for a declaration that the landlord was not entitled to recover in execution of his decree arrears of rent in excess of the rent determined by Rent Controller and for recovery of excess amount realised in execution; the suit was governed not by Art. 28 or Art. 29 but by residuary Art. 120.[20]

29.	For compensation for wrongful seizure of movable property under legal process.	[1][One year]	The date of the seizure.

12. AIR 1926 P. C. 88.
13. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
14. AIR 1940 Bom. 20 = ILR 1939 Bom. 721 (DB) + ('03) 7 Cal. W N 728 (DB).
15. AIR 1940 Bom. 20 = ILR 1939 Bom. 721 (DB) + ('04) 26 All 482 (DB) + ('03) 7 Cal W N 728 (DB).
16. AIR 1940 Bom. 20 = ILR 1939 Bom. 721 (DB) + ('03) 7 Cal. W N 728 (DB).
17. ('02) 25 Mad. 540 (DB).
18. AIR 1924 All. 828 = ('92) 1892 Bom. P J 32 (DB).
19. ('86) 10 Bom. 665 (DB).
20. AIR 1960 Madh Pra 30.
1. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

Synopsis

1. Scope.
2. Wrongful seizure.
3. Seizure.
4. "Under legal process."
5. Movable property.
6. Compensation.
7. Starting point of limitation.

1. Scope. This article provides for a specific case and prevails over the general Art. 36.[2]

2. Wrongful seizure. This Article applies where property is wrongfully seized. Thus where *A* obtains an order for attachment of *B's* movable property and a certain property pointed out as belonging to *B* by *A* was attached by Process Officer although that property really belonged to *C*. It was held that this amounted to wrongful seizure and was actionable without proof of malice.[3] Where in a criminal case property was seized but objection to seizure was partly allowed. The property was sold and amount of share disallowed was retained. A suit was filed for the amount retained and for damages. It was held, that in so far as the claim was founded on illegal seizure it fell under Art. 29.[4]

Seizure under valid process. Where property of the defendant was seized under a legal process, by the plaintiff; the seizure was not wrongful within the meaning of this article.[5] In other words if goods are seized under a writ or warrant which authorised the seizure, no action will lie unless the person complaining can establish a remedy by some such action as for malicious prosecution.[6] But where though property is seized under a valid process yet property seized is found to belong to third party[7] or an application for seizure is made maliciously and without reasonable or probable cause, an action lies against such seizure.[8] In a suit, *A* attached *B's* movable property before judgment. The application for attachment was not bona fide. Therefore the seizure was wrongful and a suit for compensation was governed by this article.[9]

Seizure under invalid process. Where the process under which seizure is made is invalid, the seizure is actionable without proof of malice or want of reasonable cause.[10] Where a suit *in rem* was filed against a vessel for recovery of amount due as maritime necessaries and the plaintiff got the ship arrested but later on the suit was dismissed. A suit by owners of the vessel for damages was governed by this article.[11]

Wrongful removal. Art. 29 applies only in case of wrongful seizure and not of wrongful removal of attached property.[12]

---

2. AIR 1915 Cal. 681 = 42 Cal. 85 (DB) + AIR 1931 Nag. 47.
3. AIR 1931 P.C. 28.
4. AIR 1957 Nag. 71 = II.R 1956 Nag. 866 = 1957 Cri. L. Jour 382 (DB).
5. AIR 1920 Mad. 397 (DB) + AIR 1921 Cal. 774 (DB) + AIR 1925 All 131. (If Art. 36 read. with S. 23 is applied. suit is within time.) + 19 Mad. 80 (DB).
6. AIR 1931 P.C. 28.
7. 17 Cal. 436 = 17 Ind App 17 (PC) + AIR 1940 Rang. 276 = 1941 Rang L.R. 1 (FB).
8. 17 Cal. 436 = 17 Ind App 17 (PC).
9. AIR 1930 Mad. 635 + 53 Mad. 621 (DB).
10. AIR 1931 Nag. 47 + AIR 1925 All. 131 + AIR 1920 Mad. 397 (DB) + AIR 1921 Cal. 774 (DB).
11. AIR 1915 Cal 681 = 42 Cal 85 (DB).
12. AIR 1946 Mad. 33 = II.R 1945 Mad. 784 (DB).

Wrongful loss. Where the sewing machine of *B* was attached before judgment and kept in custody of sureties but the attachment was subsequently raised as illegal, *B* found vital parts of the machine removed and refused to take it back. *B* filed a suit for return of the machine in original condition or for damages. It was held that the suit was not governed by Art. 29 but by Art. 48 or Art. 49.[13]

3. Seizure. This article applies to actual seizure under legal process.[14] The locking up and sealing of the godown containing the goods to be seized is actual seizure within the meaning of this article.[15] But an attachment by a prohibitory order under O. 21, R. 46 of the Civil Procedure Code is not a "seizure".[16]

Who can sue for wrongful seizure. There is no wrongful seizure unless the property was in the possession of the person who is setting up the wrong.[17] Thus where money in custody of Court was taken away by a person not entitled to it, and the person entitled to it sued the former for recovery. It was held that there was no 'seizure' of the money at all.[18] Similarly where a person had a lien or mortgage right over property, there could not be wrongful seizure of such property as against him.[19]

4. "Under legal process." Legal process denotes process by some Court.[20] Where the plaintiff brought a suit against the Government for compensation for seizure of his goods under the Defence of India Rules. There was no question in the suit of seizure of movable property under legal process inasmuch as there was nothing due from the plaintiffs in realization of which the plaintiff's movable property was seized, such as a revenue officer taking recourse to distraint of the judgment-debtor's properties for recovery of the amount of revenue or otherwise the use of the provisions of the Public Demands Recovery Act, etc.; Art. 29 was not applicable to the suit.[21]

5. Movable property. The definition of 'movable property' given in S. 2(13) of the Civil Procedure Code does not apply to the Limitation Act.[1] It has been held that money is not "immovable property" for the purposes of this article.[2] But a debt is not movable property within the meaning of this article.[3]

---

13. AIR 1946 Mad. 455.
14. 6 Bom. L.R. 704.
15. 27 Mad. 346 (DB).
16. 6 Bom. L.R. 704 + AIR 1914 Mad. 126 = 38 Mad. 972 (FB).
17. AIR 1916 All. 335 = 38 All. 676 (DB).
18. AIR 1938 Lah. 493 (DB) + AIR 1953 Nag. 234 = ILR 1952 Nag. 89. ('The suit to recover the money so taken away will be governed by either Art. 62 or by Art. 120. In either case time will not commence to run till plaintiff came to know of the withdrawal of the money by the defendant.') + AIR 1917 All. 276 = 39 All. 322 (DB) + AIR 1914 Mad. 126 = 38 Mad. 972 (FB) + AIR 1916 All. 335 = 38 All. 676 (DB) + AIR 1924 Nag. 246 = 20 Nag. L.R. 189 + AIR 1934 Oudh 158 = 9 Luck. 577 + AIR 1922 Lah. 103 (DB).
19. AIR 1930 Mad. 349 = AIR 1917 All. 276 = 39 All. 322 (DB).
20. AIR 1942 Bom. 300 (DB).
21. AIR 1958 Pat. 512 (DB).
1. AIR 1916 Mad. 1142 + AIR 1915 Nag. 69 = 11 Nag. L.R. 18.
2. 13 Mad. 437 (DB).
3. 23 Mad. L. Jour 519 (DB).

Standing crop. Standing crops, until severed from the soil, are immovable property for the purposes of this Article.[4] Therefore the attachment of crops not severed from the soil is not a seizure of movable property,[5] and suit for damages for this seizure, is not governed by this article.[6] Where standing crops were wrongfully attached, cut and removed in spite of objection by the claimant being allowed, a suit by the objector for damages was not governed by this article.[7]

6. **Compensation.** This article applies to all cases where the alleged wrongful seizure is made under a legal process.[8] Thus a claim for recovery of the amount wrongfully taken by the defendant from the Government Treasury under legal process is a suit for compensation within the meaning of this article.[9] But a suit to recover money paid to the decree-holder out of the sale proceeds of the goods wrongfully attached in execution of a decree is not a suit for compensation for wrongful seizure of goods and, therefore, the limitation provided by Art. 29 will not govern the suit.[10]

Suit for recovery of specific property. A suit for the recovery of specific property seized is not a suit for compensation for wrongful seizure.[11] This Article will not apply even where the suit for recovery of specific property seized is coupled with a prayer for the price of the articles as should be asked for under O. 20, R. 10, Civil P.C. In such a case the plaintiff can take advantage of Art. 49.[12]

Claim must be with reference to wrongful seizure. This Article applies only where claim for compensation is with reference to wrongful seizure. *B* sold and delivered a car to *A*. The car was attached and seized in execution of a decree against *B*. Pending *A's* application for removal of attachment *B* became insolvent and the plaintiff handed over the attached car to the Official Receiver. *A's* application being successful, he sued for damages for wrongful seizure of the car. It was held that this article applied to the suit.[13]

Where the claim for damages is not based on the wrongful nature of the attachment or seizure, this article has no application.[14] Thus where *A* in execution of his decree against *B* attached *C's* property but the property was released from attachment on application by *C*. *A* filed a suit under O. 21, R. 63, C.P.C. and obtained an injunction restraining *C* from taking possession of the properties. *A's* suit was dismissed. *C* filed a suit for damages resulting from detention of his property. It was held that the suit was governed by Art. 42 and not by Art. 29.[15]

---

4. AIR 1916 Mad. 1142 + AIR 1915 Nag. 69 = 11 Nag. L. R. 18 + 32 Cal. 459 (DB) + 22 Cal 877 (DB) + AIR 1922 Nag. 212 = 18 Nag. L. R. 96.
5. AIR 1915 Nag. 69 = 11 Nag. L. R. 18.
6. 32 Cal. 459 (DB) + 25 Cal. 692 (FB) + 36 Cal. 141 (DB).
7. 17 Cal Law Jour 206 (DB) + AIR 1928 Cal. 106 (DB).
8. 29 All. 615 + 27 Mad. 346 (DB) + 31 Mad. 431 (DB).
9. 8 Bom. 17 (DB).
10. AIR 1951 Pat. 602 = 30 Pat. 784 (DB). (Article 49 governs the suit. Cause of action for suit arises when the attached goods are sold and the money realised is paid to the decree-holder).
11. AIR 1935 All. 915.
12. AIR 1950 Mad. 734.
13. AIR 1937 Rang. 523.
14. AIR 1924 Lah. 136 (DB) + AIR 1938 Lah. 196.
15. 24 All. 146.

Where *A* in execution of his decree against *B*, got a warehouse of *B* sealed with Court seal fraudulently and in collusion with the process officer. *B* on knowing about it sued for damages. It was held that the suit was governed by Article 95.[16]

7. Starting point of limitation. The cause of action accrues on the day on which the property is seized.[17] The wrong done by the seizure is not a continuing wrong.[18] Any later manifestations of the original damage and consequent upon the injury originally sustained do not give rise to a new cause of action.[19] The release of movable property from attachment or the fact that the attachment is subsequently declared unlawful does not gives rise to an immediate cause of action.[20]

Property in 'custodia legis'. Once time has begun to run it does not stop running during the period the property remains in *custodia legis.*[1]

Plaintiff engaged in other proceedings. The plaintiff cannot claim exclusion of time on the ground that he was engaged in prosecuting a claim petition in the attaching Court or in obtaining a declaratory decree in a suit under O. 21, R. 63 of the Civil Procedure Code.[2]

30.	Against a carrier for compensation for losing or injuring goods.	[3][One year]	When the loss or injury occurs.

Synopsis

1. Scope.
2. Carrier.
3. Loss of goods.
4. Injury to goods.
5. Suit by whom may be brought.
6. Notice to Railway.
7. Starting point of limitation.

1. Scope. This and the next article are intended to provide exceptionally for the case of carriers on account of the difficulty of investigating and settling claims preferred against them after a long lapse of time in respect of a few articles out of the quantity of goods that are constantly passing through their hands.[4]

16. 27 Mad. 343 (DB).
17. AIR 1940 Rang. 276 = 1941 Rang. L. R. 1 (FB) + 29 All. 615 + AIR 1915 Cal. 681 = 42 Cal. 85 (DB) + 4 Nag. L.R. 49.
18. AIR 1948 Rang. 276 = 1941 Rang. L.R. 1 (FB) + 29 All. 615 + AIR 1930 Mad. 635 = 53 Mad. 621 (DB) + 4 Nag. L.R. 49.
19. AIR 1940 Rang. 276 = 1941 Rang. L.R. 1 (FB) = 31 Mad. 431 (DB).
20. AIR 1940 Rang. 276 = 1941 Rang. L.R. 1 (FB). (Release from attachment.) + 29 All. 615 (DB) + AIR 1930 Mad. 635 = 53 Mad. 621 (DB). (Attachment declared unlawful).
1. 31 Mad. 431 (DB).
2. 31 Mad. 431 (DB) + AIR 1930 Mad. 635 = 53 Mad. 621 (DB) + AIR 1931 Nag. 47 + AIR 1934 Rang. 329 = 13 Rang. 43 + AIR 1920 Cal. 357 (FB) + 9 Ind Cas. 779 (Low Bur) + 4 Nag. L.R. 49 + 3 Oudh Cas. 340.
3. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
4. AIR 1916 Mad. 314 = 39 Mad. 1 (FB) + AIR 1926 Nag. 57 (DB).

When the suit is against a carrier of goods for compensation for loss or damage to goods Article 30 and not Article 31 applies and the suit must be instituted within one year of the date of loss or damage.[5] Where the plaintiff brings a suit for compensation for injury to goods while in possession of a Railway Company; this article applies.[6]

Suit arising out of contract. This article only applies to suits for compensation for loss or damage to goods arising from malfeasance, misfeasance or non-feasance independent of contract.[7] When a point of limitation is raised, it is necessary to consider and examine the nature and scope of the plea so made in the light of the pleadings and the facts. In the plaint it was averred that the railway authorities failed to deliver, as per contract of carriage, all the goods apparently set out in the railway receipt and that they accordingly granted a short certificate, and, therefore, the plaintiff consignee was entitled under the order of consignment to recover the value of the sugar which according to the plaintiff was loaded into the wagon at the place of consignment and which was found short at the destination. The consignor was impleaded primarily as a *pro forma* defendant but it was claimed that if he were to contest the claim the suit should proceed against him as main defendant. The contesting defendant denied that there was any loss or short delivery. It was held that on the basis of the claim that was made, the suit could not be regarded as a suit in tort for compensation against a carrier either for losing or for injuring the goods consigned for carriage, and Art. 30 was not therefore applicable. On the other hand, it would fall directly within the scope of Art. 115. Article 30 occurs in the midst of the articles which deal with suits based on tort. These articles obviously do not deal with any liability for compensation arising under contract, for which one has got to go further and look into Arts. 113 to 116. It would be wrong to consider Art. 30 as a particular article *vis-a-vis* Art. 115 which is a residuary article.[8]

Non-delivery of part of consignment. To a suit for damages for non-delivery of part of consignment Art. 31, and not this article applies.[9]

2. Carrier. The Article applies only where goods are lost or damaged by the defendant when he was acting as a carrier and relationship of carrier and customer exists between them and not when he was handling them in another capacity. Thus where the plaintiff put certain goods in defendant's ferryboat and got into it but finding the boat being over-loaded, the plaintiff got down and wanted to take down his goods which the defendants refused to allow. The boat capsized on the way. It was held, there was no relationship of carrier and customer and the suit for loss of goods was not governed by this or the next article.[10] Similarly as from a scrutiny of the provisions of the Post Officer Act, it will be noticed that the post office is a mere department of the State and not a common carrier. Section 6 of the Act exempts the government from any liability by reason of loss or delay or damage to, any postal article, in the course of its

5. PLD 1964 Lahore 444 (DB).
6. AIR 1918 Sind 58 = 11 Sind L.R. 103.
7. 3 Mad. 107 (DB) + AIR 1960 Madh Pra 406 = II R 1935 Andh Pra 849 + 3 Mad 240.
8. AIR 1963 Assam 190.
9. 1983 CLC 888 + AIR 1947 Cal. 98.
10. AIR 1928 Cal. 306.

transmission, except in so far as in express terms that liability is undertaken by Government as provided in the succeeding sections of the Act and no officer of the Post Office shall incur any liability unless he has caused the same fraudulently or by his wilful act or default. Therefore the Post Office is not a carrier and Article 30 or 31 of the Limitation Act (1908) cannot apply to it.[11]

Where the plaintiff instead of taking delivery of goods on arrival asked the carrier to keep the goods and await instructions; the carrier did not become bailee for purposes of the Article in the subsequent period.[12] Similarly where a railway company received passenger's luggage and a suit was filed for value of the luggage lost from the cloak-room neither Art. 30 nor Art. 31 applies to the suit.[13] A Port Trust Board storing and delivering goods to the ships calling at the port is not a "carrier" and this Article does not apply to it.[14]

Landing agent. A landing agent who undertakes to receive the goods from a ship and deliver them to the consignee is a carrier.[15]

Owner of ship. The owners of sea-going merchant ships are carriers.[16]

Railways. The Government owning a railway is a carrier.[17]

3. **Loss of goods.** The applicability of Articles 30 and 31 would depend on the cause of action, or the infringement of a right which is the basis of the claim. If the basis of the suit be the act of carrier in losing the goods, Article 30 would apply and if the basis of the suit be the right of the plaintiff to delivery of goods which right has been infringed article 31 will govern the case.[18] Thus where a bale of cotton piece goods sent by railway, was found on arrival at the place of its destination to have been tampered with and some pieces were found missing, a suit for compensation against the Railway for loss of piece goods is governed, for purposes of limitation, by Art. 30.[19] But where the suit is for non-delivery of goods, it will be governed by Art. 31 and not by Art. 30 although the defendant proves that the goods were lost.[20] Where goods are not lost but are lying in the Lost Property Office of the carrier, the case was one of non-delivery covered by Article 31.[1]

Misdelivery of goods. 'Loss' will include loss by misdelivery of goods.[2]

---

11. AIR 1965 Orissa 118 (DB).
12. AIR 1933 All. 466.
13. AIR 1949 Cal 591 = ILR (1950) 1 Cal. 173.
14. ('11) 4 Sind L.R. 236.
15. AIR 1918 Mad. 341 (DB) + 1955-1 Mad. LJour 406 (The Governor-General-in-Council can come within the meaning of 'carrier' in Arts. 30 and 31) + AIR 1953 Assam 30 = ILR (1952) 4 Assam 363 (DB).
16. PLD 1967 S.C. 68 = 19 DLR 177 + ('81) 3 Mad. 103 (DB) + ('02) 26 Bom. 562 (FB).
17. AIR 1943 All. 348 + AIR 1935 All. 466 + AIR 1938 Cal. 298 = ILR (1937) 2 Cal. 614 (DB) + AIR 1961 MP 190.
18. PLD 1953 Lahore 460 = PLR 1953 Lahore 1045.
19. AIR 1961 Andhra Pradesh 454 (DB).
20. AIR 1948 Sind 26 = ILR 1947 Kar. 144.
1. AIR 1920 All. 157 = 42 All 390.
2. AIR 1921 Lah. 1 = 2 Lah. 133 (FB) + AIR 1923 Pat. 285 = 2 Pat. 442 (DB) + AIR 1919 Mad 140 = 41 Mad. 871 (DB).

4. **Injury to goods.** Where what is claimed in a suit against the Railway Administration is compensation for damage to the goods which were eventually delivered, the appropriate article applicable would be Art. 30 and not Art. 31.[3] Thus where damaged goods have been delivered to the consignee, the case does not amount to one of non-delivery. To a suit for compensation for injury to goods, Art. 30 and not Art. 31 applies.[4] Where in a consignment some goods were found damaged and there was also some short delivery; it was held that to a suit for compensation for loss on account of injury to goods, this Article will apply.[5]

5. **Suit by whom may be brought.** Articles 30 and 31 include suits not only by consignee but consignor also.[6]

6. **Notice to Railway.** Where a notice to a Railway under S. 80 of the Civil Procedure Code is necessary, the plaintiff is entitled to deduct the period of notice, under S. 15(2).[7] But the period of correspondence with the Railway administration in pursuing the claim under S. 77, Railways Act, cannot be excluded under S. 15(2) of the Act in computing the limitation under this Article for any suit.[8]

To whom notice may be given. The notice under S. 77, Railways Act, served upon the Chief Commercial Manager instead of on the General Manager is good service, as claims against the Railway are dealt with by that Officer. The notice under S. 77 is not--as distinguished from the other statutory notice under S. 80, Civil P.C.--a condition precedent to the institution of the suit.[9]

7. **Starting point of limitation.** The "loss or injury" referred to in the third column of this Article means loss or injury by the carrier and not the loss or injury suffered by the consignor or consignee.[10] Therefore time begins to run when the carrier loses or injures the goods and not from the time when the consignor or consignee may be said to suffer loss.[11] For the purposes of this Article loss occurs "whenever the Railway company to which the goods have been consigned for conveyance involuntarily or through inadvertence loses possession of the goods, and for the time being is unable to trace them".[12] In other words time starts running for a suit by the plaintiff against a carrier for compensation for losing or injuring the goods, the moment the loss or injury occurs and the knowledge of the plaintiff as to that loss is immaterial.[13] But this is subject to the condition that limitation will begin to run from the date when the loss is ascertained.[14] Once the

3. AIR 1960 S.C. 223 + AIR 1965 Orissa 100 (DB).
4. AIR 1962 Madras 349 (DB).
5. AIR 1962 Mys. 23 (DB).
6. AIR 1920 All. 157 = 42 All. 390 + AIR 1924 Cal. 173 + AIR 1925 Cal. 559 = 52 Cal. 372.
7. AIR 1928 Lah. 349 = 9 Lah. 519 (DB) + AIR 1953 Nag. 10 = ILR 1953 Nag. 123 (DB) + PLD 1967 S.C. 68 = 19 DLR (SC) 177.
8. AIR 1953 Nag. 10 = ILR 1953 Nag. 123 (DB).
9. AIR 1955 Cal. 448 (DB).
10. AIR 1923 All. 22 = 45 All. 43 (DB) + AIR 1958 All. 234 (DB) + AIR 1954 Trav-Co. 362 = ILR 1954 Trav-Co. 298 (DB) + AIR 1951 Cal. 462 + AIR 1948 Sind 26 = ILR 1947 Kar. 144.
11. AIR 1951 Cal. 462.
12. PLD 1954 Lah. 635 = PLR 1954 Lah. 767 (*Rel.* ILR 51 Cal. 615).
13. PLD 1964 Lah. 444 (DB).
14. AIR 1923 All. 342 + AIR 1953 Pat. 367 + AIR 1947 Nag. 224 = ILR 1947 Nag. 726.

loss has been ascertained the plaintiff cannot urge that limitation would commence from any subsequent date. Thus where a consignee admitted to carrier, in his letter of 5-8-1931, that injury occurred prior to that date, a suit for compensation filed on 15-10-1932 was held, to be time-barred. The consignee could not claim that limitation runs from the date of open delivery to him.[15] It must however be noted that a mere statement that injury was done does not amount to ascertainment of damage or injury. The plaintiff filed a money suit against the Railway for recovery of compensation for damage caused by the Railway to the consignment despatched by him. In the notice sent by the plaintiff under S. 77, Railways Act, 1890, it was stated by him that the parcel consisting of several baskets of *biris* had been left after the booking by the railway staff at the station of despatch on the open platform without protection against rain and that some baskets were badly drenched by rain water. The railway relying on the statement contended that the plaintiff must be taken to have admitted that the loss or injury occurred on the date of despatch and claimed that the suit which had been filed by him beyond 14 months from such date was barred by limitation. It was held that in the circumstances of the case the date of delivery and not the date of despatch was to be taken as the date from which the period of limitation commenced and hence the suit was not barred by limitation. The statement in the notice sent by the plaintiff under S. 77, Railways Act, 1890 a whole amounted only to an admission on the part of the plaintiff to the effect that he knew that a portion of the consignment had got drenched on the very day on which the consignment was booked. But it did not, even if the nature of the consignment was taken into account, necessarily connote loss or injury, in the sense ordinarily understood. Each successive day from the date of despatch might have counted and every succeeding moment might have made matters worse resulting ultimately in actual loss or injury. It was quite conceivable that the continued negligence of the railway authorities and other possible causes might have all combined to cause the injury complained of in the suit. The Railway having adduced no evidence on this question and the statement on which it relied, being of no avail, it must be held that the railway failed to discharge the onus which was on it. Therefore the finding, that the date of delivery should be taken to be the date of loss or injury and counting from that date the suit was in time, must stand.[16]

Rejection of claim by carrier. A suit for compensation for damage to goods against a carrier is governed by Art. 30 and time will run under that Article from the date on which the consignee becomes aware of the damage, the date of repudiation of the claim by the carrier cannot be the starting point of limitation in such cases. Where in a suit against a carrier for compensation for injuring goods filed on 4-1-1958 though the consignee knew in a general way, even prior to open delivery, that the goods had been damaged but the exact nature of the injury and quantum thereof on which alone he could have claimed damages was known to him only when the goods were examined after open delivery was given to him on 6-12-1956. It was held that limitation period of one year for the suit started to run only from 6-12-1956. To this he was entitled to add two months time prescribed for notice. The suit filed on 4-1-1958 was therefore within time.[17] Where the

15. AIR 1935 All. 407 + AIR 1951 Mys. 68.
16. AIR 1964 Pat. 80.
17. AIR 1963 Mad. 365 (DB) + AIR 1962 Mad. 349 (DB).

consignee took open delivery of the consignment after noting details of damage, he becomes aware of the loss or injury on the date of such delivery, the period of limitation would start as from that date.[18] Correspondence between the parties by itself would not enlarge the period of limitation prescribed either by Art. 30 or Art. 31 of the Limitation Act. The correspondence and the final reply of the carrier expressing its inability to make delivery will have a bearing in cases where the whole of the consignment itself had not arrived and when no time was fixed for delivery. May be, in a situation like that due diligence might result in the tracing of the consignment. In such a position, unless it is established that the goods were lost, Art. 30 would not apply. But that can have no analogy where it is proved that a party of the contents of a bag or bale is lost.[19]

Partly lost or damaged goods delivered. Where partly lost or damaged goods are delivered to the consignee the starting point of limitation is the date when the consignee on delivery found the contents pilfered[20] or damaged.[1] Thus where in a suit against a carrier for compensation for injury to goods was filed on 4-1-1958 though the consignee knew in a general way, even prior to open delivery, that the goods had been damaged but the exact nature of the injury and *quantum* thereof on which alone he could have claimed damages was known to him only when the goods were examined after open delivery was given to him on 6-12-1956. It was held that limitation period of one year for the suit started to run only from 6-12-1956. To this he was entitled to add two months time prescribed for notice. The suit filed on 4-1-1958 was therefore within time.[2]

Burden of proof. The burden of proving when the goods were lost or injured is on the carrier[3] and in that case the carrier is under an obligation to show as to how the goods were dealt with in all possible stages as long as they were in its custody.[4] If the carrier fails to prove that the goods were lost more than one year before the institution of the suit, the claim is not barred.[5] Thus where in a suit against railway for loss of goods destroyed by fire the Railway produced evidence that the fire took place on 23rd January, 1947 and the actual date of fire was not challenged by the plaintiff. The suit instituted on 1st April, 1950 was held to be barred by limitation.[6]

Short delivery by ship. Where the goods are short delivered to the consignee by a vessel, time would begin to run when the ship came to port and started discharging cargo and again on the date when survey report was made whereby

18. AIR 1962 Mad. 349 (DB).
19. AIR 1961 A.P. 454 (DB) + AIR 1960 S.C. 1058.
20. AIR 1961 A.P. 454 (DB).
1. PLD 1967 S.C. 68 = 19 DLR (SC) 177 + AIR 1964 Pat. 80 + AIR 1961 M.P. 190 + AIR 1962 Mad. 349 (DB).
2. AIR 1963 Madras 365 (DB).
3. PLD 1972 Quetta 58 (DB) + AIR 1964 Orissa 168 + AIR 1941 Cal. 304 + AIR 1960 S.C. 233 = 1960-2 S.C.R. 75 + AIR 1955 Cal. 448 (DB) + AIR 1951 Cal. 462. (The onus of proving the date of loss lies on the Railway because the date of loss is a matter which is peculiarly within its knowledge.) + AIR 1950 Mad. 30 + AIR 1947 Nag. 224 = II.R 1947 Nag. 726 + AIR 192 Cal. 371 + 23 Mad. L. Jour 511 (DB) + 7 Bom. 478.
4. PLD 1972 Quetta 58 (DB).
5. AIR 1925 All. 656 = 47 All. 549 + AIR 1951 Cal. 462 + 23 Mad. L. Jour 511 (DB).
6. AIR 1960 Cal. 458.

the plaintiff came to know about the alleged shortage.[7] Where out of a consignment of 14 packages, delivery of 13 packages was taken by the consignee, a suit for the loss of one package would begin from the date when possession of the rest of the consignment was delivered.[8]

Railways Act, S. 77. The period of 15 days allowed to the railway under S. 77, Railways Act, cannot be invoked in computing the period of limitation for a suit against the railways for damages for loss or injury to goods.[9]

31.	Against a carrier for compensation for non-delivery of, or delay in delivering goods.	[10][One year]	When the goods ought to be delivered.

Synopsis

1. Scope.
2. Non-delivery of goods.
3. Conversion by carrier.
4. Acknowledgment of non-delivery.
5. Who may sue for compensation.
6. Starting point of limitation.

1. Scope. Where a suit is governed by a general Article as well as this Article, this Article is applicable.[11]

Articles 30 and 31. The two Articles 30 and 31 are quite different. The one refers to the loss or injury to the goods and the other to non-delivery or the delay in delivering goods. In the one case the goods have been either lost or damaged and in the other they have not been delivered or there has been delay in delivering them. [12] Another point to be noted is that Article 31 of the Limitation Act is applicable where it is a case of loss of units of articles, while Art. 30 is applicable to a case where there is loss in the contents of the units of a consignment.[13]

This Article and Art. 30 are not mutually exclusive. Where the suit is for non-delivery, this Article will apply irrespective of the cause of non-delivery. Hence, though the non-delivery is due to loss of the goods, a suit for

---

7. 1984 CLC 1130.
8. 1987 CLC 173 = NLR 1987 CLJ 439 = NLR 1987 UC 26.
9. AIR 1959 Pat. 252 (AIR 1922 Pat. 549, held *overruled*).
10. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
11. AIR 1916 Mad. 314 = 39 Mad. 1 (FB) + ILR (1953) 3 Raj. 111. (Suit against carrier for compensation for non-delivery of goods due to conversion or any other reason--Article 31 and not Art. 48 applies.) + AIR 1954 Bom. 297. (Claim for compensation for non-delivery--Article 48 which is the general provision is excluded by Art. 31 which is the specific Article.) + AIR 1954 Punj. 44 + AIR 1954 Trav-Co. 362 = 1954 Trav-Co. 298. (To a suit against a railway management for value, for non-delivery of goods Art. 31 applies, as it is a special article relating to such suits. Neither Art. 30, nor Arts. 49 and 115 apply to such a suit.) AIR 1916 Mad. 314 (FB). *foll.* AIR 1917 Cal. 640, *Dissent from*) + AIR 1953 Assam 30 = ILR (1952) 4 Assam 365 (DB) + AIR 1925 Lah. 478 = 6 Lah. 301.
12. AIR 1962 S.C. 1879 + AIR 1953 Pat. 367 + AIR 1961 A.P. 454 (DB).
13. AIR 1964 Orissa 198.

compensation for non-delivery will be governed by this Article and not by Art. 30.[14]

2. **Non-delivery of goods.** This article applies to all suits for compensation for non-delivery irrespective of the question whether the suit is laid in contract or in tort,[15] and the plaintiff has to prove that he filed the suit within one year from the date when the goods ought to have been delivered to him.[16] Thus where the defendant agreed to carry plaintiffs goods from a town in Java to Calcutta the Steamship arrived at Calcutta on 25-1-1920 and left Calcutta on 20-2-1920. The goods were not delivered to the plaintiff, and he sued for damages for their non-delivery on 7-6-1921. It was held that the suit was time-barred under Art. 31.[17]

Lost goods. Article 30 applies to those cases where there is a loss or injury to the goods while Art. 31 refers to cases of non-delivery or delay in delivery of the goods. Where the defendant Railway Administration have failed to show that there was any loss of goods so far as the undelivered goods were concerned, Art. 31 would properly apply to the plaintiff's claim for non-delivery.[18] Where in a suit against Railway the plaintiff's allegations were that out of the bales of cloth consigned to him from *N* to *I* one was not delivered as it was said to have been stolen; that subsequently a case of theft in respect of the bale was registered against one *D* who was tried and convicted for the offence of theft; that the bale was also recovered from *D*. It was held that the suit was governed by Article 31. It was essentially and in substance one for compensation for non-delivery of one bale by the railway. The fact that the bale could not be delivered because it had been stolen and that subsequently it was traced and handed over by the criminal Court to the railway authorities did not make the suit anytheless a suit for compensation against the carrier for non-delivery of the goods. After receiving the bale from the criminal Court, the possession of the railway was that of a carrier and not of a person who had acquired the bale as a lost property or as a stolen misappropriated property; nor did the railway acquire the possession of the property by conversion or by wrongfully taking it from the plaintiff. Article 48 had, therefore, no applicability.[19]

Deliberate non-delivery of goods. Article 31 is confined to cases where the non-delivery is due to deliberate withholding of the goods by the carrier.[20]

Misdelivery of goods. Non-delivery within the meaning of Art. 31 means non-delivery as per the instructions or directions given to the defendant by the plaintiff. So far as the cause of action of the plaintiff is concerned, delivery according to his instructions alone arises for consideration. Where his instructions have not been carried out, it does not matter to him whether the carrier had

14. AIR 1948 Sind 26 = ILR 1947 Kar. 144.
15. AIR 1916 Mad. 314 = 39 Mad. 1 (FB) + AIR 1960 Cal. 270 + AIR 1959 Manipur 31 + AIR 1954 Bom. 297 + AIR 1928 Cal. 371 + 33 All. 544 (DB) + 26 Bom. 562 (DB) + AIR 1927 Pat. 335 (DB) + AIR 1925 Lah. 478 = 6 Lah. 301 (DB) + AIR 1917 Cal. 640 = 44 Cal. 16 (DB) + AIR 1961 Manipur 45 + AIR 1962 Kerala 56.
16. AIR 1961 Manipur 45.
17. AIR 1928 Cal. 371 + AIR 1924 Cal. 173 + AIR 1925 Pat. 611 = 4 Pat. 482 (DB) + AIR 1925 Pat. 727 = 5 Pat. 106 (DB) + AIR 1918 Sind 58 = 11 Sind L.R. 103.
18. AIR 1961 Raj. 211 (DB).
19. AIR 1962 M.P. 190.
20. AIR 1948 Sind 26 = ILR 1947 Kar. 144.

delivered the goods to *X* or *Y* other than the named consignee. It follows therefore that a case of misdelivery is well within the expression 'non-delivery' so far as the applicability of Art. 31 of the Limitation Act is concerned.[1]

Non-delivery of part of consignment. Where consignment is not delivered at all the Article applicable is Art. 31.[2] A suit for damages for non-delivery of part of consignment specifically falls under Art. 31.[3] The Article is applicable where it is a case of loss of a unit of articles, while Art. 30 is applicable to a case where there is loss in the contents of the units of a consignment. Thus where out of four bales of cloth consigned, the plaintiff took delivery of only two bales and received a shortage certificate from the Railways and in a suit against railway for the loss of goods, on the question of applicability of Arts. 31 and 30 of the Limitation Act, it was held that as it was a loss of two units of articles in the shape of two bundles of cloth, Art. 31 would apply.[4]

3. **Conversion by carrier.** A suit against a carrier for compensation in respect of wrongful conversion of the goods entrusted to him is a suit for non-delivery of the goods within the meaning of this article. Non-delivery may be due to many causes of which conversion is one, but the cause of action is the non-delivery of goods.[5]

Mere non-delivery does not amount to conversion. Where the finding of the Court is that part of the goods had been jettisoned and the remaining goods had been misdelivered to a wrong person, it cannot constitute a case of conversion of goods by the defendant. The test for conversion is not to see whether there was a failure to return the goods. Where the carrier has not appropriated the goods or their value for himself, either personally or through some nominee, it cannot be said that a case of conversion has been made out in respect of the goods.[6]

Suit for surplus sale proceeds from Railway. Where a Railway company sold goods entrusted to it under S. 55, Railways Act. It was held, that a suit by a consignor to recover surplus sale proceeds was governed by Art. 62 and not by this Article.[7]

Conversion by non-carrier. Where the defendant company in a suit for compensation for conversion of the plaintiff's goods pleads that it is only the agent of the steamship companies and the latter companies are the carrier both in law and in fact and not the defendant company, the plea precludes any consideration of the defendant as engaged in a continuous contract of carriage and, therefore, Art. 48 alone applies to the defendant's case.[8]

---

1. AIR 1962 Kerala 56.
2. AIR 1960 Pat. 340 (DB).
3. AIR 1963 A.P. 344 + AIR 1937 All. 632 (DB) + AIR 1960 J&K 141 (DB) + AIR 1959 Cal. 21 = ILR (1956) 1 Cal. 394 + AIR 1947 Cal. 98.
4. AIR 1964 Orissa 198.
5. AIR 1926 Nag. 57 (DB) + AIR 1958 Mad. 321 = ILR 1958 Mad. 342 (DB) + 1955 Raj L.W. 148 + AIR 1925 Lah. 478 = 6 Lah. 301 (DB).
6. AIR 1962 Kerala 56.
7. AIR 1921 Mad. 362 = 44 Mad. 823 (DB).
8. AIR 1958 Ker 47 = ILR 1958 Ker 268 (DB).

4. Acknowledgment of non-delivery. An acknowledgment of non-delivery may in certain cases extend limitation but a letter that denies the liability to account for non-delivery of goods,[9] or a letter by Railways intimating the consignee that his complaint regarding short delivery was receiving does not amount to acknowledgment.[10]

Acknowledgment after expiry of limitation. A letter, if it amounts to acknowledgment of non-delivery written by the defendant (carrier) long after the expiry of limitation, cannot save its operation.[11]

5. Who may sue for compensation. Article 31 does not indicate any restriction as to the status of the person whose suits are covered by the Article. As the wording stands it covers all suits of the nature provided for therein, whether they be instituted by the consignor or by the consignee.[12]

6. Starting point of limitation. Time under this article may vary according to the circumstances of each case. A reasonable time is calculated from the date when the goods are consigned.[13] Where in a suit for damages for non-delivery of goods the defendant contended that the suit was barred by limitation as the suit was brought after more than one year from the date of delivery of the goods while the plaintiff maintained that the suit was in time as the defendant did not inform the plaintiff as to the result of their promised inquiry till the date of the suit. It was held: that the suit was not barred either under Art. 30 or Art. 31 of the Limitation Act.[14]

No date of delivery specified. Under Article 31 time would run from the date when the goods are to be delivery in case of non-delivery or delay in delivering the goods, but if there is no contract about the date of delivery, then the period of one year should be calculated from the expiry of a reasonable time within which the goods ought to have been delivered having regard to the circumstances of the case and the conduct of the parties. So the *terminus a quo* of limitation under Article 31 can be considered from the time when a definite refusal or declaration of inability to deliver the goods has been made by the carrier and the cause of action in such a case would arise when the owner of the goods is made aware that there would be no further delivery.[15] Where in the contract of carriage no time is fixed for delivery of goods and the matter is being enquired into and there is no refusal

---

9. AIR 1918 Sind 6=13 Sind L.R. 1.
10. AIR 1964 Orissa 198.
11. 3 Ind Cas 469 (DB) (Cal)+AIR 1920 All 157=42 All 390.
12. AIR 1924 Cal 173+AIR 1925 Cal.l 559+AIR 1920 All. 157+AIR 1962 Kerala 56.
13. PLD 1958 Dacca 452=10 DLR 242+AIR 1925 All 656=47 All 549+AIR 1960 All 131 (DB)+AIR 1960 Punj 349 (DB). (The tracing of the goods is matter exclusively concerning the carrier.)+AIR 1955 Pat. 182=33 Pat 339 (DB)+AIR 1955 Pepsu 51=ILR 1954 Patiala 563 (DB)+ILR (1953) 3 Raj 111. (The question when the goods ought to be delivered is a question of fact and must be determined with reference to the particular circumstances.)+AIR 1954 Pat 548 (DB)+AIR 1954 Punj 44+AIR 1953 Assam 30=ILR (1954) 4 Assam 363 (DB)+ILR 1951 Mys. 94+AIR 1950 Mad. 30 (AIR 1946 Mad. 133, *Expl.*)+AIR 1949 Pat. 268 (DB). (AIR 1923 All 22, *Rel. on:* AIR 1925 Lah. 478, *Disting.*)+AIR 1920 All. 157=42 All. 390+AIR 1915 Nag. 6=11 Nag. L.R. 174 (DB)+AIR 1933 Pat. 45=12 Pat. 67 (DB)+AIR 1918 Sind 6=13 Sind L.R. 1.
14. PLD 1958 Dacca 452=10 DLR 242.
15. 1983 CLC 888+PLD 1927 Quetta 38 (DB).

to deliver within one year of the suit, the suit cannot be said to be brought more than a year after the expiry of reasonable time.[16]

In a suit against carrier for compensation for non-delivery of part of goods the time begins to run when consignee is entitled to open delivery.[17] Thus where a single bale consignment of woollen goods reached the destination in a torn and damaged condition, the plaintiff consignee took open delivery on 30-12-1950 and found that a portion of the goods was missing. The necessary notices under the Railways Act were sent on 22-8-1951. The plaintiff received a letter from the Claims Officer asking him to send, without prejudice, the original *beejuk* within a fortnight to enable him to dispose of the case early. The plaintiff accordingly sent the *beejuk* but did not hear further from the Railways. After waiting for 10 months he filed the suit on 23-6-1952 for compensation for short delivery. It was held that the suit was barred by limitation under Art. 31 as the starting point of limitation in the circumstances of the case was the date when open delivery was taken and some of the goods were found missing from the bale. That would be the date 'when the goods ought to be delivered' within the meaning of Art. 31.[18]

Carriage by Air. Under S. 4 and Rule 29 on carriage by Air (International Convention) Act, 1966, formal agreement between consignor and carrier placed obligation upon carrier to inform consignee of arrival of goods so that he could receive delivery and in case of his refusal take further instructions of consignor thus casting duty on carrier to have acted accordingly. No evidence on record was available to reveal if such duty was discharged by carrier. Consignor was held to be justified invoking R. 29 framed under the Carriage by Air (International Convention) Act, 1966 to start limitation from final refusal on part of carrier to arrange delivery.[19]

Date of delivery fixed by parties. In a suit against a carrier for compensation for non-delivery of or delay in delivering goods, if there is any date fixed by contract for the delivery of the goods, then it is that date which must be taken to be the date from which the period of one year prescribed by Art. 31 is to be computed.[1] Thus where there is an agreement that the goods should remain with the carrier for a longer time than is actually and reasonably required, time will run only from the expiry of such period.[2]

Time will run only when the carrier either refuses or expresses his inability to deliver the goods. When the carrier was willing to give delivery and the consignee was prepared to take delivery even after the expiry of that period within which the

16. AIR 1923 All. 22=45 All. 43 (DB)+AIR 1960 Cal. 270+AIR 1960 Ker. 306=ILR 1960 Ker. 539 (DB)+AIR 1959 Pat. 114 (DB)+AIR 1958 All. 234+ILR 1957 Andh Pra 295+AIR 1954 Trav-Co. 362=ILR 1954 Trav-Co. 298 (DB)+AIR 1953 Nag. 273. (The words "when the goods ought to be delivered" should be given a liberal interpretation)+AIR 1952 All. 897=ILR (1953) 2 All 654 (FB)+AIR 1949 Pat. 268. (AIR 1952 Lah. 478. *Disting:* AIR 1923 All. 22. *Rel on*)+AIR 1928 Cal. 371.
17. AIR 1927 Oudh 478=3 Luck. 102 (DB).
18. AIR 1961 Orissa 108.
19. 1986 CLC 219=PLJ 1986 Lah. 56=NLR 1986 Civ. 233=KLR 1986 CC 1.
1. PLD 1964 Lah. 444 (DB)+AIR 1963 A.P. 344+AIR 1962 Pat. 428 (DB)+AIR 1963 Orissa 31.
2. AIR 1926 Nag. 57 (DB)+AIR 1957 Trav-Co. 133=ILR 1956 Trav-Co. 348 (DB). (AIR 1955 Punj. 83. *Dissented from.*)+AIR 1954 Trav-Co. 362=ILR 1954 Trav-Co. 298 (DB).

contract was originally to be performed, limitation will being to run only on the expiry of the further period agreed to between the parties.[3]

"When goods ought to be delivered." Time runs under this article from the date on which the goods ought to be delivered.[4] The phrase 'ought to be delivered' used in Art. 31 does not mean ought to be delivered in the normal course. In cases where no time of delivery is fixed the carrier is bound to deliver the goods within a reasonable time but what is reasonable time is a question of fact and depends on the facts and circumstances of each case.[5] A proper way of determining "when the goods ought to be delivered" is to find out when the plaintiff could have filed a suit for compensation without being met by a plea that the suit was premature. From any date on which he could have filed such a suit and the suit could not have been dismissed on the ground that it was premature, time would begin to run.[6]

In the absence of any special circumstances, the reasonable time would practically be the same between two stations as would normally, or usually or ordinarily be taken for the carriage of goods from one station to another and there is no question of any onus being discharged by the railway.[7] Where the goods are despatched by railway these facts can be easily ascertained from the Railway Receipt. The R.R. is usually presented at the station of destination and the clerk concerned from time to time notes down on it about the arrival or non-arrival of the goods, and the date on which they arrived. One can find out from these facts when the goods were consigned and when they were received at the destination. But position is different where other private carriers are employed. Thus where the goods in dispute were not sent by railway but on motor trucks. The opponent led no evidence to show on what date the goods in question were despatched from *K* and on what date they reached *L* and when the goods were placed in a position to be delivered to the consignee. The Courts should not raise any presumption regarding the period within which goods may reach their destination. In such cases it is incumbent on a transport company to prove by cogent evidence that the goods entrusted to it were despatched by such and such carrier and it should be further proved that the carrier through which the goods were sent arrived at the destination by such and such time. It is needless to mention that so far as private transport companies are concerned no such accuracy can be expected from them as in the case of the Railway Authorities.[8]

Part of consignment delivered. Limitation period of one year prescribed under Art. 31 for institution of suit against carrier for compensation for short delivery of goods, would start running either from date when Port Trust, being statutory bailee and agent of carrier, had issued short landing certificate to consignee or

3. PLD 1964 Lah. 457 = 16 DLR (WP) 185.
4. AIR 1955 Pat. 182 = 33 Pat. 339 (DB). (200 bags of sugar delivered to the consignee when on weighment shortage in 8 bags noticed—*Held* period of limitation began from date of delivery.) + ILR 1957 Andh Pra 295 + AIR 1960 Cal. 152 + AIR 1960 Orissa 119 + ILR 1960 Cut. 1 (DB). (It is essentially a question of fact in each case as to what is the date on which goods ought to have been delivered.) + AIR 1958 Pat. 118.
5. PLD 1964 Lahore 444 (DB) + AIR 1961 Raj. 211 (DB) + AIR 1961 Orissa 108 + AIR 1964 Pat. 373.
6. PLD 1954 Lahore 635 = PLR 1954 Lahore 767.
7. AIR 1964 Pat. 373 + AIR 1962 S.C. 1716.
8. PLD 1966 Karachi 253.

from date when consignee's claim of compensation was finally refused by carrier and not from date when vessel carrying goods arrived at port.[9] Mere fact that consignee had preferred a claim on basis of short landing certificate which was under consideration could not have the effect of reviving period of limitation for filing of suit from date of such acceptance of claim by defendant.[10] A case in which the carrier delivers only part of the consigned goods and the claiment sues for compensation for remaining goods not delivered, the limitation starts on the expiry of the time fixed between the parties and in the absence of any such agreement the limitation starts on the expiry of reasonable time which is to be decided according to the circumstances of each case.[11]

Refusal to deliver by carrier, if necessary. For a suit for damages for loss of goods in transit, the starting point for limitation is the date when railway company finally says that the goods cannot be delivered.[12] The expression "when the goods ought to be delivered" in Article 31 really means that a consignee must be fixed with the knowledge that the goods are ready for delivery or that there is no likelihood to get its delivery so that he may be placed in a position to file a suit for compensation without being met by a plea that the suit was premature. That event can only happen when the Transport Company expresses its inability to delivery the goods or finally refuses to deliver the goods.[13] Where the plaintiff on receiving only two bales out of a consignment of 15 bales obtained short certificate and put in his claim for compensation following that up with notices under S. 77 of the Railways Act and under S. 80 of the Code of Civil Procedure. The railway administration never finally repudiated the claim of the plaintiff but intimated that they were enquiring about the whereabouts of the missing bales. The plaintiff filed a suit within one year from the date of receipt of this communication which was contested by Railways on the ground that the suit ought to have been filed within one year from the date on which the goods were not delivered and the short certificate was given. It was held that since the railways never denied any liability nor made any final statement of its liability to deliver goods there was no final repudiation of the plaintiff's claim and it could not be said that the plaintiff's claim was time barred.[14]

Correspondence with carrier. Any correspondence between the parties disclosing something which may amount to an acknowledgment of liability of the carrier will give a fresh starting point of limitation.[15] Thus where upon a demand being made by the plaintiff, correspondence ensues and the Railway authorities

9. 1987 CLC 961 + 1988 CLC 627 + PLD 1961 SC 340 + PLJ 1986 Ker. 258 + KLR 1985 CC 417 = 1985 CLC 360 + 1980 CLC 921 = PLJ 1980 Kar. 387.
10. 1985 CLC 360 = PLJ 1986 Kar 258 = KLR 1985 CC 417.
11. AIR 1957 Punj 49 = ILR 1958 Punj. 10 (FB). (AIR 1951 Punj. (Simla) 254 and AIR 1955 Punj. 83, *Overruled*).
12. PLD 1961 S.C. 340 = 13 DLR (SC) 214 = 1961 (2) P S C R 10 + AIR 1924 Mad. 567 (DB) + AIR 1959 Manipur 31 + AIR 1955 Mys. 123 = ILR 1955 Mys. 444 (DB) + AIR 1954 Nag. 115 = ILR 1954 Nag 46 (DB). (AIR 1952 Nag. 77, *Affirmed*) + AIR 1954 Pat. 548 (DB) + AIR 1953 Mys. 16 = ILR 1953 Mys. 128 + AIR 1952 Vind Pra 83 + AIR 1950 Mad. 438 + AIR 1947 Cal 98. (Non-delivery of part of consignment) + AIR 1946 Mad. 133. Loss of part of goods) + AIR 1963 A. P. 344.
13. PLD 1966 Karachi 253.
14. AIR 1962 Calcutta 175 (DB).
15. AIR 1963 Orissa 31.

hold out the promise to deliver the goods and in the end refuse to deliver or express their inability to deliver the goods, because due to those circumstances plaintiff's right to bring an action is postponed by an act of the defendant and if he were to bring a suit he will be non-suited on the ground that there is still a chance of the goods being delivered to him.[16] Where a single bale consignment of woollen goods reached the destination in a torn and damaged condition. The plaintiff consignee took open delivery on 30-12-1950 and found that a portion of the goods was missing. The necessary notices under the Railways Act were sent on 23-8-1951. The plaintiff received a letter from the Claims Officer asking him to send, without prejudice, the original *beejuk* within a fortnight to enable him to dispose of the case early. The plaintiff accordingly sent the *beejuk* but did not hear further from the Railways. After waiting for 10 months he filed the suit on 23-6-1952 for compensation for short delivery. It was held that the suit was barred by limitation under Art. 31 as the starting point of limitation in the circumstances of the case was the date when open delivery was taken and some of the goods were found missing from the bale. That would be the date 'when the goods ought to be delivered' within the meaning of Art. 31.[17]

It cannot be laid down as a general proposition of law that, in all cases of non-delivery of goods, the date of the final reply by the Railway Administration is necessarily the date from which the period of limitation has to be computed under Article 31. The correspondence which makes the plaintiff wait until the final reply is sent by the Railway Administration is important. If, however, there was a mere correspondence and forthright refusal without encouraging any hope of settlement of the claim, such refusal does not furnish the starting point of limitation. Where the consignee was informed long before the expiry of the period of one year from the date of delivery of the major part of the consignment that his claim could not be entertained and still the consignee did not think it proper to file his suit within the prescribed period of limitation. It was held that the claim of plaintiff was barred by time under Article 31.[18] Where the letter in reply to a notice under S. 80, Civil P.C. states that the matter is under correspondence with the railway from which the goods were booked and the plaintiff would be informed on the subject as soon as a final reply is received from the official of that railway, the letter certainly does not create any impression to their location and time of arrival. The period of one year prescribed under Art. 38 cannot be extended in such a case on the basis that the plaintiff expected on the strength of this letter that the goods would reach within a reasonable time, thereafter.[19] Similarly where the goods are admittedly lost or damaged, there is no question of their delivery. The argument that the period during which a carrier may put off the settlement of the matter by promising an inquiry and giving hopes to the consignor of making compensation should be excluded from computation of the period under Article 31 amounts to the importation of an extraneous consideration into the context of that Article.[20]

16. 1983 CLC 888 + AIR 1961 Rajasthan 211 (DB) + AIR 1957 Punj. 49 (FB).
17. AIR 1961 Orissa 108.
18. AIR 1962 Patna 428 (DB) + AIR 1927 Pat. 375 + AIR 1955 Pat. 182.
19. AIR 1963 Orissa 188.
20. PLD 1964 Lahore 444 (DB).

Correspondence after expiry of limitation. Any correspondence entered into after the expiry of limitation, even if amounting to acknowledgment of liability does not extend the period of limitation.[1]

Waiver of date fixed in contract. For determining the point of time from which limitation is to run, one has simply to find out the date when the goods "ought to be delivered". These words have reference to the time when the contract for delivery ought to have been performed. Except when there is an extension of time under section 46 of the Contract Act or notation of contract under Section 63, limitation will begin to run on expiry of reasonable time.[2] A shipping company against whom the claim for non-delivery is made may elect to waive a clause in the contract of carriage according to which the suit should be brought within one year. It cannot be said in such a case that by reason of a condition, express or implied, in the bill of lading issued by the defendant in connection with the contract of carriage, the plaintiff's remedy by way of compensation for non-delivery is in any way lost.[3] But extension of limitation period agreed to by defendants without prejudice to their rights is not binding on defendants and cannot help the plaintiff in any matter.[4]

Notice of suit. Where a statutory notice is given before filing a suit period of notice should be excluded for computing limitation.[5] Where a suit is filed for compensation for short delivery on 18-9-1951 against Railway Administration, on 2-5-1952 after giving statutory notice under S. 80, Civil P.C. the plaintiff is entitled to exclusion of the period of notice in computing one year period of limitation from date of delivery.[6]

No forum available. Absence of forum has the effect of suspension of remedy and a plaintiff is entitled to compute the period of limitation under this Article from the date on which the remedy becomes available.[7]

Part V.--Two years

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

Synopsis

1. Scope.
2. Right to use property for specific purposes.
3. Co-sharer or joint proprietors.
4. Perversion.
5. Starting point of limitation.
6. Equitable relief and limitation.

1. AIR 1964 Raj. 235 + AIR 1965 Pat 374 + AIR 1962 S.C. 1716.
2. PLD 1954 Lahore 635 = PLR 1954 Lahore 767.
3. AIR 1957 Trav-Co. 133 = ILR 1956 Trav-Co. 348 (DB).
4. NLR 1987 AC 290.
5. AIR 1939 All 277 = ILR 1939 All. 392 + AIR 1952 Assam 88 = ILR (1952) 4 Assam 199 (DB) + AIR 1951 Punj. (Simla) 254.
6. AIR 1960 Cal. 400 (DB).
7. AIR 1953 Hyd. 139 = ILR 1952 Hyd. 983 (DB).

1. Scope. This Article applies irrespective of the remedy asked for provided the property is perverted to different purpose from that for which the defendant is entitled to use it.[8] Thus for a suit for ejectment by landlord on the ground that the tenant diverted the holding to non-agricultural purposes, Art. 32 and not Art. 134, applies.[9] But where the cause of action for the plaintiffs is the deprivation of their right to use the land for grazing purposes and though the deprivation might have resulted from a perversion of the property by the defendants, that alone will not make Art. 32, applicable.[10] Where a suit is based on ouster of plaintiff from a certain property this article was not applicable.[11]

2. Right to use property for specific purposes. This article does not apply where the defendant has no right at all to the property or to make any use of it.[12] Therefore the article has no application where there is only a licence to use the property for certain purposes and no legal right to do so.[13] Where a proprietor of a village sued a person for encroachment by building on a certain area of the village set apart as a public thoroughfare this article would not apply.[14]

Easement, right of. A right of easement over another's land is a right to use the property for a specific purpose.[15] But a suit based upon an encroachment on a right in the nature of easement is not governed by this article.[16]

Time when the right should be in existence. The words "right to use property" refer not to the time when the suit is brought but when the perversion took place.[17]

3. Co-sharer or joint proprietors. Where co-sharers or joint proprietors are in joint possession of certain property intended to be used for a specific purpose and one of the co-sharers used it for a different purpose, suit for such perversion is governed by this article.[18] Similarly where one co-sharer in the village *avadi* perverts the use of land of another co-sharer by constructing walls thereon, a suit for demolition of the constructions is governed by Art. 32.[19]

4. Perversion. Perversion in this Article implies misuse or wrong use of property, where the use is proper but it is more extensive, there is no perversion. Thus where a person was entitled to use the water of *A's* tank for first crop, using it for a second crop does not commit any perversion.[20]

---

8. ('99) 26 Cal 564 (FB) (Suit for mandatory injunction) + AIR 1916 Cal. 395 (DB). (Suit for ejectment + AIR 1924 All. 814. (Suit for injunction) + AIR 1921 Cal. 62 (DB). (Suit for compensation).
9. AIR 1948 Nag. 20 = ILR 1947 Nag. 286.
10. AIR 1958 Punj. 187 = ILR 1958 Punj. 822.
11. AIR 1940 Pat. 106 + AIR 1933 Lah. 705 = 14 Lah. 267 (FB) + AIR 1937 All. 472 = ILR 1937 All. 623 (DB).
12. ('88) 18 All 634.
13. AIR 1935 All. 964 (DB) + AIR 1934 All. 836.
14. AIR 1928 Lah. 794.
15. AIR 1922 All. 320 (*Assumed*).
16. AIR 1924 All. 450 = 46 All. 68 (DB) + AIR 1928 Lah. 792.
17. 1894 All W.N. 165 (DB).
18. AIR 1933 Lah. 705 = 14 Lah. 257 (FB).
19. AIR 1952 All. 670 = ILR 1950 All. 507 (DB).
20. AIR 1936 Mad. 250.

The following are instances of perversion:

(*a*) Misuse of land in the possession of a tenant or the user of it contrary to the terms of the *kabuliyat*.[1]

(*b*) Excavation of a tank contrary to the *kabuliyat*.[2]

(*c*) Erection of buildings by defendant on his occupancy lands without the landlord's permission.[3]

(*d*) Planting of trees by tenants on land left for agriculture.[4]

(*e*) Person entitled to use land as *sehan drawaza* only constructing structures upon it.[5]

5. Starting point of limitation. Where the perversion takes place more than two years before the suit, the plaintiff should state and prove when the perversion become known to him.[6]

When limitation would begin to run. Where at the time of perversion one of the four plaintiffs in a suit was in jail, another had absconded in fear of criminal charge and the two plaintiffs were minors; they could not be charged with knowledge of the perversion and the limitation will run only from the date of such knowledge.[7]

6. Equitable relief and limitation. The mere fact that the suit is within time does not entitle the plaintiff to relief, if the conduct of the plaintiff does not entitle him to the relief in equity.[8]

33.	Under the Legal Representatives' Suits Act, 1855, against an executor.	[9][Two years]	When the wrong complained of is done.
34.	Under the same Act against an administrator.	[9][Two years]	Ditto
35.	Under the same Act against any other representative.	[9][Two years]	Ditto.

1. AIR 1916 Cal. 395 (DB) + AIR 1948 Nag. 20 = ILR 1947 Nag. 286.
2. ('99) 26 Cal. 564 (FB).
3. ('11) 3 All. L. Jour 914 + AIR 1924 All. 814 + ('11) 10 Ind Cas. 186 (Oudh).
4. ('98) 20 All. 519 + ('86) 8 All. 446 (DB) + ('97) 24 Cal 160 (DB) + AIR 1920 Oudh 233 = 23 Oudh Cas. 163.
5. AIR 1938 All. 20.
6. ('11) 8 All. L. Jour 914 + ('05) 9 Cal. W.N. ccxlvi (DB).
7. ('11) 10 Ind Cas 186 (Oudh).
8. ('06) 29 Mad. 497 *n* (DB).
9. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

36.	For compensation for any malfeasance, misfeasance or non-feasance independent of contract and not herein specially provided for.	[10][Two years]	When the malfeasance, misfeasance or non-feasance takes place.

Synopsis

1. Scope.
2. "Independent of contract."
3. "For compensation."
4. Commencement of limitation.
5. Misfeasance application under S. 235, Companies Act.
6. Suits against trustee.
7. Illustrations of wrongs under this Article.

1. **Scope.** Article 36 is an 'omnibus article' which concludes the series of causes of action for which the prescribed period of limitation is two years.[11] It applies as a residuary article in case of wrongs independent of contract whereas the article applicable for actions *ex contractu* is Art. 115.[12]

"Malfeasance, misfeasance, non-feasance." The words "malfeasance, misfeasance, or non-feasance independent of contract" are of the widest import and embrace all possible acts and omissions commonly known as torts.[13] Malfeasance would apply to a case where an act prohibited in law is done by a person. Non-feasance would apply to a case where a person omits to do some act prescribed by law, and misfeasance would apply to a case where a lawful act is done in an improper manner.[14] In other words the words "malfeasance, misfeasance or non-feasance independent of contract" refer to actions which may lie on account of the commission of some act which is in itself unlawful, or of the improper performance of some lawful act or of the omission of some act which a person is by law bound to do.[15] Thus Article 36 and not Art. 2 applies to a suit for compensation for damages caused by Municipal Committee's failure to maintain its water system in order.[16] The intention of Art. 2 is to meet those cases where the defendant does an act injurious or possibly injurious to another, under powers conferred or honestly believed to be conferred by some Act of the Legislature. It does not apply to a case where the damages arise not from the doing of the act or from the failure to do it, but from doing it in an improper manner out of malice and carelessness. Such a case would be governed by Art. 36.[17] Similarly a suit to recover damages for the loss of a ship caused by collision at sea is an action in tort

10. Sub. by the Repealing and Amending Act, 1923, (11 of 1923), S. 2 and First Sch., for "Ditto".
11. AIR 1917 All. 276 = 39 All. 322 (DB) + AIR 1958 Mad. 620 = ILR 1958 Mad. 1095.
12. PLD 1971 S.C. 8 = 23 DLR S.C. 81 + AIR 1929 Pat. 245 = 8 Pat. 776 (DB) + AIR 1959 Madh Pra 120 + AIR 1945 Mad. 60 (Articles 48 and 49 apply).
13. 11 Bom. 133 + ILR 1951 Mys. 74 (FB).
14. AIR 1957 All. 553 (DB).
15. AIR 1933 All. 256 = 54 All. 467 (DB) + AIR 1917 Mad. 500 (DB).
16. AIR 1945 Lah. 324 = ILR 1945 Lah. 523 (FB).
17. PLD 1959 Karachi 232.

founded upon the negligence of the defendant or his servants in the management of his vessel, must be brought within two years under the provisions of Article 36 of Schedule I of the Limitation Act (XV of 1877).[18] Where *A* was bound to pay money to *B* but failed to do that, his action would be covered by Art. 36.[19] Where serious injuries suffered by the petitioner are the consequence of culpable negligence and failure of the respondent to perform its legal obligations to maintain their plaints and equipment in a proper condition, the injury suffered by a person as a result of such negligence would fall in the category of cases visualised by the provisions of Art. 36 of the Limitation Act.[20] Where a lorry driven by the plaintiff's servant was destroyed by a train due to the gross and wilful negligence of the gatekeeper at the level-crossing, the suit for damages for the loss was governed by Art. 36 and not Art. 49.[1] But where there was no negligence or carelessness on the part of the Canal Authorities resulting in a breach in the canal. On the other hand the Authorities were shown to be vigilent, no claim for compensation for loss caused by the breach could be entertained.[2]

Negligence, accident caused by. The distinction between a claim for negligence and claim for malfeasance, misfeasance or non-feasance is obvious. Therefore where the question before the Court is as to whether the case falls under Article 22 or Article 36 and the plaintiff has merely alleged negligence without explaining as to how the accident took place. The Court rejected the plea of the respondent that the injury to the appellant was not an injury which could be described as an injury that had been committed within the meaning of Article 22, because the injury had not been caused by any overt act on the part of the respondent's servants and agents. It was held that as the words in the Article are only "when the injury is committed", nothing would turn on the question whether the injury had been committed by an overt act or whether it had been committed on account of the defendant's failure to take reasonable care to protect the rights of his neighbour. Article 22 was applicable to the case.[3]

Fiduciary relationship not necessary. The Article is not restricted to cases of fiduciary relationship.[4]

Fraud. Where relief is sought on ground of fraud this Article does not apply. Where valuables put in safe deposit lockers of a bank, by a renter of the locker were stolen. The renter filed a suit against the bank for the recovery to the valuables. It was alleged that the manager of the Bank had played fraud on the plaintiff by renting out lockers which were tempered with and could be opened without the key in the possession of the plaintiff. It was alleged that the bank was guilty of gross negligence, the suit was governed not by Art. 36 but by Art. 120. Simply because the plaintiff while giving particulars of fraud and other facts

18. PLD 1960 Dacca 321 = 12 DLR 49.
19. AIR 1957 All. 553 (DB).
20. PLD 1970 Lah. 298.
1. AIR 1964 All. 243.
2. 1986 CLC 2987 (DB).
3. 1980 SCMR 485 = PLJ 1980 SC 386 (*Observations in* PLD 1970 Lah. 298 were held to be *obitor dicta*).
4. ILR 1951 Mys. 74 (FB).

relevant thereto, had made allegation of negligence on the part of the Bank, the suit did not cause to be one for a relief on the ground of fraud.[5]

2. "Independent of contract." If the misfeasance, etc., is not independent of contract the article has no application.[6] Under S. 106, Insurance Act the allegations of malfeasance, misfeasance or non-feasence against the Director of a company is not independent of contract. The relation between him as Managing Director of the company and the insurance company in part is governed by numerous Articles in the Articles of Association. These Articles, therefore, constitute a part of contract between the company and the Directors. In these circumstances Article 36 of the Limitation Act has no application to his case. The only Article that is applicable to him is Article 90 of the Limitation Act.[7]

For the purposes of this Article a contract may be express or it may be implied.[8] Where under a contract the plaintiff agreed to hire, subject to certain conditions, the safe deposit vault of the defendant Bank. The only purpose of the contract was to ensure the safety of the articles deposited in the safe deposit vault. It was implicit in the contract that the lockers supplied must necessarily be in a good condition to achieve that purpose and, therefore, they should be in a reasonably perfect condition. One of the conditions imposed another obligation on the Bank to achieve the same purpose, namely, that the Bank should not allow access to any person to the safe except the hirer or his authorised agent or attorney. If the articles deposited were lost because one or other of these two conditions was broken by the Bank, the renter would certainly be entitled to recover damages for the said breach. In the plaint the relief was claimed mainly on two grounds, namely, (*i*) that it was an implied term of the contract that the locker rented was in a good condition, and (*ii*) the valuables were lost because the Manager, on account of the negligence of the Bank in not taking all the necessary precautions, committed theft of the articles in the course of his employment. It was held that the suit claims, being *ex contractu*, were clearly governed by Art. 115 and not by Art. 36 thereof.[9]

Where the breach of duty alleged arises out of a liability independently of the personal obligation undertaken by contract it is tort and it may be tort even though there may happen to be a contract between the parties, if the duty in fact arises independently of the contract. Breach of contract occurs where that which is complained of is a breach of duty arising out of the obligation undertaken under the contract.[10] Thus even where a person is acting under the powers conferred on him but he acts maliciously, this Article will apply to a suit for compensation instituted against him. Thus where a Municipal Committee was empowered to cut off water supply for non-payment of water charges but it was found that the supply was discontinued maliciously and not bona fide, this Article would apply to the case.[11]

---

5. AIR 1965 S.C. 1663 + AIR 1962 Punj. 534 (DB) + AIR 1935 All. 995.
6. 10 Bom. 214 (DB) + 1896 Bom. P.J. 21 (DB).
7. PLD 1971 S.C. 8 = 23 DLR S.C. 81.
8. AIR 1929 Pat. 245 = 8 Pat. 776 (DB) + AIR 1915 Mad. 889 = 38 Mad. 275 (DB).
9. AIR 1965 S.C. 1663.
10. AIR 1953 Mad. 480. (Quoting from *Jarvis* v. *Moy, Davies, Smith, Vandervell and Co.* 1936) 1 K.B. 399 = 105 L.J. & K. B. 309).
11. AIR 1964 A.P. 360 (DB).

Instances where this Article does not apply. The following are examples of misfeasance, etc., not independent of contract:

(*a*) Suit for damages against a municipal committee for breach of conditions in a *kabuliyat*.[12]

(*b*) Suit for compensation against the defendant for entering into a contract with the plaintiff falsely representing himself to have the authority of his principal to do so.[13]

(*c*) Suit for value of goods converted by the defendant in breach of a contract of pledge.[14]

(*d*) Suit for damages to goods under a contract of pledge.[15]

(*e*) Suit based on a contractual relation between master and servant.[16]

(*f*) Suit for damages for breach of contract to marry plaintiff's daughter.[17]

(*g*) Suit for accounts against co-sharer who has received amounts due to him.[18]

(*h*) Suit for compensation by lessor where the Government undertook to return the leased property in the same condition in which it was received with all damage repaired if such damage was caused by an act of their own negligence or that of their servants and the property was completely destroyed by fire owing to the negligence of the servants of the Government.[19]

3. **"For compensation."** The article applies only where the suit is for compensation on account of misfeasance, etc. Even where the State is the defendant, the Article is applicable but it cannot always be safely applied where the facts before the Court are not the whole facts. The principle of *res ipsa loquitur* had its origin in the falling of a barrel of flour from a first floor window on a passerby but it has been extended to situations quite different. It is not very much in favour, and if applied it must be correctly understood. It is not a principle which dispenses with proof of negligence. Rather it shifts onus from one party to another. It is a rule of evidence and not of liability. A too ready reliance on the maxim reinforces a fault liability, some fault must be established by evidence or must be capable of being reasonably inferred from the circumstances. It is not sufficient to say *res ipsa loquitur* because the danger is that facts may not always tell the whole story and if there is something withheld how can the thing be said to speak for itself.[20]

12. AIR 1932 Cal. 85 = 58 Cal. 930 (DB).
13. AIR 1915 Mad. 889 = 38 Mad. 275 (DB).
14. AIR 1930 Mad. 364 (DB).
15. AIR 1933 Oudh 518 = 9 Luck. 189 (DB).
16. 7 Mad. L. Tim. 93 (DB).
17. 65 Ind Cas 812 (DB) (Pat.).
18. AIR 1937 Pesh. 28 (DB).
19. AIR 1955 J&K 36 (DB).
20. AIR 1965 S.C. 17.

Suit not for compensation. If the claim is not for any 'compensation' or for compensation for misfeasance, etc., the article does not apply.[1] Therefore where there is no question of damage but the suit is only for recovery of specific property, the article has no application.[2]

Statutory compensation, suit for recovery of. A suit for the recovery of statutory compensation, not being a suit on tort, will not be governed by this article.[3]

4. Commencement of limitation. In a suit for compensation for an act not actionable in law without specific injury, the period has to be computed from the date when such injury results.[4] Where the defendant had instituted a complaint of theft of grain against the plaintiff and the Magistrate of his own motion attached the grain but subsequently the complaint was dismissed and the Magistrate ordered the grain to be produced in Court and directed the parties to civil Court wherein the defendant failed. The plaintiff sued for damages for wrongful detention and deterioration of the grain. It was held that limitation for the suit began from date of the complaint.[5]

Knowledge of plaintiff as to injury. The date of the plaintiff's knowledge of the injury is not material in deciding the starting point of limitation.[6]

Recurring injury. In the case of a recurring injury limitation runs from the date of each injurious act.[7]

Malicious insolvency proceedings. To a suit for damages for malicious insolvency proceedings, Article 36 ad not Art. 23 applies and limitation starts from the date of order of annulment of insolvency as till then there can be no cause of action to sue.[8]

5. Misfeasance application under S. 235, Companies Act. A suit against a director of a company for compensation for fraud or misfeasance would be governed by this article.[9]

6. Suits against trustee. This article has no application to wrongs committed by a trustee in respect of trusts.[10] Where a third party received trust funds with notice that they were being transferred to him in breach of trust, a suit for recovery of such funds would be governed by Art. 120 and not by this article.[11]

7. Illustrations of wrongs falling under this Article. The following have been held to be wrongs falling within the scope of this Article:-

1. 3 Cal. W.N. 202 (DB).
2. AIR 1917 Pat. 260+AIR 1953 Mad. 694=ILR 1953 Mad. 1097 (Suit for recovery of money).
3. AIR 1957 Cal. 44 (DB).
4. AIR 1929 Pat. 245=8 Pat. 776 (DB).
5. 7 Bom. 427 (DB).
6. 33 Mad. 71 (DB).
7. AIR 1933 Sind 176=27 Sind L.R. 41 (DB).
8. AIR 1948 Mad. 446=ILR 1949 Mad. 29 (DB). ((1885) 10 App Cas. 210 *Foll.*).
9. AIR 1938 Lah. 577 (DB)=AIR 1944 Mad. 431. (Article 120 does not apply.)+AIR 1945 Mad. 5=ILR 1945 Mad. 325 (DB).
10. AIR 1935 Mad. 353=ILR 1938 Mad. 586 (FB).
11. AIR 1941 P.C. 1=ILR 1941 Mad. 175=67 Ind App 448.

(1) Injury caused to plaintiff's bus by rash and negligent driving of his Balle Dumper by defendant's driver.[12]

(2) Decree-holder in execution proceedings not crediting the sum paid by the judgment-debtor.[13]

(3) Wrongful attachment of movable property by a prohibitory order.[14]

(4) Trading on and damaging plaintiff's stock-in-trade at the time of attachment.[15]

(5) Mortgagee causing damage to mortgaged property after a decree for redemption.[16]

(6) Mortgagee wrongfully cutting trees on the mortgaged land while in mortgagee's possession.[17]

(7) Wrongfully depositing on the plaintiff's land silt which was removed from the defendant's watercourse.[18]

(8) Causing damage to plaintiff's ship by a collusion due to the negligence of the defendant in the management of his vessel.[19]

(9) Cutting the banks of a canal on account of which the flood water injures the plaintiff's mill.[20]

(10) Causing damage to the plaintiff's building by the closing up of certain drains emitting water, from the plaintiff's building on the defendant's premises.[1]

(11) Causing damage by procuring the detention of goods by the customs authorities on the malicious representation of the defendant without reasonable and probable cause.[2]

(12) Causing damage by deterioration of plaintiff's oranges by procuring the seizure thereof by the police on information by the defendant, an *ijaradar* of a market between whom and the plaintiff there was a quarrel about the payment of tools.[3]

(13) Receipt of perquisites by a trustee from third persons during the wrongful suspension of an *archaka*.[4]

---

12. PLD 1969 AJ&K 51.
13. AIR 1924 Lah. 136 (DB).
14. AIR 1917 Mad. 500 (DB) + 6 Bom. L.R. 704.
15. AIR 1920 Mad. 397 (DB).
16. AIR 1918 Mad. 94 (DB).
17. 33 Mad. 71 (DB) + AIR 1953 Mad. 480. (Contractual obligation of mortgagees to take proper care of trees on the land does not cover their duty not to cut and carry away trees which arises independently of the contract--Suit for damages for trees cut and carried away is governed by Art. 36 and not Art. 116).
18. AIR 1933 Sind 176 = 27 Sind. L.R. 41 (DB).
19. 11 Bom. 133.
20. AIR 1927 P.C. 72 = 10 Lah. 161.
1. AIR 1926 Lah. 222 (DB). (The action of the defendants is a continuing wrong.).
2. AIR 1928 Cal. 1 (DB). (On appeal from AIR 1926 Cal. 757).
3. AIR 1926 Cal. 177 (DB).
4. AIR 1918 Mad. 366 = 41 Mad. 528.

(14) Defendant keeping trustee of debutter estate out of possession of the debutter properties and income with the result that the trustee had to spend money from his own pocket for the debutter estate, and he had to file a suit for recovery of such money.[5]

(15) Exclusion of the plaintiffs from their civil rights, if occasion arises for their exercise, in the administration of caste funds and for the benefit of being able to scrutinize caste fund accounts.[6]

(16) Damage resulting from a conspiracy to cause injury.[7]

(17) Suit against the chairman for loss of money to the municipality by embezzlement by the manager.[8]

(18) Claim for damages in respect of removal of clay from plaintiff's land is not mere claim for damages for trespass to which Article 39 would apply.[9]

(19) Where contract of sale by District Board was found to be void for want of sanction of Commissioner and purchase money was repaid to vendee after refusal of commissioner's sanction. Purchaser's claim for interest based on negligence of Board is governed by Article 36.[10]

(20) Suit to recover price of goods lost by the carrier where case is not covered by Articles 30 and 31.[11]

(21) Ward headmen of Municipality executed mutual guarantee bond to the Municipality for due collection and credit of revenue by each of them; subsequently, one of them, *M*, was guilty of defalcations, and on a petition by the headmen to the President of the Municipality that they would no longer stand guarantee for *M*, no action was taken and the Municipality sued the President for the recovery of loss, the case was governed by Article 36.[12]

(22) Person making false statement as to habitability of certain house and dissuading people from taking it on rent.[13]

(23) Wrongful use of water by tenant in contravention of term in *muchilika*.[14]

(24) Suit for damages for malicious insolvency proceedings is governed by Article 36 and not Art. 23. Limitation starts from the date of order of annulment of insolvency.[15]

(25) Complaint by defendant to a Magistrate that plaintiff was going to marry in contravention of Infant Marriages Prevention Act. Marriage did not take place on fixed date as a result of such complaint. Allegation found to be false and

5. 5 Cal. W.N. 273 (DB).
6. AIR 1935 Bom. 361 (DB).
7. AIR 1939 Lah. 118 (DB) + 13 Cri. L. Jour 65 (Cal.).
8. 22 Mad. 342 (DB).
9. AIR 1941 Oudh 172 (DB).
10. AIR 1939 Lah. 564 (DB).
11. AIR 1928 Cal. 306.
12. AIR 1936 Rang. 310.
13. AIR 1938 Nag. 84 = ILR 1938 Nag. 348 (DB).
14. AIR 1936 Mad. 250.
15. AIR 1948 Mad. 446 = ILR 1949 Mad. 29 (DB).

complaint dismissed without notice to plaintiff accused. Suit for compensation for loss suffered by stoppage of marriage and for mental pain and loss of dignity. Suit is not for malicious prosecution or for personal injury but is in respect of actionable wrong independent of contract, Art. 36 and not Art. 22 or 23 applies.[16]

(26) A suit by the State Electricity Board to recover from the defendant a sum of money being the cost of a pole belonging to it which was broken by the defendant's vehicle and loss of revenue on account of interruption of electric supply to consumers, is governed not by Art. 149, but by Art. 36.[17]

(27) Irregular sale of property in execution of a decree, the sale realising a sum far below the market-value on account of irregularities. A suit for compensation is governed by this section.[18]

Part VI.--Three Years

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

Synopsis

1. Scope. 2. Continuing obstruction.

1. Scope. This Article applies only to a suit for compensation and not to a suit for injunction restraining the obstruction of a watercourse, or for removal of such obstruction or for declaration of rights as to a watercourse.[19]

2. Continuing obstruction. Where the obstruction is a continuing one a suit brought within three years of the last day to which the obstruction continued was held to be within time.[20]

38.	For compensation for diverting a watercourse.	[1][Three years]	The date of the diversion.

1. Scope. Where the diversion is a continuing wrong, the plaintiff can claim damages arising from the wrong within three years from the date of the suit.[2]

39.	For compensation for trespass upon immovable property.	[3][Three years]	The date of the trespass.

16. ILR 1951 Mys. 74 (FB) + AIR 1956 Madh-B. 209.
17. AIR 1960 Mad. 571 + AIR 1958 Mad. 620 = ILR 1958 Mad. 1095.
18. AIR 1924 Lah. 136 (DB).
19. ('09) 22 In. Cas. 410 (DB) (Cal.).
20. AIR 1925 Nag. 189 + ('81) 6 Cal. 394 = 7 Ind. App. 240 (PC).
1. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
2. ('10) 3 Sind L. R. 228 (FB).
3. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

Synopsis

1. Scope.
2. Trespass upon immovable property.
3. Trespass is a continuing wrong.
4. Immovable property.
5. Starting point of limitation.

1. Scope. This Article applies to suits for compensation for trespass on immovable property.[4] In other words the suits must be to cover the loss incurred by the act of trespass and other acts subsequent to it. Thus a suit for damages for setting fire to and destroying pepper vines is governed by this article.[5] Similarly a suit for compensation for wrongfully injuring plaintiff's goods by act of trespass committed by defendant fell under Art. 39 and Art. 36 had no application to it.[6]

Theft accompanied by trespass. Where a person trespassed on certain land and removed earth therefrom the suit for damages was governed by Art. 36 and not by this article.[7]

Suit for mesne profits. A suit brought to recover mesne profits against a wrong-doer who is in possession of the property is not within this article. Such suit is governed by Art. 109 and not by this article.[8] But where the suit is in fact for compensation, though it is wrongly framed as one for mesne profits, this Article would apply. Where the plaintiff obtained an ejectment decree against defendant and sued him for mesne profits for the period of pendency of suit although no profits were received by the defendant during that period. It was held that Article 39 applied and not Article 109.[9]

2. Trespass upon immovable property. Where there is no proof of the plaintiff's possession being disturbed, a suit for compensation cannot be sustained.[10] But where trespass has been committed whether the possession of plaintiff is in his own right or in that of some other person is immaterial in an action for trespass.[11]

Well, trespass on. A seizure of a well in the possession of the plaintiff is a trespass on immovable property.[12]

Lessor and lessee. The action of a tenant who had remained on the property after the determination of the lease and a notice to quit did not constitute trespass upon the property in the required sense, and Article 39 did not apply to a suit instituted against him for damages for use and occupation. In cases where claim for compensation is relatable to a contract express or implied which is not in writing and registered, Article 115 is applicable.[13] Where the lessor of a shop served his lessee with a notice to vacate by a certain date but the lessee remained

4. PLD 1960 Kar. 958.
5. ('12) 23 Mad. L. Jour 618 (DB).
6. AIR 1960 Madh Pra 200.
7. AIR 1941 Oudh 172 (DB).
8. AIR 1953 Nag. 341.
9. ('11) 34 Mad. 502 (DB).
10. ('88) 10 All. 498 (DB) + AIR 1922 Cal. 255 (DB) + AIR 1938 Lah. 267 (DB).
11. ('07) 9 Bom. L. R. 1301.
12. ('82) 6 Mad. 176 (DB).
13. PLD 1961 Lah. 378.

in possession after that date. A suit was instituted by lessor for compensation for use and occupation, the suit was governed not by Article 29, but by Article 120.[14]

Trespass beneath surface of land. He who owns or possesses the surface of land owns or possesses all the underlying strata also.[15] Therefore trespass under another person's land is covered by this Article. Where a coal miner takes coal from under the land of another, the owner can sue for compensation for trespass and the suit will be covered by this Article, but where the plaintiff sues claiming relief in respect of coal taken and not in respect of trespass the suit is governed by Article. 48.[16]

Trespass by placing things on land. The ownership and possession of land bring with them ownership and possession of the column of space above the surface *ad infinitum*.[17] Therefore to turn cattle upon the land of another person or to throw stones on it or to drive nails into a wall,[18] or to pile rubbish against the land of the plaintiff is a trespass.[19]

An entry above the surface of land is not in itself an actionable trespass.[20] This however, does not bar the owner from getting the trespass vacated. Thus a person may cut the overhanging branches of a tree growing in his neighbour's land, whether they do him harm or not.[1]

Trespass by cutting and carrying away crops. Where *A* cut and carried away crops on *B's* land and converted them to his own use a suit based on the trespass was governed by this article.[2]

3. Trespass is a continuing wrong. A trespass. also long as it is not vacated, is a continuing wrong. Thus the construction of a drain on plaintiff's land is a continuing wrong and each act of trespass constitutes a fresh cause of action.[3] A seizure of a well in possession of the plaintiff is a trespass on immovable property and it continues to be a trespass until the possession of the trespasser comes to an end.[4]

4. Immovable property. The definition of movable property in the Civil Procedure Code, which includes standing crops, is not applicable to the Limitation Act.[5] But standing crops as soon as they are cut will become movable property.[6]

---

14. AIR 1947 All. 31.
15. (1870) 9 Eq. 671 = 39 LJ Ch. 547.
16. AIR 1929 P.C. 69 = 56 Ind. App. 93 = 8 Pat. 516 + AIR 1930 P.C. 113 = 57 Ind. App. 144 = 57 Cal. 1341.
17. (1870) 9 Eq. 671 = 39 LJ Ch. 547.
18. (1815) 1 Stark 22.
19. (1829) 9 B & C 591 = 4 M & Ry. 500.
20. (1815) 4 Camp 219 = 16 R.R. 777 + ('69) 3 Beng. L. R. 18 (DB).
1. ('94) 19 Bom. 420 (DB) + (1913) 1 Roll. 393 + 1895 App. Cas. 1.
2. ('95) 22 Cal. 877 (DB).
3. ('75) 24 Suth W.R. 97 + (1847) 4 C B 236.
4. ('83) 6 Mad. 176 (DB).
5. AIR 1916 mad. 1142 + ('13) 25 Mad. L. Jour 447 (FB) + AIR 1924 Nag. 125 = 20 Nag. L R 80.
6. (98) 25 Cal. 692 (FB).

5. Starting point of limitation. In order to apply the period of limitation of three years it is to be determined as to what is the date of the trespass from which the period of three years would begin to run.[7] Where trespass does not relate to one date, damages can be recovered in respect of so much of the trespass as has occurred within three years of the suit.[8] In the case of a continuing trespass, the plaintiff can rely upon the last act of trespass as constituting a cause of action.[9]

40.	For compensation for infringing copyright of any other exclusive privilege.	[10][Three years]	The date of the infringe-ment.

Synopsis

1. Scope.
2. Starting point of limitation.

1. Scope. A right to trade mark or a right to an invention under the Patent Act, 1859, is an "exclusive privilege",[11] and a suit for compensation relating to it is governed by this Article. But where the relief sought is other than that of compensation, the Article is not applicable. Thus a suit for an injunction restraining the defendant from making the infringement is not one for compensation. and the Article does not apply to it.[12]

2. Starting point of limitation. Where the infringement takes place within three years, a suit for compensation in respect thereof is within time.[13] Every fresh act of infringement would give a first cause of action for a suit for compensation thereof until such act becomes no longer harmful.[14]

41.	To restrain waste.	[15][Three years]	When the waste begins.

1. Scope. A common instance of suits to retrain waste is a suit by a Hindu reversioner against a limited owner for an injunction restraining her from committing waste.[16]

42.	For compensation for injury caused by an injunction wrongfully obtained.	[17][Three years]	When the injunc-tion ceases.

7. PLD 1960 Karachi. 958.
8. ('82) 6 Mad. 176 (DB) + ('93) 3 Mad. L. Jour 2 (Jour).
9. ('75) 24 Suth W.R. 97 + ('82) 6 Mad. 176 (DB).
10. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
11. AIR 1919 Lah. 90 = 1919 Pun. Re. No. 45 (DB). (Trade name) + 6 Mad. 108 (Do) + 3 Cal. 17 (DB). (Invention under Patent Act).
12. 2 Low Bur Rul 113 (DB).
13. AIR 1934 Cal. 668.
14. 2 Low Bur Rul 113 (DB) + AIR 1934 All. 922 (DB).
15. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
16. (1856) 6 Moo Ind App 433 (PC) + AIR 1921 Mad. 234 = 44 Mad. 984 (DB).
17. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

Synopsis

1. Scope. 2. "Wrongfully obtained."
3. Starting point of limitation.

1. **Scope.** The Article deals only with injunctions. A prohibitory order under O. 21, R. 46, Civil P.C. is not an injunction within the meaning of this article.[18]

2. **"Wrongfully obtained."** The institution of a suit for permanent injunction and obtaining a decree for permanent injunction is not actionable.[19] The obtaining maliciously of a temporary injunction is actionable.[20] In other words to bring a case under this Article, malice and the absence of reasonable and probable cause must both be present,[1] because in the case of temporary injunctions, the element of wrong consists in obtaining the injunction maliciously and without reasonable and probable cause.[2] Therefore apart from malice and want of reasonable and probable cause, a plaintiff has no cause of action and he cannot recover compensation in an independent suit upon mere proof that an injunction was granted to restrain him from doing what has since been held to be within his rights.[3]

Proof of malice, etc. Malice and absence of reasonable and probable cause must be proved by the plaintiff. A mere allegation in the plaint that the defendant was actuated by malice coupled with the fact that the suit in which the injunction was obtained ultimately proved successful is not enough to show want of reasonable and probable cause.[4]

3. **Starting point of limitation.** A suit for injury caused by a temporary injunction must be instituted within three years from the cessation of the injunction, even though the suit in which it was granted be pending in appeal.[5] Where an injunction was granted on 8-11-1902 and it terminated on 3-7-1905 and the plaintiff applied for assessment of damages under S. 95, Civil P.C. on 2-7-1908. An application was converted into a suit by the Court, upon payment of court-fee and application was registered as suit on 1-8-1908. It was held that the suit was not barred under this article.[6]

43. Under the [7][Succession	[8][three years]	The date of the	

18. AIR 1917 Mad. 500 (DB)+6 Bom. L. R. 704.
19. AIR 1915 Cal. 173=42 Cal. 550 (DB).
20. AIR 1928 Cal. 1 (DB)+AIR 1917 All. 451=38 All. 520 (DB)+AIR 1928 Mad. 679=51 Mad. 642 (DB)+AIR 1927 Cal. 247=53 Cal 1008 (DB).
1. AIR 1929 P.C. 222.
2. AIR 1917 All. 451=38 All. 520 (DB).
3. AIR 1929 P.C. 222.
4. AIR 1915 Cal. 173=42 Cal. 550 (DB).
5. AIR 1915 Cal. 173=42 Cal. 550 (DB).
6. 16 Cal. L. Jour 34 (DB).
7. Subs. by the Repealing and Amending Act, 1930 (8 of 1930). S. 2 and First Sch., for "Indian Succession Act, 1865, section 320 or section 321, or under the Probate and Administration Act, 1881, section 139 or section 140".
8. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

	Act, 1925, section 360 or section 361,] to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.		payment or distribution.
44.	By a ward who has attained majority, to set aside a transfer of property by his guardian.	[Three years]	When the ward attains majority.

Synopsis

1. Scope.
2. Transfers by guardian binding on ward until set aside.
3. Transfer of property.
4. Transfer must be by guardian.
5. Guardian--meaning of.
6. Suit by assignee or legal representative of ward.
7. Suit for possession against assignee from purchaser from guardian.
8. Starting point of limitation.

1. Scope. The article applies to cases where the transfer by the guardian is binding on the word till it is set aside.[10] In such a case a suit to set aside the alienation must be brought within the period prescribed by this article.[11] If that is not done that ward's right to property alienated by the guardian and in possession of the alienee will be extinguished under S. 28.[12]

Void transfer. Where a transfer by a guardian is void *ab initio*, a suit by a minor to set it aside is not governed by this article.[13] Thus where the sale deed of immovable property executed by the father of the minor is without consideration and legal necessity, the sale-deed is void *ab initio* and Art. 44 is not applicable.[14] Where the plaintiff filed a suit for a declaration that certain alienations effected by

9. *ibid*
10. AIR 1940 Cal. 589.
11. AIR 1951 Mad. 817. (The transfer by the *de jure* guardian is not void as against the minor, but only voidable at his instance).
12. 23 Mad. 271=27 Ind. App. 69 (P.C.)+AIR 1951 J&K 25=10 J&K LR 47 (DB)+AIR 1951 Mad. 817+AIR 1941 Mad. 481=ILR 1941 Mad. 775 (FB)+AIR 1920 Bom. 1=44 Bom. 742 (FB). (*Overruling* AIR 1915 Bom. 132 (DB)).
13. AIR 1965 Assam 16 (Transfer by guardian void for want of Registration--Article not applicable) 35 Cal. 551 (P.C.)+AIR 1958 Andh Pra. 626=ILR 1957 Andh Pra. 669+AIR 1951 Mad. 817. (If *de facto* manager of a minor's estate improperly alienates his property the alienation is one to which the minor is not a party through his legally authorised representative and does not require to be set aside within the period limited by Art. 44. The minor can sue for recovery of possession within the period of 12 years allowed by Art. 142 or Art. 144)+AIR 1941 Oudh 172 (DB).
14. AIR 1962 Orissa 170.

his mother were not binding on him as the same were not effected by her as his guardian, and in the plaint it was specifically stated that the plaintiff did not seek to set aside the deeds in question as he was not a party either directly or constructively to those documents, and in substance the suit was one for possession on the basis of title. It was held that on the basis of the averments found in the plaint there was not room for the application of Art. 44.[15]

Possession under a void deed is adverse to the owner. Therefore in a case where transferee under a void deed has taken possession, the minor is entitled to bring a suit for recovery of possession within 12 years from the date when the possession of the transferee becomes adverse or within 3 years after attaining majority.[16]

Voidable transfer. A decree of Court is not necessary for avoiding a transfer by a guardian which is voidable by the minor and a repudiation by the minor is sufficient for the purpose.[17] But even in such cases the transfer should be set aside within three years under Art. 44.[18]

Plea in defence by minor--no limitation. There is no limitation for taking up a plea in defence that transfer by the guardian was illegal. Thus were a guardian had transferred property but the ward continued in possession and a suit was brought by the transferee for possession after the limitation for a suit by the ward under this Article had expired. It was held that the ward could resist the suit on the ground of the transfer being liable to be set aside at his instance.[19]

2. Transfers by guardian binding on ward until set aside. This article only applies to a transfer which is binding on the ward till it is set aside.[20] A transfer of property by a certificated guardian without the permission of the Court is binding on the minor till set aside.[21] This is so even where such permission has been obtained by fraud or misrepresentation.[1]

Transfer by natural guardian. A transfer of property by the natural guardian of a minor in excess of his powers as such guardian binds the minor till set aside.[2]

---

15. AIR 1961 Mys. 193.
16. 1981 CLC 1156 = NLR 1981 AC 656.
17. AIR 1938 Mad. 822 (DB) + AIR 1938 Pat. 337 = 17 Pat. 460 + AIR 1931 Cal. 131 = 58 Cal. 128 + AIR 1915 Mad. 296 = 38 Mad. 867 (DB) + 28 All. 30 (DB) + 5 All. 490 (DB).
18. 13 Cal. L. Jour 277.
19. AIR 1940 All. 416 = ILR 1940 All 580 (DB) + AIR 1923 Lah. 247 = AIR 1916 Lah. 229 = 1916 Pun Re. No. 1 (DB) + AIR 1919 Mad. 650 = 42 Mad. 36 (DB). (*But see* AIR 1965 Cal. 444).
20. AIR 1951 Mad. 817. (The transfer by the *de jure* guardian is not void as against the minor, but only voidable at his instance).
21. AIR 1941 Mad. 481 = ILR 1941 Mad. 775 (FB) + AIR 1938 Pat. 337 = 17 Pat. 460 (DB) + 16 Cal. L. Jour 537 (DB) + AIR 1926 Oudh 88 (DB) + AIR 1930 All. 858 = 52 All. 979 (DB) + AIR 1932 All. 108 = 53 All. 738 (DB) + AIR 1919 Cal. 404.
1. AIR 1932 All. 108 = 53 All. 738 (DB).
2. PLD 1979 Lah. 237 = 1979 LN 113 = PLJ 1979 Lah. 618 + AIR 1939 Cal. 460 + AIR 1959 Ker. 125 (Transactions not supported by necessity or benefit of minors) + AIR 1953 Mad. 230. (An unauthorised alienation by a lawful guardian is only voidable and must be set aside within the time prescribed by Art. 44.) + AIR 1929 All. 879 = 52 All. 110 (DB) + AIR 1920 Bom. 1 = 44 Bom. 742 (DB). (*Overruling* AIR 1915 Bom. 152 (DB) + AIR 1918 Bom. 180 = 42 Bom. 626 (DB) + AIR 1924 Cal. 420 (DB) + AIR 1928 Lah. 115 = 9 Lah. 33

This is so even where it has been induced by fraud or undue influence.[3] A natural guardian under the Hindu Law has the power to sell or mortgage any part of the estate of the minor for legal necessity or for the benefit of the minor. Article 44 of the Limitation Act is attracted when the suit is filed by a ward to set aside a transfer of the property by his guardian. The applicability of this Article cannot be avoided on the ground that the guardian had acted in excess of his authority. The natural guardian of a Hindu minor, even if he is acting without legal necessity or transferring the property not for the benefit of the estate of the minor, is still acting as guardian and transfer by him is a transfer by guardian so as to attract Art. 44.[4]

Void transfers. A transfer of property by a guardian which is void does not come within the scope of this Article. Thus a transfer of property which is vitiated by want of consideration,[5] or which is compulsorily registerable but is not registered,[6] or which is vitiated by fraud on the law of registration is void and does not bind the minor.[7]

3. Transfer of property. The article does not apply unless the transaction impeached is a transfer of property by the guardian.[8] Where the transfer is not by the guardian but by the ward himself, this article does not apply. Thus where one *S* died leaving only one surviving son *K* and two great grandsons *W* and *P* being grandsons of the other predeceased son *M*. On *S's* death mutation was made in 1907 in favour of *K* for half sharer and *W* and *P* together for the other half share. Later *W* was adopted by *K*. In view of this *W* was mutated for *K*. *W's* name was removed from the register as a co-share with *P* in respect of their father's half share. *P* was then shown as sole owner of his father's half share. This was in 1920. *W* brought a suit in 1945 for a declaration against *P* that the property, details of which were given in the plaint, was jointly possessed and owned by the plaintiff and the defendant, the plaintiff owning 3/4th share and defendant 1/4th share. The case of the plaintiff was that the mutations were made during his minority completely ignoring his rights and that they were ineffectual to alter his lawful share in the properties. He pointed out that by the date of *S's* death he was born but not adopted and therefore he was rightly mutated in 1907 as being entitled jointly with *P* to the half share of their father and that his subsequent adoption by *K* entitled him to get *K's* half share in addition. He said that adoption could not divest him of the other 3/4th share which he had become already entitled to as the son of his father. His case was that though the Revenue records showed his interest in the landed properties only as half and not as 3/4th, his legal rights had not in an way become altered thereby since both the parties had been in joint possession throughout until the date of suit. Mutations were made on certain statements made by *K* and *W*. These statements were relied on by the other party as constituting transfer by *K* as guardian of *W*. It was held, that the various

---

(DB) + AIR 1925 Lah. 619 = 6 Lah. 447 (DB) + AIR 1929 Mad. 313 (DB) + AIR 1922 Nag. 201 = 17 Nag. L.R. 183 + AIR 1936 Mad. 914 + AIR 1945 Pat. 298 = 24 Pat. 273 (DB).

3. 28 Mad. 423 (DB).
4. AIR 1963 Raj. 211 + AIR 1959 Kerala 125 + AIR 1920 Bom. 1 (FB).
5. 13 Cal. L. Jour 277 (DB).
6. AIR 1917 Mad. 254 (DB) + AIR 1952 Orissa 31 (DB).
7. AIR 1920 Mad. 598 = 43 Mad. 436 (DB) + AIR 1931 Mad. 45 = 54 Mad. 352 (DB).
8. AIR 1932 P.C. 81 = 59 Ind App. 74 = 54 All. 93 + AIR 1953 Pat. 368 (DB) + AIR 1951 Nag. 403 = ILR 1950 Nag. 25 (AIR 1941 P.C. 128, *Referred*) + AIR 1950 Mad. 390.

mutations were brought about by *K* and that *W* was a minor at the time to the knowledge of everybody concerned. *K* intended that *W* should not have any share in his natural father's property. But in terms, what had been done was to get *W* to make a declaration of relinquishment of his share in his father's heritage. The recitals in the statements did not purport to be based on any transfer or relinquishment by *K* as the guardian of *W*. The purported release by the minor *W* was absolutely infructuous in law. There being nothing by way of release by *K* on behalf of *W*, no case for the application of Art. 44 arose. The plaintiff's suit was not barred by virtue of Art. 44.[9]

The article includes any transfer of property, provided the ward has an interest in the property.[10] Where the guardian purports to transfer property in which the minor has no present interest at all, the article does not apply.[11]

Surrender of interest. A deed of surrender by the guardian of a minor Hindu widow on her behalf is not a transfer of property.[12]

Mortgage. This article applies only where possession is also transferred to the alienee and will not apply to simple mortgages where possession is not transferred.[13] Where a ward sues not to set aside a sale by his guardian but for redemption of the property on the ground that the alleged sale is only a mortgage, this article has no application.[14]

Compromise decree. Where a compromise by a guardian involves a transfer of property, the minor must sue for the recovery of the property within three years of his attaining majority.[15] It must however be noted that a suit to set aside a decree based on a compromise entered into by the guardian of a minor is governed not by this article but by Art. 120.[16]

Execution sale. This article does not apply to sales in execution.[17]

4. Transfer must be by guardian. If the alienation is made by a natural guardian or a guardian appointed by the Court then only it is required to be avoided within three years after attaining majority.[18] A transfer of property belonging to a minor made by a person who is not his guardian is not within this

9. AIR 1954 S.C. 263.
10. AIR 1938 Pat. 337 = 17 Pat. 460 (DB) + 30 Mad. 393 (DB) + AIR 1918 Nag. 20 = 15 Nag. L.R. 55 + AIR 1915 Mad. 296 = 38 Mad. 867 (DB) + 16 Oudh Cas 119 (DB).
11. AIR 1928 Nag. 262 + AIR 1930 Oudh 82 (DB).
12. AIR 1950 Mad. 390.
13. AIR 1960 Cal. 446 + AIR 1930 All. 858 = 52 All. 979 (DB).
14. AIR 1924 Bom. 172.
15. AIR 1924 Lah. 427 + AIR 1953 Bom. 424 = ILR 1953 Bom 1055 (DB). (During execution proceedings mother of minor entering into compromise with mortgagee without permission of the Court.--Property of minor sold in pursuance of compromise--Suit for possession by redemption of mortgaged properties brought by minor after three years from the date of his attaining majority would be barred.).
16. AIR 1922 Lah. 166 = 2 Lah. 164 (DB).
17. AIR 1918 Lah. 182 + AIR 1952 All. 184 (DB) + AIR 1920 Lah. 417 = 1 Lah. 27 + 7 Mad. 516 (DB).
18. AIR 1943 Bom. 187 (DB).

article.[19] It is to be noted that under the Hindu law after the marriage of a minor female the guardianship of the father is transferred to her husband and in default of the husband no other person is entitled to act as a guardian *de jure*.[20] A senior co-widow is neither a *de jure* nor a natural guardian of a minor co-widow under the Hindu law.[1]

Manager of Hindu joint family. Where manager of a joint Hindu family alienated co-parcenary property and a minor member sought to avoid such transfer the case was not governed by this article.[2] Where a Hindu joint family consisted of co-parceners some of whom were minors.' Property belonging to the co-parcenary was alienated by the manager and the natural guardian of the minors was made a party to the alienation. The minors after lapse of three years after attainment of majority but within 12 years from the date of the alienation filed a suit for setting aside the sale and for recovery of possession of the alienated property from the transferees. It was held, that the suit was not barred by limitation as Art. 144 and not Art. 44 applied to the suit.[3]

Transfer by guardian or owner. A transfer made by the guardian of a minor not as the property of the minor but as his own does not fall within his article.[4]

5. Guardian--meaning of. The expression "guardian" in the article includes not only a certificated guardian but also a natural guardian.[5] The expression does not include a *de facto* guardian,[6] or a *de facto* manager of the property of a Hindu minor.[7] Therefore the article does not apply to a transfer by the *de facto* guardian of a Hindu minor.[8]

Hindu de facto guardian. The *de facto* guardian of a Hindu minor is entitled to transfer the minor's property for a valid necessity.[9] A transfer by the guardian without valid necessity is not totally void but only voidable at the option of the

19. 34 All. 213=39 Ind App. 49=15 Oudh Cas. 49 (PC)+AIR 1948 Nag. 100=ILR 1947 Nag. 455 (DB)+ILR (1948) 2 Cal. 170+AIR 1943 Cal. 203 (DB).
20. AIR 1950 Mad. 390.
1. AIR 1948 Nag. 100=ILR 1947 Nag. 455 (DB).
2. 25 All. 407=30 Ind. App. 165 (PC)+AIR 1960 Orissa 151=ILR 1960 Cut 71+AIR 1955 Pat. 386 (DB)+ILR 1954 Mys. 7+AIR 1954 Trav-Co. 234 (DB)+54 Mys. H.C.R. 480 (DB)+AIR 1940 Cal. 589.
3. AIR 1964 Mad. 353 (DB).
4. AIR 1965 Mysore 278+AIR 1939 Bom. 427+AIR 1935 All. 417+AIR 1937 Oudh 521.
5. AIR 1929 All. 879=52 All. 110 (DB)+AIR 1950 Mad. 560+54 Mys. H.C.R. 480 (DB). (The guardian contemplated by Art. 44 is a natural or certificated or testamentary guardian.)+AIR 1920 Bom. 1=44 Bom. 742 (FB)+AIR 1914 Cal. 825 (DB)+13 Cal. L. Jour 277 (DB)+AIR 1934 Mad. 600=57 Mad. 1062 (DB)+AIR 1929 Mad. 313 (DB).
6. AIR 1963 Raj. 211.
7. AIR 1951 Mad. 817.
8. AIR 1915 Mad. 659=38 Mad. 1125 (DB)=1959 Ker L. Tim 468+AIR 1955 Trav-Co. 197=ILR 1954 Trav-Co. 255+AIR 1953 Bom. 273=ILR 1953 Bom. 570 (DB). (An alienation by a *de facto* guardian which is not justified by legal necessity is void in that it confers no title upon the alienee. The minor on attaining majority can ignore such an alienation.)+AIR 1950 Mad. 390+AIR 1936 Mad. 884+AIR 1918 Nag. 20=15 Nag. L. R. 55+AIR 1927 Nag. 145.
9. (1856) 6 Moo Ind. App. 393 (P.C.)+AIR 1960 Cal. 446+AIR 1926 Nag. 81=22 Nag. L. R. 5 (FB).

ward.[10] A sale by a *de facto* guardian of a minor which is not made for legal necessity or for the benefit of minor is not binding on him. In order to avoid such a sale it is not necessary for the minor to institute a suit and to obtain a judicial rescission of the sale. It may be done by an expression of the minor's intention not to honour, respect or abide by the alienation. An expression of such an intention would certainly be by retaining possession of the alienated property or by dispossessing the transferee.[11]

Non-Hindu 'de facto' guardian A transfer of property by *de facto* guardian of a Muslim minor[12] or of a minor who is an Indian Christian, or a person governed by the Burmese Buddhist law is void.[13] Neither Art. 44 nor Art. 91 was applicable to cases for recovery of possession by a person whose property was transferred by a *de facto* guardian.[14]

6. Suit by assignee or legal representative of ward. An assignee from the ward cannot sue to set aside an alienation by the guardian of a minor.[15] Therefore this article does not apply to a suit by the assignee from a ward to set aside alienation by his guardian.[16] But a suit by the assignee of the ward to set aside an alienation by guardian is maintainable if the ward joins as co-plaintiff,[17] and in that case the suit is governed by this article[18]

Representative of minor, suit by. Where the minor dies before attaining majority, the same disability applies to persons claiming through the minor either as transferees or as legal representatives, and they must also exercise the option within three years from the date when the minor, would have attained majority had he been alive. Section 6(3) cannot be invoked where Art. 44 applies.[19] Where a minor has exercised the option by repudiating the transaction of alienation entered into by his mother as his guardian, by filing a suit, after his death pending the suit it is open to his heir to inherit the right to prosecute the suit in his or her own right.[20] But where a ward died after three years of attaining majority, a suit brought thereafter by his legal representative to set aside an alienation by the guardian during the minority of the ward was barred.[1]

7. Suit for possession against assignee from purchaser from guardian. Where subsequent alienation is made during the course of a suit by the ward against the original purchaser, the alienee will be bound by the adjudication made in that suit and a separate suit against the alienee will be unnecessary.[2]

---

10. AIR 1930 Lah. 136 + AIR 1928 Mad. 226 (DB) + AIR 1931 Mad. 274 + AIR 1923 Nag. 230.
11. AIR 1960 Cal. 446.
12. PLD 1954 Dacca 104 = 5 DLR 383 + AIR 1941 Pat. 351 + ILR (1948) 2 Cal. 170 + AIR 1918 P.C. 11 = 45 Cal. 878 = 45 Ind. App. 73 + 34 All. 213 = 39 Ind. App. 49 = 15 Oudh Cas. 49 (P.C.).
13. AIR 1931 Mad. 528. (Indian Christian) + AIR 1931 Rang. 178 (Burmese Buddhist).
14. 1981 CLC 1156 = NLR 1981 AC 566 (AJ&K).
15. AIR 1939 Cal. 460 + AIR 1933 Bom. 42 (DB).
16. AIR 1933 Bom. 42 (DB).
17. AIR 1925 Bom. 292 = 49 Bom. 309 (DB).
18. AIR 1925 Bom. 292 = 49 Bom. 309 (DB).
19. AIR 1954 Mad. 585 = ILR 1955 Mad. 562 (DB). (AIR 1930 Mad. 821. *Overruled*).
20. AIR 1959 Pat. 278 = 37 Pat. 1078.
1. AIR 1920 Bom. 1 = 44 Bom. 742 (FB).
2. AIR 1938 Mad. 677 (DB).

8. Starting point of limitation. The starting point of limitation under this article is the date when the ward attains majority. A suit brought more than three years after such date will be barred.[3] Where the plaintiff a Muslim, filed a suit for partition and possession of his share in the lease hold right in the suit property on the allegation that a surrender deed of the lease hold right executed by his mother for herself and as a guardian of her minor children, in favour of the landlord defendant was void. The suit was filed within three years from the date when the plaintiff attained majority without impleading persons who were actually in possession of the property by virtue of a lease and a gift executed by the landlord defendant in their favour after the surrender was executed by the plaintiff's mother. These persons were however impleaded as defendants more than three years after the plaintiff had attained majority. It was held that the impleading of such necessary parties had taken place more than three years after the attainment of majority by the plaintiff the suit was barred by limitation under S. 22 read with S. 6 and Art. 44, Limitation Act against such persons.[4]

Extended period of minority under S. 3, Majority Act. Under S. 3 of the Majority Act every person of whose person or property or both a guardian, other than under O. 32, Civil P.C., has been appointed by a Court of justice before he has attained the age of 18 years is deemed to attain the age of majority on his completing the age of 21 years and therefore a suit brought by such a person within 3 years of his completing the age of 21 would be within limitation. The extended age of majority in such cases will not be affected by the discharge of the guardian appointed by the Court.[5]

Burden of proof as to limitation. Where a case falls within this article, the burden of proving that the suit is within time is on the plaintiff.[6]

45 & 46. *Omitted by Ord. 27 of 1981, S. 3 & Sch. 2*

47.	By any person bound by an order respecting the possession of immovable property made under the Code of Criminal Procedure, 1898, [7]* * * or by	[8][Three years]	The date of the final order in the case.

3. AIR 1963 Raj. 211 + AIR 1954 Mad. 585 = ILR 1955 Mad. 562 (DB). (Suit to recover possession of property alienated by guardian of the minor during his minority has to be filed within three years from the date on which the minor attains majority.) + AIR 1948 Oudh 351.
4. AIR 1963 Kerala 344.
5. AIR 1958 Andh Pra. 766 = ILR 1957 Andh Pra. 544. (When once order is made under Guardians and Wards Act, variation of order by appellate Court should not affect right of a minor to institute suit on completion of his 21 years).
6. AIR 1924 Cal. 420 (DB) + AIR 1928 Lah. 254 + AIR 1929 Mad. 313 (DB).
7. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
8. The words, commas and figures "or the Mamlatdars' Courts Act, 1906", omitted by the A.O. 1949.

any one claiming under such person, to recover the property comprised in such order.

Synopsis

1. Scope.
2. "Person bound by an order."
3. Defendant not party to proceedings in which order passed.
4. Person claiming under person bound by the order.
5. Order respecting trust property against trustee.
6. "Order respecting the possession of immovable property."
7. "To recover property."
8. Starting point of limitation.
9. Section 28 and this Article.

1. **Scope.** The suit contemplated by this article is one based on title to the possession of the property and not one based on the plaintiff's previous possession.[9]

The order contemplated by this article should be one passed under the Criminal P.C.[10] Where though an order has been passed under S. 145, Cr. P.C. relating to that land yet the plaintiff brings a suit not to challenge that order but for declaration of title and possession, this Article would not apply.[11]

Right must be in existence when order under Cr.P.C. passed. The article contemplates a suit based on a right to sue in ejectment existing at the time of the passing of the order.[12] Where subsequent to the order the parties enter into a contract which has the effect of nullifying the order and the plaintiff's suit is based on such subsequent contract,[13] or where the right to sue for possession accrues to the plaintiff only subsequent to the date of the order, this article will not apply.[14]

2. **"Person bound by an order."** The article applies only where the plaintiff is bound by an order such as is referred to in the article, or is a person claiming through a person so bound.[15] The person whose claim of possession was negatived by an order of the criminal Court is undoubtedly a person bound by that order and he will be entitled to institute a suit as contemplated by Art. 47.[16] An order respecting the possession of immovable property made under S. 522 of the Criminal Procedure Code, binds only the parties thereto and not third parties,

9. ('80) 7 Ind. App. 71 (PC) + AIR 1958 Ker. 178 = ILR 1958 Ker. 389 (FB) + AIR 1916 Mad. 320 = 38 Mad. 432 (DB).
10. ('73) 10 Bom. H.C.R. 479.
11. 1971 DLC 317 + AIR 1963 Assam 188 + AIR 1958 Assam 34.
12. ('92) 19 Cal. 646 (DB).
13. ('99) 23 Bom. 525 (DB).
14. ('92) 19 Cal. 646 (DB) = AIR 1927 Mad. 586 (DB).
15. ('12) 14 Ind. Cas. 566 = 1912 Pun Re No. 84.
16. AIR 1958 Ker. 178 = ILR 1958 Ker. 389 (FB).

who are not bound to bring a suit for recovery of property within three years of the order.[17]

Order under S. 145, Cr.P.C. A person who is not party to proceedings under section 145, Cr.P.C. cannot be bound by the order passed in the same.[18]

Where an order is passed against a person in a representative capacity, it will be binding on all persons represented by him.[19] If the party against whom an order under S. 145 was passed was asserting only a personal right in his individual capacity, he alone would be bound by that order.[20] Where the plaintiff contested the proceeding under S. 145, Criminal P.C. in his own individual capacity as the manager of a school and filed the suit for possession of the site and building which house the school in the identical capacity as the owner of the property; it was held that as there was only one capacity in which the plaintiff functioned, Art. 47 applied to the suit.[1] For the same reason an order against a person in his private capacity is not binding on him in his capacity as the manager of a math.[2]

Favourable order not binding on plaintiff. A person in whose favour an order is passed is not bound by the order within the meaning of this article.[3]

Order must be subsisting on date of suit. Where subsequent to an order the parties enter into a contract which has the effect of dissolving the order and the plaintiff's suit is based on such subsequent contract.[4] The suit under this article being one practically to set aside the order passed, the article will not apply as there is nothing to set aside.[5]

A person cannot be bound by an order passed without jurisdiction.[6]

3. Defendant not party to proceedings in which order passed. Where the plaintiff was bound by the order but defendant was neither a party nor claimed through a party to the prior proceedings; a suit by the plaintiff was not governed by this article.[7] Where however the defendant claimed through a party to the proceedings in which the order was passed, this Article would apply. Thus where plaintiff was bound by an order under S. 145, Cr.P.C. in favour of *A*, and the plaintiff brought a suit recovery of property against *B*, an adopted son of *A*, the suit was governed by Art. 47.[8]

17. AIR 1925 Mad. 799 (DB). (Order under S. 522. Criminal P.C.) + ('12) 23 Mad. L. Jour 348 (DB) + ('94) 18 Bom. 449 (DB). (Order under Mamlatdara' Courts Act).
18. 1971 DLC 317 + AIR 1950 All. 693 + AIR 1935 Lah. 115 (DB). (Order binds the parties to the proceedings only) + AIR 1918 Nag. 242 + AIR 1941 Pesh. 65.
19. AIR 1918 Pat. 504 (DB) + AIR 1930 Mad. 48 = 52 Mad. 787 (DB) + AIR 1923 All. 151 = 45 All. 306 (DB).
20. AIR 1958 Ker. 178 = ILR 1958 Ker. 389 (FB).
1. AIR 1952 Trav-Co. 434.
2. ('03) 28 Bom. 215.
3. AIR 1927 Mad. 304 + AIR 1950 Orissa 64 = ILR (1949) 1 Cut 611 (DB) + AIR 1927 Mad. 50.
4. 23 Bom. 525 (DB).
5. AIR 1926 Cal. 1022 (DB) + 16 Ind. Cas. 735 (DB) (Cal.).
6. AIR 1920 Cal. 820 (DB) + AIR 1926 Cal. 1022 (DB) + 3 NWPHCR 171 (DB) + AIR 1921 Bom. 207 = 45 Bom. 1135 (DB).
7. 6 Cal. L. R 93 (DB) + 1891 Bom. P. J. 338.
8. 23 Cal. 731 (FB).

4. Person claiming under person bound by the order. A person is said to claim under another when he derives his title through the other by assignment or otherwise.[9] A lessor cannot be said to claim under his lessee and is therefore not bound by an order under S. 145, Cr. P. Code against the lessee. So also persons who are subsequent alienees from the lessor cannot also be held to be claiming under the lessee so as to be bound by an order under S. 145 against the lessee.[10]

For the purpose of this Article where a person claims through another his title must have arisen, subsequent to the order passed.[11]

5. Order respecting trust property against trustee. An order was passed against one of the trustees purporting to act on behalf of the trust; it was held that the trust itself was a party and was bound by the order and any other trustee subsequently suing to set it aside was only acting on behalf of the trust.[12]

6. "Order respecting the possession of immovable property." The Article applies where an order respecting the possession of immovable property has been passed. An order merely dismissing a complaint is not an order respecting possession.[13] An order merely carrying out the decree of a civil Court is not one respecting possession of property.[14] Similarly an order of a Magistrate, which neither dispossesses the plaintiff nor maintains the defendant's possession to the exclusion of the plaintiff is not an order respecting the possession of immovable property and will not fall within this article.[15]

Irregular order. A suit brought three years after an order passed with irregularity which does not cause failure of justice will be barred.[16]

Order under S. 146, Cr.P.C. Where Magistrate passes an order for attachment under S. 146 of the Criminal Procedure Code, it is not an order "respecting possession" and this article is not applicable.[17]

Title suit. Where a suit is not in any case related to an order under S. 145, Cr.P.C. and is in fact a suit for declaration of title, Article 47 does not apply to it.[18] But where a suit falls under this Article the mere fact that it is framed as a suit for title will not extend limitation. Thus where there was an order in favour of defendant on 9-3-1914, under S. 145, Criminal P.C. against *A* on *A*'s death plaintiff claiming through *A* forcibly dispossessed defendant. The plaintiff was convicted and defendant restored to possession on 8-9-1919 under S. 522, Cr.P.C. On 9-3-

9. 29 All. 1 (DB)+AIR 1922 Pat. 63=1 Pat. 174 (DB)+18 Bom. 348 (DB).
10. AIR 1959 Orissa 87=ILR 1959 Cut 74.
11. 23 Cal. 731 (FB)+AIR 1936 Pat. 629=15 Pat. 481 (DB).
12. AIR 1936 Mad. 188 (DB).
13. 16 Ind. Cas. 735 (DB) (Cal.).
14. AIR 1929 Mad. 38 (DB).
15. AIR 1926 Cal. 1022 (DB)+AIR 1958 Pat. 217=36 Pat. 1198 (DB).
16. AIR 1918 Cal. 901=18 Cri. L. Jour 1024 (DB)+AIR 1916 Mad. 320=38 Mad. 432 (DB)+14 Ind. Cas. 566=1912 Pun. Re. No. 84 (DB)+AIR 1925 Oudh 190 (DB).
17. AIR 1964 A.P. 109 (DB)+3 Agra 65 (DB)+20 All. 120 (DB)+1 Mad. 309 (DB)+26 Mad. 410 (DB)+AIR 1936 Oudh 387=12 Luck 371 (DB)+AIR 1929 Mad. 38 (DB)+AIR 1929 Cal. 782 (DB)+AIR 1921 Cal. 584 (DB).
18. 1971 DLC 317+AIR 1942 P.C. 47

1920, the plaintiff sued for declaration of his right. It was held that the plaintiff could not, by filing a suit for declaration, enlarge the period of limitation.[19]

7. "To recover property." A suit for a declaration of right to the property comprised in the order is not governed by this article.[20] Thus a plaintiff suing in the ordinary Court on his title for the possession of land is not bound by reason of anything in Article 47 of the Limitation Act, 1908.[1] Where property is attached under S. 146, Criminal P.C., or receiver is appointed of the said property, a suit by a rightful owner in respect of the property was not governed by this article.[2] Similarly where *A* and *B* are joint owners of properties *X* and *Y*. An order was made against *A* and in favour of *B* in respect of property *Y* confirming *B*'s possession. *A* used three years thereafter for partition of his share in properties *X* and *Y*, the suit was not barred.[3] Where A and *B* jointly owned properties *X* and *Y*. An order was made against *A* and in favour of *B* in respect of the properties confirming *B*'s possession. *A* sued three years thereafter for partition of his share in *X* and *Y* the suit was not barred.[4]

The words "to recover property" include the recovery of property both as full owner and also as joint owner.[5] Therefore where a co-sharer against whom an order under proceedings under S. 145, Criminal P.C. has been passed, files a suit for joint possession and injunction after the expiry of three years from the date of such orders, the suit is barred under Art. 47 of the Act.[6] The plaintiff cannot evade the operation of this article by framing the suit as one for damages for his share of the produce.[7]

8. Starting point of limitation. Limitation under this Article commence from the date of final order in the case. After the Magistrate passes his order in the proceedings under S. 145. Criminal P.C., against the plaintiff the latter makes an application to the Sessions Judge in revision for making a reference to the High Court but the application is dismissed by the Sessions Judge and the High Court is not moved in revision, the order of the Magistrate and not of the Sessions Judge is the final order.[8] Where the order embodies no finding as to which party was in possession on the date of preliminary order, such order is not "final order" within the meaning of this article.[9] Where while quashing a preliminary order under S. 145, the High Court observes that the peaceful possession of a particular party to the proceeding should be maintained until that party is evicted in due course of law such an observation will not make the order of the High Court a

19. AIR 1923 All. 151=45 All. 306 (DB)+AIR 1959 Ker. 237 (DB). (Held on facts that Art. 47 applied to the case notwithstanding its frame as one for declaration of title).
20. 35 Cal. 851 (DB).
1. 1971 DLC 317.
2. AIR 1929 Mad. 38 (DB).
3. 26 Bom. 146 (DB)+39 Cal. W.N. 853 (DB).
4. 15 Bom. 299 (DB).
5. AIR 1937 All. 300+AIR 1964 All. 377.
6. AIR 1964 All. 377+AIR 1944 Oudh 250 (DB).
7. AIR 1930 Nag. 142=26 Nag. L. R. 160.
8. AIR 1951 Pat. 325=29 Pat. 311 (DB). (Article 47 does not speak of the last order in a judicial proceeding but speaks of the final order).
9. 20 Suth W R 316 (DB).

final order.[10] Similarly an order whereby the proceedings are struck off the file or the complaint is dismissed, is not "final order" within the meaning of this article.[11]

Order passed in revision. The expression "the final order" covers an order passed in revision.[12] But a final order, so far as S. 145 of the Criminal P.C. is concerned, should embody a definite finding as to which of the parties was in possession of the subject of the dispute on the date of the preliminary order.[13] Similarly where an application for revision against an order under S. 145 (6), Cr. P.C. is rejected *in limine*, a final order for the purpose of Art. 47 is the order of the Magistrate.[14]

Verbal order. A verbal order will not be governed by this article.[15]

9. Section 28 and this Article. If a person fails to bring a suit to recover the property within three years of the order against him, his right to possession is extinguished.[16] But if, when the Magisterial order was passed the plaintiff had no right to institute the suit for ejectment of the defendant, and he obtained such right only after the passing of the order, Art. 47 would not bar a subsequent suit.[17] Thus failure of a Hindu widow to institute a suit within three years of Magistrate's order does not bind the reversioner and the reversioners' right to recover property is not affected.[18]

Possession not disturbed by order under S. 145, Cr.P.C. Where in spite of an order under S. 145, Cr.P.C. a party remains in actual possession, the article has no application and the non-institution of a suit will not extinguish the right of the party under section 28.[19]

Licensee in possession. Where no suit is brought within limitation provided by this Article and the person in possession claims to be a licensee, the right to possession is not extinguished because a licensee's right does not ripen into full owner's rights. Onus is on the party asserting adverse title that conditions necessary under Art. 47 and S. 28 are satisfied.[20]

---

10. AIR 1952 Trav-Co. 195 (DB).
11. (1865) 3 Suth W R 174 (DB). (Proceedings struck off the file) + 16 Ind. Cas. 735 (DB) (Cal.) (Complaint dismissed) + 11 Suth W R 477 (DB) (Do.).
12. AIR 1941 Pat. 372 = 22 Pat. 735 (DB).
13. AIR 1923 Mad. 24 = 24 Cal. L. Jour 156 + AIR 1923 Mad. 180 = 24 Cri. L. Jour 64 + 7 Cri. L. Jour 336 (DB).
14. AIR 1946 Mad. 444 (DB).
15. 2 Agra 26 (DB).
16. AIR 1964 All. 377 + 15 Ind Cas 24 (DB) (Mad.) + AIR 1953 Ker. 178 = ILR 1958 Ker. 389 (FB) + AIR 1958 Pat. 217 = 36 Pat. 1198 (DB) + 52 Mys. H.C.R. 90 (DB). (AIR 1930 Cal. 612; AIR 1937 All. 300 and AIR 1935 Pat. 164, *Rel. on.*) + AIR 1920 Mad. 545 + 14 Ind Cas 566 = 1912 Pun Re No. 84 (DB) + AIR 1930 Nag. 142 = 26 Nag. L. R. 160 + AIR 1935 Pat. 164 = 14 Pat. 424 (DB) + AIR 1937 All. 300 + AIR 1943 Cal. 67 = ILR (1942) 2 Cal. 332. (Exclusive possession by one co-sharer. Suit for joint-possession by another).
17. AIR 1958 Pat. 217 = 36 Pat. 1198 (DB).
18. AIR 1946 Oudh 213 (DB).
19. 20 Bom. 270 (DB).
20. AIR 1944 Oudh 250 = 19 Luck. 531 (DB) + AIR 1957 Assam 99 = ILR (1955) 7 Assam 404.

48.	For specific movable property lost or acquired by theft, or dishonest misappropria-tion or conversion, or for compensation for wrongfully taking or detaining the same.	[1][Three years]	When the person having the right to the possession of the property first learns in whose possession it is.

Synopsis

1. Scope.
2. Specific movable property.
3. Lost property.
4. Property acquired by theft.
5. Property acquired by misappropriation.
6. Property acquired by conversion.
7. "Wrongfully taking or detaining the same."
8. Starting point of limitation.
9. "Having right to possession."
10. "In whose possession it is."

1. Scope. Article 48 applies to suits for reliefs in respect of particular kinds of property,[2] where specific movable property has been wrongfully taken or wrongfully detained.[3] Thus a suit for declaration that the sand on the bed of a certain river was the property of the plaintiff and for compensation for removal of sand on two specified dates would be within limitation under Arts. 48 and 49 if brought within three years of the wrongful taking.[4] But a suit for rectification of register simpliciter under S. 38 of the Companies Act will not be governed either by Art. 48 or Art. 49.[5]

Plaintiff must have right to possession. Article 48 applies only where the plaintiff has a right to the possession of the property in respect of which relief is claimed.[6] It has no application to a suit for compensation for wrongful removal of attached property.[7]

Defendant must be in possession. Article 48 contemplates a suit where the plaintiff alleges that the property is in the possession of the defendant and sues on that basis.[8]

2. Specific movable property. The following are the two views as to what property the word "specific" applies:

---

1. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
2. AIR 1929 P.C. 69=56 Ind App. 93=3 Pat. 516+AIR 1952 Madh B 153 (DB)+AIR 1950 Raj. 4+AIR 1948 Cal. 97=ILR (1948) 1 Cal. 55 (DB).
3. AIR 1956 Cal. 71+AIR 1952 Madh B 156 (DB).
4. AIR 1953 Pat. 283=33 Pat. 555 (DB).
5. AIR 1953 S.C. 98=1953 S.C.R. 351+AIR 1953 Trav-Co. 253=ILR 1952 Trav-Co. 625 (DB).
6. AIR 1948 Cal. 97=ILR (1948) 1 Cal. 55 (DB).
7. AIR 1946 Mad. 33=ILR 1945 Mad. 784 (DB).
8. AIR 1946 Mad. 33=ILR 1945 Mad. 784 (DB).

(*a*) Property of which one may demand delivery *in specie*.[9]

(*b*) Property which can be specified.[10]

The words "specific movable property" have not the same meaning as identifiable movable property. Thus, where movable property, whether it is earth or coal, is alleged to have been removed from a particular place belonging to or in possession of a particular person, the earth or coal so removed is specific movable property although it may not be identifiable.[11]

Money. Money cannot be specific movable property though it may be movable property.[12] Thus where the plaintiff transfers shares to defendant in the course of his agency for being dealt with in due course of business, to a suit for accounts of sums received by defendant from the sale of shares, Article 48 is not applicable.[13] Similarly to a suit for value of machine wrongfully withheld, Article 49 was applicable.[14]

Share in specific movable property. A share in specific movable property is not itself a "specific" movable property.[15]

Property must be movable from the outset. Property covered by this Article must be specific movable property before it comes into the possession of the defendant. Property which becomes movable only by the act of the defendant is not movable property referred to in this and the next article.[16] Where coal was cut and carried away from plaintiff's mines by the defendant. It was held that the coal was movable property within the meaning of this section.[17]

Instances of movable property. The following are specific movable property:

(*a*) Government promissory notes.[18]

(*b*) Title deeds of property[19]

(*c*) Share certificates.[20]

(*d*) Books, mortgage deeds and other documents.[1]

The following are not movable property:

(*a*) Standing trees unless severed.[2]

---

9. 11 Bom. 133 + AIR 1958 S.C. 827 = 1959 S.C.R. 811 = ILR 1958 Punj. 2093 + 25 Cal. 692 (FB) + AIR 1920 Sind 92 = 14 Sind L. R. 137 (DB).
10. 6 Low Bur Rul 75 (DB) + AIR 1936 Mad. 250.
11. AIR 1952 Assam 141 = ILR (1951) 3 Assam 279 (DB).
12. 24 All. 27 = 28 Ind. App. 227 (P.C.) + AIR 1948 All 75 = ILR 1947 All. 203 + 11 Cal. W.N. 862 (DB) = AIR 1914 Mad. 572 = 37 Mad. 381 (DB) + AIR 1938 Lah. 139 (DB).
13. AIR 1960 Pat. 223 (DB).
14. 1934 Mad. W.N. 1291.
15. 21 Cal. 157 = 20 Ind. App. 155 (P.C.) + 31 Cal. 262 = 31 Ind. App. 10 (P.C.).
16. 22 Cal. 877 (FB) + 25 Cal. 692 (FB).
17. AIR 1929 P.C. 69 = 56 Ind. App. 93 = 8 Pat. 516.
18. 12 Cal. W.N. 1010.
19. 15 Mad. 157. (Suit to recover title deeds left with a mortgagee after redemption).
20. 12 Bom. L. R. 513.
1. AIR 1919 Lah. 47 = 1919 Pun Re No. 85 (DB).
2. 5 All. 562 (FB) + AIR 1926 All. 462 + AIR 1924 Nag. L. R. 80.

(*b*) Standing crops unless severed.[3]

(*c*) Fixtures.[4]

3. Lost property. A suit for compensation for lost specific movable property is covered by this section. Thus where *B* kept certain ornaments belonging to *A* under a promise to return them to *A* and died without doing so--*A* sued *B's* sons for the recovery of the ornaments or their value, but did not allege any misappropriation against *B* or his sons; the suit being for compensation for specific movable property lost, Art. 48 was applicable.[5]

4. Property acquired by theft. A suit against a person to recover stolen property which had come into his hands or its value as damages is governed by this article.[6]

5. Property acquired by misappropriation. A suit for compensation for property acquired by misappropriation is covered by this Article. Where war bonds purchased out of temple funds left by will to his widow by a High priest were appropriated towards arrears of maintenance by the priest, his successor's suit for delivery of bonds or their value is governed by this article.[7]

6. Property acquired by conversion. The detention of property amounts to conversion only when it is adverse to the owner or other person entitled to possession.[8] The conversion need not have been a dishonest one in order to apply this article.[9] Thus where a large quantity of earth from land belonging to the plaintiff was removed and placed on the railway track under construction. It was held, that the Union of India was liable in conversion for the value of the earth belonging to the plaintiff, even if the latter had made no demand for the return of the earth.[10] But where the defendant has taken only temporary possession of a thing for a lawful act there is no conversion. Thus when *A* went on board *B's* ferry boat with two horses, *B* wrongfully refused to carry the horses and asked *A* to take them ashore when *A* refused, *B* took the horses from *A* and put them ashore. It was held that this did not amount to conversion.[11]

Non-delivery of goods by carrier. Mere non-delivery of the goods by Railway administration cannot be taken to mean conversion of the goods.[12] To such a case Article 48 has no application.[13] But where a party sues as a carrier but takes up the plea that it is not a carrier, this Article will apply. Thus where the defendant company in a suit for compensation for conversion of the plaintiff's goods pleads

3. 6 Bom. 598 (DB) + 1955 All. L. Jour 154. (The crop though immovable property in the first instance, becomes specific movable property as soon as it is severed from the soil.) + AIR 1915 Nag. 69 = 11 Nag. L. R. 18 + 25 Cal. 692 (FB).
4. 4 Cal. 940.
5. AIR 1929 All. 208.
6. 1911 Pun L. R. No. 229, p. 863.
7. AIR 1938 Pat. 273 (DB).
8. AIR 1936 Bom. 322 = 60 Bom. 848.
9. AIR 1929 P. C. 69 = 56 Ind. App. 93 = 8 Pat. 516 + AIR 1930 P.C. 113 = 57 Ind. App. 144 = 57 Cal. 1341 + AIR 1958 Cal. 433 (DB) + AIR 1954 Cal. 233 (DB).
10. AIR 1952 Assam 141 = ILR (1951) 3 Assam 279 (DB).
11. (1841) 8 M & W 540 = 10 L. J. Ex. 364.
12. AIR 1962 Madh Pra. 190 (DB) + 1955 Raj. L W. 148.
13. AIR 1958 Cal. 434 (DB).

that it is only the agent of the steamship companies and the latter companies are the carriers both in law and in fact and not the defendant company, the plea precludes any consideration of the defendant as engaged in a continuous contract of carriage and, therefore, Art. 48 alone applies to the defendant's case.[14]

Suit for compensation. Article 48 has no application to a case where possession has been transferred by conversion and the relief claimed is not possession of the specific movable property so transferred but compensation for such conversion.[15]

7. "Wrongfully taking or detaining the same". Articles 48 and 49 only apply to cases where property has been wrongfully detained.[16] Where *A* acquired property in lawful manner and *A* subsequently misappropriated it or converted it to his own use. It was held that Article 48 has no application.[17]

Property not taken by defendant. Where the defendant merely causes deprivation of property but does not himself take or detain it, a suit for damages for causing deprivation is neither governed by this article nor by Art. 49.[18]

Suit must be for compensation. Where the taking or detention of property is wrongful, a suit for compensation or recovery thereof is governed by Art. 48.[19] where *A* and *B* were owners of adjoining coal mines--*B* trespassed on *A*'s mine, and cut and appropriated coal to his own use; a suit by *A* for compensation for removal of coal was governed by this Article.[20] Where *B* entered on *A*'s land and cut and carried away the crops on the land. A suit for compensation for cutting and carrying away crops was covered by Article 48.[1] Similarly in a suit for compensation for invalid cancellation of contract in writing registered to fell timber, a claim for compensation against the defendants for wrongfully taking the timber previously cut by him is governed for purposes of limitation by Art. 48.[2]

8. Starting point of limitation. Time runs from the date when plaintiff actually comes to know in whose possession the property is and not from the date when he would have known it if he had exercised reasonable diligence.[3] Therefore

14. AIR 1958 Ker. 47 = ILR 1958 Ker. 268 (DB).
15. AIR 1958 Mad. 321 = ILR 1958 Mad. 342 (DB).
16. AIR 1949 Assam 10 + AIR 1949 Mad. 437.
17. AIR 1929 Cal. 42 (DB) + AIR 1920 All. 353 = 42 All. 45 (DB) + ('08) 5 Bom. 554 (DB) + AIR 1916 Cal. 869 (DB) + AIR 1919 All. 102 = 41 All. 643 (DB) + AIR 1928 Oudh 47 + AIR 1925 Rang 146 = 2 Rang. 555 (DB) + ('10) 12 Bom. L. R. 513 (Refusal to deliver shares brought--Fall in value--Suit for loss) + ('12) 35 Mad. 636 (DB) + ('91) 15 Mad. 157 (DB).
18. ('03) 6 Bom. L. R. 704 + 29 All. 615 + AIR 1928 Cal. 1 (DB) + AIR 1926 Cal. 177 (DB) + AIR 1925 Mad. 185 + AIR 1930 Mad. 635 = 53 Mad. 621 (DB).
19. AIR 1917 Lah. 22.
20. AIR 1929 P.C. 69 = 56 Ind App. 93 = 8 Pat. 516 + AIR 1930 P.C. 113 = 57 Ind App 144 = 57 Cal. 1341 + AIR 1931 Pat. 436 (DB) + AIR 1920 Pat. 383 (DB).
1. AIR 1926 All. 462 + ('98) 25 Cal. 692 (FB) + ('07) 30 Mad. 12 (DB) + ('97) 20 Mad. 449 (DB) + AIR 1923 Rang. 11 (DB).
2. AIR 1959 Andh. Pra. 551 (DB).
3. AIR 1936 Bom. 322 = 60 Bom. 848 + AIR 1960 Mys. 238. (Suit against principal and agent for recovery of money paid to agent for principal--Suit decreed against principal--Suit by principal against agent for money paid by him as decretal amount--Article applicable is Art. 61) + AIR 1954 Cal. 233 (DB).

a mistaken belief by the plaintiff that the property removed was not his, will not effect the running of time.[4]

Burden of proof. Burden of proving knowledge of the defendant's possession of property within three years of the suit is on the plaintiff.[5]

9. **"Having right to possession."** This Article applies only where the plaintiff had a right to possession in the property in dispute on the day on which it was taken possession of by the defendant. If on that date the plaintiff had no right to possession, this Article would not apply. Thus where *A* contracted with *B* to deliver to him certain movable property on a particular day. *A* failed to perform the contract; a suit for property or compensation for breach of contract was not governed by this article.[6] Where *B* trespassed into a coal mine and removed coal therefrom wrongfully, *A* had no title to the mine on that date but subsequently obtained title thereto. *A* sued *B* for damages for wrongful taking of the coal; the suit was not governed by this Article.[7] Where *A*, who was a tenant-in-common with *B*, mortgaged her interest to the plaintiff who filed a suit on the mortgage against *A*, and pending the suit *B* cut down all the trees on the land and appropriated the same to himself. The plaintiff instituted a suit against *B* for damages for wrongful taking of the trees; the suit was not governed by this article.[8] Where *A* contained movable property and left it with a person appointed by Court. *B* in collusion with the Court custodian wrongfully took the property and converted it to his own use. *A* sued *B* for damages; this article did not apply to the case.[9]

Reversioner, suit by. Where the plaintiff has only a reversionary right to the property in question, this article will not apply.[10]

10. **"In whose possession it is."** The article applies only when the movable property is still in the possession of the defendants, and not when the property cannot be traced.[11]

[12][48-A. To recover movable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depository or pawnee	Three years	when the sale becomes known to the plaintiff].

4. AIR 1936 Pat. 179 (DB).
5. AIR 1936 Bom. 322=60 Bom. 848+AIR 1954 Cal. 233 (DB)+AIR 1929 All. 721 (DB)+AIR 1923 Bom. 155 (DB)+AIR 1946 Cal. 123 (DB) (Conversion).
6. AIR 1916 Mad. 486.
7. AIR 1931 Pat. 436.
8. ('05) 28 Mad. 208 (DB).
9. AIR 1932 All. 256=54 All. 467 (DB).
10. AIR 1948 Cal. 97=II.R (1948) 1 Cal. 55 (DB).
11. AIR 1931 Pat. 436 (DB).
12. Entries 48-A and 48-B ins. by the Indian Limitation (Amendment) Act, 1929 (1 of 1929), S. 3.

	for a valuable consideration.		

Synopsis

1. Scope.
2. 'Sale.'

1. Scope. The Article applies where a movable property is bought by a person without the knowledge that it is subject to any encumberance such as a mortgage, trust etc., and in the full belief that it is an absolute title.[13]

2. 'Sale.' The Article applies only when the property has been subject of a sale. It does not apply to any thing short of a sale. Thus it is not applicable where property is pledged by a trustee.[14]

[15][48-B.	To set aside sale of movable property comprised in a Hindu, Muhammadan or Budhhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Three years	When the sale becomes known to the plaintiff.]
49.	For other specific movable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	[16][Three years]	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.

Synopsis

1. Scope.
2. Suit to recover specific movable property.
3. Compensation.
4. "Wrongfully taking."
5. Wrongfully injuring the property.
6. Wrongful detention.
7. Suit for title deeds.
8. Successive conversions.
9. Successive conversions by more than one person.

---

13. 14 Moo Ind App 1 (P.C.).
14. AIR 1923 Bom. 155.
15. Entries 48-A and 48-B ins. by the Indian Limitation (Amendment) Act, 1929 (1 of 1929) S. 3.
16. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

1. Scope. The word "other" means specific movable property in general as distinguished from the movable property mentioned in the previous articles.[17] Where a case falls both under this article and another more specific article, the latter will prevail.[18]

Plaintiff must have a personal claim. This article is inapplicable where the plaintiff has not a personal claim to the movable property.[19]

Plaintiff need not have right to immediate possession. Article 49 applies to a suit for compensation in respect of movable property even though the plaintiff is not entitled to immediate possession.[20]

Possession of third party. Article 49 applies only in respect of movable property which is in the possession of some third party.[1]

2. Suit to recover specific movable property. The suit "to recover specific movable property" referred to by this article is the same as that contemplated by Ss. 10 and 11 of the Specific Relief Act, 1877.[2] Therefore where the defendant is not in possession or control of the property claimed, a suit for recovery of the property is not maintainable against him.[3]

"Specific property." For the application of this Article a suit must be for recovery of specific movable property. A suit by an heir against other heirs to recover his share of the movable estate of a deceased person is not one for specific movable property such as is contemplated by Art. 49 but is governed by Art. 120.[4]

Immovable property. The Article applies to movable property only. Until a power-house is dismantled, the machineries, etc., which are fixed to the earth are uprooted and until the buildings are demolished the material with which they were constructed cannot be called, 'movable property'. The undertaking is akin to "immovable property" rather than to movable property and any suit for its

---

17. AIR 1942 Pesh. 57.
18. AIR 1938 P.C. 110 = 32 Sind L. R 420. (Case falling under Arts. 49 and 145 held, Art. 145 prevails) + AIR 1960 J&K 141 (DB). (Suit for damages for non-delivery of part of consignment--Specific Art. 31 and not general Art. 49 applies) + AIR 1957 All. 553 (DB). (Suit for recovery of sum of money representing price of goods deposited and interest thereon--Plaintiff desiring delivery of goods of like or similar quality--Evidence that all goods had been sold by defendant--Arts. 49 and 145, held had no application--Article 36 held applied) + AIR 1937 Rang. 523. (Case falling under Arts. 49 and 29, held Art. 29 will prevail) + 31 Mad. 431 (DB) + 6 All. L. Jour 614. (Case falling under Art. 49 and 126 held, Art. 126 applies).
19. (89) 17 Cal. 3 = 16 Ind. App. 137 (P.C.) (Shebait's claim to the custody of the idol or the valuables belonging to it falls under Art. 124 or 144) + AIR 1952 Madh B. 156 (DB) + AIR 1953 Madh. B. 91 = ILR 1952 Madh B. 322 (DB) + AIR 1949 Assam 10 (DB).
20. AIR 1948 Cal. 97 = ILR (1948) 1 Cal. 55 (DB).
1. PLD 1950 Dacca 321 = 12 DLR 49 + PLD 1969 AJ&K 51 + AIR 1964 All. 243 + AIR 1958 Mad. 620 = ILR 1958 Mad. 1095. (Damage caused to municipal lamp-post by defendant's lorry--Suit for damages by Municipal Corporation--Article 36 and not Art. 49 applies).
2. (99) 22 Mad. 478 (DB) + AIR 1948 All. 75 = ILR 1947 All. 203 (DB).
3. (99) 22 Mad. 478 (DB) (Suit for damages may lie and may fall within the latter part of the first column of this article).
4. AIR 1958 S.C. 827 = 1959 S.C.R. 811 = ILR 1958 Punj. 2093.

possession would not be governed by Art. 49 but by Art. 144.[5] Where in a suit for ejectment of the defendant from the house in a suit on the basis that the defendant had trespassed into a room of the house and had transformed it into a habitable building, it is found that the plaintiff has no title to the land on which the house stood, the suit will fall under Art. 49, as the house apart from the land must be considered to be movable property.[6]

3. **Compensation.** Compensation includes value of goods as well as compensation by way of damages that are consequential on the wrongful taking, injury or detention.[7] Thus where a boat was engaged for loading goods in ship, the loading was not completed during the usual hours, therefore the boatman was detained under a threat. There was a squall at night which forced master of the ship to cast off the boat for safety of the ship. The boat was lost by sinking. A suit for value of the boat was governed by articles 48 and 49.[8]

4. **"Wrongfully taking."** Wrongful refusal to give delivery of goods amounts to conversion. A suit for compensation need not be preceded by notice under S. 77, Railways Act. Where Railway receipt was endorsed in favour of another for the purposes of taking delivery and the consignment was addressed to self. The consignor can maintain a suit for compensation for conversion and the suit is governed by Art. 49 and not by Art. 31. Therefore time starts running from date of demand and refusal.[9] Where the owner of goods illegally seized under the Defence of India Rules brought a suit for return of the goods on the basis of his title the appropriate article for limitation is Art. 49 and not Art. 2.[10] This Article applies to a suit to recover money paid to the decree-holder out of the sale proceeds of the goods wrongfully attached in execution of a decree.[11] Where rice belonging to the plaintiff was illegally seized by an officer of State, to a suit to recover price of rice Art. 48 did not apply. Article 49 applied to the case.[12]

Dishonest intention. "The element of dishonest misappropriation or conversion need not exist in cases falling under this article.[13]

Wrongful taking must be specifically proved. It cannot be inferred from other facts. Thus entry on a piece of land by itself is no proof of any conversion of movables lying upon it. Proof of any act on the part of defendant with special reference to such movables should be adduced.[14]

5. **Wrongfully injuring the property.** The meaning of the word "injury" is the popular one of loss or deterioration caused by a wrongful act.[15]

---

5. AIR 1955 Pat. 375 (DB).
6. AIR 1959 Assam 236.
7. (1900) 23 Mad. 621 (DB).
8. AIR 1945 Mad. 60.
9. AIR 1960 Mys. 283.
10. AIR 1959 Punj. 173 (DB).
11. AIR 1951 Pat. 602 = 30 Pat. 784 (DB).
12. AIR 1958 Cal. 433 (DB).
13. AIR 1950 Raj. 4.
14. 22 Mad. 197 (DB) + (1845) 6 Q.B. 769 = 14 L.J.Q.B. 87 + (1873) 21 W R (Eng.) 337 = 42 L J Ex. 80.
15. 3 Mad. H.C.R. 165 (FB).

Possession must be that of third person. Injury to property mentioned in this article is limited to property which is in the custody of some person other than the owner.[16] Where the property is in the possession of the owner when injury is caused to it, this Article does not apply.[17]

To a suit for compensation for wrongfully injuring plaintiff's goods on account of trespass committed by defendant, Article 39 or Art. 49 applies but not Article 36.[18] Where a mortgagee is deprived of his security by wrongful act of third person, the mortgagee can sue such person for compensation for depreciation of the security and the suit will be governed by this article.[19] Where there is removal of plaintiff's car by a Magistrate without authority and the car was returned after notice under S. 80, C.P. Code, a suit claiming compensation for use of car and for damage done to it and for the price of the missing parts, would fall under Art. 49 and not under Article 2.[20]

6. **Wrongful detention.** The words "for wrongfully taking or injuring or wrongfully detaining" which occur in this article restrict its application to the cases in which the detention is wrongful and the action is *ex delicto* and not *ex contractu*. Where under the agreement the defendant was entitled to retain the possession of an article, if he was to pay the amount required under the agreement, it cannot be said that his detention of the property was wrongful.[1] But where the right to detain property has come to an end but the defendant not only retains possession but also refuses to deliver on demand, the detention is wrongful and this Article applies to a suit for recovery of the property. Thus where a marriage was dissolved by the Court but the dowry and bridal gifts of the wife were detained by her husband and his father, A suit by her for recovery of those articles or a sum equal to their value with interest would fall under this Article.[2] Where *A* entrusted certain ornaments to *B* in accordance with the custom of his caste, in view of a contract for the marriage of *A's* son to *B's* daughter and on the contract being broken brought suit for the return of the ornaments. It was held, that the suit was governed by this article.[3] Where in the hire-purchase agreement *A* was expressly empowered to keep possession of the apparatus until the full price had been paid by himself, subject to the right of the vendor to retake possession and sell the apparatus to recover his dues. It was only when the vendor purported to exercise that right, and *A* resisted that exercise, that there was a breach of the contract on the part of the latter, and from that date, his possession would be deemed to be unlawful. The suit would be in time if brought within the time limited by Article 49, viz., three years commencing from that date.[4]

Proof of wrongful detention. Adverse detention is usually proved by showing that delivery of the movable property was demanded but refused by the

16. 11 Bom. 155.
17. PLD 1969 (AJ&K) 51 = PLD 1960 Dacca 321 = 21 DLR 49 + AIR 1964 All. 243.
18. AIR 1960 Madh Pra. 200.
19. AIR 1917 Mad. 880 (DB) + 28 Mad. 202 (DB) + 6 Low Bur Rul 75 (DB).
20. AIR 1958 Punj. 351 = ILR 1958 Punj 244 (DB).
1. AIR 1956 Hyd. 12 = ILR 1955 Hyd. 718.
2. 1985 CLC 2335 = PLJ 1985 Kar 368.
3. AIR 1939 Nag. 177 = ILR 1939 Nag. 498 + AIR 1946 Mad. 453.
4. PLD 1961 S.C. 321 = 13 DLR S.C. 141 = 1961 (2) P.S.C.R. 14.

defendant.[5] Therefore refusal to deliver the movable property must be certain to make the detention unlawful.[6]

A permissible possession can become unlawful only when the demand for possession is refused.[7] Thus where the plaintiff delivered to the defendant 95 bags of barley for separation of chaff. On 6th December, 1947 the defendant returned to the plaintiff 62 bags only after separation of chaff but failed to return the whole chaff and the balance of barley in spite of demand by notices. The suit for compensation was filed on 16th July, 1951. The question was whether the suit was barred by limitation. It was held that the suit was governed by Art. 49 and therefore the residuary Art. 120 could have no application.[8] Putting off or postponement to comply with a demand" cannot by itself amount to "refusal" and if there was no refusal the possession of the defendant would never become anything like wrongful detention.[9]

Commencement of limitation. Where the exact date of commencement of limitation cannot be determined and therefore it is doubtful as to whether the suit is barred by limitation, the Court would presume that the suit was within limitation. Thus where a suit was filed for recovery of jewels by *A* against *B*, his daughter-in-law on the plea that his son to whom they had belonged had died and that the daughter-in-law had forfeited the right to the jewels on her remarriage. Date of the son's death was not proved but death was established by applying presumption under S. 108, Evidence Act. It was held that as it was not shown that the defendant's possession became unlawful for more then three years before the

7. Suit for title deeds. Where a person is in lawful possession of lands, time for an action to recover title deeds does not run while he is in such possession.[11] Where the title deeds were deposited with the mortgagee and a suit was filed for recovery of title deeds after redemption, time runs from date of refusal to deliver them on demand.[12]

8. Successive conversions. Where there has once been a complete cause of action arising out of a contract or tort, the statute begins to run, and that subsequent circumstances which would, but for the prior wrongful act, have constituted a cause of action, are disregarded.[13] Thus where the defendant holding promissory notes in deposit for the plaintiff, pledged them for his own purpose. On demand by plaintiff, he refused to deliver them. It was held, that detention of notes became wrongful since the refusal to deliver them.[14] Where chattle bailed to a person ceased to be in his possession at the time of demand due to his own

5. AIR 1936 Bom. 322=60 Bom. 848+AIR 1920 All. 353=42 All. 45 (DB)+AIR 1942 Mad. 303.
6. 9 Mad. L. Jour 51 (DB).
7. AIR 1955 Pat. 375 (DB).
8. AIR 1960 Madh Pra 175.
9. ILR (1954) 4 Raj. 1019.
10. AIR 1951 Mad. 704.
11. 120 R.R. 675=29 L J Ex. 198.
12. 15 Mad. 157 (DB).
13. (1871) 19 W.B. (Eng.) 604=6 P.C. 206.
14. 12 Cal. W.N. 1010 (DB).

wrongful act, he cannot set up his own wrongful act in defence in an action of detinue.[15]

9. Successive conversions by more than one person. Where the same property is converted by more than one person, each of these acts of conversion constitute a separate cause of action, where one cause of action is barred, the claim in respect of other causes of action is not affected.[16]

50.	For the hire of animals, vehicles, boats or household furniture.	[17][Three years]	When the hire becomes payable.
51.	For the balance of money advanced in payment of goods to be delivered.	[17][Three years]	When the goods to be delivered.

Synopsis

1. Scope.
2. Commencement of limitation.

1. Scope. A suit for compensation for breach of contract is not covered by this article.[18]

Suit on bond. Where money is advanced under bond for delivery of goods. A suit on bond on non-delivery held was governed by Article 68 and not by this Article.[19]

2. Commencement of limitation. Where no time is fixed for the delivery of goods, the starting point will be the time at which by reason of trade custom or some established usage well understood by both parties, the goods ought to have been delivered or in the absence of any such usage, a reasonable time after the advance of the money, having regard to all the circumstances of the case.[20] In a case where money is advanced in payment of goods to be delivered, the time for delivery of goods, due to one reason or other, can be extended by mutual consent of parties either expressly or impliedly. The course of conduct of dealings between the parties as evidenced by the correspondence or other facts and circumstances can be looked into to find out as to when, in a given set of facts, the goods ought to have been delivered. If it can be gathered from the course of such dealings, that the person who had advanced the money was ready to accept delivery of the goods within a reasonable time after the last delivery, until which time, surely the person who had received the advance was making delivery, then it can be reasonably inferred that the goods ought to have been delivered within the last extended time or within a reasonable time of the last delivery.[1]

---

15. (1858) 5 C. B. (NS) 84 = 116 R.R. 573.
16. AIR 1936 Bom. 322 = 60 Bom. 848 = (1891) 39 W.R. (Eng.) 342 = 1 Q.B. 468.
17. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Three".
18. 1883 Pun. Re. No. 22, p. 64 (DB).
19. 1912 Pun. L. R. No. 6, p. 12.
20. AIR 1915 All. 161 = AIR 1915 Nag. 6 = 11 Nag. L. R. 174.
1. AIR 1964 Pat. 35.

Short delivery of goods. Where goods paid for in full are short delivered, limitation will begin to run from the time when such short delivery is made.[2]

Acknowledgment, extension of time by. An acknowledgment would enlarge the period of limitation.[3]

[4]52. For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	[5][Three years]	The date of the delivery of the goods.

Synopsis

1. Scope.
2. Price.
3. "Goods."
4. Combination of claims.
5. Starting point of limitation.

1. Scope. Where the suit claim is in effect for the balance due after the plaintiff has exercised his right of appropriating the payments made from time to time against deliveries made from time to time in the order of time of the deliveries, accordingly to the right given to the plaintiff to make such appropriation under Ss. 60 and 61 of the Contract Act, it would be governed for the purposes of limitation by Art. 52 of the Limitation Act.[6]

Decree debt, suit for. This Article does not apply to enforce a decree for goods sold. Where a suit was filed to enforce the decree debt of a father against the son for the price of goods sold to the father of a Hindu family, this article did not apply.[7] Where *A* sold goods to *B* who got *C's* name entered in the transaction as the purchaser, *A* got a decree against *C*, *C* sued *B* for the decretal amount, this article would not apply to the case.[8]

Suit for commission by agent. Where *A*, a commission agent of *B* sued *B* for balance due on account, the suit was not governed by this article.[9]

Money held by purchaser in custody. Where the seller instead of taking the price for each sale from the buyer kept the money with him for safe custody, a suit for such money was governed by Article 60 and not this article.[10]

---

2. 14 Cal. 457 (DB).
3. AIR 1920 Lah. 359 = 1 Lah. 357 (DB).
4. For period of limitation for these and certain other suits in the Province of the Punjab, *see* the Punjab Loans Limitation Act, 1904 (Punjab I of 1904), and S. 29 (1) (*b*) of this Act.
5. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
6. AIR 1961 Madras 388 + AIR 1962 Cal. 97 + AIR 1940 Bom. 158 = ILR 1940 Bom. 127 (DB) + AIR 1950 Nag. 228 = ILR 1950 Nag. 464 + ILR (1950) 1 Cal. 578 + AIR 1943 Mad. 13 (No period of credit agreed upon) + AIR 1939 Lah. 307.
7. 27 Mad. 243 (FB).
8. AIR 1933 Lah. 404 (DB).
9. AIR 1941 Cal. 245.
10. AIR 1939 Rang. 42.

2. Price. A suit for the price of goods sold in the absence of any agreement to pay in kind is within this article.[11] But where payment for goods is to be made in kind, this Article does not apply. To a suit for enforcement of contract of sale, Art. 65 or 115 may apply.[12]

3. "Goods." Articles of food are goods within the meaning of this Article.[13] Thus a case of beer or article in tins which do not require immediate consumption are goods.[14] The word "goods" is wide enough to include fruit even before it has been gathered.[15]

Medicines. This Article applies to a suit for recovery of price of medicines supplied.[16]

Newspapers: Suit to recover arrears of subscription to a newspaper is governed by this article.[17]

Electricity. This article applies to a suit for the price of electricity supplied to the defendant.[18]

... of claims. Where there are separate claims combined in one suit, limitation ... separately determined. Thus where a suit consists of two parts, one for price of ... for fees for medical attendance, the former part was governed by this article ... fell under Art. 115.[19] Where a suit was filed for goods supplied and work done by the plaintiff. The price of material and price of work was separately and distinctly mentioned; time for payment was not fixed by contract. It was held that a suit in so far as it relates to price of goods sold is governed by Art. 52 and by Art. 56 in respect of price of work done. Residuary Art. 115 cannot therefore govern the suit.[20] But where the claim for the price of goods supplied and for the price of work done could not be separated neither this article nor Art. 55 applied to the suit in its entirety, and the suit was governed by Art. 115.[1]

Where *A* agrees to purchase from *B* three motor cars for Rs. 14,000 paid advance of Rs. 2,000. The price of each car was not specified. *A* took delivery of one car. *A* neither paid any more money, nor returned the car, *B* sued for balance of money due for the car delivered and for damages. It was held that the claim for the price of the car was governed by this article.[2]

---

11. ('26) 8 Lah. L. Jour 322.
12. AIR 1922 Lah. 271 (DB). (On appeal from AIR 1920 Lah. 200 + AIR 1919 Lah. 108 = 1918 Pun Re No. 41).
13. AIR 1940 Rang. 17 = 1939 Rang L R 626.
14. AIR 1940 Rang. 17 = 1939 Rang L R 626.
15. ('22) 66 Ind. Cas. 120 (Lah).
16. AIR 1931 All. 752 (DB).
17. ('05) 7 Bom. L. R. 190 (DB).
18. AIR 1938 Lah. 338 + AIR 1946 All. 502 = ILR 1946 All. 476 (DB) + AIR 1964 M.P. 101 (DB).
19. AIR 1931 All. 752 (DB).
20. AIR 1961 Patna 485.
1. AIR 1922 Lah. 198 = 2 Lah. 376 (FB).
2. AIR 1931 Lah. 309 (DB).

5. Starting point of limitation. Where goods are sold on credit and entered in seller's account books, Art. 52 will apply if the account is merely open and current without being mutual, and starting point will be from the date of each delivery. But if element of mutuality is present Art. 85 will apply.[3] The fact that the purchaser agreed to pay the balance with interest does not prevent the running of time from the date of the delivery of the goods.[4]

Agreement as to time of payment. Where the agreement between the parties related to the acquisition of the shares of a limited Company. On 4-11-1964 when the agreement was made between the parties all the shares admittedly were not transferred in favour of defendants. The balance due under the agreement was to be paid to the plaintiffs by the defendants on completion of the transfer of all the shares and other formalities mentiond in the agreement. Limitation for a suit for recovery of the balance of sale price would begin from the date when the remaining shares were transferred.[5]

Goods delivered from time to time. In the case of tradesman's accounts and in cases where goods are supplied from time to time, and no period of credit is fixed, time will run in respect of each item from the date of delivery of such item.[6] Where a tradesman has a bill against a party for any amount, in which the items are so connected together that it appears that the dealing is not intended to terminate with one contract, but is to be continuous so that one item, if not paid, and form one continuous demand, the whole together forms but one cause of [illegible] But even in that case the period of limitation runs separately in respect of each [illegible] delivery.[8]

The provision of S. 60, Contract Act, is clear on the point that the debtor in making payments may appropriate payments in what manner he likes. But failing such appropriation by the debtor, the creditor may appropriate them even towards the previous debts which would otherwise be barred by limitation. If the payments are appropriated towards earlier dues, the suit for the balance can be brought within three years from the last supply of goods.[9] In other words, if the date corresponding to the delivery which remains unadjusted, in whole or in part, is beyond three years from the date of the suit, the claim in respect of that amount will remain barred but if the date corresponding to that delivery and the dates of subsequent deliveries which remain unadjusted, fall within the three years period of limitation, the claim for the corresponding amounts will be in time.[10]

---

3. ILR (1950) 1 Cal. 578.
4. AIR 1931 All. 229 (DB).
5. PLD 1982 Kar. 590.
6. AIR 1940 Bom. 158 = ILR 1940 Bom. 127 (DB) + AIR 1957 Ker. 93 = ILR 1957 Ker. 359 + ILR (1950) 1 Cal. 578 + AIR 1921 All. 325 (DB) + AIR 1935 All. 53 (DB) + AIR 1930 Oudh 287 = 6 Luck 7 (DB) + AIR 1925 Pat. 806.
7. AIR 1916 Cal. 580 = 42 Cal. 1043 (DB) + AIR 1940 Bom. 158 = ILR 1940 Bom. 127 (DB) + AIR 1923 Bom. 113 + AIR 1922 Sind 15 = 15 Sind L R 207.
8. AIR 1940 Bom. 158 = ILR (1940) Bom. 127 (DB) + AIR 1945 All. 185 = ILR 1945 All. 200 (DB).
9. ('54) Madh B L J 1954 II C R 636 (AIR 1940 Bom. 158. *Not foll.*) + AIR 1942 All. 502.
10. AIR 1961 Madras 388.

The following views are held regarding the running of time where goods are supplied from time to time and payments also are made without specific appropriation by the buyer to any particular item:

(*a*) Supplier is entitled to credit the amounts to earlier items but not to the entire balance so as to save limitation for each and every item.[11]

(*b*) Payment would save limitation for the entire balance due.[12]

(*c*) Where the buyer intends that it should be appropriated to the entire balance, limitation in respect of entire balance would be saved.[13]

Railway receipt. The date of the delivery of the railway receipt is the date of delivery of the goods for the purposes of the starting point of limitation under this article.[14]

[15]53. For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	[16][Three years]	When the period of credit expires.

1. **Scope.** This Article would apply where a period of credit after supply of goods has been stipulated in the agreement. It is however to be noted that in a simple transaction of sale of goods, the liability to pay full price accruese on the date of the sale and mere promise on part of the vendee to pay such price with interest does not amount to the giving of a period of credit.[17]

Shifting balance. Where balance is shifting art. 53 has no application. Such a case is governed by Art. 85.[18]

54. For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	[19][Three years]	When the period of the proposed bill elapses.

1. **Scope.** For this article to apply to a suit, it must be alleged that the *hundis* were not executed as promised.[20]

---

11. AIR 1935 All. 53 (DB) + AIR 1921 All. 325.
12. AIR 1916 Cal. 580 = 42 Cal. 1043 (DB).
13. AIR 1938 Nag. 266 = ILR 1939 Nag. 137.
14. AIR 1928 Nag. 181.
15. For period of limitation for these and certain other suits in the Province of the Punjab, *see* the Punjab Loans Limitation Act, 1904 (Punjab 1 of 1904), and S. 29 (1) (*b*) of this Act.
16. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
17. AIR 1931 All. 229 (DB).
18. AIR 1954 J&K 49 (DB).
19. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
20. AIR 1936 Lah. 328 (DB).

55.	For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	[1][Three years]	The date of the sale.

1. **Scope.** A suit for possession of a tree standing on defendant's land which the defendant has sold to the plaintiff will be governed by twelve years' limitation.[2]

56.	For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	[3][Three years]	When the work is done.

Synopsis

1. Scope.
2. Suit for price of work done.
3. "Request."
4. Time for payment fixed.
5. Starting point of limitation,

1. Scope. This Article does not apply to a suit for compensation for breach of contract. In that case article 115 applies.[4] Where for setting a tank and ancillary works for water supply to a fertilizer factory under the Central Government, *A's* tender was accepted by the Provincial Government while the work was proceeding, the Central Government increased wages of labourers by resolution published on 12-5-1947. *A* expressed inability, to execute the work. The Superintending Engineer promised to pay A additional sums. A completed those works in 1950 and submitted claim for further and additional amount which had been spent in order to pay the increased wages. On non-payment of such additional compensatory sum the contractor sued the Government. It was held that Arts. 56 and 115 of the Limitation Act would not be applicable to the case Art. 120 was attracted and the period of limitation began from 3-3-1964, when A's right to the additional sum was denied. The suit was not barred by time.[5]

2. Suit for price of work done. Where the cost of the work done is claimed, the relevant Article would obviously be Article 56.[6] A suit by a goldsmith to recover the price of labour for making certain ornaments for the defendant,[7] or a suit for the recovery of certain sum on account of the costs of printing certain

1. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
2. ('94) 19 Bom. 207 (DB) + 1884 Pun Re No. 112, p. 320 (DB).
3. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
4. 1972 SCMR 129.
5. AIR 1964 Patna 225 (DB).
6. PLD 1977 Kar. 297 = PLJ 1977 Kar. 299.
7. AIR 1938 Nag. 286 = ILR 1938 Nag. 592.

receipts, etc., for the defendant,[8] or a suit to recover a sum of money for having carried certain casks of beer under a contract with the defendant,[9] or a suit by a contractor against a District Board for the price of the work done, namely to make certain constructions, falls under this article.[10] Similarly a suit by a zamindar to recover sums expended by him at the defendants' request for the repair of a tank for the irrigation of lands held by them in common with him where no time was absolutely fixed for the repayment to him of those sums, was governed by this article.[11]

When the suit is for the recovery of a bill of a mechanic for repairs done to a truck; it was held that the mechanic was not a manual worker, therefore limitation for a suit by him is governed by Art. 56 and not by Art. 7[12]

Advocate's fees. Suit by pleader for recovery of his fees is governed by this article.[13]

Medical fees. A suit for the recovery of fees due for medical attendance is not a suit for the price of work done and is not governed by this Article.[14]

3. "Request." This Article applies where work was done at the request of the defendant. The request by the defendant to do the work may be implied from the circumstances of the case.[15]

Contract work. A suit brought by the plaintiff for recovery of an amount due on the execution of contract work of the defendant is governed by Art. 56 and not by Art. 115 of the Limitation Act. Article 56 mentions that for the price of work

for payment. There is no material difference between the words used in Art. 56, *i.e.*, "at the request of the defendant" and work done under the contract entered into between the parties. Merely because the parties have entered into an agreement or a contract it can hardly be disputed that the work, in such cases would not be deemed to have been carried out by the plaintiff at the request of the defendant. When the tenders are called for it is an offer which the defendant has made and a counter offer is made in the form of submission of tenders by the contractor. Once that tender is accepted, it is a contract which is entered into between the parties. But merely because the contract is reduced to writing or the work is executed on the basis of such contract, it cannot be said that Art. 56 does not apply.[16]

4. Time for payment fixed. Where time for payment has been fixed by the parties, this Article does not apply. Thus a suit by a village carpenter for wages

8. ('03) 30 Cal. 687 (DB).
9. 1887 Pun Re No. 60, p. 119.
10. AIR 1928 Oudh 297 = 3 Luck. 584 (DB).
11. ('86) 9 Mad. 334 (DB).
12. PLD 1965 Dacca 364.
13. AIR 1942 Cal. 444 (DB).
14. AIR 1931 All. 752 (DB).
15. ('86) 9 Mad. 334 (DB).
16. AIR 1965 Andhra Pradesh 186 + AIR 1928 Oudh 297 + AIR 1948 Oudh 49 + AIR 1965 All. 590 (FB) + AIR 1934 All. 436 + 4 Ind. Cas. 902 (Lah.) + 95 Punj. Re. 1908, p. 440 + AIR 1961 Pat. 485. (*But see* AIR 1964 Pat. 326 (DB)--Work done under contract after tenders are invited is done at the request of the contractor--Article 56 is not applicable).

where payment for his work was definitely to be made at the end of every agricultural year was governed by this article.[17]

5. Starting point of limitation. Where work has continued from some time, limitation begins on the day when the work is completed. Thus where work of repair of a tank continued for three years, a suit for price of such repair would be within limitation of it was filed within three years from the date when the work was fully completed.[18] The starting point of limitation is the date of completion of work and not the date when completion certificates is given.[19] Starting point of limitation will not be postponed merely because the contract is for a certain period. Thus where a suit is brought to recover money for carrying of casks of beer under contract with the defendant and there was a term in that contract that for one year the defendant would not transfer the carrying work to any lower tenderer. It was held, that this term did not imply that payment made for work done was not to be made till the close of the year.[20]

57.	For money payable for money lent.	[1][Three years]	When the loan is made.

Synopsis

1. Scope.
2. Suit must be based on the loan.
3. Loan on pledge or mortgage.
4. Agreement as to date of payment of loan.
5. "Money".
6. Suit on money dealings.
7. Commencement of limitation

1. Scope. [2]This is a general article applicable for the recovery of money payable for money lent.[3] It applies to loans, where there is no express agreement made as to its repayment.[4] This is subject to Ss. 19 and 25(3), Contract Act and S. 19, Limitation Act. Art. 64-A which applies only to suit under O. 37, CPC, does not apply to such suit.[5]

2. Suit must be based on the loan. This Article applies only where the suit is based on money lent, and not for recovery of money otherwise due to the plaintiff. Thus where *A* advanced money to *B* under a registered bond on behalf of himself and his minor daughter *C*, for meeting litigation expenses in which *C* was interested. It was held that a suit against *C* was one for money payable for money lent within the meaning of this Article.[6] But it does not apply to a suit against a surety who on the date of the loan to the principle debtor held himself responsible

17. AIR 1934 Nag. 260.
18. ('86) 9 Mad. 334 (DB).
19. PLD 1975 Kar. 1096 (DB).
20. 1887 Pun. Re. No. 60, p. 11.

1. For period of limitation for these and certain other suits in the Province of the Punjab, *see* the Punjab Loans Limitation Act, 1904 (Punjab 1 of 1904), and S. 29 (1) (*b*) of this Act.
2. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
3. AIR 1938 P C 66 = II R 1938 All. 326 = 32 Sind L. R. 388 = 65 Ind App. 132.
4. AIR 1920 Low Bur 74 = 10 Low Bur Rul 161 (DB).
5. NLR 1989 U C 554.
6. ('06) 10 Oudh Cas 38 (DB).

for the same,[7] or to a suit by a principle against his agent for money collected and retained by the agent.[8]

3. Loan on pledge or mortgage. A suit to recover personally for the debtor the amount of the loan advanced, is governed by this article,[9] notwithstanding the fact that the loan may be secured by movable or immovable property.[10]

Pledge--loan on. A suit to enforce a pledge is not governed by this article but by Article 120.[11] But the Article applies to a suit to recover personally from the debtor the balance of the amount due after crediting the proceeds of the sale of the property pledged.[12] Therefore the crucial date for determining the validity or enforcibility of the decree is the date on which it was made.[13]

Mortgage, loan on. Where loan is advanced on an unregistered usufructury mortgage and subsequently the plaintiff was forcibly dispossessed, a suit by the plaintiff for recovery of possession does not lie because the unregistered mortgage bond is only a simple money bond. In that case Article 57 would apply to a suit to recover the amount.[14]

4. Agreement as to date of payment of loan. Where a loan is advanced on agreement that it would be repayable on a future date, a suit for recovery thereof is not governed by this article.[15]

5. "Money." The Article applies only to a case when suit is for money, payable for money lent, and for that purpose money may be paid by means of a cheque.[16] But where either something other than money was lent or something other than money was sought to be recovered, this Article does not apply. Thus the Article has no application to a suit in respect of a loan of grain,[17] or to a suit for moneys due on a transaction between the parties in which each side supplied the other with goods,[18] or to a suit in respect of a loan of Government securities.[19]

6. Suit on money dealings. It is Art. 85 and not Art. 64 that applies to the case of balance due on a mutual, open and current account, where there have been mutual demands between the parties.[20] Where there was a running account of the defendants with the plaintiffs and various sums were being received by the

---

7. AIR 1931 Lah. 691 = 13 Lah. 240 (DB).
8. ('09) 31 All. 429 (DB).
9. ('95) 17 All. 284 (DB) + AIR 1935 Bom. 213 + ('95) 22 Cal. 21 (DB) + 1881 Pun Re No. 116, p. 269 (DB) + ('04) 27 Mad. 528 (FB) + AIR 1936 Pesh. 43 (DB).
10. AIR 1960 Punjab 111 = 24 All. 251 (DB).
11. 17 All. 284 (DB) + AIR 1918 All. 344 = 40 All. 512 (DB) + AIR 1935 Bom. 213 + ('95) 22 Cal. 21 (DB) + ('81) Pun Re No. 116, p. 269 (DB) + ('04) 27 Mad 528 (FB).
12. AIR 1964 Mad. 77 + ('02) 24 All. 251 (DB) + ('06) 30 Bom. 218 (DB) + AIR 1927 Nag. 346.
13. AIR 1964 Madhya Pradesh 78 (DB) + ILR 24 All. 251 (DB) + ILR 17 All. 284 + ILR 20 Bom. 216.
14. AIR 1964 Orissa 35.
15. ('84) 10 Cal. 1033 (DB) + ('92) 15 Mad. 380 (DB) + AIR 1920 Low Bur 74 = 10 Low Bur Rul 161 (DB).
16. AIR 1938 P.C. 66 = 65 Ind App. 132 = ILR 1938 All. 326 = 32 Sind L. R. 388.
17. AIR 1917 Lah. 166.
18. AIR 1922 Lah. 316 (DB)
19. ('03) 7 Cal. W.N. 476.
20. AIR 1959 Assam 162 (DB).

defendants or were being paid to the plaintiffs, without settlement of the accounts. It cannot, be said that each item related to a separate and distinct transaction which became time-barred after three years.[1] Thus where a suit is not based on a pronote but on a mutual and current account, this Article does not apply, only Article 85 governs the suit.[2] Similarly where *A* borrowed money from time to time from *B*, and made payments towards it from time to time. *B* sued *A* for the balance, the account not being mutual, open and current, this article was not applicable.[3]

Bank loan. A suit by a Bank for money lent by it is governed by this Article, and a suit for recovery of such money filed beyond three years of the date of loan was barred by limitation.[4] Where a customer of a bank draws cheques on it knowing that the funds at his credit are insufficient to meet it, but expecting the bank nevertheless to honour them, he impliedly applies for an overdraft or a loan. A suit for the recovery of the amounts due by the customer would be governed by this article.[5]

7. Commencement of limitation. Article 57 prescribes the period of limitation as three years for money payable for money lent and the point of time from which period begins to run is when the loan is made and each occasion when any part payment is made and other conditions of section 20 of the Limitation Act are satisfied the period is extended for another three years.[6] Where loans have been taken at different dates each item of the loan must be considered separately and time will run in respect of that item from the date thereof.[7] Where a customer of a bank draws cheques on it knowing that the funds at his credit are insufficient to meet it, but expecting the bank nevertheless to honour them, he impliedly applies for an overdraft or a loan. A suit for the recovery of the amounts due from the customer would be governed by this article.[8]

58.	Like suit when the lender has given a cheque for the money.	[Three years][9]	When the cheque is paid.

Synopsis

1. Scope
2. Commencement of limitation.

1. Scope. This article does not govern a suit in which the lender transfers to the borrower a cheque which had been drawn by another person and endorsed in his favour by the payee.[10]

1. PLD 1975 Kar. 661 = PLJ 1974 Kar. 395.
2. PLD 1967 Dacca 35 = 19 DLR 200 = PLR 1966 Dacca 849 (DB).
3. AIR 1922 Lah. 188 (DB) + ('07) 6 Cal. L Jour 158 (DB) + 1893 All. W.N. 34 (DB) + AIR 1934 All. 126 + AIR 1937 Rang. 340 = 1937 Rang. LR 254 + AIR 1942 Pat. 201 (DB).
4. NLR 1989 UC 146.
5. AIR 1948 Pat. 18 = 26 Pat. 231 (DB) + AIR 1960 Tripura 12.
6. 1981 CLC 299 = NLR 1981 UC 148.
7. AIR 1935 Bom. 213 + AIR 1955 Vindh-Pra. 24 + ('71) 8 Bom. H.C.R. (A.C.) 6 (DB).
8. AIR 1960 Tripura 12 + AIR 1948 Pat. 18 = 26 Pat. 231 (DB).
9. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Date".
10. AIR 1938 P.C. 66 = 11 R 1938 All. 326 = 32 Sind L. R 388 = 65 Ind App. 132.

2. Commencement of limitation. Limitation begins to run when the cheque is paid. A cheque is paid when it is cashed by the lender's bankers.[11] Therefore the period does not begin to run against the lender when the cheque received by the borrower is given by him to his own bank, and the amount is credited to him by the bank.[12]

[13]59.	For money lent under an agreement that it shall be payable on demand.	[14][Three years]	When the loan is made.

Synopsis

1. "For money lent." 2. "Payable on demand."
3. Overdraft account.

1. "For money lent." This Article applies where the suit is for money lent. In other words existence of a loan is necessary for the application of this Article. The article does not govern a suit in which the lender transfers to the borrower a cheque which had been drawn by another person and endorsed in his favour by the payee.[15] Where *A* and *B* were joint mortgagees, *A* sued on the mortgage making *B* a defendant and incurred expenses for the suit. *A* subsequently filed a suit against *B* for contribution for costs. It was held, that this article did not apply as the suit was not one for money lent which was agreed to be paid on demand.[16] Even where money has been lent by the plaintiff to the defendant, a suit which is not for the return of the money lent but is based on some other dispute would not fall under this Article. Thus where *A* deposited money with *B* for interest, *A* received back the principal sum and interest at a lower rate than agreed upon; to a suit brought by *B* for difference in interest, Article 63 and not this Article, applied.[17]

Loan payable with interest. A stipulation or compensation in the shape of interest makes no difference to the applicability of the article.[18]

2. "Payable on demand." The words "on demand" in this article have been used in the technical sense in which they are used in English law with reference to a promise to pay a debt.[19] Where a man promises to pay a sum of money, etc., on demand, the money becomes payable at once, and no demand is necessary before suing him for it.[20] Thus where *A* lends money to *B*, *B* is bound from the moment

11. AIR 1938 P.C. 66 = 65 Ind App. 132 = 32 Sind L R 388 = ILR 1938 All. 326.
12. AIR 1938 P.C. 66 = ILR 1938 All. 326 = 32 Sind L R 388 = 65 Ind App. 132.
13. For period of limitation for these and certain other suits in the Province of the Punjab, *see* the Punjab Loans Limitation Act, 1904 (Punjab 1 of 1904) and S. 29 (1) (*b*) of this Act.
14. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Date".
15. AIR 1938 P.C. 66 = ILR 1936 All. 326 = 32 Sind L R 388 = 65 Ind App. 132.
16. AIR 1923 Mad. 64 (DB).
17. 5 All. 328 (DB).
18. (1837) 46 R.R. 646 = 2 M & W 461.
19. AIR 1916 Mad. 486 + AIR 1917 Pat. 533 = 2 Pat. L. Jour 451 (DB) + AIR 1920 Low Bur 74 = 1 Low Bur Rul 161 (DB).
20. 1981 CLC 89 = PLJ 1981 Kar. 14 + AIR 1964 Cal. 358 + 4 Cal. 283 (DB) + (1837) 46 RR 646

of the loan to repay it to *A*.[1] If the practice of a particular banker is to treat a time-expired deposit as an ordinary debt falling under Art. 59 one would reasonably expect him to find out the creditor depositor and repay the amount. He would at least issue a notice to the depositor informing him that the period of the deposit has expired and that money is due to him.[2]

Special agreement as to payment only on demand. The parties may stipulate that the amount shall be payable only on demand being made, in which cases time will not run until a demand is made.[3]

Loans made at different times. Where money is lent from time to time and no date for repayment is fixed, limitation runs, as regards such amount of loan, from the respective dates of the advances, and thus advances are recoverable which were made within three years immediately preceding institution of the suit.[4]

Collateral promise to pay. Where a promise to pay is made which is a collateral in nature, *i.e.*, a promise is made in consideration of some collateral thing being done on demand, then the demand must be made before payment can be enforced and accordingly the statute of limitation will run only from actual demand. In other words, when there is no complete cause of action, without a prior demand, as where money lent is repayable by a guarantor in terms of the contract on and after an actual demand is made on him, the statute will run only from the date when the demand is made and accordingly limitation in such a case would run under Article 115 from the date fixed for repayment.[5]

3. **Overdraft account.** An overdraft account is purely a loan account and therefore a suit for recovery is governed by Art. 59 of the Limitation Act. Limitation for recovering the same runs from the date of each loan and as the last debit entry in the loan account was on 30-1-1956, the plaintiff's suit filed on 20-5-1960 was barred.[6]

60.	For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.	[Three years][7]	When the demand is made.

1. (1844) 67 RR 671 = 31 M & W 452 + (1837) 46 RR 646 = 2 M & W 461 + (1921) 37 TLR 534 = 90 L J K B 973.
2. AIR 1959 J&K 85 (DB).
3. (1837) 46 RR 646 = 2 M & W 461 + 7 Beng. L.R. 489 (DB) + (1921) 37 TLR 534 = 90 L J K B 973.
4. PLJ 1981 Kar. 14 = 1981 CLC 89.
5. PLJ 1981 Kar. 14 = 1981 CLC 89.
6. AIR 1964 Cal. 358.
7. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

Synopsis

1. Deposit and loan--distinction.
2. Money of customer with banker.
3. Deposit payable with interest.
4. Onus of proof.
5. Agreement to pay on demand.
6. Demand.
7. Suit without previous demand.
8. Starting point of limitation.

1. Deposit and loan--distinction. The terms "loans" and "deposits" are not mutually exclusive terms. There are a number of common features between the two. In a sense a deposit is also a loan with this difference that it is a loan with something more. Both are debts repayable. But, the question as to when the repayment is to be made furnishes the real point of distinction between the two concepts. A loan is repayable the minute it is incurred. But this is not so with a deposit. Either the repayment will depend upon the maturity date fixed therefor or the terms of the agreement relating to the demand, on making of which the deposit will become repayable. In other words unlike a loan there is no immediate obligation to repay in the case of a deposit. That is the essence of the distinction between a loan and a deposit.[8] Thus where amounts were paid by wife to her husband to be used by him as capital in his business and it appeared from facts and evidence that the understanding between the parties was not that the husband would be under an immediate obligation, the moment the sums were paid to him to repay them. It was held that the amounts were deposits and not loans.[9]

A deposit for safe custody or for a special purpose does not involve the relation of debtor and creditor,[10] and it does not necessarily involve the creation of a trust express or implied.[11] Where an express trust is created by the deposit, the matter is governed by S. 10.[12]

Test of deposit. The test to be applied in order to see if the money given is a loan or a deposit is as to whether the depositee is obliged to seek out the depositor or not; if the person taking the money has to seek out the depositor then it is a case of loan.[13] It is to be noted that the question in a given case whether a debt is a deposit or a loan will be one of fact which will have to be decided on the facts and circumstances of each case. The use of the term "loan" or "deposit" may not in itself be conclusive though, of course, it is a circumstance which would be

---

8. AIR 1965 Mad. 427 (DB) + AIR 1936 P.C. 171 = 17 Lah. 557 = 63 Ind. App. 279 + AIR 1940 P.C. 142 = ILR 1940 Kar. (P.C.) 277. (Intention of parties that money should be kept till asked for--Transaction a deposit) + 1958-2 Andh W R 621 (DB) + AIR 1957 Madh B. 97 (DB) + AIR 1956 All. 63 = ILR (1956) 1 All. 156 (DB). (The crucial test is whether it was intended that the amount should remain with the payee indefinitely or not) + AIR 1948 Nag. 377 = ILR 1948 Nag. 340 (DB) + AIR 1944 Nag. 101 = ILR 1944 Nag. 462. (*P* handing over money to *D*--*P* could take as much money required from *D* from time to time--No agreement for return of whole amount within certain period--*Held* it was deposit) + (1893) 42 W R (Eng.) 25 = (1893) 3 Ch. 154. (Intention of parties decides whether deposit or loan).
9. AIR 1965 Mad. 427 (DB).
10. AIR 1921 Cal. 644 (DB). (Deposit for safe custody) + AIR 1919 Lah. 322 = 1919 Pun. Re. No. 4 (Dr.) + AIR 1919 All. 102 = 41 All. 643 (DB). (Deposit for specific purpose) + 1886 Bom. P. J. 239 (DB). (Do.).
11. AIR 1936 P.C. 171 = 17 Lah. 557 = 63 Ind. App. 279 + AIR 1947 Bom. 255 = ILR 1947 Bom. 162 (DB).
12. 15 C.P.L.R. 147 = 32 Bom. 394 (DB).
13. AIR 1953 Madh B. 113 (DB).

taken into account. The cumulative effect of the evidence which bears on the character of the debt as a loan or a deposit should be kept in view.[14] No doubt ordinarily if at the time of making the payment the parties use the word "Amanat" or "Jama" prima facie. The intention is that the payment was made by way of a deposit.[15] But the substance of the transaction must be looked to in every case,[16] and if in substance a transaction is a "deposit" it must be treated as such even though named otherwise by the parties.[17]

2. Money of customer with banker. A suit for the recovery of a deposit with a banker which is not for a fixed term, is governed by this Article.[18] Where money has been deposited with a banker the death of the banker cannot alter the nature of the liability of his sons to return the deposit.[19]

The article is not restricted to claims against bankers.[20]

The word 'banker' in this article does not necessarily mean a 'professional' banker but is wide enough to include a trader who acts as a banker in relation to a particular customer or customers.[1] A suit to recover moneys in the hands of a person placing himself in the position of a banker to another will be regarded as a suit for the 'money of a customer in the hands of his banker" within the meaning of this article.[2]

3. Deposit payable with interest. The mere undertaking to pay interest cannot convert a transaction which is a deposit into a transaction of loan.[3] When the claim in respect of a deposit is a single claim for principal and interest the period of limitation for both will be that provided by this Article.[4] But where suit is not for refund of deposit with interest but on some ancillary dispute the position is different. Thus where *A* deposited with *B* at a certain rate of interest. *A* got back the principle with a lower rate of interest than the agreed one, he sued *B* for the difference. It was held that Article 63 and not this article applied.[5]

4. Onus of proof. The burden of proof to show that the transactions were deposits and not loans is on the plaintiff.[6] Therefore a person relying upon Art. 60 must prove that something took place between the parties at the time when the money passed which would make the handing over of the money, a deposit and

14. AIR 1965 Mad. 427 (DB) + AIR 1956 S.C. 12.
15. AIR 1956 All. 63 = ILR (1956) 1 All. 156 (DB).
16. AIR 1951 Nag. 255 = ILR 1950 Nag. 562 (DB).
17. 16 Cal. 25 (DB) + 18 Mad. 390 (DB) + AIR 1936 Pat. 539 = 15 Pat. 709 (DB).
18. AIR 1938 Rang. 335 = 1938 Rang. L.R. 468 (DB) + AIR 1915 All. 78 = 37 All. 292 (DB) + AIR 1919 All. 351 (DB) + AIR 1934 Lah. 42 = 15 Lah. 242 (DB) + AIR 1936 Lah. 718 = 17 Lah. 481 (DB) + AIR 1936 Pat. 539 = 15 Pat. 709 (DB) + 1936 Mad. W. N. 948 + AIR 1938 Mad. 236 (DB) + AIR 1917 Pat. 273 (DB).
19. AIR 1940 Pat. 129 (DB).
20. AIR 1921 Cal. 644 (DB).
1. AIR 1948 Nag. 377 = ILR 1948 Nag. 340 (DB).
2. AIR 1926 Bom. 168 (DB) + AIR 1948 Nag. 377 = ILR 1948 Nag. 340 (DB) + AIR 1917 Mad. 916 = 39 Mad. 1081 + AIR 1936 Pat. 589 = 15 Pat. 709 (DB) + 1913 Mad. W. N. 218 (DB) + AIR 1927 Bom. 433.
3. AIR 1939 All. 378 + (1958) 2 Andh W.R. 621.
4. AIR 1940 Pat. 129 (DB).
5. 3 All 328 (DB).
6. Madh-B L.J. 1955 II.C.R. 444.

not a loan.[7] Thus where *A* hand over money to *B* on the understanding that it is not a gift, it would be regarded in law as a loan, and if the plaintiff wants to make out that it is a deposit, the onus is on him to show that it is a deposit.[8]

Banker and customer. In case of a transaction between customer and banker. Where the question is whether a transaction is a deposit or a loan the presumption is that it was a deposit.[9]

5. Agreement to pay on demand. For applicability of this article, there must be a deposit which is, under agreement, payable on demand.[10] The agreement to pay on demand need not be express but may be implied,[11] from the circumstances of each particular case.[12]

Express agreement. If an express agreement that the deposit will be payable on demand is recorded in the document the transaction of deposit cannot be thereby converted into a transaction of loan and the words " we shall pay the said sum cannot convert the document into a promissory note.[13]

Agreement to pay on demand after fixed period. Where there is contract between the parties that after a fixed period the deposit is to be regarded as payable on demand a suit for its recovery after the fixed period was governed by Art. 60.[14] Thus where a receipt evidenced a deposit of certain amount for a period of 12 months from 1st August, 1930 to 31st July, 1940, and contained a term that interest thereon would cease on the due date. It was held that it was sufficient to establish that the amount due at the foot of the deposit receipt became due and payable on the due date mentioned therein and that there was no question of the amount being payable at any time thereafter, on demand being made in that behalf by the creditor. The limitation for its recovery therefore started from the due date namely 21st July, 1940, and not from 17th May, 1940, the date of the alleged demand.[15]

Instances of deposits not payable on demand. The following are cases where it was held that money was not payable on demand:

(*a*) Deposit returnable on the happening of a future contingent event.[16]

(*b*) Money payable at specified time.[17]

---

7 AIR 1957 Trav-Co. 237.

8 AIR 1924 Bom. 28 (DB) + AIR 1957 Trav-Co. 237 + 1955 Raj. L.W. 542.

9 AIR 1935 Mad. 734 (DB) + AIR 1917 Mad. 384 (DB).

10 AIR 1928 Mad. 509 = 51 Mad. 549 (DB) + AIR 1951 Nag. 255 = ILR 1950 Nag. 562 (DB).

11 AIR 1939 Rang. 42 (DB) + AIR 1956 S.C. 12 + AIR 1959 J&K 85 (DB) + AIR 1934 Lah. 42 = 15 Lah. 242 (DB) + AIR 1937 Lah. 81 (DB) + 1913 Mad W.N. 218 (DB).

12 AIR 1939 Rang. 42 (DB) + AIR 1959 J&K 85 (DB) + 1958-2 Andh W.R. 621 (DB) + AIR 1936 Lah. 587.

13 AIR 1956 S.C. 12.

14 AIR 1919 Mad. 825 (DB) + AIR 1936 Rang. 338 (DB).

15 AIR 1958 S.C. 437 = 1958 S.C.R. 1331.

16 AIR 1914 Mad. 4 (DB) + AIR 1962 Ori. 14 (Money deposited as security for due performance of contract).

17 AIR 1931 All. 50 (DB) (This article does not apply, cause of action arises at the end of specified time) + AIR 1951 Nag. 255 = ILR 1950 Nag. 562 (DB) + 20 Bom. 8 (DB). *See also* AIR 1959 J&K 85 (DB). *See* however AIR 1939 Pat. 261.

(*c*) Deposit as earnest-money for the purchase of certain property.[18]

(*d*) Where money was advanced by one to another, for joint purchase of property.[19]

(*e*) Payment of money by plaintiff in consideration for an implied promise by defendant to supply goods.[20]

6. Demand. The demand must be an unqualified one for the whole sum due.[1] A request for money on account is not a demand within the meaning of this article.[2] Where a cheque was dishonoured by bank for the reason, "drawer's signature differs". It did not amount to refusal to pay on demand by bank and hence limitation for filing suit does not arise from date of such endorsement.[3] Where a forged cheque was cashed, an intimation sent by customer about encashment of forged cheque is not notice of demand. Limitation for the suit would start only from a legal notice of demand.[4]

Demand for payment according to convenience of depositee cannot be called unqualified demand which alone would cause time to run for the whole amount due.[5] Thus where a banker is adjudicated an insolvent, tender of proof of debt and claim made in insolvency by the depositor is not a "demand" within the meaning of this article.[6]

Who may make demand. The mere request by a person who was not competent to give a valid discharge of the debt would not be such a demand as would start limitation against the plaintiff under this article.[7] Therefore if the deposit is payable to several persons, the demand must be made by them all or by one who is capable of giving a discharge on behalf of all of them.[8]

To whom demand may be made. A demand must be made to the depository. In the case of a bank the demand should ordinarily be made at the branch where the account is kept.[9] A claim to a deposit nor addressed to the depository but put forward in a written statement in a suit to which both the claimant and the depository were co-defendants is not a "demand" of the nature contemplated by this article.[10]

---

18. AIR 1929 Cal. 216 = 56 Cal. 455 (DB).
19. AIR 1916 Lah. 432 (DB).
20. AIR 1964 M.P. 153.
1. AIR 1939 Sind 173 = ILR 1939 Kar. 602 (DB) + AIR 1957 Mad. 106 (DB) + AIR 1954 Nag. 38 = ILR 1953 Nag. 364 (DB). (AIR 1932 Mad. 685 and AIR 1938 Rang. 335, *Rel on*) + AIR 1938 Rang. 335 = 1938 Rang. L. R. 468 (DB) + AIR 1932 Mad. 685 (DB). (Request to pay whole amount if it suited the convenience or such amount as can be spared is no demand.)
2. AIR 1921 Cal. 644 (DB).
3. 1983 CLC 266 (Kar).
4. PLD 1975 Kar. 252 = PLJ 1975 Kar. 43b.
5. AIR 1953 Tripura 5.
6. AIR 1938 Rang. 335 = 1938 Rang. L. P. 468 (DB).
7. AIR 1963 J&K 29 (DB).
8. AIR 1939 Sind 173 = ILR 1939 Kar. 602 (DB).
9. AIR 1957 Mad. 106 (DB).
10. AIR 1939 Sind 173 = ILR 1939 Kar. 602 (DB).

7. **Suit without previous demand.** A demand previous to the suit is not necessary for the maintainability of the suit and the suit itself may be treated as the demand.[11]

In certain cases a demand may become superfluous. Thus repudiation of customer's right to be paid any sum by the bank is waiver of any demand and a suit without making a formal demand is maintainable.[12]

8. **Starting point of limitation.** The making of the demand is entirely dependent upon the volition of the plaintiff and the starting point of limitation may be indefinitely postponed by him by not making a demand.[13] Thus where *A* migrated to Pakistan between June to August, 1949, his right to recover the amount from *B* would vest in the Custodian between June to August, 1949 if it was alive under the Law of Limitation. Where there is no evidence that demand was made by *A* for return of money before *A* migrated to Pakistan, assuming Art. 60 of the Limitation Act applied, the period of limitation did not begin to run where demand is made for the first time on 10-1-1952, time would run from that date.[14]

[15]61. For money payable to the plaintiff for money paid for the defendant.	[16][Three years]	When the money is paid.

Synopsis

1. Scope.
2. Payment by plaintiff for defendant.
3. Plaintiff and defendant jointly liable.
4. Plaintiff undertaking to meet defendant's liability.
5. Suit by receiver to recover money spent for estate.
6. Suit by agent against principal.
7. Claim for money charged on property.
8. Starting point of limitation.

1. Scope. This article or any other article does not lay down the law as to the circumstances under which the plaintiff can recover money paid for the defendant from him, which is a question of substantive law.[17]

Applicability. This article is a general article applicable to all suits for recovery of money paid for the defendant whereas Arts. 70, 81, 83, 99, 100 and 107 are particular articles specifying various situations in which money is paid by the

11. AIR 1933 Pat. 701+AIR 1956 All. 63=ILR (1956) 1 All. 156 (DB)+AIR 1926 Mad. 66 (DB).
12. AIR 1940 Pat. 129 (DB). (Waiver of demand--No question of limitation will arise though no demand is made before the institution of suit.)+(1921) 3 K.B. 110=90 L.J.K.B. 973.
13. AIR 1926 Mad. 66 (DB)+AIR 1933 Pat. 701+AIR 1943 Nag. 9=ILR 1943 Nag. 253. (Suit for surrender value of Insurance Policy).
14. AIR 1964 S.C. 1256.
15. For period of limitation for these and certain other suits in the Province of the Punjab, *See* the Punjab Loans Limitation Act, 1904 (Punjab 1 of 1904), and S. 29 (1) (*b*) of this Act.
16. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
17. ('01) 13 Oudh Cas. 23.

plaintiff for the defendant. Where any of the said particular articles apply this general article will not apply.[18]

2. Payment by plaintiff for defendant. In this Article 'money paid' means actual and not notional payment.[19] It may be a payment in money or transfer of property which is equivalent to a payment of money.[20]

Payment must be by plaintiff. For the application of this section it is necessary that the money must have been paid by the plaintiff and not by a third person against the will of the plaintiff.[1] Where the plaintiff has not made any payment, and he sues for recovery of money spent by the defendant from trust funds, this article would not apply. Thus where *B* a trustee of a temple, took money for litigation. *A* succeeded *B* as trustee and sued *B* to recover that amount; this article did not apply.[2]

Suit for contribution. Where payment was made by the plaintiff in pursuance of a decree, it was held that the suit of the plaintiff for contribution against the defendant was not governed by this article.[3] Where *A* obtained a decree for contribution against *B* and *C*. *A* failed to recover from *C* his share and sued *B* under S. 43, Contract Act. It was held that this article did not apply.[4]

Deposit into Court. A deposit of money into Court for the purpose of being paid to a particular person amounts to a payment within the meaning of this article only when such deposit is accepted by the Court.[5]

Payment must have been made for the defendant. This article applies only where the plaintiff has made a payment for the defendant. Where *A*, a puisne mortgagee paid off a prior mortgage and claimed the amount from mortgagor *B*, the suit was governed by this article.[6] Where under a compromise decree defendants were to pay certain encumbrances on properties of plaintiff but on their failure to do so the plaintiff paid off and sued them for recovery of the amount; the suit was governed by this article.[7] Where a vendee pays rents and charges of property sold to the vendee for reimbursement; this article would

18. ('03) 26 Mad. 686 (FB) + AIR 1960 Mys. 238. (Suit against principal and agent for recovery of money paid to agent for principal--Denial by principal--Suit decreed against principal--Suit by principal against agent for money paid for him as decretal amount--Article applicable is Art. 61) + AIR 1954 Trav-Co. 499 = ILR 1954 Trav-Co. 720 (DB). (Suit for contribution falling under any of special articles comes under Art. 61) + AIR 1921 Lah. 335 (DB) + ('01) 13 Oudh Cas. 23 + AIR 1927 Lah. 231.
19. AIR 1946 All. 142 = ILR 1945 All. 871 (DB) + ('79) 5 Cal. 321 (DB) (Execution of new bond for old bond is not payment) + 3 Oudh W.N. 968 (DB).
20. (1829) 10 B & C 329 = 34 R R 432 + 1904 Pun Re No. 31, p. 109 (DB).
1. AIR 1914 Cal. 160 (DB).
2. AIR 1934 Mad. 542.
3. AIR 1956 Nag. 250 = ILR 1956 Nag. 82 (DB).
4. 1900 Pun L. R. No. 35, p. 149 (DB).
5. AIR 1917 Cal. 203 + AIR 1932 Oudh 222 = 8 Luck. 79 (DB) + AIR 1918 Oudh. 303.
6. AIR 1922 All. 153 = 44 All. 67 (DB) + 1955 Mad. W.N. 106 + AIR 1929 All. 943 + 52 All. 139 (DB) + AIR 1922 Pat. 499 = 1 Pat. 780.
7. ('10) 7 All L Jour 585 (DB) + AIR 1935 Lah. 307 (DB).

apply.[7] Where there is a claim to recover money paid to discharge a mortgage binding on the defendant; Article 61 would apply.[8]

The question whether a payment by *A* to *X* was made for *B* is one of fact which will depend upon the circumstances of each case.[9] The mere fact that a payment has been made by the plaintiff which proves to be to the benefit of the defendant would not bring it under this Article. The payment must have been consciously made for the defendant. Thus where *A* was in possession of property adjudged to him by Court. *A* paid off a charge on the property. In appeal *B* was decided to be the owner of the property and not *A*. It was held that *A* did not make the payment for the property.[10] Where *A* alleged himself to be lawful heir of *C* and paid off his debts. Subsequently *B* was found to be the heir of *C* the payment of debt by *A* was not for *B* and this article did not apply.[11] Where a tenant made repairs under the permission of the Rent Controller. A suit was brought by him against his landlord to recover costs. It was not a suit for money paid for defendant and Art. 61 did not apply to it.[12] *A*, *B* and *C* were partners in the firm which suffered loss. *A* was liable for his share of loss. *D*, a sub-partner of *A* was liable only to *A* for the loss sustained by *A*. Therefore a suit by *A* against *D* for contribution in the amount paid towards loss in the main partnership did not fall under this article.[13] Where *A* and *B* jointly purchased property in execution and *A* purchased stamps for the sale certificate. The money paid for the stamp was not paid for *B* and this article did not apply to a suit for contribution.[14]

Payment made for minor, etc. Where a payment is made by *A* to *X* for necessaries for *B* who is incapable of contracting; a suit by *A* against *B* for the recovery of this amount was governed by this article.[15]

Payment for defendant where defendant not liable. The plaintiff can be said to have made a payment for the defendant only where the defendant's liability was met by a payment and not where the defendant was not liable to make payment. Thus where on the date of payment of the debt by one co-promisor in excess of his share the creditor's remedy against the other co-promisor or co-promisors was lost, the excess payment cannot be said to have been made for the other co-promisor or co-promisors. And in such a case when the creditor has no enforceable claim against other co-debtors when one co-debtor paid the debt the suit for contribution by one against the other of such co-debtors does not fall under Art. 61, but falls under the residuary Art. 120.[16] Where the mortgagor left some amount with the mortgagee for payment to the former's creditors. On the failure of the mortgagee to make payment the mortgagor paid the amount. A suit for recovery of this amount was not governed by this article.[17] Where a vendee was

8. AIR 1927 Mad. 1060 + AIR 1919 All. 18 = 42 All. 61 (DB).
9. AIR 1925 Oudh 132 + AIR 1945 Mad. 500.
10. ('94) 18 Mad. 88 (DB) + ('86) 14 Cal. 256 (DB).
11. ('03) 6 Oudh Cas 212 + ('05) 3 Cal L Jour 93 (DB).
12. AIR 1931 Mad. 207 = 53 Mad. 952 (DB).
13. ('06) 64 Cal. W.N. 773.
14. AIR 1934 Mad. 12 = 57 Mad. 347.
15. AIR 1941 Mad. 96.
16. AIR 1940 Mad. 106 = ILR 1940 Mad. 27 (DB).
17. AIR 1954 Trav-Co. 499 = ILR 1954 Trav-Co. 720 (DB).
18. AIR 1931 All. 549 = 53 All. 702 (DB).

required to pay off vendor's incumbrances but the vendee failed to do so and the vendor paid off the amount; payment was not for the vendee within the meaning of this article.[19] Where *B* used *A's* land for non-agricultural purposes without his permission. *A* had to pay a fine to the Government. *A* paid the fine and sued *B* for reimbursement; this article did not apply to the case.[20]

3. Plaintiff and defendant jointly liable. Where the plaintiff and defendant are jointly liable to make a payment and plaintiff makes the entire payment, he has made payment for defendant also, therefore this Article would apply. Where *A* and *B* were liable for payment to *X*. *A* paid off the whole liability. It was held that *A's* payment in excess of his share was for *B*.[1] *A* drew a *hundi* for Rs. 5,000. *B* endorsed it to *X* who paid the amount. *A* and *B* took half and half. *A* paid the whole amount to *X*. It was held that *A's* payment in respect of *B's* share was for *B*.[2] Where one of several partners paid off a common liability, his payment in excess of his share was for other partners.[3] Where money was paid by one of two joint owners of a tenure to save estate from sale for arrears of revenue and rent; the payment in excess of his share was for the other.[4]

Where there is no joint liability but a payment is made voluntarily by one of the persons in whose interest it is to make payment, the suit for recovery of the money paid in excess of his share does not fall under this Article. Thus where *A* and *B* jointly purchased property in execution and *A* purchased stamps for sale certificate; the money paid for stamp, was not paid for *B* and this article did not apply to a suit for contribution.[5] Where a subsequent purchaser of portion of equity of redemption paid off a prior mortgage decree and sued to recover it from the mortgagor; the suit was not governed by Article 61.[6] Where on the date of the payment of the debt by *A* in excess of his share, the remedy of *X* against it is lost, the excess payment made by *A* cannot be said to have been made for *B*. In such a case when *X* has no enforceable claim against *B*, the suit for contribution by *A* against *B* does not fall under this article but falls under the residuary Art. 120.[7] Where *A* and *B* who were co-owners of certain property agreed that *A* should build a house on that property and *B* should contribute towards expenses. *A* built the house and sued *B* for contribution; this article did not apply.[8] Similarly where *A* and *B* being co-owners of certain property were bound to carry out some repairs. A made the repairs and sued *B* for contribution; the suit was not governed by this article.[9] Where *A* and *B* were co-sharers in mortgage right, *A* filed a suit on

---

19. AIR 1926 All. 605.
20. AIR 1922 Bom. 257 (DB).
1. ('78) 4 Cal. 369 (DB) + AIR 1957 Raj. 267 = ILR (1957) 7 Raj. 616 (Suit for contribution by one judgment-debtor paying off the whole decree) + AIR 1954 Trav-Co. 499 = ILR 1954 Trav-Co. 720 (DB). (Suits for recovery of the excess payment from the co-debtor) + AIR 1954 Mad. 185. (Joint and several decree against several persons—Voluntary payment into Court by one—Suit for contribution is governed by Art. 61 or Art. 99).
2. 5 Bom. L R 725.
3. AIR 1924 Lah. 112 (DB).
4. 25 Cal. 844 = 25 Ind. App. 95 (P.C.).
5. AIR 1941 Mad. 96.
6. AIR 1929 All. 309 = 51 All. 606 (DB).
7. AIR 1954 Trav-Co. 499 = ILR 1954 Trav-Co. 720 (DB).
8. AIR 1928 Lah. 442.
9. AIR 1937 Oudh 394 = 13 Luck 323 + AIR 1919 Mad. 1145 (DB) + AIR 1921 Cal. 93 (DB).

the mortgage incurring costs and a decree was given in favour of all co-sharers. *A* sued *B* for contribution. It was held that this article did not apply.[10]

4. Plaintiff undertaking to meet defendant's liability. Where the plaintiff has undertaken to meet the defendant's liability and he subsequently meets that liability, he is not making payment for the defendant but for himself. Thus where *B* owed money to *X*. *A* accepted liability by executing a promissory note to *X* and released *B* from the liability. *A* paid *X* subsequently and sued *B* for reimbursement. It was held that this article did not apply.[11] Where the plaintiff executed a bond for payment of an amount due by judgment debtor under a decree. The decree was certified as satisfied. The plaintiff subsequently paid the amount. It was held that the suit by the plaintiff to recover the money from the judgment-debtor was not governed by this article.[12] Similarly where a suit was based on express indemnification, Article 83 and not this article would apply to the case.[13]

5. Suit by receiver to recover money spent for estate. A suit by the receiver to recover the amount spent by him in instituting a suit to recover money due to the estate from the owner is governed by this article even though the Receiver was also benefited by the suit.[14] It is however to be noted that an application by a receiver for payment of such sums as have been allowed to him on passing of accounts is not a suit and therefore not hit by this article.[15]

6. Suit by agent against principal. A suit by an agent to recover money paid by him to a creditor from whom he borrowed money within his authority from the principal is not governed by this article.[16]

7. Claim for money charge on property. This article only applies where the suit is for a simple money decree.[17] Therefore where a trustee sues to recover money spent by him out of his pocket during his trusteeship from the trust property, this article will not apply.[18] Similarly where a certificated guardian spent money from his pocket during guardianship. To a suit to recover such money from the minor's property this article was inapplicable.[19]

8. Starting point of limitation. The plaintiff's cause of action itself, in cases where he seeks to recover the money paid by him for the defendant, arises only when he has made the payment.[20] Where a joint and several decree for costs is

10. AIR 1923 Mad. 64. (Article applicable is 120).
11. AIR 1936 Mad. 334.
12. 1909 Pun L R No. 146, p. 559.
13. AIR 1927 Lah. 231.
14. AIR 1935 Mad 594 (DB).
15. AIR 1954 Cal. 386.
16. AIR 1959 Raj 153 = ILR (1959) 9 Raj 577. (Such suits are governed by Art. 83) + AIR 1932 Bom. 25 (DB) (Do.) + AIR 1944 Cal 302 = ILR (1944) 2 Cal. 283 (DB) (Do.) + AIR 1914 Lah. 407 = 1915 Pun Re No. 23 (Do.) + AIR 1931 Lah. 392 = 12 Lah. 190 (DB).
17. AIR 1916 Mad. 57 = 38 Mad. 260 (DB) + AIR 1922 Pat. 499 = 1 Pat. 780 (DB). (Suit to recover money, in respect of which the plaintiff acquired a charge by the enforcement of the charge is not governed by this article.) + AIR 1931 Cal. 493 (DB) (Do.).
18. AIR 1916 Mad. 57 = 38 Mad. 260 (DB).
19. AIR 1939 Bom. 394.
20. 1981 CLC 1132 (DB) + AIR 1933 Lah. 404 (DB) + AIR 1960 Mys. 238 + AIR 1956 Nag. 250 (DB) + AIR 1919 Lah. 83 = 13 Cal. 155 (DB).

passed against several persons and one of them voluntarily pays into Court full amount of the decree and then brings a suit for contribution against the other judgment-debtors, the starting point of limitation under this article for the suit will be the date when the money is actually paid into Court and not the date on which the money is appropriated towards the decree or when the actual satisfaction of the decree is entered up by the Court and the judgment-debtor is discharged.[1] Where a redemption suit is brought by two plaintiffs, and one of them pays an amount in Court in excess of the share, a suit is filed to recover such excess from the co-plaintiff. The period of limitation is to be reckoned from the date of payment and not from the termination of the redemption suit.[2] Where in a compromise one party agrees to pay off certain creditor and on the failure of fulfilment of the term of compromise the other party pays off the creditor, then limitation runs not from the date of the breach of the agreement but from the date of the payment of the other party to the creditor.[3]

Full payment not necessary. The expression "when the money is paid" does not mean when the whole debt has been discharged or when the money is paid effectively.[4]

Acceptance or adoption of payment by defendant not necessary. Article 61 does not require that the payment made by the plaintiff should be accepted or adopted by the defendant.[5]

62.	For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	[6][Three years]	When the money is received.

Synopsis

1. Scope.
2. Suit must be for money.
3. Suit for accounts.
4. Suit for damages.
5. "Money received by the defendant."
6. Receipt of money for plaintiff's use.
7. Co-sharers receiving share of other co-sharer.
8. Suit against agent for money had and received.

---

1. AIR 1954 Mad. 185.
2. AIR 1922 Cal. 79 (DB).
3. AIR 1935 Lah. 307 (DB).
4. 13 Oudh Cas. 23 (DB). (Several payments made by plaintiff to meet a particular liability of the defendant—Time runs in respect of each payment from the date of such payment) + 26 Mad. 686 (FB) (Do.) + 1891 All. W.N. 102 (Do.) + AIR 1954 Trav-Co. 499 = ILR 1954 Trav-Co. 720 (DB). (Does not mean when paid effectively).
5. AIR 1931 Lah. 344 (DB).
6. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

9. Money paid under void agreement.
10. Money paid on an existing consideration which afterwards fails.
11. Money paid under mistake.
12. Money obtained by fraud, etc.
13. Suit for legacy.
14. Suit for profits of immovable property.
15. Suit for money deposited.
16. Recovery of money paid under judgment.
17. Suit for money recovered by transferee of decree on transfer being set aside.
18. Suit for refund of purchase money by auction-purchaser.
19. Suits for surplus sale proceeds on revenue sale.
20. Suit for compensation money in land acquisition cases.
21. Suit to recover tax, etc., illegally collected.
22. Suit against *benamidar receiving* money belonging to real owner.
23. Suit by ward against guardian.
24. Suit for refund of assets wrongly paid to defendant under S. 73, C.P.C.
25. Suit for money wrongly attached.
26. Suit to recover over-payment.
27. Suit against person receiving offerings for shrine.
28. Starting point of limitation.

1. Scope. A suit for money received by the defendant for the use of the plaintiff is not in the nature of a suit for damages or compensation.[7] In case of a suit for damages by the vendee for breach of covenant, Art. 116 applies and not Art. 62.[8]

The article ought to apply wherever the defendant has received money which in justice and equity belongs to the plaintiff under circumstances which in law render the receipt of it, a receipt by the defendant to the use of the plaintiff.[9] This article applies whether the liability of the defendant arises under a statute or under general principles of law.[10] Thus where a sum of money is due from *A* to *B*, and *C* receives the money from *A*, under circumstances which would otherwise render such receipt, one for the use of *B*, the fact that on the date of such receipt, a suit by *B* against *A* would have been barred by law, does not affect the maintainability of a suit by *B* against *C* for money received by the latter for the former's use.[11]

The test to determine whether money is received by the defendant for the use of the plaintiff is to see whether, under the law, the money is to be treated as so received.[12] In other words the facts should be such as to entitle the plaintiff to

---

7. AIR 1929 Mad. 409 = 52 Mad. 207 (DB) + 32 All. 491 (DB) + 1932 Mad. W. N. 1089 + AIR 1917 All. 321.
8. AIR 1961 J&K 66.
9. AIR 1932 Bom. 86 (DB) + AIR 1934 Bom. 491 + AIR 1921 Cal. 596 (DB) + AIR 1936 Pat. 370 = 15 Pat. 433 (DB) + AIR 1942 Mad. 386 (Defendant receiving money on his own account and not on behalf of plaintiff. This Article does not apply.) + 32 Cal. 527 (DB).
10. AIR 1932 Bom. 86 (DB). (Liability under a statute.) + AIR 1936 Pat. 370 = 15 Pat. 433 (DB).
11. AIR 1961 All. 109 + AIR 1923 All. 532 = 45 All. 410 (DB).
12. 32 Cal. 527 (DB). (The intention of the person receiving the money that it should be used for the benefit of the plaintiff is not a conclusive factor in determining the question) + AIR 1915 Mad. 405 = 39 Mad. 62 (DB). (Do.) + AIR 1919 Lah. 47 = 1919 Pun Re No. 85 (DB)

claim receipt of the money forthwith, that is as soon as it is received. Where the defendant was to keep the money in deposit with him until the entire amount of goods were sold off and to hand it over to the plaintiffs only on demand. It was held, that in the circumstances, Art 62 had no application.[13] Article 62 should be confined in its application to increasingly narrow limits. Its scope should not be extended. There must be something in the transaction between the parties, their mutual dealings and relations and the surrounding circumstances, so as to enable the Court to lay its hands on a particular case as showing that the defendant at the time he had received the money had or must be deemed to have received it for the plaintiff's use and not for his own use.[14] Thus where the defendants received the amount under certain decree claiming themselves to be entitled to that amount and it was not even remotely suggested by them or could be held to be implied in their conduct that they were receiving any money for and on behalf of the plaintiff or for his use, it is clear on the words used in the Article that Art. 62 does not apply to the facts of the case and that the suit would be governed by Art. 120 which is the residuary Article.[15] Where the plaintiff's property is wrongfully sought to be sold in satisfaction of a decree, to which he was not a party, and he is forced to deposit the decretal amount in order to save his property from sale in execution, then a suit brought later on by the plaintiff against the defendants for the return of the decretal money received by the defendants is governed by Art. 120 and not by Art. 62. For when the defendants, withdrew the amount they treated and received it as their own and not for the plaintiff's use.[16]

Where a Government servant entered into contract on behalf of Government with a third person for construction of certain works to be carried by the latter, the contract contained a provision that Government will reimburse sales tax payable by the contractor in respect of such construction works. A suit by the contractor against the Government for the recovery of sales tax paid by him was governed by Art. 120 and not by Art. 62 or Art. 115.[17] Where goods were imported in Karachi for onward transmission to Afghanistan. The goods were released in Karachi by customs authorities on payment of import duty and sales tax subject to its being refunded when goods were finally transported to Afghanistan. The importer claimed refund after the goods were duly re-exported to Afghanistan. Article 62 was not applicable because payment of import duty and sales tax in such a case was not money received by Customs authorities for the use of the importer.[18] Where *A* wrongfully converts certain timber belonging to *B*. *A* then dies leaving *C* his widow, as his legal representative. *D*, acting as the agent of *C*, sells the timber and is holding the sale proceeds on *C's* behalf. *B* sued *D* for the money. *D* receives the money as the agent of *C* and not for the use of the plaintiff.

(D.C.) + AIR 1918 Cal. 873 (DB); (D.C.) + AIR 1916 Pat. 54 (DB); (D.C.) + AIR 1948 East Punj 1 + II R 1948 East Punj 302 (DB). (Intention of person receiving the money that it should be used for plaintiff's benefit is not conclusive) + AIR 1936 Pat. 370 = 15 Pat. 433 (DB). (The intention of the person paying is not enough)

13. PLD 1967 Kar. 624 (DB) + AIR 1957 All. 553 (DB).
14. AIR 1961 All. 109 + AIR 1959 Pat. 477.
15. AIR 1961 All. 109.
16. AIR 1961 Pat. 105.
17. AIR 1962 Pat. 117 (DB).
18. PLD 1967 Kar. 624 (DB).

Therefore the suit does not fall within this article.[19] *A* and *B* who were liable to pay certain sum by way of assessment in equal shares, paid the same to the State. Subsequently on 4-6-1948 the State refunded the whole amount to *B* only, because in its opinion *B* alone was entitled to it. Further, *B* received the whole amount contending that he alone was entitled to it. *A* sued *B* for recovery of his share of the amount refunded. It was held that the transaction was one where the payer paid a certain amount to the payee as the sum due by the payer to the payee and to none else. Therefore Art. 62 on its strict construction was not applicable to such a suit as the claim of *A* was an equitable claim and not a contractual claim. The suit was therefore, governed by Art. 120 and was within limitation.[20] Where the defendant withdrew money deposited in respect of a decree assigned by him in favour of the plaintiff before plaintiff's claim for specific performance of the same could be decreed. The plaintiff sued for the amount, it was held that the suit is one to enforce an equitable claim and is governed by Art. 120 and not by this article.[1] Where it was common ground between the parties that the defendant was retaining the plaintiff's money not for the plaintiff's use, but for the purpose of adjustment towards part-payment of the money payable by the plaintiff to defendant; it was held that Article 62 was inapplicable.[2] Where on the sale of a house price was paid by adjustment of debt due to vendee. The vendee was subsequently dispossessed because the vendor had no title. A suit for the recovery of money was not governed by Article 62. Where, even in cases of void contracts actual possession of the property sold is handed over by the seller to the purchaser, it cannot be rightly postulated that the purchaser is not in effective enjoyment of the property sold, or, that the money, which the seller has had from the purchaser in respect thereof, is held by him not on his own account but for the use of the plaintiff within the meaning of Art. 62.[3]

Contract not necessary. There must be some privity of a legally recognizable nature between the plaintiff and the defendant.[4] But privity of contract is not necessary to constitute a receipt of money by the defendant, a receipt for the use of the plaintiff.[5] The restrictions laid down by the English law that unless the circumstances are consistent with the existence of a contract between the parties, an action for money had and received would not lie, do not apply.[6]

2. Suit must be for money. For the application of this Article it is necessary that the suit must be for money. When the suit was for a share of immovable property acquired by the defendant, the article does not apply.[7]

3. Suit for accounts. The article only applies where a definite sum of money is claimed against the defendant and does not apply to a suit for accounts.[8] Where

19. 10 Cal. 860 = 11 Ind. App. 59 (P.C.).
20. AIR 1953 Bom. 79 = ILR 1953 Bom. 214.
1. 1941 Nag. L. Jour 665.
2. PLD 1959 Lahore 295 (DB).
3. AIR 1962 Raj. 83
4. AIR 1919 Mad. 957 = 41 Mad. 923 (DB) + AIR 1926 Lah. 228.
5. AIR 1929 Lah. 290 (DB).
6. AIR 1918 P.C. 151 = 46 Cal. 670 = 46 Ind. App. 52.
7. AIR 1934 Bom. 491.
8. AIR 1940 Cal. 363 = ILR (1940) 1 Cal. 110 (DB) + AIR 1950 Dacca 13 + AIR 1950 Hyd. 52 = ILR 1951 Hyd. 202 (DB) + AIR 1931 P.C. 9 = 8 Rang. 645 = 58 Ind App. 1 + AIR 1943

both Courts below did not take into consideration the ledger to find out whether there was mutuality of accounts between the parties or not the decision on point of limitation was held, to be erroneous and set aside.[9]

4. Suit for damages. This Article is applicable where a suit is filed for recovery of the specific amount held by the defendant for the plaintiff and not to a suit for compensation for damages. Thus where there was a seizure and confiscation of non-duty paid tobacco. the tobacco was sold in spite of payment of duty and redemption fine. A suit for recovery of tobacco or its price against the State was governed by Art. 62, and *terminus a quo* for the period of limitation was the date of sale.[10] But where the suit is for recovery of compensation for breach of the covenant for title or for quiet enjoyment expressly or impliedly contained in the deed of transfer, this article will not apply.[11] A suit to recover difference between the sum advanced on a written contract for supply of goods and the value of goods delivered is one for compensation for a breach of contract and is governed by Article 115.[12] Similarly a suit as against a Shipping Company as carrier for recovery of amount paid to its landing agents and sub-agents can only be considered to be a suit for damage on account of the unlawful detention of goods belonging to the consignee until certain claims of its landing agent and sub-agent were satisfied, and is governed by Art. 111, Rule 6, clause 3 of the Carriage of Goods by Sea Act and not by Art. 62 of the Limitation Act. [13]

5. "Money received by the defendant." This article applies only where money has been received by the defendant,[14] and not where the defendant ought to have received certain sum of money on plaintiff's behalf.[15] Thus where a mortgagee had undertaken to pay off prior encumbrances and failed to do so, and the mortgagor was compelled to discharge such encumbrances himself; it was held that a suit by the latter for recoupment against the mortgagee was governed by this article.[16] But where the defendant has not received any money for the plaintiffs, this section would not apply. Where *A* purchased certain property from *B*. Relying on the purchase, *A* paid off certain encumbrances on the property. Subsequently, it was held that *B* had no title to transfer it to *A*. *A* then sued *B* for the recovery of the money paid by him to discharge the encumbrances. It was held that the defendant had not received any money and that the suit was not one within this article.[17]

Bom. 216 (DB). (Suit by one co-owner against other for accounts for amount received more than his share. This article does not apply).

9. 1985 CLC 1217.
10. AIR 1958 Pat. 439 (DB).
11. AIR 1915 Mad. 742 = 38 Mad. 1171 (DB) + AIR 1929 All. 293 = 51 All. 651 (DB) + 2 Nag. L. R. 174 + AIR 1932 Bom. 36 = 55 Bom. 565 (DB) + AIR 1936 All. 771 = 52 All. 66 (DB) + AIR 1933 Mad. 126 + AIR 1931 Sind 141 = 25 Sind L. R. 175 + AIR 1924 Cal. 145 (DB) + AIR 1930 Sind 12 = 24 Sind L.R. 172 + AIR 1926 Nag. 109 = 22 Nag. L.R. 49 + AIR 1924 Pat. 322.
12. 1883 Pun Re No. 22, p. 66 (DB).
13. AIR 1965 Kerala 51.
14. AIR 1917 Mad 354 (DB). (Receipt of paddy cannot be said to be receipt of money) + AIR 1921 Cal. 77 (DB). (Defendant receiving rent in kind Article does not apply) + AIR 1941 Nag. 181 = II R 1942 Nag. 92 (DB). (Suit for profits of property entrusted to defendant for sale custody--Art. 62 does not apply).
15. AIR 1937 Bom. 217 + AIR 1917 Mad. 948 = 40 Mad. 291 (DB).
16. AIR 1918 Oudh 432 (DB).
17. AIR 1923 Mad. 392 (DB).

A receipt by the defendant's agent,[18] or a receipt of money by the defendant's predecessor-in-interest is equivalent to a receipt of money by the defendant himself for the purposes of this article.[19]

Money from whom received. The term "received" necessarily implies that the money has been obtained (or received) from some one other than the person himself who withholds payment.[20]

Recovery of money which defendant has applied to his own use. Where the defendant has applied certain money to his own use, this Article does not apply to a suit for the recovery of that money. Thus where the plaintiff's predecessor obtained a lease of certain premises from Collector for purpose of carrying on grogshop. He deposited Rs. 250 by way of security and died shortly after. The defendant got a transfer of the lease in his name and arranged with the Collector that the security amount of plaintiff's predecessor be applied to discharge of defendants' liability under the lease, the plaintiff's sued to recover the sum. It was held that the amount was applied by the defendant for his own use and the suit was not governed by this article.[21]

6. Receipt of money for plaintiff's use. This article will apply only where at the time of the receipt of the money by the defendant, it is received for the use of the plaintiff.[1] Thus where money is received by the defendant from a third person directly or impliedly for and on behalf of the plaintiff, it will be the clearest case for the application of Art. 62.[2] But it does not apply to a case in which the money originally received by the defendant on his own account becomes, by subsequent events, money received for the plaintiff's use.[3] When money was paid to the promoter of a company by intending shareholders in the company. The company, contrary to the law was not registered and therefore became an illegal body. A suit for converting the assets of the company into cash and for return of subscription was not governed by this article.[4] Where goods were imported in Karachi for onward transmission to Afghanistan. The goods were released in Karachi by Customs authorities on payment of import duty and sales tax subject to its being refunded when goods were finally transported to Afghanistan. The importer claimed refund after goods were duly re-exported to Afghanistan, Article

---

18. AIR 1916 Mad 524 (DB).
19. AIR 1923 Pat 259 (DB) + 6 Mad. 402 (DB) + AIR 1916 Mad. 524 (DB) + AIR 1922 Cal. 499 + 25 All 55 (DB).
20. 1906 Pun Re. No. 83. p. 307 + AIR 1951 Cal. 251 = ILR (1950) 2 Cal. 352 + 7 Ind. Cas. 467 = 1910 Pun. Re. No. 59. (*A* owing money to *B*--*A* selling his property to *C*. As consideration for the sale, *C* agreeing to pay *B* the debt due by *A*--*B* also consenting to arrangement--*B*'s suit against *C* for the debt is not suit for money received by *C* for *B*'s use and hence this article does not apply).
21. AIR 1917 Pat. 260.
1. PLD 1975 Kar. 209 = PLJ 1975 Kar. 55 + PLD 1967 Kar. 624 (DB) + AIR 1927 All. 437 + AIR 1950 Hyd. 52 (DB) + AIR 1948 East Punj. 1 (DB) = AIR 1934 Bom. 491 + AIR 1933 Mad. 524 (DB) + AIR 1935 Pat. 159 + ('92) 20 Cal. 51 (FB). (*Overruling* 18 Cal. 234) + AIR 1930 Rang. 21 = 7 Rang. 540 (DB) + AIR 1920 Nag. 94 + AIR 1943 Nag. 9 = ILR 1943 Nag. 253. (Insurance policy--Surrender value--Suit for--Art. 60 and not Art. 62 applies) + AIR 1936 Rang. 80 (DB) + ('13) 40 Cal. 187 (DB) + AIR 1965 S C. 1773.
2. AIR 1959 Pat. 477.
3. PLD 1975 Kar. 209 = PLJ 1975 Kar. 55.
4. AIR 1930 Rang. 21 = 7 Rang. 540 (DB).

62 was not applicable to the case because payment of import duty and sales tax in the case was not money received by Customs authorities for the use of the importer.[5] Where the defendants received an amount under a certain decree claiming themselves to be entitled to that amount and it was not even remotely suggested by them or could be held to be implied in their conduct that they were receiving any money for and on behalf of the plaintiff or for his use. It is clear on the words used in the Article that Art. 62 did not apply to the facts of the case and that the suit was governed by Art. 120 which was the residuary Article.[6]

Money subsequently agreed to be applied elsewhere. Where money is received by the defendant for plaintiff's use but there is a subsequent contract whereby the defendant thereafter holds the money for other purpose, this article does not apply to a suit for recovery of the money by the plaintiff.[7]

7. **Co-sharer receiving share of other co-sharer.** Where immediately on receipt of money, the defendant is bound to pay over to the plaintiff a definite share of the money, this article will apply to a suit to recover such share.[8] But where the defendant is in possession of the money on behalf of the plaintiff as the latter's agent with the express or implied authority of the latter, this article cannot apply to a suit to recover the money.[9]

Taking of account necessary before payment. Where the plaintiff and the defendant are entitled to share in a certain sum of money and the money is received by the defendant alone and under the circumstances of the case, the taking of accounts is necessary in order to determine the amount payable to the plaintiff, the suit will not come within this article.[10] Thus where the plaintiff and the defendant are co-sharers in a village, but the defendant is entrusted with the general management of the village and he has to spend as well as receive money,

5. PLD 1967 Karachi 624 (DB).
6. AIR 1961 Allahabad 109 (DB).
7. 1935 All. W.N. 500.
8. ('87) 10 Mad. 69 (DB) + ('55) 57 Pun L.R 458. (Entire mortgage-money received by one of mortgagee—Suit against him by others to recover their shares—Suit is governed by Art. 62 and not by Art. 120) + ILR (1952) 2 Raj. 459. (Joint creditors—Each contributing some share—Bond executed in favour of one only—Such creditor realizing full amount—Suit by assignee of other creditors for recovery of their share—Article applicable is Art. 62 and not Art. 89) + AIR 1948 Nag. 397 = ILR 1948 Nag. 401 + 1946 Jaipur L.R 319 (DB). (AIR 1933 Mad. 806 = 32 Cal. 527 + AIR 1915 All. 12. *Foll.*) + ('10) 34 Bom. 349 (DB) + AIR 1925 Cal. 67 (DB) + AIR 1920 Nag. 245 = 16 Nag. L. R. 182 + AIR 1915 All. 12 = 37 All. 253 (DB) + AIR 1933 Mad. 806 + AIR 1931 Bom. 189 = 55 Bom. 193 (DB) + AIR 1918 Cal. 815 (DB) + AIR 1915 All. 253 = 37 All. 434 (DB) + ('71) 16 Suth W.R. 20 (PC).
9. AIR 1928 Bom. 265 (DB) + AIR 1921 Bom. 384 = 45 Bom. 313 (DB) + AIR 1916 Mad. 1207 (DB).
10. AIR 1922 Mad. 150 = 45 Mad. 648 (FB) + AIR 1931 P.C. 9 = 58 Ind App. 1 = 8 Rang 645 + AIR 1923 P.C. 31 + AIR 1956 Orissa 53 = ILR 1955 Cut 454 (DB). (Article 62 has no application to a case between tenants-in-common, co-sharer and co-owners. AIR 1922 Mad. 150 (FB) *Rel. on.*) + ILR (1951) 2 Cal. 168 (Suit for partition and accounts—Parties governed by Dayabhag—Accounting period is six years under Art. 120 and not a period of twelve years under Art. 127—To such a case Arts. 62 and 109 do not apply) + AIR 1951 Mad. 234 (DB) + AIR 1922 Mad. 150 (FB) *Rel. on.*).

the amount payable to the plaintiff cannot be determined without taking accounts and this Article does not apply to the case.[11]

8. **Suit against agent for money had and received.** Where an agent receives money belonging to his principal, under circumstances which make it the agent's duty to immediately pay over to the principal the money received, a suit for the money will be one for money received by the defendant for the use of the plaintiff and this article will apply.[12] Money belonging to the principle and received by the agent after the termination of the agency will by money received by the agent for the principal's use and a suit for the money will be governed by this article.[13]

Money not immediately payable to principal. A suit by a principal against an agent for the balance due out of moneys received by him after deducting all legitimate expenses and allowance is not a suit for money received by the defendant for the plaintiff's use within the meaning of this article.[14] Where the plaintiff entrusted a certain amount to the defendant for doing a specific thing. On the failure of the defendant the plaintiff filed a suit for recovery of the amount. It was held that legal relationship between the parties was one of principal and agent and Article 62 did not apply.[15] Where a suit was brought against the principal and agent for recovery of money paid to the agent for the principal and the principal denoted receipt of the money but the suit was decreed against the principal. A suit by the principal against his agent for money paid for him as decretal amount is governed by Art. 61. Article 62 did not apply.[16]

Suit against legal representative of deceased agent. Where money is received by an agent for the use of the principal and the agent has died without paying over the money to the principal, a suit for the recovery of the money against the legal representative of the agent will also be a suit for money received by the "defendant" for use of the plaintiff.[17] It is to be noted that although a suit "for money received by the defendant for the use of the plaintiff" would not have lain against the deceased agent, the suit against the legal representative of the agent for the recovery of the money received by the agent would come within this article.[18] But a suit for accounts against the legal representative of a deceased agent is not governed by this article.[19] Where the sum was demanded from the

11. AIR 1939 All. 442 = ILR 1939 All. 594 (DB) + AIR 1916 Nag. 40 = 13 Nag. L.R. 127 + ('11) 12 Ind. Cas. 586 (DB) (Bom).
12. AIR 1929 Lah. 94 + AIR 1927 Cal. 917 (DB) + AIR 1926 Bom. 320 + AIR 1939 Bom. 126 = ILR 1939 Bom. 154 (DB) + AIR 1919 All. 440 = 41 All. 635 (DB).
13. AIR 1915 All. 259 (DB) + ILR (1952) 2 Raj. 459. (Money received after termination of agency--Suit for recovery of sum so received--Article 62 applies and not Art. 89) + AIR 1915 Mad. 596 (DB) + AIR 1922 Mad. 55 (DB).
14. 1886 Pun Re No. 96, p. 239 (DB) + ('49) 54 Mys. H.C.R. 154.
15. AIR 1957 Ker. 155 = ILR 1957 Ker. 416. (Article 88 also did not apply--Article 90 applied--Suit also would fall under Art. 89).
16. AIR 1960 Mys. 238.
17. AIR 1922 Cal. 499 + AIR 1950 Dacca 13.
18. 1886 Pun Re. No. 96, p. 239 (DB).
19. ('12) 13 Ind Cas 930 = 1912 Pun Re No. 1 (DB) + ('09) 31 All. 429 (DB) + AIR 1942 Pat. 181 (DB). (Suit for money collected by deceased agent--Agent not liable to make over collection directly on receipt but permitted to keep amounts for litigation expenses of principal--Running account--This article will not apply).

agent during his lifetime and he refused to pay, limitation would run from that date and not from the date of his death.[20]

9. Money paid under void agreement. Where money has been paid under a void agreement the person paying is entitled to recover it under S. 65 of the Contract Act on discovering that the agreement was void. Ordinarily the date of agreement is presumed to be the date of discovery and the right to recover money accrues as soon as money is paid, the case is one of receipt of money by defendant for use of plaintiff within this article, therefore the time will begin to run from the date of receipt of money by the defendant.[1] Where a transfer of property is void *ab initio*, a suit by the purchaser for the return of the purchase money will fall within this article.[2] It is however to be noted that so long as the person whose rights have been infringed remains in possession of the property, limitation does not begin to run against him. Accordingly so long as a vendee to whom his vendor has conveyed a defective title, remains in possession of the property purchased, he need not bring a suit for refund for the sale consideration. It is only when actual dispossession takes place that limitation begins to run.[3]

Where an agreement is discovered to be void much later than the agreement, the cause of action for recovery of money paid under agreement will accrue under S. 65, Contract Act after the agreement and the payment of money under it. This Article will not apply to the case.[4]

Suit not based on void agreement. This Article applies where the suit for refund is based on the ground that the agreement is void and not when though the agreement is void yet the suit has a different cause of action. Thus where a registered deed is void *ab initio*, a suit by the lessee based on a personal covenant by the lessor to return *nazrana* in case of dispossession, Article 116 and not Art. 62 applies to the case.[5] Where a mortgage is invalid but a suit is based on a covenant to repay independant of the mortgage, this Article does not apply and the suit may be filed within six years.[6] Where a vendor has sold property to which he had no title, a suit for purchase-money is one on the basis of the covenant of title imported by S. 55, Transfer of Property Act. This article does not apply to it.[7]

Suit for refund based on unlawful agreement. Money paid under an unlawful agreement, as a general rule is not recoverable (*in pari delicto potior est conditio posidentis*), but in certain circumstances it may be recovered for instance where

---

20. PLD 1950 Dacca 9 = 1 DLR 141.
1. AIR 1939 Nag. 27 = ILR 1940 Nag. 553 (DB) + AIR 1933 P.C. 63 = 54 All. 1067 = 60 Ind. App. 13 + AIR 1942 Sind 37 = ILR 1941 Kar. 495 (DB). (Money paid as consideration in contract of Sale--Art. 62 does not apply to suit for refund except where contract is void in law *ab initio*) + ('92) 19 Cal. 123 = 18 Ind. App. 158 (P.C.) + AIR 1943 All. 204 = ILR 1945 All. 604.
2. ('92) 19 Cal. 123 = 18 Ind. App. 158 (PC) + AIR 1960 Andh Pra 89. (AIR 1935 Mad. 354 Doubted) + AIR 1940 Mad. 794 = ILR 1940 Mad. 864 (DB) + AIR 1943 All. 204 = ILR 1945 All. 604.
3. AIR 1944 All. 243 = ILR 1944 All. 612.
4. AIR 1922 P.C. 405 = 50 Ind. App. 69 = 45 All. 179 + AIR 1925 Oudh 212 + AIR 1947 Lah. 164 (DB).
5. AIR 1942 Oudh 82 = 17 Luck 289.
6. AIR 1944 All. 276 (DB).
7. AIR 1946 All. 159 = ILR 1946 All. 72 (DB).

the unlawful act is still incomplete allowing a *locus penitentiae* to either party to the agreement or where one of the parties is in *minori delicto, i.e.*, the less guilty of the two. A case of this nature shall be covered by Art. 62.[8]

10. Money paid on an existing consideration which afterwards fails. Where a suit is brought for money paid on an existing consideration which afterwards fails, the money paid cannot be said to have been received by the defendant for the use of the plaintiff at the time of the receipt of the money, and this article cannot apply to such a suit.[9]

11. Money paid under mistake. A suit for money paid under a mistake will be governed by Art. 96.[10] Thus where the defendant is wrongly paid by an order of Court a sum of money deposited in Court and legally belonging to the plaintiff, a suit by the plaintiff for its refund is governed either by this article or by Art. 120 and not by Art.29.[11]

12. Money obtained by fraud, etc. Where the defendant, by means of fraud practised on a third party having plaintiff's money in his possession, obtains from such third party such money, a suit by the plaintiff against the defendant for the recovery of the money will be governed by this article.[12] Similarly where the defendant has obtained benefit from the plaintiff by tort (conversion, trespass), the latter may claim liquidated sum as money had and received. Such a claim is covered by Art. 62.[13]

Money stolen by defendant. A suit brought against a thief for money stolen by him will be governed by this article.[14]

13. Suit for legacy. Where the plaintiff was entitled under a will to receive certain amount as maintenance from the income of certain properties in the hands of the defendant. It was held that a suit for such amount was one for a legacy within Art. 123 and was not governed by this article.[15]

14. Suits for profits of immovable property. Where the receipt of profits by the defendant was not wrongful, the suit for profits of immovable property

---

8. AIR 1959 Pat. 477.
9. ('92) 19 Cal. 123 = 18 Ind. App. 158 (PC) + AIR 1959 Pat. 477 (Article 62 does not apply except where the transaction is void *ab initio*) + AIR 1932 Lah. 382 = 13 Lah. 188 (DB).
10. AIR 1925 Pat. 765 = 4 Pat. 448 (DB) + AIR 1959 Pat. 477 (Mistake of fact or law.) + AIR 1956 Vindh Pra 26 (A suit for refund of the excess tax paid under a mistake is a suit for money received by the defendant for the use of the plaintiff.) + AIR 1953 Hyd. 274 = ILR 1953 Hyd. 451) (Consignor of goods paying at higher rate under mistake--Suit to recover money paid in excess--Payment cannot come under heading 'money had and received'--Art. 96 and not Art. 62 applies--AIR 1940 Bom. 252, *Distinguished.*) + AIR 1925 Mad. 1255 = 48 Mad. 925 (DB).
11. AIR 1953 Nag. 234 = ILR 1952 Nag. 89. (The time for such a suit will not commence to run till the plaintiff comes to know of the fact that the defendant withdrew the amount--Note: No reason is given for holding so: nor is Art. 96 *referred to*).
12. ('77) 2 Cal. 393 (DB) + ('02) 25 Mad. 396 (DB).
13. AIR 1959 Pat. 477.
14. AIR 1941 Mad. 391 = ILR 1941 Mad. 414 (DB).
15. AIR 1931 Cal. 670 (DB).

belonging to the plaintiff would be one for money had and received to which this article would apply.[16]

15. Suit for money deposited. Where *A* deposits money with *B* on the terms that the latter should return to *A* an equivalent sum of money, a suit for recovery of the deposit by *A* is not one for money received by the defendant for the use of the plaintiff.[17] Where money is deposited by way of security for the due performance of a contract and after the expiry of the contract, a suit is brought for the refund of the deposit. Art. 62 is not applicable to the suit as the money was not received by the defendant for the plaintiff's use.[18] Where a Co-operative Bank paid certain sums of money to *H* in 1933 by means of cheques drawn by the managing director of the company. The Bank brought a suit for recovery of the amount in 1950. The Bank relied on the vouchers relating to the transactions which carried the writing. "Debit short term deposit Khata" to prove that it was a deposit. But it adduced no evidence to prove for what term the money was deposited and on what date the short term expired. It was held that short term might mean a period of six months or one year and ; if the money remained with *H* after that period a suit against him will be for money had and received. In that view the suit filed 17 years after 1933 could not be held to be within limitation.[19]

16. Recovery of money paid under judgment. This Article applies to a suit for money paid under a decree which is afterwards set aside.[20] Where the decree has been passed without jurisdiction a suit will lie for the recovery of the money paid under such decree without having the decree cancelled and such suit will be governed by this article.[1] Unless a decree under which the money is paid is reversed or superseded no suit will lie for the recovery of such money on the ground that the person to whom it was paid was not entitled to it.[2]

17. Suit for money recovered by transferee of decree on transfer being set aside. Where a decree in favour of *A* is transferred to *B* and he recovers money under the decree and subsequently the transfer is set aside, suit by *A* for the money recovered by *B* will be governed by this article.[3] Where an assignee of a mortgage bond has recovered mortgage money but the assignment is found to be void *ab initio*, a suit by assignor against the assignee for money recovered by him is within this article.[4]

18. Suit for refund of purchase money by auction-purchaser. Different views are held as to the applicability of this article to a suit by auction-purchaser for refund of purchase-money on its being found that the judgment-debtor had no saleable interest in the property they are:--

---

16. AIR 1939 P.C. 178.
17. AIR 1919 All. 351 (DB)+AIR 1954 Nag. 38=ILR 1953 Nag. 364. (Joint family shop—*A*'s wife depositing her money in shop through *A*—Suit for return of money—Article applicable held Art. 60 and not Art. 89 or 62)+1913 Mad. W.N. 218 (DB).
18. AIR 1962 Gujerat 14.
19. Madh B L J 1955 H C R 444.
20. 1913 Pun. Re. No. 36=17 Ind. Cas. 311 (DB).
1. ('76) 1 All. 333 (DB).
2. AIR 1937 All. 481=ILR 1937 All. 628 (DB).
3. AIR 1947 All. 256=ILR 1946 All. 633 (DB). (Circumstances preventing suit—Limitation held suspended)+AIR 1938 Mad. 532+2 All. 354.
4. ('07) 30 Mad. 459.

(*a*) This article will apply to such a suit.[5]

(*b*) Article 97 will apply to such a suit.[6]

(*c*) Article 96 will apply to such a suit if the parties have acted under a mistake in bringing to sale and buying a property to which the judgment-debtor was not entitled.[7]

(*d*) Article 120 will apply to such cases.[8]

19. Suits for surplus sale proceeds on revenue sale. Where *A* purchased certain land, and subsequently, it was sold for arrears of Government revenue. The surplus sale proceeds remaining after satisfaction of the arrears were paid to *B* who was the original owner of the land who continued to be recorded in the Collector's registers as the proprietor. It was held that *B* received the money for the use of *A* and that a suit by *A* against *B* for the recovery of the money was governed by this article.[9]

Recovery of mortgage money by mortgagee. Where a mortgaged property was sold for arrears of revenue and the surplus sale proceeds where withdrawn by the mortgagor. A suit by the mortgagee to recover the mortgage money out of the sale proceeds was held to be governed by Art. 132.[10]

20. Suit for compensation money in land acquisition cases. Where the plaintiff is entitled to receive compensation money paid in land acquisition proceedings but the money is received by the defendant, a suit by the plaintiff for the recovery of the money from the defendant will be governed by this article.[11] Thus where the land which had been obtained in exchange by *P* from *D* was acquired by the Government and compensation thereof was paid to *D* because the revenue authorities refused to sanction mutation of exchange and *D* continued to be recorded in the revenue paper as owner of the land. In a suit by *P* against *D* for recovery of the amount of compensation, *D* contended that the claim of *P* could only be against the State and not against *D*, and therefore the correct article to be applied was Art. 17 and not Art. 62. It was held that the correct article to be applied was Art. 62 and not Art. 17. The State was only obliged to recognise the person recorded in the revenue records as the true owner to whom the compensation was payable and was actually paid. Hence *P* was rightly entitled to claim against *D* and not against the State.[12] But where the right of the plaintiff to the money is not immediate but is postponed to a future date this Article does not apply. Thus where by his will the testator gave certain immovable property absolutely to *A* but the property was to remain in possession and control of *B*

5. AIR 1935 Mad. 354 + AIR 1937 Oudh 286 = 13 Luck 138 (DB) + 37 Cal. 67 (DB) + 1881 All. W N 125 (DB).
6. AIR 1941 Pesh. 41 (DB) + AIR 1960 Andh Pra 89.
7. AIR 1941 Mad. 742 + AIR 1964 Mad. 9 (DB) + AIR 1947 Mad. 90.
8. AIR 1948 East Punj. 1 = ILR 1948 East Punj. 302 (DB). (AIR 1923 Cal. 85 = 16 Mad. 361 and 35 All. 419, *Rel on;* AIR 1935 Mad. 354, *Dissented*) + ILR (1948) 1 Cal. 479 (DB) + 228 Ind. Cas. 479 (Lah.).
9. AIR 1936 Pat. 370 = 15 Pat. 433 (DB) + AIR 1916 Pat. 54 (DB) + 17 Ind. Cas. 351 (DB) (Cal.).
10. (1900) 27 Cal. 180 (DB).
11. 3 Cal. W.N. 202 (DB) + 1881 All. W.N. 41 (DB).
12. AIR 1964 Punjab 451.

during his lifetime and *B* was to pay certain fixed amount annually to *A*. Part of the property was acquired by Government and *B* received the compensation money awarded in respect of the property acquired. After the death of *A* a suit was brought for the recovery of the sum by the assignee of *A* under a deed of trust. It was held that the compensation money stood substituted in place of the portion of the immovable property given to *A* by the will. All the rights and obligations which attached to the immovable property now attached to the compensation money. Just as *B* could keep under his control and management the immovable properties during his lifetime, so also he could keep the compensation money under his control and management during his lifetime. He could keep and retain for himself the income, if any, arising from the compensation money. The assignees of those properties under the deed of trust executed by *A* were entitled to possession of the compensation money after the death of *B* just as they were then entitled to possession of the immovable properties. When *B* died, his estate became bound to hand over the sum to *A's* assigns. Therefore the suit for the recovery of compensation money was not governed by Art. 62 as the money was not received by *B* for the plaintiff's use and he could retain the money during his lifetime for his use also. The suit was not governed by Art. 123 also as it was not for recovery of a legacy. No specific article of the Limitation Act being applicable the suit was governed by the residuary Article 120 and the right to sue accrued on the death of *B*.[13]

21. Suit to recover tax, etc., illegally collected. The article will apply to all cases in which "the defendant has received money which in justice and equity belongs to the plaintiff under circumstances which in law render the receipt of it a receipt by the defendant for the use of the plaintiff". In that case it will apply to suits "for money got through imposition (express or implied) or extortion for oppression or an undue advantage taken of the plaintiff's situation," and to cases in which "money is paid by the plaintiff in discharge of a demand illegally made under colour of an office".[14] Where therefore, the money was received as tax by the defendant Province from the plaintiff which the plaintiff was not bound in law to pay but which he was compelled or forced to pay because of the threats or apprehension of legal process. It was held that notwithstanding that the receipt by the defendant purported to be for his own benefit still it was money which at the

13. AIR 1962 Cal. 513 (DB).

14. PLD 1958 Dacca 472=10 DLR 258+PLD 1953 Sind. 41 (PLD 1960 Pesh 163 (DB) it is submitted is not correctly decided)+AIR 1964 A.P. 485+AIR 1957 Trav-Co. 61=ILR 1956 Trav-Co. 554 (DB). (AIR 1923 Cal. 379 and AIR 1953 Bom. 79, *Dissented from*)+AIR 1940 Bom. 252+AIR 1958 Andh Pra 670 (DB)+AIR 1957 Raj. 396=ILR(1957) 7 Raj. 139 (Suit for recovery of money wrongly realized by Customs and Excise Department as licence-fee—Amount not recoverable by any revenue authority—Article applicable is Art. 62 or Art. 120 but not Art. 16)+AIR 1955 Mys 110=ILR 1955 Mys. 257. (Suit for refund of octroi duty—Suit held was governed by this article)+67 Mad. L W 473. (Suit for recovering an amount said to have been collected illegally from the plaintiff as sales tax by the State is governed by Art. 62)+AIR 1953 Mad. 905. (Suit to recover an amount said to have been collected illegally from the plaintiff as sales-tax by the State—Art. 62 properly applies and not Art. 16)+AIR 1953 Punj 99. (Suit against Municipality for recovery of municipal tax wrongfully levied by it—Art. 62 applies and not Art. 96.)+AIR 1943 Mad. 191=ILR 1943 Mad. 521 (DB)+AIR 1929 Mad. 409=52 Mad. 207 (DB)+24 Cal. 163 (DB)+AIR 1920 Cal. 466 (DB)+AIR 1934 Oudh 158=9 Luck 577+AIR 1924 Sind 87=17 Sind L R. 82 (DB)+32 All. 491 (DB)+AIR 1965 S.C. 1773.

very moment of the receipt in justice and equity belonged to the plaintiff, rendering its receipt a 'receipt by the defendant to the use of the plaintiff, and the suit claiming refund would be governed by Art. 62.[15] But where certain moneys are legally collected as octroi duty from the plaintiff by a Municipality but subsequently, the plaintiff becomes entitled to their refund for certain reasons, a suit for such refund will not be governed by this article.[16]

22. Suit against 'benamidar' receiving money belonging to real owner. Where a *benamidar* has sold property, a suit by the real owner for recovery of the sale price received by the *benamidar* is governed by Art. 120 and not by this Article.[17] Similarly a suit against a *benamidar* mortgagee for the recovery of the mortgage money which had been received by the *benamidar* is a suit to enforce the payment of money charged on immovable property and was governed by Art. 132 and not by Art. 62.[18]

23. Suit by ward against guardian. A suit by a ward against his guardian for specific sums received by the latter is governed by this article.[19] Where the defendant took the money of a minor as his *de facto* guardian and subsequently gave a receipt in the name of the minor admitting receipt of the money and stating that that money remained in *"amanat"* with him; it was held that a suit for recovery of the money by the minor was governed by Art. 62 and not by Art. 145.[20]

24. Suit for refund of assets wrongly paid to defendant under S. 73, C.P.C. A suit under sub-section (2) of S. 73, Civil P.C., for refund of money wrongly paid to the defendant by an executing Court engaged in the rateable distribution of the assets of a judgment-debtor is one under this article.[1]

25. Suit for money wrongly attached. Where money has been wrongly attached in execution by a decree holder, a suit by owner of money against the decree-holder for recovery of money is one under this article.[2]

26. Suit to recover over-payment. Where *A* owes a certain sum of money to *B* but overpays the amount, a suit by *A* for recovery of the excess amount paid is a suit for money received by *B* for the use of *A* and is governed by this article.[3] Thus a suit against a Railway Company for overcharge,[4] or a suit for refund of the excess payment made by the plaintiff to the defendant on account of licence fees is

---

15. AIR 1965 S.C. 1773+52 All. 491+AIR 1929 Mad. 409+AIR 1943 Mad. 191+AIR 1953 Mad. 905+AIR 1953 Punj. 99.
16. AIR 1914 All. 338=36 All. 555.
17. AIR 1946 Mad. 248=ILR 1946 Mad. 306 (FB) (*Overruling* 21 Mad. 373: 30 Mad. 298 and AIR 1916 Mad. 524 (DB))+AIR 1951 Mad. 547.
18. 1909 Pun Re. No. 37, p. 112 (DB).
19. 1883 Pun Re. No. 56, p. 171 (DB).
20. AIR 1952 Cal. 230=ILR (1949) 2 Cal. 557. (The proper translation of the word *"amanat"* in this context would be that the amount "remained in his charge" or "was held by him").
1. AIR 1915 Mad. 405=39 Mad. 62 (DB)+15 Bom. 438 (DB).
2. AIR 1916 All. 335=38 All. 676 (DB)+AIR 1914 Mad. 126=38 Mad. 972 (FB)+4 All. 6 (DB).
3. AIR 1914 Lah. 29 (DB)+AIR 1957 Trav-Co. 61=ILR 1956 Trav-Co. 554 (DB). (Suit for realisation of excess amount illegally exacted--Art. 62 and not Art. 120 applies.)+AIR 1928 Nag. 256.
4. AIR 1939 Nag. 141.

governed by this article.[5] Where under an agreement the defendant was only entitled to recover nominal licence fee of Re. 1 per month per tank/pump from the plaintiff for several years. It was held that as the licence fee was recovered in breach of agreement the cause of action for claiming refund occurred to plaintiff on each deduction and therefore a suit could be brought within three years of such deduction.[6] But where money is knowingly paid without protest and a suit is subsequently filed for refund, this Article does not apply. Thus where the contract between the parties was that the defendant would supply salt to the plaintiffs at the rate of Rs. 6-8-6 per bag of 2 maunds. When the salt was actually sent to the plaintiffs by defendant he charged a higher rate and realised that amount by sending the railway receipts through a Bank. The plaintiffs had already deposited Rs. 1,200 as advance with the defendant. The plaintiffs took delivery of the salt without any protest at that time but later raised objection to the excess charged demanding refund of the amount from the defendant. On the refusal of the defendant to refund, the plaintiffs filed a suit for the same. It was held that Art. 62 could not be applied to the facts of the case, Art. 120 was applicable.[7] Similarly there may be a statutory right given to a tenant to claim an adjustment or refund of the amount of rent paid in excess of fair rent, but if the relief for that refund is sought through the medium of a Court, the provisions of the Limitation Act apply. Such a suit is governed by the general Art. 120 and not by Art. 62, Limitation Act, and the tenant will be entitled to get a refund of the excess amounts paid by him only within a period of six years prior to the suit.[8]

27. Suit against person receiving offerings for shrine. A suit on behalf of a shrine for the recovery of money received by the defendants as offerings for the shrine does not fall under this article.[9]

28. Starting point of limitation. Limitation begins to run under this Article from the time when the money is received by the defendant.[10] Where the receipt of money by the defendant has been by means of a cheque, the date, on which the cheque has been cashed and not the date on which the cheque is issued, is the date when the money is received by the defendant.[11] But where by the fraud of the defendant, the plaintiff has been kept from the knowledge of the fact that the defendant has received the money, time will begin to run from the date when the fraud first becomes known to the plaintiff.[12]

Land acquisition proceedings. Where money awarded as compensation in land acquisition proceedings has been withdrawn by the defendant and the

5. PLD 1961 S.C. 13=PLR 1961 (1) W.P. 370 (S.C.).
6. PLD 1982 Kar. 121.
7. AIR 1959 Pat. 477.
8. AIR 1961 Kerala 54.
9. AIR 1925 Mad. 1188 (DB)+AIR 1926 Lah. 228+AIR 1928 All. 134=50 All. 265 (DB).
10. AIR 1925 Cal. 67 (DB)+AIR 1920 Cal. 466 (DB)+AIR 1923 Mad. 392 (DB)+AIR 1946 Mad. 116=ILR 1946 Mad. 423 (DB). (There is nothing in Art. 62 which implies that knowledge of a payment is a factor to save time).
11. AIR 1914 Bom. 33=38 Bom. 293 (DB).
12. AIR 1918 Mad. 288=41 Mad. 488 (DB)+AIR 1921 All. 155=43 All. 449 (DB)+AIR 1938 Cal. 263=ILR (1938) 1 Cal. 512 (DB)+AIR 1922 Cal. 157=49 Cal. 886 (SB)+AIR 1917 All. 8 (DB)+AIR 1921 Mad. 283 (DB).

plaintiff claims such money as belonging to him, the money must be deemed as definitely received by the defendant on the date of the final award.[13]

Refund for short delivery of goods. Where goods have been paid for before delivery and there is a short delivery; limitation for a suit to recover the sum overpaid will begin to run on the date when money is received by defendant for plaintiff's use.[14]

Civil Procedure Code, S. 73. Under Art. 62 the time from which limitation runs for a suit against a defendant claiming rateable distribution under S. 73 (1) of the Civil Procedure Code is the time when the defendant received the money. For purposes of Art. 62 the defendant must be deemed to have received the money on the date of confirmation of the sale in cases where the defendant himself purchases and sets off the sale price against his decree.[15]

Recovery of goods illegally sold. Where tobacco is seized for non-payment of duty and it is sold in spite of payment of duty and redemption fine, a suit for recovery of tobacco or its price against the Government was governed by Art. 62 and limitation began to run from the date of sale.[16]

[17]63. For money payable for interest upon money due from the defendant to plaintiff.	[18][Three years]	When the interest becomes due.

Synopsis

1. Scope.
2. Independent contract to pay interest.
3. Interest under Registered contract.
4. Interest charged on immovable property.

1. **Scope.** The word "interest" in its ordinary sense means something paid for money overdue.[19] A suit by a depositor against a banker for the difference between the higher rate of interest claimed by him on his deposit and the lower rate admitted and paid by the banker is governed for money payable for interest upon money due.[20]

Where there is no express promise to pay interest independently of the principal, interest is always a mere accessory of the loan and falls to the ground

13. AIR 1920 Lah. 491 (DB).
14. 14 Cal. 457 (DB).
15. AIR 1960 Mad. 263 = ILR 1960 Mad. 71.
16. AIR 1958 Pat. 439 (DB).
17. For period of limitation for these and certain other suits in the Province of the Punjab, *see* the Punjab Loans Limitation Act, 1904 (Punjab 1 of 1904) and S. 29 (1) *(b)* of this Act.
18. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
19. ('78) 4 Cal. 283 (DB).
20. ('80) 3 All. 328 (DB).

where the claim for principal is barred by limitation.[1] Thus where interest on a pronote is payable with quarterly rests and interest amount is to form part of the principal, the suit should be decreed for interest item, within time.[2]

2. Independent contract to pay interest. Where there is an independent contract to pay interest, it may be recovered by suit even though the principal may be barred or may not have become due or may have been paid up.[3] Where *A* takes a loan from *B* to be repaid after five years and interest at a certain rate was agreed to be paid on the amount at the end of every year. *B* sued for the loan six years after the date of the loan; the interest due within three years of the date of the suit was recoverable under this article.[4]

3. Interest under Registered contract. A suit for interest on money payable under a registered contract would be governed by Article 116.[5]

4. Interest charged on immovable property. A suit for recovery of interest charged on immovable property by enforcement of the charge, would be governed by Article 132 and not by this article.[6]

[7]64. For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	[8][Three years]	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.

1. ('02) 27 Bom. 330 (DB)+AIR 1954 Sau 93. (Suit for principal barred under Civil P.C. (1908) O. 2, R. 2–Suit for interest only is also barred.)+AIR 1934 Nag. 219+('80) 5 Cal. 759 (DB)+('77) 1 Mad. 228 (DB).
2. AIR 1958 J&K 20 (DB).
3. ('11) 35 Bom. 327 (P.C.)+AIR 1929 P.C. 240+AIR 1942 Pesh. 85 (DB).
4. AIR 1917 Oudh 181=20 Oudh Cas 152+('09) 2 Ind Cas 111 (Cal.).
5. AIR 1916 P.C. 182=44 Cal. 759=44 Ind App. 65.
6. AIR 1916 Lah. 451 (DB)+('96) 22 Bom. 107 (DB)+AIR 1921 Cal. 172=48 Cal. 625 (FB)+('82) 6 Mad. 417 (DB)+AIR 1916 Mad. 78.
7. For period of limitation for these and certain other suits in the province of the Punjab, *see* the Punjab Loans Limitation Act, 1904 (Punjab I of 1904) and S. 29 (1) (*b*) of this Act.
8. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

Synopsis

1. "Account stated."
2. Account must be in terms of money.
3. Statement of account does not extinguish original rights.
4. Statement of account between principal and agent.
5. Adjustment of accounts not signed.
6. "Signed."
7. Starting point of limitation.

1. "Account stated." The expression "account stated" when it means an acknowledgment of liability, does not constitute a cause of action.[9] Whether the striking of a balance between two parties amounts to an acknowledgment,[10] or it gives rise to a fresh cause of action depends on the intention of parties and facts of the case. Acknowledgments have to be liberally construed and if the debtor has really intended to admit his liability whatever may be found on settlement of the account, it must be held that he acknowledged the debt.[11] But where a letter of demand by *A* on *B*, endorsed the words "will pay next August"; The writing was not an "Account stated" but a mere proposal.[12]

"An account stated" must on the face of it purport to contain accounts.[13] Where there is only a single item of account between the parties which is acknowledged this article will not apply.[14]

Account must amount to settlement. A mere balancing of an account is not necessarily an account stated within the meaning of this article.[15] An account stated must be the result of agreement between the parties to set-off cross items of the account against one another.[16] Therefore a statement of account must contain cross-items of account though they need not be in respect of mutual or independent dealings.[17] The expression "accounts stated" will include a case of accounts which merely consisted of amounts advanced on one side and repayments towards such advances on the other side.[18]

---

9. AIR 1934 P.C. 144 + (1921) 38 T L R 134.
10. 1904 Pun Re No. 68, p. 194 (DB). ((1878) Pun Re No. 4 (FB), *Followed.*) + AIR 1953 S.C. 225 = 1953 S C R 758 + Madh B L J 1954 H C R 775 + AIR 1952 Vindh Pra. 58.
11. AIR 1961 Punjab 175 (DB).
12. AIR 1919 Oudh 401.
13. AIR 1935 Nag. 221 (Creditor merely stating the final amount due--Debtor acknowledging--No account stated).
14. AIR 1938 Nag. 180 = ILR 1940 Nag. 441.
15. AIR 1938 All. 504 = ILR 1938 All. 741 (DB) (Balance struck--Account not closed but continued--No account stated.) + AIR 1960 Cal. 212 + AIR 1954 Madh B 11. (A mere balancing of account + ('11) 13 Cal. L Jour 165 (DB) + ('12) 15 Cal L Jour 204 + AIR 1918 Mad. 1305 (DB) + AIR 1920 Pat. 161 = 5 Pat L Jour 371.
16. AIR 1939 Oudh 120 = 14 Luck 478 (DB) + AIR 1958 Ker. 31 = ILR 1957 Ker 983 (FB). (An account stated is no more than an agreement.) + AIR 1958 All. 313 + AIR 1957 Raj. 29 = ILR (1957) 7 Raj. 222 (DB) + AIR 1955 Vindh Pra 24 (Where the accounts are explained to the debtor who agrees to the balance after understanding them and after tallying the accounts with his own books, the balance amounts to an account stated.) + AIR 1938 All. 504 = ILR 1938 All. 741 (DB) + ('11) 13 Cal L Jour 165 (DB).
17. AIR 1939 Oudh 120 = 14 Luck 478 (DB).
18. AIR 1934 P.C. 147 = 61 Ind App 273 = 56 All 376.

Acknowledgment on statement of accounts. The expression "account stated" in the article is used in the sense of giving rise to a fresh cause of action.[19] The reason for that is that where balance is struck and acknowledged after adjustment of credit and debit between the parties, it is a contract giving rise to a fresh cause of action.[20] The acknowledgment itself contains an implied promise to pay and in these circumstances when the accounts are examined by the parties and the defendants acknowledge that so much amount is due to the plaintiff, such an acknowledgment implies a promise to pay and can be the basis of a suit.[21] In such cases the parties are bound by the statement and cannot go behind it as in the case of acknowledgment.[22] Where the relationship between the parties was that of buyer and seller, the plaintiffs being buyers were the debtors. Thus, the plaintiffs were in debt throughout, and the accounts being one sided there was no mutuality which is an essential element in current and open account. Therefore the debtor could not ask for refund of any overpayments made by them prior to three years from the date of suit.[1]

Nature of debt included in account. The Court cannot go behind the statement of account, except on ground of mistake or fraud.[2] It is not necessary, in order to make out a real account stated, that the debts should be debts *in praesenti* or that they should be legal debts.[3] Therefore it is immaterial whether the items of account balanced and stated are beyond the period of limitation.[4] It has been held that an agreement to pay a time-barred debt in the case of an account stated is one supported by consideration.[5]

Accounts not finally settled. Where accounts between parties are not finally settled the suit is not governed by Art. 64.[6]

Mutual open and current account, suit on. It is Art. 85 and not Art. 57 or Art. 64 that applies to the case of the balance due on a mutual open and current account.[7]

Presumption as to acknowledgment. Where the debtor has admitted the existence of an account, it must be deemed to be an acknowledgment of liability for whatever is found due from him on the settlement of the said account. A

19. AIR 1934 P.C. 147=56 All. 376=61 Ind App. 273+AIR 1934 P.C. 144+AIR 1957 Raj. 110=ILR (1957) 7 Raj 483 (DB)+AIR 1957 Raj 29=ILR (1957) 7 Raj. 222 (DB)+ILR (1955) 5 Raj. 793+AIR 1954 Madh B 11+AIR 1954 Mys. 23=ILR 1953 Mys. 344.
20. AIR 1940 Pat. 71+AIR 1956 Raj. 12=ILR (1955) 5 Raj. 85 (DB)+AIR 1934 P.C. 144+(1921) 38 T L R 134.
21. AIR 1964 Assam 78 (DB)+AIR 1953 S.C. 225=1953 S C R 758.
22. AIR 1934 P. C. 144+AIR 1954 Mys 23=ILR 1953 Mys. 344. (The existence of a debt can be rebutted, and it may very well turn out that there is no real debt and in that case there would be no consideration and no binding promise).
1. PLD 1975 SC 193=PLJ 1975 SC 138.
2. AIR 1934 P.C. 147=61 Ind. App. 273.
3. AIR 1934 P.C. 144+AIR 1934 P.C. 147=56 All. 376=61 Ind. App. 273. (It is doubted whether this principle will apply where all the items are statute-barred).
4. ('1843) 11 M & W 542=12 L. J. Ex. 295+AIR 1942 Nag. 92=ILR 1942 Nag. 369. (Some items time-barred)+AIR 1946 Nag. 112=ILR 1946 Nag. 21+1877 Pun. Re. No. 41. p. 101 (DB)+AIR 1942 Oudh 311 (DB).
5. AIR 1954 P.C. 144.
6. AIR 1960 Orissa 123 (DB).
7. AIR 1959 Assam 163 (DB).

debtor may, while admitting the existence of an account, also say that on account of a set-off, which he claims nothing will be found due to the creditor, or may say that on account of the payments which he has made the balance of the account will be found to be in his favour. All the same he would be deemed to have admitted the existence of the account and would be deemed to have acknowledged his liability to pay whatever money is found due on the basis of the said account. Hence where the debtor has expressly said in his written statement that if any amount is found due from him, instalments may be fixed for the same, it means that he has admitted the existence of his liability to pay whatever is found due from him, although he likes to pay the same by instalments, and the statement amounts to an acknowledgment of liability on his part.[8] Where the account is handed over or sent by one party to the other with the signature of the debtor on the balance and is never objected to by the creditor, the Court can presume that it was accepted by the other side and amounted to an "account stated".[9]

2. **Account must be in terms of money.** There must be a definite sum of money entered in the account as due.[10] Every item must appear in terms of money whatever the consideration for each item may be.[11]

3. **Statement of account does not extinguish original rights.** The statement of an account does not extinguish the original debt. Therefore the creditor can base his suit either on the account stated or on the original contract.[12] But where a bond is executed by the defendant and thereby he has accepted the correctness of the previous accounts, if any, between the parties it is not open to the Court in a suit on the bond to reopen the transaction and to take accounts between the parties except where a mistake or fraud is pleaded or claim for reopening of the transaction is made under any statute.[13]

4. **Statement of account between principal and agent.** A suit based on accounts between a principal and agent is governed by this article.[14]

5. **Adjustment of accounts not signed.** Where the dealings are mutual between the parties, an oral statement of account will give rise to a cause of action.[15] But the mutuality of accounts is not a necessary factor in a statement of account giving rise to a cause of action.[16]

6. **"Signed."** In order to sustain a suit on the basis of accounts stated, such statement must be signed by the defendant.[17] Where an account stated is not

8. AIR 1961 Punjab 175 (DB).
9. AIR 1958 Raj. 303 = ILR (1958) 8 Raj. 617 (DB).
10. AIR 1923 Lah. 645 (DB).
11. AIR 1934 P.C. 147 = 56 All. 376 = 61 Ind. App. 273.
12. ('21) 63 Ind Cas 280 (DB) (Pat.). (Suit for money due under original registered contract where the account has been stated beyond three years of such statement but within six years of the contract itself held not barred).
13. AIR 1955 Pepsu 122 (DB).
14. AIR 1934 P.C. 147 = 56 All. 376 = 61 Ind App. 273 + AIR 1940 Pat. 71.
15. AIR 1940 Pat. 71 + AIR 1917 Mad. 622 (DB) + ('97) 21 Mad. 366 (DB).
16. AIR 1934 P.C. 147 = 56 All. 376 = 61 Ind App. 273 + AIR 1946 Nag. 112 = ILR 1946 Nag. 21.
17. AIR 1965 Raj. 47 (DB).

signed as required by this article by the defendant or his agent, this article will not apply.[18]

What is good and valid signature for S. 19 is also good and valid signature for this article.[19] Thus where the defendant opened account in the plaintiff's shop with his name written by himself and after several entries by him, he struck the balance by totalling up in pencil. It was held that this article did not apply to a suit for money due on that account.[20]

7. **Starting point of limitation.** When an account has been stated, limitation will begin to run from the date when the statement of account is signed by the defendant. But when there is no evidence as to when the accounts were stated, a finding that a suit is not barred by the three years' rule under this article, cannot be supported.[1] Even a surety of the defendant stands in the position of a defendant so far as this Article is concerned. Thus where a surety undertakes liability for dues of *A* to *B* and interest upto Rs. 1,000 and subsequently a statement of account was made between *A* and *B*. *B* sued A and his surety. It was held that time began to run against both from the date of the statement.[2]

Demand and refusal to pay. Where this Article applies time does not run from the date of demand and refusal.[3] Thus where *A* demanded money from his debtor *B* and *B* endorsed on the letter of demand "will pay next August"; the starting point of limitation was not postponed to that date.[4]

Agreement as to date of payment. Where the debt is by simultaneous agreement in writing signed by defendant or his authorised agent, payable at a future time, limitation will run from that date.[5] But such agreement must always be in writing. A simultaneous verbal agreement cannot have the effect of extending the three years period of limitation.[6]

64A.[7]	Under Order XXXVII of the Code of Civil Procedure.	Three years	When the debt becomes payable.

1. **Commencement of limitation.** Under Order 37, C.P.C., a suit is required to be filed within 3 years from the date when the debt becomes payable and on a Demand Promissory Note, debt becomes payable immediately. Therefore under Article 73 of the Limitation Act, a suit based on a promissory note payable on demand has to be filed within 3 years from the date of the Note.[8]

18. AIR 1907 Pun Re No. 132, p. 626 (DB) + AIR 1950 Nag. 228 = ILR 1950 Nag. 464.
19. AIR 1933 Lah. 12 = 14 Lah. 14 (DB).
20. AIR 1940 Mad. 887 + AIR 1958 Pun 216 = ILR 1958 Punj. 674 (DB). (AIR 1940 Mad. 887, *Rel on*).
1. AIR 1953 All. 104 (DB).
2. AIR 1936 Pat. 444 (DB).
3. AIR 1938 Cal. 861 (DB).
4. AIR 1919 Oudh 401.
5. AIR 1917 Cal. 156 (DB) + 25 All. 67 (DB).
6. 8 Bom. 542 (DB).
7. Art. 64A ins. by the Civil Procedure and Limitation (Amendment) Ord., 1961 (9 of 1961), S. 3 (with effect from the 6th March, 1961).
8. NLR 1979 Civ. 91.

65. For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	[9][Three years].	When the time specified arrives or the contingency happens.

Synopsis

1. Scope.
2. Contracts performable on demand.
3. Registered contracts.
4. Contract of indemnity and guarantee.

1. Scope. Article 65 of the Limitation Act, 1908 applies in general to all contracts which are to be performed at a specified future date or on the happening of a specified contingency. Moreover its relates to suits which are for compensation and for breach of promise to do anything at a specified time or on the happening of a specified contingency. Where there is no contract between the parties providing for the performance of a contract at any specified time or upon the happening of a specified contingency, Article 65 of the Limitation Act would not apply.[10] The word "specified" implies some particularity in the contract regarding time of its performance or the contingency which is to happen.[11] Thus where the plaintiff has advanced money under a deed. It is to be repaid on redemption of a prior mortgage on property, the time runs from the date of redemption.[12] Where the defendant had purchased cottonseeds from plaintiff, and he agreed to take delivery on a specified date and pay compensation. It was held that time started from the date of delivery of goods.[13] Where defendant in a sale deed bound himself to pay compensation in case the land sold did not fall to his share in partition, limitation for a suit for compensation commences from the date of final order in partition proceedings.[14] Where defendant agreed to give plaintiff a half share in the land for helping him in recovering it, limitation runs from the refusal of the defendant after recovery.[15]

More than one Article applicable. Where a case comes under more than one Article, only one of them would apply. Thus where a case comes under Art. 115 and this article; either this article or Art. 115 would apply.[16] Similarly where a case falls under Art. 65 and Art. 49, the latter article will apply as being more specific.[17]

---

9. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
10. PLD 1967 Karachi 624 (DB).
11. AIR 1932 Bom. 25 (DB) ("Contingency" refers to contingent contracts as defined in S. 31 of the Contract Act, 1872).
12. AIR 1917 Oudh 170 + AIR 1927 Oudh 53.
13. AIR 1927 Lah. 122.
14. AIR 1923 Lah. 23 (DB).
15. AIR 1923 Nag. 47.
16. AIR 1923 Lah. 645 (DB) + AIR 1957 Orissa 124 = ILR 1957 Cut 334 (DB) + 12 Cal. L. Jour 423 (DB) + AIR 1922 Lah. 122 (DB).
17. AIR 1950 Raj. 4.

2. Contracts performable on demand. The words "on demand" by themselves do not make demand a term of the contract. Whether or not demand is a term of the contract will depend upon the intention of the parties and in cases where it is so it should be proved that the demand was made to fix the defendant with liability.[18]

3. Registered contracts. Where there is a registered contract of the nature referred to in the article, a suit for compensation in respect thereof will be governed only by Art. 116 that being a special article applicable to suits on registered contracts.[19]

4. Contract of indemnity and guarantee. This article applies to suits against the surety on contracts of guarantee.[20] A contract of guarantee has to be strictly construed as to the point of time when the liability of the guarantor arises. The question will naturally depend on the terms of the contract of guarantee by which the guarantor has bound himself for the repayment of the loan advanced to the principal borrower.[1] Where payment by surety is to be made on demand his liability will start after the demand has been made and limitation will run from the date of the demand or when the liability to pay accrues.[2] It is to be noted that the letter of guarantee embodying the term of repayment as "within 2 days after demand" will be read, as a condition precedent for enforcing the right against the guarantor but it will not by itself enlarge the period of limitation, at the will of the parties and leave it to the sole discretion of the creditor to sleep over his rights, to let the debt become time-barred against the debtor and to catch hold of the guarantor at any time he likes, simply by not giving a notice of demand.[3]

Date of payment not determined by surety Land. One view is that where a loan to *A* is repayable on demand and *X* guaranteed the loan, the starting point of limitation for a suit against surety began, under this article, from the date of the loan.[4] But the other view is that Article 83 applies to such cases.[5]

[6][7]66. On a single bond, where a day is specified for payment.	[Three years].	The day so specified.	

18. AIR 1919 Mad. 462 + AIR 1919 Mad. 562.
19. 13 All. 200 (DB).
20. 1982 CLC 1101 + 4 Cal. L. R. 34 + AIR 1952 All. 587 (DB).
1. 1981 CLC 89 = PLJ 1981 Kar. 14 = NLR 1981 UC 161.
2. 1982 CLC 1101.
3. 1981 CLC 89 = PLJ 1981 Kar. 14 = NLR 1981 UC 161.
4. 21 Mad. L. Jour. 457 (DB).
5. AIR 1917 Cal. 154 (DB). (Article 115 applies) + AIR 1919 Cal. 636 (DB) (Dc.) + AIR 1939 Bom. 26 = I L R 1939 Bom. 9 (DB).
6. For period of limitation for these and certain other suits in the Province of the Punjab, see the Punjab Loans Limitation Act, 1904 (Punjab I of 1904), and S. 29 (1) (6) of this Act.
7. Subs. by the Repealing and Amending Act, 1923 (1 of 1923), S. 2 and First Sch., for "Ditto".

When on default of regular payment of interest on the amount of the bond, the amount becomes immediately payable though a period has been fixed for such payment, it can be said that a day is specified for payment.[18] In such a case time would run from the date primarily fixed for payment and not from the date of default.[19]

No time specified. Where a bond provided that the amount due would be paid at the time of payment of two other debts, a day was not specified for payment.[20] Similarly where a bond provided that the amount due thereunder would be paid before the payment of another debt; it was held that no day was specified for payment.[1]

3. Registered bond. Article 66 applies where the plaintiff seeks to enforce an unregistered bond.[2] But it does not apply to a suit to enforce a personal covenant where the bond is registered. In that case Article 116 and not this article was applicable.[3]

4. Suit against legal representative of executant. This article applies to suits against the executant as well as against his legal representatives.[4]

[5]67. On a single bond, where no such day is specified.	[6][Three years].	The date of executing the bond.	

1. Scope. Where the obligee might have enforced payment at any time after the execution of the document a suit will be governed by Article 67.[7] Therefore the Article will apply to a bond payable on demand,[8] or to a bond payable at the time of the payment of another debt of the obligor,[9] or to book entries of the balances struck in the plaintiff's account-books by the defendant attested by witnesses have been held to be single bonds and if no day is specified for the payment, to be governed by this article.[10] Where a bond stipulated that the money due under it should be paid before the payment of the amount advanced to the obligors by the obligee, under a lease; it was held that no day was specified for

18. AIR 1941 Oudh 210 = 16 Luck 464 (FB). (AIR 1936 Oudh 279 and AIR 1925 Oudh 502. *Overruled.*) + 5 Cal. 21 (DB) + AIR 1917 All. 402 (DB).
19. AIR 1941 Oudh 210 = 16 Luck. 464 (FB). (AIR 1936 Oudh 279. *Overruled*).
20. AIR 1916 Lah. 251 + AIR 1933 Lah. 84.
1. 1888 All. W.N. 234 (DB).
2. AIR 1937 Cal. 347 (DB).
3. AIR 1929 Mad. 53 = 52 Mad. 105 (FB) + AIR 1933 Cal. 268 (DB) + AIR 1931 Cal. 801 (DB) + AIR 1930 All. 69 = 52 All. 363 (FB) + AIR 1934 Pat. 578 = 13 Pat. 228 (DB) + AIR 1928 Oudh 465 = 4 Luck 107 (DB) + AIR 1937 Rang. 484 = 1938 Rang. L. R. 35 (FB) + AIR 1914 Bom. 141 = 38 Bom. 177 (DB).
4. AIR 1937 All. 559.
5. For period of limitation for these and certain other suits in the Province of the Punjab, *see* the Punjab Loans Limitation Act, 1904 (Punjab 1 of 1904) and S. 29 (1) (*b*) of this Act.
6. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
7. ('12) 16 Ind. Cas. 222 (DB) (All).
8. ('81) 3 All. 415 (DB).
9. AIR 1933 Lah. 84 + AIR 1916 Lah. 251.
10. AIR 1925 Lah. 75 = 5 Lah. 406 (DB).

payment and that the period of limitation should be reckoned under this article from the date of the execution on the bond.[11]

This article does not apply where a date for payment of the bond has been specified. Thus where a decree-holder seeks execution of a decree for costs pending appeal and execution is stayed on the furnishing of security to Court where in it was agreed that the surety would pay the costs whenever demanded. It was held that the date was specified in the bond and that this article did not apply.[12]

[13]68.	On a bond subject to a condition.	[14][Three years].	When the condition is broken.

Synopsis

1. "Bond subject to a condition." 2. Administration bond.
3. Starting point.

1. **"Bond subject to a condition."** A bond subject to a condition is a bond accompanied by a condition in the nature of a defeasance, providing that on the performance of the condition, the bond shall become void.[15] In such a case the condition in the bond specifies the real agreement between the parties.[16] Thus a bond given by a student sent abroad for studies by the State to serve the State for five years after return from abroad, or to refund the money spent on his education by the State would be covered by this Article.[17] Where there is an agreement whereunder the defendant undertakes to pay Rs. 7,000 out of the due amount of Rs. 9,000 by a certain date and plaintiff to give up his right to the balance but on failure to do so the whole amount is to be paid; a suit on the bond was governed either by Art. 68 or Art.80.[18] Where there is no penalty attached to breach of a condition under the bond, this Article does not apply. Thus a bond, which stipulates that the money due under it should be paid before the payment of another debt, is not a bond subject to a condition and this article does not apply to it.[19]

Surety bond. Bonds executed by sureties under the Guardians and Wards Act, 1890, are bonds with a condition within the meaning of this article.[20]

Where a suit is brought against a surety but it is not brought on a surety bond this article does not apply. Thus where a successful party in a claim under O. 21, R. 58, Civil P.C. brings a suit against the surety, with whom the property

11. 1888 All. W.N. 234 (DB).
12. ('97) 1 Cal. W.N. 223*n* (DB).
13. For period of limitation for these and certain other suits in the Province of the Punjab, *see* the Punjab Loans Limitation Act, 1904 (Punjab 1 of 1904), and S. 29 (1) (*b*) of this Act.
14. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
15. AIR 1923 All. 1 = 45 All. 27 (FB) = (`05) 8 Oudh Cas. 77.
16. AIR 1938 Nag. 13 = ILR 1938 Nag. 399 (DB).
17. PLD 1960 Kar. 506 (DB).
18. AIR 1938 Nag. 13 = ILR 1938 Nag. 399 (DB) = (`11) 12 Ind. Cas. 616 (Lah).
19. 1888 All. W.N. 234 (DB).
20. AIR 1919 Mad. 432 = 42 Mad. 302 (DB).

has been kept for sale custody, for compensation for loss of part of the property, the suit is not one based on the surety bond and is not governed by Art. 68 but by Art. 49.[1]

Security Bond. This article applies to bonds of the nature of security bonds, where the executant is only liable to make a payment on breach of the condition and is not otherwise liable under the bond.[2] But where a security bond is given to prefer an appeal and the appeal is dismissed and on the bond being assigned to the plaintiff he filed a suit for a declaration that the premises covered by the security bond were charged in favour of plaintiff. The suit was opposed as being barred by limitation on the ground that it was for enforcement of security bond and was governed by Art. 68 of the Limitation Act and the period of limitation was three years from the date of breach. It was also contended that assignment by Registrar did not constitute either the commencement of the period of limitation or any fresh starting point of limitation. It was held that since the surety bond contained the specific covenant of creation of charge and the plaintiff's suit as constituted being for a declaration of that right and the ancillary relief of mortgage decree, the suit was governed by Art. 116 of the Limitation Act. Further the basis of the suit being enforcement of the charge, the suit was competent under Art. 132 also and was within time.[3]

Mortgage bond. A bond, such as a mortgage bond providing for immediate payment of interest, is not a bond subject to a condition.[4] But in case of a mortgage bond providing for immediate payment of the amount due in default of regular payment of interest, if there was no default the suit was governed by Art. 66 but if default occurred, the suit on the bond would fall under this article.[5]

2. Administration bond. Administration bonds are bonds subject to a condition under this article.[6] Therefore suits by assignee of an administration bond was governed by this article.[7]

3. Starting point. In case of suits falling under this Article, the limitation begins to run from the date of breach in the conditions of the bond. Thus where the bond was for payment of money within a certain time and there was part payment and endorsement on the bond that balance should be paid within a certain date, either Art. 68 or Art. 80 applied and time started from the date fixed for payment in endorsement.[8] Where a student was sent abroad for studies on Government expense. He signed a bond whereby he would have to serve the State for five years after returning from abroad. He did not do so and the Government sued him on the bond for return of the money spent on his education abroad. It was held that the cause of action had arisen to the plaintiff on the breach of

1. AIR 1946 Mad. 33 = ILR 1945 Mad. 784 (DB).
2. AIR 1941 Oudh 210 (FB).
3. AIR 1963 Calcutta 12 + AIR 1934 Mad. 1 + AIR 1919 Mad. 432 + AIR 1932 P.C. 131.
4. AIR 1941 Oudh 210 (FB) + AIR 1923 All. 1 = 45 All. 27 (FB). (*Overruled* in AIR 1934 All. 397 (FB) on another point).
5. AIR 1935 All. 405.
6. AIR 1924 Rang. 68 = 1 Rang. 463 (DB) + AIR 1914 Low Bur 261 = 8 Low Bur Rul 99 (DB) + AIR 1915 Mad. 1184.
7. AIR 1941 P.C. 6 = 67 Ind App. 416 = ILR 1941 Bom. 202 = ILR 1941 Kar. (PC) 11.
8. AIR 1939 Lah. 236.

condition in the bond by one of the defendants. On the date of breach the debt became due to the plaintiff and in accordance with Article 68 in the 1st Schedule of the Limitation Act, the period for limitation started to run when the condition was broken.[9]

Several breaches. Where there are several breaches of a bond and some of them are beyond time a suit is maintainable if brought within three years of the breach complained of.[10]

Administration bond. Where there is a breach of condition of the administration bond as where it is found that the administrator has not administered the estate property, limitation for the suit began to run from the day which the administrator failed to pay the deficiency in accounts.[11] Where an administration bond was assigned under S. 292, Succession Act, after breach of its condition. It was held that a new cause of action did not arise on the assignment.[12] Where the administrarix died and the bond was assigned to one of her sons on his attaining majority; it was held that for a suit on the bond time began to run from the date of death of the maker.[13]

Surety bond. Where there was a condition in a bond by guardian that the guardian would account for and dispose of the balance found due as the Judge would decide. It was held that the cause of action did not arise till the Court directed disposal of the balance amount.[14]

[15]69. On bill of exchange or promissory note payable at a fixed time after date.	[16][Three years].	When the bill or note falls due.

Synopsis

1. Scope. 2. Starting point of limitation.

1. Scope. A suit not based on the promissory note or bill of exchange does not fall within this article.[17]

2. Starting point of limitation. The limitation under this Article starts when the bill or note falls due. In ascertaining when a note or bill falls due for the

9. PLD 1960 Karachi 306 (DB).
10. AIR 1924 Rang. 68 = 1 Rang. 463 (DB) + AIR 1919 Mad. 1184.
11. AIR 1927 Rang. 28 = 4 Rang. 358 (DB) + AIR 1924 Rang. 68 = 1 Rang. 463 (DB) + AIR 1921 Upp. Bur Rul 25 = 4 Upp Bur. Rul. 22 (AIR 1914 Low Bur. 261. *Dissented from*).
12. AIR 1941 P.C. 6 = ILR 1941 Bom. 202 = ILR 1941 Kar. (PC) 11 = 67 Ind. App. 416 (AIR 1936 Bom. 363. *Overruled*).
13. AIR 1941 P.C. 6 = ILR 1941 Bom. 202 = ILR 1941 Kar. 11 = 67 Ind. App. 416 + AIR 1943 Pat. 218 = 22 Pat. 114 (DB). (Cause of action against heirs of deceased surety arises on his death).
14. AIR 1919 Mad. 432 = 42 Mad. 302 (DB).
15. For period of limitation for these and certain other suits in the Province of the Punjab, *see* the Punjab Loans Limitation Act, 1904 (Punjab I of 1904), and S. 29 (1) (*b*) of this Act.
16. Subs. by the Repealing and Amending Act, 1925 (11 of 1923), S. 2 and First Sch., for "Ditto".
17. (1903) 5 Bom. L. R. 725.

purposes of limitation regard must be had to the provisions of the Negotiable Instruments Act (XXVI of 1881) on the subject.[18]

Agreement as to due date. Where there is an agreement between the parties as to due date of a bill of exchange, etc., that agreement must be given effect to in determining the starting point of limitation. Thus the days of grace may be waived by agreement between the parties and in such cases, time will run from the date on which the note is expressed to be payable and not from the expiry of the period of grace.[19]

Proof of agreement. The note or bill need not, for applicability of this article, embody the stipulation as to the period of payment but evidence of a contract fixing such a period may be admissible in cases where the note or bill is silent on the point.[20]

[1]70.	On a bill of exchange payable at sight or after sight, but not at a fixed time.	[2][Three years].	When the bill is presented.
[3]71.	On a bill of exchange accepted payable at a particular place.	[4][Three years].	When the bill is presented at that place.

1. **Scope.** A bill of exchange was "accepted payable at the house of P & Co." It was held that the holder was bound to present the bill at the house for payment in order to charge the acceptor.[1]

Where a promissory note or bill is payable at two places, it can be presented at either of the places.[2]

[5]72.	On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	[6][Three years].	When the fixed time expires.

18. AIR 1915 Lah. 297.
19. AIR 1914 Mad. 430 (DB).
20. AIR 1920 Mad. 486 (DB).

1. For period of limitation for these and certain other suits in the Province of the Punjab, *see* the Punjab Loans Limitation Act, 1904 (Punjab I of 1904), and S. 29 (1) (*b*) of this Act.
2. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
3. AIR 1923 Mad. 667 = 46 Mad. 259 (DB).
4. AIR 1926 Mad. 792 (DB) = (1816) 17 R R 644 = 1816 Holt N. P. 313.
5. For period of limitation for these and certain other suits in the Province of the Punjab, *see* the Punjab Loans Limitation Act, 1904 (Punjab I of 1904), and S. 29 (1) (*b*) of this Act.
6. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

1. **Scope.** Where a bill is payable two years after demand, time would not begin to run till two years after demand.[7] Where a pronote was payable at "six months' notice"; time did not run till notice was given and six months time had expired.[8]

Suit against guarantor. Where the guarantor promised to pay within two days after demand all moneys due from the principal debtor. The making of the demand was a condition precedent, and such a demand was necessary to inform the guarantor of the amount outstanding against the principal debtor, and to give rise to accrual of cause of action against him. In the circumstances the suit filed against him on 14-10-76 after service of notices dated 25-10-1975 and 20-3-1976 would not be barred by time.[9]

[10]73.	On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	[11][Three years].	The date of the bill or note.

Synopsis

1. "On a bill of exchange or promissory note."
2. Payable on demand.
3. "Writing restraining or postponing the right to sue."
4. Computation of time.

1. **"On a bill of exchange or promissory note."** This Article applies where the suit is brought on a bill of exchange or promissory note. Thus a suit against a Hindu son to enforce the pious obligation to pay his father's debt arising under a promissory note is governed by this article.[12] Where the suit is not on the promissory note, etc., this Article does not apply. Thus a suit against endorser of a promissory note,[13] or a suit against a surety for a debt due on the note is not governed by this article.[14]

Where the instrument though executed in the form of a promissory note was not intended to be negotiable; this article did not apply.[15]

---

7. 29 R R 485 = 8 Dowl & Ry. 347.
8. (1856) 111 R R 316 = 22 Beav 172.
9. 1983 CLC 244.
10. For period of limitation for these and certain other suits in the Province of the Punjab, *see* the Punjab Loans Limitation Act, 1904 (Punjab I of 1904), and S. 29 (1) (*b*) of this Act.
11. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
12. AIR 1939 Bom. 464 = AIR 1931 Bom. 542 (DB).
13. AIR 1940 Mad. 85 = AIR 1925 Mad. 132.
14. NLR 1981 UC 161 = 1981 CLC 89 = PLJ 1981 Kar. 41 = AIR 1918 Cal. 707 (DB) = AIR 1922 Oudh 286 (DB).
15. AIR 1939 Sind. 281 = ILR 1954 Trav-Co. 1196 (DB).

2. Payable on demand. The words "on demand" regarding transactions under this article, mean money lent and repayable on demand, the instrument is payable at once and without demand.[16] Thus a promissory note or a bill of exchange in which no time is fixed for payment is one payable on demand and is governed by this article.[17]

Bill of exchange. A promissory note payable at sight is one payable on demand within the meaning of this article. But to a bill of exchange payable at sight though it is equivalent to one payable on demand, this article does not apply, Article 70 applies.[18] No presentment is necessary in order to make the drawer or maker liable where the bill of exchange is payable on demand or at sight.[19]

3. "Writing restraining or postponing the right to sue". Where a bill or note is accompanied by a writing restraining or postponing the right to sue, it is not governed by this article but is be governed by Art. 80.[20] Thus a promissory note stating "I shall pay you whenever you may demand after attaining majority,"[1] or a promissory note "payable at any time within six years on demand" is not one within this article.[2] It is however to be noted that the writing contemplated by this Article is a legally effective and binding writing. An oral agreement to postpone the date of payment will not take the case out of the pale of the article.[3] Similarly a mere expectation that the demand will not be made for a certain period is not an agreement and will not render this article inapplicable.[4]

Subsequent agreement to postpone payment. An agreement restraining or postponing the right to sue need not have been executed simultaneously to take a case out of the application of this article.[5]

4. Computation of time. Where a promissory note is payable on demand, suit on it may be filed within three years of the date of notice.[6] Where a suit is governed by this Article the day on which the bill or note was executed should be excluded in computing the period of limitation.[7]

---

16. 2 DLR 385 + AIR 1928 Bom. 35 = 52 Bom. 88 (FB) + AIR 1926 Nag. 194 + AIR 1918 Cal. 707 = 44 Cal. 978 (DB) + AIR 1915 Nag. 65 = 11 Nag. L. R. 189 + (1865) 2 Mad. H C R 472 + AIR 1931 Cal. 140 = 58 Cal. 290.
17. 1881 Bom. P J 112 (DB) + AIR 1955 Trav-Co. 141 = ILR 1954 Trav-Co. 1196 (DB).
18. AIR 1924 Cal. 1065 (DB).
19. AIR 1929 Lah. 240 = 10 Lah. 755 (DB). (21 All. 450 and 32 Bom. 247, *Relied on*).
20. AIR 1917 Mad. 539 = 39 Mad. 129 (FB) (19 Mad. 368, *Overruled*--Negotiable character of bill or note not destroyed by such writing) + AIR 1950 Mad. 749 + AIR 1920 All. 353 = 41 All. 55 (DB).
1. ('93) 3 Mad. L. Jour 199 (DB). (6 Mad. 290 *Followed*).
2. ('83) 6 Mad. 290 (DB).
3. AIR 1926 Nag. 194 + AIR 1917 Mad. 539 = 39 Mad. 129 (FB).
4. ('86) 3 Bom. H C R (O C) 153 (DB).
5. AIR 1920 Mad. 486 (DB). (Application to bank for loan with a period of six months for repayment--*Held* time ran after the expiry of the period--Though pronote was payable on demand) + ('76) 1 Bom. 503 (DB). (Pronote payable on demand--Advance interest paid on the understanding that until the period covered by such interest there will be no demand--*Held* limitation began to run only from the time fixed).
6. NLR 1978 Civ. 570 = PLJ 1978 Kar. 173.
7. 1912 Upp. Bur. Rul. 146 (DB). (Note executed on 7-10-1907, limitation expired on the midnight of 7-10-1907).

[8]74	On a promissory note or bond payable by instalments.	[9][Three years]	The expiration of the first term of payment as to the part then payable; and for the other parts the expiration of the respective terms of payment.

Synopsis

1. Scope.
2. Default clause in instalment bond.

1. Scope. The phrase "payable by instalments" necessarily qualifies the phrase "promissory note or bond", and can only apply to an instrument of that character. The fact that the suit debt has been made repayable by instalments by an Act of the legislature would not convert the promissory note or bond under which the debt is due into a bond or note payable by instalments.[10] Similarly where an agreement between the Government and a contractor for collection of toll tax provided for payment of money to the government by instalments, and the Government brought a suit for compensation for breach of contract on non-payment of instalments by the contractor, this Article did not apply because though payment was to be made by instalments yet the suit was not based on a bond.[11]

Agreement to the contrary. Notwithstanding any contract to the contrary, time will, in respect of each instalment, run from the date on which it falls due and the creditor cannot recover instalments due beyond three years of the suit.[12]

Registered instalment bond. A suit upon a registered instalment bond is governed by Art. 116 and not by this article.[13]

2. Default clause in instalment bond. This article is a general article applicable to all suits on instalment bonds except where they fall within the scope of the special Art. 75 in which case this article will not apply.[14] Thus where *A* agrees to pay Rs. 99 in eighteen annual instalments and there is no default clause a suit for the instalments accrued due would be governed by Article 74 and not Art. 75.[15]

8. For period of limitation for these and certain other suits in the Province of the Punjab, *see* the Punjab Loans Limitation Act, 1904 (Punjab 1 of 1904), and S. 29 (1) (*b*) of this Act.
9. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
10. AIR 1960 Mad. 84.
11. AIR 1964 Orissa 189.
12. AIR 1915 Mad. 979 = 38 Mad. 374 (DB).
13. AIR 1939 Pat. 433 = 18 Pat. 459 (FB) + 18 Cal. 506 (DB).
14. AIR 1934 All. 661 = 57 All. 106 (FB) + AIR 1932 Nag. 1 = 28 Nag. L. R. 4 (FB). (*Overruling* AIR 1927 Nag. 28 = 22 Nag. L. R. 126).
15. AIR 1927 Oudh 539 = 4 Luck 480 (DB) + Madh B.L.J. 1955 H.C.R. 5 + 1869 Pun Re. No. 64.

Where the bond contains a default clause but there has been no default, making the whole amount due or where, though such a default has been committed, it has been waived, a suit for the instalments that have accrued due would not be governed by Art. 75 but only Art. 74.[16] But where whole amount became due by default which was not waived, to a suit for enforcement of the agreement as to instalments, Art. 75 and not this article applied.[17]

[18]75. On a promissory note or bond payable by instalment, which provides that if default be made in payment of one or more instalments, the whole shall be due.	[19][Three years]	When the default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.

Synopsis

1. Promissory note or bond.
2. Default in payment.
3. Obligee having option of demand--applicability.
4. Starting point of limitation.
5. Waiver.
6. Onus of proof of waiver.
7. Pleading and waiver.
8. Registered instalment bonds.
9. Instalment bond creating charge on property.

1. Promissory note or bond. This Article applies only where a suit is brought on a promissory note or a bond. It does not apply to applications for execution of a decree payable by instalments,[20] or to suits on verbal contracts under which money would be payable in instalments.[1] A suit on an agreement which provided that in consideration of the amount paid by the plaintiff to the defendants the latter should, during a certain period, hand over to the former a

16. AIR 1939 Pat. 433=18 Pat. 459 (FB). (Instalment bond with default clause--Default committed and no waiver--Obligee suing for instalments which would have accrued within 3 years of suit--Suit instituted more than 3 years after default--*Held*, Article 75 applied and not this article)+AIR 1915 Mad. 979=38 Mad. 374 (DB). (Promissory note payable in instalments--Promisee refusing instalments after some time when tendered--Suit more than 3 years after refusal--*Held* this article applied and not Article 75)+AIR 1961 All. 278 (DB).
17. AIR 1939 Pat. 433=18 Pat. 459 (FB)+AIR 1934 All. 661=57 All. 108 (FB)+AIR 1932 Nag. 1=28 Nag. L. R. 44 (FB). (*Overruling* AIR 1927 Nag. 28=22 Nag. L. R. 126)+AIR 1955 Raj. 188=ILR (1955) 5 Raj. 671 (DB)+AIR 1961 All. 278 (DB)+AIR 1941 Oudh 485.
18. For period of limitation for these and certain other suits in the Province of the Punjab, *see* the Punjab Loans Limitation Act, 1904 (Punjab 1 of 1904), and S. 29 (1)(*b*) of this Act.
19. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
20. 4 All. 83 (DB)+7 Cal. 56 (DB).
1. 3 Cal. 619 (DB).

specified part of their catch of fish and for every default become liable to pay to the plaintiff compensation at the rate mentioned in the agreement is clearly a suit for damages for breach of a contract and not a suit on a bond or promissory note. To such a suit Art. 115 and not this Article, is applicable.[2]

Bond or note must be payable by instalments. This Article will apply only where the bond or note which is subject of the suit is payable in instalments. A bond or note is "payable by instalments" when the principal amount thereof is payable by instalments and not where the interest alone is payable on particular dates, but the whole of the principal is payable after a fixed date.[3] Where principal on a bond was payable after three years but interest on it was payable every half year and on failure to pay interest regularly, principal and interest were to be payable immediately. It was held that this was not an instalment bond.[4]

2. **Default in payment.** Article 75 applies only to those cases where the provision relating to the default clause lays down that on default being made in payment of one or more instalments, the whole amount is to fall due.[5] Where there is no default clause in the bond or note providing that whole amount would be due on default in payment of one or more instalments, this article will not apply but only the general Art. 74 would apply.[6]

A clause in an instalment bond that on default in payment of one instalment the whole shall be due, is not a penalty within the meaning of S. 74, Contract Act.[7]

Default must have occurred. A mere non-payment of the instalments due is not necessarily a default.[8] Thus where the debtor is ready and willing to pay the instalment but the creditor refuses to accept it there is no 'default' within this article.[9]

Waiver of default. Where a bond has a default clause and there has been also a default but the default has been waived and a fresh default has not occurred a suit on the bond would not be governed by this article but by Art. 74.[10]

Future instalment not claimed on default. Where conditions given in the Article are satisfied, the article applies to suits claiming only instalments already

---

2. AIR 1953 Trav-Co. 272 (DB).
3. AIR 1941 Oudh 210 (FB)+AIR 1923 All. 1=45 All. 27 (FB). (AIR 1921 All. 104, *Overruled*)+AIR 1952 All. 479 (DB)+5 Cal. 21 (DB)+AIR 1929 Sind 140+AIR 1915 Sind 37=9 Sind L. R 90+AIR 1947 All. 38=ILR 1946 All. 711.
4. 2 All. 322 (DB).
5. AIR 1963 All. 278 (DB).
6. AIR 1927 Oudh 539=4 Luck 480 (DB)+Madh B L J 1955 II C R 5+6 C P L R 24+AIR 1934 All. 661=57 All. 108 (FB)+AIR 1943 All. 172=ILR 1943 All. 210 (DB). (Default clause authorising creditor to sue for whole amount not unequivocal--Application of Art. 75 held doubtful).
7. ('79)+Bom. 96 (DB)+AIR 1927 Mad. 965 (DB).
8. AIR 1915 Mad. 244 (DB).
9. AIR 1915 Mad. 244 (DB).
10. AIR 1915 Mad. 244 (DB).

fallen due under the primary terms of the agreement, without claiming to enforce the default clause.[11]

3. Obligee having option of demand--applicability. Whether the bond or note provides merely that the whole amount will become due on the default of one or more instalments or whether it provides that the whole amount shall become due at the option of the obligee or promisee the bond or note falls within column 1 of this article, and time will start to run from the date of the first default unless such default is waived by the obligee or promisee.[12] After the expiry of the period prescribed by Art. 75 from the date of the first default, not only a suit for the whole amount but also a suit for the instalments due within three years of the suit would become barred.[13]

If the words "on demand" be construed in the light of the transaction with reference to which the bond is given as a condition for enforcing the default clause, time does not run against the obligee until demand is made.[14] Where however the last instalment has fallen due time will start running from the date of the last instalment falling due. Even though a demand is considered necessary to make the whole amount payable, no demand is needed after the last instalment has become due.[15]

4. Starting point of limitation. The article in effect, creates a case of election as each instalment becomes overdue and after the last instalment becomes overdue, there can be no election.[16] Thus where the suit is brought after the last instalment has fallen due, time runs from the date on which such instalment falls due.[17]

Where an instalment bond provided that the whole amount would become due on default of "two or three" instalments, time started to run on default of the second instalment.[18]

---

11. AIR 1939 Pat. 433 = 18 Pat. 459 (FB). (*Overruling* 11 Pat. L. T. 866) + AIR 1934 All. 661 = 57 All. 108 (FB) + AIR 1932 Nag. 1 = 28 Nag. L. R 44 (FB). (*Overruling* AIR 1927 Nag. 28) + AIR 1942 Nag. 138 = ILR 1943 Nag. 630.
12. AIR 1934 All. 661 = 57 All. 108 (FB) + AIR 1959 Madh Pra. 336 + AIR 1952 Pepsu 18 = 3 Pepsu L. R 450 + AIR 1947 Oudh 128 = 22 Luck 33 + AIR 1925 Oudh 373 + AIR 1934 Nag. 180 = 30 Nag. L. R 314 + 65 Ind. Cas. 257 (Cal.) + AIR 1947 Oudh 235 = 22 Luck 299. (It is a mixed question of law and fact--Point of waiver cannot be raised for first time in appeal) + AIR 1932 Nag. 1 = 28 L. R 44 (FB) + AIR 1915 Sind 37 = 9 Sind L. R 90 (DB) + AIR 1925 Oudh 54 (DB) + AIR 1934 Lah. 283 + 20 Bom. 109 + AIR 1947 All. 38 = ILR 1946 All. 711 + AIR 1917 Mad. 47 (*But see* AIR 1937 Lah. 1 (DB).
13. AIR 1949 Pat. 447 (DB) + AIR 1948 Nag. 225 = ILR 1947 Nag. 947.
14. 8 Bom. 561 + AIR 1919 Mad. 462 + 36 Mad. 66 + AIR 1930 Lah. 124 (DB).
15. AIR 1919 Mad. 580 (DB) + AIR 1947 Oudh 235 = 22 Luck 299 + AIR 1924 Mad. 310.
16. 9 Mad. 271 (DB).
17. AIR 1924 Mad. 310 + AIR 1955 Raj. 188 = ILR (1955) 5 Raj. 671 (DB) + AIR 1919 Mad. 580 (DB).
18. AIR 1922 Nag. 194 + AIR [illegible] 128 = 22 Luck. 33. (Whole amount to be due on default of one of all instalments + No waiver + Time begins from the default in first instalment).

5. Waiver. The exigibility clause in an instalment bond is for the benefit of the creditor and he has a right to waive that benefit even in the absence of fresh agreement, fresh consideration or a fresh bilateral arrangement.[19]

Waiver--What is. Waiver is the abandonment of a right and must be intentional. It may be express or implied from conduct.[20] It is a bilateral transaction between the parties.[1] Therefore an overt act is necessary to constitute a waiver.[2] To prove waiver it is not sufficient to show a mere abstinence from suit. Something else must be established to show that a promisee has waived his rights. It may be by the expression of an intention to waive the benefit either by communication to the debtor or by any other overt act.[3] The following are different views as to the nature of the overt act required to constitute waiver:--

(*a*) Waiver may be effected in a variety of ways and may be inferred from various circumstances.[4]

(*b*) Waiver can be effected only by acceptance by the obligee of the overdue instalments and in no other way.[5]

(*c*) Acceptance of overdue instalments may amount to waiver though not necessarily so.[6]

Failure to sue does not amount to waiver. A mere inaction or the failure to sue the obligor on the occurrence of a default is not sufficient to constitute waiver.[7] But it may be evidence from which waiver may be inferred.[8]

---

19. AIR 1948 Nag. 225 = ILR 1947 Nag. 947 + AIR 1952 Trav-Co. 29 = ILR 1951 Trav-Co. 241 (DB).
20. AIR 1959 Madh Pra 413.
1. 2 All. 857 (DB) + (1867) 36 L. J. Ch. 404 = 2 HL. 43 + 20 Bom. 109 + AIR 1925 All. 499 = 47 All. 552.
2. AIR 1929 Cal. 292 (DB) + AIR 1959 Madh Pra 413 + (1888) 38 Ch. 273 = 57 L. J. Ch. 609. (Inaction is evidence of waiver).
3. ILR 1954 Madh B 334 + AIR 1959 Madh Pra 413.
4. 36 Mad. 66 + ILR 1954 Madh B 334 + AIR 1948 Nag. 225 = ILR 1947 Nag. 947 + 4 Ind Cas 17 (Cal.) + AIR 1929 Cal. 292 (DB) + AIR 1933 Nag. 70 (AIR 1927 Nag. 28, held *overruled*.) + 159 Ind Cas 96 (Nag.) + AIR 1932 Oudh 176 + AIR 1917 Mad. 47.
5. 31 Cal. 297 (DB) + 36 Cal. 394 (DB).
6. 27 Bom. 1 (FB) + AIR 1955 Raj. 188 = ILR (1955) 5 Raj. 671 (DB) + AIR 1952 Trav-Co. 29 = ILR 1951 Trav-Co. 241 + AIR 1953 Pat. 6 + AIR 1948 Nag. 225 = ILR 1947 Nag. 947 + 12 Mad. 192 + 32 Mad. 284 (DB) + AIR 1921 All. 318 = 43 All. 38 + 106 Ind Cas 874 (Lah.) + AIR 1934 Oudh 455 (DB) + AIR 1935 Pesh. 179 (DB) + 1 Bom. 125 (FB). (Acceptance of overdue instalment cannot by itself prove waiver.) + 2 All. 857 (DB) + 159 Ind Cas 96 (Nag.) + AIR 1933 Sind 365 (DB) + AIR 1933 Nag. 70 + AIR 1939 Pat 433 = 18 Pat. 459 (FB). (Acceptance of overdue instalment is not necessarily waiver.) + AIR 1920 Lah. 472 (Do.) + AIR 1928 Lah. 378 (Do.) + AIR 1961 M.P. 29.
7. AIR 1939 Pat. 433 = 18 Pat. 459 (FB) + AIR 1952 All. 479 (DB) + AIR 1948 Nag. 225 = ILR 1947 Nag. 947 + AIR 1947 Oudh 128 = 22 Luck. 33 + AIR 1915 Mad. 244 (DB) + AIR 1947 Oudh 235 = 22 Luck. 299. (It is a mixed question of law and fact--Point of waiver cannot be raised for first time in appeal) + 20 Bom. 109 + AIR 1932 Nag. 1 = 28 Nag. L.R. 44 (FB). (AIR 1927 Nag. 28 = 22 Nag. L. R. 126. *Overruled.*) + AIR 1919 Cal. 950 (DB) + 7 Mad. 583 (DB) + AIR 1937 Lah. 863 + AIR 1924 Bom. 301 (DB) + 32 Mad. 284 (DB) + AIR 1924 Lah. 702 (DB) + AIR 1929 Cal. 292 (DB) + AIR 1927 Oudh 34 (DB) + AIR 1934 All. 1039 = 57 All. 561 (DB) + 11 All. L. Jour 89.
8. AIR 1917 Mad. 47 + AIR 1936 Oudh 384 + 36 Mad. 66 + AIR 1914 Sind 60 = 8 Sind L. R. 63 (DB).

Demand of overdue instalment. The demand of an overdue instalment is not a waiver of the right to sue for the whole amount fallen due on the default.[9]

Part-payment or payment towards account. To amount to waiver by acceptance of overdue instalments, the payment must be for the specific instalment in arrear, a mere payment on account generally will not suffice.[10] Therefore a payment of part of an instalment or a payment for interest, though accepted by the creditor cannot by itself amount to a waiver.[11]

Waiver does not affect liability of surety. The advantage of waiver can be taken by the creditor against the principal debtor only and not against the surety, because the latter is not a party to the transaction.[12]

Waiver, if a question of fact. The question of waiver is one of mixed law or fact.[13] But the question whether there has been a waiver is one of fact.[14]

6. Onus of proof of waiver. For the purpose of this Article waiver may be established and inferred from circumstances.[15] The burden of proof as to waiver under this article lies on the person who wishes to take advantage of the fact.[16]

7. Pleading and waiver. If a party wishes to take advantage of a plea of waiver he must distinctly set up such plea in his pleading.[17] In some cases where it is not specifically set up, it may be gathered from the frame of the pleadings.[18] The mere fact that a waiver will be to the advantage of the plaintiff inasmuch as that will save him from the bar of limitation, will not *ipso facto* be a proper basis for the view that he should be assumed to have waived the benefit and that on that basis the defendant who pleads to the contrary, should be called upon to establish the negative namely, that the plaintiff has not waived his right.[19]

---

9. 20 Bom. 109.
10. AIR 1921 All. 318=43 All. 38 (DB)+106 Ind Cas. 874 (Lah.)+AIR 1935 Pesh. 179 (DB)+AIR 1929 Lah. 390.
11. 31 Cal. 83 (DB)+AIR 1939 Pat. 433=18 Pat. 459 (FB)+AIR 1924 Bom. 264+AIR 1926 Cal. 789=53 Cal. 277 (DB)+12 Mad. 161 (DB).
12. AIR 1935 Pesh. 179 (DB).
13. AIR 1947 Oudh 235=22 Luck 299+AIR 1959 Madh Pra. 413+ILR 1954 Madh B 334+AIR 1948 Nag. 225=ILR 1947 Nag. 947 (AIR 1933 P.C. 233. *Foll.*).
14. AIR 1936 Lah. 159 (DB)+36 Mad. 66+27 Bom. 1 (FB)+AIR 1922 All. 113+AIR 1936 Oudh 384+9 Ind. Cas. 22 (DB) (Cal.)+AIR 1914 Cal. 633 (DB)+AIR 1934 Oudh 455 (DB). (No hard and fast rule can be laid down as to what would or would not constitute a waiver)+AIR 1932 Oudh 176.
15. AIR 1936 Oudh 384+ILR 1954 Madh B 334.
16. AIR 1964 A.P. 365 (DB)+13 App. Cas. 770=57 L.J.P.C. 97+AIR 1959 Madh Pra 413+AIR 1948 Nag. 225=ILR 1947 Nag. 947.
17. AIR 1935 Mad. 303+AIR 1959 Madh Pra 413+AIR 1955 Raj. 188=ILR (1955) 5 Raj. 671 (DB)+ILR 1954 Madh B 334. (Unless facts establishing waiver have been pleaded and proved the legal effect of waiver cannot come into operation or be considered)+AIR 1948 Nag. 947+AIR 1947 Oudh 235=22 Luck 299+AIR 1946 Nag. 117=ILR 1945 Nag. 955. (Waiver cannot be presumed. Pleas cannot be raised for the first time in revision).
18. AIR 1922 All. 113+AIR 1929 Cal. 292 (DB)+AIR 1941 Oudh 465 (Intention to waive [illegible] Suit should not be dismissed if cause plaintiff may [illegible] to amend)+AIR [illegible] 25=[illegible] 27=[illegible] 28.

Where there is no plea of waiver, on the other hand the plaintiff has clearly set up a plea inconsistent with the plea of waiver, as where he has set up a plea of payment of certain instalment which is later on found to be incorrect, it cannot be said that the plaintiff has made a plea of waiver.[20] Where interest was leviable on default and the plaintiff stated in the plaint that certain instalments were barred and only claimed later instalments, and he also claimed interest from the date of the bond. It was held that the earlier defaults were not waived.[1]

Plea must be taken at the earliest. Except in those few cases where the waiver becomes a pure question of law, the plea of waiver must be raised in the pleading and proved and if this is not done, it cannot be raised at a later stage.[2] Thus a new plea of waiver cannot be allowed to be raised for the first time in appeal.[3]

Waiver of one default does not bar suit on second default. Where no suit is filed on the first default, the creditor's right to use coercive measures provided in the bond are not affected on subsequent default.[4]

8. Registered instalment bonds. Where an instalment bond with a default clause has been registered, a suit thereon would be governed by Art. 116.[5] In that case Article 116 must be read with Art. 75 for determining the starting point which is the date of default. Where default is waived, the starting point is the date of the next default.[6]

9. Instalment bond creating charge on property. Where an instalment bond with default clause creates a charge over immovable property, a suit to enforce the charge on the occurrence of default would be governed by Art. 132, and not by this article.[7] A suit to enforce a personal remedy under such a bond would be governed by this article, and if the bond were a registered instalment bond, by Art. 116 read with Art. 75.[8]

'76.	On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	[10][Three years]	The date of the delivery to the payee.

20. AIR 1939 Pat. 433 = 18 Pat. 459 (FB) + ILR 1954 Madh B 334.
1. AIR 1937 Lah. 863.
2. AIR 1955 Pat. 188 = ILR (1955) 5 Raj. 671 (DB).
3. AIR 1947 Oudh 235 = 22 Luck 299.
4. 163 Ind Cas 165 (Lah.) + AIR 1925 Mad. 233 + ('07) 29 All. 431 (DB) + AIR 1922 Mad. 67 (DB) + AIR 1922 Lah. 416 = 3 Lah. 285 (DB).
5. AIR 1939 Pat. 433 = 18 Pat. 459 (FB) + AIR 1914 Sind 60 = 8 Sind L. R. 63 (DB) + ('07) 11 Cal. W.N. 903 (DB) + ('09) 4 Ind. Cas. 17 (DB) (Cal.) + AIR 1922 All. 113 + ('09) 1 Ind. Cas. 570 (DB) (All).
6. ('13) 11 All. L. Jour 89.
7. AIR 1939 Cal. 26 + AIR 1939 Pat. 433 = 18 Pat. 459 (FB) + AIR 1928 Mad. 952 (DB).
8. AIR 1939 Cal. 26 + AIR 1925 Pat. 557 = 4 Pat. 820 (DB) + ('07) 30 All. 38 (DB) + ('06) 3 All. L. Jour 463 (DB) + 1941 Nag. L. Jour 649. (Suit within the time if filed within 6 years from the date fixed for payment of last instalment).
9. For period of limitation for these and certain other suits in the Province of the Punjab, see the Punjab Loans Limitation Act, 1904 (Punjab 1 of 1904), and S. 29 (1)(*b*) of this Act.
10. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

1. **Scope.** When a promissory note was made and deposited with a banker to be delivered to the payee on his producing a certain cancelled note the cause of action to the payee started on receiving the note from the banker.[11]

[12]77.	On a dishonoured foreign bill where protest has been made and notice given.	[13][Three years]	When the notice is given.
[12]78.	By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	[13][Three years]	The date of the refusal to accept.

Synopsis

1. Scope.
2. Starting point of limitation.

1. **Scope.** This article applies only to a suit on a bill which has been dishonoured by non-acceptance. It does not apply where the bill has never been presented for acceptance but only for payment.[14]

The Article does not apply where the suit is not based on a bill of exchange. Where on the dishonour of a bill of exchange sent by the defendant to the plaintiff, on settlement of accounts between them, the plaintiff sued the defendant for recovery of the sum due on accounts, this article did not apply.[15]

2. **Starting point of limitation under this Article.** Time runs not from the date of notice but from the date of dishonour. A subsequent dishonour by non-payment when the bill is presented for payment does not furnish a fresh cause of action or a fresh starting point of limitation.[16]

[17]79.	By the acceptor of an accommodation-bill against the drawer.	[18][Three years]	When the acceptor pays the amount of the bill.

Synopsis

1. Scope.
2. Starting point of limitation.

---

11. (1817) 19 R R 707 = 2 Strak 232.
12. For period of limitation for these and certain other suits in the Province of the Punjab, see the Punjab Loans Limitation Act, 1904 (Punjab 1 of 1904), and S. 29 (1)(*b*) of this Act.
13. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
14. 1888 Pun Re No. 19, p. 49 (DB).
15. AIR 1919 Cal. 534 = 46 Cal. 168 (DB).
16. (1817) 19 W.R. (Eng.) 644 = 49 L. J. C. P. 141.
17. For period of limitation for these and certain other suits in the Province of the Punjab, see the Punjab Loans Limitation Act, 1904 (Punjab 1 of 1904), and S. 29 (1)(*b*) of this Act.
18. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

1. Scope. This article applies only where the accommodating party is the acceptor and he sues the drawer for the loss caused to him as a result of the accommodation.[19] Therefore the suit by the accommodator for recovery of the sum paid by him for the bill, is not a suit on the bill but one on contract of indemnity.[20]

2. Starting point of limitation. The cause of action arises when the plaintiff is damnified and time commences to run from that date.[1]

[2]80.	Suit on a bill of exchange, promissory note, or bond not herein expressly provided for.	[3][Three years].	When the bill, note or bond becomes payable.

Synopsis

1. Scope and applicability. 2. Starting point.

1. Scope and applicability. This article is the residuary one and provides for cases not otherwise expressly provided for.[4] Therefore this Article applies in the following cases:--

(*a*) Suit on a *hundi* never presented for acceptance is governed not by Article 78 but by Article 80.[5]

(*b*) A suit on a promissory note payable on demand which is accompanied by a writing restraining or postponing the right to sue.[6]

(*c*) A suit on promissory note payable at a specified period after date and at a specified place.[7]

(*d*) A suit on a bond providing for repayment on a future date on the happening of a contingency.[8]

---

19. ('84) 7 Mad. 392 (DB).
20. (1845) 69 R R 816 = 14 M. & W. 762 + (1850) 82 R R 754 = 5 Ex 514 + (1840) 56 R R 527 = 1 Man & G. 753 + (1865) 148 R R 870 = 11 L. T. (NS) 708.
1. (1865) 11 L. T. (NS) 708 = 148 R R 870.
2. For period of limitation for these and certain other suits in the Province of the Punjab, *see* the Punjab Loans Limitation Act. 1904 (Punjab 1 of 1904), and S. 29 (1)(*b*) of this Act.
3. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
4. AIR 1933 Mad. 376 (DB). (War bond) + AIR 1959 Mad. 82 + AIR 1947 All. 38 = ILR 1948 All. 711 + AIR 1923 All. 1 = 45 All. 27 (FB). (Mortgage bond with default clause) + AIR 1924 Rang. 68 = 1 Rang. 483. (Administration bond under Art. 68).
5. 1888 Pun. Re. No. 19, p. 49 (DB).
6. AIR 1917 Mad. 539 = 39 Mad. 129 (FB) + AIR 1950 Mad. 749 + AIR 1920 All. 353 = 42 All. 55 (DB) + ('07) 7 Bom. H C R (OC) 36.
7. AIR 1933 Mad. 376 (DB).
8. AIR 1916 Lah. 251 + ('96) 1 Cal. W N ccxxiii (DB).

(e) A suit on a bond of a complex description providing for repayment either on demand or on the expiration of stipulated period whichever is earlier.[9]

(f) A bond which stipulates for payment of principal within three years and of interest every half-year and provides that in default of such half yearly payments of interest it shall be optional on the party of the creditor to claim full payment of the debt.[10]

(g) Bond providing that if by a certain date the person under obligation should pay a certain amount, then the bond would become void.[11]

Registered bond. A suit on a registered bond is governed by Article 116 and not by this article, even if this article will apply if the bond had not been registered.[12]

Relief of enforcement of line claimed. Where the relief claimed is the enforcement of lien against any property, the article is inapplicable.[13]

2. **Starting point.** A promissory note or a bill of exchange payable at a specified place will become payable, within the meaning of this article, when it is so presented.[14] Where a bond provided repayment of principal within a fixed period. Interest was to be paid in fixed instalments and on default of payment in any instalment, whole of principal and interest was to become due. The creditor did not exercise his option to enforce immediate payment. It was held that limitation for the suit on the bond would run, from the expiry of the period stipulated.[15] Where a bond was executed on 1-7-1930 and part payment was made on 25-11-1930 and in endorsement of payment, the debtor promised to pay the balance within five years. It was held, that the bond fell due on 25-11-1934 and limitation ran from that date.[16]

81.	By a surety against the principal debtor.	[17][Three years].	When the surety pays the creditor.

Synopsis

1. Scope.
2. "By surety against principal debtor."
3. Payment to creditor.
4. Remedy against principal debtor barred--Surety not liable.
5. Starting point of limitation.
6. Surety in respect of mortgage debt.

9. 1897 Bom. P J 344. Reprint p. 200 (DB).
10. ('80) 2 All. 322 (DB).
11. AIR 1938 Nag. 13 = ILR 1938 Nag. 399 (DB).
12. AIR 1924 Rang. 68 = 1 Rang. 463 (DB) + AIR 1923 All. 1 = 45 All. 27 (FB).
13. AIR 1918 All. 344 = 40 All. 512 (DB).
14. AIR 1933 Mad. 376 (DB).
15. AIR 1934 All. 397 = 56 All. 954 (FB) + AIR 1952 All. 479 (DB) + AIR 1935 Lah. 948 + AIR 1941 Oudh 210 = 16 Luck. 464 (FB).
16. AIR 1939 Lah. 236.
17. Subs. by the Repealing and Amending Act, 1925 (11 of 1925), S. 2 and First Sch., for "Three".

1. **Scope.** A suit to enforce the right obtained by a surety who has paid the creditor, under S. 140, Contract Act, is not to enforce any right of indemnity, but merely to enforce the original obligation in favour of the creditor and this article does not apply to such suits.[18]

Suit by agent against principal. A suit by an agent against his principal for recovery of money spent for the principal is governed by Article 83 and not by Art. 81 or Art. 82. Art. 61 also does not apply to the case.[19]

2. **"By surety against principal debtor."** This article will apply only where the debtor is a willing party to the agreement of suretyship.[20]

A surety is always liable to the person to whom he gives a guarantee. Where there is no such liability there is no relationship of surety and principal and this section does not apply. Thus where *A* and *B* executed a joint promissory-note in favour of *C* and received in moieties the money advanced thereunder, each of them is not a principal debtor in respect of moiety of the debt and surety for the other.[1] Where A executed a bond in favour of *B* but the money was really for the benefit of *C* who undertook to indemnify *A* against loss; it was held that *A* was not a surety for *C* inasmuch as *C* himself was not liable to *B*.[2] Where *D* owed money under a decree to *A*. *G* accepted liability by executing a bond in *A*'s favour. *A* released *D* from liability. It was held that *G* was not a surety and a suit by him against *D* for reimbursement was not governed by this article.[3] Where *A* contracted with *B* to discharge the liability of *C* to *B* in case of default, but on the date of such contract the right of *B* against *C* had been barred by limitation, it was held that *A* was not a surety at all.[4]

Surety for release of judgment-debtor from arrest. Where security was given releasing a judgment-debtor from arrest, a suit by the surety against the judgment-debtor for indemnity was governed by this article.[5]

3. **Payment to creditor.** A suit by a surety who was compelled to contribute to a co-surety who had paid the creditor on the implied contract of indemnity, is not governed by this article, but by Article 83.[6]

4. **Remedy against principal debtor barred--Surety not liable.** Where the remedy against the principal debtor is allowed to be barred the surety is discharged.[7]

5. **Starting point of limitation.** It is the loss which the surety has sustained by the default of the principal debtor that entitles the surety to sue the principal

18. AIR 1917 Mad. 183=39 Mad. 965 (DB).
19. AIR 1959 Raj 153=ILR (1959) 9 Raj. 577. (34 Mad. 167, *Dissented from*).
20. AIR 1926 Mad. 544=49 Mad. 156 (DB).
1. AIR 1915 Mad. 675=39 Mad. 288 (DB).
2. ('07) 29 All. 627 (DB).
3. ('09) 4 Ind. Cas. 1041 (Lah).
4. AIR 1915 Bom. 197=42 Bom. 444 (DB).
5. AIR 1921 Lah. 335 (DB).
6. 1881 Pun Re. No. 98, p. 228 (DB).
7. AIR 1928 All. 46=50 All. 211 (DB)+('02) 24 All. 504 (DB)+('92-96) 2 Upp Bur Rul 308+1878 Pun Re No. 30, p. 121 (DB).

debtor for reimbursement.[8] The limitation starts from the date when the surety makes payment to the creditors. The word "pays" in the third column of this article has the same meaning as it has under S. 145 of the Contract Act.[9] It means a payment in money or a transfer of property and not the mere incurring of a pecuniary obligation in the shape of a bond or a promissory note or an acknowledgment of liability.[10] Payment may be even in the shape of suffering a decree to be passed,[11] or the execution of a mortgage.[12]

Deposit of money in Court. Where money is deposited by the surety into Court to the credit of the creditor, the date of payment for the purpose of this Article is the date of the deposit,[13] but where at the time of the deposit the creditor is not entitled to draw the amount out of Court, the date of payment for the purpose of this article would be the date when the creditor becomes entitled to withdraw it.[14]

Several payments made at different times. Where the surety has had to make payments at several times, his right to reimbursement arises as often as he is so compelled to make the payment and time runs as to each such payment from the time when it is made.[15]

6. Surety in respect of mortgage debt. A suit against a surety for a mortgage debt is governed by this Article. Where *A* borrowed money from *B* under mortgage of his property on *C* standing surety for payment. On *A's* failure, *B* recovered the money from *C*. *C's* suit to recover the money from *A* is governed by this article and must be brought within three years of payment to the creditor.[16] But '*C*' could also enforce the mortgage by suit to be brought within 12 years of the cause of action under the mortgage under Article 132.[17]

82.	By a surety against a co-surety.	[18][Three years]	When the surety pays any thing in excess of his own share.

Synopsis

1. Scope. 2. "Pays."
3. Starting point of limitation

1. Scope. A surety has no right of contribution until he has paid a larger sum than his proportion of the debt actually due to the creditor.[19] Where a surety

8. ('03) 26 Mad. 322 (DB) + AIR 1925 Bom. 244 = 49 Bom. 202 (DB).
9. AIR 1919 Nag. 126 = 15 Nag. L. R. 78 + AIR 1926 Nag. 429 (Obiter).
10. AIR 1936 Rang. 235 = 14 Rang. 511 + AIR 1930 Lah. 812 + AIR 1924 Lah. 657.
11. AIR 1919 Nag. 126 = 15 Nag. L. R. 78.
12. 1926 Nag. 429.
13. AIR 1920 Upp Bur 21 = 3 Upp Bur Rul 261.
14. AIR 1925 All. 164.
15. (1840) 9 L J (N.S) Ex. 263 + AIR 1920 Upp. Bur. 21 = 3 Upp. Bur Rul 261.
16. AIR 1920 Upp. Bur 21 = 3 Upp. Bur Rul. 261.
17. AIR 1919 All. 56 = 42 All. 70 (DB) + ('03) 28 Mad. 686 (FB).
18. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
19. (69) 1 N W P H C R 100.

has paid less than his share of the debt to the creditor he could not recover any contribution from his co-sureties.[20]

When a surety makes payments in excess of his share he has in respect of each such payment a right of suit for contribution.[1] Therefore a surety must, in his suit for contribution include the whole of the claim for contribution in respect of all the payments made prior to the date of suit.[2]

2. "Pays." Where a surety does not make any payment to the creditor he has no right to claim any contribution.[3] To give a starting point to limitation the payment must be actual payment in money or transfer of property and not the mere undertaking of a pecuniary obligation such as the execution of a promissory note or bond in discharging of the surety's liability.[4] It is to be noted that it will amount to a payment even if the surety suffered his property to be seized under process of law for realization of the amount from its income or sale.[5]

3. Starting point of limitation. Where a payment made by a co-surety was not in excess of his share on the date of payment, but it became an excess payment when the amount was actually adjusted by the creditor towards the debt in full satisfaction, the starting point of limitation would not be the date of payment but the date on which it became an excess payment by adjustment.[6]

83.	Upon any other contract to indemnify.	[7][Three years]	When the plaintiff is actually demnified.

Synopsis

1. Scope.
2. Suit for indemnity not based on contract.
3. Suit by agent against principal.
4. Registered contract of indemnity.
5. Suit to enforce indemnity charged on immovable property.
6. Suit by transferor against transferee of immovable property.
7. Suit by assignor against assignee of lease.
8. Suit by creditor against surety.
9. Suit by a joint promisor for contribution.
10. Starting point of limitation.

1. Scope. Article 83 is a special Article which applies to the case of a suit upon any contract of indemnity, other than a contract covered by Art. 81 or Art. 82 which apply respectively to a suit by a surety against a principal-debtor and by a

20. (1840) 55 R R 547.
1. ('03) 26 Mad. 686 (FB).
2. ('03) 26 Mad. 686 (FB) + ('10) 13 Oudh Cas. 23.
3. ('72) 11 Beng. L R 76 (DB).
4. AIR 1924 P.C. 192 = 4 Rang. 48.
5. ('03) 26 Mad. 686 (FB) + AIR 1921 Cal. 814 (DB).
6. AIR 1960 Mys. 227.
7. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

liability on a contract of indemnity under this Article.[18] Where *A*, acting as an agent for *B*, purchases certain goods for *B* and pays the price on his behalf, *A*, does a lawful act for *B* in consequence of which he is damnified and hence a suit by *A* for recovery of balance due from *B* is a suit based on an implied contract and as such is governed by Art. 83 and not by Art. 81 or Art. 82.[19]

4. Registered contract of indemnity. When the contract of indemnity is registered the article applicable is Art. 116 read with this article,[20] and the limitation is six years from the date of actual damnification.[1]

5. Suit to enforce indemnity charged on immovable property. This article does not apply to cases where the indemnity is charged on immovable property and such charge is sought to be enforced; Art. 132 applies to the case.[2]

6. Suit by transferor against transferee of immovable property. Where on sale, a vendor leaves money with the vendee to pay off his debts, and the vendee fails to do so the vendor can sue the vendee on the implied contract of indemnity,[3] and the vendor can sue for damages, even though he had not suffered any actual loss, for the sum to be paid to the debtor.[4]

Where *A* sells property to *B* subject to incumbrances, there is an implied contract of indemnity by *B* in favour of *A* against such incumbrances.[5] Where a conveyance contains a covenant by the purchaser to pay off an encumbrance on the property sold, the failure of the purchaser to do so may give rise to two distinct causes of action. The failure of the purchaser to discharge the encumbrance within such time as is provided, expressly or by implication, in the conveyance entitles the vendor to bring an action to have himself put in a position to meet the liability which the purchaser has failed to discharge, and secondly, if as a result of that failure the vendor incurs loss as a consequence of the incumbrancer recovering from the vendor the amount due under the mortgage, then the vendor is entitled to file a suit on the contract of indemnity. In the first of these cases limitation will run under Art. 116 of the Limitation Act (or under Art. 115 if the sale deed is unregistered) from the date upon which the purchaser ought to have paid off the mortgage: in the second it will, under Art. 83 run from

18. AIR 1932 Bom. 25 (DB) + AIR 1914 Lah. 407 = 1915 Pun Re. No. 23 (DB) + AIR 1931 Lah. 392 = 12 Lah. 190 (DB) + AIR 1944 Cal. 302 = ILR (1944) 2 Cal. 283 (DB). (Time runs when agent is damnified).
19. AIR 1959 Raj. 153 = ILR (1959) 9 Raj. 577 (Article 61 also does not apply—34 Mad. 167. *Dissented from*).
20. PLD 1959 Kar. 707 + AIR 1940 Lah. 321 (DB) + 1956 Ker. L. Tim 302 + AIR 1939 Pat. 194 = 17 Pat. 751 (DB) + AIR 1921 Lah. 260 = 2 Lah. 316 (DB) + AIR 1926 Nag. 429 + 31 Mad. 452 (DB) + AIR 1936 Mad. 655.
1. PLD 1959 Kar. 707.
2. AIR 1934 Mad. 1 = 57 Mad. 218 (DB) + AIR 1921 Mad. 514 (DB) + AIR 1933 Lah. 109 = 14 Lah. 380 (DB).
3. AIR 1940 Lah. 321 (DB). (Sale deed registered--Suit governed by Art. 116 read with this article) + 1953 B L J R 538 + AIR 1948 Nag. 401 = ILR 1949 Nag. 454 (DB). (AIR 1938 Pat. 275. *Rel. on*) + AIR 1939 Pat. 194 = 17 Pat. 751 (DB) + AIR 1931 Pat. 271 = 10 Pat. 451 (DB) + 16 Cal. W. N. 1040 (DB) + AIR 1918 Mad. 1135 + AIR 1923 Mad. 492 (DB) + AIR 1938 All. 297 = ILR 1938 All. 500 (FB).
4. AIR 1938 Pat. 275 = 17 Pat. 338 (DB) + AIR 1936 All. 870 (DB).
5. AIR 1934 Mad. 1 = 57 Mad. 218 (DB) + 36 Ind. App. 203 = 31 All. 583 (PC).

the date upon which the vendor is damnified. If the conveyance is registered the period of limitation is, under Art, 83 read with Art. 116, six years from the date upon which the vendor is damnified.[6]

Registered contract. Where money is left with vendee to pay vendor's debts and there is an express contract of indemnity against loss on failure to do so, this article would apply but Art. 116 read with this article would apply if the contract is registered.[7]

Covenant for quiet possession, etc. Where there is an express covenant for indemnity against loss of title or possession, a suit on such covenant will be governed by this article, and if the contract is registered, by Art. 116 read with this article.[8]

7. Suit by assignor against assignee of lease. Where a lessee assigns his lease to another there is an implied promise to the assignee to indemnify the assignor in respect of covenants in the lease and a suit by the assignor for indemnity against breach of covenant by the assignee would be governed by this Article, and time will begin to run when the assignor was indemnified.[9]

8. Suit by creditor against surety. This article is applicable to a suit by the creditor against a surety.[10]

9. Suit by a joint promisor for contribution. Where one of the two joint promisors executed a renewal promissory note in favour of creditor two obtained and executed the decree against that promisor; it was held that the promisor had a right of contribution the co-promisor though creditor's remedy against him was barred. The cause of action for such suit arose when the promisor was damnified.[11]

10. Starting point of limitation. In all contracts of indemnity, it is the damage sustained which entitles the indemnified person to sue the indemnifier for reimbursement. Time runs from the date when the plaintiff is actually damnified.[12] Ordinarily a person cannot be said to be demnified before he has been deprived of anything. Therefore a remote chance of being deprived of anything will not entitle him to realise damages from his indemnifier.[13] Where the contract is to indemnify the plaintiff against loss of title of plaintiff in respect of property sold to him by the defendant, the plaintiff will be demnified when a decree is passed against him negativing his title.[14] Where the contract is to indemnify the plaintiff against loss of possession of property sold to him, the plaintiff will be "actually

---

6. AIR 1958 All. 170 (DB).
7. AIR 1933 Lah. 109 = 14 Lah 380 (DB) + AIR 1933 Lah. 793 = 14 Lah 646 (DB) + AIR 1926 Nag. 429 + 16 Cal. W.N. 1040.
8. AIR 1929 Lah. 388 + AIR 1919 Mad. 849 (DB) + AIR 1958 Ker. 322 = ILR 1958 Ker. 27 (DB).
9. 5 Cal. 811.
10. AIR 1939 Bom. 26 = ILR 1939 Bom. 9.
11. AIR 1929 Mad. 309 (DB).
12. PLD 1980 Kar. 30 + AIR 1935 Lah. 974 + AIR 1924 PC 192 = 4 Rang. 48 + AIR 1929 Mad. 309 (DB) + PLD 1968 Kar. 1 (DB).
13. PLD 1968 Kar. 1 (DB) + AIR 1935 Lah. 974.
14. AIR 1919 Mad. 757 + AIR 1919 Mad. 849 (DB).

damnified" only where he is actually dispossessed of such property.[15] Where there was a contract to indemnify plaintiffs, if damage was caused to certain mortgage documents on property sold to plaintiffs. The defendant gave those documents to a third person, and the plaintiffs had to spend money to recover the same. It was held that the plaintiffs suffered damage when they spent the money.[16] Where a security bond was given for securing balance unprovided for by proceeds of sale of mortgaged property under mortgage decree, until the property was sold security bond could not be enforced.[17] Where *A* deposited certain amount with *B* for business. At the time of *A's* death, certain amount was with *B* at *A's* credit. On assurance of *C*, that *A's* widow *D* was entitled to the amount and that no claim would be made to it by any other person, *B* paid the amount to *D*, later on *A's* sons sued *B* and recovered the amount from *B* in execution of their decree. *B* sued *C* for recovery of the amount paid to *d* on his assurance. It was held, that the cause of action arose when the damage which the indemnity was intended to cover was suffered, *i.e.*, when the payment was made to the sons of *A* in execution of the decree and the limitation started to run when the amount was so paid.[18]

Commission agent. Where a commission agent *A* purchased property for *B* by paying the money himself. *B* did not pay and subsequently *A* resold the property at a loss. *A* sued *B* for the loss caused. It was held that time started from the date on which *A* made the payment.[19]

Surety, suit against. Where the creditor first sued the surety along with the principal debtor and obtained a decree. The decree as against the surety was set aside on appeal by the surety on the ground that the suit against him was premature. Then, the creditor having failed to recover the full amount from the principal debtor in execution against him, brought another suit against the surety for the balance. It was held that this article applied and that the creditor was not "actually damnified" within the meaning of this article till his previous suit against the surety was dismissed in appeal as being premature.[20]

84.	By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when	[1][Three years].	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or

15. AIR 1932 Bom. 36=55 Bom. 565 (DB)+AIR 1958 Ker 322=ILR 1958 Ker 27 (DB). (Time runs only from date of disturbance.)+AIR 1927 Lah. 570=9 Lah. 191 (DB)+10 Ind. Cas. 486 (DB) (Cal.)+AIR 1923 Mad. 492 (DB)+AIR 1917 Mad. 874 (DB).
16. AIR 1922 P.C. 187=49 Cal. 203=48 Ind. App. 335.
17. AIR 1923 P.C. 131.
18. AIR 1960 Punj. 425.
19. AIR 1921 Lah. 167 (DB)+AIR 1927 Lah. 826.
20. AIR 1939 Bom. 26=ILR 1939 Bom. 9.

1. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

such costs are to be paid.	business) the date of such discontinuance.

Synopsis

1. Costs payable by opposite party under decree.
2. Particular business.
3. Application for costs to High Court.
4. "Costs"--meaning of.
5. Starting point of limitation.

1. Costs payable by opposite party under decree. Where a consent decree provides that the costs of one party should be paid to his attorney by the other party, and the attorney sues such other party, for the costs, the suit is not governed by this article.[2]

2. Particular business. A *vakil* or attorney can claim his costs even when they are respecting a particular business and not a suit. The filing and conduct of an application under S. 24 of Act XV of 1895, was held to be a "particular business" within the meaning of this article.[3]

3. **Application for costs to High Court.** An application for costs by an attorney, where such application is allowed under the rules of the High Court, is not governed by this article.[4] In allowing or otherwise, a belated application the High Court is not limited by any analogy of this article, and is not bound to dismiss the application.[5]

4. "Costs"--meaning of. The expression "Costs" is not limited to the out-of-pocket expenses incurred by the *vakil* or attorney but includes the remuneration or fees payable to him.[6] The fees stipulated between the client and the *vakil* can be recovered, without any reference to S. 27 of the Legal Practitioners Act.[7] Moreover in a suit by a client against his attorney for recovery of the documents and papers relating to his case, the attorney can set up his lien on such papers for costs, as a defence notwithstanding that his claim for costs would have been barred by limitation.[8]

5. Starting point of limitation. Limitation will start running from the date of discontinuance or termination of a suit or proceedings. A suit terminates when judgment is pronounced in the case.[9] Where the "business" was the prosecution of an application under S. 24 of the Act XV of 1895, it was held that the business terminated when the judgment was delivered on the application.[10]

---

2. AIR 1932 Bom. 378 (Such a suit will be governed by Article 120).
3. 22 Cal. 943.
4. 1 Bom. 253 (DB) + 32 Bom. 1 + AIR 1930 Cal. 651 (FB).
5. AIR 1921 Cal. 67 = 48 Cal. 817.
6. AIR 1916 Mad. 836 (DB).
7. AIR 1916 Mad. 836 (DB).
8. AIR 1921 Cal. 67 = 48 Cal. 817 + (1889) 38 W. R. (Eng.) 49.
9. 22 Cal. 952n + AIR 1949 Cal. 24. (AIR 1930 Cal. 651 (FB). *Dissented*) + AIR 1947 Mad. 457 + 7 Bom. 518 (DB).
10. 22 Cal. 943.

So long as an attorney's business is not discontinued the limitation does not begin to run even though the matter remains dormant Thus where an attorney was engaged for a petition which resulted in the favour of the client in 1924. Nothing was done by the attorney till 1930 when the client instructed him to have his bill of costs taxed. It was held that the business continued till costs were taxed.[11]

Termination without knowledge of counsel. Where a business or suit is terminated without the knowledge of the attorney, such termination will not give a starting point to limitation under this Article. Thus where a solicitor was retained for executing a decree but the decree-holder compromised out of Court without the solicitor's knowledge and the compromise was not certified to the Court. It was held that the compromise did not amount to termination of business.[12]

Notice of client terminating engagement. An attorney's appointment cannot be revoked merely by client's notice repudiating liability for future costs, and a suit by the attorney within three years of the termination of the suit for which he was engaged though after three years of clients' notice was in time.[13] But where an attorney was superseded by another and the Court ordered that costs due to outgoing solicitor be taxed between attorney and client, limitation for a suit by the solicitor started from the date of his supersession.[14]

85.	For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	[15][Three years].	The close of the years in which the last item admitted or proved is entered in the account; such year to be computed as in the account.

Synopsis

1. Scope.
2. Mutual account and reciprocal demands.
3. Advances of loans and repayments.
4. Advances of loan and agency.
5. Sale of goods.
6. Deposit and withdrawal of money.
7. Mutual loans.
8. Casual and mistaken entries.
9. Minor, payments and receipts for.
10. Shifting balance need not exist.
11. "Open and current account."
12. "Between the parties."
13. Period of limitation.
14. Plea as to open and current account must be taken in pleadings.

11. AIR 1931 Mad. 183.
12. 1 Bom. 505 (DB).
13. 36 Cal. 609.
14. 35 Cal. 171 (FB).
15. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

1. **Scope.** The object of this article is to apply the old English Common Law of acknowledgment to a certain type of cases and to provide that if the last item is within time it will draw the previous items after it, however old they may be, although there has been no acknowledgment or payment sufficient to comply with the conditions imposed by Ss. 19 and 20 of the Act.[16] It must, however, be remembered that the plaintiff must in all cases prove the existence of the last item in the year in which the limitation commences. Where that is not done a mere reference to a balance of the previous year's account and subsequent accounts will not exonerate the plaintiff and bring his suit within this Article. Thus where in a suit on a mutual and open accounts, the claim was based on the balance of the year 1349 B.S. which included the starting balance of settled account of the year 1347 B.S. No account books were produced for 1347 B.S., nor was the balance proved in any way. It was held that the fact that under Art. 85 the plaintiffs were allowed to claim dues which in effect dated from the year 1347 B.S. owing to the nature of the provisions of the article, did not absolve the plaintiff from the necessity of proving that the balance of 1347 B.S., was in fact due.[17]

Account must be in existence on date of suit. In order to attract the application of Article 85 of the Limitation Act, it is necessary that the account must be subsisting on the date of the suit.[18]

2. **Mutual account and reciprocal demands.** It is Art. 85 and not Art. 57 or Art. 64 that applies to the case of the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties, and in such a case it is three years limitation running from the close of the year in which the last item admitted or proved is entered in the account.[19] Where the respondent and the appellant were dealing with each other in two different capacities, *viz.*, principal and agent and seller and purchaser with each having demands against the other. While the respondent had demands for the price of goods sold on credit to the appellant, the appellant had demands against the respondent on account of commission on all sales made on its behalf and also incidental expenses incurred in respect of such sales. These dealings for two distinct contractual relationships created reciprocity of accounts between the parties and showed that a mutual current and open account was maintained.[20] Where a suit is not based on a pronote given by the defendant but on mutual open and current account, this Article will apply.[1] Where the ledger account of the defendant shows the balance due on mutual, open and current account and there have been reciprocal demands between the parties. It appears that me time the defendants over-drew and thereafter deposited money with the Bank by creating credit and liability alternately. It was held that the suit in such circumstances would be governed by Art. 85 and not by Article 57 of the Schedule.[2]

16. AIR 1931 Cal. 359 = 58 Cal. 649 (DB) + AIR 1953 Trav-Co. 391 (DB).
17. AIR 1952 Cal. 92.
18. PLD 1969 Dacca 529 = 21 DLR 755 (DB).
19. NLR 1981 SCJ 433 = PLD 1980 SC 286 + AIR 1959 Assam 162 (DB).
20. NLR 1981 SCJ 433 = PLD 1980 SC 286.
1. PLD 1967 Dacca 35 = 19 DLR 200 = PLR 1966 Dacca 849.
2. PLD 1962 Dacca 1 = PLR 1962 Dacca 881 = 14 DLR 197 (DB) (PLD 1963 Dacca 352 *Relocated*).

Reciprocal demands. This Article requires that there must have been reciprocal demands between the parties.[3] The result that the words "where there have been reciprocal demands between the parties" in the article are a surplusage is to be avoided if possible, according to well-known canon of construction of statutes.[4] The requirement of reciprocal demands involves transactions on each side creating independent obligations on the other and not merely transactions which create obligations on one side, those on the other being merely complete or partial discharges of such obligations.[5] Thus where from the pass book and the corresponding Ledger it appeared that the defendants used to take advances from the Bank and they also used to make deposits from time to time and there were both withdrawals and deposits with the result that at time the defendants became debtors to the Bank and at others the Bank became indebted to the defendants and the pass book and the Ledger showed that there were many transactions between the parties and that these created independent obligations of one against the other and thereby gave rise to occasions of reciprocal demands this Article applied.[6] But if there is an entry shown on one side which is set off by payment of the debt, the account cannot be said to be open, mutual and current account. There must be an existence of reciprocity of demands.[7]

The real test to see whether there have been reciprocal demands in any case is to see whether there is a dual contractual relationship between the parties.[8] Where there is no such relationship this Article does not apply. Thus where the plaintiff, who was an employee in the defendant's shop, was credited with the salary and other emoluments due to him in the defendant's accounts and the amounts paid to him (plaintiff) to discharge him were debited in the account, the account could not be treated as a mutual open and current one, as that was a transaction which created obligation on the defendant to pay the amounts earned by the plaintiff as salary, etc., the payments made by him being only in partial discharge of such obligation. The transaction cannot thus be treated as one governed by Art. 85 of the Limitation Act.[9]

---

3. AIR 1938 Lah. 264 (DB)+AIR 1960 Punj. 164+AIR 1923 Bom. 82=47 Bom. 128 (DB)+AIR 1922 Lah. 338 (DB)+AIR 1936 Rang. 495=1937 Rang. L. R. 240.
4. ('09) 5 Nag. L. R. 189+AIR 1934 Oudh 145=9 Luck 670 (DB)+AIR 1918 Mad. 921 (DB)+AIR 1932 Oudh 63=7 Luck 350 (DB)+AIR 1925 Cal. 1=52 Cal. 275 (FB)+AIR 1926 All. 653 (DB).
5. AIR 1959 S.C. 1349=(1960) 1 S C R 563. (Agreement for supply of grain by sellers to buyers at certain rates and on certain dates--Certain amount paid by buyers--Delivery of goods--Another amount paid--Subsequent deliveries on various dates--Various payments towards price made--*Held* that there was no reciprocity of dealings and no independent obligations--Payments made were towards the price due and in discharge of obligation and under terms of contract--AIR 1954 J&K 49. *Reversed*)+AIR 1959 Ker. 356=ILR 1958 Ker. 1151. (AIR 1925 Nag. 295, *Not foll.*)+AIR 1963 Assam 11 (DB).
6. PLD 1969 Dacca 529=21 DLR 755 (DB).
7. AIR 1963 Assam 11 (DB).
8. AIR 1939 Lah. 356+AIR 1960 Punj. 164+AIR 1954 J&K 49 (DB). (*Reserved* on another point in AIR 1959 S.C. 1349)+AIR 1928 All. 236=50 All. 645 (DB)+('13) 14 Mad L Tim 498.
9. AIR 1939 Ker. 356=ILR 1958 Ker. 1151 (AIR 1925 Nag. 295, *Not foll.*).

Mutual account. In order to constitute a mutual account under this article there must be independent obligation on both sides.[10] There should be two sets of independent transactions between the parties, in one of which one of the parties should hold the position of debtor and the other that of a creditor, and in the other, the reverse position.[11] In other words each party must be able to say to the other "I have an account against you".[12] One has to look at each particular case and see if it is really a case of debtor and creditor only or a case of mutual obligations which will in the ordinary way result in enforceable liabilities on each side. An ordinary debt and credit account in which defendant (the debtor) never had any demand against the plaintiff (the creditor) to whom he was indebted, does not fall within Article 85. All that is necessary to be proved for the application of Article 85 is that there should be an open current account between two persons consisting of mutual items of debit an[illegible] the course of dealings between them, the credits to be made as such and not in discharge of the one-sided debt.[13]

The idea of reciprocity of demands is involved in the expression "mutual account".[14] A mutual account is an account in which there are two parallel sets of dealings by which each party give credit to the other and which therefore gives each party a right to an account against the other on the basis of his own dealings and which carry an understanding, express or implied, [illegible] on one side would be set off against [illegible] on the other and both [illegible] being brought into account a balance [illegible] duced.[15] Where one p[illegible] received and paid money on accoun[illegible] the other has not r[illegible]ved and paid [illegible]unt [illegible] the former, the account is not a mutual one within the [illegible]ning of this article [illegible] where a tradesman has a bill against a party for any [illegible]s in which the items ar[illegible] together that it appears that the dealing is not intended to terminate [illegible]ith one co[illegible], but to be [illegible] that one item, if not paid, shall [illegible]nited with another to form one continuous [illegible] [illegible] together [illegible]s but one cause of action and cannot be divided.[17]

10. PLD 1976 Kar. 623+AIR 1938 All. 504 (DB)+AIR 1959 Mad. 470 (DB)+AIR 1954 J&K 49 (DB) (*Reversed* on another point in AIR 1959 S.C. 1349)+AIR 1940 Pat. 71 (DB)+AIR 1939 Nag. 113=ILR 1941 Nag. 222 (DB)+AIR 1931 Lahore 241=12 Lah [illegible] 1943 Mad. 13+AIR 1928 All. 236=50 All. 645 (DB)+AIR 1927 M[illegible] Cal. 359=58 Cal. 649 (DB)+('07) 6 Cal. L. Jour 158 (DB)+AIR 1938 Lah. 20[illegible] (DB).
11. AIR 1928 All. 236=50 All. 645 (DB)+AIR 1940 All. 209=ILR 1940 All. 147+AIR 1938 Rang. 224.
12. AIR 1940 All. 209=ILR 1940 All. 147+AIR 1960 Punj. 164+AIR 1959 Ker. 204 (DB)+AIR 1956 Mad. 210+ILR (1955) 5 Raj. 462+7 Bom. L. R. 151+AIR 1917 All. 465=39 All. 33 (DB)+AIR 1931 Cal. 359=58 Cal. 649 (DB)+AIR 1934 Lah. 358+15 Lah. 652 (DB)+AIR 1924 Pat. 107 (DB)+AIR 1928 Pat. 221=7 Pat. 238 (DB)+AIR 1936 Rang. 495=1937 Rang. L. R. 240+22 Bom. 606 (DB).
13. NLR 1981 SCJ 433=PLD 1980 SC 286+PLD 1976 SC 109.
14. AIR 1939 Nag. 113=ILR 1941 Nag. 222 (DB)+6 Cal. L. Jour 158 (DB)+AIR 1935 All. 53 (DB)+AIR 1928 Pat. 221=7 Pat. 238 (DB)+AIR 1923 Rang. 18=11 Low Bur Rul. 369 (DB).
15. AIR 1965 Cal. 246.
16. AIR 1931 Lah. 241=12 Lah. 420 (DB)+6 Cal. L. Jour 158 (DB)+AIR 1927 Mad. 819+AIR 1915 Low Bur 148=8 Low Bur Rul 149 (DB).
17. AIR 1965 Cal. 246.

Where the plaintiff filed a suit against the defendant for recovery of Rs. 843/- alleging that the plaintiff was to purchase grain for the defendant and to sell the same as an *adtiya*. The plaintiff accordingly purchased some grain and sold it and made entries in the account books. On the basis of the said accounts, an amount of Rs. 843/- was said to be due. It was held that in one capacity, the plaintiff was to act as an agent for purchases on behalf of the defendant. In that capacity, the plaintiff spent its own money in the nature of an advance to the defendant. In the other capacity, the plaintiff was to sell the grain on behalf of the defendant. The amount received by the plaintiff towards such sale would make the plaintiff a trustee for the defendant regarding that amount. The final liability between the parties could not be settled, unless an account was gone into, taking into consideration the assets and liabilities of the parties in the two, altogether different, capacities. Therefore the account between the parties was open, mutual and current account and this Article was applicable.[18] The plaintiff company carried on business of manufacture of cloth and yarn. It appointed the defendant firm, who carried on the business of cloth merchants, as its agent for the sale of cloth and yarn. Under the terms of agency, the plaintiff company was to send cloth and yarn to defendant firm for sale "on instructions" from the plaintiff company, and the defendant firm was to charge commission besides the incidental expenses on all such sales. Subsequently the plaintiff company also started suppiying cloth and yarn on credit to the defendant firm who would pay the price after the sale on its own account. It was alleged in the plaint that it was orally agreed between the parties that a single ledger account shall be maintained despite the dual contractual relationship between them, namely, that of principal and agent on the one hand, and of seller and buyer on the other. This dual business relationship was alleged to have continued between the parties till the plaintiff company filed its suit for the recovery of the sum due on the balance. It was held, that the facts did not reveal a single contractual relationship between the parties. Rather they were dealing with each other in two different capacities, *viz.*, principal and agent in one set of transactions and seller and purchaser in the other set of transactions. Therefore, each has demands against the other. While the plaintiff company had demand for the price of goods sold on credit to the defendant firm, the latter had demands against the plaintiff company on account of commission on all sales made on its behalf and also incidental expenses incurred in respect of such sales. These business dealings for two distinct contractual relationship laid foundation for reciprocity of accounts between the parties.[19]

Account between lender and borrower only. Dealings should disclose independent obligations on both sides, and not merely obligations on one side, the acts done by the other being merely a discharge of such obligations.[20] The mere credit entries in the account books of the creditor showing realisation of the bills

18. PLD 1968 Kar. 167 (DB)+AIR 1961 M.P. 99.
19. PLD 1968 Kar. 167 (DB)+PLD 1956 Dacca 194=6 DLR 548=PLR 1954 Dacca 328.
20. AIR 1947 Pat. 273+AIR 1956 Mad. 210+ILR (1950) 1 Cal. 578+7 Bom. L. R. 151+AIR 1933 Bom. 450=48 Bom. 200 (DB)+AIR 1931 Cal. 359=58 Cal. 649 (DB)+AIR 1936 Cal. 382 (DB)+AIR 1923 Lah. 347 (DB)+AIR 1923 Lah. 636 (DB)+AIR 1923 Mad. 278 (DB)+AIR 1927 Mad. 819+AIR 1936 Rang. 495=ILR 1937 Rang. L. R. 240+AIR 1923 Rang. 18=11 Low Bur Rul. 369 (DB)+32 All. 11 (DB)+AIR 1942 Pat. 201 (DB) (Customer of bank overdrawing several times and making only two payments towards reduction of interest--Art. 85 does not apply).

of the debtor, outstanding against other persons, and debit entries of over realisations, in the absence of an agreement authorising the creditor to realise the bills on behalf of the debtor, do not make the account mutual, open and current account between them.[1] Thus where the relationship between *A* and *B* was that of lender and borrower respectively. *B* can have no demand against *A*. Even if *B* makes overpayments by mistake, the right to recover it from *A* does not make it a "demand".[2] Where by an arrangement between the parties price of goods supplied by defendant to plaintiff was agreed to be set off against advances by the plaintiff. The supply was subsequently stopped and a suit for recovery of balance due from defendant was brought by the plaintiff. The goods were supplied by way of repayment of advances and not by way of independent obligation, therefore Art. 51 and not Art. 85 applied.[3] It must however be noted that in each case one has to look at each particular case and see if it is really a case of debtor and creditor only or a case of mutual obligations, which will in the ordinary way result in enforceable liabilities on each side. An ordinary debtor and creditor account in which defendant (the debtor) never had any demand against plaintiff (the creditor) to whom he was indebted, is not within Article 85. It is necessary to prove for the application of Article 85 that there should be an open current account between two persons consisting of mutual items of debit and credit in the course of dealings between them, the credits to be made as such and not in discharge of the one sided debt.[4]

Actual demand is not necessary. Words "where there have been reciprocal demands" do not import that either party has made an actual demand in fact.[5] It means that there must be reciprocal claims arising out of the respective credits on the two sides.[6]

Demands made on different grounds. Mutuality is not violated if the basis of the contending claims are different, as when one party is demanding the price of goods sold and the other claims money for services rendered. In such a case, there are created independent obligations in favour of one and against the other respectively.[7]

Shifting of balance of accounts. One of the tests for the applicability of the article is to see whether there has been a shifting balance in favour of each side in the account.[8] But the existence of a shifting balance is not conclusive on the question.[9] It is not necessary that the balance should shift from one side to the other at any stage of the dealings. So long as there is a possibility of the shifting of

1. AIR 1964 Assam 114.
2. AIR 1922 Pat. 364 (DB) + AIR 1933 Nag. 50 = 29 Nag. L. R. 20 + AIR 1928 All. 236 = 50 All. 645 (DB) + 7 Bom. L. R. 151 + 5 Cal. 759.
3. 1964 Patna 35 (DB).
4. PLD 1972 S.C. 109.
5. AIR 1939 Nag. 113 = ILR 1941 Nag. 222 (DB) + AIR 1960 Punj. 164 + AIR 1959 Mad. 470 (DB) + AIR 1931 Cal. 359 = 58 Cal. 549 (DB) + AIR 1921 Lah. 256 (DB) + AIR 1936 Rang. 495 = 1937 Rang. L. R. 240 + AIR 1923 Bom. 82 = 47 Bom. 128 (DB) + AIR 1914 Mad. 717 (DB).
6. AIR 1960 Cal. 246.
7. AIR 1960 Punj. 164.
8. PLD 1976 Quetta 99 + PLD 1968 Kar. 167 (DB) + AIR 1940 All. 209 + AIR 1934 All. 386 (DB) + AIR 1922 Pat. 364 (DB).
9. 17 Mad. 293 (DB) + 7 Bom. L. R. 151 + AIR 1933 Nag. 50 = 29 Nag. L. R. 20.

the balances from one side to the other, mutuality of transactions is maintained. There need not be a mutuality of balances in the sense that balances should also shift from one side to the other from time to time.[10] Where on the date of opening of balance sheet, the appellant was the creditor and the respondent was the debtor. Thereafter the appellant remained a debtor throughout and the respondent remained a creditor. The account was also not settled and both the parties remained creditor and debtor. There was reciprocity of dealings between the parties.[11]

Test of shifting balance, though valuable as an index of the nature of dealings, is not by itself decisive, and the absence of a shifting balance is not conclusive on the question.[12]

Closure of account. An account does not cease to be "open and current" simply because the creditor has made a demand. The test in such cases is, whether the account had been closed and that to the knowledge of the other party. It is not open to any party to deprive the other of the benefit of Art. 85 of the Limitation Act by arbitrarily closing the account. If the account is not closed by settlement or otherwise, it is open, and a mere cessation of dealings between the parties does not mean that the account has been closed.[13]

Casual transaction. Before deciding whether a particular course of dealings is a continuous course of transactions independent of the other transactions involved in the case, the number of dealing do not count to decide whether the counter claim arises upon casual transactions. The real import of the casual transaction should be taken note of in deciding the question whether they give rise to independent obligations or whether they are merely a mode of liquidation of the obligation already undertaken by the party.[14]

Each party need not keep one account. The fact that only one of the parties kept accounts does not show that the account is not a mutual one if it is established otherwise that the dealings were mutual.[15]

3. **Advances of loans and repayments.** Where there have been no reciprocal demands and the account is a simple loan and repayment account a suit for balance on an account of such transaction is not within this article.[16] There is no

10. PLD 1972 S.C. 109 + AIR 1959 Mad. 470 (DB).
11. PLD 1976 Quetta 99.
12. PLD 1968 Kar. 167 (DB) + AIR 1965 Cal. 246 + AIR 1939 Lah. 356 + AIR 1956 Mad. 210 + AIR 1956 Trav-Co. 97 = ILR 1955 Trav-Co. 98 (DB) + AIR 1953 Trav-Co. 391 (DB) + AIR 1952 Cal. 92 + AIR 1948 Pat. 18 = 26 Pat. 31 (DB) + (AIR 1924 Pat. 107, *rel. on*) + AIR 1939 Nag. 113 = ILR 1941 Nag. 222 (DB) + AIR 1928 All. 236 = 50 All. 645 (DB) + AIR 1921 Lah. 369 + 22 Bom. 606 (DB) + 17 Mad. 293 (DB) + AIR 1933 Nag. 50 = 29 Nag. L. R. 20 + AIR 1924 Pat. 107 (DB) + AIR 1928 Pat. 221 = 7 Pat. 238 (DB) + AIR 1923 Rang. 18 = 11 Low Bur Rul. 369 (DB) + 22 Mad. L. Jour 14.
13. AIR 1960 Punj. 164.
14. AIR 1959 Mad. 470 (DB).
15. AIR 1915 Lah. 279 = 1916 Pun. Re. No. 16 (DB) + ('87) 10 Mad. 199 (DB) (Each party need not keep one account).
16. AIR 1917 All. 465 = 39 All. 33 (DB) + AIR 1927 Bom. 225 + AIR 1933 Lah. 12 = 14 Lah. 14 (DB) + 17 Mad. 293 (DB) + 23 Mad. L. Jour 516 (DB) + AIR 1936 Rang. 495 = 1937 Rang. L. R. 240 + AIR 1923 Rang. 18 = 11 Low Bur Rul. 369 (DB) + AIR 1933 Nag. 50 = 29 Nag. L. R. 20.

difference in principle where the payment in discharge is in money or by way of sending goods.[17] Where *A* was employed by *B* and was in the habit of drawing advances against his salary; it was held that the account was merely a debtor and creditor account and that this article did not apply.[18] Even apart from Art. 85, where the customer of a bank became a debtor only on a certain date and all the loans were advanced after that date and thereafter the accounts always showed a debit balance against the customer, Art. 57 would apply. Under Art. 57 the period of limitation is 3 years from the date of the loans.[19]

4. Advances of loan and agency. Though Arts. 89 and 90 specifically provide for suits by principals against agents, the phraseology of Art. 85 is wide and comprehensive and does not exclude from its purview the case of a principal and an agent between whom a mutual open and current account may exist.[20] Thus where *A* lends money to *B* in one capacity and acts as his agent in another capacity, and two accounts are put together *A* and *B* will have reciprocal demands" between them and a suit on the account would be governed by this article.[1] Where a ginning factory had advanced Rs. 25, 000 as a loan to *N* for the supply of cotton to the firm and the account kept by the firm showed that there had been several debit and credit entries, the credit side representing the amounts realised on account of the sale of cotton supplied to the firm by *N* and the last item credited to *N* was shown as the amount of *N's* commission, it was held that there was no doubt that an open and current mutual account subsisted between the parties.[2] Where *B* engaged *A* as his agent for working his boats and authorised him to receive money payable by people using boats, and to pay on his account money for expenses incurred in and for working boats. These were held to be reciprocal demands, and this article applied.[3] Where a suit was brought by a commission agent to recover balance due by defendants as principals on the foot of an account. One of the items was relating to purchase of goods effected by the agent under instruction of the principals and the defendant was shown to have refused to pay for and take delivery of the goods. The plaintiff waited for some time and after giving notice to defendants re-sold the good on their account and credited the amount realised to them. A suit by the plaintiff is governed by Art. 85 and not by Article 61.[4] Firm *A* which had firm *B* as a customer arranged for the sale of goods purchased by Firm *A* and also advanced certain sums of money to firm *B*. All the transactions were entered in one account and balance was struck out from time to time. It was held that the financing and the supplying of goods created independent liabilities but at the same time mutual liabilities and hence the account was mutual and open within the meaning of Art. 85.[5] Where *A* placed

17. AIR 1964 Pat. 35 (DB)+AIR 1923 Lah. 636 (DB)+34 Mad. 513 (DB)+AIR 1931 Cal. 359+58 Cal. 649 (DB)+AIR 1917 Lah. 166.
18. AIR 1938 Lah. 264 (DB)+AIR 1938 Rang. 224+AIR 1927 Mad. 819.
19. AIR 1960 Tripura 12.
20. PLD 1972 S.C. 109+AIR 1953 Sau 141.
1. ('04) 7 Bom. L. R 151+AIR 1939 Lah. 356+AIR 1928 All. 236=50 All. 645 (DB)+AIR 1926 Lah. 283+AIR 1921 Bom. 451 (DB)+1929 All. L. Jour 73 (DB)+AIR 1931 Cal. 359=58 Cal. 649 (DB)+AIR 1915 Mad. 1001 (FB).
2. PLD 1972 Supreme Court 109.
3. ('87) 10 Mad. 199 (DB).
4. AIR 1932 Bom. 593.
5. AIR 1952 Cal. 92.

orders with *B* either for sale or purchase of goods according to which *B* entered into transactions as *pakka adatia*. Sometimes the balance was in favour of *A* and sometimes in favour of *B*. The commission and other charges were also debited to *A*. It was held that the account was mutual, open and current and that *B*'s suit was governed by this article.[6] Where the plaintiff filed a suit against the defendant for recovery of Rs. 843.00, alleging that the plaintiff was to purchase grain for the defendant and to sell the same as an *adittya*. The plaintiff accordingly purchased some grain and sold it and made entries in the account books. On the basis of the said accounts, an amount of Rs. 843.00 was said to be due. It was held that in one capacity, the plaintiff was to act as an agent for purchases on behalf of the defendant. In that capacity, the plaintiff spent its own money in the nature of an advance to the defendant. In the other capacity, the plaintiff was to sell the grain on behalf of the defendant. The amount received by the plaintiff towards such sale would make the plaintiff a trustee for the defendant regarding that amount. The final liability between the parties could not be settled, unless an account was gone into, taking into consideration the assets and liabilities of the parties in the two, altogether different, capacities. Therefore the account between the parties was open, mutual and current account and this Article was applicable.[7]

5. Sale of goods. Where payments in money and goods were credited to defendant merely in reduction of his debt. Article 85 is not applicable, as such payments were not evidence of reciprocal demands but were merely in partial extinguishment of an existing indebtedness.[8] Where *A* sells goods to *B* from time to time and *B* makes payments towards price from time to time, there are no reciprocal demands and this article will not apply to suits on such accounts.[9] Where price of goods supplied by defendant to plaintiff was agreed to be set off against advances by plaintiff. The supply was stopped and a suit was filed for recovery of balance due from defendant. The goods were supplied by way of repayment of advances and not by way of independent obligation. Therefore Art. 51 and not Art. 85 applied.[10] Where there was an agreement for supply or grain by sellers to buyers at certain rates and on certain dates. A certain amount was paid by buyers at the time of agreement, and goods were delivered. Various payments towards price of goods supplied were made. It was held that there was no reciprocity of dealings and no independent obligation. The payments were made towards the price due and in discharge of obligations and under terms of the contract. Therefore this Article did not apply.[11] But where *A* advances money to *B* as loan, and *B* sells goods to *A* as an independent transaction, a suit for account in which two transactions have been brought together would be governed by this article.[12] Even where the advances were intended to procure supplies of yarn and eventually to liquidate the price of the yarn supplied by the plaintiff to the

6. AIR 1953 Sau 141.
7. AIR 1961 Madhya Pradesh 99.
8. PLD 1972 S.C. 109.
9. AIR 1962 Cal. 97+AIR 1939 Lah. 307+('50) ILR (1950) 1 Cal. 578. (Such a case comes under Art. 52 as a suit for the price of goods sold and delivered where no fixed period of credit is agreed upon)+AIR 1935 All. 53 (DB)+AIR 1936 Cal. 382 (DB)+AIR 1925 Pat. 806+AIR 1923 Pat. 242+AIR 1930 Oudh 287=6 Luck. 7 (DB)+AIR 1935 Mad. 982.
10. AIR 1964 Patna 35 (DB).
11. AIR 1959 S.C. 1349=1960-1 SCR 563 (AIR 1954 J&K 49. *Reversed*).
12. ('10) 7 Ind Cas. 715=1910 Pun Re No. 75.

defendant, this would not mean that the obligation to return the advance was non-existent or was not independent of the obligation arising under the sale and purchase of yarn. The legal import of the transaction between the parties was such as to give rise to cross-claims or reciprocal demands. It was a case where the application of Art. 85 of the Limitation Act was called for.[13]

Goods sold by each party to the other. Where each party sells goods to the other to be paid for by the other, a suit on account of such transactions will be governed by this article.[14] Where there were transactions of sale of brass-sheets by plaintiff to defendant and brass-cuttings by defendant to plaintiff and where the two accounts had not been adjusted by the parties to the litigation at any time prior to the institution of the claim. It was held that they were reciprocal demands and reciprocal obligations though there has been no shifting of balance in favour of one party and then in favour of the other and because there has never been mutual adjustment till the filing of the suit, the transactions were continuing till within three years of the institution of the plaint. This is a clear case to which Art. 85 would apply, and the suit is not barred.[15]

Running and continuous account. the principle of a running and continuous account is that where a tradesman or supplier supplies goods to a person on different dates, and the items are so connected together that the dealings are not intended to terminate with one contract, but were to be continuous, so that one item if not paid, shall be united with another and form one continuous demand, that would give rise to one cause of action.[16]

6. Deposit and withdrawal of money. Where the deposit and withdrawal of money creates reciprocal demands this Article will apply otherwise not. Article 85 applies to banking transactions if the balance is now on one side and then on the other, and the change does not appear to arise from a merely accidental passing over-payment. Thus there ought to be items upon either side independent of one another giving rise at one time or another to independent obligation and there must be mutual dealing in the sense that both parties come under liability to each other.[17] Where *A* deposited various amounts at different times with *B* and drew money at various times from *B* whenever he wanted it. This article would apply to accounts of such transactions.[18] But where the account reveals that the defendant never paid more than what was due to the plaintiffs, the account, though open and current, would not be a mutual account.[19]

Overdraft by bank. Where amount in dispute became due by failure of defendant to adjust it against the over-draft facilities availed of by him from time to time. Statement of account produced in evidence by Bank contained numerous entries showing deposits and withdrawal by defendant. Case being that of

13. AIR 1959 Mad. 470 (DB).
14. AIR 1931 Cal. 359 = 58 Cal. 649 (DB) + ILR (1950) 1 Cal. 578 + ('87) 19 Mad. 259 (DB).
15. 1960-2 Andh W.R. 1 (DB).
16. PLD 1976 Kar. 623.
17. PLD 1965 Karachi 519.
18. AIR 1940 All. 209 = ILR 1940 All. 147 + AIR 1939 Nag. 113 = ILR 1941 Nag. 222 (DB) + AIR 1924 Pat. 107 (DB) + ('81) 3 All. 523 (DB) + AIR 1934 Lah. 358 = 15 Lah. 652 (DB) + AIR 1945 Mad. 467 (DB).
19. PLD 1965 Karachi 519.

reciprocal credits, Art 85, Limitation Act, 1908 was squarely applicable and suit for recovery of amount must be brought within a period of 3 years.[20] But where a depositor borrowed money from a Bank by way of overdraft and occasionally made small payments which were applied to the interest due on the overdrafts the transaction is not a mutual account but a mere record of a loan transaction between the Bank and the depositor.[1]

7. Mutual loans. In order for such mutuality of account to exist as will arrest the bar of the statute each party to the account must extend credit to the other on the faith of an admitted indebtedness.[2] Thus where *A* draws *hundis* upon *B* and *B* draws *hundis* upon *A*, without the parties intending that *hundis* drawn upon *A* should be merely in discharge of *hundis* draws upon *B* the account would be within this article.[3] It has been held that where each party charges interest for the amounts advanced by him to the other party, it would be an indication that each party has lent money to the other and not merely that one advance is merely by way of repayment of the other advance.[4]

8. Casual and mistaken entries. This Article applies only where there are mutual transactions in the normal course. It does not apply where there is a merely accidental and passing transaction from one side to the other whereas all other transactions show that there was no mutual account.[5] Where the agreement between parties was for *A* to sell goods to *B* and for *B* to pay the price thereof *B* sold goods to *A* once or twice. The dealings were held to be not mutual. open and current.[6] Where *A* an employer opened an account in the name of his servant *B*. The account consisted of debts against *B* for monies drawn by him and credits for his salary money. The account showed only one instance of credit for money deposited by *B*. It was held that the account was not mutual.[7]

Suit by agent for recovery of money. Suit by an agent to recover money due to him from the principal on transactions entered into on behalf of the latter is not governed by this article.[8]

9. Minor, payment and receipts for. Where *A* was receiving rents from property belonging to a minor and independently spent moneys from his own pocket for expenses of the minor. A suit on an account of such transaction fell within this article.[9]

10. Shifting balance need not exist. For the application of this Article it is not necessary that balance should shift from one side to the other at any stage of the dealings. So long as there is a possibility of the shifting of the balances from one side to the other, mutuality of transactions is maintained. There need not be a mutuality of balances in the sense that balances should also shift from one side to

20. PLD 1988 SC (AJ&K) 199 = NLR 1988 SCJ 408 = 1988 PSC 988.
1. AIR 1942 Pat. 201 (DB). (*See also* AIR 1948 Pat. 18 = 26 Pat. 231 (DB)).
2. 1985 CLC 2410 + PLD 1965 Karachi 519.
3. ('81) 6 Bom. 134.
4. ('97) 22 Bom. 606 (DB) + AIR 1923 Rang. 18 = 11 Low Bur Rul. 369 (DB).
5. PLD 1965 Kar. 519.
6. AIR 1935 Mad. 982.
7. AIR 1938 Rang. 224.
8. ('29) 30 Pun. L. R. 35 (DB).
9. ('12) 22 Mad. L. Jour 14 (DB).

the other from time to time.[10] Therefore an account that begins as a mutual account continues as such till it is closed or ceases to be current, although after a time, the dealings between the parties cease to be mutual.[11] When once the mutuality has been established, the fact that towards the latter part of the account there has been no shifting balance and that the customer had continued to be a debtor will not indicate the absence of mutuality.[12] On the date of opening of balance-sheet, the appellant was the creditor and the respondent was the debtor. Thereafter the appellants remained a debtor throughout and the respondent remained a creditor. The account was also not settled and both the parties remained creditor and debtor. It could not therefore be said that there was no reciprocity of dealings between the parties.[13]

11. **"Open and current account."** For the application of this article, the plaintiff has to show that the account between the parties is open and current and that it was so at the time of the institution of the suit.[14] Settlement of an account is a technical term of art. In law, it really means coming together of two persons, verification of the debits and the entries and the mutual adjustment of rival claims or objections and the consequent agreement upon the balance due.[15] Wording of the article indicates that the Legislature has contemplated annual accounts and annual striking of the balance.[16]

Meaning of open and current account. An open account is one where there are current dealings between the parties, and the account is kept open because of some contemplated future dealings. It would be so if the account is continuous or current, uninterrupted or unclosed by settlement or otherwise and consists of a series of transaction.[17] It is an account where the balance is not ascertained, or though ascertained has not been admitted or acknowledged by the parties.[18] The main feature of mutual, open and current account is that the transactions must be both on the debit and credit sides creating independent obligation. No dogmatic test can be uniformly or invariably applied. But the payment shown on one side should not merely be off-set by entries of repayment of a debt due to the other side by payment in the course of independent transactions. A mutual accountability between the parties is a test based on the existence of reciprocity of demands. While the balance may be a shifting balance, even the absence of shifting balance is not conclusive on the question. The essence of a mutual, open and current account is that there must be independent dealings between the parties which can be duly off-set against each other. There must be cross claims arising out of a course of dealings which evidences or is referable to an intention

10. PLD 1972 Supreme Court 109 + AIR 1959 Assam 162 (DB).
11. AIR 1920 Lah. 25 + AIR 1938 All. 504 = ILR 1938 All. 741 (DB) + AIR 1939 Nag. 113 = ILR 1941 Nag. 222 (DB).
12. AIR 1960 Tripura 12.
13. PLD 1976 Quetta 99.
14. AIR 1962 Mad. 301 (DB) + AIR 1933 Bom. 450 = 58 Bom. 200 (DB) + AIR 1922 Lah. 182 (DB).
15. AIR 1962 Mad. 301 (DB).
16. 5 Beng. L. R. 550 (DB) + 6 Cal. 447 (DB).
17. PLD 1972 S.C. 109.
18. AIR 1940 Mad. 887 + ILR (1950) 1 Cal. 578 + AIR 1953 Trav-Co. 391 (DB) + AIR 1931 Cal. 359 = 58 Cal. 649 (DB) + 6 Cal. Jour 158 (DB) + AIR 1935 All. 53 (DB).

to set-off.[19] Where the balance due from the defendant has been ascertained, and the account is acknowledged by the defendant, the account becomes closed.[20]

Overdraft account. In case of a bank account, whether an account is mutual or not shall not be dependent on the fact that there was always overdraft or there was always credit balance or sometime the Bank was debtor and sometime a creditor and *vice versa.* It will depend upon agreement between the Bank and the person who wants to open a current account. If by the agreement each party makes himself liable to satisfy the demand of the other whenever occasion arises, then there is mutuality.[1] In the case of overdraft account with a bank there are two sets of independent transactions creating independent obligations. Overdraft facilities are given by a Bank to a customer having an account with them. Otherwise an advance by the Bank would be in the nature of a mere loan. When an account is started in a Bank, it starts with a credit balance in favour of the customer creating on obligation on the Bank which the customer can enforce. When the Bank allows an overdraft to such a customer on his account taking a promissory note as collateral security and allows the customer to overdraw on his account, an obligation is created on the customer which the bank can enforce against him. In the case of such an account a shifting balance sometimes in favour of the customer and sometimes in favour of the Bank is clear evidence of mutuality. It is not necessary that such shifting balances should continue throughout the period of the account.[2] Thus where the bank gives overdraft facilities to a customer and neither side demands closing of the account. It is an open and current account.[3] Where from the pass book and the corresponding Ledger it appeared that the defendants used to take advances from the Bank and they also used to make deposits from time to time and there were both withdrawals and deposits with the result that at times the defendants become debtors to the Bank and at others the Bank became indebted to the defendants and the pass book and the Ledger showed that there were many transactions between the parties and that these created independent obligations of one against the other and thereby give rise to occasions of reciprocal demands. It was held, that having regard to the nature of the transactions creating independent obligations of one party or the other, it could be safely said that the disputed overdraft account of the defendants was mutual, open and current account within the meaning of Article 85 of the Limitation Act.[4]

Bank in liquidation--effect. If at the time of filing the suit, the parties have substituted by agreement one cause of action for another, such as one on mutual, open and current account for another of adjusted account, a suit lies not on the previous cause of action but on the substituted subsequent cause of action, valid and operative at the time of the institution of the suit. But when there is a mutual, open and current account between a bank and a customer and the Bank goes into liquidation, the liquidator succeeds to the rights of the Bank on the mutual, open

19. AIR 1960 Cal. 285 (DB).
20. AIR 1931 Lah. 233 (DB) + AIR 1933 Lah. 12 = 14 Lah. 14 (DB).
1. PLD 1967 Dacca 35 = PLR 1966 Dacca 849 = 19 DLR 200 (DB).
2. PLD 1953 Dacca 220 = PLR 1952 Dacca 342 (DB) + AIR 1960 Tripura 12 + AIR 1940 All. 209.
3. AIR 1965 S.C. 1711 + AIR 1961 Manipur 7 + AIR 1960 Tripura 16.
4. PLD 1929 Dacca 529 = 21 DLR 755 (DB).

and current account. Though liquidation closes the mutual, open and current account, the cause of action does not charge thereby. It is only the administration which changes and the liquidator's right as legal successor to the Bank to sue on such account remains.[5]

Closure of account. An open and current account means a running, unsettled or unclosed account.[6] An account must be deemed to continue until the customer calls upon the Bank to close the account or the Bank calls upon the customer to do so. Until then it is an open and current account. To such case Art. 85. applies.[7] When balance due from defendant is ascertained in plaintiff's books and his account is formally closed, the plaintiff cannot re-open the account and avoid the bar of limitation by carrying an old balance into a new account.[8] But the mere fact that there are no dealings for a period does not necessarily entitle the Court to hold in retrospect that the accounts had ceased to be mutual, open and current because, it would have been open to the parties to have entered into fresh transactions which would have been entered in the accounts and become a part of the same old mutual, open and current account. But where the balance had been struck on a particular date and demands for payment culminating in a registered notice of demand were made after that date and there were no fresh dealings between the parties the conclusion that the accounts had been closed and ceased to be mutual, open and current as from the date on which the balance was struck is unavailable."[9]

It is not necessary that the account should be stated in order to close an account between the parties.[10] A mere striking of the balance due from the defendant does not show that the account has become closed.[11] There must be a settlement of account for its closure. Settlement of an account is a technical term of art. In law, it really means coming together of two persons, verification of the debits and the entries and the mutual adjustment of rival claims or objections and the consequent agreement upon the balance due. Where there is no evidence of the parties having come together and of a settlement of account on a particular date, mere drawing up a balance after closing account on both sides unilaterally by one party will not amount to a settlement of account to make it a starting point of limitation.[12]

12. "Between the parties." For the application of this Article it is necessary that the parties should be the same throughout the period of the account.[13] It is to be noted that when a firm has a mutual, open and current account with a bank,

---

5. AIR 1960 Cal. 285 (DB).
6. AIR 1931 Cal. 359=58 Cal. 649 (DB)+AIR 1956 Trav-Co. 97=ILR 1955 Trav-Co. 98 (DB)+32 All. 11+6 Cal. L. Jour 158 (DB)+AIR 1955 All. 53 (DB)+AIR 1927 Bom. 225+AIR 1923 Lah. 347 (DB)+AIR 1927 Lah. 848 (DB)+AIR 1933 Bom. 450=58 Bom. 200 (DB)+AIR 1943 Mad. 13.
7. AIR 1960 Tripura 12.
8. AIR 1927 Lah. 848+AIR 1918 Mad. 1325 (DB).
9. AIR 1955 All. 41=ILR (1955) 1 All. 548 (FB).
10. AIR 1918 Mad. 1305 (DB).
11. AIR 1938 All. 504=ILR 1938 All. 741 (DB)+AIR 1922 Lah. 316 (DB)+7 Ind. Cas. 715=1910 Pun Re No. 75+AIR 1918 Mad. 1305 (DB).
12. AIR 1962 Mad. 301 (DB).
13. 1 Cal. L. R. 526 (DB).

the fact that subsequently the number of partners constituting the firm is changed does not affect the nature of the account.[14]

13. Period of limitation. The provisions of section 25 have no application to this article.[15] In such a case right to sue accrues when acknowledgment is signed. A subsequent payment by the debtor cannot postpone it.[16]

Last item admitted or proved. The words "last item admitted or proved" mean the last item on the defendant's side of account.[17] It should not only be proved as a fact, but also proved to have arisen in the course of mutual dealings.[18]

14. Plea as to open and current account must be taken in pleadings. When the plaintiff has not disclosed in the plaint that the account between the parties was a mutual, open and current one and so Art. 85 of the Limitation Act was applicable, he cannot raise the point at the trial of the suit.[19]

86.	[20][(*a*) On a policy of insurance when the sum insured is payable after proof of the death has been given to or received by the insurers.	[1][Three years]	[20][(*a*) The date of the death of the deceased.
	(*b*) On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers.]		(*b*) The date of the occurrence causing the loss.]

Synopsis

1. Clause (*a*). 2. Clause (*b*).
3. Suit not falling under Insurance Policy.

1. **Clause** (*a*). The presumption under S. 108, Evidence Act, extends to the fact of death at the expiration of seven years and not to the time of death at any particular time within that period. The exact time of death is not a matter of presumption but of proof by evidence and the onus of proving that death took

14. AIR 1940 All. 209 = ILR 1940 All. 147.
15. 20 Bom. 767.
16. AIR 1943 Sind 26 = ILR 1942 Kar. 442 (DB).
17. 5 Cal. 759 (DB) + 6 Cal. L. Jour 158 (DB).
18. AIR 1914 Mad. 717 (DB). (Every liability between parties cannot be included in account).
19. PLD 1976 Kar. 623 + AIR 1964 Pat. 12 (DB).
20. Subs. for the original entry by S. 122 of the Insurance Act, 1938 (4 of 1938), as amended by the Insurance (Amendment) Act, 1941 (13 of 1941).
1. Subs by the Repealing and Amending Act, 1923 (11 of 1923). S. 2 and First Sch. for "Ditto".

place at a particular time within the period of seven years lies on the person who claims a right for the establishment of which that fact is essential.[2]

Refusal to pay by Insurance Company. Where the Insurance Company by a letter refused to pay claim to plaintiff because the deceased had given untrue statement with regard to his health, when he was being examined for life insurance in respect of the Life Insurance Policy. The letter was an implied acknowledgment of liability with refusal to pay the same and a fresh period of limitation would be computed from the date when the letter was signed.[3]

2. Clause (b). The suit contemplated by Art. 86 (*b*) is only a suit by the insured as against the Insurance Company. The omission of the word 'assured' in Art. 86(*b*) does not make any different. Article 86 (*b*) relates only to suits by the assured or to the right of the assured. A suit by a third party is not covered by Art. 86 (*b*) of the Act.[4] Thus a suit for compensation for injury suffered by the plaintiff in a bus accident against the bus owner, driver, and the insurance company which has covered third party risk, is governed by Art.22 and not by Art. 86 or Art. 115 of the Act. Hence the suit filed after expiry of one year from the date of injury is barred by limitation in view of Art. 22.[5]

Fire Insurance Policy. Article 86(*b*) of the Limitation Act does not apply to each and every contract based on insurance policy. The use of the words "after proof of loss has been given to or received by the insurers" necessarily restricts the application of the Article to the cases where sum insured becomes payable on submission of proof. Therefore clauses in fire or lightning insurance policies which provide for forfeiture or non-liability after specified period are not void under section 28 of the Contract Act, 1872.[6]

3. Claim not arising under Insurance Policy. Only claims arising under an Insurance Policy fall under this Article. A claim against an Insurance Company arising on an act done under Ordinance 21 of 1971 falls under Article 2 and not under this Article.[7]

87.	By the assured to recover premia paid under a policy voidable at the election of the insurers.	[8][Three years]	When the insurers elect to avoid the policy.
88.	Against factor for an account.	[8][Three years]	When the account is during the

2. AIR 1958 Mad. 463.
3. 1980 Law Notes 57.
4. AIR 1958 Andh Pra. 309 = ILR 1958 Andh Pra. 261.
5. AIR 1964 Pat. 372.
6. PLD 1989 Lah. 390 = PLJ 1989 Lah. 336 = KLR 1989 CC 661 (FB).
7. NLR 1981 UC 206.
8. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch, for "Ditto".

		continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.

Synopsis

1. Scope.
2. Factor acting in different capacity.

1. Scope. The Article applies only to suits against factors. It does not apply to persons other than factors to whom money has been entrusted. It has been held that secretaries and treasurers of joint stock companies who have made advances and incurred expenses for the company are not factors.[9] Where the plaintiff entrusted a certain amount to defendant for doing a specific thing. On failure of defendant a suit for recovery of the amount is not governed by this Article.[10]

2. Factor acting in different capacity. The Article applies only where money is held by the defendant in the capacity of a factor. Where *A* was factor in respect of some portion of his dealings with *B*, but not in respect of several advances to him by *B*. To a suit by *B* against *A* on accounts; Art. 85 and not this article, applies.[11]

89.	By a principal against his agent for movable property received by the latter and not accounted for.	[12][Three years]	When the account is during the continuance of the agency, demanded and refused or, where no such demand is made when the agency terminates.

Synopsis

1. Scope.
2. Agreement to account, suit based on.
3. Suit for accounts.
4. Agent, who is.
5. Members of joint Hindu family.
6. Suit against representative of deceased agent.
7. Suit by representative of deceased principal.

---

9. 13 Bom. 314.
10. AIR 1957 Ker. 155 = ILR 1957 Ker. 416.
11. AIR 1915 Mad. 1001 (FB).
12. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

8. Demanded and refused.
9. "When the agency terminates."
10. Burden of proof.
11. Duty of agent to render proper accounts.
12. Period for which agent liable to render accounts.

1. Scope. For a suit based on agency, the articles especially provided for in the Limitation Act are only Arts. 89 and 90 with this difference that as between them Art. 90 is a residuary article. That means, Article 90 in the case of agency is meant only for such a suit which is not covered by Art. 89.[13]

This article will not apply when there is no relationship of principal and agent between the parties.[14] Thus the Article does not apply where the parties stand in fiduciary relationship.[15]

There is no provision for a suit for accounts by the agent against his principal either in the Contract Act or in the Limitation Act. Therefore, normally such a suit will not lie. But the existence of special circumstances will justify such a suit for accounts.[16]

Suit for taking of accounts. Ordinarily a suit contemplated by this article must involve the taking of an account and would include a suit for account.[17] A suit for an account involves an undertaking by the plaintiff to pay to the defendant any amount that may be found to be due to him on taking accounts and a decree may be passed in favour of the defendant for such amount.[18]

Suit for an account is not a suit for a definite sum of money but for ordering the defendant to account to the plaintiff for money received by him and is different from a suit for compensation for breach of contract.[19] But where the suits is not merely for accounts, but one to enforce in the plaintiff's favour a charge on an immovable property created to secure the moneys which might be found due from the agent to his principal on his accounts, the case falls within Article 132.[20] Similarly where accounts have already been taken and adjusted and a specific sum has been found due from the agent to the principal, a suit for the recovery of such sum is not governed by this article.[1]

Suit for recovery of property. Article 89 is not confined to suits for accounts. It is applicable for the recovery of any movable property which has been received by the agent and which has not been accounted for.[2] If the movable property is not accounted for it does not matter what the reason for failure to account may be

---

13. AIR 1960 Pat. 223 (DB). (Case covered by Art. 89 or Art. 90, Art. 120 does not apply.).
14. AIR 1940 Cal. 363=ILR (1940) 1 Cal. 110 (DB)+AIR 1949 Oudh 51=23 Luck 65 (DB)+AIR 1939 Mad. 671 (DB)+AIR 1926 Lah. 228+AIR 1946 Mad. 116=ILR 1946 Mad. 423 (DB)+AIR 1937 Bom. 217 (DB)+('84) 7 All. 25 (DB).
15. AIR 1961 Bom. 11 (DB).
16. AIR 1959 All. 546 (DB).
17. ('01) 8 Cal. W. N. 113 (DB)+ILR (1952) 2 Raj. 459+('05) 32 Cal. 719.
18. ('87) 14 Cal. 147=13 Ind App. 123 (PC).
19. AIR 1931 Mad. 185=54 Mad. 654 (DB)+('96) 23 Cal. 884 (FB).
20. AIR 1941 Cal. 257 (DB)+AIR 1920 Cal. 848 (DB).
1. AIR 1941 Cal. 257 (DB)+AIR 1917 Cal. 156 (DB)+AIR 1916 Low Bur 40 (DB).
2. AIR 1958 Madh Pra 91 (DB).

and the suit for such property will be governed by this article.[3] Thus where certain articles were supplied to an agent for agency work and a suit was brought for the recovery of articles after termination of the service, Art. 89 and not Art. 145, applies.[4]

Movable property includes money. The expression 'movable property' in the first column of Art. 89 includes agency.[5]

Mutual, open and current account. Where a mutual, open and current account exists between a principal and an agent the suit will be governed by Art. 85.[6]

2. **Agreement to account, suit based on.** This article is comprehensive enough to include suits based on express contract or liability to account arising under law.[7] Thus where an agency terminated on 16-11-1950 and the agent executed a letter acknowledging liability to render account on 24-11-1950. It was held that suit for rendition of accounts instituted on 24-11-1953 by the principal was within time prescribed under Art. 89.[8] Similarly where an agent expressly agreed to render accounts from time to time, a suit for accounts was governed by this article.[9] It must however, be noted that a suit for accounts and for payment of the balance cannot be regarded as a suit for compensation for a breach of the contract to account.[10]

Registered agreement to account. A suit for accounts against the agent based on an agreement which is registered would be governed by Article 116 and not by this article.[11] Thus where a suit is for recovery of money under a claim arising under a registered power-of-attorney, Article 116 and not Article 89 will apply.[12]

3. **Suit for accounts.** A suit for accounts and to recover the balance due after taking such accounts will fall within this article.[13] Where a suit is by a zamindar against his land agent for payment of sums not accounted for by latter, the Zamindar should not bring a suit of this kind for an account merely or for the delivery of accounts or account papers merely; but the suit should be for an account and for the payment of what on the taking of the account may be found due from the defendant to the plaintiff.[14] Where a principal is in possession of

---

3. AIR 1938 Mad. 38+AIR 1928 Mad. 906 (DB)+AIR 1934 Cal. 238=60 Cal. 1347 (DB)+AIR 1916 Cal. 244 (DB).
4. AIR 1948 Mad. 76=ILR 1948 Mad. 296 (DB). (Limitation starts from termination of agency).
5. AIR 1957 Ker. 155=ILR 1957 Ker. 416.
6. AIR 1953 Sau 141.
7. ('01) 24 All. 27+AIR 1916 Mad. 281=39 Mad. 376 (DB). (Suit based on express contract)+AIR 1925 Pat. 494=4 Pat. 289 (DB)+AIR 1916 Cal. 680=43 Cal. 248 (DB).
8. AIR 1962 Madras 171.
9. AIR 1916 P.C. 148=44 Cal. 1.
10. AIR 1919 Cal. 458 (DB)+('08) 35 Cal. 248 (DB)+AIR 1931 Mad. 185=54 Mad. 654 (DB).
11. ('01) 1 Cal. L. Jour 211 (DB)+('10) 14 Cal. W. N. 122 (DB)+AIR 1917 All. 14=39 All. 355 (DB).
12. AIR 1944 Cal. 106=ILR (1943) 1 Cal. 578.
13. ('02) 24 All. 27=28 Ind App 227 (PC) (Words 'movable property' include money)+AIR 1940 Pat 90 (DB).
14. ('81) 7 Cal. 89 (DB).

accounts of business of agency, and he does not pray for general accounting but only takes exception to certain matters appearing in accounts and alleges that in certain transactions the agent acted in excess of his authority; the suit is one for accounts and is governed by Art. 89.[15]

Suit for recovery of account papers. Suit to recover from the defendant account papers is governed by Article 120.[16]

4. Agent, who is. An agent is a person employed to do any act for another or to represent another in dealings with third persons.[17] It is not necessary that contract of agency be always in writing. It may as well be oral, or even implied in the conduct of parties.[18] Thus relation between a broker and the person for whom he acts is that of an agent and principal.[19] Where *A* is employed by *B* to invest money on his behalf and to represent him in dealings with the debtors. *A* is an agent of *B*.[20] Where two Muslim brothers joint in estate were in Government service employed in different districts. One was at home at one time and other, at another. One acted for the other in receipt of profits of their estate. They were held agents, one of the other, in dealing with the joint estate.[1] Where a Hindu family becomes divided, and a portion of joint property is left in the management of one member, that member must be considered to be the agent of other members.[2] Where *A* and *B* executing a deed entrusted their property to *C* for good management with powers to sell. *A* and *B* reserved to themselves the power to sell or mortgage with *C's* consent. It was held, that *C* was not a trustee under the deed but was the agent of *A* and *B*.[3] Where three sisters succeeded to residue of father's zamindari under the will. The eldest sister was appointed manager for collecting amounts and profits and distributing them between the sisters and also for controlling the household and paying household expenses. It was held that the managing sister was in the position of a factor or agent under the terms of the will.[4] Where, in a suit for partition, the plaintiff claimed interest on her share of rent realised by the defendant, who was managing the estate of the father after his death and on the facts admitted and proved it was clear that the defendant had been acting as the agent of the plaintiff; it was held that the proper Article applicable to the suit was Art. 89, and not Art. 109 and the residuary Article of the Limitation Act.[5]

Where a person is not employed to do an act for the other, he is not an agent though he does something on behalf of the other. Thus where a bank advanced a

15. AIR 1938 Mad. 38.
16. ('05) 1 Cal. L. Jour 147.
17. ('08) 30 All. 422 (FB).
18. 8 Ind Cas. 637 (Bom) + AIR 1957 Trav-Co. 179 = ILR 1955 Trav-Co. 1200 (DB) + AIR 1950 Hyd. 52 = ILR 1951 Hyd. 202 (DB) + ('05) 32 Cal. 719 (DB) + AIR 1930 Sind 142 + AIR 1943 Nag. 227 = ILR 1943 Nag. 470.
19. AIR 1917 All. 466 = 39 All. 81 (DB) + AIR 1916 Cal. 548 = 42 Cal 1050 (DB).
20. AIR 1931 All. 372 (DB).
1. ('02) 24 All. 27 = 28 Ind App 227 (PC).
2. AIR 1921 Bom. 384 = 45 Bom 313 (DB) + AIR 1928 Bom. 365 (DB) + AIR 1925 Mad 150 = 45 Mad. 648 (FB) + AIR 1929 Lah. 407 (DB) + AIR 1928 Lah. 688 (DB) + ('97) 24 Cal. 309 (DB). (Though defendant was held to be acting as agent Art. 62 was applied).
3. AIR 1940 Pat. 90.
4. ILR 1939 All. 442 = ILR 1939 All. 442 = ILR 1939 All. 594 (DB).
5. AIR 1957 Trav-Co. 179 = ILR 1955 Trav-Co. 1200 (DB).

loan to *A* and *A* executed a pronote and lodged certain shares which he held in the bank as security for the loan. After *A's* death the bank sold the shares. Notice of sale was not given. A suit was brought by *A's* wife against the bank for accounts and for return of the balance. It was held that relation between *A* and the bank was not that of principal and agent.[6] Similarly where *A* obtained a mortgage decree against *B*. Later on *A* made a will which provided that *A's* elder son *C* would be entitled to collect the mortgage debt on behalf of both the brothers *C* and *D* and their net proceeds would be divided between *C* and *D* according to ten annas and six annas share. After *A's* death *D* transferred his share in the mortgage decree in favour of one *E*. *E* brought a suit against *C* for his share of the amount realised by *C*. It was held that the suit was not governed by Art. 89 as there was no relationship of agent and principal between *C* and *E* who had never accepted the provisions of the will.[7] A suit by a co-parcener against the manager for recovery of outstandings collected and misappropriated by the latter is governed by this article.[8]

Instance of persons not agents. The following are some instances of persons who act for another but are not his agents:

(*a*) A quondam agent, after termination of his authority, receiving money due to principal.[9]

(*b*) A co-mortgagee acting for another co-mortgagee.[10]

(*c*) Guardian acting for his ward.[11]

(*d*) A Chairman of a Municipal Council, is not an agent of the Council.[12]

(*e*) An administrator *de son tort*.[13]

(*f*) A co-sharer is not an agent of another co-sharer in respect of rents and profits received by the latter.[14]

(*g*) Custodian of property entrusted for safe-keeping pending settlement of disputes as to title to it is not an agent within Article 89.[15]

(*h*) A manager appointed under the Lunacy Act to manage the estate of the lunatic is not an agent of the lunatic.[16]

(*i*) A partner is not an agent of another individual partner though he is an agent of the partnership.[17]

---

6. AIR 1942 Mad. 386.
7. AIR 1956 Orissa 53 = ILR 1955 Cut. 454 (DB).
8. AIR 1930 P.C. 18 (AIR 1925 Mad. 922. *Reversed*).
9. AIR 1915 All 259 (DB).
10. AIR 1921 Lah. 196.
11. AIR 1943 Pat. 218 (DB).
12. ('99) 22 Mad. 342 (DB).
13. AIR 1919 Mad. 172 (DB).
14. AIR 1940 Cal. 363 = ILR (1940) 1 Cal. 110 (DB).
15. AIR 1941 Nag. 181.
16. AIR 1949 Oudh 51 = 23 Luck 65 (DB).
17. AIR 1923 Nag. 27.

5. Members of joint Hindu family. A suit by a co-parcener against the manager of the family for recovery of outstandings collected and misappropriated by the latter is governed by this article.[18]

6. Suit against representative of deceased agent. A suit for accounts will lie against the legal representatives of the agent,[19] and it is the duty of the legal representative to place before the Court for investigation all the accounts in their possession and power which the deceased agent might have prepared during his agency.[20] To such a suit this article applies.[21]

7. Suit by representative of deceased principal. A suit by the legal representative of a deceased principal against the agent for accounts will be governed by this article.[1]

8. **Demanded and refused.** In case of a continuing agency where an account has been demanded and refused, time runs from the date of such refusal otherwise not.[2] Thus where a general power-of-attorney is executed in favour of the agent empowering him to manage all the business of the principal, the agency does not terminate with the collection of a particular debt due to the principal. Hence a suit brought by the principal in 1941 to recover the mortgage-debt collected by the agent in 1937 in the absence of demand for accounts and refusal is not barred.[3] But where agency has come to an end, whether by renunciation or otherwise, any amount of demand thereafter for accounts, though coupled with refusal, would not in law provide any new starting point for limitation under Art. 89.[4]

Plea of demand and refusal. The question as to what constitutes a demand or a refusal is a question of law being a question relating to the interpretation of an enactment and the question whether a plea of demand or refusal has been raised is also a question of law.[5]

Proof of demand and refusal. The question whether there has been a demand and refusal is a question of fact and has to be proved by definite evidence.[6] In the

---

18. AIR 1930 P.C. 18 (AIR 1925 Mad. 922. *Reversed*).
19. AIR 1929 Lah. 362 (DB) (Burden of proof will be upon plaintiff to establish his case) + AIR 1958 Punj. 487 = ILR 1958 Punj. 1658 (DB) + AIR 1921 Mad. 407 = 44 MAd. 214 (DB) + AIR 1918 Cal. 876 (DB) + ('12) 16 Cal. W N 1024 (DB) + ('09) 31 All 429 (DB) + AIR 1927 Mad. 157 = 50 Mad. 249 (DB + AIR 1925 Bom. 148 (DB) + AIR 1921 Bom. 384 = 45 Bom. 313 (DB) + AIR 1928 Nag. 256 + AIR 1917 All 14 = 39 All 355 (DB) + ('12) 13 Ind Cas. 930 = 1912 Pun. Re. No. 1 (DB) + AIR 1957 Madh Pra 234.
20. AIR 1929 Lah. 362 (DB) + AIR 1918 Cal. 276 (DB).
21. AIR 1927 Mad 157 = 50 Mad. 249 (DB) + AIR 1958 Punj. 487 = ILR 1958 Punj. 1658 (DB) + AIR 1957 Madh Pra. 234 + AIR 1915 Mad. 596 (DB) + AIR 1921 Bom. 384 = 45 Bom. 313 (DB) + AIR 1925 Bom. 148 (DB) + AIR 1928 Nag. 256 + AIR 1935 Cal. 817 (DB) + ('10) 14 Cal. W. N 122 (DB) + AIR 1934 Nag 227 = ILR 1943 Nag. 470 + AIR 1942 Pat. 181 (DB).
1. AIR 1925 All 682 + AIR 1916 P.C. 148 = 44 Cal. 1.
2. AIR 1916 Cal 680 = 43 Cal. 248 (DB) + AIR 1950 Dacca 13 + AIR 1933 All 642 = 55 All 814 (DB) + ('12) 13 Ind Cas. 933 = 1912 Pun. Re No. 1 (DB).
3. AIR 1946 Madras 122.
4. AIR 1960 Pat. 223 (DB).
5. AIR 1955 Sau 113.
6. AIR 1925 Pat. 494 = 4 Pat. 289 (DB) + AIR 1955 Sau 113 + AIR 1918 Pat. 615 (DB).

absence of evidence, no inference as to the demand and refusal can properly be drawn adversely to the claim of the principal.[7]

Refusal might be inferred or implied from the facts of the case.[8] It has been held that neglect to comply with the demand to render accounts is tantamount to a refusal.[9] Where the defendant submitted account papers but did not explain them and when called upon to appear and explain did not respond to the call. It was held the failure to respond amounted to refusal to explain.[10] Where an agent employed to collect rent was asked by the principal to submit accounts up to 12th April, 1914 on or before 13th May, 1914. The agent failed to submit accounts, the conduct of the agent in not complying with the demand to submit accounts amounted to refusal to do so.[11] It must however be noted that before a refusal can be gathered from the circumstances of non-compliance, etc., there must be an intention to refuse, which must necessarily precede the act of refusal and its communication to the principal.[12] Therefore where the defendant takes up the plea that accounts have already been settled it cannot be said that he has refused to produce accounts.[13] When a demand for accounts was made but the agent put the matter off, such postponement was held not to amount to refusal.[14]

When demand is not proper there can be no refusal. Thus where an agent is appointed jointly by more than one principal, a demand for account must be made by all principals together. A separate demand from one principal and refusal by the agent to such principal has no effect on the starting point of limitation under this article.[15]

9. **"When the agency terminates."** The determination of the agency is a question of fact.[16] It has to be decided on the facts of each individual case. Ordinarily in every suit the contract of agency is created when the *vakalat* is executed and it ends with the termination of the suit.[17] Similarly agency created for the management of an immovable property is terminated by the transfer of such property.[18]

Where an agency has been terminated a suit brought against the agent after three years of such termination is barred by limitation. Thus where the principal provided his agent with petrol pump, tank and accessories for selling petrol during the continuance of the agency, a claim for return of the property after three years

---

7. AIR 1916 P.C. 148 = 44 Cal. 1.
8. AIR 1933 Bom. 450 = 58 Bom. 200 (DB) + AIR 1933 Cal 204 (DB) + AIR 1922 Cal 355 = 49 Cal. 250 (DB) + AIR 1930 Sind 142.
9. ('78) 3 Cal. L. R. 446 (DB) + ('10) 11 Cal L Jour 43 (DB).
10. AIR 1916 Cal 680 = 43 Cal 248 (DB).
11. AIR 1922 Cal. 355 = 49 Cal. 250 (DB).
12. AIR 1955 Sau 113.
13. AIR 1955 Sau 113.
14. AIR 1924 Pat. 664 = 3 Pat. 546 (DB) + AIR 1918 Pat 615 (DB) + AIR 1919 Cal. 458 (DB).
15. AIR 1973 Pat. 464 = 2 Pat. 585 (DB).
16. AIR 1918 Mad. 31 = 41 Mad. 1 (DB) + AIR 1928 Lah. 688 (DB) + AIR 1935 Lah. 49 + AIR 1933 All. 64[illegible] 55 All. 814 (DB) + ('66) 6 Suth W.R. (Act X Rul) 29 (DB) + AIR 1938 Mad. 38 (DB).
17. AIR 1927 Mad. 157 = 50 Mad. 249 (DB) + (1880) 28 W.N. (Eng.) 681 = 14 Ch. D 406.
18. AIR 1916 Cal. 800 (DB).

from termination of the agency is barred under Art. 89, Section 10 or Art. 145 has no application.[19]

Continuation of agency after expiry of term. Where the duration of agency is fixed for a term by agreement between the principal and his agent. But the latter was allowed to continue as agent even after the term was over. It was held that the agency was not terminated on the expiry of the term. A fresh agency was not created but original agency continued even after the expiry of the term.[20]

Liability of agent after termination of agency. The fact that the liability of the agent in respect of acts done by him may continue, has nothing to do with the termination of the agency.[1]

Agent appointed receiver. Where an agent is appointed as receiver and he works as an agent of his master, notwithstanding his appointment as receiver, his agency does not cease.[2]

Suit for accounts after termination of agency. Where the agency is terminated and the agent fails to render any account to the principal, the principal can maintain a suit against the agent for rendition of account without being obliged to call upon him to render accounts prior to the institution of the suit. The third column of Art. 89 provides for two categories of cases (*i*) in respect of a continuing agent where if the principal wants the agent to render account there must be a demand and refusal to furnish the principal with a cause of action to sue, (*ii*) but where the agency itself is terminated no such demand is necessary, as the starting point of limitation under that Article is the date of the termination of the agency. In the absence of any evidence of demand and refusal limitation runs from the termination of the agency.[3] But where the suit is not merely for rendering account of the money received by the agent and not accounted for but it also embraced the claim of the plaintiff with respect to certain monies which, according to the plaintiff, the defendant should have recovered but had not recovered, this Article would not apply and the proper article applicable would be Art. 120.[4]

Termination by revocation of agent's authority. Authority of an agent may be revoked by notice to the agent,[5] or by dismissal of the agent.[6] In such cases the causes of action for a suit for accounts against the agent will not arise until he has received the notice of revocation.[7]

Agent renouncing business of agency. Agency may be terminated by the agent when he resigns from the employment,[8] or when he departs from his employer's

19. AIR 1948 Mad. 76 = ILR 1948 Mad. 296 (DB).
20. AIR 1917 Mad. 455 (DB).
1. AIR 1916 Mad. 281 = 39 Mad. 376 (DB) + AIR 1935 Mad. 707.
2. AIR 1936 Mad. 980 (DB).
3. AIR 1962 Madras 171 + AIR 1916 P.C. 148.
4. AIR 1961 Rajastan 143 + AIR 1917 Mad. 948.
5. AIR 1916 P.C. 148 = 44 Cal. 1.
6. AIR 1922 Cal. 355 = 49 Cal. 250 (DB).
7. AIR 1939 All. 738.
8. ('09) 4 Ind. Cas. 556 (DB) (Cal.).

service,[9] or sets up a title in himself adverse to his principal.[10] Revocation of agency may also be implied from the conduct of the principal or of the agent.[11]

Termination by completion of business of agency. Where an agency is created for the purpose of transacting a particular business, it terminates on the completion of that business.[12] Thus where an agent is appointed for sale of properties, the agency terminates when the sale is completed, and does not continue until payment of price to the principal.[13] Where certain goods which were shipped from New York had to be cleared from a certain port and were to be sent to the plaintiff's nominee by the defendant Bank. After the goods were so delivered on 8-7-1948 the plaintiff filed a suit for accounts against the Bank. It was held that the suit being between principal and agent was governed by Art. 89 and not by the residuary Art. 120. The agency being for a particular purpose of clearing the goods from the port and delivering it to the plaintiff's nominee and that entire purpose having finished on 8-7-1948, the contract came to an end on that date and time therefore ran from that date and not from a subsequent date on which demand for accounts was made, the same being not during the continuance of agency.[14] But where a general power-of-attorney executed in favour of a person empowers him to manage all affairs of the principal, the agency does not terminate on collection of debts and outstandings due to the principal.[15]

Death of principal, termination of agency by. Authority of an agent is terminated by the death of the principal.[16] Where the agent continues to act as agent of the legal representative of the deceased principal, the agency, is not continued only a new agency is created. Therefore in such a case if the legal representative sues the agent for accounts for the whole period of agency, the suit in respect of the period before the death of the principal would be barred after three years from his death and a suit in respect of the period after his death would be barred after three years from the date of termination of agency.[17]

Where two or more persons appoint an agent by the same act or instrument and one of such principals dies, the agency will continue under surviving principals in absence of any evidence that all principals were joint principals and not joint and several.[18]

---

9. ('86) 14 Cal. 147 = 13 Ind. App. 123 (P.C.).
10. ('79) 5 Cal. 692.
11. ILR (1952) 2 Raj. 459. (Joint creditors--Each contributing some share--Bond executed in favour of one only--Such creditor realizing full amount--Suit by assignee of other creditors for recovery of their share--Article applicable is Art. 62 and not Art. 89).
12. AIR 1928 Lah. 833 + AIR 1929 Lah. 883.
13. AIR 1937 All. 363 + AIR 1916 Mad. 281 = 39 Mad. 376 (DB) + AIR 1934 Mad. 691 + AIR 1926 Sind. L. R. 336.
14. AIR 1961 Punjab 180 + AIR 1916 Mad. 281 + AIR 1928 Lah. 833.
15. AIR 1918 Mad. 1296 (DB) + AIR 1946 Mad. 122.
16. AIR 1916 P.C. 148 = 44 Cal. 1 + (1900) 23 All. 233 = 28 Ind App 15 (PC).
17. AIR 1935 Cal. 817 (DB) + AIR 1916 P.C. 148 = 44 Cal. 1.
18. AIR 1936 Cal. 650.

Death of agent, termination of agency by. Death of an agent operates as a termination of the agency.[19] But where authority is conferred on two agents, death of one of them does not terminate the agency as regards the surviving agent.[20]

10. Burden of proof. Where the suit is against the agent himself, the burden lies on the agent to establish that the claim is beyond time.[1] The onus lies on the agent to prove that there was a demand and refusal, or that by any act of the principal he has been exempted from the duty of furnishing the accounts otherwise the agent will be liable till the termination of the agency.[2] An acknowledgment of liability by the agent to render accounts is sufficient to show that he has not rendered accounts.[3]

11. Duty of agent to render proper accounts. When any money is received by the agent in the course of the business, there is an obligation on him to render an account to the principal of the money so received,[4] and for that purpose he has to support the entries by vouchers in proper cases,[5] and he must be ready to pay any balance which might be found due from him upon taking the accounts.[6]

Agent employed jointly by several principals. Same agent may be employed jointly by more than one principal. In such cases the agent is not bound to account to them separately.[7] But if he submits accounts to one of such principals, he is not thereby discharged from liability to the other or others, unless the co-principals are partners.[8]

12. Period for which agent liable to render accounts. Where a suit is brought by the principal against his agent for accounts within the period of limitation provided under this article, the principal is not restricted to get an account merely for three years preceding the suit, but is entitled to an account for the entire period without any other bar of time.[9] But if the defendant has acted as plaintiff's agent under more than one contract of agency successively entered into and a suit for accounts in regard to a prior contract is barred by limitation, he is not liable, in a suit on a later contract, to account for transactions pertaining to the prior contract.[10]

19. ('69) 2 Beng L R (AC) 139 (DB) + ('81) 7 Cal. 627.
20. ('12) 17 Cal. L. Jour 210 (DB).
1. AIR 1930 P.C. 18.
2. AIR 1916 P.C. 148 = 44 Cal. 1.
3. AIR 1962 Mad. 171.
4. AIR 1929 P.C. 119 = 10 Lah. 352 = 56 Ind. App. 170.
5. AIR 1931 Mad. 185 = 54 Mad. 654 (DB) + ('81) 6 Cal. 754 (DB).
6. AIR 1916 Cal. 680 = 43 Cal. 248 (DB) + AIR 1917 Cal. 156 (DB) + ('12) 13 Ind. Ca 930 = 1912 Pun Re No. 1 (DB).
7. ('21) 62 Ind. Cas. 766 (DB) (Cal.).
8. AIR 1923 Pat. 464 = 2 Pat. 595 (DB).
9. AIR 1939 All. 412 = ILR 1939 All. 594 (DB) + ('86) 14 Cal. 147 = 13 Ind App. 123 (PC).
10. AIR 1940 Mad. 299 (DB), (Defendant will not be entitled to any credit for items claim by him as due to him in regard to earlier contract) + AIR 1938 Mad. 38.

90.	Other suits by principals against agents for neglect or misconduct.	[11][Three years]	When the neglect or misconduct becomes known to the plaintiff.

Synopsis

1. Scope.
2. Neglect or misconduct.
3. Agent, who is
4. Starting point of limitation.
5. Liability of legal representative of deceased agent.

1. Scope. This article prescribes the period of limitation for suits which do not properly came under Art. 88 or Art. 89.[12] In a suit based on agency, the articles especially provided for in the Limitation Act are only Arts. 89 and 90 with this difference that as between them Art. 90 is a residuary article. That means that Art. 90 in the case of agency is meant only for such a suit which is not covered by Art. 89.[13] Thus where a misfeasance application was filed against a Director of an Insurance Company under S. 106, Insurance Act; it was held that this Article and not Art. 36 applied to the case.[14] Where the plaintiff had entrusted to the defendant a sum of money for negotiating and obtaining for him a sale from *K* and on settlement of the terms of the sale the defendant was to pay the amount as advance towards the sale consideration. The defendant failed to do the same and, therefore, the plaintiff took a sale from *K* direct and paid the entire amount of consideration. In a suit by the plaintiff for the recovery of the amount, it was held that Art. 90 was applicable.[15]

2. Neglect or misconduct. A suit for compensation for neglect or misconduct on the part of the agent will fall under this article.[16] Where the suit is not against an agent, this Article does not apply. Thus where *C* filed a suit for recovery of money against *A* and *B* alleging that *A*'s clerk *B* had borrowed the same on behalf of *A*. *A* pleaded that *B* had no authority to receive the money on his behalf. It was held that the suit could not be a suit filed against the agent and was not covered by this article.[17]

The words "neglect or misconduct" do not cover every failure of duty of the agent.[18] The word "neglect" or "misconduct" as used in Art. 90 contemplates something which is tortuous in nature and, therefore, necessarily an act that is not authorised under the terms of agency or contemplated thereunder. That means that what in law amounts to misconduct or neglect as contemplated in Art. 90 is

---

11. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
12. AIR 1939 Mad. 114+AIR 1918 Mad. 31=41 Mad. 1 (DB)+AIR 1935 Cal. 817 (DB).
13. AIR 1960 Pat. 223 (DB).
14. PLD 1971 S.C. 8=23 DLR (S.C.) 81.
15. AIR 1957 Ker. 155=ILR 1957 Ker. 416.
16. PLD 1971 Kar. 583+AIR 1924 All. 467=46 All. 175 (DB). (It was assumed that Executive Officer was an agent of the Municipal Board)+ILR 1953 Hyd. 727. (Suit for damages for neglect and misconduct of the agent--Suit is governed by Art. 90).
17. AIR 1960 Hys. 238
18. AIR 1928 Mad. 90[illegible] (DB)+AIR 1953 Mad. 906 (DB)+AIR 1953 Mad. 694=ILR 1953 Mad. 1097 (DB). (The neglect or misconduct contemplated by the article is neglect or misconduct in the course of and intimately connected with the agency duties. *qua* agent).

that act which is done quite independent of the authority given to the agent.[19] There must be proof of gross negligence and want of reasonable skill and diligence on the part of an agent before an action can be brought against him.[20]

Suit not based on neglect or misconduct of agent. The Article applies only to a suit not based on neglect or misconduct of agent. Where *A* was one of the directors and also the sole managing agent of certain company and was thus bound in a fiduciary character to protect the interest of the company. But availing himself of this character and utilising the premises and staff of the company as well as his credit with the company by reason of the position which he occupied, *A* gained for himself a pecuniary advantage in the sum of Rs. 8,510. The company sued to recover the amount claiming that *A* must hold that advantage so gained for the benefit of the company. It was held that in view of the nature of the claim, Art. 90 did not apply. This was a case where the basis of the claim was not neglect or misconduct, but the advantage taken by a person in a fiduciary capacity of his position to make a gain.[1]

3. **Agent, who is.** An agent is a person employed to do any act for another or to represent another in dealings with third persons.[2] Therefore a bank clerk in charge of savings bank accounts is an agent and this article is applicable to a suit to recover moneys paid out by his fraud.[3] If a *Lambardar* does not collect from solvent and willing tenants, of squanders the cash and generally fritters away the profits which might by realised if he were ordinarily diligent, he is liable to be sued for compensation.[4]

Director of company. Where a Director acting as agent of a company incurs loss to the company by this negligence,[5] or his misfeasance[6] he is liable to the company for it.

Advocate. An advocate engaged by a party is his agent and a suit against the advocate for neglect or misconduct in his professional duties will be governed by this article.[7] Therefore a suit by a client against his advocate to return the amount paid to him on his failure to conduct the case is governed by Art. 90 of the Limitation Act.[8]

4. Starting point of limitation. This Article provides three years limitation for a suit by a principal against an agent for negligence or misconduct, the period is to be calculated from the date when the neglect or misconduct becomes known to the plaintiff.[9] The words that "limitation shall run from the time when the neglect becomes known to the plaintiff" mean that time will run from the date

19. AIR 1960 Pat. 223 (DB).
20. 10 Oudh Cas. 95 (DB) (Suit against legal practitioner).
1. AIR 1953 Mad. 694 = ILR 1953 Mad. 1097 (DB).
2. 30 All. 422 (FB).
3. AIR 1930 All. 573 (DB).
4. AIR 1924 All. 481 = 46 All. 791 (FB).
5. AIR 1936 Lah. 268 = 17 Lah. 262 (DB) (AIR 1923 Lah. 58 + AIR 1927 Lah. 262. *Dissented from*) + AIR 1936 Lah. 271 (DB).
6. PLD 1971 S.C. 8 = 21 DLR S.C. 81.
7. AIR 1938 Rang. 258 = 1938 Rang. L. R. 457 (DB).
8. AIR 1965 Mysore 237 + AIR 1960 Hys. 217 + AIR 1932 Rang. 1 + AIR 1938 Rang. 258 (FB).
9. PLD 1971 Karachi 583 + PLD 1960 Kar. 484 = PLR 1960 (2) W.P. 1100.

when the negligent act or omission becomes known to the plaintiff and not the time when he realises or concludes that the act was negligent.[10] Therefore it is necessary, before this article can be applied, to ascertain the date on which the plaintiff came to know of the neglect or misconduct of the agent.[11] Even constructive notice of the negligence of the agent is sufficient.[12] Therefore knowledge of the negligence or misconduct of an agent can fairly be imputed to the principle from the date when he obtains the account book from the agent.[13]

Date of actual injury may provide starting point of limitation. Where the principal has suffered an injury as a result of neglect or negligence by the agent, limitation will commence from the date of the injury. Thus where *A* entrusted *B* (broker) with the sale of certain shares of the bank. *B* sold the shares to the Bank itself. Bank went into liquidation *A* was made to pay the unpaid call money and he actually made the payments. Suit by *A* against *B* for damages. It was held that under S. 24 period of limitation had to be computed from the date when the injury had resulted. Reading Art. 90 and S. 24 together, the suit, being within three years of the actual payments, was within time.[14]

No provision for set off against agent. Where there is no provision laying down limitation for set off against a bank which is entrusted with money, Art. 90 would not apply.[15]

5. Liability of legal representative of deceased agent. A remedy for a wrongful act committed by deceased agent, can be pursued against his legal representative where property belonging to another person has been appropriated by the deceased and added to his estate.[16]

91.	To cancel or set aside an instrument not otherwise provided for.	[17][Three years]	When the facts enti-tling the plaintiff to have the instrument cancelled or set aside became known to him.

Synopsis

1. Scope and applicability.
2. Cancellation or setting aside of instrument.
3. "Instrument."
4. Onus of proof.
5. Starting point of limitation.

10. AIR 1938 Rang. 258=AIR 1938 Rang. L. R 457 (FB)+AIR 1932 Rang. 1=9 Rang. 575 (DB).
11. AIR 1941 Nag. 70+AIR 1931 Cal. 738=58 Cal. 923 (DB).
12. 7 All L. J 724.
13. AIR 1939 Mad. 114+AIR 1914 Low Bur 173 (DB).
14. AIR 1953 Mad. 726.
15. AIR 1960 Punj. 590 (DB).
16. AIR 1936 Lah. 268=17 Lah. 262 (DB)+AIR 1953 Lah. 705 (DB).
17. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch. for "Ditto".

1. Scope and applicability. A right to sue to set aside or cancel an instrument is provided for by S. 39 of the Specific Relief Act, 1877[18] and this Article applies to a suit for that purpose.

Arbitration agreement. If the relief is to cancel or set aside an arbitration agreement on any ground not covered by S. 30 of the Arbitration Act, then Art. 91 would apply.[19]

Wills. Art. 91 has no application to wills; the appropriate Article in case of wills being Article 120.[20]

Parties to suit. The article is restricted to suits between parties to an instrument or their successors-in-interest.[1] Third party to an instrument is not bound to sue for a declaration that it is not binding upon him and his failure to do so will not affect the enforcement of his rights.[2] Where *B* executes an instrument in favour of *C*, *A* who is not a party to it or who does not claim through either *B* or *C*, cannot get it set aside or cancelled.[3] But a third party to an instrument may, if the instrument is likely to cast a cloud upon his title, get a declaration under S. 42 of the Specific Relief Act, 1877, that the instrument is not binding upon him and cannot affect his interest.[4] Where in a suit to enforce his rights, a third party to an instrument prays for setting aside or cancelling such an instrument, the prayer will be regarded as merely incidental to the reliefs which he claims.[5]

Defence that instrument is void. Where a suit is brought by a lessee for possession of the leased property and the limitation for cancellation of lease deed has expired, the defendant may take the plea that the lease was void. He is not precluded from urging by way of defence that the lease was obtained by the plaintiff by undue influence and misrepresentation although a suit by him to have the instrument set aside or cancelled is time barred under Art. 91.[6]

Suit not to set aside instrument. The Article applies only where a suit is brought to set aside an instrument. A suit based on an instrument is not a suit to set aside or cancel the same and is not governed by this Article.[7] Thus where the

18. 1969 DLC 416 = 21 DLR 626 + AIR 1919 Mad. 679 (DB).
19. AIR 1957 Pat. 417 = 36 Pat. 35 (DB).
20. PLD 1957 Lahore 99 = PLR 1957 (1) W.P. Lahore 552.
1. AIR 1923 Rang. 82 (DB) + AIR 1921 Nag. 74 = 17 Nag. L. R. 169 + AIR 1931 Oudh 333 = 7 Luck. 131 (DB).
2. AIR 1935 All. 1018 + 30 Mad. 18 (DB) + 6 All. 260 (DB) + 1887 Bom. P. J. 263 (DB) + AIR 1933 Cal. 812 + AIR 1916 Cal. 120 (DB) + 1905 Pun. Re. No. 79, p. 248 = AIR 1916 Lah. 247 = 1916 Pun Re No. 83 (DB) + 1931 Mad. W.N. 856 + AIR 1914 Nag. 75 = 10 Nag. L.R. 133 + AIR 1922 Nag. 60 = 18 Nag. L. R. 11 + AIR 1924 Pat. 551 = 3 Pat. 578 (DB) + 65 Ind Cas. 224 (Pat.) + (1900) 3 Oudh Cas. 105 (Suit for possession not barred) + AIR 1934 Oudh 55 = 9 Luck. 365 (DB) + AIR 1923 Rang. 82 (DB).
3. ('90) 14 Mad. 26 (DB) + AIR 1935 All. 1018 + AIR 1924 Mad. 607 (DB) + 1888 Pun Re No. 135, p. 366 + AIR 1915 Lah. 200 (DB) + AIR 1922 Nag. 60 = 18 Nag. L.R. 11 + 8 Nag. L.R. 29 + ('11) 5 Sind L. R. 240 (DB).
4. ('87) 15 Cal. 409 = 15 Ind App. 37 (PC).
5. 1884 All. W.N. 88 (DB) + AIR 1934 All. 507 (DB).
6. AIR 1946 Oudh 129 (*Rel.* AIR 1935 Bom. 326; 28 Bombay 639; 30 Bombay 395) + AIR 1962 Pat. 168 (DB).
7. 23 All. 383 = 28 Ind App. 11 (PC). (Even if the plaintiff attacks a particular clause in the instrument as invalid and illegal) + AIR 1932 Sind 137 = 26 Sind L. R. 111 (DB).

plaintiff was never interested in setting aside the deed of gift. Her case was that the wrongful insertion of the suit lands in the deeds of gift did not affect her right. She was in no sense challenging the deed of gift, but was seeking to avoid the legal effect of the fraudulent insertion, and it was alleged that the suit was barred under Art. 91 of the Limitation Act. It was held that this Article did not apply where the plaintiff did not challenge the validity of the transaction or of the deed but attacked a particular portion of it as being a nullity.[8] Similarly where the suit did not challenge the validity, of an instrument but merely sought a declaration that it was not binding on a certain person, this Article did not apply.[9]

Article 91 did not apply to a case where the document was sought to be declared *benami*.[10]

Cancellation of instrument as ancillary relief. Article 91 does not apply to a suit where the cancellation of the instrument is merely incidental or ancillary to the substantial relief claimed by the plaintiff for example, recovery of possession, or a declaration that the instrument is ineffective as against the plaintiff's rights.[11]

2. Cancellation or setting aside of instrument. A suit for cancellation of an instrument is governed by this Article where the plaintiff was bound by the instrument, cancellation of the instrument was necessary for claiming the right.[12] Where the petitioner was aware of the existence of the instrument from the date of its execution. He had to have it set aside as a preliminary to his taking possession of the suit land. Article 91 would be attracted. A suit to have the document set aside could be instituted within a period of three years from the time the facts entitling the plaintiff to have the instrument cancelled or set aside became known to him.[13] Where an instrument is a sham or inoperative one it need not be set aside, the rights of parties thereto, will not be affected by failure to get it set aside or cancelled.[14] A suit for a declaration that a particular transaction is a sham one would not be governed by this article.[15]

Void instrument. A party to a void instrument, is not bound to institute a suit to have it adjudged void as a preliminary to his obtaining the relief which he claims.[16] A gift under the Muslim Law which is unaccompanied by possession is

8. PLD 1956 Dacca 274 = PLR 1954 Dacca 167 = 6 DLR 592.
9. 25 Cal 179 = 24 Ind App. 170 (PC).
10. PLD 1957 Dacca 575 = 8 DLR 159.
11. PLJ 1976 SC 44 + PLD 1971 SC 165 = PLJ 1981 SC 420 = NLR 1981 AC 537.
12. PLD 1975 SC 624 + PLD 1978 Lah. 10.
13. PLD 1977 Lah. 1347.
14. 35 Cal. 551 = 35 Ind App. 98 (PC) + AIR 1957 Trav-Co. 312 + AIR 1939 Lah. 544 = ILR 1940 Lah. 546 (DB) + AIR 1928 All. 267 = 50 All. 510 (DB) + AIR 1924 Bom. 174 = 48 Bom. 166 (DB).
15. AIR 1926 Rang. 71 (DB) + 13 Mad. 44 (DB) + 1939 All. L. Jour 389 + 35 All. 149 (DB).
16. PLD 1954 Lah. 253 = PLR 1954 Lah. 205 + PLD 1960 Lah. 300 = PLR 1961 (1) W.P. 240 (DB) + 6 DLR 254 + AIR 1961 Cal. 411 = 27 Cal. 156 = 26 Ind. App. 216 (PC) + AIR 1955 Assam 231 = ILR (1955) 7 Assam 215 (DB). (Such a suit does not fall under this article) + AIR 1954 Mad. 83 + AIR 1952 Mys. 65 = ILR 1952 Mys. 197 (DB) + AIR 1951 Him. Pra. 54 + AIR 1953 Mad. 611 = ILR 1955 Mad. 398 (DB) + AIR 1950 Pat. 247 (DB). (AIR 1938 Pat. 60: *Commented and Diss:* 15 Cal. 58 (PC) and AIR 1948 Cal. 11. *Dist;* AIR 1930 P.C. 134 and AIR 1934 P.C. 208. *Rel. on*) + AIR 1949 Ajmer 8 + AIR 1940 Pat. 201 (DB) + AIR 1945 All. 367 = ILR 1945 All. 494 (DB). (Even though a relief may be added for setting aside of document, that relief is merely ancillary to the main relief for

void *ab initio*. Therefore it is not necessary for a party denying the validity of the gift to have it set aside before taking possession of the subject of the impugned gift, and the case does not attract the provisions of Article 91 of the Limitation Act.[17] Where an alienation of land by an illiterate old lady is challenged on the ground that the sale deed was not read over and explained to her and evidence on the record is not satisfactory to prove proper execution of documents Art. 142 and not this Article would apply to the suit.[18]

When a document is void *ab initio* and does not require to be set aside and a suit is filed for cancellation of the document and for possession. Article 91 does not apply but the residuary Article 120 applies.[19] Where a suit was brought by a devisee for a declaration that the sale by executor of the immovable property of the testatrix is void and for recovery of possession; it was a suit not for cancellation of the instrument of sale so as to attract Art. 91 but a suit by a devisee for possession of immovable property in consequence of invalidation of the sale deed, and, therefore, it was covered by Art. 140.[20]

An alienation of minor's property by a person who was neither a *de facto* guardian nor a *de jure* guardian was not voidable but *ab initio* void, as such, it was not necessary for the minor to seek a declaration for setting aside the alienation; the minor could bring a suit for possession within 12 years.[1]

Voidable instrument. Where an instrument is voidable at the option of a person party to it. Such person can get the instrument set aside or cancelled by bringing a suit for the purpose under S. 39, Specific Relief Act, 1877.[2] Such suit would be governed by this article.[3] As the right of vendor to challenge a sale-deed for want of consideration arises on execution of the deed, he can do so only within 3 years from the date of its execution under Art. 91[4] Where in an administration suit there was an averment that the house in respect of which there was a sale deed by the deceased in favour of his wife was included in the estate as the sale of the suit house was not binding on the plaintiff. By an amendment the plaintiffs sought to add a prayer for a declaration that the sale deed was nominal and was the result of undue influence. It was held that the claim made in the amendment application was not a new claim and the claim was one of the real questions in

---

possession) + AIR 1938 Nag. 335 = ILR 1939 Nag. 1 (FB). (The principle is equally applicable whether there is one instrument or two--If the legal parts can be separated from the illegal, relief in respect of bad is not governed by this article--If they cannot, the whole is bad and this article would not apply).

17. PLD 1981 SC 165 = PLJ 1981 SC 420 + PLD 1964 SC 143 = 1964 (2) PSCR 1 = 16 DLR SC 330.
18. AIR 1961 Orissa 100.
19. PLD 1978 Lah. 10 + 6 DLR 254.
20. AIR 1963 Patna 2 (DB).
1. NLR 1981 AC 656 = 1981 CLC 1156.
2. ('87) 15 Cal. 58 = 14 Ind. App. 148 (P.C.) + (1900) 25 Bom. 337 = 27 Ind. App. 216 (P.C.).
3. PLD 1975 SC 624 + 6 DLR 254 + AIR 1916 Mad. 350 = 38 Mad. 321 (DB) + AIR 1953 Mad. 610 + AIR 1952 Punj. 224 = ILR 1951 Punj. 298 + ('10) 5 Ind. Cas. 497 (DB) (All) + 27 Bom. 560 (DB) + AIR 1916 Cal. 120 (DB) + AIR 1921 Cal. 786 (DB) + 32 Mad. 72 (DB) + 3 CPLR 182.
4. AIR 1961 Madhya Pradesh 176 (DB) + AIR 1915 All. 212.

controversy between the parties as stated in O. 6, R. 17. Therefore, although the claim was barred by limitation, the amendment application could be allowed.[5]

Where plaintiff's suit is for cancellation of the document on the ground that it is vitiated by fraud, such a suit is one under section 39 of the Specific Relief Act and is governed by Art. 91 of the Limitation Act which prescribes three years limitation.[6] But where the essential relief claimed was with regard to the maintenance of possession and issuance of injunction in this behalf, against the defendant and the relief claimed with respect to the registered deed that it may be declared void was only ancillary, Articles 91 and 95 of the Limitation Act would not be attracted.[7]

A suit for any relief which is inconsistent with a voidable instrument would be barred if filed after the period prescribed by this article to get it set aside or cancelled.[8] But where the relief claimed is not inconsistent with the instrument but is based on a cause of action with which the instrument has no concern, the suit would not be governed by this article.[9]

Gift by husband to wife. Where the donor wished to make a gift and acted voluntarily in making it, but the transaction was induced by undue influence, the gift is only voidable and requires to be set aside before the property covered by it can be claimed by the donee or any one claiming through him and in such cases Art. 91 of the Limitation Act (1908) applies and time for setting aside the deed of gift would run from the date of the gift.[10] But a gift under the Muslim Law which is unaccompanied by possession is void *ab initio.* Therefore it is not necessary for a party denying the validity of the gift to have it set aside before taking possession of the subject of the impugned gift, and the case does not attract the provisions of Article 91 of the Limitation Act.[11]

Alienation by Hindu widow. An alienation by a Hindu widow is voidable at the option of the reversionary heir but the reversioner is not bound to institute a suit to set aside or cancel the same before he can claim the relief which he wants.[12]

Alienation by co-parcener in joint Hindu family. Where one of the members of a joint Hindu family alienated family property. Another member might sue for any relief to which he was entitled. The suit would not be barred by reason of the fact that he had not sued to set aside the alienation within the period prescribed by this Article.[13] Thus where *A* and *B* were members of a joint Hindu family governed by the Mistakshara law. *A* alienated family property to *X*. *B* cannot get

5. AIR 1964 Gujerat 174 + AIR 1957 S.C. 363 = 11 Bom. L. R. 1042.
6. 21 DLR 626 + 1969 DLC 416.
7. PLD 1981 SC 165 = NLR 1981 AC 537 = PLJ 1981 SC 420.
8. ('87) 15 Cal. 58 = 14 Ind App. 148 (PC) + AIR 1956 Sau 20 (DB) + AIR 1953 Mad. 610. (It is not open to the transferor to sue for possession of the properties ignoring the deed).
9. ('98) 1 Oudh Cas 178 + ('92) 17 Bom. 755 (DB) + (1900) 25 Bom. 78 (DB).
10. AIR 1964 Orissa 212 + AIR 1945 P.C. 54.
11. PLD 1964 S.C. 143 = 1964 (2) PSCR 1 = 16 DLR S.C. 330.
12. ('06) 34 Cal. 329 = 34 Ind. App. 87 (P.C.) + AIR 1924 P.C. 137 = 51 Ind. App. 220 = 48 Bom. 411.
13. ('09) 1 Ind. Cas. 670 (DB) (Cal.) + AIR 1915 Nag. 52 = 12 Nag. L. R. 12. (Even if alienating member be the manager).

the alienation set aside, or cancelled but he may sue for a declaration that it is not binding on him and does not affect his interests.[14]

Where one member asks for the setting aside or cancellation of the transaction by another member, the prayer will be regarded as merely one for a declaration ancillary to the other reliefs claimed. This article would not apply to such cases.[15]

Alienation by 'lambardar.' A co-sharer is entitled to sue for a declaration that an alienation by the *lambardar* is not binding on him. Such a suit would not be barred by this article.[16]

Alienation by 'mahant' or trustee. Where an alienation by his predecessor-in-office is not binding on the mutt or the temple the succeeding *mahant* or trustee may ignore the alienation and sue for possession or other appropriate relief. Such a suit would not be barred by this article.[17]

Alienation by sonless proprietor in the Punjab. If a sonless proprietor in the Punjab alienates property, a reversioner cannot sue to set aside or cancel the alienation during the lifetime of the proprietor. He can sue for a declaration that alienation does not affect his interests. A reversioner is not bound to sue for such a declaration, and is not precluded from suing for possession on the death of the alienor within the period prescribed for such suits.[18]

Alienation by executor or administrator. Where the executor makes an alienation of the testator's property, the legatee can treat the alienation as not binding on him and sue for the recovery of the property bequeathed to him.[19] Similarly where an administrator sells property without the leave of the Court, the heirs can treat the sale as not binding on them and sue for possession. This article would not apply to such a case.[20]

Alienation by Court of Ward. A suit to set aside the alienation by the Court of Wards would be governed by this article.[1]

Alienation by minor. An instrument executed by a person as a major but who on that date was really a minor is void and inoperative against him. He is not bound to set it aside but can sue for possession within the ordinary period limited for such a suit. This article does not apply to such a case.[2] Where the plaintiff brought a suit for possession on the ground that the sale was affected by minor and was therefore void. The sale-deed does not exist in the eye of law and accordingly the claim for possession has to be judged independently of the sale

14. ('12) 13 Ind. Cas. 547 (Oudh) + AIR 1924 Oudh 120 = 27 Oudh Cas. 140 (DB).
15. ('94) 16 All. 73 + ('10) 7 All. L. Jour 783 (DB).
16. AIR 1935 All. 1018 + 20 Ind. Cas. 147 (Oudh) + AIR 1921 Nag. 74 = 17 Nag L. R. 169.
17. AIR 1929 Lah. 816 (DB) (Alienation by *mahant*) + AIR 1915 Mad. 1196 = 39 Mad 456 (DB). (Alienation by trustee.) + 24 Cal. 77 (DB).
18. 1890 Pun Re No. 116, p. 357 (FB) + 1903 Pun Re No. 56, p. 240 (FB). (1902 Pun Re No. 23 and 1902 Pun L R No. 133, *Overruled* by implication).
19. 36 Mad. 575 (DB).
20. AIR 1919 Low Bur [illegible] 9 Low Bur Rul. 186 (DB).
1. AIR 1916 Cal. 164 (DB). (Where alienation is a void transaction, there is no need to set it aside).
2. AIR 1918 Bom. 188 = 42 Bom. 638.

deed. Clearly the period of limitation in such a case would be governed by Art. 144 of the Limitation Act provided that there was dispossession of the plaintiffs in pursuance of the sale-deed.[3]

3. 'Instrument.' The Article applies only where there is an instrument which is sought to be set aside. Where there is no instrument at all in question this article will not apply.[4] An instrument under this article includes an award,[5] and a settlement deed.[6] But it does not include a decree,[7] or a will.[8]

4. Onus of proof. Where a suit or application is, on the face of it, barred, it is for the plaintiff to satisfy the Court that there are circumstances which would prevent the statute from running.[9] Where, under the Act, Time does not begin to run unless and until the plaintiff has knowledge of certain facts, the onus of proving the knowledge of facts on a date anterior to that admitted by the plaintiff lies on the defendant.[10]

5. Starting point of limitation. Time, under this article runs from the date "when the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him".[11] Thus time will run only from the date when facts, which arouse the apprehension of the plaintiff that the instrument, if left outstanding would cause him serious injury, come to his knowledge.[12] In this context the knowledge may be that of the plaintiff or of his agent.[13]

Fraud. In the case of instruments voidable on the ground of fraud, time will run only from the date when the plaintiff becomes aware of the fraud.[14] Thus a suit for cancellation of a registered *kabuliat* alleged to have been fraudulently executed by the defendant trespasser in his own favour, without the knowledge of the plaintiff, without claiming any relief for possession or declaration of title is governed by Art. 91, Limitation Act, and the starting point of limitation will be the date when the facts entitling the plaintiff to have the instrument cancelled became known to him.[15] But where a suit is filed by a person to safeguard his interest against an instrument but it fails and he thereupon files a suit to set aside the instruments, limitation will run from the date of the decree. Thus when *A* fraudulently transferred his property to *B* with intent to defeat or delay his creditor *C*, and *C* was aware of the same on the date of the transfer, he had then filed a suit on his debt but a decree was passed subsequent to the date of the

3. PLD 1960 Karachi 625 = 1960 (1) KLR 545.
4. AIR 1919 Low Bur 53 = 9 Low Bur Rul. 186 (DB) + 1882 All. W.N. 173 (DB).
5. AIR 1925 P.C. 216 = 52 Ind. App. 265 = 5 Rang. 186.
6. AIR 1946 Nag. 377 = II.R 1946 Nag. 433 (DB).
7. ('05) 8 Oudh Cas. 191 + 62 Cal. 642 + AIR 1922 Lah. 166 = 2 Lah. 164 (DB).
8. PLD 1957 Lah. 99 = PLR 1957 (1) W.P. 552 + 23 Cal. 1 = 22 Ind. App. 171 (P.C.).
9. AIR 1923 Oudh 254 (DB).
10. ('06) 2 Nag. L. R. 98 + AIR 1925 Nag. 398 + AIR 1939 All. 348 (DB) + AIR 1921 Cal. 131 (DB) + AIR 1938 Rang. 264 (DB).
11. PLD 1977 Lah. 1347 + 6 DLR 254 + AIR 1939 Rang. 278 + AIR 1924 All. 370 (DB) + AIR 1923 All. 58 (DB) + 4 Bom. LR 146 (DB) + AIR 1927 Oudh 629 (DB).
12. PLJ 1976 SC 44 + AIR 1919 Mad. 679 (DB) + AIR 1917 Oudh 188 + 28 Mad. 349 (DB).
13. 25 All. 1 = 29 Ind. App. 203 (P.C.).
14. 1 Cal. W.N. ccIvii (DB).
15. AIR 1963 Assam 4.

transfer. It was held that the time ran from the date of the decree and not from the date of the plaintiff's knowledge of the fraudulent transfer.[16]

Undue influence, cancellation of instrument on ground of. A plaintiff entitled to sue to cancel or set aside an instrument voidable on the ground of undue influence becomes aware of it later than the date of the document, time will run from the later date.[17] Therefore where a deed of settlement was executed by the widow under influence of her deceased husband's brother and the widow fully knew the nature of instrument executed by her. A suit to set aside the instrument on the ground of undue influence brought after three years from the date of instrument is barred.[18] The fact that the undue influence continued till a later date of knowledge will not postpone the starting point of limitation.[19]

A suit brought by a son, during the lifetime of his father, to challenge a gift made by the latter on the ground of undue influence was bound to be dismissed as the son had no interest *in praesenti* in his father's property during the latter's lifetime.[20]

Want of consideration, cancellation for. Where an instrument is not supported by consideration, the plaintiff would be entitled to set it aside on the ground of want of consideration. Limitation would run from the date of the execution of the instrument.[1]

Minor plaintiff. Where the plaintiff and his guardian were aware of the fact entitling the plaintiff to set aside an award, it was held that the plaintiff must prove that he attained majority within three years of the suit and that time ran from the date of the award and not from the date when the Court refused to file it.[2]

Suit by legal representative. Where the limitation for bringing a suit under this article has once commenced to run against the plaintiff's predecessor who had knowledge of the instrument; it will not be interrupted by the fact of plaintiff's minority and a suit brought more than three years after that date would be clearly barred by limitation under Art. 91.[3]

---

16. ('81) 3 All. 394 (DB).
17. AIR 1938 All. 451 + AIR 1948 P.C. 111 = 75 Ind. App. 108 = ILR 1948 Bom. 148 (AIR 1934 P.C. 130 and AIR 1945 P.C. 54. *Rel. on*).
18. AIR 1946 Nag. 377 = ILR 1946 Nag. 433 (DB).
19. AIR 1934 P.C. 130 = 61 Ind App. 224 = 9 Luck 178 (PC). (AIR 1931 Oudh 34. *Reversed.*) + AIR 1945 P.C. 54 = ILR 1945 Kar. (PC) 115 (Sup) = 72 Ind App. 21 = ILR 1945 Bom. 440. (Gift voluntary but induced by undue influence--Gift is voidable and requires to be set aside--This article applies--Time runs from the date of the knowledge of undue influence and not from the date of the removal of the undue influence) + AIR 1946 Nag. 377 = ILR 1946 Nag. 433 (DB).
20. PLD 1975 SC 624 = PLJ 1976 SC 44.
1. AIR 1915 All. 212 = 37 All. 640 (DB).
2. AIR 1925 P.C. 216 = 5 Rang. 186 = 52 Ind. App. 265.
3. AIR 1956 Sau 20 (DB).

92.	To declare the forgery of an instrument issued or registered.	[4][Three years]	When the issue or registration becomes known to the plaintiff.

Synopsis

1. Scope.
2. Instrument attempted to be registered.
3. "Issue".

1. Scope. To an application under S. 33, Arbitration Act, for a declaration that the agreement for reference to arbitration is a forgery, Art. 92 or Art. 93, as the case may be would apply.[5] This article does not apply to cases where one party challenges a document as forgery and the declaration is not necessary.[6] Thus where the suit is substantially to obtain a declaration of title to certain lands and it is not necessary to have stated anything about the will set up by the defendant being a forgery, this article will not apply even though the suit may involve the determination of the genuineness of the will.[7]

2. Instrument attempted to be registered. The Article applies to a registered instrument. A mere attempted registration of the document does not give any starting point.[8]

3. "Issue." The Article applies to an instrument which has been issued. But a will which was concocted could not be said to have been 'issued' within the meaning of Article 92.[9] Similarly an unregistered deed of permission to adopt cannot be said to have been issued.[10]

93.	To declare the forgery of an instrument attempted to be enforced against the plaintiff.	[11][Three years]	The date of the attempt.

Synopsis

1. Attempt to enforce instrument.
2. Declaration of forgery not main relief in suit.
3. Starting point of limitation.

---

4. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
5. AIR 1957 Pat. 417 = 36 Pat. 35 (DB).
6. AIR 1918 Mad. 1198 (DB) + ('78) 2 Cal. L. R. 10 (DB) + ('92) 16 Bom. 186 (DB).
7. ('78) 2 Cal. L. R. 561 (DB).
8. AIR 1915 Bom. 136 = 40 Bom. 22 (DB).
9. 1909 Pun L. R. No. 82. p. 295 (DB).
10. 24 Cal. 1 = 23 Ind App. 97 (PC).
11. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2, and First Sch., for "Ditto".

1. Attempt to enforce instrument. This Article applies to a case when the plaintiff is a party to the document or is otherwise bound by it and the cause of action is an attempt to enforce it against him.[12]

An attempt to enforce an instrument would mean an attempt to recover some benefit under the instrument.[13] It means institution of proceedings wherein genuineness of the instrument is directly in issue and to which person against whom it is sought to be enforced is a direct and necessary party.[14] Thus where a share in a decree is assigned by a deed and the assignee applied as such to be made a respondent in the appeal prepared against such decree, the application was held to be an attempt to enforce the deed.[15]

An attempt to enforce instrument need not necessarily be made by person relying on it as a plaintiff in a suit.[16]

2. Declaration of forgery not main relief in suit. This article does not apply to suits where the declaration is subservient or ancillary and not necessary to the main relief claimed.[17] Thus the mere mention of the existence of a will in written statement in a previous suit, without producing the will or doing anything to obtain a decision on its genuineness or binding character is not an attempt to enforce the will.[18]

3. Starting point of limitation. "The date of the attempt" in the third column means the date of the attempt to enforce the instrument.[19]

94.	For property which the plaintiff has conveyed while insane.	[20][Three years]	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95.	To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	[20][Three years]	When the fraud becomes known to the party wronged.

12. AIR 1939 Pat. 548 (DB).
13. AIR 1915 Bom. 136=40 Bom. 22 (DB). (An attempt to register an instrument is not an attempt to enforce it).
14. AIR 1917 Mad. 570 (DB). (Application by a widow for succession certificate as heir to her deceased husband and incidentally mentioning will of her husband is not an attempt)+AIR 1921 Mad 545 (DB).
15. 8 Cal. 178=8 Ind. App. 197 (PC).
16. AIR 1921 Mad. 545 (DB).
17. AIR 1939 Pat. 548 (DB)+('92) 16 Bom. 186+('04) 28 Mad. 338+2 Cal L. R. 10 (DB).
18. AIR 1921 Mad. 545 (DB)+2 Cal. L R 561 (DB)+AIR 1935 Mad. 709 (DB).
19. 8 Cal. 178=8 Ind. App. 197 (PC).
20. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2, and First Sch., for "Ditto".

Synopsis

1. Scope.
2. Cause of action must be fraud.
3. Setting aside decree for fraud.
4. Fraud in execution proceedings.
5. For other relief on ground of fraud.
6. Fraudulent transfer.
7. Starting point of limitation.
8. Plea of fraud.
9. Burden of proof.

1. Scope. The article has reference to case where a party has been induced fraudulently to enter into some transaction, to execute some deed, or to do some other act, and desires to be relieved from the consequence of those acts.[1] Where there is a breach of a contract of sale, this Article would apply to a suit for refund of money obtained by vendor by fraud.[2] The fraud contemplated by this article is a fraud practised upon a party to a decree or a party to a transaction in which the fraud was committed,[3] and the suit contemplated is one by a party to a transaction in which fraud was committed for relief on the ground of such fraud.[4] Where the plaintiff is not a party to the decree or to the fraudulent transaction, this article will have no application.[5] Therefore this Article does not apply to a suit filed by successor-in-interest of the party on whom fraud was practised. In the latter case Article 120 applies.[6]

Fraud vitiates all things, and prevents the application of any other law of limitation than that specially provided for relief from its consequences in Art. 95.[7]

Article 36, 62 and 95. Where a suit falls both within Art. 36 or Art. 62 as well as this article, it will be governed only by this article.[8]

Section 18 and this Article. Where a relief is sought on the ground of fraud, Art. 95 is appropriately applicable.[9] Where the plaintiff seeks relief on the ground of fraud practised upon him and also alleges that by means of fraud he has been kept from knowledge of his right to sue for the relief on the ground of such fraud, the starting point will be the date when the fraud by means of which he was kept from the knowledge of his right to sue becomes known to the plaintiff.[10]

2. Cause of action must be fraud. Where the cause of action for the suit is fraud, this article and no other will apply.[11] A plaint which does not disclose fraud

1. 3 Cal. 504 (DB). (It does not apply where fraud is only part of machinery by which plaintiff is kept out of possession).
2. PLD 1978 Lah. 317 = PLJ 1978 Lah. 41 (DB).
3. 30 Mad. 402 (DB) + AIR 1943 Bom. 283 (DB). (Party not challenging decree--Suit by a stranger for declaration that decree is collusive is governed by Art. 120 and not by this Article) + 1946 Jaipur L.R 391 (DB). (30 Mad. 402, *Foll*).
4. 9 Suth W. R. 553 (DB).
5. PLD 1980 Lah. 477 = 1980 Law Notes 438.
6. PLD 1984 Pesh. 86 = PLJ 1984 Pesh. 5 = KLR 1984 Rev. C 35 = NLR 1984 Rev 105 = 1984 LN 207.
7. PLD 1971 Karachi 250 + 6 All. 407 (DB).
8. 31 Mad. 230 (DB) · AIR 1935 All. 995 = 58 All. 342 (DB).
9. 34 Cal. 241 (DB)
10. 6 Suit W R 165 (DB).
11. 1881 All. W. N. 38 (DB) + AIR 1947 Bom. 144 + 35 Cal. 877 (DB) + 37 Bom. 158 (DB) + 13 Cal. 155 (DB).

as the basis of the claim is not governed by this Article.[12] For the applicability of this article, the relief claimed in the suit must be on the sole ground of fraud.[13] The test to see whether or not this article applies to any particular case is to see whether the plaintiff discloses a cause of action irrespective of any fraud that may be alleged in the plaint.[14] Where a cause irrespective of the fraud is alleged and the fraud is merely part of the machinery by which the plaintiff was kept out of enjoyment of the right to which he was entitled, this Article would not apply.[15] Where *A* is induced by the fraud of *B* to sign a certain document under the belief that it is a power-of-attorney while in reality it is a deed of gift in favour of *B*. *A* sues for a declaration that the deed is a nullity and that he is entitled to the property covered by the deed. The suit is not governed by this article.[16] Where the basic plea was that the impugned decree was unlawful because the same had been passed on the basis of withdrawal of the suit made by the attorney who did not enjoy the power to do so and the plea of fraud was only raised as an ancillary ground. It could not be said that the decree was challenged on the basis of fraud thereby bringing the suit within the purview of Article 95 of the Limitation Act.

Fraud must be by defendant. This article only applies where the fraud is that of the defendant.[17] Where *M* executed a usufructuary mortgage in favour of *H*. Under the terms of the mortgage *H* was liable to pay annual rent to the landlords. The landlords instituted two rent suits claiming rent at an enhanced rate and *H* deposited the decretal amount, and brought a suit against *M* for excess rent they had paid in satisfaction of the rent decrees. They obtained an *ex parte* money decree and as the decree was not satisfied the mortgaged land was sold in execution and auction-purchased by the sons of *H* themselves. Later on, *M* brought a suit for redemption of the mortgaged land alleging that money decree and the sale in execution thereof were fraudulently obtained by *H*. It was held that as the defendants relief upon the previous decree in the money suit and the sale certificate as plea in bar either as estoppel or as *res judicata*, S. 40 of the Evidence Act would apply and the plaintiff would be entitled under S. 44 of that Act to show that both the decree and sale in the execution proceedings were vitiated by fraud of the mortgagee and should be ignored and treated as a nullity in the present suit.[18]

Arbitration agreement, setting aside of. An application under S. 33, Arbitration Act would be governed by Art. 95, Limitation Act, if the ground of relief in the application is fraud.[19]

---

12. 3 Cal 300 (DB)+AIR 1930 All. 573 (DB)+AIR 1916 Mad. 33=38 Mad. 1076 (DB)+6 Mad. 344 (DB)+1878 Pun Re No. 19, p. 98.
13. 25 Cal. 49 (DB)+ILR 1950 Nag. 950+1946 Jaipur L. R. 391 (DB). (3 Cal. 504. *Foll.*)+AIR 1931 Sind 27 (DB)+AIR 1943 Bom. 419+6 All. 406+9 Suth W. R. 553 (DB).
14. 25 Cal. 49 (DB)+1837 Pat. 331.
15. 3 Cal. 504 (DB)+1946 Jaipur L. R. 391 (DB)+6 All. 75 (DB)+14 All. 498 (DB)+AIR 1943 Bom. 419.
16. AIR 1921 Cal. 786 (DB).
17. AIR 1936 Bom. 322=60 Bom. 848 (*A* entrusting government securities, etc., to *B* for renewal–*B* transferring them to *C* for consideration–Suit by *A* against *C* for the securities-Art 95 is not applicable).
18. AIR 1955 Pat. 66.
19. AIR 1957 Pat. 417=36 Pat. 35 (DB).

3. Setting aside decree for fraud. Where a decree has been obtained by fraud, a suit will lie at the instance of a party to the decree to set it aside.[20] A person bound by a decree as being a party thereto may seek any relief negatived by such decree, unless he gets the decree set aside for fraud. A suit for such a relief though governed ordinarily by an Article prescribing a longer period of limitation, would be barred, if filed after the period of limitation prescribed by this article.[1]

Voidable decree. A suit to set aside a decree on the ground that it is voidable and not on the ground that it is fraudulent is not governed by this article.[2]

Void decree. Limitation would run against a void decree if proceedings were within the knowledge of a person or he knew well about it. Such person should be vigilant to challenge void decree within the prescribed period of limitation.[3]

Fraud must be extraneous to decree. The fraud that will enable the Court to set aside a decree at the instance of a party must be a fraud which is extraneous to the decree.[4]

Suit must be by person bound by decree. Only a person bound by the decree can sue to set it aside. A person who is not a party to the decree can ignore it and claim the relief he wants.[5] Thus where *D* purchased from *J* benami in the name of S, the *darpatni* right in a certain tenure in 1886. *B*, the *patnidar* in 1889 entered into a fraudulent arrangement with *S* and obtained a decree against him for arrears of rent under which *darpatni* was sold and purchased by himself. *D* became aware of the fraud in July, 1892 and filed a suit in October, 1895 against *R* and *S* to recover possession of the *darpatni*. It was held, that the suit was not governed by this article and was not barred.[6]

'Ex parte' decree. Where a plaintiff applies to get an *ex parte* decree set aside and fails, a suit to set aside the decree on the ground of fraud would not be barred in the absence of proof that the question of fraud in obtaining the decree was raised and decided in the previous proceedings.[7]

---

20. 34 Cal. 83 (DB)+17 Mad. 299 (DB)+4 Cal. L. Jour 472 (DB)+AIR 1933 Sind 53+AIR 1916 Pat. 131.
1. 16 C P L R 131+AIR 1919 Pat. 134+AIR 1925 Pat. 625=4 Pat. 510 (DB)+AIR 1931 Cal. 69 (DB)+AIR 1925 Cal. 819 (DB).
2. AIR 1924 All. 625=46 All. 575 (DB)+AIR 1922 Lah. 166=2 Lah. 164 (DB)+AIR 1922 Cal. 493 (DB)+34 Cal. 83 (DB).
3. NLR 1988 CLJ 9. (*Rel:* PLD 1975 SC 599+PLD 1975 BJ 29+PLD 1960 SC 237).
4. AIR 1926 Lah. 86. (Non-service of summons is no evidence of fraud)+AIR 1921 Pat. 12=6 Pat 1 Jour 1 (FB)+AIR 1922 Pat. 291 (DB) (Do)+AIR 1919 Mad. 1044=61 Mad. 743 (FB). (That a decree was obtained by perjured evidence is not fraud extraneous to the decree *overruling* 29 Mad 179)+AIR 1935 Cal. 95+AIR 1923 Cal. 425 (DB). (Decree obtained by fraudulent supersession of summons–Article applies)+AIR 1914 Sind 63=8 Sind L R 81 (DB). (Fraudulent statements where the direct and immediate cause of plaint being admitted)+1 Nag. L. R 20 (The defendant must have been prevented by fraud from defending the claim in manner most to his advantage.).
5. AIR 1930 All. 420 (DB)+AIR 1954 Trav-Co. 312=ILR 1954 Trav-Co. 264+AIR 1954 Mad. 624.
6. 34 Cal. 711=34 Ind. App. 138 (P.C.).
7. 28 Cal. 475 (P.C.)+29 Cal. 395=29 Ind. App. 99 (P.C.).

Fraudulent decree against 'Shebait'. Where a decree against *A* as *shabait* of an idol in respect of the idol's property has been obtained fraudulently and *A* is himself party to the fraud, the succeeding *shebait* is entitled to sue to set it aside and this article would apply to such a suit.[8]

Fraudulent decree obtained by Hindu widow. Where a Hindu widow fraudulently colludes with a third person and allows him to obtain a decree against her in respect of her husband's estate, it is not binding on the reversioner and this article would not apply to a suit by him either for a declaration of his rights or for other appropriate relief.[9]

4. Fraud in execution proceedings. Where execution proceedings are challenged on ground of fraud, limitation for a separate suit or an application under S. 47, C.P.C. would be governed by this Article.[10] Thus an auction-purchaser can sue to recover his purchase-money on the ground of fraud of the decree-holder and such a suit would be governed by this article.[11] Where not only the execution proceedings but the decree itself is attacked on the ground of fraud, a suit at the instance of a party to set aside the execution sale would lie and would be governed by this article.[12]

5. For other relief on ground of fraud. The fraud referred to in the latter portion of the first column of this article is not fraud of the same nature as that in a decree obtained by fraud which is referred to in the former portion of it.[13] The words "for other relief on the ground of fraud" have no reference to any decree and the mention of a decree in the first portion of the article does not detract from the generality of the latter portion thereof.[14] It has been held that compensation for damage caused to the plaintiff by the fraud practised by the defendant,[15] or rectification of deed under S. 31 of the Specific Relief Act on the ground of fraud,[16] or recovery of amount fraudulently withdrawn from the bank by the defendant, an agent of the plaintiff, is a suit for relief on the ground of fraud, and is governed by Art. 95.[17]

6. Fraudulent transfer. Where *A* transferred by a registered deed to *B* property to which *A* had no title or which he is not entitled to transfer, and the transfer was brought about by the fraudulent concealment of material facts by *A* a suit for refund of money advanced on the transfer would be governed by this Article.[18]

---

8. 4 Cal. L. Jour 472 (DB).
9. 30 Mad. 402 (DB) + 11 All. L. Jour 574.
10. PLD 1969 Dacca 300 (DB) + AIR 1950 Mad. 460.
11. 20 DLR 983 + 34 Mad. 143 (DB). (Even a *benamidar* can maintain such a suit) + 16 Ind. Cas. 215 (DB) (Mad) + AIR 1926 Pat. 401 = 5 Pat. 759 (DB) + AIR 1933 Pat. 473 (DB) + 6 All. 406 (DB) + 13 Bom. 221 (DB) + 34 Mad. 143 (DB).
12. AIR 1960 Ker. 38 = ILR 1959 Ker. 952 + 26 Cal. 326*n* (DB).
13. 35 Cal. 877 (DB) + AIR 1919 Pat. 134 + 27 Mad. 343 (DB).
14. AIR 1930 All. 573 (DB).
15. 27 Mad. 343 (DB) + AIR 1960 Madh Pra. 323 + AIR 1950 Mad. 460 + 31 Mad. 230 (DB).
16. 1901 Pun Re. No. 62, p. 204.
17. 55 Mys. H C R 11 (DB).
18. AIR 1922 Oudh 113 + AIR 1917 Oudh 232 + 1913 Pun. L. R No. 135, p. 472 + AIR 1916 Lah. 312. (Art. 116 applied as under Art. 95 the suit was barred.).

7. Starting point of limitation. The *terminus a quo* is the date when the fraud becomes known to the party wronged.[19] So long as a person on whom a fraud has been practised remains ignorant of the fraud no time shall run against him.[20] Mere negligence in pursuing means available for discovering the fraud will not start the limitation running before the date of actual knowledge.[1] The question when the fraud came to the knowledge of the plaintiff, is one of fact to be ascertained from the facts and circumstances of each case.[2]

To serve as starting point of limitation, the knowledge contemplated by this Article must be clear and definite knowledge of the facts constituting the particular fraud and not a mere suspicion.[3] The knowledge referred to must be such knowledge as would enable the person wronged to seek his remedy in Court, and the Court must find exactly when the plaintiff got the knowledge of the fraud. The real test is whether the plaintiff knew facts and circumstances on which he as a reasonable man would have concluded that the fraud was practised on him.[4]

Knowledge of agent. The knowledge of an agent is, in law, the knowledge of his principal.[5]

8. Plea of fraud. Where plaintiff charges the defendants with fraud, he must distinctly, accurately and specifically set forth in the plaint the facts constituting the alleged fraud.[6]

Plea in defence. Where a decree or judgment obtained by fraud is sought to be enforced against the defendant the latter is entitled to show that the decree was obtained by fraud or collusion and he need not, before doing so, have sued to set it aside for fraud.[7] Thus a claim can be resisted in defence on the ground that the claim was based on fraud even though the defendant may not have and could not have, owing to time-bar, brought a suit to set aside the transaction on the ground of fraud.[8]

9. Burden of proof. The onus of proof of fraud in the first instance is on the plaintiff.[9] The allegations of fraud must be substantially proved though every puzzling article or contrivance resorted to by the opposite party need not be unravelled. Fraud cannot be presumed until the person relying upon it establishes his case. The Court must not be too ready to presume fraud from suspicious circumstances.[10]

---

19. 20 DLR 983+19 Bom. 593 (DB)+AIR 1960 Madh Pra. 323+AIR 1948 Nag. 150=ILR 1947 Nag. 985.
20. PLD 1980 Lah. 477=1980 LN 438+5 All. 294 (DB)+AIR 1948 Nag. 150+AIR 1930 Mad. 173 (DB).
1. 31 Mad. 230 (DB).
2. 12 Mad. 512 (P.C.).
3. 37 Cal. 81 (DB)+AIR 1948 Nag. 150=ILR 1947 Nag. 985.
4. AIR 1948 Nag. 150=ILR 1947 Nag. 985.
5. 25 All 1=29 Ind. App. 203 (P.C.).
6. AIR 1916 Cal. 120 (DB)+AIR 1916 All. 356=38 All. 126 (DB)+19 Bom. 593 (DB)+15 Cal. 583=15 Ind. App. 119 (P.C.).
7. 24 All. 242 (DB)+27 Cal. 11 (DB)+AIR 1928 Cal. 810 (DB)+AIR 1921 Pat. 193 (FB).
8. 28 Bom. 639 (DB)+30 Bom. 395 (DB)+AIR 1916 Pat. 396+11 Ind. Cas. 882 (Cal.).
9. 25 Suth W R 133.
10. AIR 1935 All. 995=58 All. 342 (DB)+1 Nag. L. R. 20.

Once fraud is established the burden will be shifted to the person who has committed it to show that the person wronged has had knowledge of the transaction beyond the period of limitation.[11] Where the plaint, read as a whole, is based on fraud and misrepresentation and though no particulars of this fraud and misrepresentation are given as to when this fraud was committed; but from the evidence it appeared that this fraud was allegedly discovered. Within three years of the filing of the suit, the suit was within limitation.[12] Where the plaintiff has a *prima facie* evidence in favour of the date alleged by him, it is for the defendant to rebut the plaintiff's allegations and to prove that the knowledge of the fraud was acquired at an earlier period.[13] Where it is doubtful at what precise time the fraud became known to the plaintiff, the onus is on the defendant to show that the suit is out of time.[14] But where there was not evidence at all to show when the plaintiff came to know of the fraud, the Courts would hold the suit barred by limitation if it is field beyond 3 years from the date of the transaction.[15]

96.	For relief on the ground of mistake.	[16][Three years]	When the mistake becomes known to the plaintiff.

Synopsis

1. Scope.
2. Mistake.
3. Illustrations of suits falling under this Article.
4. Starting point of limitation.

1. Scope. This Article applies only when cause of action is founded on mistake.[17] Thus where *A*, *B* and *C*, major co-sharers, enter into a partition and an unequal allotment is made by mistake, a suit for re-partition on the ground of the mistake is governed by Art. 96.[18]

The article is intended to apply only to those cases in which the Courts are asked to relieve parties from the consequences of mistakes committed by them in the course of contractual transaction.[19] Therefore in order that Art. 96 may apply the suit must be founded on a mistake, that is, the money or article claimed must be claimed as due in consequence of the mistake as where an excess amount is paid or some article is handed over by mistake, there being no other cause of action, and the claim is not maintainable except on this footing.[20] Where there is some other cause of action and mistake does not furnish the only cause of action

11. 17 Bom. 341 + 20 Ind App 1 (PC) + AIR 1948 Nag. 150 = ILR 1947 Nag. 985.
12. PLD 1975 Kar. 509 = PLJ 1975 Kar. 460.
13. 12 Mad. 512 (PC).
14. 31 Mad. 230 (DB).
15. 1973 SCMR 261 + NLR 1981 Civ. 78.
16. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
17. AIR 1940 Bom. 252 + 18 Ind Cas 869 (DB) (Cal.) + AIR 1946 All. 502 = ILR 1946 All. 476 (DB) + AIR 1927 All. 355 + AIR 1930 All. 387.
18. 1906 Pun L. R. No. 3, p. 6 (DB) + AIR 1931 Mad. 707 = 54 Mad. 883 (DB). (*But see* AIR 1924 Lah. 324 (DB)).
19. AIR 1962 Assam 98 (DB) + 11 Ind Cas. 537 (DB) + AIR 1927 Cal. 117 (DB) + AIR 1943 Bom. 419 + 18 Ind. Cas. 869 (Cal.).
20. AIR 1946 Allahabaid 502 + AIR 1938 Lah. 338 + AIR 1936 Sind 32.

available, this Article would not apply. Thus where *A* sold goods to *B* but wrongly entered it in the name of *C*. On *C* refusing to pay the price on demand, *A* discovered the mistake and sued *B* for the price. It was held that the suit was not for any relief on the ground of mistake and was not governed by this article.[1] In a petition between co-sharers, a minor co-sharer was given less than his lawful share. On attaining majority he sued for his lawful share. It was held that the suit was not governed by this article.[2] Where a promissory note is executed by *B* and *N* in favour of *J* and *M*. *J* alone realised whole amount though he had no authority on behalf of *M*. Subsequently a suit was filed by *J* and *M* on the basis of the note. The suit was decreed for *M* only to the extent of his half share. A suit was then filed by *B* to recover from *J* the amount paid to *M*. The suit was held to be governed by Art. 61 or Art. 120 but not by Art. 96.[3] Where property is sold and possession is delivered but subsequently the sale is found to be void and a suit is brought to recover the purchase price, this Article does not apply.[4]

Article 62 and this article. Where case falls under this article as well as under the general Art. 62, this article will prevail.[5]

Tax wrongly levied, recovery from Government. A suit against a municipality for recovery of tax wrongfully levied by it is not governed by this article.[6] *A* suit for refund of sales tax paid under compulsion of law and which is bound to be in excess of the amount actually assessed is not governed either by Art. 10 or by Art. 96 but is governed by the residuary Art. 120 of the Limitation Act.[7]

Suit for alteration of decree. This article will not apply to a suit to set aside or alter a decree on the ground of mistake.[8]

Suit to set aside execution sale. Art 12 and not this article applies to a suit to set aside an execution sale even though the suit is based on the ground of mistake.[9]

Suit by auction-purchaser for recovery of sale price from decree-holder. Where the auction-purchaser, subsequent to the confirmation of the Court sale, finds that no right, title or interest has passed, and he loses possession of the property, he has a right to recover back the purchase money from the decree-holder by a separate suit under the common law. Article 96 applies to such a suit and the starting point for limitation would be the knowledge on the part of the plaintiff that he had purchased property under a mistake that the judgment-debtor had some right, title or interest in the property which could be sold by Court.[10]

---

1. AIR 1933 Sind 32 = 27 Sind L. R. 81 (DB).
2. 14 All. 498 (DB).
3. AIR 1938 Lah. 99 = ILR 1937 Lah. 623 (DB).
4. AIR 1945 Lah. 164 (DB).
5. AIR 1963 Mad. 362 (DB) + 1928 Mad W. N. 232 (DB) + AIR 1925 Mad. 1255 = 48 Mad. 925 (DB) + AIR 1925 Pat. 765 = 5 Pat. 448 (DB).
6. AIR 1962 Assam 98 + AIR 1953 Punj. 99 (Suit is governed by Art. 62).
7. AIR 1961 Madhya Pradesh 320 (DB).
8. 11 Ind. Cas. 537 (Oudh).
9. AIR 1923 Bom. 62 = 46 Bom. 914 (DB).
10. AIR 1964 Madras 9 (DB) + AIR 1941 Mad. 742 + AIR 1947 Mad. [illegible].

2. **Mistake.** The article will apply to all suits for relief on the ground of mistake, whether the mistake is one of law or fact.[11] But where the mistake was a pure mistake of law and had no bearing on the private right of a person resulting in payment by one person to another, the mistake is no ground for relief.[12]

Mistake must be that of plaintiff. The Article applies only to suits for recovery of money or property parted with in consequence of the mistake of the plaintiff,[13] and there must be no neglect on the part of the plaintiff.[14]

No mistake involved. Where there has been no mistake on the part of the parties, this Article does not apply. Thus where a mortgage bond was executed by the defendant in plaintiff Bank's favour and the defendant was allowed to overdraw his current account with the bank to the extent of Rs. 30,000 on security of certain property. The defendant overdrew Rs. 5,000 in excess of Rs. 30,000. It was held that Rs. 5,000 was not paid under mistake and this Article did not apply to the case.[15]

3. **Illustrations of suits falling under this Article.** A suit to recover money paid by mistake to the defendant is with this article.[16] Thus where certain land was acquired by Government, and the defendant claimed that he was entitled to the entire land and he applied for and obtained compensation. The plaintiff who was entitled to a part of the land sued the defendant for his portion of the compensation paid by Government by mistake to the defendant. It was held that neither of the two Art. 62 and 120 could apply. Article 96 would alone apply. When the Government proceeded to pay the money to a person in excess of what he was entitled to, the excess payment would be referable only to a mistake on its part.[17] Similarly where *A* made a payment into Court under a mistaken belief that he was liable to pay and the decree-holder drew the amount from the Court. *A* sued for recovery of the money on the ground of mistake. It was held that Art. 96 or Art. 120 will apply.[18]

Mistaken allotment in partition. In a partition between the plaintiff and defendants, a mortgage supposed by mistake to be due was allotted to the plaintiff. The plaintiff sued on the mortgage, but it was held that the mortgage had already been discharged. The plaintiff, thereafter, sued the defendants for the recovery of the amount on the ground of mistake in the allotment. It was held that Art. 96 applied.[19] Similarly a suit for repartition on the ground that certain properties wrongly allotted to the share of the plaintiff really belonged to a third

11. 20 Bom. 511 + AIR 1960 Cal. 381.
12. AIR 1929 Mad. 177 (DB) + AIR 1940 Bom. 252 + AIR 1929 Mad. 179 = 52 Mad. 12 (DB).
13. AIR 1933 Sind. 32 = 27 Sind L R 81 (DB) + AIR 1938 Lah. 338 + AIR 1927 Cal. 117 (DB) (*Reversed* on another point in AIR 1930 P.C. 113).
14. 11 Ind. Cas. 537 (Oudh).
15. AIR 1942 Pat. 201.
16. 12 Cal. 533 (DB) + AIR 1956 Vindh Pra 26 + AIR 1953 Hyd. 274 = ILR 1953 Hyd. 274 = ILR 1953 Hyd. 451 (Consignor paying at higher rate under mistake--Suit to recover money paid in excess--Art. 96 and not Art. 62 applied to suit) + 1928 Mad. W. N. 232 (DB) + AIR 1925 Pat. 765 = 4 Pat. 448 (DB).
17. AIR 1963 Mad. 362 (DB) (AIR 1943 Mad. 191 + AIR 1915 Mad. 382, *Distinguished* and AIR 1943 Mad. 191 + AIR 1915 Mad. 405 + ILR 6 Mad. 344 + AIR 1925 Mad. 1255 + AIR 1925 Pat. 765, *Rel. on*).
18. 6 Ind Cas. 654 (Lah.).
19. AIR 1921 Bom. 184 = 45 Bom. 582 (DB).

party who obtained a decree for possession of these properties from the plaintiff, is governed by Art. 96 and not by Art. 127 or Art. 144 of the Limitation Act. The time begins to run when the plaintiff is dispossessed.[20]

Suit for rectification of mistake in instrument. A suit for rectification of an instrument on the ground of mutual mistake under S. 31 of the Specific Relief Act, 1877 is within this article.[1]

Suit for recovery of money for goods short supplied. A sold certain bales of cloth to *B* who sold them to *C* who sold them to *D*. *D* found shortage of cloth and sued *C* for the recovery of the price of shortage. It was held that Art. 96 applied.[2]

4. Starting point of limitation. Time under this article runs from the discovery of the mistake by the plaintiff.[3] In computing the period of limitation under this article, the period of other proceedings bona fide taken in a wrong Court can, under section 14; be excluded.[4]

Date of discovery of mistake. Where the mistake is as to the belief of a party that a third person is liable, the mistake must be taken to be discovered when third person repudiates his liability and communicates such repudiation to the party or to his partners.[5] Where a discovery of the mistake is made by one of two partners in whom a right of action vested, time will run from the date of such discovery notwithstanding that the other partner chooses to persist in his mistake even after the mistake is pointed out by the other.[6] Where a mistake is discovered by reason of the decree of a trial Court, time will run from the date of that decree and not from the date of the appellate decree confirming the trial Court's decree.[7]

97.	From money paid upon an existing consideration which afterwards fails.	[8][Three years]	The date of the failure.

Synopsis

1. Scope.
2. Suit must be for recovery of money paid.
3. Existing consideration.
4. "Consideration which afterwards fails."
5. Money paid on void transfer.
6. Voidable transfer.
7. Failure of executory consideration.
8. Liability under S. 65, Contract Act.

---

20. AIR 1960 Cal. 381 (AIR 1931 Mad. 707, *Foll.*).
1. AIR 1938 Mad. 589 (DB)+AIR 1918 Cal. 180 (DB)+AIR 1930 All. 387+AIR 1936 Cal. 400 (DB)+AIR 1925 Pat. 765=4 Pat. 448 (DB).
2. AIR 1925 Mad. 1255=48 Mad. 925 (DB).
3. AIR 1922 All. 475+AIR 1925 Oudh 719.
4. AIR 1936 Cal. 400 (DB).
5. 14 Mad. L. Jour 443 (DB).
6. 14 Mad. L. Jour 443 (DB).
7. AIR 1921 Bom. 184=45 Bom. 582 (DB)+AIR 1947 Mad. 90.
8. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

1. **Scope.** In order to attract the application of Art. 97, the following ingredients must be established. In the first place the suit must be for money, which has been paid by the plaintiff to the defendant. In the second place, such money must have been paid upon a consideration which was in existence at the time of the payment. In the third place, this consideration should have afterwards failed. If all these ingredients are established, then, the application of Art. 97 cannot be resisted and the starting point for limitation should be not the date when the money was paid but when the consideration should have failed.[9] Wherever money has been paid on a contract there is an implied contract to refund the amount on failure of consideration,[10] and the right to recover such money is based on the principle that it is inequitable for the payee to retain the money in such a case.[11] Thus where payments by way of deposits are made by the plaintiffs in consideration for an implied promise by the defendant to supply cloth to the plaintiffs after purchasing it from the manufacturers, but on receipt of the moneys the defendant set up a false story about the moneys deposited by the plaintiffs having been stolen and on this ground resiled from his promise, the claim for refund of the moneys deposited by the plaintiffs is not one for money which is initially received by the defendant for the use of the plaintiffs. The moneys became returnable to the plaintiffs only after repudiation by the defendant of his promise to utilise the moneys for the purpose for which the same were obtained by him. In such a case, the suit by the plaintiffs for recovery of moneys was governed either by Art. 97 or Art. 115 and not by Art. 60 or 62 of the Limitation Act.[12]

Contract to refund money. Where there is a contract to refund the money paid on the happening of a certain event, a suit for refund of the money is not based on the failure of consideration and is not within this article.[13] Thus where money was deposited as security for due performance of a contract and a suit was brought for refund of the deposit after the expiry of the contract, Art. 120 would apply.[14]

Payment must have been made under contract. Where the money has not been paid in pursuance of any contract, a suit for the recovery thereof is not governed by this article.[15] But it is to be noted that the word "contract" is not expressly mentioned in Article 97, Limitation Act (IX of 1908) and one promise may, generally speaking, constitute consideration for another, even if no enforceable contract, *stricto sensu,* results from the mutual undertakings of the parties. Where on the express request of the plaintiff, a liquor licensee, the defendant, Government, who had taken over plaintiff's stock of liquor on the expiry of his licence, agreed to set off the sale proceeds of his stock against such arrears of licence fees as may be due from him. Article 97 was held to apply and

9. AIR 1962 Rajasthan 83.
10. AIR 1934 Pat. 148 = 13 Pat. 192 (DB) + AIR 1951 Pat. 348 = 28 Pat. 974 (DB).
11. AIR 1934 Cal. 148 (DB).
12. AIR 1964 Madhya Pradesh 153.
13. 30 All. 402 (DB) + 19 Mad. 391 + 19 All. 371 (DB) + 30 All. 405 (DB).
14. AIR 1962 Guj. 14.
15. AIR 1919 Nag. 96 = 15 Nag. L. R. 140 = 13 Mad. 437 (DB).

the time began to run from the date when it was found that no arrears were in law due to be realised from the plaintiff.[16]

Article 97 cannot be applied when the suit is not between contracting parties but between strangers to the contract. Thus a suit by the auction-purchaser at an execution sale for refund of the money rateably distributed to various decree-holders brought after the sale is set aside, is not governed by this article.[17] Where *A* mortgaged property to *B*. After *A's* death *B* obtained a mortgage decree against *A's* daughter and *A's* adopted son *K*. The plaintiff, a purchaser from them paid off the mortgage decree but he had to give up possession in favour of *L* and *M*, sons of mortgagor's daughter as they had obtained a decree that *K* was not the adopted son of *A*. The plaintiff brought a suit against defendants for recovery of amounts personally from *L* and *M* and also from the mortgaged property. Art. 97 did not apply to the suit as it was not for refund of purchase money or for relief against the vendor.[18]

Mistaken payment. A suit based on the fact that the money was paid by mistake is not within this article.[19]

Suit for refund of fee paid to advocate. A suit by a client against his advocate to return the amount paid to him on his failure to conduct the case is governed by Art. 90 of the Limitation Act. The relations of a client and advocate are of principal and agent. Article 97 of the Act does not apply to the case, as, normally, that Article can be called to aid when a transaction for which money has been paid is subsequently found to be invalid or impossible of performance as a result of the conduct of the defendant.[20]

Registered sale deed, refund of money paid on. Transfer of Property Act is applicable to the case of a registered sale deed. Where a vendor fails to put the vendee in possession, and the vendee files a suit for refund of the purchase money, the suit will be governed by Art. 116 of the Limitation Act.[1]

2. Suit must be for recovery of money paid. This article applies only where a suit is for recovery of money paid. A debt retained in part payment of the purchase money in a sale transaction between a debtor and his creditor is, as between them, a payment of the part, for the purposes of this article.[2] Similarly an adjustment of mutual claims may amount to a payment.[3]

Suit for damages or compensation. A suit for damages or compensation is not one for the recovery of the money paid.[4] The question whether a suit is for the recovery of the money paid or for compensation or damages must be determined

16. PLD 1961 Supreme Court 17 = 1960 PSCR 111 = PLR 1961 (1) S. C. 692.
17. 228 Ind. Cas. 479 (Lah.). (AIR 1937 Oudh 286, *Dissented from*).
18. AIR 1957 Mys. 65 = ILR 1957 Mys. 1.
19. 6 Ind. Cas. 654 (Lah.).
20. AIR 1965 Mysore 237.
1. AIR 1961 Manipur 24.
2. 11 All. 47 = 15 Ind. App. 211 (PC).
3. 8 Bom. L. R. 283 (DB).
4. AIR 1963 Ker. 247 + 9 Ind Cas. 237 (Lah) + AIR 1932 Nag. 5 = 28 Nag L. R. 31 (FB) + AIR 1934 Pat. 148 = 13 Pat. 192 (DB) + AIR 1932 Bom. 36 = 55 Bom. 565 (DB) + AIR 1930 All. 771 = 52 All. 604 (DB) + 30 All. 400 (DB) + 31 Mad. 230 (DB) + AIR 1920 Mad. 634 (DB).

having regard to the nature of the suit and the reliefs claimed.[5] Where a suit is framed as one for damages. The Court may treat the suit as one for the recovery of money and grant the plaintiff relief, if the claim for such relief is not barred under this article.[6]

Registered deed, suit for refund of money paid under. This article is covered by Art. 116 in cases where the right to recover the money paid arises out of transactions embodied in registered instruments.[7] Where money has been paid without any consideration a suit for the recovery thereof will not be governed by this article.[8]

3. Existing consideration. The Article applies only where money has been paid on an existing consideration. Where money has been paid without any consideration a suit for the recovery thereof will not be governed by this article.[9]

Void consideration. The words 'existing consideration' suggest consideration which is not either void *ab initio* or illegal. Therefore Art. 97 has no application where the contract is forbidden by law or is void *ab initio*.[10]

Existing consideration where contract not enforceable. Money may have been paid on an existing consideration even where the promise on contract on which it is based proves to be unenforceable. Thus where *A* pays money to *B* who in return promises to transfer property and also gives possession of such property, the delivery of possession is an existing consideration even though the promise is unenforceable.[11] Where *B* mortgaged certain properties to *A* and paid interest thereon for some time. On a subsequent failure to pay interest, *A* sued upon the mortgage and obtained a decree for sale of the property and got the property sold in execution thereof, *C* who was the real owner of the mortgaged property subsequently sued for a declaration that the mortgage was paid as against him, and obtained a decree in his favour. *A* thereupon sued for recovery of the money paid by him for the mortgage. It was held that the mortgage when made was not made without consideration.[12] Where a Muslim transferred property to his wife in lieu of dower and made a promise to get it registered and also to get mutation effected. The husband died without doing either of the above things. The widow failed to get mutation in her favour on objections by stepsons when she sued them for the dower debt. It was held that Art. 97 applied.[13] Where a creditor was put in possession of debtor's property and he enjoyed usufruct in lieu of interest. No registered mortgage was effected. The creditor was deprived of possession subsequently and sued for money. It was held that Art. 97 applied.[14]

---

5. AIR 1932 All. 358 (DB).
6. 8 Bom. L. R. 283 (DB) + AIR 1915 Mad. 766 (DB).
7. AIR 1930 Sind 12 = 24 Sind L. R. 172 + AIR 1920 Lah. 365 + AIR 1931 Sind 141 = 25 Sind L. R. 173 + AIR 1934 Nag. 16 = 30 Nag. L. R. 138 + AIR 1933 Mad. 382.
8. 19 Cal. 123 = 18 Ind. App. 158 (PC).
9. 19 Cal. 123 = 18 Ind. App. 158 (PC).
10. AIR 1959 Madh Pra 30 + AIR 1960 Madh Pra 56 (Does not apply to transactions void *ab initio* + AIR 1927 Lah. 101 + AIR 1918 Oudh 348 (DB).
11. AIR 1917 Mad. 296.
12. AIR 1927 P.C. 99 = 5 Rang. 283 = 54 Ind App. 145.
13. AIR 1441 Pesh. 57 (DB).
14. AIR 1937 Rang. 148.

4. "Consideration which afterwards fails." Limitation time for filing suit claiming refund of earnest-money in case of non-completion of auction sale is governed by Art. 97 which provides three years' period of limitation.[15] This Article applies where the consideration for payment fails after the payment. It does not apply where there is no failure of consideration and the suit is based on a different cause of action.[16]

Failure of consideration by fault of plaintiff. The Article applies where failure of consideration occurs by a fault of the defendant. Where the plaintiff is at fault this article does not apply. Thus where property was sold by auction and the purchaser paid Rs. 1,000 as part payment of the price. The purchaser failed to comply with the terms of the contract and the amount was forfeited. On second auction the same purchaser paid Rs. 2,550 and extension of time was obtained for completion of the contract. The sale again fell through for purchaser's default. A suit was filed to recover the amounts paid. It was held that Art. 97 was not applicable to the suit.[17]

Cause of failure is immaterial. The Article does not make the cause of failure of consideration material to its application.[18]

When failure takes place. An executed consideration will fail if the advantage received from the act or abstention is lost or withdrawn.[19] Failure may be complete or partial. This article applies even where only a part of the consideration fails.[20] Where the major or dominant consideration in a contract fails, this article will be applicable. Thus where a purchaser pays money for property and is put in possession, he certainly has a right to a good title also, and if he is not given a good title as well as possession, the consideration fails.[1]

Starting point for limitation. Limitation under this article begins to run on the date when consideration fails.[2] Thus where a suit is brought for refund of advance paid towards catering arrangements of installation ceremony of a Raja, the decision of abandoning the ceremony is the failure of consideration and it is the starting point of limitation under Art. 97.[3] Where the plaintiff obtained a receipt from *A's* son for payment made to him in discharge of a loan taken from *A* but the receipt was held not to be binding on A in a suit instituted by him for recovery of the loan, the cause of action for refund of the payment would be the High Court's decree whereby the receipt was held to be not binding on *A*.[4]

5. Money paid on void transfer. Money paid on a mere void transfer is not recoverable under this Article; there being no transfer of possession or other existing consideration for the payment. Thus where, for money received from *A, B* transfers property to *A* and the transfer is void and there is no other

15. NLR 1989 AC 893 (DB).
16. AIR 1962 Guj. 14.
17. AIR 1945 Lah. 210 (DB).
18. AIR 1942 Sind 37 = ILR 1941 Kar. 495 (DB).
19. 11 Bom. 475 (DB).
20. AIR 1917 Mad. 296 + AIR 1929 Bom. 361. (*But see* AIR 1927 Lah. 570 (DB)).
1. AIR 1947 Mad. 90.
2. NLR 1989 AC 893 (DB).
3. AIR 1959 Punj. 612 = ILR 1958 Punj. 1136.
4. AIR 1957 Trav-Co. 295.

consideration, the money paid for such a transfer is not recoverable by *A* as on failure of consideration within the meaning of this article.[5] In such cases the person paying the amount may, in cases where there is a covenant for title or for quiet possession, be entitled to recover compensation, for breach of such covenant and such claim would be governed by Art. 115 or Art. 116 according as such covenant is unregistered or registered.[6]

Where possession was delivered. Where for money received from *A*, *B* transfers property to *A* and the transfer happens to be void but *A* is given possession of the property transferred, the possession given must be considered to be part of the consideration.[7] Even where the price has not been paid in cash but has been paid by adjustment of debt this Article would apply.[8]

Starting point of limitation. Under this Article the starting point of limitation, would be either when it was declared that the agreement was void or when the plaintiffs were dispossessed of what they had bought under the said agreement.[9]

So long as possession continues undisturbed there is no failure of consideration.[10] Therefore if the vendee takes actual possession of the property purchased by him from a vendor, who may or may not have a sound and unfettered right to convey, and his possession is disturbed, the cause of action for damages or compensation arises on the date of such disturbance, and time begins to run against the vendee from that date under Article 97 of the Limitation Act.[11] Where the possession is lost, the starting point of time is the date on which the plaintiff has lost possession.[12] Where a vendee is dispossessed by a title-holder superior to that of the vendor, limitation for a suit for recovery of the amount of consideration of the sale-deed brought by the vendee against his vendor starts from the date of his dispossession by the superior title-holder and not from the date of dismissal of his suit brought against the superior title holder.[13] Where *A* mortgaged a certain property to *B* and put *B* in possession thereof, and *C*, a third party, obtained against *B* a decree for possession on the ground that the mortgage was invalid, and in execution of the decree *C* was formally put in possession; it was held that the date of the formal dispossession was the date of the failure of

5. AIR 1918 P. C. 151 = 46 Cal. 670 = 46 Ind. App. 52.
6. AIR 1926 Nag. 109 = 22 Nag. L R 49 + AIR 1922 Oudh 257 = 25 Oudh Cas 164 + AIR 1921 Oudh 47 (DB) + AIR 1915 Nag. 46 = 11 Nag. L R 186 + AIR 1933 Mad. 126 + AIR 1915 Mad. 742 = 38 Mad. 1171 (DB) + AIR 1920 Lah. 355 + AIR 1925 Bom. 440 = 49 Bom. 596 (DB).
7. AIR 1962 Raj. 82 + AIR 1930 Sind 12 = 24 Sind L R 172 + 1947 Jaipur L R 322.
8. AIR 1962 Raj. 83.
9. PLD 1968 Karachi 196 (DB).
10. 10 Ind. Cas. 486 (DB) (Cal.) + 1913 Pun L R No. 135, p. 472 + AIR 1944 Mad. 211 = ILR 1944 Mad. 663 (DB).
11. PLD 1965 Lahore 50 = 17 DLR (WP) 45.
12. AIR 1962 Raj. 82 + AIR 1929 Bom. 361 + AIR 1919 Cal. 980 (DB) + 37 Bom. 538 (DB) + 1913 Pun L R No. 135, p. 472 + AIR 1945 Lah. 164 + 10 Ind. Cas. 486 (DB) (Cal.) + AIR 1936 Oudh 141 = 11 Luck 735 (DB) + AIR 1932 Nag. 5 = 28 Nag. L R 31 (FB) + AIR 1926 Oudh 19 + AIR 1915 Mad. 766 (DB) + AIR 1944 Mad. 211 = 1944 Mad. 663 (DB) + AIR 1926 Rang. 7 (DB).
13. AIR 1963 Madhya Pradesh 137 + AIR 1932 Nag. 5 (FB).

consideration though *B* continued in possession even after the formal delivery of possession.[14]

Independent suit for refund of money. The mere fact that one of the remedies is barred will not disentitle the plaintiff to pursue the other.[15] A suit may lie independently of the right to claim relief on the ground of failure of consideration for breach of a covenant for title or for quiet possession, express or implied, in sale transactions and would be governed by Art. 116, and it may be instituted notwithstanding the fact that remedy under this Article stands barred.[16]

6. Voidable transfer. Where transfer is voidable, the payment made under it is for an existing consideration even where possession has not been delivered and this Article applies to it. Where, in consideration of money paid by *A*, *B* executes a transfer to *A*, without giving him possession thereof, or any other consideration, but the transfer is voidable at the option of *C*, there is an existing consideration for the payment.[17]

Starting point of limitation. Where *A*, being entitled to possession under the transfer, attempts to obtain possession and fails to get it by reason of *C's* objection, *C* may be said to have avoided it and the date of the failure to get possession will be the date of the failure of consideration.[18] Where *C* himself sues *A* for avoiding transfer and obtains a decree in his favour, the starting point will be the date when he obtains such decree.[19] The fact that matter is taken up on appeal and the appellate Court confirms the decision of the first Court, will not carry the starting point to the date of the appellate decision.[20] But where the first Court decides against the plaintiff and the second Court reverses the decision, which, in its turn, is reversed by the High Court, the starting point will be date of the latter decision.[1]

Suit by auction-purchaser for refund of purchase money. A suit by a Court auction-purchaser who had not taken possession, for refund of purchase money on its being found in claim suit that the judgment-debtor had no saleable interest in the property is governed by Art. 97 and not by Art. 62 and the starting point of limitation is the date of the decree in the claim suit.[2]

Possession given under voidable transfer. The starting point for a suit to recover the money paid in consideration of a voidable transfer with delivery of possession is the date when possession of the property transferred is lost.[3] Where

14. AIR 1933 Lah. 83.
15. AIR 1920 Nag. 94 + AIR 1917 Mad. 296.
16. AIR 1939 All. 170 (DB) + AIR 1916 Oudh 240 + AIR 1924 Pat. 321.
17. AIR 1933 Lah. 581 (DB).
18. 19 Cal. 123 = 18 Ind. App. 158 (P.C.) + AIR 1928 Nag. 134 + AIR 1920 Oudh 185 = 23 Oudh Cas. 284 + AIR 1932 Lah. 382 = 13 Lah. 188 (DB).
19. 21 Ind. Cas. 581 (Oudh).
20. AIR 1918 P.C. 151 = 46 Cal. 670 = 46 Ind. App. 52.
1. AIR 1931 All. 651 = 53 All. 914.
2. AIR 1960 Andh Pra. 89.
3. AIR 1932 Nag. 5 = 28 Nag. L. R. 31 (DB) + AIR 1958 Pat. 1 + AIR 1955 Madh B. 127 = ILR 1955 Madh B 342 + AIR 1923 Mad. 46 = 46 Mad. 40 (DB) + AIR 1927 Lah. 570 = 9 Lah. 191 (DB) + AIR 1932 Bom. 36 = 55 Bom. 565 (DB) + 25 Bom. 593 (DB) + AIR 1915 Mad. 708 = 38 Mad. 887 + AIR 1942 Pat. 247 (DB).

A purchased property from *B* and got into possession. *C*, a nephew of *B*, brought a suit for a declaration that alienation of *B* was not binding on *C*'s reversionary interest. *C*'s suit was dismissed in two Courts but was decreed in the third Court. Letters Patent appeal from the latter decision was dismissed. Therefore *A* brought a suit for the refund of money. It was held that time ran from the date of the decree of the third Court and not from the date of decision of the Letters Patent appeal.[4]

A purchased property from *B* as guardian of *C* and obtained possession. C later on filed a suit to recover the properties sold. *A* compromised with *C* and paid the value of the property. Thereafter, he sued *B* for return of the money paid. It was held that Art. 97 applied and that the consideration failed when *A* had to pay money to *C*.[5]

7. Failure of executory consideration. Where executory consideration ceases to be enforceable by reason of its being avoided by the person at whose option the contract is voidable, there is a failure of consideration when the contract is avoided.[6] Where *A* contracted to sell property to *B* but mortgaged the properties subsequently. The mortgagee sued on his mortgage and obtained a decree and got the property sold in execution. It was held that time ran only from the date of the sale.[7] Where executory consideration ceases to be enforceable by reason of the fact that after the contract is made the act promised becomes unlawful, there is a failure of consideration, when the act promised to be done becomes impossible or unlawful.[8] Where a contract ceases to be enforceable because a Court of law refuses to enforce its specific performance, failure of the consideration will occur when the Court so refuses.[9] Where there is a promise to abstain from doing something. There will be a failure of consideration when the promisor does the thing which he promised to abstain from doing.[10] Where a decree-holder accepted payment out of Court but filed execution for full amount ignoring the payment already made and received the amount a second time. The cause of action for the suit to recover the amount paid a second time arises on the date when the execution application was filed and time runs therefrom.[11]

8. Liability under S. 65, Contract Act. Where the a contract becomes void, a person receiving advantage under that contract is bound to restore it. A suit for

---

4. AIR 1927 Lah. 734.
5. AIR 1919 Mad. 37 (DB).
6. AIR 1918 Mad. 728+AIR 1935 Lah. 685 (DB).
7. AIR 1929 Cal. 216=56 Cal. 455 (DB).
8. AIR 1928 All. 360 (DB)+AIR 1934 All. 360 (DB)+AIR 1934 All. 547 (DB)+AIR 1916 Bom. 158=41 Bom. 31 (DB)+AIR 1934 Cal. 148 (DB)+AIR 1925 Mad. 1040+AIR 1959 Bom. 468.
9. 11 All. 47=15 Ind. App. 211 (PC)+AIR 1934 Nag. 16 (*But see* AIR 1916 All. 6 (DB)).
10. 1883 Bom. P. J. 56 Reprint p. 558 (DB)+AIR 1951 Pat. 348=28 Pat. 974 (DB) (A decree-holder who accepts payment out of Court impliedly contracts to get the payment certified and not execute the decree. The breach of the contract takes place and the consideration for it fails when he files an application for execution for the full decretal amount ignoring the payment which has been made).
11. AIR 1951 Pat. 348=28 Pat. 974 (DB).

the recovery of the money paid will be governed by this article.[12] Once a suit is found to be of the nature covered by Art. 97 of the Limitation Act, the term "void" in S. 65 of the Contract Act in relation to the interpretation put upon that term in S. 2 (*g*) (*i*) of that Act will also cover the contract, which ceases to be enforceable by law and thereby becomes void when it ceases to be so enforceable.[13]

Sale void 'ab initio'. Where a sale is *ab initio* void, a suit for the return of the money paid in consideration thereof would be governed by Art. 62.[14]

98.	To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	[15][Three years].	The date of the trustee's death, or, if the loss has not then resulted the date of the loss.

1. Scope. This article contemplates suits brought after the death of the trustee against his general estate, to make good the loss occasioned by a breach of trust.[16] Therefore a suit brought more than three years after the death of the trustee where loss has resulted before the date of death, is barred by limitation.[17] The word "loss" in this article is not any loss occasioned by a trustee but the loss of 'property vested in trust for a specific purpose', within the meaning of S. 10 of the Act, and the meaning of this article is that in case the specific property is irrecoverable, then the value can be recovered out of the 'general estate' within the period specified in this Article.[18] It is to be noted that the joint family properties of the father and sons which pass by survivorship to the sons on the death of the father do not form the 'general estate' of the deceased father.[19]

99.	For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than	[20][Three years].	The date of the payment in excess of the plaintiff's own share.

12. AIR 1928 All. 360 (DB) + AIR 1949 Pat. 505 = 28 Pat. 303 + AIR 1920 Oudh 185 = 23 Oudh Cas. 284.
13. 1957 All. L. Jour 222.
14. 19 Cal. 123 = 18 Ind. App. 158 (PC) + AIR 1955 Ajmer 54 + AIR 1950 Nag. 229 = ILR 1950 Nag. 467 + 1947-2 Mad. L Jour 335 + AIR 1943 All. 294 = ILR 1943 All. 604 + 35 Mad. 39 (DB).
15. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
16. AIR 1938 Nag. 30 = ILR 1940 Mad. 94 (DB) + AIR 1949 Nag. 255 = ILR 1948 Nag. 794 (DB).
17. 21 Bom. 257 (DB) + AIR 1938 Nag. 30 = ILR 1940 Nag. 94 (DB).
18. 9 Bom. 373.
19. 33 Mad. 308 (DB).
20. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

his share of the amount of revenue due from himself and his co-sharers.		

Synopsis

1. Scope.
2. Right of contribution--when arises.
3. 'Payment'--what is.
4. Payment of revenue, if charge is created by.
5. Starting point of limitation.

1. Scope. This article is one of a series of particular articles specifying various situations comprised within the class of cases governed by the general Art. 61.[1]

Contribution of revenue paid by the co-sharer. The article applies to suits for contribution where revenue is due by a person and his co-sharers, and the same has been paid by such person wholly or in excess of his share.[2]

Payment must be to satisfy joint decree. Suits to enforce rights of contribution where there is no joint decree and no revenue has been paid would not be governed by this article.[3] A decree which is not valid against one of the two persons against whom it appears to have been passed is not a joint decree which can attract the application of this Article.[4] Where *A* obtains a decree against *B, C* and *D, X* pays off *A's* decree and subsequently *B* is compelled to pay *X* the amount paid by him to *A*. *B* then files a suit for contribution against *C* and *D* in respect of the amount paid by him to *X*. It was held that this article would not apply.[5] Where a final decree for partition passed on 30-4-26 directed that the entire joint family debts were to be paid by *A* alone and on that basis the shares of the other defendants *B* and *C* were equalised and *A* was also directed to pay *B* a sum of Rs. 1,543. On appeal by *B* the Judicial Commissioner held on 16-7-1928 that *A* and *B* should be jointly liable for the family debts and that *A* should pay Rs. 7,175 to *B* instead of Rs. 1,543 as directed by the trial Court. There was a lacuna in the judgment as to the extent of the debts binding on the family but on review the Judicial Commissioner's Court on 13-8-1929 upheld the finding of the trial Court as to the extent of the debts binding on the family. But no term was incorporated in the decree which could enable the plaintiff to claim contribution from the defendant in respect of the repayments of the joint family debts made by him upto that date by way of execution. It was held that as the decree finally passed on 13-8-1929 by the Judicial Commissioner's Court altered the position envisaged by the final decree passed by the trail Court, and created new obligations without providing a mode for working them out, a suit could be based

1. 13 Oudh Cas. 23.
2. 1900 Pun L R 149 (DB) + 12 All. 110 (DB) + AIR 1924 Lah. 112 (DB) + AIR 1929 All. 792 (DB).
3. 12 All. 110 (DB) + AIR 1924 Lah. 112 (DB) + AIR 1915 Nag. 13 = 11 Nag. L. R. 156 = 6 Cal. 549 (DB) (*Overruled* in 14 Cal. 809 (FB) on another point) + 1900 Pun L R 149 (DB) + 14 Suth W R 480 (DB).
4. AIR 1954 Trav-Co. 499 = II.R 1954 Trav-Co. 720 (DB).
5. AIR 1914 Cal. 160 (DB).

on the order passed by the Judicial Commissioner's Court and so far as the plaintiff's suits for recovery of the defendant's share of the joint family debts paid off by the plaintiff up to 13-8-1929 was concerned, it was governed by Art. 122, Limitation Act. Neither Arts. 61, 99 nor 107, Limitation Act, was attracted to the facts of the present case, because the payments were made by the plaintiff in pursuance of the decree passed by the trial Court and the plaintiff's right to sue the defendant for contribution was taken away till the decision of the appeal in the Judicial Commissioner's Court.[6]

Partners, payment by. Where a partner pays a decree against him on account of a partnership debt contracted by agreement of partners, this article will apply to a suit for contribution from the other partners. Thus where *A* borrowed money for a partnership business under an agreement between the partners that he may so borrow and a decree was subsequently obtained against *A* on the said loan and the same was paid off by *A*; *A* then sued his partners for contribution. It was held that Art. 99 would apply.[7]

Partition suit. A claim for contribution made by the plaintiff in a suit for partition, will not be governed by this article.[8]

2. Right of contribution--when arises. It is necessary, in order to give rise to a right of contribution, that the party seeking contribution should himself have paid the amount in respect of which contribution is sought,[9] and payment must have been in respect of a common liability of himself and others from which contribution is sought.[10]

3. 'Payment'--what is. The execution of a mortgage in lieu of joint liability of the plaintiff and of others is a payment and time will run, for a suit for contribution from the date of such execution.[11] But the mere incurring of a pecuniary obligation in the shape of a bond or promissory note is not a payment within the meaning of this article.[12]

4. Payment of revenue, if charge is created by. In the absence of a statutory enactment creating a charge, there is no general principle of equity to the effect that whoever having an interest in an estate makes a payment, in order to save the estate gets by reason of such payment a charge upon the estate.[13] But where a charge is held to exist, a suit to enforce the same and recover the contribution would be governed by Art. 132 and not by this article.[14]

5. Starting point of limitation. Where a joint decree is satisfied by payment by one of the judgment-debtors, time for a suit for contribution against the other

---

6. AIR 1956 Nag. 250 = ILR 1956 Nag. 821.
7. 26 Cal. 254 (DB).
8. AIR 1939 Mad. 70 (DB).
9. 26 Mad. 686 (FB).
10. 14 Suth W R 480 (DB) + 7 Suth W R 29 (DB).
11. AIR 1931 All. 652 (DB).
12. AIR 1927 Mad. 1137.
13. 14 All. 273 (FB) + 26 Bom. 437 (DB) + 14 Cal. 809 (FB) + AIR 1928 Pat. 641 = 7 Pat. 613 + AIR 1928 Rang. 278 = 6 Rang. 500.
14. 33 All. 708 (FB) + AIR 1923 Nag. 181 + AIR 1925 Oudh 613 + 8 Cal. L. R. 210n + AIR 1943 Pat. 365 = 22 Pat. 187 (DB).

judgment-debtors will run from the date of such satisfaction.[15] Where the plaintiff borrowed money from *X* and paid the Government revenue and subsequently he paid off *X* and sued his co-sharers for consideration; it was held that the cause of action for contribution arose when the plaintiff paid the Government revenue and not the date when he paid off the debt borrowed from *X*.[16] For a suit for contribution by a party who has deposited in Court the whole of the amount due under a joint decree, the time begins to run from the date of deposit but not either from the date of an order of appropriation passed by the Court on or from the date on which the decree-holder withdrew that amount.[17] Where the plaintiff and defendant were joint judgment-debtors under a rent decree. The plaintiff purchased the holding at a sale under the decree. Afterwards the sale was set aside and when plaintiff attempted to obtain a refund of the sale proceeds from the decree-holder, he failed as he was one of the judgment-debtors. Thereupon he sued the defendant for contribution. It was held that on setting aside of the sale the purchase money must be deemed to have been paid towards the decree and that the starting point for a suit for contribution was that date.[18] Where a decree was passed against *A* and *B* in execution of which a sum of money in another Court to the credit of *A* was attached and transferred to the credit of decree-holder. Subsequently, a payment order was made over to the decree-holder's pleader. *A* brought a suit against *B* for contribution. It was held that the date of payment was the date on which the payment order was made.[19] Where a joint decree for rent was passed against *A* and *B*, *A* paid his share of the decree. Objection of *B* to the execution being dismissed, he went in appeal and applied for stay of execution. Stay was granted on *A* depositing cash security in Court. The Decree-holder realised the amount from the treasury. Appeal by *B* was dismissed *A* then brought a suit against *B* for contribution. It was held that Limitation did not run from the date of deposit or date of dismissal of appeal. Security deposit in Court did not *ipso facto* without an order of Court become property of the decree-holder. Hence the date on which the Court ordered payment to be made to the decree-holder should be taken as the date from which amount in deposit would be deemed to be payment by the plaintiff to the decree-holder.[20]

Instalment decree. Where payments towards the decree are made in instalments, time will begin to run when, after the plaintiff's share is paid up, the payment becomes one in excess of his share.[1]

Payment to process server. A payment made to a process server while he went to serve processes in execution of a decree is a payment within Art. 99 and therefore time under Art. 99 would run from the date of such payment and not when the Court ordered its payment to the decree-holder.[2]

15. AIR 1924 All. 843 (DB) + 3 Cal. L R 480 (DB) + 19 Mad. L. Jour 487 (DB).
16. 7 Suth W R 29 (DB).
17. 1958-2 Andh W R 339.
18. AIR 1921 Cal. 814 (DB).
19. AIR 1940 Pat. 151 (DB).
20. 1955 All Jour 241.
1. 10 Ind. Cas. 839 (Lah.) + 1891 All W N 102.
2. AIR 1957 Orissa 224 + ILR 1957 Cut 474.

100. By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	[3][Three years].	When the right to contribution accrues.

1. Scope. The principle governing a suit contemplated by this article is that where trustees are equally to blame for a breach of trust, any one or more of the trustees who has had to refund the loss to the *cestui que trust* may compel the others to contribute.[4] The right of contribution, as in the case of co-sureties is based on general principles of justice and is the result of a general equity on the ground of equality of burden and benefit.[5]

101. For a seaman's wages.	[6][Three years].	The end of the voyage during which the wages are earned.
102. For wages not otherwise expressly provided for by this Schedule.	[6][Three years].	When the wages accrue due.

Synopsis

1. Scope.
2. Wages.
3. Government suit for arrears of salary against.
4. Starting point of limitation.

1. Scope. This article will apply if none of the specific articles applies to the case.[7] But where a suit falls both under Art. 131 and this article, it is this article that will apply.[8] Therefore this article applies to a suit by village barber for remuneration for services rendered.[9] A suit by a wet nurse to recover her wages.[10] A suit for recovery of wages by mechanical engineer,[11] a suit by a weighman employed to work at a shop to recover his dues from his master,[12] a suit for his wages by a person employed to help a dealer in the sale of goods,[13] a suit brought

3. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
4. 74 L T 34 = 44 W R (Eng) 388 + 1 Ves. and B 144 = 12 R R 95.
5. 74 L T 777 = 2 Ch. 415.
6. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
7. AIR 1936 Lah. 661 + AIR 1918 Mad. 366 = 41 Mad. 528 (DB).
8. AIR 1936 Mad. 149.
9. AIR 1941 Nag. 132.
10. 10 All. L Jour 395.
11. AIR 1919 Sind 54 = 12 Sind L. R. 140 (DB).
12. AIR 1926 All. 172 = 48 All. 164.
13. AIR 1935 Rang. 235 + AIR 1935 All. 102.

by a hotel cook for arrears of salary,[14] or a suit to recover bonus by a servant employed in a cloth business.[15]

Labourer, suit by. A suit for the wages of household servants, artisans or labourers falls under Art. 7 and is not governed by this article.[16] A 'labourer' indicates a person who is engaged in the performance of unskilled labour, generally speaking. A person who is called upon to do some work which requires some amount of skill, however little that may be, is not to be regarded as a labourer, within the meaning of Art. 7. Thus an employee, who is entrusted with the duties not only of mixing sugar with water for preparing sodas and other drinks in a soda water factory but also of writing of accounts and of sales of aerated drinks, is not a 'labourer' within the meaning of Art. 7. A suit for arrears of salary by such a person will, therefore, not be governed by Art. 7 for purposes of limitation but by Art. 102.[17]

'Artisan.' An 'artisan' is one who is trained to manual dexterity in some mechanical art or trade. In the latter sense, a driver may or may not be an artisan. If a driver is also a mechanic, he may be classified as an artisan.[18]

Arrears of wages under Payment of Wages Act. Enforcement of a claim under the Payment of Wages Act, is a relief of a different nature altogether. It is true that the application is based on a claim of arrears of wages but it is not an application in respect of wages. Such an application is specifically permissible under the Act, which Act, creates special reliefs for a special claim. The application itself cannot be described as an application or suit for recovery of arrears of wages. Article 102 of the Limitation Act has no application to this case.[19]

Suit for reimbursement of wages paid for another. Where *A* has paid wages to *B* in the interest of *C*, and seeks reimbursement from *C*, his suit is not within this article.[20]

2. Wages. The word 'wages' in Art. 120 include pay or salary.[1] 'Monthly salary' is nothing else but an euphemism for monthly wages. A right to wages accrues on the date when it falls due, *viz.*, each month if it is an employment on a monthly basis or each day or week as the case may be. The right to wages does not accrue only when the Court declares it so but when it is in fact due.[2] A suit for wages by the *archaka* of a temple against the trustee is governed by this article.[3]

14. AIR 1937 Mad. 340.
15. AIR 1953 Mad. 433.
16. AIR 1927 Rang. 279=5 Rang. 447+AIR 1936 Lah. 661+AIR 1934 Nag. 260+AIR 1916 Mad. 633 (DB).
17. AIR 1961 Madras 358.
18. AIR 1962 Patna 356.
19. PLD 1967 Dacca 778 (DB).
20. AIR 1930 Oudh 420.
1. AIR 1962 S.C. 8+1954 All. L. Jour 515 (The suit for the recovery of arrears of salary is governed by Art. 102 of the Limitation Act)+AIR 1947 F.C. 23=ILR 1947 Kar. (F.C.) 52=1947 FCR 80+AIR 1949 Nag. 118=ILR 1948 Nag. 576 (DB).
2. AIR 1964 Andhra Pradesh 491 (DB).
3. AIR 1918 Mad. 366=41 Mad. 528 (DB)+AIR 1935 Mad. 128 (DB).

Managing agent of company. Proceedings for winding up of a Company is not a suit. Therefore to a claim by Managing Agents for remuneration this Article does not apply.[4]

3. Government, suit for arrears of salary against. A suit by a Government servant to recover arrears of pay is governed by Art. 102 and not by Art. 115 or by Art. 120.[5] Therefore in such cases a public servant is entitled to recover arrears of pay only in respect of such period of his service as fell within three years immediately proceeding the institution of the suit.[6]

Employee who feels aggrieved by his dismissal from service by his employer has a right to sue not only for a declaration that his dismissal was wrongful, but also for the consequential relief for payment of arrears of wages and other emoluments. He cannot obviously split up the two reliefs and sue for the former relief only, in view of the express prohibition contained in O.2, R.2, C.P.C. both the reliefs would, therefore, run from the date on which the right to sue accrued to him. If however, instead of filing a regular civil suit for these reliefs he seeks an alternative remedy by a direct application to the High Court for a writ and does not pray for the consequential relief of arrears of salary, etc., he cannot urge that the right to ask for the latter relief accrued only after the date of the judgment of the High Court in that writ application,[7] and the High Court cannot grant the relief of payment of arrears in its discretion, even if it holds the dismissal to be unlawful.[8]

Salary not yet fixed. This Article will apply in those cases only where there is no dispute with regard to the rate of salary. However, where the amount of salary is yet to be fixed, this article will have no application. The cause of action in such a case will arise from the date the employee concerned is informed about the fixation of his salary.[9]

4. Starting point of limitation. The question when the wages in any particular case accrued due is one of fact to be determined with reference to the contract or in its absence, to the course of dealing between the parties.[10] In the case of monthly wages, the wages accrue and become due in law on the last day of the month and the period of limitation for each month's wages begins to run from that date; even if the services are terminated before the end of a month, the date of the termination of service will not be the starting point under this article.[11]

Suit to set aside wrongful dismissal and arrears of salary. Where a public servant brings a suit for setting aside wrongful dismissal and for arrears of salary, limitation starts from date of his wrongful dismissal and not from date of his

---

4. AIR 1963 Orissa 220 (LB).
5. Law Notes 1974 Lah. 80 + AIR 1963 Mad. 425 (DB) + AIR 1961 Cal. 626 (DB) + AIR 1965 AP 188 + AIR 1961 Med. 486 + AIR 1962 S.C. 8 + AIR 1963 Punjab 220 (DB) + AIR 1949 Nag. 118 = ILR 1948 Nag 576 (DB). (AIR 1947 F.C. 23. *Rel. on*) + AIR 1947 F.C. 23 = ILR 1947 Kar. (FC) 52 = 1947 F C R 89 + 1954 All. L. Jour. 515 (DB).
6. Law Notes 1974 Lah. 75 (DB).
7. AIR 1964 Orissa 111 (DB).
8. AIR 1964 Orissa 241 (DB).
9. 1984 C I C 1897.
10. AIR 1936 Cal. 227 (DB).
11. AIR 1935 All. 716.

suspension.[12] But where dismissal of the Government servant is set aside and he is reinstated, limitation for suit for arrears will being to run from the date of reinstatement.[13] Therefore a suit brought within three years from the date of reinstatement, for the recovery of salary for the period for which the dismissal was in force is within the time prescribed.[14]

Recovery of salary. This Article provides a period of 3 years for suit for recovery of salary and the limitation will start from the last day of each month.[15]

Appellate order of dismissal. Where the dismissed public servant files a departmental appeal, and it is dismissed, limitation for a suit for arrears of salary will commence on the date when final order is passed in appeal and not from the original order of dismissal.[16]

Cause of action arising prior to 10-7-1970. After declaration of the law by the Supreme Court of Pakistan in Mrs. A.V. Issacs's case [17] on the 10th July, 1970, that arrears of salary no longer constituted bounty of State and an action for their recovery lay in Court, the respondent instituted a suit on the 9th July, 1973, to realize from the appellant arrears of his salary for the period from the 5th April, 1950 to the 20th June, 1955. It was held that the Supreme Court judgment in Mrs. A.V. Issacs's case did not operate retrospectively so as to alter in any manner the flow of time of limitation which had already started running before and the legislature in its wisdom not having though it fit to amend the law to entitle the Government employees to take advantage of its beneficial effect for pressing their claims whose enforcement by legal action was barred by limitation under the existing law, commencement of period of limitation prescribed for filing a suit for realization of arrears of salary was to be regulated by Article 102 as it stood. In that view of the matter the date of the 30th June, 1955, when the respondent resumed duty, and not the date of pronouncement of the judgment in Mrs. A.V. Issacs' case by the Supreme Court would be taken to be the starting point of the period of limitation set down by Article 102, which period had expired long before the respondent filed the suit. The suit was, therefore, time-barred.[18]

103. By a Muhammadan for exigible dower (*mu'ajjal*).	[19][Three years].	When the dower is demanded and refused or (where, during the continuance of the marriage no such demand had been made) when the

12. AIR 1961 Calcutta 626 (DB).
13. 1982 LN 681 (Lah.) + 1982 PSC 406 (SC Ind) + AIR 1961 Mad. 486 (DB).
14. AIR 1961 Madras 425 (DB) + AIR 1962 S.C. 8 + AIR 1947 F.C. 23 + AIR 1961 Mad. 486.
15. 1984 CLC 1897.
16. AIR 1959 Madh Pra. 46.
17. PLD 1970 SC 415.
18. 1982 Law Notes 681 = PLD 1981 Lah. 580 = PLJ 1981 Lah. 324.
19. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

marriage is dissolved by death or divorce.

Synopsis

1. Exigible--meaning of.
2. Who may sue.
3. Who may be sued.
4. Demand and refusal.
5. Divorce.
6. Husband executor of wife.
7. Wife placed in possession of property for payment of dower.
8. Mortgage executed in consideration of dower debt.
9. Contract of dower on behalf of or in favour of minor.

1. Exigible--meaning of. Exigible dower is dower payable on demand. It implies that the dower may, not that it must, be exacted and a cause of action in respect of it does not accrue so long as the marriage exists until the wife does something to show that she requires it to be paid.[20]

2. Who may sue. It is not necessary that a wife must sue for exigible dower. An heir or transferee will be entitled o sue for the recovery of the dower and will for purpose of limitation, stand in the shoes of the wife.[1]

3. Who may be sued. The husband who contracted to pay the dower may be sued for it. Where the husband dies without payment of the dower debt, the wife is entitled to claim the dower debt, from the legal representatives of the husband to the extent of his assets in their hands.[2]

4. Demand and refusal. In order that time may run under this article, during the continuance of the marriage it is necessary that there should have been a demand and a refusal,[3] and the demand and the refusal must be definite and unambiguous.[4]

The words "demand and refusal" must be understood as one phrase and time runs only when there is a demand as well as a refusal.[5] Where the wife has not made any demand, no amount, of opposition on the husband's part would set time running.[6] Similarly the time will not begin to run where there has been no refusal from the husband. Thus where the wife demanded the dower and the husband paid a part of it but there was no evidence of refusal as to the rest it was held that there was no refusal as to the rest.[7]

---

20. 11 Beng. L. R. 375 = Ind App (Sup Vol.) 135 (PC).
1. AIR 1923 Cal. 152 = 50 Cal. 253 (DB) + AIR 1923 Cal. 507 (DB) + AIR 1934 All. 52 = 56 All. 401 (DB).
2. 17 Suth W. R. 113 (PC).
3. 8 All. 149 (FB).
4. ('72) 2 Ind. App. 235 (PC) + AIR 1933 Pesh 31 (DB) + AIR 1930 Lah. 202.
5. AIR 1937 All. 39 = I.L.R 1937 All. 153 (DB) (Wife demanding dower--Husband replying that he would pay when property would be divided--Wife continuing demands for eight or nine years--*Held*, there was no refusal by husband to pay).
6. AIR 1933 Pesh. 31 (DB) + ('72) 2 Ind. App. 235 (PC).
7. AIR 1925 Oudh 267.

5. Divorce. Time will begin to run from the date of the divorce. When once the divorce has come into effect any subsequent conduct of the parties would not stop or postpone the commencement of limitation. Thus where the parties were governed by Hanafi School of Muslim law and there was a first divorce by written document and its contents were known to the wife but the couple subsequently lived together as husband and wife and again there was a divorce by *talaq*, a suit by the wife for prompt dower brought more than three years after the first divorce was barred.[8]

Date of communication of 'talaq'. Where *talaq* is communicated to the wife after it is pronounced, limitation for a suit under this Article will begin to run from the date when it is communicated to the wife. Where the husband divorced his wife in her absence by *talaq* and the *kazi* informed the wife of it on a later date when she came to know of it for the first time; it was held that time began to run only from the latter date.[9] The onus is on the plaintiff to show when the divorce was communicated to her.[10]

6. Husband executor of wife. Where the wife bequeathed her right to dower to certain persons and appointed the husband himself as the executor of such will, it was held that the husband could not take advantage of the three years rule of limitation prescribed by this article.[11]

7. Wife placed in possession of property for payment of dower. Where *F, a* Muslim put his wife in possession of his property in order that she might satisfy her dower therefrom. *F* died and his heirs wrongfully took possession of his property. In a suit for recovery of the balance of the dower-debt; limitation ran from the date of dispossession and not from the date of death of the husband.[12]

8. Mortgage executed in consideration of downer debt. In consideration of a dower debt, a mortgage deed was executed by the husband in favour of his wife. A suit to recover such mortgage debt was held not governed by this article.[13]

9. Contract of dower on behalf of or in favour of minor. If at the time of marriage the wife was under sixteen years of age, and if the father as guardian entered into a contract on the infant's behalf, the right to dower can be enforced by the minor.[14] Similarly if the contract of dower was entered into by the father, after the marriage on behalf of the minor husband, it is binding on the husband.[15]

---

8. AIR 1937 Lah. 270 (DB).
9. AIR 1931 Mad. 647=54 Mad. 622. (A claim for deferred dower)+36 Cal. 184+AIR 1943 Lah. 215=ILR 1944 Lah. 186 (DB).
10. AIR 1941 Lah. 166.
11. 4 Ind. Cas. 462 (Cal.).
12. 33 All. 568 (DB).
13. AIR 1927 All. 268.
14. AIR 1955 Cal. 1225 (DB). (The deed of dower was executed in wife's favour.).
15. 4 Ind. Cas. 462 (Cal.).

104.	By a Muhammadan for deferred dower (*mu'ajjal*)	[16][Three years].	When the marriage is dissolved by death or divorce.

Synopsis

1. Deferred dower.
2. To whom payable.
3. Dower payable by instalments.
4. Registered dower deed.

1. Deferred dower. Deferred dower is dower payable only on death or dissolution of marriage by divorce. But this may be modified by an agreement entered into after the marriage, by which the husband agrees to pay the same on demand.[17] Thus a contract by the husband to pay deferred dower, in case of the predecease of the wife, is presumed to be for the heirs of the wife, and the heirs become entitled to recover it on the basis of a breach of contract.[18]

2. To whom payable. The amount of deferred dower is like the amount due on a policy of life insurance on the wife and is payable to her nominee or her heirs.[19]

3. Dower payable by instalments. Where the deferred dower had become payable on dissolution of marriage by the husband pronouncing *talaq*, and a *talaknamah* was executed by the husband wherein he agreed to pay her the dower amount by monthly instalments; it was held that the wife would be given an instalment decree as per the deed and the period of limitation would be reckoned for each instalment from the last date of each month on which it fell due.[20]

4. Registered dower deed. If the contract was by registered deed, Art. 116 would apply.[1]

105.	By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	[2][Three years].	When the mortgagor re-enters on the mortgaged property.

Synopsis

1. Suit for surplus profits.
2. Registered deed.

16. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
17. AIR 1922 Lah. 172.
18. 6 Cal. L. Jour 558 (DB).
19. 4 Ind. Cas. 462 (Cal.).
20. AIR 1936 Cal. 627.
1. AIR 1923 Cal. 152 = 50 Cal. 253 (DB) + AIR 1923 Cal. 507 (DB).
2. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

1. Suit for surplus profits. The Article applies only to suits for profits brought after the mortgagor has entered into possession on redemption.[3] A claim to surplus profits or for an account against the mortgagee is one arising from and connected with the right to redeem the property.[4] Therefore where a suit for redemption is filed in the first instance and subsequently a suit for accounts or for the surplus profits is filed, the latter would be barred under O.2, R.2 of the Civil P.C.[5] To avoid conflict with O.2, R.2, C.P.C. the article will govern suits for profit where the mortgagor has re-entered into possession without a suit for redemption,[6] or where liberty has been given in the previous suit for redemption, to file a fresh suit for profits or for account.[7]

Surplus profits--what are. Where trees were cut and sold by the mortgagee, and it was not shown that this was wrongfully done, it was held that the proceeds were profits collected by the mortgagee.[8] Therefore a suit for compensation for trees cut by the mortgagee may be treated as a suit for collections made by the mortgagee.[9]

2. Registered deed. Where the mortgage deed is registered, a suit against the mortgagee in possession for accounts is governed by Art. 20 and not by Art. 105.[10]

106.	For an account and a share of the profits of a dissolved partnership.	[11][Three years].	The date of the dissolution.

Synopsis

1. Scope.
2. Dissolved partnership.
3. Suit must be for accounts and share of profits.
4. Settlement after dissolution.
5. Specific amounts received by a partner after dissolution of partnership.
6. Suit between partner and sub-partner.
7. Second partnership after dissolution of first.
8. Suit by assignee or successor of partner.
9. Suit by or against deceased partner's heirs.
10. Registered partnership deed.
11. Starting point of limitation.
12. Onus of proof.

---

3. AIR 1927 Nag. 302 + AIR 1922 Cal. 189 + 1 Bom. L R 858 (DB).
4. AIR 1925 Rang. 13 = 2 Rang. 382 + 30 All. 225 + 34 Cal. 223 (DB) + AIR 1927 Nag. 302 + 12 Cal. L. Jour 620 (DB).
5. 30 All. 225 (DB).
6. AIR 1922 Cal. 189 (DB) + AIR 1917 Oudh 200 = 20 Oudh Cas. 25 + 30 All. 225 (DB) + AIR 1919 Oudh 125.
7. 33 All. 244 (DB).
8. 4 Oudh Cas. 355.
9. AIR 1919 Oudh 125.
10. 1959 All. L. Jour 128.
11. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

1. Scope. In deciding whether a suit is one for accounts and a share of the profits of a dissolved partnership the substance of the claim must be looked to.[12] If in substance the suit is one for an account and a share of a dissolved partnership, this article will apply, though the suit is framed as one for contribution or as one for possession of immovable property or as one for relief on the basis of an existing partnership.[13] Thus a suit by the plaintiff for a declaration that he retired from the partnership on a certain date and that, so far as he was concerned the partnership was dissolved on that date, and for accounts and a share of the profits found due to him falls within this article.[14] The mere fact that there are unrealised assets outstanding on date of dissolution and on date of the suit would not alter the character of the suit as one for accounts.[15]

2. Dissolved partnership. The words dissolved partnership mean the existence of a partnership which has been dissolved before the institution of the suit. Where there has been no partnership this Article does not apply. Thus a suit for administration against Muslim coheirs by a person entitled to a part of the interest of an heir is not governed by this Article.[16] A family business carried on by a joint undivided Hindu family is not a partnership. Where, however, there is a partition in such family, the members conducting the business further may become partners.[17] But so long as they have not become partners after the dissolution of a joint family firm, Art. 106 would not apply.[18]

Partnership must have been dissolved. This article does not apply unless partnership has been dissolved.[19] Therefore a suit for a relief arising out of partnership relationship when such partnership is not dissolved is not governed by this article.[20] Consequently a suit for dissolution of partnership and for accounts is not governed by this article but would be governed by Art. 120.[1] For the same reason a suit for declaration that certain persons are partners in a partnership for the dissolution of such partnership if it should be subsisting, and for winding it up if it was dissolved already, is not governed by this article.[2]

3. Suit must be for accounts and share of profits. The words "for an account and a share of the profits of a dissolved partnership" apply to every suit in which plaintiff claims an account of the general partnership property and his share

12. 1906 Pun. Re. No. 73, p. 277.
13. AIR 1932 Lah. 519 (DB) + 9 Cal. W N 537 + 1906 Pun. Re. No. 73, p. 277 + AIR 1920 Sind 182 = 24 Sind L R 182 (DB) + AIR 1916 Lah. 410 (Partnership-at-will) + AIR 1933 Mad. 353.
14. AIR 1918 Cal. 294 (DB).
15. 9 Cal. W. N. 537.
16. AIR 1940 P.C. 215 = ILR 1940 Kar. (PC) 410 = 67 Ind. App. 406 = ILR 1941 Bom. 8.
17. AIR 1937 Mad. 599 (DB).
18. ILR 1942 Kar. P. C. 33.
19. AIR 1934 Bom. 491 + AIR 1956 Nag. 46 = ILR 1955 Nag. 498 (DB) + AIR 1935 Lah. 209 (DB).
20. AIR 1922 Lah. 349 (DB) + AIR 1921 Cal. 538 (DB) + AIR 1931 All. 225 (DB) + AIR 1920 Mad. 680 (DB) + AIR 1930 Lah. 378.
1. AIR 1963 M.P. 155 + AIR 1930 Lah. 378 + AIR 1957 Trav-Co. 123 (DB) + AIR 1934 Bom. 491 + 15 Cal. L J 204 (DB) + AIR 1933 Mad. 353 (DB) + AIR 1928 Rang. 160 = 6 Rang. 198 (DB) + 12 Cal. W N 455 (DB).
2. 4 All. 437.

in the same and its profits.[3] A suit in respect of a matter which is not, and has not become, an item of partnership account, is not governed by this article.[4] Thus a suit for a declaration that a certain property, attached in execution of a decree against one of the partners as belonging solely to him, is not solely owned by him and that the plaintiff has got a share in it, is not one for accounts or for a share of the profits of a dissolved partnership.[5] A suit for recovery of money found due to the plaintiff by the defendant as declared by a prior judgment between the parties in a suit for accounts of a dissolved partnership, is not one for accounts.[6] A suit for possession of a share in property alleged to have been partnership property will be barred if a suit for accounts would be barred on that date.[7]

4. Settlement after dissolution. The parties to a partnership can come together and agree to an account themselves even after the expiry of three years from the date of dissolution; and such a settlement would be supported by consideration inasmuch as all the partners make mutual promises to abide by such settlement.[8] Where such a settlement has been arrived at and accounts are settled and adjusted between the parties, a suit to recover the amount due on the basis of such settlement is not a suit for accounts or for a share of profits of the dissolved partnership.[9] Thus where there is an agreement by the partners after dissolution of partnership that two of them should collect outstanding and pay off liabilities and that thereafter all partners should share the balance equally, a suit for accounts based on the agreement is not governed by Article 106.[10] Similarly where a provision is made in the settlement for discharge of debts, division of outstandings and immovable properties, a suit for division of properties is not governed by Art. 106.[11]

5. Specific amounts received by a partner after dissolution of partnership. Where a partnership is dissolved by the death of a partner, and one of the surviving partners receives certain item of partnership assets from a debtor of the firm, a suit by another surviving partner for share of these items within three years of receipt thereof but beyond three years of date of dissolution is barred.[12] But where a new asset belonging to the partnership has come into existence after the dissolution and the sole controversy is whether one of the partners alone is entitled to collect it or all of them should do it, in such a case there is no question of the claim of any of the partners being barred by limitation and an objection on the basis of Art. 106 is untenable and cannot be given effect to.[13]

3. 8 Ind Cas. 999 = 1910 Pun. Re. No. 97 (DB).
4. 26 Cal. 254 (DB).
5. AIR 1933 All. 926 (DB).
6. AIR 1934 Mad. 665 (DB).
7. 30 All. 279 (DB) + AIR 1956 All. 660 (DB) + 11 Ind. Cas. 288 (DB) (All).
8. AIR 1933 P.C. 120.
9. AIR 1922 Lah. 425 = 3 Lah. 326 (DB) + AIR 1934 Mad. 665 (DB) + AIR 1928 Lah. 459.
10. AIR 1931 Lah. 300 (DB).
11. AIR 1938 Mad. 133.
12. AIR 1922 P.C. 115 = 45 Mad. 378 = 49 Ind. App. 181.
13. AIR 1959 Andh Pra. 551 (DB).

6. Suit between partner and sub-partner. Where a partner bore share of loss sustained in the main partnership, suit by him against his sub-partner for the latter's share of such loss is governed by Art. 106.[14]

7. Second partnership after dissolution of first. Where a partnership is dissolved by the death of one of the partners and partnership business is carried on by other partners in the partnership, and after dissolution of second partnership a suit is filed for account and share of profits of the second partnership, the accounts of first partnership can also be gone into.[15]

8. Suit by assignee or successor of partner. A suit by the assignee of a partner or his successor-in-interest for accounts and for share of the dissolved partnership will be governed by this article.[16] But where business is continued after the death of a partner, a suit for account, of such business by representative of deceased partner is not governed by Art. 106.[17]

9. Suit by or against deceased partner's heirs. Where a partnership is dissolved on the death of the partner and it is sought to make the sons of the partner liable for debts due from him as a member of the partnership, the suit would be governed by this Article.[18] A suit by the heirs or legal representatives of a deceased partner for accounts and a share of profit under S. 37, Partnership Act, would be governed by Art. 106 and not by the residuary Art. 120,[19] by applying the provisions of section 88 of the Trusts Act, the nature of the suit does not change.[20]

10. Registered partnership deed. A suit for accounts of a dissolved partnership would be barred under this article after three years from the date of dissolution even if the deed of partnership has been registered.[1]

11. Starting point of limitation. Limitation for a suit under this Article begins to run from the date of dissolution of the partnership. Therefore the question for determination in each case is as when the partnership stood dissolved. Where the partnership was formed for running chit fund with the partnership as the stake-holder and a suit is brought for dissolution of partnership and accounts, time will not begin to run until all assets of the partnership are realised and liabilities paid.[2]

Suit instituted beyond three years of dissolution. Limitation for a suit under this Article is three years. If the plaintiff does not choose to bring his action for nearly four years after the dissolution of the partnership, he has to blame himself if he is not able to get any relief from the Court.[3] Where the partnership of which the plaintiff's father was a partner was dissolved soon after the death of the

14. AIR 1934 Mad. 12 = 57 Mad. 347.
15. 44 W R (Eng.) 182 = 2 Ch. 474 + 25 Mad. 26 (DB) + AIR 1924 Mad. 708 + AIR 1914 Lah. 517 = 1914 Pun Re. N0. 181 (DB) + 15 Cal. L. Jour. 204 + AIR 1929 Sind. 230.
16. AIR 1925 Bom. 347 (DB) + AIR 1934 Mad. 665 (DB).
17. 45 Cal. W N 1065.
18. AIR 1936 Lah. 514 (DB).
19. AIR 1958 Andh Pra. 48 = II.R 1957 Andh Pra 686 (DB) + AIR 1964 All. 83.
20. AIR 1964 Allahabad 53 + AIR 1934 P.C. 138.
1. 22 Mad. 14 (DB).
2. AIR 1942 Mad. 104.
3. 1983 CLC 3056 + AIR 1958 Bom. 51 = II.R 1957 Bom. 871.

plaintiff's father in 1951; permitting an amendment of the plaint in 1957 would work injustice to the defendant because the claim under the dissolved partnership would become barred by lapse of three years under Art. 106.[4]

Plaintiff minor when partnership dissolved. Where the plaintiff was a minor when the right to sue accrued to him, it is for the plaintiff to show that the suit is within limitation and it is the allegation in the plaint which will govern limitation. The plaintiff, therefore, has to prove that he attained majority within three years of the filing of the suit.[5]

12. Onus of proof. Where a suit is prima facie barred, it is for plaintiff to allege in his plaint the ground upon which exemption is claimed from the law of limitation.[6] Where plaintiff alleges dissolution within three years of the suit, or alleges that partnership is not dissolved at all till the date of suit, the onus is on the defendant to prove that dissolution was beyond three years of the institution of the suit.[7]

107. By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate.	[8][Three years].	The date of the payment.

Synopsis

1. Scope.
2. Payment after partition.
3. Starting point of limitation.
4. Suit for partition after right to contribution is barred.

1. Scope. Where this article as well as Art. 99 apply the latter will prevail over the former.[9]

2. Payment after partition. A suit for contribution by a person who was a manager of the joint estate of an undivided family, brought after partition is not one within this article.[10]

3. Starting point of limitation. The starting point of limitation under this Article is the date of payment, where the payments were made by the plaintiff in pursuance of the decree passed by the trial Court, and the plaintiff's right to sue the defendant for contribution was taken away till the decision of the appeal in the Judicial Commissioner's Court this Article would not apply.[11]

---

4 AIR 1958 Andh Pra 234.
5 AIR 1964 Allahabad 53.
6 8 Ind Cas 999 = 1910 Pun Re No 97 (DB).
7 AIR 1917 Lah 459 = AIR 1959 Raj 94 = ILR (1959) 9 Raj 24 = AIR 1956 Lah 378.
8 Subs by the Repealing and Amending Act, 1923 (11 of 1923) S 2 and First Sch for "Three".
9 AIR 1931 Mad 682 (DB).
10 8 Mad L Jour 271 (DB) = 5 Cal 521 (DB).
11 AIR 1956 Nag 256 = ILR 1956 Nag 821 (DB).

Money borrowed by Manager in personal capacity. Where the manager borrows money in his private capacity and expends the same for the benefit of the estate, "the payment on account of the estate" can be said to be made only when he so expends the money and not when he subsequently repays the loan borrowed by him.[12]

Money borrowed by Manager as Manager. Where a debt is incurred by a person as the manager of the family and the amount is spent for the estate, its discharge at a subsequent date will be a payment on account of the estate and time will run from the latter date.[13]

4. Suit for partition after right to contribution is barred. Where the manager sues for partition after his right to contribution in respect of certain moneys exepended by him on account of the estate is barred under this article, he is not entitled to set off this amount in adjusting the equities between the parties.[14]

108.	By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	[15][Three years].	When the trees are cut down.

1. Scope. This article applies only where the lessee has no right to cut the trees but he cuts them. Where a tenant is entitled to cut trees but is not entitled to remove them, a suit by the landlord for compensation for the removal of such trees is not one within this article.[16]

109.	For the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant.	[17][Three years].	When the profits are received.

Synopsis

1. "Wrongfully received."
2. Suit between co-owners for profits.
3. Joint Hindu family.
4. Suit against trustees.
5. Suits between mortgagor and usufructuary mortgagee.
6. Suit between lessor and lessee.
7. Dispossession of plaintiff under decree or order subsequently set aside.

---

12. 6 Beng. L. R. (App) 103 (DB) + 20 Cal. 18 (DB).
13. AIR 1931 All. 652 (DB) (Case under the special Article 99).
14. AIR 1918 Mad. 258 (DB).
15. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2, and First Sch., for "Ditto".
16. 10 Cal. L. Jour 25 (DB).
17. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2, and First Sch., for "Ditto".

8. Suit by minor for profits.
9. Claim for mesne profits in suits for possession.
10. Application for ascertainment of mesne profits.
11. Application for profits in insolvency proceedings.
12. "Profits."
13. "Belonging to the plaintiff."
14. Starting point of limitation.

1. "Wrongfully received." The words "wrongfully received" include receipt of profits under a claim or title that cannot be legally substantiated.[18] Thus receipt of profits by a licensee after the expiry of the period of the license,[19] or the receipt of profits by a trespasser would be wrongful.[20]

Where an insolvent had, within two years of his adjudication as insolvent, sold his property. The sale was set aside by the Insolvency Court as null and void. The receiver sued for the profits received by the purchaser. It was held that the receipt of profits by the purchaser must be considered to have always been wrongful within the meaning of this article.[1]

Profits not wrongfully received. Article 109 will not apply to a case where the profits are not "wrongfully received".[2] Thus where there was a compromise between *A* and *B* provided that *A* would be entitled to all the rents and profits accruing in respect of the properties as from 20th July, 1928. A *kist* of rent fell due on 29th September, 1928 but *B* had collected it in advance even before 20th July, 1928. *A* sued *B* for recovery of the rent collected. It was held that it could not be said that *B's* collection before 20th July, 1928 was wrongful.[3]

Profits which could have been received. A suit for profits, which might with ordinary diligence have been received by the defendant in wrongful possession is not governed by this article.[4]

Possession not wrongful but profits received wrongfully. The article will apply to a suit for profits wrongfully received by the defendant even though he is not in wrongful possession.[5] The absence of mala fides on the part of the defendant will not make the receipt anytheless wrongful.[6] The words "wrongfully received" are not confined to a case where possession of defendant originates in a wrongful act. Even if the possession is obtained under a decree of Court which afterwards is set aside on appeal, the profits are wrongfully received.[7] The receipt of profits by an alienee from a Hindu widow after her death where the alienation is set aside would be wrongful receipt of the profits.[8] Where *A* obtained a mortgage decree and purchased property in execution, *B* the owner in possession of the property challenged the mortgage by way of suit and obtained injunction restraing *A* from

---

18. AIR 1915 Mad. 1133 (DB).
19. AIR 1936 Pat. 362 (DB).
20. AIR 1931 Pat. 114 (DB).
1. AIR 1938 Bom. 158 = II R 1938 Bom. 107 (DB).
2. AIR 1955 Andh 278 (DB) + II R 1954 Mad. 1213.
3. AIR 1937 Pat. 237 = 16 Pat. 184.
4. 34 Mad. 502 (DB).
5. AIR 1924 Lah. 738 (DB) + AIR 1921 Pat. 102 = 6 Pat. L. Jour. 166 (DB).
6. 19 Suth W.R. 486 = 2 Beng L.R. 16 (DB).
7. AIR 1939 P.C. 178 + AIR 1942 All. 358 = II R 1942 All. 671 (DB).
8. AIR 1935 Oudh 515 = 11 Luck. 535 (DB).

interfering with his possession. *B's* suit was dismissed. *A* after obtaining possession sued *B* for mesne profits, *B's* possession was held to be wrongful within Art. 109.[9] Where a deed of gift provided that the donor would be entitled to "half of the income accruing from the property in question", the donee is under no obligation to collect and pay the income to the donor, who has as much right to collect his share of the income as the donees themselves. The donor is entitled to recover the amount from the donee only if it is found that the donee has wrongfully received the donor's share. A suit by the donor to recover his share of income is governed by Art. 109 or 113.[10]

Profits received by judgment-debtor before confirmation of sale. In case of a sale pending confirmation, the possession of the judgment-debtor before confirmation is not wrongful because before that date the auction-purchaser himself would not be entitled to possession. The judgment-debtor therefore would not be keeping out a person entitled to possession. There is, therefore, no wrongful receipt of the rents and profits by the defendants at any time before the date of confirmation of sale and Art. 109 can have no application.[11]

Principal and agent. Where in a suit for partition the plaintiff claimed interest on her share of rent realised by the defendant who was proved to have been acting as the agent of the plaintiff; it was held that the proper Article applicable was Art. 89 and not this article.[12]

2. Suit between co-owenrs for profits. Where a co-sharer of property was excluded from enjoyment thereof by the other co-sharers, the co-sharer's claim for his share of profits is one for compensation for wrongful exclusion, a suit to recover the share was not governed by this article but falls under Art. 120.[13] Thus the co-heirs inheriting an estate, are co-owners of the property comprised in the estate, and a suit for profits by one against the other would be governed by Art. 120.[14]

Partition decree but no actual partition. A mere decree for partition not executed by actual division, will not put an end to the relationship of co-owners, and Art. 120 would apply to a suit for profits received subsequent to the decree.[15] Thus where *J, K* and *A* were owners of properties as tenants-in-common. In execution *A's* share was sold and was purchased by *D. J* brought a suit for partition of her share against *D*. A decree was passed for partition and separate possession of her share. The decree was confirmed on 20-1-1937 by Bombay High Court. P who was the legal representative of *J* applied on 12-9-1940 for ascertainment of mesne profits. *D* resisted the application on the ground that P had no title. The Court determined the mesne profits payable to *P* upto 1940. *D*

9. AIR 1949 Mad. 279.
10. AIR 1957 Assam 10 = ILR (1956) 8 Assam 309 (DB).
11. AIR 1963 All. 44 + ILR 1954 Mad. 1213 (DB).
12. AIR 1957 Trav-Co. 179 = ILR 1955 Trav-Co. 1200 (DB).
13. AIR 1941 Pat. 90 = 20 Pat. 162 (DB) + AIR 1960 Mad. Pra. 40 + 36 Cal. W N 296 (AIR 1935 Mad. 731, *Relied on.*) + AIR 1954 Trav-Co. 601 (DB) + AIR 1953 Mys. 139 = ILR 1953 Mys. 244 (DB) + AIR 1925 P.C. 93, read with AIR 1924 P.C. 144.
14. AIR 1939 Rang. 365 = 1940 Rang. L. R. 136 (DB) + AIR 1924 Rang. 155 = 1 Rang. 405 (DB).
15. AIR 1931 Rang. 150 (DB) + 7 Beng. L R 113 (PC). (PLD 1969 Dacca 120 (DB) appears to have been wrongly decided).

preferred first appeal against the order of the Bombay High Court. After remand it was ultimately decided by the High Court on 18-7-1952, along with the second appeal arising out of the suit which *D* had filed challenging the decree for partition of her share obtained by *J*. On 21-4-1953 *P* obtained possession of his share and sued *D* for mesne profits. It was held that the suit was governed by Art. 120 and not Art. 109 which applies only to a suit for recovery of profits wrongfully received.[16]

Alienation set aside. Where alienation of property is set aside and mesne profits are claimed from the former alienee, the application of this article depends on the fact whether he was a co-owner or not. Thus where an alienation by a Hindu widow was set aside at the instance of reversioners after the death of the widow as to a certain portion of the property alienated, it was held that the receipt by the alienee of the profits of the whole property alienated was wrongful and not one as a co-owner, and this article and not Art. 120 applied.[17] But where a Hindu father alienated certain properties, but the alienation was set aside at the instance of the sons except as to the share of the father; it was held that a suit for profits against the alienee was governed by Art. 120 and not by Art. 109.[18]

Title of co-owner denied by co-owner in possession. Where a co-owner *Y* appropriates the profits without repudiating the title of another co-owner *X* to a share, *X* can recover his share of the profits received within six years before the suit, though he had not received the profits for over twelve years.[19] But a co-owner *X* who is excluded from possession by another co-owner *Y* claiming the whole property exclusively as his, and who does not receive his share of the profits for over twelve years, would lose his right to the property, though his name is recorded as a co-sharer in the revenue records.[20]

3. Joint Hindu family. Where a division in status is effected between members of a Hindu family, to a subsequent suit for partition by metes and bounds and for share of profits received by members after taking account Article 120 applies.[1] But where the rents and profits were received with the consent of all concerned, by the various members in possession pending a final settlement by division, each of such persons might be considered as agent for himself and his co-owners and Art. 89 would apply to such a case.[2]

Mitakshara family. So long as the Mitakshara family remain joint, no individual member is entitled to any definite share of the income or profits of the family property.[3] If a member of Dayabhag Hindu family is excluded from enjoyment of the property his suit against the others for his share of the profits will be governed by Art. 120.[4]

16. AIR 1962 Mysore 14 + AIR 1922 Mad. 150 + AIR 1951 Mad. 233 + AIR 1953 Mys 139.
17. AIR 1925 Oudh 515 = 11 Luck. 435 (DB).
18. AIR 1936 Mad. 654.
19. 32 All. 389 (DB).
20. 17 All. 423 = 1881 All. W N 107 (DB).
1. AIR 1922 Mad. 150 = 45 Mad. 648 (FB). (*Overruling* (1911) 2 Mad. W N 467).
2. AIR 1922 Mad. 150 = 45 Mad. 648 (FB).
3. 23 Bom. 144 (DB).
4. II R (1951) 2 Cal. 168.

4. Suit against trustee. Article 120 has been held applicable to suits for profits by *cestui que* trust against constructive trustees.[5] Where under an agreement the defendants were acting as trustees of the deity and making collections and spending for the deity till such time the rightful trustee was decided and on the trustees bringing a suit against the defendants for recovery of collections made. It was held that the defendants having been trustee *de son tort* could not be said to have wrongfully received the collections the suit would be governed by Art. 120 of the Limitation Act and not by Art. 109 thereof.[6]

5. Suits between mortgagor and usufructuary mortgagee. A suit by a mortgagor after the mortgage has been satisfied to recover surplus collections received by the mortgagee is governed by Art. 105 and not by this article.[7] But where the suit by the mortgagor does not fall under Art. 105, this article will apply.[8]

Void mortgage, suit by mortgagor. Where the mortgage is void or invalid against the plaintiff the possession of the property and receipt of profits by the mortgagee would be wrongful within the meaning of this article.[9]

Suit by mortgagee. A suit by the usufructuary mortgagee; who has been dispossessed by the mortgagor, for the profits received by the latter, will be governed by this article.[10] Similarly where the mortgagee was dispossessed by a person to whom the mortgagor had sold the mortgaged property, the mortgagee's suit for profits was held to be governed by this article.[11]

6. Suit between lessor and lessee. Where a lessee is wrongfully dispossessed by the lessor, a suit by the lessee for profits received by the lessor will be governed by this article.[12] But where the lessee has not been dispossessed because he has not been given possession at all in breach of the contract of lease, his suit for profits will be one for damages for breach of contract. Article 116 will apply if the lease deed is registered.[13]

7. Dispossession of plaintiff under decree or order subsequently set aside. Where the plaintiff is dispossessed by the defendant under a decree of Court and the same is subsequently set aside, the possession of the defendant pending the appeal must be considered to be wrongful and the receipt of profits by him a wrongful receipt.[14] Where possession is obtained by virtue of an order of the Court which afterwards is set aside the profits would be "Wrongfully received"

---

5. AIR 1924 All. 884 = 47 All. 17 (DB) + AIR 1950 Bom. 399 = ILR 1950 Bom. 678 (DB).
6. AIR 1963 Orissa 104.
7. AIR 1917 Oudh 200 = 20 Oudh Cas. 25 (DB) + 33 All. 244 (DB) + 4 Oudh Cas 355.
8. 1 Bom. L R 858 (DB).
9. AIR 1925 Bom. 325 = 49 Bom. 583 (DB) + AIR 1922 Cal. 235 (DB) + AIR 1926 Cal. 65 (DB) + AIR 1936 Mad. 778 = 59 Mad. 1020 (FB).
10. AIR 1917 All. 294 = 39 All. 200 (DB) (AIR 1917 All. 321. *Not approved*) + (1900) 2 Bom. L R 201 (DB).
11. AIR 1936 Rang. 80 (DB).
12. AIR 1924 Mad. 224 (DB).
13. AIR 1917 Mad. 987 (DB).
14. 25 Mad. 103 (FB) + 1950 Trav-Co. L R 631 (DB) + 5 Suth W R 125 (DB) + 2 N W P H C R 290 (DB).

within the meaning of this article[15] and a suit for mesne profits if not barred under Civil P.C. will be governed by this article.[16] Thus where *A* was dispossessed by *B* and he sued *B* to recover possession and obtained a decree for possession. The decree was reversed on appeal and the appellate decree was confirmed in second appeal. On appeal to the Privy Council the original decree was restored. *A* then filed a suit for recovery of the profits for the whole period of his dispossession. It was held that *A* could recover profits received only within three years prior to the suit.[17] Where *A* pursuant to his decree against *C*, brought the suit lands to sale in execution of the decree, purchased them in auction and obtained possession after dispossessing *B*, the former was a bona fide purchaser of those lands for consideration from *C*. *B* filed an application for restoration of possession and on its dismissal instituted a suit for setting aside that order. The suit was decreed and the decree was affirmed in appeal and second appeal. In a subsequent suit for mesne profits brought by *B* against *A*. It was held that *A's* possession being one under an order which was eventually set aside, *B's* suit was one for profits wrongfully received by *A* during the period he was in possession as a result of the order of the Court and was governed by Art. 109 and not by Art. 120.[18]

8. Suit by minor for profits. Where a minor is dispossessed of his properties during his minority, he can, within three years after attaining majority, sue for recovery of profits received by the defendant not only within three years prior to the suit, but for the whole period of his minority.[19] But where the justice of the case demanded that profits should not be allowed for more than three years, the Court refused to allow the profits for a period beyond three years of the institution of the suit. Thus where the minor on attaining majority challenged a *kobala* for which adequate consideration had been paid and minor had benefited from the consideration received by his mother, the Court set aside the *kobala* but did not allow profits beyond three years.[20] Similarly where the *shebait* of a Hindu *math* was dispossessed of the *math* property during his minority and he sued for possession and mesne profits within three years of his attaining majority, it was held that he was entitled to recover possession with mesne profits.[1]

Minor one of several claimants. Where a minor who is dispossessed of property during his minority is one of the several persons entitled to sue for mesne profits, and a discharge can be given without the concurrence of such minor, his claim for mesne profits beyond three years of the suit would be barred.[2]

---

15. AIR 1915 Mad. 1133 (DB) + AIR 1942 All. 358 = ILR 1942 All. 671 (DB). (Possession under purchase as Court auction sale) + AIR 1918 Cal. 360 (DB) + 35 Cal. 996 (DB).
16. AIR 1935 Mad. 731 + 1950 Trav-Co. L. R. 631 (DB) + AIR 1918 Cal. 360 (DB) + 35 Cal. 996 (DB).
17. 10 Cal 785 = 11 Ind. App. 88 (PC).
18. AIR 1962 Andhra Pradesh 152 (DB) + AIR 1915 Mad. 1133 + AIR 1918 Cal. 360 + AIR 1939 P.C. 178.
19. 33 Cal. 23 = 32 Ind. App. 181 (PC).
20. AIR 1964 Cal. 354 (DB).
1. 32 Cal. 129 = 31 Ind. App. 203 (PC) (Claim for mesne profits beyond three years of suit disallowed).
2. 1 Ind Cas. 670 (DB) (Cal).

Alienation by guardian of minor. Where the guardian of a minor has affected an alienation, the alienee is not liable for mesne profits until repudiation by the minor by suit.[3]

9. Claim for mesne profits in suits for possession. The claim for mesne profis, in a suit for recovery of possession, will be limited to the profits actually received within three years before the suit.[4] Where the plaint does not ask for mesne profits in the first instance, and is subsequently amended by a prayer to that effect, all the profits which had become barred on the date of the amendment, even though within three years before the date of the plaint, will be barred.[5]

Future profits. Where the plaintiff asks for profits *pendente lite*, and also future mesne profits from the date of the decree up to the delivery of possession, but the Court does not grant the same, a subsequent suit for those profits will be governed by this article.[6] Thus where the plaintiff filed in 1953 a suit for ejectment of the defendants from the suit land on the ground that they were yearly tenants and that the tenancy had been determined by a notice. A prayer for recovery of possession, arrears of rent and future mesne profits was also made. After a protracted litigation the suit resulted in a decree for possession and the claim for future mesne profits was left open for determination in a separate suit. This decree was confirmed in second appeal by the High Court in 1953 without any cross-objection being filed by the plaintiff. The plaintiff recovered possession of the land in 1953. Thereafter the plaintiff filed another suit claiming mesne profits from the date of the institution of the earlier suit till the date of delivery of possession on the ground that the defendants were in unlawful possession for the aforesaid period. It was held that on the allegations in the plaint the claim fell within the letter and spirit of Art. 109, Limitation Act and, therefore, Art, 120 which was a residuary article, could not be applied. The receipt of rents and profits by the defendants was wrongful from the outset notwithstanding the fact that a litigation was pending wherein the dispute to be decided as to the title to the very property with respect to which the rents and profits were claimed. A plaintiff in order to successfully recover profits due to him from a person in unlawful possession must institute the suit within the prescribed period in order to escape the bar of limitation and cannot wait till his title is declared or confirmed by the trial Court or by the highest Court of appeal.[7]

10. Application for ascertainment of mesne profits. Where pursuant to a decree awarding mesne profits a plaintiff filed an application for ascertainment of such profits the claim would not be limited to the profits received within three years before the date of the application, but will extend to three years before the date of suit.[8] The period of limitation for the application will commence to run

3. AIR 1926 Mad. 46 (DB).
4. AIR 1919 Cal. 167+AIR 1938 Cal. 563 (DB).
5. AIR 1931 Nag. 74=27 Nag. L. R. 291.
6. AIR 1927 All. 446=49 All. 565 (DB)+AIR 1932 All. 45 (DB)+32 Cal. 118 (DB)+14 Mad. 328 (DB).
7. AIR 1961 Andhra Pradesh 432 (DB)+AIR 1933 Lah. 615+AIR 1927 All. 446+AIR 1937 All. 481.
8. AIR 1921 Pat. 430 (DB).

only from the date of the final decree, and all the profits from three years prior to the suit up to the date of the final decree can be recovered.[9]

Future mesne profits. Where a decree grants future mesne profits, but is silent as to the period for which it can be claimed, the decree holder is entitled to mesne profits only for three years from the date of the decree, even if the delivery of possession is made after three years.[10]

Applicant advised by Court to file suit for ascertainment of profits. Where an applicant for mesne profits is wrongly referred to a fresh suit, on the ground that the profits claimed were beyond the pecuniary jurisdiction of the Court passing the decree for possession, any fresh suit for the same will be treated as a continuation of the first suit, and this article will not apply to such a claim.[11]

11. Application for profits in insolvency proceedings. Where in an application by the official Receiver under S. 54, Provincial Insolvency Act, a transfer by an insolvent prior to the adjudication was set aside, a subsequent application by the Receiver for mesne profits against the transferee was not barred by *res judicata* and the Receiver was entitled to mesne profits for three years prior to the date of application for the same.[12] Similarly where a mortgage by the insolvent was annulled by the insolvency Court and the Official Assignee applied under S. 7 of the said Act for recovery of rents and profits from the mortgagee; it was held that he could not recover such profits for more than three years immediately preceding the application.[13]

12. "Profits". Profits mean net gains obtained by a person. Where the property is burdened with certain payments they must be deducted before the profits are ascertained.[14] Where the land has yielded produce or fruits, the "profits" will mean the actual price thereof less the costs of collection and other expenses.[15]

Profits by wrongful act. The term "profits" includes the value of trees cut down wrongfully by the person in possession.[16] Similarly a suit for compensation for loss caused by the defendants obstructing the right of fishery of the plaintiff, is a suit for mesne profits.[17]

Damages for trespass. Suits for damages for trespass upon immovable property governed by Art. 39 will not be suits for profits.[18] Where interference with the plaintiff's possession is by way of valid or regular order of Court, the only action which lies is one of trespass and not trespass simpliciter, and it is necessary to prove malice before the plaintiff can recover damages. By merely avoiding the word "damages" and using the words "loss of profits" the plaintiff cannot make his

9. 23 All. 152 = 27 Ind. App. 209 (PC).
10. 24 Bom. 149 (DB) + AIR 1915 Mad. 226 (DB).
11. AIR 1925 Cal. 1076 = 53 Cal. 14 (FB).
12. AIR 1946 Mad. 207 (DB)
13. AIR 1936 Mad. 778 = 59 Mad. 1020 (FB).
14. 17 Suth W. R. 208 (DB).
15. AIR 1921 Pat. 102 (DB) + AIR 1924 Oudh 319.
16. 4 Oudh Cas. 355.
17. 17 Suth W. R. 360 (DB).
18. 25 Mad. 103 (FB)

position any better. Where the essence of the action is the malicious abuse of the process of the Court, it cannot be ignored by merely framing the suit as one for loss of profits on ground of trespass alone, under Art. 109.[19] Rents or payments in money received by a trespasser from the tenant will be included in the term "profits".[20]

Rent, suit for. Where the defendant is the tenant, and the tenancy is admitted by the landlord, a suit by the landlord will not be for "profits" but for arrears of rent, to which Art. 110 will apply.[1]

13. "Belonging to the plaintiff." The words "belonging to" have been construed as qualifying the word "profits".[2]

Property. Possessory right of a lessee is included in the term "property".[3] Similarly the right of a usufructuary mortgagee to possession of the mortgaged property has been held to be included in term "property" in this article.[4]

Co-owners, right of, to profits. One co-owner alone can sue the trespasser for profits, and can recover the whole of the profits, without making the other co-owners parties.[5]

Property in possession of trespasser. Where *A*, the owner of property which is in the wrongful possession of *X* sells the property to *B*, in the absence of a contract to the contrary under S. 55, Cl. 4 (a) of the T.P. Act, *A* will be entitled to the rents and profits until the ownership passes to *B*, and after the sale, *B* cannot recover the profits that accrued before the date of sale, from *X*; but even after the sale, *A* will be entitled to recover from *X* those profits.[6] Where *A* the owner of property which is in the wrongful possession of *X*, first obtains a decree for possession against *X* and then transfers his interest to *B*, *B's* suit for profits subsequent to the sale will not be barred, if the decree is alive on the date of suit, and *B* can recover under this article the profits received within three years before the suit.[7]

14. Starting point of limitation. Under this Article limitation does not start unless a cause of action has arisen to party.[8] Therefore in a case for recovery of profits time runs from the date when the profits are received.[9] Notwithstanding the fact that the cause of action for the suit may arise subsequently.[10] Therefore where the defendant began to wrongfully receive the profits of certain property in

19. AIR 1956 Trav-Co. 222 (DB).
20. 11 Cal. W. R. 862 (DB)+AIR 1922 Cal. 235 (DB)+AIR 1921 Bom. 37 (DB)+AIR 1923 Bom. 478 (DB).
1. AIR 1926 Nag. 212.
2. 1 Bom. L. R. 858.
3. AIR 1924 Mad. 224 (DB).
4. AIR 1917 All. 294=39 All. 200 (DB).
5. AIR 1927 Nag. 9.
6. AIR 1929 Bom. 51 (DB).
7. 14 Ind. Cas. 801 (Low Bur).
8. 1984 CLC 2314 (DB).
9. 21 Cal. 157=20 Ind. App. 155 (PC)+ILR 1957 Bom. 829.
10. AIR 1938 Bom. 158=ILR 1938 Bom. 107 (DB)+AIR 1926 Cal. 65 (DB)+AIR 1933 Lah. 615+AIR 1935 Mad. 731 (DB)+AIR 1937 All. 481=ILR 1937 All. 628 (DB)+35 Cal. 996 (DB).

1916 and the plaintiff sued only for possession and, after obtaining a decree for possession against defendant in 1929, sued him in 1932 for mesne profits from 1916 to 1929, it was held that the suit was barred by time.[11]

Crops. The date of receipt of the profits in the case of crops will be the date when the defendant actually cut and appropriated the crops.[12]

Negotiations to settle dispute. Where the defendant (Land Acquisition Authority) took possession in 1952 but negotiations were begun to settle dispute over the compensation including mesne profits payable to the plaintiff. The negotiations failed in February, 1964. Limitation for suit for compensation and mesne profits would begin from date of failure of negotiations *i.e.*, February, 1964. Therefore suit filed in May, 1964 was in time.[13]

110. For arrears of rent.	[14][Three years].	When the arrears become due.

1. Suit for rent.
2. Suit between persons not landlord and tenant.
3. Tenancy by sufferance.
4. Suit for rent due under registered instrument.
5. Lease by usufructuary mortgagee.
6. Suit for rent against sureties of lessee.
7. Starting point of limitation.
8. Acknowledgment of liability.
9. Suit by minor landlord after attaining majority.

1. Suit for rent. For the application of this Article it is necessary that the relationship between plaintiff and defendant must be that of landlord and tenant.[15] A relationship of landlord and tenant may and generally does arise from express or implied contract between the parties,[16] but it may also arise by mere occupation of property.[17]

Government party to suit. Article 110 applies to the Government as much as to any other citizen unless of course, its application is excluded under some other law, partly or wholly.[18]

Use and occupation, suit for. A suit for damages for use and occupation against a person who does not stand in the relationship of a tenant to the plaintiff, is not a suit for rent and is not governed by this article.[19]

---

11. AIR 1937 All. 481 = ILR 1937 All. 628 (DB).
12. AIR 1914 Nag. 65 = 10 Nag. L. R. 76 + 10 Cal. L. Jour 226 (DB).
13. NLR 1984 UC 5 (DB).
14. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
15. 5 Cal. L. R. 62 (DB) + AIR 1952 All. 344 + AIR 1945 Mad. 20. (No relationship of landlord and tenant--Amount claimed not rent--Art. 110 does not apply) + AIR 1917 Mad. 901 = 39 Mad. 54 (DB).
16. AIR 1917 Mad. 901 = 39 Mad. 54 (DB) + AIR 1942 Cal. 222 = ILR (1941) 1 Cal. 335 (DB).
17. AIR 1929 Cal. 90 (DB) + 1 Ind Cas. 312 (DB) (Cal.).
18. PLD 1984 Kar. 28 (DB).
19. AIR 1939 Cal. 468 + AIR 1952 All. 344 + 25 Bom. 556 (DB) + 26 Mad. 730 (DB) + 16 Mad. 305 (DB) + 23 Cal. 799 (DB).

Suit for breach of contract. Where *A* the lessee contracts with *B* the lessor that he will pay a particular amount to *B's* superior holder and fails to pay it, a suit by *B* to recover such amount would be one not for rent but for damages for a breach of contract.[20] Where there is an adjustment between the lessor and the lessee fixing a certain amount due for rent and the lessee undertakes to pay it to a superior proprietor of the lessor, the amount ceases to be rent from the time of the adjustment.[1]

Instances of rent. The following are instances of rent:

(*a*) Share of produce to be given to the landlord.[2]

(*b*) The amount payable by the defendant on settlement by auction of certain date and palm trees, for taking the juice from them for a season.[3]

(*c*) Customary dues payable to ground landlords under *wajib-ul-arz*, on the occasion of marriages.[4]

Instances of payment which are not rent. The following are some of the instances of payments not made as rent:-

(*a*) Amount due to the proprietors of a canal, as water hire from the owner of land watered by that canal, according to the terms agreed between them.[5]

(*b*) The minimum royalty reserved by the landlord in the case of a mining lease though the additional sum to be paid by the lessee on each maund of coal raised will be 'commission' and not rent.[6]

(*c*) The fee charged by a municipality under the provisions of a statute for issuing permission to use Municipal land for temporary purposes.[7]

(*d*) Amount due by one co-owner to another in respect of rents collected by the former from the tenants.[8]

2. Suit between persons not landlord and tenant. For the application of this Article it is necessary that the relationship between plaintiff and defendant must be that of landlord and tenant.[9] Therefore a suit by one co-sharer against another for recovering his share of the rents received by another will not be governed by

20. 33 Cal. 140 = 33 Ind. App. 30 (PC).
1. AIR 1915 Cal. 570 (DB).
2 AIR 1932 All. 149 = 54 All. 89 (DB) + 21 Suth W. R. 124 (DB).
3. AIR 1936 Pat. 403 = 15 Pat. 626 (DB).
4. AIR 1927 Lah. 639.
5. 1883 Pun. Re. No. 171, p. 533.
6. AIR 1916 P. C. 182 = 44 Cal. 759 = 44 Ind. App. 65.
7. AIR 1936 Sind 184 = 30 Sind L R 146 (DB).
8. AIR 1921 Cal. 77 (DB).
9. 5 Cal. L. R. 62 (DB) + AIR 1952 All. 344 + AIR 1945 Mad. 20 + AIR 1917 Mad. 901 = 39 Mad. 54 (DB).

this article.[10] Similarly the liability of the *lambardar* to the co-sharer for rents not collected by him owing to his negligence is not a claim for arrears of rent.[11]

3. Tenancy by sufferance. A tenant holding over after the expiry of the term of the lease does not continue the relationship of landlord and tenant between the parties. Therefore a claim by the lessor against the tenant holding over would not be one for rent but merely one for damages for use and occupation and a suit for the same would not be governed by this article.[12] But where the possession of the tenant after the expiry of the lease is assented to by the landlord by acceptance of rent or otherwise, the relationship between them is that of a landlord and tenant, and a suit by the former against the latter will be one for rent.[13]

Non-payment of rent without bringing tenancy to an end. The mere non-payment of rent in the absence of the lessor's intention to determine the tenancy does not determine the tenancy and the lessor is entitled to recover rent for three years immediately preceding the suit.[14] But a suit for rent for any period prior to three years would be barred by limitation.[15]

4. Suit for rent due under registered instrument. A suit for rent due under a registered instrument is governed by Article 116 and not by this article.[16] A suit by the lessor to recover rent from the assignee of the lessee under a registered instrument will be governed by Art. 116.[17] But where a registered *patta* tendered by the landlord is not accepted by the tenant, a suit by the landlord for rent will not be governed by Art. 116, but by this Article.[18]

Rent due under Local or Special Act. Where a local or special law prescribed a special period of limitation for suits for arrears of rent, that special period will govern such suits even if the contract of lease is registered, Art. 116 cannot be applied to them.[19] But where the special Act has no application and the lease is registered Art. 116 would apply.[20]

5. Lease by usufructuary mortgagee. Where a usufructuary mortgagee leases back the mortgaged property to the mortgagor himself for a certain rent, a claim for the rent is not a claim for interest on the mortgage and is governed by the three years period of limitation.[1] Where a usufructuary mortgagee leased out the property to the mortgagor for two years and the lease amount was made a charge on the mortgaged property. The mortgagor held over after the expiry of the two years, and became in law a tenant from year to year by reason of the

10. AIR 1924 All. 481 = 46 All. 791 (FB).
11. AIR 1928 All. 762 + AIR 1922 Oudh 149 = 25 Oudh Cas. 49 + AIR 1924 All. 613 (DB).
12. AIR 1917 Mad. 901 = 39 Mad. 54 (DB) + AIR 1946 All. 447.
13. PLD 1970 Pesh. 146 (DB) + AIR 1934 Mad. 458 = 58 Mad. 75 (DB) + AIR 1949 Mad. 421.
14. PLD 1982 Kar. 121 + AIR 1941 Lah. 248 = ILR 1942 Lah. 252 (DB).
15. PLD 1982 Kar. 121.
16. AIR 1916 P.C. 182 = 44 Cal. 759 = 44 Ind. App. 65 + AIR 1951 Cal. 251 = ILR (1950) 2 Cal. 352 (DB). (AIR 1920 Mad. 380 and 6 Ind. Cas. 766 (Mad.) *Foll.*) + AIR 1947 Mad. 274.
17. AIR 1920 Mad. 380 (DB).
18. 13 Mad. L. Jour 485 (DB).
19. 19 Cal. 1 (DB).
20. AIR 1937 Cal. 587 = ILR (1937) 2 Cal. 631 (DB) + (1900) 2 Cal. 203 (DB) + AIR 1916 Mad. 667 = 30 Mad. 101 (DB).
1. 1901 All. W. N. 109 (DB) + 23 All. 338 (DB).

mortgagee having accepted rent from him. It was held that the rent due under the tenancy by holding over could not be considered to be a charge on the property and that a suit for recovery of more than three years' rent was barred.[2] But where the property leased back to the mortgagor also carries a burden of interest and the mortgagee sues the mortgagor for interest and not for rent, the suit will not be governed by this Article. This where *A* made a usufructuary mortgage of his property *X* to *B* in 1896 and by a document of even date took back a lease of the same from *B*. In 1903, *A* further created a usufructuary mortgage in favour of *B* of property *X* and property *Y* and the document expressly made the mortgaged properties *X* and *Y* liable both for principal and interest. In 1912, *B* sued for the principal and interest on both the mortgages. It was held that *B* was entitled to recover interest irrespective of the fact that *X* had been leased to *A* and that the claim to recover interest by the sale of the properties was governed by Art. 132.[3]

Redemption of mortgage, suit for rent against lessee. Where a usufructuary mortgagee leases out the mortgaged property to a third party and the mortgage is subsequently redeemed by the mortgagor, the lessee's right will also cease. After redemption a suit by the mortgagor against the third party for rent is not sustainable.[4]

6. Suit for rent against sureties of lessee. The starting point of limitation for a suit by the lessor, for arrears of rent, against the sureties for the lessee will be the date of default of the lessee.[5] But where the lease is for a fixed term, the surety for the lessee will not be liable for the rent accruing due after the expiry of the lease, if the lessee continues in possession thereafter.[6]

7. Starting point of limitation. Limitation for a suit for rent begins to run from the date when arrears of rent become due. The word "due" has the connotation of something legally demandable and accordingly it is from the date of the accrual of the cause of action that time begins to run. Consequently the word "due" in Article 110 of the Limitation Act, 1908 means the date on which the cause of action arises for the filing of the suit for the recovery of the arrears of rent and till then limitation remains suspended.[7]

Arrears of rent. Rent will become an "arrears" when it is not paid until the close of the day on which it falls due.[8] Where by the terms of the contract, rent is payable in a particular month, it will not become an "arrears" till the end of the month and time for recovery of the arrear will run from the end of the month.[9] But where by a long course of dealing between the parties rents were received by the landlord, not on the date mentioned in the *kabuliyat* but on a later date it was held that the later date was the date on which the rent became due.[10]

2. AIR 1934 Mad. 458 = 58 Mad. 75 (DB).
3. AIR 1916 Mad. 78 (DB).
4. 2 N W P H C R 199 (DB).
5. 9 Bom. 320 (DB).
6. 1901 Pun L R No. 126, p. 500.
7. PLD 1972 Karachi. 273 = Law Notes 1972 (NUC) Kar. 205 (DB).
8. 6 Cal. 325 (FB) + AIR 1925 Pat. 750 (DB) + AIR 1926 Pat. 549 (DB).
9. 28 Mad. 540 (DB) + 6 Sau L. R. 383.
10. AIR 1925 Cal. 1148 (DB).

Date of ascertainment of rent. The expression "arrears of rent" means arrears of ascertained rent which the tenant is under an obligation to pay, and which the landlord can claim and, if necessary, sue for.[11] Where a usufructuary mortgagee leases out the mortgaged property to a third party and the mortgage is subsequently redeemed by the mortgagor, the lessee's right will also cease. After redemption a suit by the mortgagor against the third party for rent is not sustainable.[12] The defendant was the tenant of certain premises at the agreed rent of Rs. 200 P.M. On 3-3-1953 the Rent Controller fixed the standard rent at Rs. 199-10.0 P.M. On 3-7-1956, the plaintiff landlord instituted a suit claiming arrears of rent. It was held that the suit so far as it sought to enforce the contractual obligation to pay rent for the period prior to 1953 was barred by limitation in view of Art. 110.[13] Where a landlord's application dated 8-12-1948 for fixation of fair rent of the premises leased to the defendant was rejected by the Rent Controller but on appeal by an order dated 30-9-1953 the agreed rent was enhanced and fixed at Rs. 75 with effect from the date of application. The landlord filed a suit on 21-3-1956 claiming the difference between the agreed rent and fair rent for the period between 8-12-1948 and 21-3-1956. The defence was that the claim was barred by time. It was held that until the fair rent was fixed on 30-9-53 on appeal, it was not open to the landlord to have claimed any enhanced rent or to have instituted any suit for the difference claimed. Therefore, the right to sue for recovery of arrears of rent at the enhanced rate accrued only after the fair rent was fixed in appeal on 30-9-1953. Hence the suit claim was not barred by the three years limitation in Art. 110, Limitation Act.[14]

Liability to pay rent re-emerging after satisfaction. Where a claim for rent has been satisfied by a sale but the sale is set aside and the liability emerges again, limitation will start from the date of re-emergence of liability. Thus where a *patni* is sold for arrears of rent, the claim for arrears is satisfied by such sale. If the sale is subsequently set aside, and the *patnidar* is restored to possession, the claim is revived as from the date of the *patnidar* being so restored to possession and such date will be deemed to be the date on which the arrears become due.[15]

8. Acknowledgment of liability. An acknowledgment of liability to pay arrears of rent will extend the period of limitation by three years from the date of acknowledgment.[16] Even where on the date of the defendant's acknowledgment the claim for the rent has become barred under this article, but the acknowledgment in writing contains an express promise to pay the rent, it will be a valid contract under S. 25 of the Contract Act, and the amount can be recovered on the basis of such contract.[17]

9. Suit by minor landlord after attaining majority. Ordinarily where a usufructuary mortgagee leased out the property to the mortgagor for two years. The lease amount was made a charge on the mortgaged property. The mortgagor held over after the expiry of two years, and became in law a tenant from year to

11. 27 Mad. 143 : 31 Ind App. 17 (PC).
12. 2 N.W.P.H.C.R. 199 (DB).
13. AIR 1958 Cal. 264 : AIR 1963 Cal. 531 (DB).
14. AIR 1963 Mysore 112 : AIR 1924 Cal. 600 : AIR 1923 Mad. 461 : ILR 27 Mad. 143 (PC).
15. AIR 1942 Cal. 222 : ILR (1941) 2 Cal. 335 (DB).
16. 22 Mad. 32 (DB) : AIR 1916 Mad. 638 (DB).
17. 25 Mad. 94 (DB).

year by reason of the mortgagee having accepted rent from him. It was held that the rent due under the tenancy by holding over could not be considered to be a charge on the property and that a suit for recovery of more than three years' rent was barred.[18] But where a minor is co-owner of the property with an adult, and the latter can give a valid discharge for the rent, he can, in a suit filed by him after attaining majority for arrears of rent from the tenant, recover only arrears of rent accruing due within three years before the suit.[19]

Recovery barred by special enactment. Arrears of rent barred under a special enactment cannot be recovered even if the same had accrued due during the minority of the landlord.[20]

111.	By a vendor of immovable property for personal payment of unpaid purchase-money.	[1][Three years]	The time fixed for completing the sale, or (where title is accepted after the time fixed for completion) the date of the acceptance.

Synopsis

1. Scope.
2. Enforcement of charge under S.55 (4), T.P.Act.
3. Registered deed, claim under.

1. Scope. This article governs suits for unpaid purchase money payable to or to the order of the vendor under an agreement to sell and is independent of rights arising by the deed of sale.[2] This Article does not apply where on partition between joint owners, as part of adjustment in allotting shares, one joint owner promises to pay money to another. A suit by latter for recovery of the amount is not governed by Article 111.[3] Similarly where *A* as guardian of *B* sold property to *C* who undertook to keep the purchase money in trust for *B*. *B* subsequently died leaving *A* as his next reversioner. A suit by *A* for recovery of amount is not governed by Article 111.[4]

2. Enforcement of charge under S. 55 (4), T.P. Act. A suit by a vendor to enforce a charge under S. 55 (4) (*b*) of the Transfer of Property Act is not governed by Article 111 but by Article 132 and the remedy is available even though personal remedy for unpaid purchase money is barred by limitation.[5]

18. AIR 1934 Mad. 458 = 58 Mad. 75 (DB).
19. 1893 Pun Re No. 60, p. 271.
20. AIR 1915 Mad. 1211 = 39 Mad. 646*n* (DB).
1. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
2. AIR 1933 Mad. 424 = 56 Mad. 724.
3. AIR 1928 Lah. 662.
4. AIR 1933 Lah. 860 = 15 Lah. 35 (DB).
5. AIR 1914 All. 131 + 30 All. 172 (FB).

3. Registered deed, claim under. A suit to enforce the personal remedy, in which the right arises in respect of an express stipulation in a registered sale deed will be governed by Article 116 and not by this article.[6]

112.	For a call by a company registered under any Statute or Act.	[7][Three years]	When the call is payable.

Synopsis

1. Calls for contribution after winding up of company.
2. Special contract as to calls.
3. Suit for dividend by share-holder.
4. Starting point of limitation.

1. Calls for contribution after winding up of company. After the winding up of a company the liability to pay the call is *ex lege* and not *ex contractu*.[8] Therefore after a company is wound up, to a suit by the liquidator to enforce member's liability to contribute to assets of the company up to the amount sufficient for payment of the debts, Article 112 does not apply even if "call" had been made on defendant before the winding up.[9] The fact that a call made before the winding up is time-barred is immaterial.[10] To such suits Art.120 applies.[11]

2. Special contract as to calls. A suit to enforce share-holder's liability under a special contract such as that referred to in Regulation XXVII of Table A annexed to the Companies Act, to pay the amount of and calls which are due and owing at the time of the forfeiture of his shares is governed by Article 115 of this Act.[12]

3. Suit for dividend by share-holder. A suit by a share-holder against the company for the dividend declared on his share is not governed by Article 112.[13]

4. Starting point of limitation. Time runs from the date when the call is payable.[14] Thus where the sum called is payable on allotment of shares, and by the

---

6. AIR 1916 P.C. 182=44 Cal. 759=44 Ind. App. 65+1933 P.C. 143=11 Rang. 186=66 Ind App. 183 (*Confirming* AIR 1931 Rang. 139+AIR 1935 All. 411=57 All. 797 (DB)+AIR 1941 Pat. 452+AIR 1929 Lah. 395+AIR 1934 Oudh 240=10 Luck. 26 (DB)+AIR 1931 Bom. 365+AIR 1934 Lah. 296+AIR 1937 Pat. 44=15 Pat. 753.
7. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
8. AIR 1961 Punjab 190.
9. AIR 1962 Punjab 526+AIR 1963 Mys. 61+10 Bom. 483+1957 M.P.L.J. 77 (Nag) (AIR 1956 Nag. 204. 20 Bom. 654 and 31 Mad. 66. *Rel. on*)+1903 Pun Re No. 74. p. 298 (DB)+31 Mad. 66 (DB)+AIR 1934 Lah. 1015+AIR 1928 All. 272=50 All. 476+AIR 1931 Pat. 44=10 Pat. 249 (DB).
10. AIR 1962 Punjab 190+AIR 1950 Bom. 386+AIR 1932 P.C. 240+AIR 1931 Pat. 44. *Rel. on*).
11. AIR 1963 Mys. 61.
12. AIR 1940 Nag. 235=ILR 1942 Nag. 114+AIR 1959 Punj. 328=ILR 1958 Punj. 2356+AIR 1932 All. 342=54 All. 541 (DB)+AIR 1928 Bom. 252=52 Bom. 477 (DB)+AIR 1933 Oudh 285=8 Luck 723 (DB).
13. AIR 1926 Mad. 615=49 Mad. 468 (FB) (AIR 1919 Mad. 646. *Overruled*).
14. AIR 1932 Cal. 382 (DB)+AIR 1934 Bom. 97 (DB)+AIR 1927 Lah. 543.

Article of Association, the money becomes due on the inscription of the defendants's name as the holder of such shares, time will run from the date of such inscription.[15]

113.	For specific performance of a contract.	[16][Three years]	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

Synopsis

1. Specific performance of contract.
2. Suit for possession and suit for specific performance.
3. Suit to enforce condition subsequent.
4. Suit to enforce an award.
5. Starting point of limitation.
6. "Performance is refused."
7. Defence to a suit for specific performance.

1. Specific performance of contract. A contract primarily means a transaction which creates and regulates the personal obligations and duties of the promisor.[17] Where there is a contract in existence at the time of suit, a suit not barred by limitation is competent notwithstanding the fact that it refers to some earlier transactions also. Thus where a suit was brought in 1900 against the defendant for possession of village on payment to him for such sum as might be found due. The plaint alleged that the villages had been purchased by the defendant in 1883, as *benamidar* for the plaintiff's father (deceased) and that in 1888 he had contracted to convey them to the plaintiff upon payment of a sum then found due. The contract of 1888 was expressed to be for a "sale" of the villages to the plaintiff. It was held that whatever was the original nature of the purchase in 1883 the suit became one for specific performance of contract which was barred by Art. 113.[18] Where there is a provision in a partition deed that if inequality in shares is discovered subsequently the person having excess is bound to make good the deficit in the other share. A suit for recovery of possession on the strength of the above clause is one for specific performance and is governed by Art. 113.[19] Where a deed of gift said that the donor would be entitled to "half of the income accruing from the property in question", the donee is under no obligation to collect and pay the income to the donor, who has as much right to collect his share of the income as the donees themselves. The suit by the donor to recover his share of income is not governed by Art.120. Article 100 or 113 would apply to the case, the cause of action being a breach of contract.[20] A suit for

15. 17 Bom. 469 (DB) + 17 Bom. 472 (DB).
16. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
17. AIR 1918 P.C. 85 = 46 Cal. 173 = 45 Ind App 162.
18. AIR 1922 P. C. 345 = 49 Ind. App. 335 = 45 Mad. 641 (AIR 1917 Mad. 773, *Reversed*).
19. AIR 1935 Mad. 559.
20. AIR 1957 Assam 10 = ILR 1956 8 Assam 300 (DB).

enforcement of an agreement of lease and for causes of action based on contracts entered into between K.M.C. and other persons are governed by Article 113 of the Limitation Act, which provides a period of three years for enforcing the specific performance of a contract and limitation runs from the date when any party has notice that performance is refused.[1] A suit for specific performance of a contract of sale of property instituted after the Sub-Registrar had refused registration of the sale deed is not a suit under section 77, Registration Act, and the period of limitation for such a suit is 3 years under Article 113, Limitation Act, inasmuch as the relief asked for was against the defendant directing him to have the sale-deed registered.[2]

No contract in existence. Article 113 presupposes the existence of a concluded and finalised contract between the plaintiff and the defendant, the performance of which has been refused by the defendant and of which the plaintiff has notice.[3] Where there is no contract in existence, a suit for specific performance cannot lie and this Article is not applicable to any suit other than one for specific performance of a contract. Thus a suit by an advocate for fees due to him is not a suit for specific performance of contract and Art. 84 and not Art. 113 applies to it.[4] Where a partition deed in unambiguous terms declared the substantive rights of the plaintiffs' branch and the defendants' branch each to a moiety in the suit properties and the provision was made only for postponement of division by metes and bounds till after the death of one of the parties to the agreement. It was held, that the suit to work out the rights declared under the partition deed could in no sense be described as a suit for specific performance of a contract.[5] Where *A* purchased agricultural land from Government but sale was cancelled by superior Revenue Officer. A suit was filed for possession of land by *A* against the Government. It was held that the order cancelling the sale being a barrier to plamiff's obtaining the relief prayed for, the suit could not be regarded as one for specific performance falling under Art.113. Art. 14 was applicable.[6] A suit to enforce a promise to pay subscription to start a college, is not a suit for specific performance of a contract governed by Art. 113. It is a suit for the enforcement of a promise which becomes enforceable when the construction of the college building commences on the faith of such promise. As there is no specific article governing the suit, the residuary article namely Art. 120 of the Act applies to the case.[7]

Suit for compensation for breach of contract. A suit for specific performance of a contract is not one for compensation for the breach of the contract within the meaning of Art. 115 or Art. 116,[8] and a suit for compensation for breach of a contract is not one for the specific performance of the contract; such a suit would

1. PLD 1961 Karachi 599.
2. PLD 1955 Peshawar 48.
3. PLD 1977 Kar. 377 = PLJ 1977 Kar. 248 (DB).
4. AIR 1947 Mad. 457.
5. AIR 1956 Mad. 405 = ILR 1956 Mad. 1116 (DB).
6. AIR 1944 Sind 44 = ILR 1943 Kar. 404.
7. AIR 1964 Kerala 265 (DB).
8. ILR (1952) 1 Cal. 27. (Suit for specific performance of registered contract is not suit for compensation).

be governed by Article 115 or by Art. 116 according as the contract is unregistered or registered.[9]

Parties to suit. Where a person who was a necessary party to a suit for specific performance of a contract is not impleaded as a party to the suit, and suit for specific performance is barred against him, his claim cannot be subsequently defeated on other grounds. Thus where *A* brought a suit to enforce the contract for sale in his favour against the vendor. When the suit was pending *B* brought his suit for redemption on the basis of purchase from the original mortgagor and filed his written statement in the suit. In spite of this *A* did not make *B* a party to his suit. He chose to proceed against the vendor and obtained an *'ex parte'* decree by which a sale deed was executed in favour of *A*. It was held that as it was open to *A* to ask for specific performance against *B* who was a subsequent purchaser with notice of the prior contract in favour of *A* along with the original vendor, he could not later on say that he was entitled to defeat the claim of *B* either on the doctrine of *'lis pendens'* or on the principle embodied in S. 91 of the Trusts Act at a time when any claim for specific performance against *B* was barred.[10]

2. Suit for possession and suit for specific performance. A suit for the specific performance of a contract wherein possession is claimed as a relief, is based on an agreement whereby the defendant agrees to complete the title of the plaintiff to the subject-matter.[11] Where the suit is for specific performance of a contract, it is this article that will apply even where possession is asked for as part of the specific performance.[12]

Suit for possession alone. One view is that where the plaintiff, instead of bringing a suit for specific performance of the contract, institutes a suit for possession, his suit will fail for want of title to the suit property.[13] But the other view is that where a contract for lease has been executed under which the lessee is entitled to be put in possession of the land leased but he is not put in possession, and he sues for possession under his lease, the suit is really one for specific performance of the contract and Article 113 would apply.[14]

This article will not apply where the suit is merely for possession of property based on title.[15] Thus where a suit for possession is barred on a registered lease deed, Art. 144 would apply.[16] Where title is not clear and a suit for possession is

9. AIR 1940 Pat. 155 (DB)+AIR 1950 Ker. 366+AIR Madh B 91=ILR 1952 Madh 322 (DB). (Suit for damages for breach of contract of marriage--Art. 115 applies)+31 Mad. 452 (DB)+31 Mad. 452 (DB)+AIR 1919 Mad. 849 (DB)+AIR 1917 Mad. 164=1917 Pun Re No. 51 (DB).
10. 34 Pat. 156.
11. 6 All. 231 (DB).
12. AIR 1940 Lah. 225. (Suit by lessee against lessor for specific performance by delivery of possession--Art. 113 applied--*See* however AIR 1938 All. 429 where it was held that a lessee who has not been given possession can sue for possession on the basis of title)+6 All. 231 (DB)+AIR 1921 Oudh 248 (DB)+11 Ind. Cas. 25 (DB) (Sind)+AIR 1916 Low. Bur 73+AIR 1916 Low Bur 104+AIR 1932 Lah. 24.
13. 6 All. 231 (DB)+AIR 1929 Nag. 298.
14. PLD 1969 Azad J & K 32.
15. 1 Ind App. 157 (PC)+AIR 1938 All. 429. *Foll.*+AIR 1960 Mys. 193+AIR 1938 All. 429=ILR 1938 All. 664 (DB). (*Reversing* AIR 1935 All. 569).
16. PLD 1960 A. J & K 32.

brought this Article does not apply. Where in a suit for specific performance the plaintiff alleged that the Barrage *Mukhtiarkar* sold the land to him and received part payment but the Revenue Officer cancelled the sale and a suit was brought after 12 months of this order. It was held that it was not open to the plaintiff to bring a suit for possession in the form of a suit for specific performance without asking for a relief which was a condition precedent to the grant of the relief prayed for. The order of the Revenue Officer cancelling the sale stood as a barrier to his possession of the land and if the plaintiff did not sue to set aside that order, his suit must be dismissed. The suit was therefore governed by Art, 14.[17]

3. Suit to enforce condition subsequent. Where the parties to an exchange covenant specifically agree that in the event of deprivation of any part of the property exchanged each should return to the other what is taken, the contract is in the nature of a condition subsequent,[18] and a suit to enforce a condition subsequent is not governed by this article but by Article 143.[19] But where a contract in a deed of exchange between *A* and *B* provides that *A* is deprived of any part of the property taken by him, *B* should make good the loss by a return of a portion of the property transferred to him equal in value to that of which *A* was deprived, the contract is not a condition subsequent and a suit to enforce it is one for specific performance of the contract governed by this article.[20]

4. Suit to enforce an award. Although an award springs from an agreement it is not itself a contract and a suit to enforce an award is not a suit for specific performance of any contract.[1]

5. Starting point of limitation. Where a case falls within the first clause of the third column of this article, the second clause should not be resorted to.[2] Limitation, under the first part of the third column begins to run from the date fixed for the performance of the contract.[3] The "date fixed' means the date fixed expressly by the parties,[4] or a date that can be fixed with reference to a future event which is certain to happen, on the principle *certum est quod certum redei potest*.[5] Where the agreement of conveyance is subject to issue of P.T.D. in favour

17. AIR 1944 Sind 44 = ILR 1943 Kar. 404 (DB).
18. AIR 1920 Mad. 812 = 42 Mad. 690 (DB).
19. 30 Mad. 316 (DB). (Treated as overruled by AIR 1918 P.C. 151 and in AIR 1920 Mad. 634 on another point) + AIR 1920 Mad. 812 = 42 Mad. 690 (DB).
20. 9 Mad. L. Jour 137 (DB) + 11 All. 28 (FB).
1. AIR 1921 Bom. 519 = 19 Bom. 693 (DB) + 33 Cal. 881 (DB) + AIR 1919 Cal. 452 (DB) + AIR 1916 Lah. 163 = 1915 Pun Re No. 102 (DB) + 16 Ind. Cas. 804 = 1913 Pun Re No. 32 (DB) + 23 All. 285 (DB) + AIR 1922 All. 410 (DB) + 23 Mad. 593 (DB) + AIR 1924 Mad. 485 (DB) + AIR 1917 Oudh 126 = 7 Oudh Cas. 369 + 2 Upp Bur Rul 293 + AIR 1919 Upp Bur 25 = 3 Upp Bur Rul 109.
2. PLD 1983 SC 344 = NLR 1983 CLJ 529 = PLJ 1983 SC 501 + AIR 1930 Lah. 1020 (DB).
3. 1986 CLC 1887 + PLD 1985 Kar. 674 + AIR 1940 Lah. 225 + AIR 1918 Pat. 630 + 71 Ind. Cas. 968 (Pesh.).
4. PLD 1963 Kar 786 (DB) + AIR 1933 All. 410 (DB).
5. AIR 1918 Mad. 492 = 41 Mad. 18 (DB) + AIR 1954 Mys. 29 = ILR 1953 Mys. 340 (AIR 1950 Mad. 820, *Rel. on*) + AIR 1954 Sau 104 (AIR 1950 Mad. 820 *Foll.*) + AIR 1950 Mad. 820 (DB) + AIR 1930 Lah. 34 = 11 Lah. 69 (DB). (The maxim cannot be invoked in reference to a loosely worded agreement under which the promisor undertook to execute the sale deed not on the happening of a particular event but after the happening of certain events which could not possibly have happened simultaneously) + 11 All. 28 (FB) + 9 Ind. Cas. 243 (Oudh).

of a party, the question whether there was entitlement to PTD or not would be decided in exercise of discretion and it cannot possibly be said that issuance of PTD was an event which was certain to happen. Therefore date of issue of PTD did not furnish starting point of limitation.[6] Moreover this is subject to the exception that the maxim will not apply to cases where a person is entitled to bring a suit on the contract who may not and need not be aware of the date becoming fixed.[7] It is further to be noted that "the date fixed for the performance", which is the phrase occurring in the third column of Art.113, must be not only a date which can be identified without any doubt as a particular point of time, but it should also be a date which the parties intended should be the date when the contract could be performed.[8]

Where time for performance of the contract is fixed, limitation for a suit for specific performance begins to run as from that time, *i.e.*, the time fixed for performance, irrespective of the question of notice or refusal to perform the contract.[9] Three years' time for filing suit for specific performance starts running from date fixed in contract for performance in case where time is the essence of contract.[10] But Indian view is that the question whether time is the essence of the contract, is not at all relevant for determining whether the first or the second part of column 3 in Art. 118 applies to such a case.[11] Where the vendor agrees to sell and the vendee agrees to buy immovable property contingent on the vendor's title being for the execution of a conveyance and for possession of the property time runs from the date of the final decree or order in the pending suit on which the contract was contingent.[12] Thus where *A* agreed to finance a certain litigation by *B* in consideration of the latter promising to transfer to *A* a certain share in the property recovered through such litigation. An enhanced share was to be given in case there was an appeal to the Privy Council. It was held that the obligation to transfer the property did not arise on the date on which the trial Court passed its judgment and that the case did not fall within the first part of column 3 of this article.[13]

Extension of time agreed to. Where time under the contract is extended, the new date substituted is the "date fixed" for the performance.[14]

Suspension of limitation. A cause of action arises for a party under a contract only when, as contemplated by the parties, the obligor is in a position to perform his promise effectively. Till such date no cause of action arises for the other party to compel him to file a suit for specific performance of the contract. Thus where on 3-8-46 *A* and *B* entered into an agreement for the sale of *B's* property, which had earlier been sold in execution of a mortgage decree against *B*. On 28-3-1946

---

6. NLR 1979 Civ. 195 (SC) = PLD 1978 SC 213 = PLJ 1978 SC 306.
7. AIR 1918 Mad. 492 = 41 Mad. 18 (DB).
8. AIR 1963 Madras 24 (DB).
9. PLJ 1988 Kar 142 = 1988 CLC 76 + AIR 1965 MP. 177 (DB).
10. NLR 1989 AC 502.
11. AIR 1965 Madya Pradesh 177 (DB).
12. 6 All. 231 (DB) + AIR 1923 Nag. 47 + AIR 1921 Oudh 248 (DB).
13. AIR 1940 P.C. 19 = ILR 1940 Lah. 1 = ILR 1943 Kar. (PC) 63 = 67 Ind App. 50 (*Reversing* AIR 1938 Lah. 23 on another point).
14. PLD 1983 SC 344 = NLR 1983 CLJ 529 = PLJ 1983 SC 501 + AIR 1922 P.C. 178.

the application by *B* to set aside the sale was remanded by the High Court to the District Court for fresh disposal and was pending disposal. The application was dismissed by the District Court on 25-2-47. An appeal against that order was disposed of by the High court on 16-9-52. The sale of the property in execution of the mortgage decree was actually set aside by the District Court on 8-1-1953. *A* filed a suit to enforce the agreement of 3-8-46 on 4-1-54. It was held that though the cause of action accrued to *A* on the date of the agreement, no suit could have been brought on this cause of action till 8-1-1953 when the cause of action was complete and that the starting point for limitation under Art. 113 would be 8-1-53 and that therefore the suit was not barred.[15]

Plaint returned under O. 7, R. 10. Where a plaint filed before civil Court was returned by the order of High Court under O. VII, R. 10, C.P.C. Plaintiff presented the returned plaint alongwith another newly-drafted plaint and the balance of court-fee. The presentation of the plaint in the circumstances, could not be said to be filing a new suit and it will have to be treated as a continuity of the previous suit. Time taken by the plaintiff in the first Court will have to be excluded.[16]

Period of limitation. A suit for specific performance instituted more than three years after the date fixed is barred.[17] When the Legislature provides a definite period of limitation within which a litigant is free to come to the Court and pursue his remedy, delay within that period cannot be pleaded against him. The Court, as a proposition of law, cannot apply arbitrarily a time limit to non-suit a litigant who under the statutory provision is entitled to seek relief in a Court of law within a prescribed period. If the circumstances of any particular case would indicate that the plaintiff has waived and abandoned his rights to which he was entitled long before he came to the Court, he may be non-suited but not otherwise.[18] When the language used in an agreement of reconveyance is too indefinite to be regarded as fixing a date for the performance of the contract and the maxim *certum est quod certumm redi potest* cannot also be invoked in reference to such a loosely worded agreement, under which the promisor undertook to reconvey not on the expiry of the stipulated period but at any time after the expiry thereof. Claim for reconveyance cannot be denied simply by the fact that it is made some 13 years after the expiry of the period stated in the agreement, because lapse of time short of the period prescribed by the Limitation Act should not be allowed to operate as a bar to the claim for relief.[19] When in the sale-deed no specific date was fixed for the re-sale of the property and the period mentioned therein, *i.e.*, within 16 years or after the expiry of 16 years, would show that the petitioners were given the choice either to ask for the resale of the property within 16 years or after the expiry of 16 years. It was held that Part 2 of Art. 133 was applicable to the case.[20] Where there is a transfer of land by way of sale coupled with agreement to reconvey within five years after the stipulated period of one year. The word "after" clearly extends the period to five years after

15. AIR 1965 Madras 24 (DB).
16. 1988 CLC 332 = PLJ 1988 Kar. 321.
17. 1984 CLC 2364 + AIR 1933 P.C. 29 = 60 Cal. 980 = 60 Ind. App. 297.
18. AIR 1961 Patna 347.
19. PLD 1966 S.C. 505 + PLD 1961 Dacca 675.
20. PLD 1963 Peshawar 133 (DB).

the expiry of stipulated period of one year. Limitation for the suit is six years in such a case. Therefore where the agreement was executed on 8-4-52, and offer to re-purchase was made on 8-4-57, the offer, was well within time.[1] But where the condition for repurchase has under the terms of the agreement to be performed within the stipulated time and the terms of the agreement to be performed within the stipulated time and the deed expressly stated that the condition would be void after that expiry of the period, then the right of repurchase would be lost if no offer to repurchase is made at any time within the stipulated period by tendering the required amount for repurchase. The period fixed in the document is a condition for the performance and after the expiry of the period, the right reserved is itself at an end. The period fixed in the deed is not the period of limitation prescribed for any suit. Neither S. 4 nor Art. 113 of the Limitation Act can have application. The plaintiff having defaulted and as a result lost the right to repurchase, he cannot resurrect and save the right by resort to the Limitation Act.[2]

6. **"Performance is refused."** Where there is no date fixed for the performance of the contract, time will run against the plaintiff from the date of the refusal of a demand by the plaintiff for performance,[3] or when the plaintiff has notice that performance is refused.[4] Where there is no actual notice, the refusal may be gathered from the circumstances of the case.[5] Where it is stated that in case plaintiff would not pay the balance of sale consideration within a period of fortnight from the receipt thereof he would be at liberty to take over the possession of the property and sell it to another person, this could at best be said to be threat to cancel the contract. Date of such notice and its reply could be taken as the starting point of limitation.[6] Where time for completion of documents contained in agreement does not form essence of contract, time would run from date when plaintiff had knowledge that performance was refused. In such case exclusion of time taken for completion of documents should be completely refused disentitling defendant to claim its inclusion in the prescribed three years time under Art. 113.[7] But where no refusal from promisor could be spelt out in

1. PLD 1969 Dacca 278.
2. AIR 1961 Madras 276.
3. 1988 CLC 870=NLR 1989 UC 198 (DB)+NLR 1988 AC 482+PLD 1968 Kar. 723=20 DLR W.P. 277+AIR 1934 Bom. 491+AIR 1953 Trav. Co. 161 (DB)+AIR 1944 Mad. 218=ILR 1944 Mad. 742 (DB)+AIR 1924 Mad. 680=47 Mad. 692 (DB)+AIR 1933 Cal. 641=60 Cal. 761+AIR 1945 Cal. 355 (DB)+AIR 1920 Pat. 322=4 Pat. L. Jour 447 (DB)+AIR 1923 Rang 44+AIR 1938 Lah. 23 (DB).
4. 1985 SCMR 554+1984 CLC 1820 (DB)+1986 CLC 1887+PLD 1985 Kar. 674=PLJ 1986 Kar. 73+1986 Dhaka LR 240+PLD 1980 Kar. 30+PLD 1961 Kar. 599+PLD 1963 Kar. 786 (DB)+AIR 1940 Lah. 225+AIR 1957 Madh B. 177+AIR 1956 Cal. 350 (DB)+AIR 1921 Bom. 409=45 Bom. 434 (DB)+5 Cal. 175 (DB)+AIR 1932 Lah. 36 (DB)+AIR 1928 Nag. 211+AIR 1947 Nag. 353+AIR 1923 Rang. 125=11 Low Bur Rul. 462+AIR 1916 Low Bur 79+11 Ind. Cas. 25 (DB) (Sind)+AIR 1916 Cal. 136=43 Cal. 790 (DB)+5 Oudh Cas. 140.
5. AIR 1928 Cal. 754 (DB)+AIR 1954 Sau. 104. (The refusal to perform the contract may be gathered from the circumstances of the case and the notice thereof need not be actual)+62 Ind. Cas. 953 (Lah).
6. 1988 CLC 332=PLJ 1988 Kar. 321.
7. NLR 1987 CLJ 329.

clear terms it would be conjectural and presumptive to attribute such conduct to promisor and to deprive him of his remedy.[8]

Refusal—nature of. Before a defendant can successfully invoke the bar of limitation under Article 113, he has to prove affirmatively that his refusal to perform the contract was clear, unequivocal and unconditional.[9] The refusal must not be evasive.[10] It must be unconditional,[11] and to the knowledge of the plaintiff.[12] Refusal which is only academic and not effective would not give start to three years' limitation time under Art. 113.[13] Where landlord had entered into an agreement of sale of the property in occupation of the tenant. He subsequently brought a suit for ejectment of the tenant. But he never expressly indicated that he would be rescinding the contract nor any refusal in categorical terms not to honour his commitment was forthcoming from him. It would be harsh and inequitable to deprive the plaintiff applicant the right acquired under the agreement of sale in such a situation and it would be too much to infer that mere filing of the rent proceedings would amount to refusal within the meaning of Article 113 of the Limitation Act, and further to attribute to the appellant that he had notice of such an intention because the requirements of law are "that the plaintiff has notice that performance is refused".[14] Where the performance of an agreement to transfer property was contingent on the issue of PTD in favour of the promisor but the vendee was not aware of date of issue of P.T.D. Suit for breach of agreement was governed by second part of Art. 113.[15] Thus where there is an agreement by the vendee to re-convey the property to the vendor, and on the vendor's demanding resale of the property the vendee denies the agreement, his denial will amount to a refusal to perform the agreement.[16] Where *A* contracted in 1903 to sell to *B* three out of twelve sites for oil wells which she expected to be allotted to her by the Government for that year. In 1904 four of these sites were allotted by the Government, but *A* did not obtain all the twelve till 1912. There was nothing to show that the allocation of the total of twelve sites was a condition precedent to the grant of the three. *B* instituted in 1913 a suit for specific performance of the agreement to sell the three wells. It was held that the refusal took place in 1905, and that such a long lapse of time was fatal to the action.[17]

Oral sale. Where no date of performance of an oral sale was fixed. The date of knowledge about refusal to perform agreement *sine qua non* for filing suit. Gift of property made in favour of son was undoubtedly an act of refusal of performance on part of defendant. No other date about such refusal was proved in the case. It was held that suit filed within six months of making of gift was within time.[18]

---

8. PLD 1985 Kar. 674 = PLJ 1986 Kar. 73.
9. NLR 1989 UC 857 + 1988 CLC 332 = PLJ 1988 Kar. 321 + 1988 CLC 76 = PLJ 1988 Kar. 142 + PLD 1977 Kar. 377 = PLJ 1977 Kar. 248 (DB).
10. PLD 1968 Kar. 723 = 20 DLR 277 + AIR 1914 Cal. 155 (DB).
11. PLD 1968 Kar. 723 = 20 DLR 277 + AIR 1932 Lah. 36 (DB).
12. PLD 1968 Kar. 723 = 20 DLR 277 + AIR 1930 Lah. 34 = 11 Lah. 69 (DB).
13. NLR 1989 UC 857.
14. PLJ 1986 Kar. 73 = PLD 1985 Kar. 674.
15. PLD 1978 SC 213 = PLJ 1978 SC 306 = NLR 1979 Civ. 195.
16. AIR 1934 Bom. 171 + 3 Mad. 87 (DB).
17. AIR 1922 P.C. 249 = 48 Ind. App. 214 = 48 Cal. 832 = 4 Upp. Bur Rul. 30.
18. PLJ 1987 Lah. 502 = 1987 CLC 1866 = 1987 Law Notes 603.

7. Defence to a suit for specific performance. The remedy of the specific performance of a contract is an equitable remedy, the granting of which depends on the discretion of the Court.[19] Where the delay in instituting the suit not amounting to a bar by the statute of limitation, is pleaded as a defence and where the delay does not mislead the defendant or amount to acquiescence, any lapse of time short of the period allowed under the Act should not disentitle the claimant to relief.[20] It must however be noted that though a mere delay in filing a suit is not fatal to the suit, the delay taken with other circumstances of the case may prove a successful defence to the suit for specific performance.[1] Where a person enters into possession of property under a written contract of sale, he can set up his rights under the contract in defence to a suit for possession against him, although a suit for the specific performance of the contract may be barred by limitation.[2]

114.	For the rescission of a contract.	[3][Three years]	When the facts entitling the plaintiff to have the contract rescinded first become known to him.

1. Scope. This Article covers only cases to which parties to a contract are parties. A suit by a third party *C* to have an instrument between *A* and *B* cancelled or set aside is not governed by this article.[4]

Suit by reversioner. A suit by a reversioner for recovery of property from the alienee from a widow is not within this article.[5]

Suit for dissolution of partnership. A suit for the dissolution of a partnership is not one for the rescission of a contract.[6]

---

19. AIR 1915 Lah. 124 (DB) + AIR 192[illegible] 181 (DB) + AIR 1920 Nag. 173.
20. PLD 1966 S.C. 505 + AIR 1930 P.C. 165 + AIR 1956 Pat. 53 + AIR 1954 Sau. 104 + AIR 1949 Mad. 265 (DB).
1. AIR 1914 Cal. 137 = 41 Cal. 852 (DB) + AIR 1954 Sau 104 + 30 Cal. 265 (DB) + AIR 1929 Lah. 249 (DB) + AIR 1919 Lah. 393 = 1919 Pun Re No. 57 (DB) + 27 All. 678 (DB) + AIR 1925 All. 595 = 47 All. 784 (DB) + AIR 1917 Mad. 8 (DB) + AIR 1924 Bom. 282 (DB).
2. AIR 1939 Cal. 163 = ILR (1938) 2 Cal. 328 (DB) + AIR 1924 Mad. 271 = 46 Mad. 919 (FB). (29 Mad. 336 and AIR 1919 Mad. 1033 (FB). *Overruled*) + AIR 1918 All. 211 = 40 All. 187 (DB) + AIR 1923 Bom. 473 = 47 Bom. 621 (DB) + AIR 1928 Bom. 150 = 52 Bom. 307 (DB) + AIR 1921 Upp Bur 10 = 4 Upp Bur Rul. 179 + AIR 1923 Rang. 125 = 11 Low Bur Rul. 462.
3. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
4. 3 All. 846 (DB) (Rescission of contract can only be as between promisor and promisee) + AIR 1919 Low Bur 53 = 9 Low Bur Rul. 186 (DB).
5. 1882 Pun Re. No. 141, p. 411.
6. AIR 1928 Rang. 160 = 6 Rang. 198 (DB).

115.	For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	[7][Three years]	When the contract is broken, or (where there are successive breaches) When the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.

Synopsis

1. Scope and applicability.
2. 'Not in writing registered.'
3. "Compensation for the breach of any contract."
4. Implied contract.
5. Payment not certified by decree holder--Suit for compensation by judgment-debtor.
6. Wrongful dismissal from service.
7. Suit for commission by broker.
8. Suit against a *del credere* agent.
9. Suit on award by arbitrator.
10. Suit based on a compromise decree.
11. Claim for use and occupation.
12. Claim of interest as compensation.
13. Starting point of limitation.
14. Successive breaches of contract.

1. Scope and applicability. This is a residuary article applying to all actions on contract not specially provided for otherwise.[8] Thus where the suit, though one for compensation for breach of a contract, falls under some other article, this article has no application.[9] This article does not apply to a suit for accounts by the principal against the agent arising out of breach of the contract of agency.[10] Where a suit is brought by a contractor for goods applied and work done by him, and a claim against the municipality for the price of work done, and the document claimed to serve as acknowledgment of liability is not signed by the chairman or

7. Subs. by the Repealing and Amending Act, 1923 (11 of 1923). S. 2 and First Sch., for "Ditto".
8. PLD 1972 Quetta 58 (DB) + AIR 1922 Lah. 198 = 2 Lah. 376 (FB) + AIR 1930 Oudh 395 = 6 Luck. 80 (DB).
9. AIR 1942 Cal. 222 = ILR (1941) 2 Cal. 335 (DB) + AIR 1947 F.C. 23 = 1947 F C R 89 = ILR 1947 Kar. (F C) 52 + AIR 1958 All. 170 (FB) + ILR (1959) 9 Raj. 17 + AIR 1958 Raj. 343 = ILR (1958) 8 Raj. 975. (Breach of Contract of indemnity--Suit governed by more specific Art 83) + 1947 Marwar L R (Civ) 51 (DB) + AIR 1940 Bom. 127 (DB) + AIR 1940 Bom. 158 = ILR 1940 Bom. 127 (DB) + AIR 1937 Cal. 587 = ILR (1937) 2 Cal. 631 (DB) + AIR 1934 All. 126 + 5 Cal. 830 (DB) + AIR 1931 Lah. 309 (DB) + 1912 Pun. L R No. 6. p. 12.
10. AIR 1925 Pat. 494 = 4 Pat. 289 (DB) + AIR 1916 Cal. 680 = 43 Cal. 248 (DB) + AIR 1922 Cal. 355 = 49 Cal. 250 (DB) + AIR 1916 Mad. 281 = 39 Mad. 376 (DB).

the vice-chairman but by somebody for chairman. There is no evidence on record to show that the person who signed was authorised by the chairman to make the acknowledgment. It was held that the document could not give a fresh start of limitation to the claimant.[11] A suit for compensation for injury suffered by the plaintiff in a bus accident against the bus owner, driver and the insurance company which has covered third party risk, is governed by Art. 22 and not by Art. 86 or Art. 115 of the Act. Hence a suit filed after expiry of one year from the date of injury is barred by limitation in view of Art, 22.[12]

Oral contract. Article 115 applies to action *ex contractu*, whether express or implied, oral or written but not registered.[13] Thus this article applies to oral contracts.[14]

Suit not based on contract. This article presupposes the existence of a contract.[15] The very basis of a suit contemplated by this article is that the contract has been broken, and is no longer in existence.[16] Where a contract has been terminated in accordance with its terms and an adjustment is to be made after such termination, a suit on the basis of such adjustment is not covered by this Article.[17] A suit for recovery of dividend, which had accrued in favour of a share-holder in a limited company is not a suit for the breach of contract and this Article does not apply to it.[18] Similarly where the suit is not founded upon a contract but upon tort this article has no application.[19] Where for setting a tank and ancillary works for water supply to a fertilizer factory under the Federal Government, *A*'s tender was accepted by the Provincial Government. While the work was proceeding the Federal Government increased wages of labourers by resolution published on 12-5-1947. *A* expressed inability to execute the work. The Superintending Engineer promised to pay *A* additional sums. *A* completed those works in 1950 and submitted claim for further and additional amount which had been spent in order to pay the increased wages. It was held that the contract entered into between the contractor and the Superintending Engineer being void, Art. 115 does not apply to a suit for compensation by the contractor against the Government.[20]

The essence of an *ex contractu* relationship apart from other requirements, is free consent of parties entering into it. It is not a neutral but an affirmative attitude. A mere non-resistance, passiveness or submission is not equal to a free consent or voluntary agreement. The requisitioning of premises by the Federal or the Provincial Government in the exercise of a statutory compulsion, even where the other party is non-protesting or non-resisting, cannot be deemed to be on a

11. AIR 1961 Patna 485 (*Distinguished* AIR 1922 Lah. 198 (FB)).
12. AIR 1964 Patna 372+AIR 1958 A.P. 309.
13. AIR 1961 Punjab 314 (DB).
14. 10 Cal. 1033 (DB)+1883 Pun Re No. 20, p. 61.
15. AIR 1916 Pat. 384=1 Pat. L. Jour 69+AIR 1959 Ker. 1 (FB)+AIR 1957 Tripura 33+AIR 1953 Sau 159 (DB)+AIR 1945 Cal. 144=ILR (1944) 1 Cal. 463+AIR 1937 Pesh. 28 (DB)+AIR 1916 Mad. 524 (DB).
16. AIR 1934 Pat. 148=13 Pat. 192 (DB)+AIR 1927 Mad. 775 (DB).
17. PLD 1968 Dacca 937=PLR 1968 (1) Dacca 340 (DB).
18. AIR 1926 Mad. 615=49 Mad. 468 (FB). (Held that Art. 120, applied.).
19. AIR 1936 Mad. 250=ILR 1939 Nag. 498+AIR 1939 Lah. 118 (DB).
20. AIR 1964 Pat. 225 (DB).

contractual basis.[1] Therefore a suit for compensation for requisitioning of property was not governed by this Article. Where the suit is not one seeking to enforce a contractual liability or obligation, but a statutory liability, this article has no application.[2]

Loss of goods by carrier. This article does not apply to a suit for compensation against a carrier for non-delivery of goods.[3] But where the liability did not arise under the Bill of lading, but apart from it, by implication, under principles of the English Common Law, the said special limitation did not apply to the case, and that suit must be held to be governed by the general law of limitation, and Article 115 of the first Schedule to the Limitation Act applied to such a case.[4] It is further to be noted that rule 6 of Article 111 of the Carriage of Goods by Sea Act, 1925 is limited to the contract of carriage which ends with the discharge of cargo by the ship at the place of lading and, after the contract of affreightment ends, the carrier incurs a new liability as bailee if the goods still continue to remain in his custody, and the limitation for bringing a suit in such a case would be 3 years under Article 115 of the Limitation Act. 1908.[5] A suit against the carrier claiming damages where the carrier company has delivered the goods to the consignee but realized from him the value of the goods delivered because of his failure to produce the bill of lading in time falls under this article.[6] This article applies to a suit for compensation against the Government Railway for loss in carriage.[7] Where it was averred that the railway authorities failed to deliver, as per contract of carriage, all the goods apparently set out in the railway receipt and that they accordingly granted a short certificate, and, therefore, the plaintiff consignee was entitled under the order of consignment to recover the value of the sugar which according to the plaintiff was loaded into the wagon at the place of consignment and which was found short at the destination. It was held that on the basis of the claim that was made, the suit could not be regarded as a suit in tort for compensation against a carrier either for losing or for injuring the goods consigned for carriage, and Art. 30 was not therefore applicable. On the other hand, it would fall directly within the scope of Art. 115.[8]

Fire Insurance Policy. Provision of Art. 115, Limitation Act which is a sweeping Article for all cases of breach of contract not specially provided for in the Act, is not applicable to Fire Insurance Policy.[9]

---

1. AIR 1961 Punjab 314 (DB).
2. AIR 1938 Pat. 192+71 Mad. L W 44+AIR 1957 Ker. 19=ILR 1957 Ker 44 (FB)+AIR 1957 Andh Pra 79 (DB)+AIR 1956 Ajmer 3. (The liability to pay municipal tax for plying buses)+59 Cal. W N 405+AIR 1951 Nag. 148=ILR 1951 Nag. 40. (Liability of buyer under S. 44, Sale of Goods Act. Art. 120 and not Art. 110 or 115 *applies.*)+AIR 1947 All. 31.
3. 26 Bom. 562 (DB)+AIR 1960 Cal. 270+AIR 1959 Manipur 31+AIR 1934 Trav-Co. 362=ILR 1954 Trav-Co. 298 (DB). (Article 31 *applies* and not Art. 115--AIR 1917 Cal. 640 *Dissented from*)+AIR 1953 Assam 30=ILR (1952) 4 Assam 363+3 Ind. Cas. 469 (DB) (Cal)+AIR 1925 Pat. 727=5 Pat. 106 (DB)+AIR 1925 Pat. 611=4 Pat. 482 (DB).
4. PLD 1959 Dacca 961=11 DLR 329.
5. PLD 1960 Dacca 173=11 DLR 483.
6. 8 Ind. Cas. 882 (Mad).
7. ILR (1941) 2 Cal. 160.
8. AIR 1963 Assam 190.
9. PLD 1989 Lah. 390=PLJ 1989 Lah. 336=KLR 1989 CC 661 (FB).

2. 'Not in writing registered.' The article applies to contracts which are in writing but not registered.[10] But it does not apply to a case where the contract is partly in writing registered and partly in writing not registered.[11]

3. "Compensation for the breach of any contract." This Article applies to a suit for compensation for breach of contract. The contract may be express or implied. Thus where under a contact the plaintiff agreed to hire, subject to certain conditions, the safe deposit vault of the defendant Bank. The only purpose of the contract was to ensure the safety of the articles deposited in the safe deposit vault. It was implicit in the contract that the lockers supplied must necessarily be in a good condition to achieve that purpose and, therefore they should be in a reasonably perfect condition. One of the conditions imposed another obligation on the Bank to achieve the same purpose, namely, that the Bank should not allow access to any person to the safe except the hirer or his authorised agent or attorney. If the articles deposited were lost because one or other of these two conditions was broken by the Bank, the renter would certainly be entitled to recover damages for the said breach. In the plaint the relief was claimed mainly on two grounds, namely, (*i*) that it was an implied term of the contract that the locker rented was in a good condition, and (*ii*) the valuables were lost because the Manager, on account of the negligence of the Bank in not taking all the necessary precautions, committed theft of the articles in the course of his employment. It was held that the suit claims, being *ex contractu*, were clearly governed by Art. 115 and not by Art. 36.[12] Where the defendant contracted to purchase from the plaintiff woollen cloth and paid certain advance. The plaintiff sent a bill for the price on 25-7-1951 stating that he would deliver the cloth on payment of the balance. The defendants did not take delivery whereupon the plaintiff sent a notice that unless the defendant paid the price and took delivery within four days the cloth would be resold at the defendants' risk. On default the plaintiff resold the cloth on various dates between 8th and 20th November, 1951, and brought a suit for recovery of a sum representing the loss sustained by him in the resale. It was held that the suit being one for compensation for breach of contract was governed by Art. 115 and the starting point of limitation of three years was the date when the contract was broken, *viz.*, when the defendant failed or refused to take delivery of the goods and not the date when the last portion of the cloth was resold by the plaintiff.[13] Where there was an agreement, for construction of a power substation, between *A* & *F*. Pursuant to the contract *A* started construction but because of failure on the part of *F* work was not completed. A suit was brought by *A* for the recovery of cost of construction already carried out together with interest, Art. 115 and not Art. 56 applied to the suit.[14]

The following suits have been held to be governed by this article:

10. PLD 1974 Kar. 50 = PLJ 1974 Kar. 7 (DB) + 25 Mad. 55 (DB) + AIR 1932 Cal. 85 = 58 Cal. 930 (DB).
11. AIR 1930 Bom. 572 = 54 Bom. 226 (DB).
12. AIR 1965 Supreme Court 1663.
13. AIR 1963 Punjab 120.
14. 1972 SCMR 129.

(*a*) Suit to recover balance of one-third share of cost of construction of a building, based upon an agreement between the parties to pay such share.[15]

(*b*) Suit by a building contractor seeking to recover a sum of money as the value of building work done for the defendant, where the defendant had, even before the completion of the building work by the plaintiff, given the contract to another.[16]

(*c*) Suit by municipality for recovery of balance due from the defendant, to whom the right to collect the tolls in the market was settled for a particular period and for a particular sum.[17]

(*d*) Suit by pledgor against pledgee to get back the properties pledged or their full value, where the pledgee took over the properties himself as if upon sale, without the authority of the pledgor.[18]

(*e*) Suit for recovery of money due under a registered mortgage bond when surety who had agreed by unregistered bond to pay the amount in case of default by mortgagor is also joined as party, the suit, so far as surety was concerned.[19]

(*f*) Suit by a legal adviser against his client for his remuneration for services rendered on the basis of an express agreement with the client.[20]

Suit for sum certain. The term "compensation" does not only denote a claim to unliquidated damages, but includes a claim for the recovery of a sum certain.[21] Thus this Article would apply to a suit to enforce the liability of a surety who has guaranteed the payment of the amount borrowed by a debtor, *e.g.*, under a promissory note[1] and to a suit on adjusted accounts of a partnership which entitles the plaintiff to claim a certain sum by virtue of that adjustment,[2] and to suit to enforce a contract embodying a promise to pay a time-barred debt,[3] and to a contract to supply goods and render other catering services for payment,[4] and to a suit by the liquidator of a limited company against a share-holder for the recovery of money due in respect of certain calls of sharers not fully paid up,[5] and to a suit by the lessor against the lessee for breach of contract on the part of the latter in

15. AIR 1928 Lah. 422.
16. AIR 1934 Lah. 475 (DB).
17. AIR 1937 Pat. 360 = 16 Pat. 302 (DB).
18. AIR 1930 Ma. 364 (DB).
19. AIR 1960 Andh Pra 210 (DB).
20. 43 Pun L. R. 97 (DB).
21. PLD 1979 Quetta 63 = PLJ 1978 Quetta 23 + PLD 1978 Kar. 244 (DB) + PLD 1975 Kar. 209 = PLJ 1975 Kar. 55 + AIR 1922 Lah. 198 (FB) + 12 Cal. L. Jour 423 (DB) + AIR 1917 Cal. 154 (DB) + AIR 1916 PC 182.
1. AIR 1931 Lah. 691 = 13 Lah. 240 (DB) + AIR 1918 Cal. 707 = 44 Cal. 978 (DB) + AIR 1919 Cal. 636 (DB).
2. AIR 1933 Sind 324 = 27 Sind L.R. 308 (DB) + AIR 1944 Nag 124 = ILR 1944 Nag. 101 (DB).
3. AIR 1932 Lah. 212 = 13 Lah. 448 (DB).
4. AIR 1935 Lah 222 (DB).
5. AIR 1932 All. 342 = 54 All. 541 (DB) + AIR 1959 Punj. 328 = ILR 1958 Punj. 2356 + AIR 1957 Mad. 295 + AIR 1928 Bom. 252 = 52 Bom 477 (DB).

not paying the portion of the rent to the superior landlord as undertaken,[6] and to a suit to recover the amount payable by the defendant for breach of an agreement under which he was bound to pay a share of the produce to the plaintiff annually,[7] and to a suit to recover the difference in value between the sums alleged to have been advanced on a written contract for the supply of bankar and the value of bankar alleged to have been delivered.[8] Similarly a suit for reimbursement of the amount spent by the lessee of a ferry right on the repairs of the steamers, which under an implied term of the lease were to be delivered by the Government in working order but it failed to do so, is governed by Art. 115.[9]

Suit for Provident Fund. Where the plaintiff has been making deposits in his Provident Fund Account but on retirement only part of the sum due to him is paid, he may bring a suit for payment of the balance and this Article will govern the limitation for the suit. As part payment has been made, the starting point of limitation will be the date of part payment.[10]

Suit for accounts. When a plaintiff is claiming commission (as an agent) to which he would be entitled on an account being taken and not compensation in lieu of what he was entitled to under the contract. It is a suit for an account and not a suit for compensation for breach of a contract.[11]

Suit for refund of deposit. The word 'compensation' used in this Article is sufficiently comprehensive to include a claim for damages as well as for refund of money paid as advance to the defendant for performance of the contract. Even a claim for interest on amount of consideration falls within that term.[12] The refusal to return the deposit, being in breach of the contract, although the suit is brought for refund of the deposit, is in essence and in effect, a suit for compensation for breach of the contract. The fact that the deposit was made by the plaintiff according to the terms of the contract and rightly received by the defendant but wrongfully withheld by him cannot be held to be a circumstance falling under the residuary Article 120. The withholding was wrongful, because it was contrary to the terms of the agreement and Art. 115 will apply to such a suit.[13]

Suit for compensation against Government. A suit against the Government for compensation based on an unregistered contract is governed by this Article.[14] Where a contractor whose tender had been accepted by the Government made a claim for refund of sales tax paid by him, the suit was governed by this Article.[15] A suit for compensation against Government for the breach of an agreement to pluck and take away fruits from the trees growing in a forest is governed by Art. 115 and not by Arts 2, 14 or 36.[16] Similarly where there was a contract for

6. 32 Cal. 169 (DB)+AIR 1915 Cal. 370 (DB).
7. AIR 1924 Lah. 149 (DB).
8. 1883 Pun Re No. 22. p. 64.
9. AIR 1962 Andhra Pradesh 249 (DB).
10. PLD 1979 Quetta 63=PLJ 1978 Quetta 23.
11. AIR 1954 Nag. 300=ILR 1954 Nag. 435 (DB).
12. AIR 1959 Madh Pra 30 (DB)+AIR 1915 All. 759.
13. PLD 1975 Kar. 209=PLJ 1975 Kar. 55 (Suit for recovery of security after completion of a contract)+AIR 1962 Patna 372 (DB)+AIR 1959 M.P. 30 (DB).
14. AIR 1963 Cal. 277.
15. AIR 1963 Cal. 307.
16. AIR 1959 Madh Pra 120 (DB).

construction of a certain part of the water works and the work was stopped by the State Officer. A suit by the contractor for recovery of damages for breach of contract and for cost of material was governed by Art. 115 and limitation started from the date when the work was stopped.[17]

Suit by Government for compensation. A suit by the Government against a contractor, for the recovery of the balance due under an agreement for collecting the tolls in a *Lat* for the official year is one for compensation for breach of a contract and is governed by Art. 115.[18]

Suit for compensation for goods deposited. Where under an agreement the depositor can no longer lay claim to the deposited property *in specie* and he can only claim the price or any other compensation fixed by the parties the case will fall under this article and not under Art. 145.[19]

Suit not for compensation. This Article applies only to those cases in which compensation is claimed for breach of contract. It does not apply to suits, in which compensation is not claimed. Where the defendant took '*Theka*' of a shop for one year from the plaintiff and agreed to pay certain sum by instalments, but failed to pay the agreed sum and therefore the plaintiff filed a suit for recovery of the defaulted instalments without claiming any compensation or damages for the breach of the contract. It was held that the suit was governed by Art. 120 and not by Art. 115, for it was not suit for compensation for breach of contract, but for enforcement of the agreement to pay '*Thieka*' money.[20] A suit to enforce a promise to pay subscription to start a college, is not a suit for specific performance of a contract governed by Art. 113. It is a suit for the enforcement of a promise which becomes enforceable when the construction of the college building commences on the faith of such promise. As there is no specific article governing the suit, the residuary article, namely, Art. 120 of the Act applies to the case.[21]

Suit for price of work done. The expression 'compensation' used in Art. 115 must be read in the light of section 37 of the Contract Act which uses that term. A reading of that section would reveal that compensation is paid when contracts are broken. The term 'compensation' may bear a different meaning than the word 'damages' but the term 'compensation' does not carry the same meaning as the price for the work done. There is a clear distinction between the two. Hence Art. 115 does not apply to a suit for price of work done.[1]

Suit against guarantor. Article 65 applies in general to all contracts which are to be performed at any specified future date or on the happening of a specified contingency. Anyhow, the combined effect of Article 65 and Article 115 is to postpone the running of the statute of limitation upon a claim payable upon a contingencey which by its nature must be such as to postpone or suspend the right of action. A suit by a creditor on a contract of guarantee against the surety or guarantor is not specifically provided for in the Limitation Act. The view which

17. AIR 1958 Ker. 366 (DB).
18. AIR 1964 Orissa 189.
19. AIR 1956 Hyd. 12 = ILR 1955 Hyd. 718.
20. AIR 1962 Allahabad 438 (DB).
20. AIR 1964 Kerala 265 (DB) + AIR 1918 Mad. 311 + AIR 1937 Mad. 524.
1. AIR 1965 Andhra Pradesh 186. (*But see* AIR 1935 Lah. 775).

should, therefore, prevail is that Article 65 read with Article 115 applies to the suit against the guarantor and the liability based on the deed of guarantee being in the nature of *ex contracto*, the omnibus Article 120, that is, the period of six years' limitation has no application.[2]

4. Implied contract. This Article applies to implied contracts also. Thus the Article would apply to suit by a medical practitioner for the recovery of fees due to him for attendance on a patient,[3] or to a suit to recover, by way of compensation, the sums expended by the family of the plaintiff on the occasion of the marriage of the plaintiff's deceased brother, basing the claim upon a custom prevailing among the *Jats*, to which the parties belonged,[4] or to a suit by the owner of certain lands against the Municipal Committee claiming compensation for the use of his lands by the Municipality for cattle fair,[5] or to a suit by *A* against *B* for the recovery of the cost of litigation and the redemption money where *A* and *B* are jointly interested in redeeming a mortgage and *A* alone files a suit for redemption and redeems the mortgage,[6] or to a suit claiming compensation for the subsidence of the tank.[7] Where the licensee of a market agrees to pay a certain sum for the period of licence, *i.e.*, one year but the contract is not sealed and is therefore not binding, the licensee after being in possession of the market for seven months surrendered his rights. In a suit by municipality for compensation the licensee is under implied obligation to pay for period of possession and Art. 115 applies.[8] Where a suit is brought for travelling allowance against the District Council by a member thereof it was held that there is an implied contract to pay the allowance within the meaning of this article.[9] Where a mortgage is not validly registered, containing a covenant for payment of certain amount by the mortgagee to a prior mortgagee. No date was fixed for such payment. A default in payment by subsequent mortgagee must be taken to have occurred on the date of execution and the express covenant to pay is turned, after its breach, into an implied covenant to pay to the mortgagor himself and breach of it gives rise to a cause of action to the mortgagor at once.[10] Where a passenger deposited his goods in cloak-room of the Railway and there was an implied contract by the Railway to keep it safe. If the luggage was lost and the owner sued for compensation, the suit would fall under this Article.[11]

Recovery of advance paid. Where payments by way of deposits are made by the plaintiffs in consideration for an implied promise by the defendant to supply cloth to the plaintiffs after purchasing it from the manufacturers, but on receipt of the moneys the defendant sets up a false story about the moneys deposited by the plaintiffs having been stolen and on this ground resiles from his promise, the claim for refund of the moneys deposited by the plaintiffs is not one for money which is initially received by the defendant for the use of the plaintiffs. The money become

2. PLJ 1981 Kar. 14 = 1981 CLC 89 = NLR 1981 UC 161.
3. AIR 1931 All. 752 (DB) + 13 Suth W.R. 96 (DB).
4. 3 All 385 (DB).
5. AIR 1938 Lah. 627 (DB).
6. AIR 1922 Cal. 79 (DB).
7. AIR 1929 Pat. 245 = 8 Pat. 776 (DB).
8. AIR 1938 Pat. 429 = 17 Pat 277 (DB).
9. AIR 1947 Nag. 153 = ILR 1946 Nag. 392.
10. AIR 1951 All. 589 = ILR (1953) 1 All. 907 (DB).
11. AIR 1949 Cal. 591.

returnable to the plaintiffs only after repudiation by the defendant of his promise to utilise the money for the purpose for which the same was obtained by him. In such a case, the suit by the plaintiffs for recovery of money is governed either by Art. 97 or Art. 115 and not by Arts. 60 or 62 of the Limitation Act.[12] Where *A* agrees to buy from *B* certain bales of cotton goods against a quota to be confirmed within 30 days. *A* pays *B* Rs. 3,500 as advance but he is unable to obtain necessary quota for export. A suit by *A* against *B* to refund the advance may be governed by Art. 115 on the basis of an implied agreement by *B* to return the deposit on *A's* inability to perform his part of contract for no fault of his.[13]

5. Payment not certified by decree holder--suit for compensation by judgment-debtor. Where a decree-holder fails to give credit for a payment made by the judgment-debtor towards to decree out of Court, a suit by the judgment-debtor for recovery of that amount is governed by this article.[14] Where a decree-holder has realized the decretal amount twice over and a suit is brought by the judgment-debtor to recover the amount so realized by the decree-holder, the suit is one for damages for breach of implied contract by the decree-holder to get the payments certified. Article 115 or possibly Art. 97 applies to it.[15] In such cases every successive execution application by the decree-holder without regard to the payment towards the decree amounts to a successive breach, and gives rise to a fresh cause of action to file the suit.[16]

6. Wrongful dismissal from service. A suit claiming compensation, by a person alleging that he has been wrongfully dismissed from service falls under this article.[17] It is however to be noted that Article 115 applies only if the suit is for compensation for a breach of contract, it does not apply to a suit for declaration that the order of termination of service of the plaintiff being void, he is still in Government service. Such a suit is governed by Art. 120 and not by Art. 115 as it is not one for compensation for breach of contract.[18] In the case of dismissal from service the suit for recovery of arrears of salary was governed by Art. 102 and not by Art. 120.[19]

7. Suit for commission by broker. A suit for commission by a broker is one for compensation for breach of a contract. A prayer for an account in such a suit does not alter its character.[20]

8. Suit against a 'del credere' agent. A suit against a *del credere* agent for the price of goods sold by him and not paid by the purchasers, was held not to be a suit for recovery of a debt but one for compensation for breach of contract.[1]

---

12. AIR 1964 Madhya Pradesh 153 + AIR 1935 All. 759.
13. AIR 1960 Bom. 404 = II.R 1959 Bom. 151 (DB).
14. 5 Mad. 397 (FB) + 1892 Pun Re No. 78, p. 281 + 1913 Pun L R No. 330, p. 1099 + AIR 1951 Pat. 348 = 28 Pat. 974 (DB).
15. AIR 1951 Pat. 348 = 28 Pat. 974 (DB).
16. AIR 1919 Mad. 773 (DB).
17. AIR 1937 Lah. 226 (DB) + AIR 1934 Rang. 111 = 12 Rang. 124 + AIR 1914 Sind 125 = 8 Sind L. R. 294.
18. AIR 1958 Cal. 551.
19. AIR 1963 Punjab 220 (DB).
20. AIR 1917 All. 466 = 39 All. 81 (DB) + AIR 1917 Lah. 22.
1. 10 Beng. L. R. 15 (P.C.).

9. Suit on award by arbitrator. A suit to enforce a term of an award is not governed by this article.[2] But where the parties have signed the award, the award becomes merged in a new contract and a claim for compensation based on its non-fulfilment is governed by this Article.[3]

10. Suit based on a compromise decree. A suit to enforce a term in an unregistered deed of compromise entered into between the parties, which has been subsequently embodied in a decree of Court is governed by this article.[4]

11. Claim for use and occupation. A claim for use and occupation has been held to fall under this article as amounting to breach of an implied contract.[5] The reason for it is that the action of a tenant who has remained on the property after the determination of the lease and the notice to quit did not constitute trespass upon the property in the required sense and Article 39 did not apply to a suit instituted against him for damages for use and occupation. Article 115 has been consistently applied in the case of suits for compensation when the claim for compensation is relatable to a contract, express, or implied, but not in writing and registered.[6]

Requisitioned property. A suit for compensation for requisitioned property is not governed by Art. 115. It is governed by Art. 120 because the compensation is not claimed on the basis of a contract but on the basis of statute.[7]

12. Claim of interest as compensation. Where interest is claimed by way of compensation, this Article would apply. Thus where one of several co-mortgagors redeems and files a suit for contribution of the amount paid for redemption claiming also interest, the claim for interest is governed by this Article.[8] A suit by plaintiff claiming charges for repair and also interest by way of damages, where the defendant, who had borrowed the plaintiff's motor car for private use, and damaged the same in an accident is governed by this Article.[9]

13. Starting point of limitation. The starting point of limitation for suits governed by this article is the date of the breach of contract,[10] or where the breach is continuing, when it ceases,[11] and not the date on which the plaintiff actually suffers loss on account of the breach.[12] Thus where the suit is based on breach of contract by the defendant in refusing to pay and take delivery of the goods contracted to be purchased, the ascertainment of the actual amount of damages from the re-sale does not give a fresh start to limitation. Ascertainment of

2. AIR 1916 Lah. 163 = 1915 Pun Re. No. 102 (DB) + AIR 1929 Sind 168 = 23 Sind L. R. 417 (DB).
3. 16 Ind. Cas. 804 (DB).
4. AIR 1924 Pat. 231 = 2 Pat. 749 (DB) + AIR 1934 Pat. 7 = 12 Pat. 792 (DB) + AIR 1916 Cal. 816 = 43 Cal. 217 (DB) + AIR 1915 Cal. 550 (DB).
5. 20 Mad. L. Jour 555 (DB) + AIR 1954 Pat. 304 + AIR 1949 Mad. 421.
6. PLD 1961 Lahore 378 (DB).
7. PLD 1970 Dacca 576 = 22 DLR 79 (DB).
8. AIR 1925 Oudh 613.
9. AIR 1933 Oudh 518 = 9 Luck. 189 (DB).
10. 1990 MLD 538 + 8 Oudh Cas. 166 (DB) + AIR 1957 Orissa 124 = ILR 1957 Cut 334 + AIR 1951 Pat. 348 = 28 Pat. 974 (DB) + AIR 1939 Lah. 118 (DB) + AIR 1918 Mad. 917 + 6 Cal. 356 (DB) + 12 Cal. L. Jour 419 (DB).
11. 1990 MLD 538.
12. PLD 1964 Karachi 43 + AIR 1936 Rang. 510 + AIR 1960 Mad. 480 (DB).

damages must be distinguished from the breach of contract and it is the latter which provides the cause of action.[13] Where the defendant has contracted to let plaintiff use certain premises for fifteen days in a year for sale of fire-crakers on the occasion of Deepvali but he refused to deliver possession of the premises on that occasion and the plaintiff suffered loss because he had to sell the crackers elsewhere. It was held that breach was complete when the time for putting the plaintiff in possession of the property had expired on 6-11-1953. The limitation commenced to run from this date in spite of the fact that the plaintiff could not file a suit that very day because some time has to lapse to determine the quantum of damages.[14] The defendant contracted to purchase from the plaintiff woollen cloth and paid certain advance. The plaintiff sent a bill for the price on 25-7-1951 stating that he would deliver the cloth on payment of the balance. The defendants did not take delivery whereupon the plaintiff sent a notice that unless the defendant paid the price and took delivery within four days the cloth would be resold at the defendant's risk. On default the plaintiff resold the cloth on various dates between 8th and 20th November, 1951, and brought a suit for recovery of a sum representing the loss sustained by him in the resale. It was held that the suit being one for compensation for breach of contract was governed by Art. 115, Limitation Act and the starting point of limitation of three years was the date when the contract was broken, *viz.*, when the defendant failed or refused to take delivery of the goods and not the date when the last portion of the cloth was resold by the plaintiff.[15] In a suit for compensation for breach of a contract where the parties had settled and fixed the amount of damages payable on breach by either of them even in advance before the date fixed for performance of the contract, limitation was held to commence only from the date fixed for the performance and not fro... the date of fixing liquidated damages.[16]

Breach, when occurs. The third column of the Schedule has been loosely worded. The Court is entitled to go behind its language to find out the intention of the legislature and to give effect to it.[17] Where a tender to supply bricks for construction of roads and buildings was accepted by the Government. The contract in respect of the buildings was found to be void as it failed to comply with the provisions of S. 175(3) of the Government of India Act, 1935. Bricks, however, had been delivered and the Government had made part payments. The contract including the void contract was a case of running accounts with credits and debits being adjusted from time to time. Under the void contracts also, the price of bricks was being paid from time to time and security money was also being held back in deposit by the Government. On the contractor's account, it was held that the cause of action, in the circumstances of the case, could arise only after refusal to pay the amount claimed by the contractor; and therefore limitation will begin to run from the date when the plaintiff claims had been repudiated.[18] Where a toll contractor committed default, and the District Board exercised option of re-sale, the sale was postponed for want of bidders without consent of contractor.

13. PLD 1964 Karachi. 43.
14. AIR 1965 Madras 532.
15. AIR 1963 Punjab 120.
16. AIR 1927 Lah. 122.
17. AIR 1957 Cal. 153.
18. AIR 1963 Pat. 254 (DB).

Subsequently there was a resale and the suit was brought for loss incurred, limitation runs from first date of re-sale and not from date of actual sale.[19]

Normally, the breach of a contract occurs when either party to the contract repudiates his liability under the contract and declines performance.[20] Therefore the question as to when a breach of the contract occurs, depends upon the terms express or implied of the contract itself.[1] Thus where in a contract for sale of property within a period specified in the agreement with simultaneous payment of the price by the intending purchaser, both parties were aware that the sale could not take place legally, unless a particular authority sanctioned it. Accordingly, the intending vendor applied for permission immediately after execution of the contract. The permission was refused long after the specified period. The purchaser sued for recovery of price. It was held that time was not essence of the agreement for sale and limitation started from the date of the order refusing the permission and not from the earlier date on which the term mentioned in the agreement ended.[2] Where *A* falsely pretends to be the agent of his father, and mortgages the latter's lands to *B*. The father repudiates the transaction, and files a suit against *B*, and gets a decree for possession. A suit for compensation by *B* against *A* must be brought within three years from the date of the decree.[3] In the case of an alternative contract to sell land or pay compensation and keep the land, limitation for a suit claiming compensation starts from the date on which the vendor elects to adopt one of the courses open to him.[4]

Where the defendant made part payment of the sum due under an original agreement, and time was granted by the plaintiff for payment of the balance. A suit for non-payment of the balance will be governed by this Article and time will run from the date of part payment.[5]

New agreement entered into between parties. When parties have entered into a new agreement the cause of action would be determined by the terms of the new agreement and not by the original superseded agreement.[6] In the case of novation of a contract, limitation starts from the date of the breach of the fresh contract.[7] Thus a settlement of account followed by a promise to pay affords a fresh cause of action and a suit filed within three years of such cause of action is tenable.[8]

Contract to be performed on a future date. Where the contract is to be performed at a future time and a date is fixed for such performance in the contract itself, limitation starts from the date fixed for performance.[9] The time fixed for the performance of the contract need not be express; it may be implied

19. AIR 1933 Mad. 704.
20. AIR 1923 Bom. 113+AIR 1928 Cal. 74=54 Cal. 969+8 Mad. L. Jour 61.
1. 8 All. L. Jour 233 (DB)+AIR 1938 Lah. 277 (DB).
2. AIR 1959 Madh Pra. 42.
3. AIR 1934 Pesh. 45.
4. AIR 1931 Lah. 657 (DB).
5. PLD 1975 Kar. 209=PLJ 1975 Kar. 55.
6. AIR 1958 Andh Pra. 438 (DB).
7. 15 Cal. W N 882 (DB)+AIR 1933 Sind 324=27 Sind L R 308 (DB)+AIR 1925 Oudh 632.
8. AIR 1944 Nag. 124=II.R 1944 Nag. 101 (DB).
9. 1981 CLC 89+NLR 1981 UC 161=PLJ 1981 Kar. 14+AIR 1936 Rang. 338 (DB)+AIR 1928 Cal. 148 (DB)+108 Ind. Cas. 49 (Lah.)+AIR 1951 Mad. 717 (DB)+15 Mad. 380 (DB)+14 Cal. 256 (DB)+1911 Pun. L R No. 66. p. 292.

from the terms of the contract.[10] The custom or usage of trade is admissible to show such matters as when the contract was intended to become effective, or how long it was intended to continue in force.[11] Where, although the contract between the parties does not fix a date for performance either expressly or by necessary implication; still if the intention of the parties, as can be gathered from the terms of the contract, is that there should be demand for the performance of the contract, the date of demand will be the starting point.[12] Where the contract is to be performed at a further date and no time is fixed for the performance by the parties either expressly or by necessary implication, the law presumes that the contract should be performed within a reasonable time, and limitation in such cases starts from the date of the expiry of reasonable time.[13]

Contract of guarantee, breach of. Period of limitation, in case of guarantor of bank loan would start running from the day when the guarantor had for the first time denied to honour his guarantee.[14]

Suit against Government. In the case of a suit against the Government in respect of a breach of contract which is required to comply with the formalities provided by S. 175 (3), Government of India Act, time does not begin to run till the date the contract is signed as required by the Act even though the provisional contract and the breach thereof took place prior thereto.[15] Where statutory notice is required to be given before institution of proceedings, the period of notice has to be excluded while computing limitation.[16]

14. Successive breaches of contract. Case of successive breaches may occur when a party to a contract agrees to do or forbear from doing two or more different things; in such cases the contracting party may commit several breaches by not doing those things which he has contracted not to do.[17] But all those breaches must take place on different dates. Breaches committed on the same date are not successive breaches. Thus where the obligation under the contract is to pay two sums of money to be paid on the same date, the failure to pay the sums as agreed will not be a case of "successive breaches" of contract.[18]

Calculation of period of limitation. In suits for the breach of a contract to be performed at different times, limitation must be calculated from each breach as it occurs.[19] Therefore where the contract was to render accounts year by year and there had been successive demands and breaches at the end of every year, and plaintiff brought a suit for accounts within three years of the last breach, it was held, whether Art. 89, or Art. 115 applied, he was entitled to accounts for one year

10. 25 Mad. L. Jour 422 (DB) + AIR 1935 Lah. 307 (DB) + AIR 1936 Lah. 668.
11. Mad. B L J 1954 II C R 430.
12. AIR 1919 Mad. 462 + 3 Mad. 87 (DB) + 14 Suth W R 87 (DB) + AIR 1920 Lah. 200 + 20 Bom. 8 (DB) + AIR 1916 Cal. 869 (DB).
13. 23 Mad. 441 (DB) + 22 Mad. L. Jour 207 (DB) + AIR 1915 Cal. 370 (DB) + AIR 1930 Oudh 395 = 6 Luck 80 (DB).
14. 1990 MLD 538.
15. AIR 1957 Cal. 153.
16. 19 DLR 599 (DB).
17. 10 All. 85 (DB).
18. AIR 1941 Pat. 452.
19. 6 Suth W R 61 (FB) + ILR (1951) 1 Cal. 420 + AIR 1953 Trav-Co. 272 + AIR 1953 Trav-Co. 193 = ILR 1952 Trav-Co. 241.

only.[20] Where there have been successive breaches of contract and in respect of things to be done at different times but of the agreement as a whole, limitation for suit on the breach will begin from the date of the last breach.[1]

Part VII. Six years

116.	For compensation for the breach of a contract in writing registered.	Six years	When the period of limitation would being to run against a suit brought on a similar contract not registered.

Synopsis

1. Scope and applicability.
2. Suit to enforce contract by third party.
3. Contract in writing.
4. Implied contracts.
5. "Registered."
6. "Compensation for the breach of a contract."
7. Suit for recovery of money on simple bond registered.
8. Recovery of rent and profits, suit for.
9. Royalty, suit for recovery of.
10. Lease deeds, suits based on.
11. Partnership suits.
12. Suits for accounts based on registered contract of agency.
13. Dower, suit for recovery of.
14. Award, suit based on.
15. Sale-deed, suit by vendor based on covenant in.
16. Sale-deed, suit by vendee based on covenant in.
17. Deed of exchange, breach of covenant in.
18. Claim for personal decree arising on registered mortgage deed.
19. Mortgage deed not validly registered, claim for personal relief.
20. Breach of covenant in mortgage deed.
21. Suit to enforce vendor's lien for unpaid purchase money.
22. Claim for interest by way of damages.
23. Instances of other suits falling under the Article.

1. **Scope and applicability.** Where a suit is in substance one based on a registered document, and can be regarded as a suit for compensation for breach of a contract, this article will apply although such a suit way fall under some other article also.[2] But where the mortgagee himself repudiates the mortgage and sues for the mortgage amount advanced, this article does not apply.[3] Similarly the article has no application to suits claiming to recover possession of immovable property or to suits seeking to enforce a charge against the properties by sale

20. 11 Cal. L. Jour 43 (DB).
1. PLD 1974 Kar. 50=PLJ 1974 Kar. 7 (DB).
2. AIR 1916 P.C. 182=44 Cal. 759=44 Ind. App. 65+AIR 1929 Pat. 388=8 Pat. 432 (DB)+9 Cal. W. N. 679.
3. AIR 1933 Lah. 581 (DB).

thereof although such reliefs may be founded upon a breach of a contract in writing registered.[4]

Breach of contract necessary. It is not enough for the applicability of this article that a suit is founded upon contract; it is further necessary that it should be founded on breach of such contract.[5]

Obligation not arising out of contract, suit on. Where the obligation does not arise from a contract between the parties but is imposed by statute,[6] or where the suit is not founded upon contract but upon tort or other misfeasance not arising out of contract, this article has no application.[7]

Claim for compensation necessary. The article applies only where the suit is for compensation. However wide the meaning of the word 'compensation' may be taken to be, a suit for specific performance cannot be considered to be a suit for compensation.[8] Similarly a suit for accounts by the principal against the agent, though arising on a registered contract of agency, is not a suit for compensation, and this Article does not apply to such cases.[9]

2. Suit to enforce contract by third party. The suits contemplated by this article must be suits by the parties to the contract or their representatives-in-interest and not suits by third parties to the contract.[10]

3. Contract in writing. The article is inapplicable to a case where the whole of the contract is not in writing and registered.[11] It must however be noted that the contract need not be signed by both the parties provided there is a valid contract evidenced by a registered document which, though signed by only one party, is complete as having been accepted and acted upon by the other.[12]

4. Implied contracts. The word 'contract' used in this article will include an implied contract also.[13] Thus a contract implied by virtue of S. 55 (1) (*g*) of the Transfer of Property Act would come within this Article.[14] But where the obligation is not implied in the registered deed of conveyance but arises independently of it, though out of the same transaction, this article will not apply.[15]

---

4. 13 Beng L R 312=1 Ind. App. 157 (PC)+AIR 1941 Cal. 257 (DB). (Suit to enforce charge)+AIR 1921 Mad. 514 (DB).
5. AIR 1915 All. 339 (DB)+AIR 1935 Oudh 378=11 Luck. 110.
6. 5 Cal. L. Jour 19 (DB)+AIR 1952 Pat. 239=31 Pat. 187 (DB). (Suit for recovery of arrears of cess).
7. AIR 1930 Bom. 572=54 Bom. 226 (DB)+AIR 1953 Mad. 480.
8. ILR (1952) 1 Cal. 27.
9. AIR 1931 Mad. 185=54 Mad. 654 (DB).
10. AIR 1930 Mad. 382=53 Mad. 270 (FB)+9 Ind. Cas. 988 (Cal.)+34 All. 63=39 Ind. App. 7 (PC).
11. AIR 1930 Bom. 572=54 Bom. 226 (DB)+AIR 1937 Pat. 293.
12. AIR 1928 All. 313=50 All. 661 (DB)+19 Mad. 52 (DB)+11 Mad. L. Jour 125 (DB)+AIR 1931 Rang 139=9 Rang. 56 (DB)+1875 Pun Re No. 6, p. 12+AIR 1929 Oudh 311=5 Luck 166 (DB).
13. AIR 1915 Mad. 742=38 Mad. 1171 (DB)+AIR 1929 Mad. 775+AIR 1930 All. 785 (DB)+AIR 1944 All. 234=ILR 1944 All. 612+AIR 1925 Bom. 440=49 Bom. 596 (DB)+AIR 1924 Cal. 148 (DB)+AIR 1932 Nag. 5=28 Nag. L R 31 (FB).
14. 1956 Ker L. Tim. 302.
15. AIR 1930 Cal. 568=57 Cal. 683 (DB)+24 Mad. 233 (DB).

5. "Registered". "The law for the time being in force" in S. 3, Cl. 45 of the General Clause Act does not mean the Registration Act alone but includes registration under other special laws, *e.g.*, Companies Act and the Copy Right Act.[16] It must however be remembered that to come within this Article documents must be registered under the law prevailing in Pakistan. Where the mortgages were executed in Burma, registration in accordance with the law of Burma cannot be deemed to be registration within the meaning of Art. 116, because that was not in accordance with laws in force in Pakistan.[17]

Attestation. The mere attestation of a deed before a *kazee* does not amount to registration.[18]

6. "Compensation for the breach of a contract." The word "compensation" has been used in this article in the sense in which it appears in S. 73 of the Contract Act.[19] The term "compensation" is not necessarily restricted to a claim for unliquidated damages but includes also a claim for a sum certain.[20] 'Compensation' may be of two kinds (1) restitution, which means return or restoration of the benefit received from the plaintiff under the contract and (2) penal redress which denotes payment of damages for the loss suffered by the plaintiff on account of the non-performance of the contract. Therefore a suit for refund of the advance comes straight within the purview of Art. 116 of the Limitation Act and not Art. 97.[1]

Starting point of limitation. Where a vendee is dispossessed by a title holder superior to that of the vendor, the limitation for recovery of the amount of consideration of the sale deed brought by vendee against his vendor starts from the date of his dispossession by the superior title-holder and not from the date of dismissal of his suit brought against the superior title-holder.[2]

7. Suit for recovery of money on simple bond registered. A suit to recover money lent and due upon a registered bond is a suit for compensation for the breach of a contract in writing registered and is governed by this article.[3] Therefore a suit for declaration of a right under a security bond was governed by this article.[4]

---

16. AIR 1925 All. 519=47 All. 669 (DB)+AIR 1940 Bom. 97=ILR 1940 Bom. 165 (FB)+AIR 1930 Bom. 572=54 Bom. 226 (DB).
17. AIR 1964 Madras 527 (DB).
18. 1 Suth W R 89 (DB).
19. 12 Cal. 357 (DB)+3 Mad. 76 (DB).
20. AIR 1916 P.C. 182=44 Cal. 759=44 Ind. App. 65+AIR 1956 Hyd. 12=ILR 1955 Hyd. 718+AIR 1925 Bom. 440=49 Bom. 596 (DB)+AIR 1931 Rang. 139=9 Rang. 56 (DB).
1. AIR 1963 Kerala 246.
2. 1971 DLC 393+PLD 1957 Dacca 242+PLD 1959 Dacca 650+5 DLR 290+AIR 1963 Madhya Pradesh 137+AIR 1932 Nag. 5 (FB).
3. 3 All. 600 (FB)+AIR 1954 Hyd 41=ILR 1953 Hyd. 642 (DB)+AIR 1940 Pat. 74 (DB)+AIR 1944 All. 276=ILR 1944 All. 574 (DB)+AIR 1944 All. 241=ILR 1944 All 554 (DB)+AIR 1932 Lah. 212=13 Lah. 448 (DB)+AIR 1914 Bom. 141=35 Bom. 177 (DB)+AIR 1916 Cal. 771 (DB)+AIR 1918 Mad. 541 (DB)+AIR 1924 Pat. 439 (DB)+AIR 1934 Rang. 227+7 Oudh Cas. 46.
4. AIR 1963 Cal. 12.

8. Recovery of rents and profits, suit for. A suit for the recovery of rent due under a registered lease deed is governed by this article.[5] But where special period of limitation is prescribed for rent suits by certain Acts, this article will not apply.[6]

Invalid lease. A registered *kabuliat*, if it is invalid as a lease, cannot form the basis of a claim for rent.[7]

Rent for period tenant holds over. Where a registered lease has been determined and the tenant holds over, the claim for rent for the period during which the tenant has held over is not a claim for compensation for the breach of the contract in writing registered. After the period of the registered lease has expired, the relationship between the parties is regulated by the statutory provisions contained in section 116 of the Transfer of Property Act and not by the written and registered contract.[8] Therefore this article will not apply to a suit to recover rent for the period of holding over after the expiry of the registered lease deed.[9]

Suit for profits from land. A suit for recovery of the profits of certain lands by virtue of a registered agreement is governed by this article.[10]

9. Royalty, suits for recovery of. A suit for recovery of royalty due under a registered deed is governed by this article.[11]

10. Lease deeds, suit based on. This Article applies to a suit by lessee for compensation for breach of an express term of contract or of implied obligation to put the lessee in possession.[12] Thus where lessee's possession is interfered with by the lessor contrary to the terms of lease, this article applies to a suit for damages.[13] Where a lessee is dispossessed by third party before expiry of the period of lease owing to lessor's title being defective, the lessee is entitled to sue for compensation within the period prescribed by this article. The starting point of limitation is the date of dispossession of the lessee.[14] In cases of breach of express or implied contract to put a lessee in possession limitation starts from the date

5. AIR 1916 P.C. 182 = 44 Cal. 759 = 44 Ind. App. 65 + AIR 1951 Cal. 251 = II.R (1950) 2 Cal. 352 (DB) + 1939 Pat W N 220 (DB) + 37 Bom. 656 (DB) + AIR 1937 Cal. 587 = II.R (1937) 2 Cal. 631 + 67 Ind. Cas. 939 (DB) (Lah) + AIR 1942 Pat. 83 (Patni lease) + AIR 1940 Pat. 87 = 23 Pat. 185 (FB) + AIR 1935 Mad. 632 + AIR 1918 Pat. 385 (DB) + AIR 1917 Pat. 14 (DB).
6. 19 Cal. 1 (FB) + AIR 1919 Cal. 144 (DB) + AIR 1955 Pat. 430 = 34 Pat. 577 (DB). (AIR 1942 Pat. 83. AIR 1942 Pat. 474; AIR 1944 Pat. 87 (FB): 1939 Pat. W. N. 220; 37 Cal. 747 and AIR 1937 Cal. 587; *Dissented from*) + AIR 1948 Pat. 328 = 26 Pat. 269 + AIR 1936 Nag. 180 = II.R 1936 Nag. 5 + AIR 1927 Mad. 439.
7. AIR 1957 Cal. 479 (DB).
8. PLD 1970 Peshawar 146 (DB).
9. PLD 1970 Pesh. 146 (DB) + AIR 1934 Mad. 458 = 58 Mad. 75 (DB) + AIR 1955 Trav-Co. 146 = II.R 1955 Trav-Co. 392 (FB) + AIR 1936 Pat. 362 (DB).
10. AIR 1935 All. 945 + AIR 1952 Trav-Co. 498 = ILR 1952 Trav-Co. 477 (DB).
11. AIR 1916 P.C. 182 = 44 Cal. 759 = 44 Ind. App. 65.
12. AIR 1934 Pat. 148 = 13 Pat. 192 (DB) + AIR 1917 Mad. 987 (DB) + AIR 1927 Pat. 248 = 6 Pat. 606 (DB) (Implied obligation) + AIR 1927 Lah. 1 = 7 Lah. 423 (DB).
13. AIR 1932 Cal. 85 = 58 Cal. 930 (DB).
14. AIR 1940 Pat. 81 = 18 Pat. 654 (DB) + AIR 1924 Nag. 220 + AIR 1936 Pat. 462 (DB) + AIR 1942 Oudh 82 = 17 Luck 289 (Lease void *ab initio*).

when the lessee would be entitled to be put in possession under the lease and when the lessor fails to do so.[15]

11. Partnership suit. A suit for taking the accounts of a partnership is not a suit for compensation for the breach of a contract although the deed of partnership may be a registered instrument.[16] But as under a registered partnership agreement each partner was to bear the loss in proportion to his share, a suit to recover the defendant's share of the loss borne by the plaintiff is governed by this article.[17]

12. Suits for accounts based on registered contract of agency. Where there is a breach of a registered contract of agency whereunder accounts must be rendered year by year, Art. 116 applies to the suit for compensation based on such breach.[18] Thus if a suit is filed for money received by an agent in the course of his duties and misappropriated by him, Art. 116 applies but if the agent is only sued in respect of want of due care and diligence in his agency, the suit falls under Articles 89 ad 90.[19] This article does not apply where an agent under a power-of-attorney sued his principal for money spent by him in the course of agency, as the power of attorney did not contain a promise by the principal to pay for advances made by the agent.[20]

13. Dower, suit for recovery of. A suit for recovery of dower, where the dower is payable under a registered instrument executed by a person in favour of his wife, whether the suit is brought by the wife herself or by her heirs after her death, is a suit for compensation for the breach of a contract.[1]

14. Award, suit based on. Where an agreement to refer to arbitration has been registered and the award of the arbitrators is also signed by the parties in token of acceptance, a suit to recover a certain sum payable under the award is governed by this article.[2]

15. Sale-deed, suit by vendor based on covenant in. A suit by a vendor against the vendee for compensation for failure to pay the debts of the vendor as undertaken in the sale deed and for which payment of debts a portion of the purchase money was left with the vendee, is governed by this article,[3] and time will run either from the date of the breach of the contract to pay the creditor, or, if the suit is based on the expressed or implied contract of indemnity, from the date on which the plaintiff is actually damnified.[4] Where a vendor has left in hands of

---

15. AIR 1932 Mad. 225.
16. AIR 1934 Mad. 378 (DB)+AIR 1933 Nag. 127.
17. 14 Mad. 465 (DB).
18. 11 Cal. L. Jour 43 (DB).
19. 4 Ind. Cas. 556 (DB) (Cal.).
20. 34 Mad. 167 (DB).
1. AIR 1933 Cal. 152=50 Cal. 253 (DB). (Arts. 103 and 104 are controlled by this article)+AIR 1923 Cal. 507 (DB).
2. 34 All. 43 (DB).
3. AIR 1938 All. 297=ILR 1938 All. 500 (FB)+AIR 1956 Pat. 277=34 Pat. 568 (DB)+AIR 1950 Pat. 21 (DB)+AIR 1940 Lah. 321=ILR 1940 Lah. 353 (DB)+AIR 1940 Pat. 155 (DB)+AIR 1941 Pat. 452 (Art. 111 read with Art. 116. *applied*)+AIR 1926 Nag. 429+6 Cal. L. Jour 398 (DB)+AIR 1947 Pat. 11.
4. AIR 1938 All. 297=ILR 1938 All. 500 (FB)+AIR 1958 All. 170 (FB)+AIR 1956 Pat. 277=34 Pat 568 (DB)+1963 B L J R 538+AIR 1950 Pat. 21 (DB)+AIR 1948 Nag.

vendee certain amount to pay off the mortgage debt and there is a stipulation to return surplus remaining after the payment. A suit to recover such surplus falls under this article and limitation start from the date when the surplus is found.[5]

16. Sale-deed, suit by vendee based on covenant in. The sale itself may not be properly called a contract in writing but contracts which are to be contained in a sale or such terms of contract which their lawyer merits into a sale are contracts within the meaning of Article 116 and a sale-deed comes within Article 116 of the Limitation Act.[6] Therefore, a suit by the vendee against the vendor for compensation for the breach of the express or implied covenant of title, is governed by this article.[7] Where land was sold to plaintiff by a co-sharer and he was admittedly given possession with regard to the land in suit as a co-sharer and he was ousted by the defendants therefrom. In 1959 a suit filed on 7-2-1959 immediately after the dispossession is not barred by the provisions of Article 116 of the Limitation Act.[8] Where there was a sale by *A* to *B* and *B* was put in possession. A suit was filed by *A's* son for partition. *A* and *B* were both impleaded. A decree for partition was given in 1937 and the Court held that the sale was not binding on the share of the son for a portion of consideration. The son was directed to deposit moiety of binding portion of consideration and the decree was confirmed in appeal in 1938. The son deposited the amount in 1939 but *B* was actually dispossessed of the property in 1944. A suit by *B* in 1946 for damages for breach of covenants of title and quiet possession was not barred by limitation.[9]

Covenant of indemnity. A suit to enforce a covenant of indemnity under a registered sale deed falls under this article and time runs from the date when the vendee is damnified.[10] Where there is a breach of contract of indemnity, express or implied, in writing registered, Art. 83 should be read with this article and the plaintiff will have a period of six years from the date when he is actually damnified.[11]

Possession not delivered to vendee. A suit by the vendee who has not been in possession, for enforcement of the statutory obligation under S. 55(1) (*f*), Transfer of Property Act, or for compensation for breach thereof will be barred if brought

---

401 = ILR 1940 Nag. 454 (DB) + AIR 1931 Bom. 365 = 16 Cal. W N 1040 (DB) + AIR 1933 Cal. 641 = 60 Cal. 761 + AIR 1940 Lah. 321 = ILR 1940 Lah. 353 (DB) + AIR 1933 Mad. 424 = 56 Mad. 724 + AIR 1918 Mad. 1135 (DB) + AIR 1939 Pat. 194 = 17 Pat. 751 (DB) + AIR 1947 Pat. 11 + AIR 1933 Nag. 379 = 29 Nag. LR 298 (DB) + AIR 1927 Oudh 455 = 2 Luck 731 (DB).

5. AIR 1934 Oudh 240 = 10 Luck 26 (DB).
6. 1971 DLC 393.
7. 30 All. 402 (DB) + AIR 1959 Andh Pra 445 + 1954 All. W R (PC) 385 + AIR 1950 Bom. 401 + AIR 1950 Nag. 229 = ILR 1950 Nag. 467 + AIR 1949 All. 480 + AIR 1923 Lah. 23 (DB) + AIR 1929 Lah. 388 + AIR 1923 Mad. 28 (DB) + AIR 1933 Mad. 382 + AIR 1916 Oudh 240 + AIR 1926 Pat. 321 + AIR 1930 Sind. 66 + AIR 1939 All. 170 (DB). (Implied covenant.) + AIR 1946 All. 159 = ILR 1946 All. 72 + AIR 1926 Mad. 255 + AIR 1962 Mad. 150 + AIR 1961 J & K 66.
8. 1971 DLC 393.
9. AIR 1949 Mad. 652 (DB).
10. AIR 1921 Lah. 260 = 2 Lah. 316 (DB) + AIR 1918 All. 219 = 40 All. 605 (DB).
11. PLD 1956 Lah. 675 = PLR 1956 Lah. 1840 + 1956 Ker L Tim 302 + AIR 1958 Ker. 322 = ILR (1958) Ker. 27 (DB).

more than six years after the date of the sale deed.[12] A suit was brought by the vendee for return of consideration for breach of covenant to put him in possession. No time was fixed for delivery. Under the circumstances time would run when the vendor become incapable of carrying out his undertaking.[13]

Hire-purchase amounting to sale. Where in a agreement no right is reserved to the hirer to return the machine during the hiring or before payment of all the instalments, the agreement is an agreement for sale to which Article 116 of the Limitation Act apply.[14]

Starting point of limitation. The starting point of limitation will be different in different cases depending upon the validity of the sale agreement as well as the circumstances in which a breach of a covenant is committed. Thus if the vendor himself has entered into symbolic possession of the property sold and the parties to the sale contemplate that the vendee should take steps to reduce the property to his physical possession, the breach of the covenant of title takes place on the date when the vendee's attempt to recover possession fails. Hence, in such a case the starting point of limitation under Art. 116 is the date, when it is first decided by the Court, before which a suit for possession is filed by the vendee. The vendee cannot recover possession on the strength of the sale deed in his favour; and not the date of the execution of the sale deed.[15] Similarly limitation in a suit by the vendee against the vendor for compensation for the breach of the express or implied covenant of title, is governed by this article.[16] Where the sale is void from its inception and no possession is given to the vendee, the starting point of limitation is the date of the sale deed,[17] but where the purchaser is put in possession of the property sold, limitation starts from the date on which the vendee is dispossessed by the rightful owner.[18] Where sale is voidable on objection by third party and the vendee is in possession, time runs when the vendee is dispossessed by a third party.[19]

17. Deed of exchange, breach of covenant in. A suit to enforce a covenant of indemnity contained in a registered deed of exchange falls under this article.[20]

18. Claim for personal decree arising on registered mortgage deed. A claim to enforce personal remedy arising under a registered mortgage deed, is governed

12. AIR 1948 Nag. 382 = ILR 1948 Nag. 50 (DB).
13. AIR 1933 Mad. 153 + AIR 1961 Manipur 24.
14. 12 DLR 229.
15. AIR 1962 Madras 150 + AIR 1933 Mad. 126 + ILR 19 Cal. 123 (PC).
16. 30 All. 402 (DB) + AIR 1959 Andh Pra 445 + 1954 All. W.R. (HC) 385 + AIR 1950 Bom. 401 + AIR 1950 Nag. 229 = ILR 1950 Nag. 467 + AIR 1949 All. 480 + AIR 1923 Lah. 23 (DB) + AIR 1929 Lah. 388 + AIR 1923 Mad. 28 (DB) + AIR 1933 Mad. 382 + AIR 1916 Oudh 240 + AIR 1924 Pat. 321 + AIR 1930 Sind 66 + AIR 1939 All. 170 (DB). (Implied covenant) + AIR 1946 All. 159 = ILR 1946 All. 72 + AIR 1926 Mad. 255.
17. AIR 1923 Mad. 392 (DB) + AIR 1960 Pat. 269 (DB) + 1957 Ker. L. T. 588 + AIR 1927 Mad. 273 + AIR 1925 Bom. 440 = 49 Bom. 596 (DB) + AIR 1926 Nag. 109 = 22 Nag. L.R. 49 + AIR 1937 Rang. 39.
18. AIR 1941 Nag. 169 + AIR 1950 Nag. 229 = ILR 1950 Nag. 467 (AIR 1932 Nag. 5 (FB). *Followed*) + AIR 1932 Nag. 5 = 28 Nag. L. R. 31 (FB) + AIR 1915 Mad. 708 = 38 Mad. 887 (*See also* 53 Mys. H.C.R. 126 (DB).
19. AIR 1929 All. 293 = 51 All. 651 (DB) + AIR 1950 Bom. 401 (DB) + AIR 1949 Mad. 652 (DB) + AIR 1944 All. 243 = ILR 1944 All. 612 + AIR 1943 Mad. 150 + AIR 1935 Mad. 636.
20. 31 Mad. 452 (DB).

by this article.[1] Where a father mortgages property and the mortgage is not binding on the interest of sons or junior members. A simply money decree can be passed on the footing of the covenant to pay the amount contained in the deed and limitation for such suit is one prescribed by this article.[2] Where there is a stipulation for payment of interest in a mortgage deed, and the stipulation is no more than a part of the principal, the mortgagee cannot get a personal decree for the recovery of the interest, even for the period of six years preceding the suit, in a case where his suit for the enforcement of the personal remedy in respect of the principal is barred by time at the time of the institution of the suit. There being one contract from which the liability for the principal and the interest arises the cause of action arising from the breach of contract is not divisible or severable and the time for the recovery of both principal and interest must be deemed to begin to run from the date when the breach takes place.[3]

Starting point of limitation. A claim to enforce personal remedy arising under a registered mortgage deed, is governed by this article.[4] It will not start from the date of default in payment of instalment though there may be a stipulation to the effect that on default the whole amount would become due.[5] Where no date is fixed for payment of the mortgage amount, the starting point is the date of the mortgage deed.[6]

Breach of covenant in mortgage deed. In a suit under S. 68 of the Transfer of Property Act claiming a personal decree, limitation starts from the date on which the mortgagee is deprived of the mortgage security.[7] Where a mortgage by father of a Hindu joint family is found to be not binding as such on the sons of the mortgagor, but the document contains an indemnity clause, a suit will lie, after the death of the mortgagor, against his sons for personal decree against the assets of

1. PLD 1961 Kar. 213 (DB)+AIR 1930 All. 69=52 All. 363 (FB)+AIR 1946 Lah. 97=ILR 1945 Lah. 355 (FB)+AIR 1931 Lah. 801 (DB)+AIR 1934 Lah. 765=16 Lah. 137 (DB)+AIR 1926 Nag. 449+AIR 1934 Pat. 578=13 Pat. 228 (DB)+AIR 1940 P.C. 204=ILR 1940 Kar. (PC) 419=67 Ind. App. 431+AIR 1937 P.C. 256=ILR (1938) 1 Cal. 66=31 Sind. L R 637=64 Ind. App. 302+AIR 1934 P.C. 208+AIR 1916 P.C. 182=44 Cal. 759=44 Ind. App. 65+AIR 1937 Rang. 484=1938 Rang. L R 35 (FB)+AIR 1935 Bom. 203=59 Bom. 634+AIR 1928 Oudh 465=4 Luck. 107 (DB).
2. AIR 1938 Bom. 295 (DB)+AIR 1955 Raj. 39=ILR (1955) 5 Raj. 278 (DB)+AIR 1928 Oudh 465=4 Luck. 107 (DB).
3. AIR 1946 Lahore 97.
4. AIR 1930 All. 69=52 All. 363 (FB)+AIR 1946 Lah. 97=ILR 1945 Lah. 355 (FB)+AIR 1931 Cal. 801 (DB)+AIR 1934 Lah. 765=61 Lah. 137 (DB)+AIR 1926 Nag. 449+AIR 1934 Pat. 578=13 Pat. 228 (DB)+AIR 1940 P.C. 204=ILR 1940 Kar. (P.C.) 419=67 Ind. App. 431+AIR 1937 P.C. 256=ILR (1938) 1 Cal. 66=31 Sind. L R 637=64 Ind. App. 302+AIR 1934 P.C. 208+AIR 1916 P.C. 182=44 Cal. 759=44 Ind. App. 65+AIR 1937 Rang. 484=1938 Rang. L R 35 (FB)+AIR 1935 Bom. 203=59 Bom. 634+AIR 1928 Oudh 465=4 Luck. 107 (DB).
5. AIR 1934 All. 397=56 All. 954 (DB). (AIR 1923 All 1 (FB), held overruled by AIR 1932 P.C. 207)+AIR 1936 Sind. 14=29 Sind. L R 361 (DB)+1941 Nag. L. Jour 649.
6. AIR 1929 All. 139=51 All. 473 (DB)+AIR 1929 All. 775=52 All. 71 (DB)+AIR 1932 Lah. 592+AIR 1945 Mad. 157 (DB). (Money to be paid on demand)+AIR 1916 All. 137 (DB). (Not from date of registration).
7. AIR 1965 Kerala 154+AIR 1925 Rang. 223=3 Rang. 60+AIR 1943 Nag. 178=ILR 1943 Nag. 422 (DB)+AIR 1934 Rang. 227+AIR 1934 Oudh 415 (DB).

mortgagor in their hands and time will run when the plea of the sons as to the mortgage not being binding on them was upheld by the Court.[8]

Application under O. 34, R. 6, C.P.C. In an application for personal decree under O. 34, R. 6 of the Civil P.C. it is the date of the mortgage suit and not the date of the application under that rule that has to be considered for the purpose of computing the six years' period.[9]

19. Mortgage deed not validly registered, claim for personal relief. Where the parties to a mortgage deed get the deed registered by practising fraud on registration law, a suit for recovery of money on personal covenant contained in the deed is governed by this article.[10] Thus where land not intended to be mortgaged was included in a mortgage deed merely to get registration of the deed before a particular registering officer who would otherwise be incompetent to register it, the registration of the deed was a fraud on the registration law and did not affect the immovable properties comprised in the deed but the registration was good as regards the personal covenant to repay the mortgage money and enable the mortgagee to sue for it within six years was provided by Article 116 of the Limitation Act.[11]

20. Breach of covenant in mortgage deed. A suit by the usufructuary mortgagee claiming a simple money decree on the basis of the covenant in the mortgage deed that the mortgage money is recoverable in case of default on the part of the mortgagor in delivering possession of the mortgaged properties is governed by this article.[12] Where the mortgagor undertook to deliver possession of the mortgaged property to the mortgagee on a certain date but failed to do so; it was held that limitation for a suit for damages for the breach of contract would begin to run once for all from the date fixed for delivery of possession.[13] Similarly a suit by the usufructuary mortgagee claiming mesne profits for the period he was kept out of possession of the mortgaged properties is governed by this article.[14] In a suit for redemption of a usufructuary mortgage brought in 1944 the defendant put forward a claim for compensation for loss of possession on account of breach of covenant for title and quiet enjoyment contained in the mortgage and relied for his claim on an *ekramama* executed by the mortgagor in 1923, that is within six years from the date of dispossession, under which the mortgagor had expressly covenanted to pay damages for the period of dispossession at the time of redemption. It was held that the effect of acknowledgment of liability contained in the *ekramama* was only to extend the period of limitation for a further period of six years under Art. 116, Limitation Act, within which the defendant could claim

8. 106 Ind. Cas. 816 (Lah.)+AIR 1921 Oudh 47 (DB). (In absence of any such covenant, limitation starts from date fixed for payment in mortgage deed)+AIR 1924 Oudh 147.
9. 30 All. 388 (DB)+34 Cal. 672 (DB)+AIR 1916 Mad. 13 (DB)+AIR 1929 Oudh 59=4 Luck. 237 (DB).
10. 5 DLR 290+AIR 1923 Mad. 447=46 Mad. 435 (DB)+AIR 1927 Oudh 214 (DB).
11. 5 DLR 290.
12. 30 All. 400 (DB)+21 Mad. 242 (DB)+AIR 1916 Lah. 312.
13. AIR 1941 Oudh 1=16 Luck. 203 (DB)+AIR 1945 All. 202=ILR 1945 All. 676=46 Cri. L. Jour 143 (FB).
14. AIR 1915 All. 393.

the compensation and that period could not be extended beyond 1929 merely because the plaintiff expressly agreed to pay damages at the time of redemption.[15]

Non-payment of government dues by mortgagee. A suit by a mortgagor against a usufructuary mortgagee for compensation on the ground that the latter who was bound under the mortgage deed to pay the Government revenue committed default and that as a consequence, a portion of the mortgaged properties was sold for the arrears of revenue, would be governed by this article.[16]

Non-payment to prior mortgagees by subsequent mortgagee. A suit by the mortgagor for compensation against the mortgagee who has undertaken, in the mortgage deed, to pay the sum due to prior mortgagee and has failed to do so, would fall under this article and limitation will start from the date on which the mortgagor is himself obliged to pay the prior mortgagee.[17]

21. Suit to enforce vendor's lien for unpaid purchase money. In a suit by the vendor to recover the balance of the unpaid purchase-money in enforcement of the vendor's lien, a claim for a personal decree after enforcing the charge is governed by this Article.[18]

22. Claim for interest by way of damages. The Court can award interest by way of compensation for six years after the expiry of the term fixed for payment in a mortgage deed where the deed contains no stipulation for payment of *postdiem* interest.[19]

23. Instances of other suits falling under the Article. The following suits have also been held to be governed by this article; a suit for recovery of arrears of allowance payable annually under a registered *ekramama*;[20] a suit for refund of money paid under a registered deed of redemption for committing default of a clause in the deed whereby the executant undertook to put the opposite party in possession of the properties,[1] a suit to recover Government rent, and under-proprietary rent payable by the transferee under a registered maintenance deed to the transferor;[2] a suit by the principal for recovery of specific sum of money misappropriated by the agent who by a registered agreement undertook to repay the amount found to have been misappropriated by him within a certain time of the ascertainment of the amount;[3] a suit by a shareholder in a company for payment of the dividend declared by the company;[4] a suit for money recovered under registered power-of-attorney;[5] a suit or compensation upon a contract embodied in a registered *qabuliat* under which a person is allowed to occupy a

15. AIR 1952 Pat. 73 = 30 Pat. 1161 (DB).
16. 33 Mad. 71 (DB).
17. AIR 1921 All. 133 (DB) + AIR 1919 Oudh 36.
18. AIR 1937 Nag. 246 = ILR 1938 Nag. 45 + AIR 1931 Rang. 139 = 9 Rang. 56 (DB) + AIR 1933 P.C. 143 = 60 Ind. App. 183 = 11 Rang. 186.
19. 19 All. 39 = 23 Ind. App. 138 (P.C.) + AIR 1922 Lah. 254 = 3 Lah. 200 (FB) + AIR 1932 Mad. 175 + 24 Cal. 699 (FB) + 7 Oudh Cas. 11 + 17 All. 581 (FB).
20. 23 Cal. 645 (DB).
1. AIR 1931 Lah. 448 = 13 Lah. 1 (DB).
2. AIR 1929 Oudh 311 = 5 Luck. 166 (DB).
3. AIR 1941 Cal. 257 (DB).
4. AIR 1940 Bom. 97 = ILR 1940 Bom. 165 (FB).
5. AIR 1944 Cal. 106 = ILR (1943) 1 Cal. 578 (DB).

house and pay compensation for use and occupation;[6] a claim for past salary by the Director of a Company before the official liquidator,[7] a suit for refund of money for failure of consideration.[8]

117.	Upon a foreign judgment as defined in the Code of Civil Procedure, 1908.	[9][Six years]	The date of the judgment.

Synopsis

1. Suit on foreign judgment. 2. 'Foreign judgment'--what is.
3. Starting point of limitation.

1. Suit on foreign judgment. A foreign judgment creates an obligation belonging to the class of implied contracts "that every man hath engaged to perform what his duty or justice requires.[10] The obligation gives rise to a new cause of action on which a suit may be founded.[11]

2. 'Foreign judgment'--what is. The term "judgment" as used in the expression "foreign judgment" means the decree or order of a foreign Court and not the statement of reasons given by the Judge as the grounds of his decision.[12] An order of a foreign Court which is not a "judgment" cannot be a "foreign judgment"[13] Thus an order under S. 12 of the Arbitration Act (52 and 53 Vict. C. 49) enforcing an award in England is not a "Judgment" and cannot be regarded as a "foreign judgment".[14] Similarly a call order by a Liquidation Court in a foreign State authorising the institution of suits for recovery of sums from persons living outside the jurisdiction of the Court is not a final decision and is not a "foreign judgment".[15]

Act of State. An order passed by the Government of a foreign State, which amounts to an Act of State is not a "foreign judgment".[16]

Courts whose judgments are foreign judgments. The Supreme Court of Mauritius, the Court of Native States and Courts in Ceylon are foreign Courts and their judgments, are "foreign judgments".[17]

---

6. AIR 1952 All. 344 (DB).
7. AIR 1957 All. 143 = ILR (1958) 1 All. 407 (DB).
8. PLD 1978 Lah. 317 = PLJ 1978 Lah. 41 (DB).
9. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S 2 and First Sch., for "Ditto".
10. 6 Bom. 292 (DB).
11. AIR 1939 Bom. 522 = ILR 1939 Bom. 639 + AIR 1933 Mad. 511 = 56 Mad. 951 (DB).
12. AIR 1932 Mad. 661 (*Reversed* on another point in AIR 1933 Mad. 511 = 56 Mad. 951 (DB)).
13. 1877 Pun Re No. 36, p. 75 (FB).
14. 31 Cal. 274 (DB).
15. AIR 1935 Lah. 975 = 17 Lah. 341 (DB).
16. 17 Bom. 620*n* (Order deposing a high priest).
17. 22 Cal. 509 (DB). (Supreme Court of Mauritius) + 22 Cal. 222 = 21 Ind. App. 171 = 1894 Pun Re No. 112 (PC). (The Courts of Native States) + AIR 1915 Mad. 486 = 39 Mad. 24 (FB) + AIR 1933 P.C. 134 = 60 Ind App. 167 = 56 Mad. 405 + 1877 Pun Re No. 36, p. 75 (FB) + 32 Mad. 469 (DB) (Courts in Ceylon) + 20 Mad. 112 (DB).

3. Starting point of limitation. The date of the judgment is the starting point of limitation under this article.[18] Where the judgment of a foreign Court is appealed against and the appeal is dismissed, the judgment for the purpose of Art. 117 is the judgment of the appellate Court and not that of the Court of first instance.[19]

While calculating the period of limitation, the Court must keep before itself the date of judgment, any other proceedings based on that judgment would not stop the running of time. Thus time spent in executing the decree in the foreign Court[20] or time spent in defending an application to set aside the decree where it has been passed *ex parte* cannot be deducted in computing the period of limitation.[21]

Executability of decree immaterial. If a suit is instituted within six years of a foreign decree, it is immaterial whether under the Law of Limitation in force in the foreign country the decree was capable of execution or not at the time of institution of the suit.[1]

118.	To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	[2][Six years]	When the alleged adoption become known to the plaintiff.

Synopsis

1. Scope and applicability.
2. Starting point of limitation.
3. Effect of not filing suit.
4. Alienation subsequent to adoption.

1. Scope and applicability. It is only if, in truth and substance, the suit is one for a declaration that an adoption is invalid, that this article would apply.[3] Where the reversioner's suit for possession of the estate of the last male owner is resisted by a person alleging himself to be the adopted son of the last male owner, but it is found as a fact that the adoption was by the widow to herself, this article will not apply.[4] Similarly where in a suit for a declaration of right and possession of immovable property, the defendant set up his right under adoption deed, Art. 114 and not Art. 120 or Art. 118 would apply.[5] Where a Hindu female becomes entitled to possession of property on the death of her mother, her suit for declaration of her title to her share of the property and partition is governed by

18. 8 Suth W.R. 32 (DB) + 4 Suth W. R. 107.
19. AIR 1933 Mad. 511 = 56 Mad. 951 (DB) + AIR 1939 Bom. 522 = ILR 1939 Bom. 639.
20. 8 Suth W. R. 32 (DB).
21. AIR 1927 Lah. 200 = 8 Lah. 54 (DB).
1. AIR 1939 Bom. 522 = ILR 1939 Bom. 639. (AIR 1916 P.C. 147. *Explained* and *Distinguished*).
2. Subs. by the Repealing and Amending Act. 1923 (11 of 1923). S 2 and First Sch., for "Ditto".
3. AIR 1927 P.C. 229 + AIR 1954 Nag. 319 = ILR 1954 Nag. 692 (DB).
4. 22 Cal. 609 = 22 Ind. App. 51 (PC) + 6 Ind. App. 110 (PC).
5. AIR 1961 Madh B 40.

Art. 141 and not by Art. 118 even though the defendant raises the question of his adoption.[6]

Declaration sought only as incidental to main relief. Where the claim in a suit by a Hindu widow was in substance one for possession of the immovable property and a declaration claimed as to invalidity of the alleged adoption, under which the defendant claimed the property was merely incidental to the principal relief claimed in the suit, Art. 118 had not application.[7] Where *S* died leaving a widow. A son D was adopted to *S* on 13th September, 1925, A sister of *S* filed a suit in 1931 alleging *D's* adoption to be invalid. The suit was dismissed in 1933 as a result of a compromise between *D* and the sister of *S*. In 1941 the son of the sister sued alleging that the compromise was brought about in fraud of his possible future interests and that the existence of this fraud provided him with a new cause of action. It was held that the suit was maintainable and was not barred by limitation.[8]

Suit for possession by reversioner. Where an adoption is void and is insufficient to confer any rights upon the adopted son, it is not necessary to file any suit for getting a declaration of the invalidity of adoption and the plaintiff can ignore such an adoption, and bring a suit for possession within 12 years of the death of the widow who is alleged to have adopted the son.[9] This article should be restricted to declaratory suits in respect of adoption and not to suits for possession. The omission to bring within the period prescribed by this article a suit to obtain a declaration that an alleged adoption was invalid or never in fact took place was no bar to bring a suit for possession of property against a person who claimed to be in possession in exercise of the rights of adoption.[10] Therefore where a suit for a declaration that an adoption is invalid is barred by time, Courts have in the interest of justice allowed the plaintiff to convert the suit into one for the recovery of possession of the estate and to amend the plaint accordingly.[11] Thus where original suit by the plaintiff was as reversioner for a declaration of title that the alleged adoption by the widow was invalid and the widow died pending the suit. The plaint was amended and the plaintiff claimed as full owner and sued for recovery of possession, the nature of the suit was completely changed, and the suit was not hit by Art. 118.[12]

2. Starting point of limitation. Time under this article, runs from the date when the alleged adoption becomes known to the plaintiff.[13] To constitute knowledge under the article, the knowledge need not necessarily have been obtained first hand but there must be some foundation in fact and the question how far that condition is satisfied is a question of degree only to be solved by

---

6. AIR 1960 Pat 452 (DB).
7. AIR 1963 Madhya Pradesh 348 (DB) + AIR 1924 P.C. 137 + AIR 1931 P.C. 84.
8. AIR 1945 Mad. 33 = ILR 1945 Mad. 450 (DB).
9. 1954 Raj. L W 608.
10. 28 All. 727 = 33 Ind. App. 156 = 9 Oudh Cas. 377 (P.C.) + 39 Cal. 418 = 39 Ind. App. 19 = 1912 Pun. Re. No. 126 (P.C.) + AIR 1922 Bom. 223 = 46 Bom. 776 (FB) + AIR 1914 Lah. 309 = 1914 Pun Re. No 81 (FB) + AIR 1924 P.C. 137 = 48 Bom. 411 = 51 Ind. App. 220 + AIR 1931 P.C. 84 + AIR 1958 Bom. 270 = ILR 1958 Bom. 656 (DB).
11. AIR 1930 Mad. 47 (DB).
12. AIR 1961 Orissa 35 (AIR 1956 A P 141 (FB). *Distinguished*).
13. AIR 1924 P.C. 137 = 51 Ind. App. 220 = 48 Bom. 411 = 24 Cal. 1 = 23 Ind. App. 97 (P.C.).

reference to the facts of each case.[14] For limitation to begin it is not necessary that adoption must have taken place. Irrespective of whether an adoption in fact takes place or not time will run from the date when the allegation of adoption is known to the plaintiff.[15]

Once limitation has begun to run, it is not arrested by the fact that the person making the adoption was alive within six years before the suit,[16] or by the fact that the widow of the adoptive father admits the title of the adopted son.[17]

Registered deed. The mere registration of a deed of adoption does not amount to notice of adoption to the person interested in challenging the validity of such adoption.[18] Thus where a deed of adoption was registered, but the plaintiff had no knowledge thereof until a date when a gift was mutated; it was held, that time under this article ran from the date of mutation and not from the date of registration.[19] But where other facts continue with the fact of registration a presumption may arise as to the knowledge of the adoption by the plaintiff. Thus where a deed of adoption was registered, the adopted son and adoptive father lived together for a considerable time and the reversioner contesting the adoption resided in the same village, it was held that under the circumstances, a presumption arose that the reversioner came to know of the fact of adoption at a time which was beyond the period of limitation.[20]

Knowledge of minor plaintiff. The minority of the plaintiff cannot affect the mandatory provision of Art. 118 which require that the suit must be brought within six years from the date when the alleged adoption becomes known to the plaintiff.[1] But in a suit by the minor natural son born subsequent to an adoption by his father, to declare that the adoption was invalid, it was held that a minor could not be fixed with knowledge of an adoption from the date of his birth and that a suit by him to set aside the adoption was not governed by this article.[2]

Knowledge of the nearest reversioner. A suit by a Hindu reversioner for a declaration that an adoption is invalid is a representative suit on behalf of all the reversioners.[3] Therefore time will run against the whole body of reversioners from the date of knowledge of the adoption by the nearest reversioner.[4] A suit by a remote reversioner to set aside the adoption would be barred, if filed more than six years after the next reversioner obtained knowledge thereof.[5] It must however be noted that though a suit filed by one of the presumptive revisioners is a representative suit and the presumptive reversioner is capable of giving a discharge without the concurrence of others yet the mere non-filing of a suit by

14. 5 Bom. L. R. 584 (DB) + AIR 1916 Mad. 896 (DB).
15. AIR 1943 Pat. 68.
16. 27 Bom. 614 (DB).
17. 1901 Pun. Re No. 116. p. 401.
18. AIR 1925 Lah. 25 = 5 Lah. 368 (DB).
19. AIR 1934 Lah. 274 = 15 Lah. 645.
20. 4 Ind. Cas. 889 (Lah.).
1. AIR 1958 Bom. 270 = II.R 1958 Bom. 656 (DB).
2. AIR 1926 Mad. 1123 + AIR 1949 East Punj. 156 (DB). (AIR 1923 Lah. 25. *Foll.*).
3. AIR 1915 P.C. 124 = 42 Ind. App. 125 = 38 Mad. 406 + 29 Mad. 390 (FB) + AIR 1925 P.C. 272 = 47 All. 883 = 28 Oudh Cas. 352 = 52 Ind. App. 398 + AIR 1951 Mad. 824 (DB).
4. AIR 1921 Mad. 380 = 44 Mad. 218 (DB) + AIR 1951 Mad. 824 (DB).
5. AIR 1916 Mad. 731 (DB) + 24 Mad. 405 (DB).

the presumptive reversioner cannot bar the suit filed by other reversioner three years after attaining majority.[6]

Onus of proof of knowledge. In the first place it is for the plaintiff to prove that he did not have knowledge of the adoption within six years of the suit. Where there is sufficient evidence to show that the plaintiff had knowledge of the adoption for a long time, the suit will be time barred. Where on the facts it was found that the plaintiff challenging the adoption had himself asserted over and over again the factum of adoption and had agreed to be bound by it and received consideration for it; it was held that a suit by him several years thereafter to challenge the adoption was clearly barred.[7] Where an adoption has been recognized as valid during a long course of years, it was held that, altogether apart from the Law of Limitation, the burden resting upon any litigant, who challenges the validity of the admitted adoption was of the heaviest order.[8] Where the plaintiff has given *prima facie* evidence of his want of knowledge of the fact of adoption, it will be for the defendant to show in the clearest possible way that the plaintiff had such knowledge beyond six years of the date of suit.[9]

3. Effect of not filing suit. A reversioner who has not filed a suit for a declaration that an alleged adoption, made by the widow is not binding on the reversioner within the prescribed time under this article, cannot, ignoring the said adoption file a suit after the said prescribed time for a declaration that the alienation made by the adopted son is not binding on the reversioner.[10]

4. Alienation subsequent to adoption. When the alleged adopted son makes an alienation of the properties of the adoptive father, such alienation would not give a fresh cause of action against the adopted son and a suit challenging the alienation after the expiry of the period of limitation prescribed for a suit to get the adoption declared invalid would be barred.[11]

119.	to obtain a declaration that an adoption is valid.	[12][Six years]	When the rights of the adopted son, as such are interfered with.

Synopsis

1. Applicability and scope.
2. Interference with rights.

1. Applicability and scope. This Article applies only to a suit for declaration as to the validity of an adoption and not as to the factum of adoption.[13] It does not

6. AIR 1959 Orissa 179 = ILR 1959 Cut 122 (DB).
7. AIR 1923 All. 58 = 45 All. 169 (DB).
8. AIR 1925 P.C. 201.
9. 22 Cal. 609 = 22 Ind. App 11 (PC) + AIR 1949 East Punj. 156.
10. AIR 1956 Andhra 141 = ILR 1955 Andh 505 (FB) + AIR 1958 Bom. 270 = ILR 1958 Bom. 656 (DB).
11. AIR 1921 Lah. 389 (DB) + AIR 1920 Lah. 438 (DB) + AIR 1917 Mad. 68 (DB). (*But see* AIR 1926 Lah. 654 (DB)).
12. Subs. by the Repealing and Amending Act, 1923 (11 of 1923). S. 2 and First Sch., for "Ditto".
13. 31 Bom. 80 (DB) + 28 Bom. 94 (DB).

apply to a suit for possession even though the plaintiff may have to establish the validity of the adoption as the basis of his claim to possession.[14]

2. Interference with rights. To constitute "interference" there must be some act done which is incompatible with the recognition of the adoption.[15] Thus a gift of property by the adoptive mother to her daughter in derogation of the adopted son's rights accompanied by a transfer in the daughter's favour is a direct interference with rights of the adopted son.[16] But the Article has no application where the interference was intended to have no greater effect than that of postponing the right of the adopted son to succeed as heir to the property of his adoptive father.[17] Similarly a mere unsuccessful attempt by somebody to exclude the adopted son from the property to which he would be entitled or a mere denial of status of adopted son would not be an "interference."[18]

Interference must be by defendant. The interference must be by the defendant and not by a third party unconnected with the defendant.[19]

Property interfered with. Interference may be with respect to any property to which the adopted son is entitled.[20] It must be with the rights of the alleged adopted son and not with merely the rights of a third person.[1]

120.	Suit for which no period of limitation is provided elsewhere in this schedule.	[2][Six year]	When the right to sue accrues.

Synopsis

1. Scope and applicability.
2. Starting point.
3. Suit for damages for breach of trust.
4. Suit to enforce trust.
5. Suit to enforce right to manage trust property.
6. Suit for accounts against trustees.
7. Suit by or against an executor or administrator.
8. Suit by transtee for money due to him.
9. Suit impeaching alienation of trust property.
10. Suit for recovery of trust property.
11. Suit for pre-emption.
12. Claim suit.
13. Arrears of public demand, suit to set aside.

---

14. 25 Cal. 354 (DB) + 24 All. 195 (DB) + 26 All. 40 (DB) + 13 Bom. 160 (DB) + AIR 1925 Mad. 497 = 48 Mad. 1 (DB) + 5 Mad. L. Tim 262 (DB) + AIR 1914 Lah. 309 = 1914 Pun Re. No. 81 (FB) + AIR 1934 Bom. 110 = 58 Bom. 288 (DB) + AIR 1924 Nag. 142.
15. AIR 1920 Bom. 110 (DB).
16. 13 Mad. L. Jour 144 (DB).
17. 28 Bom. 94 (DB).
18. AIR 1924 Rang. 34 = 1 Rang. 186.
19. 26 All. 40 (DB).
20. 13 Mad. L. Jour 145 (DB).
1. AIR 1930 Bom. 110 (DB) + 26 Bom. 720 (DB).
2. Subs. by the Repealing and Amending Act, 1923 (11 of 1923). S. 2 and First Sch., for "Ditto".

14. Official acts or orders, suit to challenge.
15. Compensation for land acquired under statute, suit for.
16. Suit for injunction.
17. Declaration of right as to property attached under Cr.P.C.
18. Possession of movable property.
19. Suit to recover deposit.
20. Suit for money due from defendant for money received by him.
21. Suit for accounts.
22. Administration bond, suit on.
23. Promissory note, suit on.
24. Suit for costs by attorney or advocate.
25. Suit relating to contract of agency.
26. Will, suit to avoid.
27. Will, suit for construction of.
28. Suit for declaration that decree was not binding or to set aside decree or order.
29. Suit for relief on ground of fraud.
30. Mistake, suit for relief on ground of.
31. Suit for contribution.
32. Refund of money paid to defendant, suit for.
33. Suit relating to partnership.
34. Suit for profits.
35. Suit relating to companies.
36. Suit for declaration.
37. Suit for possession of and for removal of person from office.
38. Hindu Reversioner, suit by.
39. Suit to set aside alienation by Hindu father.
40. Partitions, suit for.
41. Emoluments of hereditary office, suit for.
42. Suit to enforce mortgage or pledge.
43. Suit to enforce award.
44. Suit for taxes.
45. Suit by creditor against alienee from devisee.
46. Restitution of conjugal rights, suit for.
47. Dissolution of marriage, suit for.
48. Exclusive right to worship, suit for.
49. Hindu son's pious obligation to pay his father's debts.
50. Record of right, suit for correction of or declaration as to entry in.
51. Suit for damages.
52. Suit for money under S. 68, T.P. Act.
53. Suit against buyer for charges for care and custody of goods.
54. Suit for money promised to be paid.

1. **Scope and applicability.** This article is a general one and applies to suits to which no other article in the schedule applies.[3] Therefore this article should be

3. AIR 1934 Lah. 384 = 15 Lah. 389 (FB) + AIR 1959 Ker. 1 (FB) + AIR 1960 Assam 121. (Suit for recovery of Provident Fund money from Local Board withheld without authority--Art. 120 applies.) + AIR 1960 Bom. 404 = ILR 1959 Bom. 151 (DB) + AIR 1960 Mad. 264 = ILR 1960 Mad. 300 (DB) + AIR 1960 Punj. 655 (DB) + 64 Cal W N 773 + AIR 1959 Ker. 38 = ILR 1958 Ker. 838 (DB) + AIR 1959 Pat. 477 + AIR 1957 Ker. 19 = ILR 1957 Ker. 44 (FB) + AIR 1957 Tripura 33 + AIR 1957 Madh Pra 234 + AIR 1956 Ajmer 3 + ILR (1951) 2 Cal. 276 + AIR 1954 All. 393 = ILR (1954) 1 All. 582 (DB) + AIR 1954 Madh B 23 = ILR 1954 Madh B 203 + AIR 1952 Pat. 143 (DB) + 93 Cal L. Jour 373 + AIR 1951 Mad. 572 = ILR 1950 Mad. 339 (DB) + AIR 1948 All. 75 = ILR 1947 All. 203 (DB) + AIR 1941 All. 152 = ILR 1941 All. 276 + AIR 1947 All. 31 + AIR 1945 Lah. 164 (DB). (Suit for recovery of purchase price under S. 93 of Punjab Land Revenue Act.) + AIR 1940 Cal. 400 + AIR 1916 Low Bur

applied wherever the case does not clearly fall under any specific article.[4] Where another article applies, this article will not apply.[5] It is to be noted that wile considering whether Art. 120 applies, the Court is not precluded from deciding that another particular article applies, even though none of the parties has relied upon it.[6] Where the plaintiff alleged that he was in possession of the land in dispute and had been dispossessed within twelve years of the failing of the suit. The fact that the contention urged by him has been accepted by the two Courts, as well as the High Court would clearly attract to the suit filed by him, Article 142 and not Article 120, which is residuary Article.[7]

Special limitation provided under a statute. Where a statute provides for special limitation under it. This Article of the Limitation Act will not apply.[8]

2. Starting point. The words "right to sue" mean a right to seek relief, that is, a right to prosecute by law, and to obtain relief by means of legal procedure.[9] The question as to when a right to sue arises must depend largely upon the circumstances of the particular case.[10] There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted.[11] In other words date of accrual of cause of action, and not cause of action itself, would be *terminus a quo* for computing limitation time under Art.

---

40 (DB)+AIR 1934 Bom. 491+AIR 1919 Mad. 972=40 Mad. 1040+AIR 1914 Mad. 572=37 Mad. 381 (DB)+AIR 1942 Sind 37=ILR 1941 Kar. 495 (DB)+AIR 1945 Cal. 144=ILR (1944) 1 Cal. 463+AIR 1923 All. 58=45 All. 169 (DB)+AIR 1929 Cal. 714=56 Cal. 556+AIR 1965 All 590 (FB).

4. 21 Cal. 157=20 Ind. App. 155 (P.C.).
5. 1981 SCMR 765+6 DLR 254+AIR 1961 A P 432 (DB)+AIR 1941 P.C. 6=ILR 1941 Kar. (P.C.) 11=ILR 1941 Bom. 202. (*Over* AIR 1936 Bom. 363)+AIR 1939 P.C. 178=AIR 1947 F.C. 23=AIR 1947 F C R 89=ILR 1947 Kar. (F.C.) 52.) (AIR 1943 Oudh 368, *Overruled*)+AIR 1960 Andh Pra 210+AIR 1960 Bom. 59=ILR 1959 Bom. 898 (DB)+AIR 1960 Cal. 381+AIR 1960 Mad. 264=ILR 1960 Mad. 264=ILR 1960 Mad. 300 (DB)+AIR 1960 Mys. 278+AIR 1960 Mys. 193 (DB)+AIR 1960 Pat. 223 (DB)+AIR 1958 Andh Pra 48=ILR 1957 Andh Pra 686 (DB)+1958-1 Andh W R 166+AIR 1957 Assam 10=ILR (1956) 8 Assam 309 (DB)+AIR 1957 Trav-Co. 179=ILR 1955 Trav-Co. 1200 (DB)+ILR 1954 Mad. 537+AIR 1954 Cal. 253=ILR (1954) 1 Cal. 422. (AIR 1952 Cal. 76. *Explained* and *Distinguished*)+AIR 1952 Bom. 106=ILR 1952 Bom. 226+AIR 1951 Mad. B. 40+AIR 1950 All. 632=ILR (1953) 1 All. 265 (DB). (1889 Pun. Re No. 160, p. 562. *Dissent from*)+AIR 1949 Assam 75+AIR 1949 Mad. 437 (DB)+AIR 1949 Mad. 279=AIR 1949 Mad. 114 (DB)+AIR 1940 Cal. 207+AIR 1948 Nag. 150=ILR 1947 Nag. 985=AIR 1947 All. 256=ILR 1946 All. 633 (DB)+AIR 1941 Mad. 391=ILR 1941 Mad. 414 (DB)+ 43 Pun L R 97 (DB)+AIR 1941 Oudh 45+16 Luck 223+AIR 1947 Lah. 117=ILR 1946 Lah. 300 (*Held* Art. 134-A was applicable.)+AIR 1946 Bom. 192=ILR 1946 Bom. 109 (DB). (*Held* Art. 144 was applicable)+AIR 1946 Mad. 116=ILR 1946 Mad. 423 (DB).

6. AIR 1965 Allahabad 590 (FB).
7. 1981 SCMR 765=NLR 1980 SCJ 467.
8. PLD 1955 Lah. 288=PLR 1955 Lah. 451.
9. AIR 1914 Mad. 708=38 Mad. 1064 (DB)+AIR 1957 Tripura 33+AIR 1939 Lah. 6 (DB)+AIR 1935 Bom. 213+26 Bom. 597 (DB)+AIR 1922 Oudh 109+AIR 1930 Mad. 173 (DB).
10. AIR 1940 Cal. 51=ILR (1940) 1 Cal. 183 (DB)+AIR 1939 Lah. 6 (DB)+AIR 1916 Cal. 751 (DB)+AIR 1922 Cal. 8 (DB)+AIR 1931 Lah. 238=12 Lah. 13 (DB)+AIR 1935 Bom. 213+20 Bom. 511.
11. NLR 1986 UC 263+PLD 1984 Kar. 97+PLD 1969 A J & K 1 (DB)+AIR 1930 P.C. 270=11 Lah. 657+AIR 1931 P.C. 9+AIR 1960 S.C. 335.

120.[12] Thus where the plaintiff made repeated applications or representations to the I.G.P. for implementing the order of Tribunal, the Special Judge. These applications were neither accepted nor turned down. It would be ridiculous to say that the right to sue accrued to the plaintiff, on the date of the appellate order of the Tribunal. The Tribunal had accepted the departmental appeal of the plaintiff. The acceptance of his appeal would not give him the right to file a suit. All that he could do was that he could approach the Government for implementation of this appellate order which he did time and again but which representations fell on deaf ears. In the end the plaintiff was forced to serve the Government with a notice under section 80, C.P.C. but the Government decided to contest the suit and this decision of the Government to contest the suit gave the plaintiff, the cause of action and the right to sue accrued to him when the government also turned down his notice under section. 80, C.P.C. and elected to contest.[13]

A fresh cause of action would accrue to the plaintiffs every time their right of ownership was denied or repudiated. On 4-2-1949 the petitioners had acknowledged the ownership rights of the respondents; even though the agreement was not registered. Mutation was got entered by the respondents on the basis of this agreement, but it was rejected on 18-9-1954. It must, therefore, be said that the denial of the ownership rights of the respondents arose on 18-9-1954. The suit was filed on 13-11-1956, and was obviously within time whether the Article applicable was 120 or 142 of the Limitation Act.[14]

The words "right to sue" must mean the right to bring the particular suit with reference to which the plea of limitation is raised.[15] Therefore where the right asserted itself came into existence within six years of the date of the suit no question of limitation would arise.[16] Where proceedings for fixation of fair rent are instituted, limitation for arrears of fair rent begins to run from the date when fair rent is fixed by the Rent Controller and not from the date from which the rent has to be paid. Therefore a suit filed within three years of the fixation of fair rent was held to be within time.[17]

Knowledge of cause of action. Where the nature of the right claimed imports as a necessary condition, knowledge of certain facts, a right to sue cannot arise until the plaintiff has the necessary knowledge.[18] Thus where a decree against the interest of a person was passed in 1913 and he came to know of it in 1935, 26 years after it became time barred. It was held that limitation begins to run from the knowledge of the decree to the person concerned and not from the date of the passing of the decree.[19] In a suit by an official receiver for a declaration that a deed of transfer executed by the insolvent is not binding on the official receiver or the creditors under S. 53, T.P. Act, which is governed by the residuary Art. 120, Limitation Act, the starting point of limitation is the date of knowledge of the

12. NLR 1989 SD 880.
13. PLD 1969 Azad J & K 1 (DB).
14. 1972 SCMR 289.
15. AIR 1931 P.C. 89 = 58 Ind App. 125 = 58 Cal. 1157 = AIR 1950 Him Pra. 15 + AIR 1939 Pat. 548 (DB) + AIR 1922 Bom. 438 (DB).
16. AIR 1914 Cal. 29 (DB).
17. AIR 1963 Cal. 531 (DB).
18. AIR 1916 Mad. 743 = 38 Mad. 67 (DB) + AIR 1960 Pat. 66 (DB).
19. PLD 1958 Lahore 936 = PLR 1959 (1) Lahore W.P. 956.

fraudulent nature of the transfer on the part of the plaintiff. As regards the nature and extent of such knowledge of the existence of a document transferring the property of the debtor is not enough. There should be knowledge of facts from which an inference can be drawn that the transfer is with an intent to defeat or delay the creditor. That knowledge cannot, of course, be expected to comprise all the facts and circumstances which may, during the course of an elaborate trial, be brought out, but there must be knowledge of facts which would reasonably lead to a definite conclusion and not such as would merely raise a bare suspicion. Ultimately, the whole question resolves itself into a question of pure fact depending upon the circumstances and probabilities of each particular case.[20]

Continuing right. The expression "right to sue accrues" does not always mean "the right to sue first accrues".[1] Where the wrong giving rise to the cause of action is continuing and the suit is brought within six years from cessation of the wrong, no question of limitation arises.[2]

Successive invasions of right. Where there are successive invasions or denials of a right, the right to sue under Art. 120 accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuos it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.[3]

3. Suit for damages for breach of trust. A suit for damages for breach of trust in the management of the trust property will be governed by this article, and time will run from the date of the breach and not from the date of the loss consequent on the breach.[4] As to when the right to sue arises against a trustee or ex-trustee to make good the loss sustained by the trust by his omission to collect moneys due to the trust will depend on the circumstances when time will begin to run.[5]

4. Suit to enforce trust. A suit to enforce a trust would be governed by this article.[6] Therefore a suit by a beneficiary under a trust to enforce the trust by compelling the trustee to convey the trust properties to him would be governed by this article.[7]

A mere declaration by the trustee of his intention to hold the trust properties as a full owner in future is not an overt act. Limitation does not run against the beneficiaries from the time of such declaration only.[8] Where the plaintiffs,

---

20. AIR 1946 Madras 286.
1. AIR 1917 Mad. 244 (DB) + 1946 Jaipur L R 355 (DB).
2. 27 Mys. L. Jour 48 (DB).
3. AIR 1960 S.C. 335 = 1960-2 S C R 253.
4. AIR 1936 Bom. 30 (DB).
5. AIR 1938 Mad. 353 = ILR 1938 Mad. 586 (FB) + AIR 1943 Mad. 691 = ILR 1944 Mad. 264 (DB).
6. AIR 1927 Mad. 1135.
7. AIR 1920 Cal. 363 = 47 Cal. 1377 (FB) + AIR 1931 P.C. 196 = 10 Pat. 851 = 58 Ind. App. 279.
8. AIR 1947 Lah. 117 = ILR 1946 Lah. 300.

representing the community applied to the Deputy Commissioner for sanction to sue the defendant under S. 92, Civil Procedure Code. The defendant claimed adverse title and the Deputy Commissioner ordered them to institute a suit for declaration regarding title to the properties in question. The plaintiffs then brought a suit for declaration that the properties in suit were *wakf*. It was held that Art. 120 did not apply. This was a representative suit on behalf of a community under O. 1, R. 8, Civil P.C. for a declaration that properties in suit were *wakf*. It could not be said that the community as such was ever aware before the institution of such suit that its title was in jeopardy. It might be that some members of it were aware that the defendant claimed an adverse title to the *wakf* properties but that did not mean that the assertion was to the knowledge of the entire community. The plaintiff got a fresh cause of action for the suit on the order of the Deputy Commissioner and were entitled to sue for a declaration as per terms of order.[9] Similarly where the trustees began to deal with *wakf* properties as owners. It was held that in purporting to deal with *wakf* property as owners they were committing breaches of trust not setting up title adverse to the trust.[10]

5. Suit to enforce right to manage trust property. A suit to enforce plaintiff's personal right to manage an endowment dedicated to religious purposes there being no question as to whether the manager was applying the property to trust purposes is governed by this article.[11] Similarly a suit brought against defendants not as trustees but as beneficiaries receiving the money in their own right for their private use for a declaration that plaintiff also was entitled to a share thereof is governed by Article 120.[12]

6. Suit for accounts against trustees. A suit for accounts against a person not holding under an express trust but who renders himself liable in equity to account for a particular fund would be governed by this article,[13] and the cause of action for the suit would arise when an account is demanded and refused.[14] A suit for account against a trustee for money which never came into his hands but for his wilful default or negligence will be governed by this article and not by S. 10.[15]

7. Suit by or against an executor or administrator. The following suits will be governed by this article. An executor's suit for recovery of money from the estate;[16] a suit for recovery of money misappropriated by the executor or administrator,[17] and a suit for accounts against the executor.[18]

Starting point of limitation. In a suit for recovery of moneys misappropriated by trustee or administrator the cause of action will arise on the termination of the administration and not on the date of the misappropriation.[19]

---

9. AIR 1946 Nagpur 401.
10. PLD 1949 P.C. 8.
11. 6 All. 1 = 10 Ind. App. 90 (P.C.).
12. AIR 1944 Oudh 139 = 19 Luck. 515.
13. PLD 1978 Kar. 97 + AIR 1931 P.C. 9 + AIR 1949 Oudh 51 (DB) + AIR 1941 All. 1 (DB).
14. AIR 1931 P.C. 9 = 8 Rang. 645 = 58 Ind. App. 1.
15. AIR 1940 Rang. 207 = 1940 Rang. L R 273 (DB).
16. AIR 1916 Mad. 720 = 39 Mad. 365 (DB).
17. 7 Mad. L Tim 123.
18. 9 Cal. L Jour 383 (DB) + 32 Bom. 364.
19. 7 Mad. L Tim 123.

8. Suit by trustee for money due to him. A suit by a trustee for money due to him from *cestuc qui trust* falls under this Article. Where a certificated guardian spent money out of his pocket for the benefit of the minor, and when the minor attained majority the Court ordered the guardian to deliver possession of property to the minor. A suit by the guardian for recovering the amount due to him is governed by Article 120 as the guardian was in the position of a trustee. The cause of action for the suit arises when the property is delivered to the minor.[20]

9. Suit impeaching alienation of trust property. A suit to declare an alienation of trust property invalid would be governed by this article.[1]

10. Suit for recovery of trust property. A suit by a trustee to recover from a former trustee a certain sum of money which he had taken from the temple funds,[2] or a suit by a trustee against the legal representative of his co-trustee for recovery of trust property consisting of a sum of money would be governed by this article.[3] A suit for the recovery of certain Government Promissory Notes conveyed on an invalid trust would be governed by this article, and the cause of action for the suit would arise on the conveyance and not when the trustee refused to re-convey the property.[4] A suit to recover trust property from a person taking it from trustee by a transaction amounting to breach of trust is governed by Article 120 and limitation starts from the date of knowledge of the transaction.[5]

Failure of purpose of trust. When there is a failure of purpose for which a particular fund was held in trust, a suit by the contributors for recovery of their shares in the fund is governed by this article. Limitation commences to run from the date when there is a failure of the purpose whereupon the resulting trust arises.[6]

Recovery of property from beneficiary. A suit by a trustee for recovery of movable trust property wrongfully taken by a beneficiary is governed by this article.[7]

11. Suit for pre-emption. The principle underlying both Art. 10, Limitation Act, and S. 30, Punjab Pre-emption Act is that of the notice is afforded to the pre-emptor by the transfer of physical possession or by the registration of the sale-deed. If the transaction of sale is effected in such manner that such notice has not occurred resort to the residuary Art. 120 is unavoidable.[8] Similarly the limitation applicable to a suit brought to declare a right of pre-emption in respect of a sale, not by registered instrument of an undivided share in a joint holding which does not admit of physical possession being taken is six years under Article 120 of the Limitation Act, 1908. Property which is *haqi shamilat* is incapable of physical possession and where such property is sold by unregistered deed the transaction is

20. AIR 1939 Bom. 394.
1. AIR 1914 Mad. 708 = 38 Mad. 1064 (DB) + AIR 1923 Pat. 475 = 2 Pat. 391 (DB).
2. AIR 1934 Mad. 542.
3. AIR 1927 Bom. 424.
4. 20 Bom. 511.
5. AIR 1941 P.C. 1 = ILR 1941 Kar. (PC) 1 = ILR 1941 Mad. 175 = 67 Ind. App. 448 + AIR 1948 Mad. 519 = ILR 1946 Mad. 429.
6. AIR 1938 Mad. 641 (DB).
7. AIR 1949 Assam 10 (DB).
8. AIR 1951 Punj. 45 = ILR 1951 Punj. 207 (FB).

not covered by either Article 10 of the Limitation Act, 1908 nor by section 31 of the N.-W.F.P. Pre-emption Act, 1950. The relevant provision of law applicable in such case is Article 120 of the Limitation Act, 1908 which prescribes a period of six years.[9]

AJK Right of Prior Purchase Act, suit under. A pre-emption suit not covered by provisions of Art. 10, Limitation Act, 1908 or section 29, Right of Prior Purchase Act falls under the provision of Art. 120, Limitation Act, 1908.[10]

Suit by one pre-emptor against another. Where one pre-emptor files a suit against another claiming that he has a superior right of pre-emption and that a decree obtained by such other pre-emptor is based on fraud, Article 120 is applicable.[11]

Pre-emption on foreclosure. In case of pre-emption on foreclosure, Art. 10 does not apply. Art. 120 applies.[12]

Right of pre-emption. In a suit to enforce a right of pre-emption founded on a special contract with respect to the sale of a proprietary share in a village together with *khudkasht* lands appurtenant therein, the suit would be governed not by Art. 10 but by the residuary Art. 120.[13]

Transfer of property by vendee, suit by pre-emptor. If a purchaser under a sale-deed in respect of which the cause of action for the suit for pre-emption has arisen has subsequently transferred the property to another, the original cause of action for pre-emption is not thereby affected. The subsequent transferee from the original vendee must take the transfer subject to plaintiffs' right to pre-empt. If therefore the suit against the original purchaser is brought within limitation under Article 10 but the subsequent transferee is afterwards impleaded as a defendent after the said period of limitation the suit against the transferee is in effect merely for a declaration and is governed by six years limitation under Article 120 or as one for possession against a person who is in possession without title and so is governed by 12 years rule of limitation under Article 144.[14]

Starting point of limitation. The sale and not the knowledge of the sale is the foundation of the right. If the knowledge of the sale is held to be at the root of that right, then period of limitation for suits for pre-emption would be considerably prolonged, and the purchasers would remain under the sword of pre-emption for an indeterminate period. There may be perhaps some justification for pleading knowledge of the sale for the purpose of limitation under Article 120, if by any fraud on the part of vendor and vendee actual sale is concealed from the view of the people but not otherwise.[15]

---

9. PLD 1967 Peshawar 166 = ILR 1968 (1) W.P. 302.
10. 1990 CLC 765 (AJ&K).
11. AIR 1936 Lah. 503.
12. AIR 1950 All. 647.
13. AIR 1956 Nag. 243 = ILR 1956 Nag. 116 (DB).
14. PLD 1984 Pesh. 74 (DB) + NLR 1984 CLJ 1237 (DB) + 1980 CLC 152 + PLD 1980 Lah. 215 + AIR 1914 Oudh 216 + AIR 1936 All. 158.
15. PLD 1959 Peshawar 172 = PLR 1960 (1) W.P. Peshawar 392.

Where possession has been delivered by the vendor to the vendee under an oral sale before actual mutation is sanctioned, the limitation for suit of pre-emption would commence from the date of possession and not the date of mutation.[16] Similarly if vendees had been able to establish that sale had taken place before date of registration of sale and they had taken physical possession of land under that sale prior to the said date, limitation for suit would commence from the date of possession.[17]

Compromise decree. Where a compromise decree in a pre-emption suit admitted of passing of consideration and physical possession of the property by an oral agreement between the parties and assume a legal shape on its passing. It was held that right to sue accrued to the pre-emptor with effect from the date of passing of the decree.[18]

12. Claim suit. A claim suit, not governed by Art. 11 or Art. 15 may be governed by this article.[19] Article 11 of the Limitation Act does not govern attachment before judgment, as such attachment cannot be said to be in execution of a decree. The very wording of the Article makes it clear that it does not apply to a claim made under O. 38, R. 8, C.P.C. and there being no other specific Article applicable to such a claim, Art. 120 springs into operation. A suit filed within six years of such an order would be in time.[20] A suit by the official receiver to set aside an order against him on claim made by him after attachment before judgment of the insolvent's property is not governed by Art. 11 or Art. 13, but is governed by this article.[1]

Where at the time of hearing of the appeal the period of six years prescribed under Art. 120 had elapsed, the appellant requested that his application challenging the liability to attachment of the property attached before judgment be treated as a suit, by virtue of the provisions of S. 47 (2), C.P.C. It was held that there was no impediment in granting the permission since the application under S. 47, C.P.C. was made within six years. The permission sought was granted, subject to the payment of deficit Court-fee and costs.[2]

13. Arrears of public demand, suit to set aside. Where a sale for arrears of public demand is void, a suit to set it aside would fall under this Article.[3]

14. Official acts or orders, suit to challenge. If a public officer has passed an order which he has no jurisdiction to pass, the order can be overlooked and the suit to get relief against it can be brought within six years of the passing of the

16. PLD 1989 SC 127 = 1989 SCMR 802 = NLR 1989 SCJ 616 (PLJ 1989 Lah. 526 not good law).
17. PLJ 1989 Lah. 153.
18. 1990 CLC 765 (AJ&K).
19. AIR 1921 Mad. 163 = 44 Mad. 902 (FB) + AIR 1954 Mys. 39 = ILR 1953 Mys. 408 (DB) + 13 Cal. L. R 139 (DB) + AIR 1932 Lah. 516 (DB) + AIR 1933 Lah. 449 (DB) + AIR 1934 Pat. 580 (DB) + AIR 1945 Cal. 449 = ILR (1945) 1 Cal. 547 (DB).
20. AIR 1964 Andhra Pradesh 99 (DB).
1. AIR 1922 Mad. 189 = 45 Mad. 70 (DB).
2. AIR 1964 Andhra Pradesh 99 (DB).
3. 34 Cal. 241 (DB) + 5 Cal L. Jour 686.

order under Article 120 of the Limitation Act.[4] But where the orders were valid and in order to make them ineffective they had to be avoided, then whatever the language of the plaint, Article 14 would come into play and if brought more than one year after the impugned order was passed, the suit would be barred by time.[5]

Dispute over property. Where the Government asserts title over property claimed as his own by a private owner a suit by the latter to have his title declared would be governed by this Article.[6]

Where the Government resumed land under agreement with a Municipal Corporation and the land was resumed by the order of the Commissioner, to a suit for possession by the Corporation, Art. 14 did not apply but Art. 120 applied.[7]

Order of Revenue Officer. Where a Revenue Officer passed an order to the effect that the defendants were the permanent tenants of a field. The plaintiff's suit to declare that they were not; is governed by this article.[8] Where owner of occupancy lands on the borders of a creek applied for occupancy of the land in dispute alleging that it was alluvial. The Collector held otherwise and granted the land to another person. A suit to declare the order null and void was governed by this article.[9] Where a suit is for a declaration that mutation order is wrong and for possession; cancellation of mutation entry is not necessary for the claim for possession. Art. 120 would apply to the claim for the declaration and not Art. 14.[10]

Suit to declare dismissal illegal. Where the plaintiff does not ask to set aside any act or an order of an officer of Government in his official capacity but only seeks a declaration that his dismissal was no dismissal in the eye of the law the suit is governed by this article and not by Art. 14.[11] Such a suit with a claim for arrears of pay is governed by Art. 120 and not by Art. 14, Limitation Act.[12] Similarly a suit for a declaration that the order of the Commissioner, Income Tax, discharging the plaintiff from service was illegal and void and that the plaintiff still continued to be in service, is governed by Art. 120.[13]

Compulsory retirement, suit to set aside. Where an order of compulsory retirement from Government service was challenged as being *ultra vires*, Art. 120 and not Art. 14 applied to the suit.[14] Thus a suit by an official for a declaration that the order of the appointing authority compulsorily retiring him passed under R. 7, Public Conduct (Scrutiny) Rules, 1959, was "illegal, void and without

4. PLD 1960 Lahore 1179 = PLR 1961 (2) W.P. 113 + PLD 1960 Lah. 801 = PLR 1961 (1) Lah. 957.
5. PLD 1960 Lahore 801 = PLR 1961 (1) W.P. Lahore 957.
6. AIR 1927 Nag. 1 = 22 Nag. L. R. 147.
7. AI 1947 Sind. 69.
8. AIR 1947 Nag. 159.
9. AIR 1931 Bom. 369 = 55 Bom. 447 (DB).
10. AIR 1951 Ajmer 1.
11. PLD 1980 Lah. 1 + PLD 1957 Lah. 925 + AIR 1943 Oudh 368 (DB).
12. AIR 1956 All. 114.
13. AIR 1954 All. L. Jour 515.
14. AIR 1959 Him Pra. 32.

jurisdiction was governed by Art. 120 and not by Art. 14, not being a suit for setting aside such order.[15]

Seniority, suit to challenge. Where the plaintiff is aggrieved by the revised policy of fixing seniority, the limitation for a declaratory suit regarding the seniority would begin from the date the policy was issued and not the date when a seniority list was prepared from it.[16]

Order of posting, suit to challenge. Where the plaintiff has not prayed for setting aside any order of any officer of the Government. His prayer is for a declaration that his posting as an Income-tax Officer, Class II, Grade III in the circumstances stated in the plaint, was illegal, inoperative and not binding on him was governed by Art. 120.[17]

15. Compensation for land acquired under statute, suit for. A suit for damages against the Collector for refusing to make an award for compensation on acquisition of land is governed by this article.[18] Where the Government fails to discharge its duty in not determining the amount of compensation and not paying any amount to the owner of the property requisitioned, a suit for compensation is governed by this Article and not by Article 2.[19] This article applies also to a suit to recover from the Government compensation under the Land Acquisition (Mines) Act, 1885.[20]

Recovery of compensation. Where a suit is brought for recovery of statutory compensation which has not been paid, this Article applies.[1] Thus a suit for compensation for property requisitioned under E.B. (Emergency) Requisition of Property Act would fall under this Article.[2] Where certain land is requisitioned under the Defence of India Rules and the amount of compensation is settled by an agreement between the parties, the suit for compensation is governed by this Article and not by Art. 115.[3]

Share in compensation, suit for. This article applies to a mortgagor's suit against usufructuary mortgagee for share in the compensation awarded under the Land Acquisition Act.[4]

16. Suit for injunction. A suit for an injunction which is not governed by any of the specific articles would be governed by this article.[5] Thus this Article applies to a suit by a co-proprietor to restrain the defendant from putting land to a different use than the one for which it is set apart and which use would amount to

15. PLD 1969 Dacca 280 (DB) = 21 DLR 492 + PLD 1969 Dacca 430 = 20 DLR 928 = PLR 1968 (1) Dacca 560 (DB).
16. NLR 1980 Ser. 25.
17. PLD 1961 Dacca 616.
18. 27 Mad. 535 (DB).
19. AIR 1955 Orissa 57 = ILR 1954 Cut 717 (DB).
20. AIR 1936 Pat. 513 = 15 Pat. 510 (DB).
1. AIR 1936 Pat. 513 (DB) + AIR 1957 Cal. 44 (DB) + AIR 1949 Lah. 583.
2. PLD 1970 Dacca 567 = 22 DLR 79 (DB).
3. 56 Cal. W.N. 405.
4. AIR 1919 Oudh 26 = 22 Oudh Cas. 342.
5. 13 Mad. 445 (DB) + AIR 1952 All. 310 + AIR 1923 All. 452 + 26 All. 391 (DB) + AIR 1921 Lah. 242 + 1895 Bom. P J 257 reprint p. 346 (DB) + AIR 1919 Oudh 303.

an ouster of him;[6] and to a suit for injunction directing the defendant to remove construction erected by him on common land;[7] and to a suit for removal of obstruction to public way and for ousting defendant from the portion so encroached;[8] and to a suit for injunction directing the defendant to close a window opened by him in the party wall belonging to himself and plaintiff in common,[9] and to a suit for mandatory injunction directing the defendant to pull down a staircase which he supported by a pillar driven into land of the plaintiff, of which he was a tenant.[10]

Continuing wrong, injunction against. A suit by the plaintiff for a mandatory injunction against the defendant directing him to remove the *parnalas* through which he had been discharging water on the wall of the plaintiff's house for more than six years prior to the institution of the suit is not barred by limitation of six years, because each time water is discharged on the plaintiff's land there will arise a fresh cause of action against the defendant within the meaning of S. 23 of the Act.[11]

17. Declaration of right as to property attached under Cr. P.C. A suit by a party affected by attachment under the Criminal P.C. to establish his right to the property is governed by this article.[12]

18. Possession of movable property. This article applies to a suit for possession of movable property. Therefore it applies to a suit for declaration of title to eight annas share in movable property and recovery of possession thereof from the defendant in wrongful possession,[13] or a suit for recovery of his share in movables from the other co-heirs by the heir of a deceased Muslim,[14] or a suit for partition of cash and movables,[15] or a suit for recovery of share of movables on death of widow of a brother.[16]

Suit for share after partition. A suit by some member of a Hindu family after partition for their share of movables, outstandings and collections made by the various members is governed by this article. Time runs from the date of demand for the share and refusal by defendants.[17]

Suit for movables by reversioner. The cause of action for a suit by a reversioner for the recovery of movable property after the death of a Hindu

6. AIR 1933 Lah. 705 = 14 Lah. 267 (FB).
7. AIR 1940 Lah. 359 = ILR 1941 Lah. 22 (FB).
8. AIR 1928 Lah. 792 + AIR 1928 Lah. 794.
9. AIR 1925 Bom. 373 = 49 Bom. 586 (DB).
10. AIR 1918 Bom. 178 = 42 Bom. 333 (DB).
11. AIR 1961 Jammu and Kashmir 53.
12. 26 Mad. 418 (DB) + AIR 1933 Pat. 224 = 12 Pat. 261 + AIR 1925 Nag. 236 = 20 Nag. L. R. 195 + AIR 1936 Oudh 387 = 12 Luck 371 (DB).
13. AIR 1933 Cal. 253 (DB) + AIR 1917 Lah. 181 + 1917 Pun Re. No 92 (DB).
14. PLD 1953 Lah. 593 = PLR 1955 Lah. 934 + AIR 1940 Lah. 475 = ILR 1941 Lah. 843 (DB) + 21 Cal. 157 = 20 Ind. App. 155 (PC) + 34 Mad. 511 (FB).
15. AIR 1922 All. 525 = 44 All. 244 (DB) + AIR 1958 S.C. 827 = 1959 SCR 811 = ILR 1958 Punj. 2093 + AIR 1920 Sind 92 = 14 Sind. L. R 137 (DB) + AIR 1915 All. 148 = 37 All. 318.
16. AIR 1914 Lah. 161 = 1914 Pun Re No. 34.
17. AIR 1922 Mad. 150 = 45 Mad. 648 (FB).

widow, arises on the date of her death.[18] Where an adoption is not proved but the alleged adopted son holds property adversely to the widow, a suit by a reversioner after the death of the widow for recovery of money or movables from the alleged adopted son is governed by this Article.[19]

19. Suit to recover deposit. A suit for recovery of a deposit as security for the due performance of a certain act would be governed by this article.[20] When the act in question has been performed the refusal to return the deposit, being in breach of the contract, although the suit, is brought for refund of the deposit, is in essence and in effect, a suit for compensation for the breach of the contract. The fact that the deposit was made by the plaintiff according to the terms of the contract and rightly received by the defendant but wrongfully withheld by him cannot be held to be a circumstance falling under the residuary Article 120. The withholding was wrongful, because it was contrary to the terms of the agreement, Art. 115 will apply to such a suit.[1]

Deposit for due performance in office. In a suit to recover deposit made for due performance in office, the cause of action accrues from the date when account of charges due against the depositor was made and is sent to him and not from the date of his dismissal.[2]

20. Suit for money due from defendant for money received by him. Where the defendant has received certain money which is not due to him, a suit for its recovery by the plaintiff to whom it belongs falls under this Article. Therefore this Article applies to a zamindar's suit against a creditor who took the surplus sale proceeds in rent sale held at the instance of the zamindar and was compelled to pay the purchaser the whole amount,[3] or to a judgment-debtor's suit against the decree-holder who realised more than his due by sale of former's property,[4] or where execution sale is set aside and a suit is brought by the auction-purchaser against the creditors for refund of purchase money,[5] or to a suit by a co-sharer for a share of profits received by the defendant,[6] or to a suit for refund of octroi taken by a municipality and refused to be returned.[7] Where *A* obtained a mortgage decree against *B*. Later on *A* made a will which provided that *A* 's elder son *C* would be entitled to collect the mortgage-debt on behalf of both the brothers *C* and *D* and then net proceeds would be divided between *C* and *D* according to ten annas and six annas share. After *A*'s death *D* transferred his share in the mortgage decree in favour of one *E*. *E* brought a suit against *C* for his share of the amount realised by *C*, this Article would apply to the case.[8] This Article would also apply where a landlord has withdrawn money deposited by him in a pre-emption suit in

18. 23 Bom. 725 = 26 Ind. App. 71 (PC) + AIR 1922 Cal. 321 = 49 Cal. 45 (DB) + AIR 1922 Cal. 321 (DB).
19. AIR 1954 Nag. 319 + ILR 1954 Nag. 692.
20. AIR 1962 Guj. 14 + 12 Cal. 113 (DB) + 13 Oudh Cas. 286.
1. AIR 1962 Patna 372 (DB).
2. 12 Cal. 113 (DB).
3. AIR 1928 Cal. 296.
4. AIR 1933 Lah. 112.
5. 228 Ind. Cas. 479 (Lah.).
6. AIR 1917 Mad. 948 = 40 Mad. 291 (DB).
7. AIR 1914 All. 338 = 36 All. 555 (DB).
8. AIR 1956 Orissa 53 = ILR 1955 Cut 454 (DB).

execution of his rent decree against his tenant and a suit is brought by the vendor for recovery of the money.[9] Where by his will the testator gave certain immovable property absolutely to *A* but the property was to remain in possession and control of *B* during his life-time and *B* was to pay certain fixed amount annually to *A*. Part of the property was acquired by Government and *B* received the compensation money awarded in respect of the property acquired. After the death of *A* a suit was brought for the recovery of the sum by the assignee of *A* under a deed of trust. It was held that the suit for the recovery of compensation money was not governed by Art. 62 as the money was not received by *B* for the plaintiff's use and he could retain the money during his lifetime for his use also. The suit was not governed by Art. 123 also as it was not for recovery of a legacy. No specific Article of the Limitation Act being applicable, the suit was governed by the residuary Article 120 and the right to sue accrued on the death of *B*.[10]

Money wrongly paid to plaintiff. This Article applies to a suit for the refund against a person who was wrongly paid money due to the plaintiff[11] or to a suit by a person who claimed to be an assignee of the debt which was attached against the attaching creditor to whom it was paid,[12] or to a suit by plaintiff to recover his share of the money paid to the defendant as being due to him and received by him as such.[13]

Money transferred fraudulently. This Article applies to a claim against fraudulent transferee from *benamidar*.[14]

Suit for money converted by defendant. A suit to enforce an equitable claim in respect of money wrongfully converted to defendant's own use is governed by this Article.[15]

Money held as trustee, suit for. This Article applies where property was purchased by *A* and *B* in the name of *A* and *A* sold the same and retained the sale proceeds, *A* was trustee for *B*'s share in the sale proceeds and a suit was brought by *B* or his heirs for the recovery of *B*'s share,[16] or where the suit was to enforce an equitable claim in respect of money wrongfully converted to defendant's own use,[17] or to a suit against surety for recovery of money withdrawn by him from Court.[18]

21. Suit for accounts. A suit for accounts which is not governed by any other specific Article is governed by this Article.[19] The following suits for accounts were

9. AIR 1953 Nag. 234 = ILR 1952 Nag. 89.
10. AIR 1962 Calcutta 513 (DB).
11. 11 Mad. 345 (DB) + AIR 1917 All. 276 = 39 All. 322 (DB) + AIR 1946 Cal. 526.
12. AIR 1914 Mad. 126 = 38 Mad. 972 (FB).
13. AIR 1953 Bom. 79 = ILR 1955 Bom. 214.
14. AIR 1941 Mad. 767 (DB).
15. 10 Cal. 860 = 11 Ind. App. 59 (P.C.) + AIR 1941 Nag. L. Jour 665 + AIR 1946 Mad. 248 = ILR 1946 Mad. 306 (FB).
16. AIR 1951 Mad. 547.
17. 10 Cal. 860 = 11 Ind. App. 59 (P.C.) + AIR 1941 Nag. L. Jour 665 + AIR 1946 Mad. 248 = ILR 1946 Mad. 306 (DB).
18. AIR 1952 Trav-Co. 546.
19. 19 Mad. 425 (DB) + AIR 1960 Punj. 607.

held to be governed by this Article; a suit not covered by Art. 64,[20] or a suit by a member of the joint family against its manager;[21] or a suit by co-sharer against another who received the profits of the common property;[1] or a suit by a person against another between whom there was agreement to trade separately and then to look into accounts and equalise profits;[2] or a suit for accounts against receiver on the allegation of negligent management,[3] or a suit for accounts from bailee who has sold off the pledge without notice of sale,[4] or an ex-minor's suit against the guardian,[5] or an application by Receiver to recover mesne profits from transferee in the case of fictitious transfer by the insolvent,[6] or a suit for accounts by quondam minor against person who has received money for the minor;[7] or a suit by a ward for accounts against guardian appointed under Guardians and Wards Act;[8] or a suit for partition and accounts brought by one member of Dayabhag joint Hindu family against another,[9] or a suit for accounts by an agent against his principal,[10] or a suit against manager of a lunatic for rendition of account;[11] or a claim in suit for accounts of the management of an estate by the defendant;[12] or a suit for adjustment of accounts after termination of contract.[13]

Suit for specific sum of money. Where a suit is brought for a specific sum of money, this Article does not apply. Thus where two persons were made liable by an award for the moiety of expenses incurred for a temple; to a suit by one to recover the amount spent by him in excess of his share; this article did not apply.[14]

Starting point of limitation. 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 against whom the suit is instituted.[15] Therefore the cause of action for a suit for accounts will arise on the date when an account is demanded and refused.[16]

---

20. AIR 1925 Mad. 1260 (DB) + 15 Cal. W.N 882 (DB).
21. AIR 1940 Cal. 51 = II.R (1940) 1 Cal. 183 (DB) + 8 Cal. 483 (FB).
1. AIR 1964 Mys. 16 (DB) + AIR 1937 Pesh. 28 (DB) + AIR 1956 Mad. 108 + AIR 1954 Sa... 35 + AIR 1922 Mad. 150 = 45 Mad. 648 (FB) + AIR 1940 Cal. 363 = II.R (1940) 1 Cal. 11... (DB) + AIR 1941 Sind 50 = II.R 1940 Kar. 534 + 13 Bom. L. R. 1014 (DB) + AIR 1937 Bom. 217 (DB) + AIR 1936 Rang. 407 + AIR 1929 Oudh 83 = 4 Luck. 265 (DB) + AIR 1942 Mad. 514.
2. AIR 1927 Mad. 775 (DB) + 19 D.L.R 722 (DB).
3. AIR 1942 Cal. 483 = II.R (1942) 1 Cal. 577 (DB).
4. AIR 1942 Mad. 386.
5. AIR 1943 Pat. 218 (DB).
6. AIR 1950 Bom. 399 = II.R 1950 Bom. 678 (DB).
7. AIR 1950 Hyd. 52 = II.R 1951 Hyd. 202 (DB).
8. AIR 1949 Nag. 235 = II.R 1948 Nag. 794 (DB).
9. II.R (1951) 2 Cal. 168.
10. 19 D.L.R 722 (DB) + AIR 1954 Nag. 300 = ILR 1954 Nag. 435 (DB).
11. AIR 1949 Oudh 51 = 23 Luck. 65 (DB).
12. AIR 1961 Bom. 11 (DB).
13. P.L.D 1968 Dacca 937 = P.L.R 1968 (1) Dacca 340 (DB) + AIR 1964 Patna 326 (DB).
14. 19 All. 244 (DB).
15. AIR 1961 Bombay 11 (DB) + AIR 1930 P.C. 270 + AIR 1931 P.C. 9.
16. AIR 1940 Cal. 51 = II.R (1940) 1 Cal. 183 (DB) + AIR 1941 Sind. 50 = II.R 1940 Ka... 534 + AIR 1933 Mad. 200.

22. Administration bond--suit on. A suit on an administration bond not covered by Art. 68 would be governed by this article.[17]

23. Promissory note, suit on. A suit on a promissory note payable "at any time within six years on demand" is governed by this article.[18]

24. Suit for cost by attorney or advocate. Where a consent decree provides that the costs of one party should be paid to his attorney by the other party, the attorney's suit for costs will be governed by this article.[19]

25. Suit relating to contract of agency. A suit by a principal against an agent for recovery of money received by him or advantage taken by him in the capacity of an agent is covered by this Article. Thus where one person acts as the agent of two principals and uses money belonging to one of them for the benefit of the other, a suit by the former against the latter for recovery of such money is one covered by this article.[1] Similarly where the sole managing agent of a company utilised the premises and staff of the company as well as his credit and gained for himself a pecuniary advantage; it was held that a suit by the company to recover the amount from the agent was governed by Art. 120.[2] A person entrusted with money to buy a particular thing bought another which was refused and agreed to return the money after selling the article. A suit by the person who advanced money to follow the proceeds in the hands of the person who acted as agent is governed by this article.[3]

Suit to recover account papers from agent. A suit for recovering account papers from the agent would be governed by this article.[4]

Legal representatives of agents and principals, suit by. Article 89 applies to suits for accounts between the legal representatives of the principal and agent. Hence Art. 120 does not apply to such suits.[5]

Suit based on breach of contract of agency. Where the debt sought to be recovered is commission based on the strength of a contract of sole selling agency Art. 115 of the Limitation Act would apply and benefit of Art. 120 could not be taken by the creditor.[6]

26. Will, suit to avoid. A suit to avoid a will on the ground that it was a voidable transaction,[7] or for a declaration that an alleged will is a forgery, is governed by this article.[8] When the relief which a plaintiff seeks cannot be granted unless he succeeds in securing as a foundation for his relief another relief, the suit cannot be filed after the expiry of the limitation for the suit for such other relief. If this principle were not adopted the provisions of the Limitation Act would be

17. 9 Ind. Cas. 935 (DB) (All.).
18. 6 Mad. 290 (DB).
19. AIR 1932 Bom. 378.
1. AIR 1927 All. 173.
2. AIR 1953 Mad. 694 = H.R 1953 Mad. 1097 (DB).
3. AIR 1927 Oudh 574.
4. 1 Cal. L. Jour 147 (DB).
5. AIR 1958 Punj. 487 = H.R 1958 Punj. 1658 (DB).
6. AIR 1963 Allahabad 284 (DB) + AIR 1917 All. 466.
7. AIR 1926 Lah. 635 (DB).
8. 1909 Pun L. R No. 82, p. 295 (DB).

defeated. It in order to obtain the relief of possession in this case it be essential for the plaintiff to secure a decree for setting aside the will before he is granted possession, then the suit would be governed by the Article which applies to a suit for setting aside the will.[9]

27. Will, suit for construction of. A suit for the construction of a will is governed by this Article.[10] Therefore where a Hindu reversioner sues after the death of the widow of a Hindu testator for a construction of the latter's will and codicil, time will run from the death of the widow.[11]

28. Suit for declaration that decree is not binding or to set aside decree or order. A suit to set aside a decree on grounds other than fraud is governed by this Article.[12] Where the basic plea of the appellant was that the impugned decree was unlawful because the same had been passed on the basis of withdrawal of the suit made by the attorney who did not enjoy the powers to do so and the plea of fraud was only raised as an ancillary ground. The suit would be governed by this Article and not Article. 91.[13] Where a consent decree was obtained against [illegible] co-sharers. Suit against such decree brought by non-impleaded co-sharers would be governed by Art. 120 and not Art. 91 of the Limitation Act. Suit brought against such decree within six years by non-impleaded co-sharers would thus be within limitation.[14]

A suit to obtain a relief which could not be obtained without setting aside the decree itself, would be barred under this article if a suit to set aside the decree would be barred on the date of the suit.[15]

Starting point of limitation. The cause of action for a suit by a person who was not a party to the decree to set aside a decree or order or to declare that the decree is not binding would accrue when the plaintiff's right are jeopardised.[16] Where a worshipper sued for a declaration that a decree obtained on a mortgage of wakf property was not binding on the trust; it was held that the cause of action accrued when the mortgagee sought to enforce the decree against the wakf property.[17] Where a mortgage decree had been obtained against a trust property and the plaintiff sued as trustee that the decree was not binding on the trust; time began to run when the suit on the mortgage was filed.[18]

Voidable decree. Cause of action for a suit to set aside a voidable decree against the minor arises on the date of the decree itself.[19]

Suit by minor. In a suit by the minor to set aside a decree obtained against a minor on the ground of gross negligence of guardian, the cause of action would

9. PLD 1964 Supreme Court 329 = 16 DLR (S.C.) 477 = 1964 (2) P S C R 89.
10. 20 Cal. 906 (DB) + AIR 1924 Cal. 411 (DB).
11. 20 Cal. 906 (DB).
12. 62 Cal. 642 + AIR 1949 Amjer 8 + 20 Mad. L. Jour 349 (DB).
13. PLD 1984 AJ&K 1 = NLR 1984 AC 227.
14. 1996 CLC 177.
15. AIR 1922 Lah. 166 = 2 Lah. 164.
16. AIR 1930 All. 420 (DB) + AIR 1954 Trav-Co. 312 = ILR 1954 Trav-Co. 264 (DB) + AIR 1948 Mad. 129 + AIR 1913 Bom. 283 (DB).
17. AIR 1933 Lah. 270.
18. AIR 1932 Mad. 589 (DB).
19. AIR 1924 All. 625 = 46 All. 575 (DB).

arise on the date when the gross negligence of guardian becomes known to the minor.[20]

Order of withdrawal. A suit to have an order of withdrawal of a suit vacated and to be declared entitled to prosecute the suit further, is governed by this Article and the cause of action for such a suit arises on the date of withdrawal of the suit.[1]

29. Suit for relief on ground of fraud. A suit for relief on the ground of fraud which does not fall within Art. 95 would be governed by this Article.[2] Thus a suit for cancellation of an instrument on the ground of fraud,[3] or a suit for a declaration that the defendant has fraudulently procured the entry of his name in the revenue records and that the plaintiff alone is entitled to succeed to his father's property would be governed by this Article.[4] Similarly a suit by the worshippers of a temple for a declaration that a mortgage executed by a trustee of certain temple property is fraudulent and not binding on the temple would be governed by this Article.[5] Where valuables put in safe deposit lockers of a bank, by a renter of the locker were stolen. The renter filed a suit against the Bank for the recovery of the valuables. It was alleged that the manager of the Bank had played fraud on the plaintiff by renting out lockers which were tempered with and could be opened without the key in the possession of the plaintiff. It was alleged that the bank was guilty of gross negligence. It was held that the suit was governed not by Art. 36 but by Art. 120. Simply because the plaintiff while giving particulars of fraud and other facts relevant thereto, had made allegations of negligence on the part of the bank the suit did not cease to be one for a relief on the ground of fraud.[6] A suit by successor-in-interest of the donor to challenge a mutation of gift on ground of fraud, is governed by this Article.[7]

Starting point of limitation. The cause of action for a suit for relief on the ground of fraud would accrue on the date on which the plaintiff obtains knowledge of the fraud.[8] In such cases suit would be barred by time in case plaintiff does not specify date on which fraud came to his knowledge.[9] Where the plaintiffs were *pardanashin* ladies and they did not know about the mechinations of the defendant and they became aware of the threat to their rights in the land when their possession was threatened. It was held that they were not bound to seek cancellation of the transfer deed through a suit and could wait till threat to

---

20. AIR 1930 Mad. 173 (DB) + AIR 1936 Mad. 804 (DB) + AIR 1936 Pat. 231 = 14 Pat. 824 (DB).
1. AIR 1938 Cal. 874 (DB).
2. AIR 1931 Oudh 333 = 7 Luck. 131 (DB) + AIR 1931 Lah. 70 = 12 Lah. 262 (DB) + AIR 1926 Mad. 66 (DB) + AIR 1918 Mad. 76 (DB) + AIR 1944 Bom. 267 (DB) + AIR 1954 Nag. 129 = ILR 1953 Nag. 937 (DB) + AIR 1947 Pat. 257 (DB).
3. 1969 DLC 416 = 21 DLR 626.
4. AIR 1934 Lah. 574 (DB).
5. AIR 1929 Mad. 837 (DB).
6. AIR 1962 Punjab 534 (DB) + AIR 1935 All. 995.
7. PLD 1984 Pesh. 86 = PLJ 1984 Pesh. 5.
8. 1986 LN 55 + 1984 CLC 1211 + NLR 1980 UC 450 + 1973 SCMR 248 + AIR 1934 Lah. 574 (DB) + AIR 1954 Nag. 129 (DB) + AIR 1951 Mad. 388 + AIR 1948 Bom. 265 = ILR 1947 Bom. 807 (DB) + AIR 1943 Mad. 252 + AIR 1946 Mad. 236 = ILR 1946 Mad. 777 + AIR 1930 Mad. 173 (DB) + AIR 1931 Lah. 70 = 12 Lah. 262 (DB) + AIR 1926 Mad. 66 (DB).
9. NLR 1989 Civ. 368.

their possession became not only visible but more real. It was further held that the right to seek relief against the defendant accrued to the plaintiffs at the aforementioned stage and thus the starting point of limitation remained the date of sanction of mutation and thereafter on every day when the defendant continued making claim against the plaintiff's right to possess the suit land.[10]

Where in a suit for a declaration against the defendants who are predecessors-in-interest of the plaintiff's agent, the agent is found to be guilty of fraud in not disclosing the fact to the plaintiff that the disputed lands had been purchased and later mutated in his own name, then the onus would lie on the defendants to show that the plaintiff had clear and definite knowledge of the facts and the onus would not be successfully discharged even by showing that the plaintiff had means available to him for coming to know of the fraud. Time would begin to run from the date of knowledge or discovery of the fraud.[11] Gross negligence of the guardian of a minor or the Court of Wards may in certain cases, amount to misconduct and fraud. In such a case time runs against the minor when he comes to know of the misconduct of the guardian or the Court of Wards.[12]

Where the plaintiff is in possession and his right in property was threatened by means of a fraudulent deed of gift the plaintiff was not bound to seek cancellation of the transfer deed through a suit and could wait till threat to her possession became not only visible but more real. The right to seek relief against the defendant accrued to the plaintiff at the aforementioned stage and thus the starting point of limitation remained the date of sanction of mutation and thereafter on every day when the defendant continued making claim against the plaintiffs' right to possess the suit land. Therefore in such cases reliance on Art. 120 alone was not enough.[13]

Fraud, defence against. Where the plaintiff sues for possession on the basis of a deed obtained by fraud, the defendant would be within her right to plead that the deed was void on account of fraud and that the respondent had no title and no right to possess the land. To raise such a plea, there would not have been any impediment of limitation for the defendant.[14]

30. Mistake, suit for relief on ground of. Suits for relief on the ground of mistake not falling within the purview of Art. 96 would be governed by this Article.[15]

31. Suit for contribution. A suit for contribution not falling within any of the specific Articles, will be governed by this Article.[16]

Starting point of limitation. The right to sue in suits for contribution will arise on the date of such payment only if the benefit to the defendant is immediate.[17]

---

10. 1981 SCMR 814 = PLD 1981 SC 165.
11. AIR 1955 Assam 177 = ILR (1955) 7 Assam 53.
12. Madh BLJ 1955 HCR 408.
13. NLR 1982 Civ. 16 (SC).
14. PLD 1981 SC 165 = PLJ 1981 SC 420 = NLR 1981 AC 537.
15. AIR 1938 Lah. 99 = ILR 1937 Lah. 623 (DB).
16. AIR 1917 Cal. 203 (DB) + AIR 1954 Trav-Co. 499 = ILR 1954 Trav-Co. 720 (DB) + AIR 1923 Mad. 679 (DB) + AIR 1941 Mad. 96 + AIR 1914 Cal 160 (DB).
17. AIR 1921 Cal. 814 (DB) + 26 Cal. 241 (DB) + AIR 1925 Mad. 1282 (DB).

Where it is an essential part of the cause of action that the defendant shall have received a benefit by the payment or other act of the plaintiff, the plaintiff's cause of action does not arise until the stage is reached when the defendant is so benefited.[18]

32. Refund of money paid to defendant, suit for. For Article 62 to apply there must exist a priority between the plaintiff and the defendant so that the latter can be said to have received the money on behalf of the plaintiff and held the same in trust for him. But where the receipt by the defendant is on his own account and not on account of the plaintiff this Article will have no application. In the present case refund was claimed from the general tax recovered by the defendant on its account and not on account of the plaintiff. It was, therefore, Article 120 which applied and not Article 62.[19] A suit for refund of monies advanced for a purpose which fails would be governed by this article where the suit does not fall within Art. 62.[20] Similarly the suit by the borrowers for refund of money realised in excess of the lawful dues of the money-lender on account, is a suit under section 36(1) of the Money Lenders Act and is governed not by Article 62 but by Art. 120 of the Limitation Act.[1] This Article would apply where the suit was for recovery of money paid by the plaintiff to defendant for being employed towards the purchase, jointly with the defendant, of a cinema, and the negotiations for the deal proved abortive.[2] Where the plaintiff, a Housing Society had been paying expenses on account of sweeping charges to Municipality and on account of street lighting to Electric Supply Company. The area of plaintiff Housing Society was subsequently included within the limits of the Municipal Corporation which thereafter became entitled to levy tax on properties and became liable for sweeping and lighting in the area. The society demanded refund of the payments made by it earlier to the Municipal Corporation and the Electric Supply Company. It was held that the suit was governed by Art. 120.[3] The Municipal Corporation had realised general taxes from October, 1952, it was liable to pay for the services it was legally bound to provide but it had not done so, and as the plaintiff had been compelled to pay for such services, it was entitled to claim that amounts so spent by it should be refunded. Article 120 and not Article 65 applied to the case.[4]

Illegally levied tax. Fee or tax levied by the Government cannot be held to have been received for the use of the tax payer. Therefore a suit for recovery of the amount so paid would fall under Art. 120.[5]

Refund of excess rent paid. There may be a statutory right given to a tenant to claim an adjustment or refund of the amount of rent paid in excess of fair rent, but if the relief for that refund is sought through the medium of a Court, the

18. AIR 1919 Mad. 1145 (DB)+AIR 1941 Mad. 96.
19. 1975 SCMR 368.
20. AIR 1934 Oudh 329 (DB)+AIR 1930 Rang. 21=7 Rang. 540 (DB)+AIR 1933 Lah. 860=15 Lah. 35 (DB).
1. 6 DLR 156.
2. PLD 1959 Karachi. 191.
3. PLD 1970 Karachi 216 (DB). (Leave to appeal against the judgment was granted by the Supreme Court in 1970 SCMR 413).
4. 1975 SCMR 368.
5. PLD 1960 Peshawar 153.

provisions of the Limitation Act apply. Such a suit is governed by the general Art. 120 and not by Art. 62, Limitation Act, and the tenant will be entitled to get a refund of the excess amounts paid by him only within a period of six years prior to the suit."

Starting point of limitation. Where the state realised a sum of money from the plaintiff who was the treasurer of a District Treasury on the ground that he had paid the amount to a wrong person. It was held, that the cause of action for the plaintiff's suit for refund of the amount arose when he made the payment pursuant to Government orders; and subsequent attempts to get the Government to re-consider their order could not have the effect of stopping or arresting the time which had begun to run for purposes of limitation even if Art. 120 applied.

33. Suit relating to partnership. This Article applies to a suit for dissolution of partnership,[8] to a suit to establish the plaintiff's right as partner and for accounts,[9] to a suit for accounts without any prayer for dissolution of partnership,[10] to a suit by a partner against his sub-partner for a share of the loss sustained by the former in the main partnership;[11] and to a suit by a sub-partner for accounts and for recovery of his share of the amount of profits ascertained to be due to the partner.[12]

Starting point of limitation. Where the defendant in a suit for dissolution of partnership and accounts admits his position to be that of a partner on a particular date, the suit instituted within six years from that date is within time.[13]

34. Suit for profits. A suit for profits not falling within Article 109 either on the ground that the property in respect of which the profits are claimed does not belong to the plaintiff or on the ground that the defendant's receipt of profits is not wrongful, would be governed by this article.[14] It has been held that Art. 120 applies to a suit of one co-owner against another who had received the profits of the property;[15] or to a suit for profits of a joint business by two brothers after it was wound up;[16] or to a suit by auction-purchaser against judgment-debtor for rents and profits for the period between date of sale and date of confirmation.[17]

---

6. AIR 1961 Kerala 54.
7. AIR 1957 Ker 151 (DB).
8. 1988 CLC 1882 (DB)+AIR 1919 Mad. 838 (DB)+AIR 1957 Trav-Co. 123 (DB)+AIR 1928 Rang. 160=6 Rang. 198 (DB)+AIR 1930 Lah. 378+12 Cal. W. N. 455 (DB)+AIR 1921 Cal. 538 (DB).
9. AIR 1920 Mad. 680 (DB)+AIR 1930 Lah. 378+12 Cal. W. N. 455 (DB)+4 All. 437.
10. AIR 1933 Nag. 127=29 Nag. L. R. 34.
11. AIR 1934 Mad. 12=57 Mad. 347.
12. AIR 1957 Andh Pra 76.
13. AIR 1963 Madhya Pradesh 155 (DB).
14. AIR 1941 Nag. 181=II R 1942 Nag. 92 (DB)+AIR 1960 Andh. Pra. 326+AIR 1953 Mys. 139=II.R 1953 Mys. 244 (DB)+AIR 1942 Mad. 487=ILR 1942 Mad. 562 (DB)+AIR 1921 Cal. 77 (DB)+AIR 1942 All. 358=II.R 1942 All. 671 (DB).
15. AIR 1922 Mad. 150=45 Mad. 648 (DB)+AIR 1960 Madh Pra. 40+63 Cal. W. N. 296+AIR 1954 Sau 35+AIR 1954 Trav-Co. 302=II.R 1954 Trav-Co. 601 (DB)+AIR 1952 Trav-Co 498=II.R 1952 Trav-Co. 477 (DB)+AIR 1951 Pat. 595=30 Pat. 377 (DB)+AIR 1943 Bom 216 (DB)+AIR 1941 Pat. 90=20 Pat. 162 (DB)+AIR 1925 P.C. 93. (Amending judgment in AIR 1924 P.C. 144).
16. 1988 CLC 1882 (DB)+AIR 1923 Mad. 679 (DB).
17. II.R 1954 Mad. 1213 (DB).

where pending a suit to establish title to property attached under S. 146, Cr.P.C., the defendant withdrew profits deposited in Court and there was a subsequent compromise to the effect that property should belong to the plaintiff a suit by the plaintiff to recover profits withdrawn by the defendant is governed by this article.[18]

35. Suit relating to companies. A suit by the liquidator of a company for money due in respect of unpaid calls would be governed by this Article where the case does not fall under Art. 112.[19] Once a call is made by the directors with regard to the unpaid share amount and the date of payment has passed, it ordinarily assumes the character of a debt due to the company. However, by reason of the provision in S. 156, Companies Act, 1913 the nature of this Contractual liability becomes a statutory one on the company being wound up. Thus such a member will be liable to contribute to the assets of such company under the statutory liability imposed on him. The mere fact that the directors had given a notice calling upon the share-holder to pay the unpaid share amount before winding up does not make it a contractual liability after the supervening event of the voluntary winding up of the company, to a suit, therefore, brought by the liquidator to enforce this statutory liability and recover the balance of call money, Art. 120 and not Art. 112 of the Limitation Act applies.[1]

Recovery of money illegally spent. A suit by a liquidator against the directors of the company for recovery of money spent in transactions which are *ultra vires* would be governed by this article and not by S. 10.[2]

Suit for payment of dividend. A suit by a share-holder for recovery of arrears of dividend is a claim for debt and not a claim arising out of a contract within Article 115 and is governed by this article.[3]

Loss on account of misleading statement. A suit for compensation for loss suffered as a result of misleading statements in prospectus is governed by Art. 36 and not by Art. 120.[4]

Rectification of register of companies. Where a claim is made for rectification of register simpliciter under S. 38, Companies Act. (1913) the claim does not involve a claim for return of share-scrips, Arts. 48 and 49 do not apply. Art.181 also is not applicable and Art. 120 is applicable.[5]

36. Suit for declaration. A suit for a declaration not falling within the scope of any other specific article providing for declaratory suits will fall under this article.[6] Therefore a suit for a declaration of title to property, which does not fall

18. AIR 1923 Cal. 379 = 50 Cal. 475 (DB).
19. AIR 1935 Lah. 335 = 16 Lah. 1055 (DB) + AIR 1956 Nag. 204 = ILR 1956 Nag. 556 + AIR 1935 Lah. 975 = 17 Lah. 341 (DB) + 10 Bom. 483.
1. AIR 1963 Mysore 61 + AIR 1932 P.C. 240.
2. 18 Bom. 119 (DB).
3. AIR 1926 Mad. 615 = 49 Mad. 468 (FB) (AIR 1919 Mad. 646 = 42 Mad. 33 (*Overruled*)).
4. AIR 1945 Mad. 5 = ILR 1945 Mad. 325 (DB). (*Affirming* AIR 1944 Mad. 41).
5. AIR 1953 S.C. 98 = 1953 S C R 351.
6. 1986 CLC 320 + PLD 1969 Lah. 418 = PLR 1970 (1) W.P. 752 + AIR 1940 Cal. 501 = ILR (1940) 2 Cal. 464 (DB) + AIR 1924 P.C. 150 = 47 Mad. 572 = 51 Ind. App. 257 + 20 All. 35 (FB) + 1954 All. L. Jour 515 (DB) + AIR 1954 Pat. 175 = 31 Pat. 993 (DB) + AIR 1952 Mys. 65 = ILR 1952 Mys. 197 (DB) + AIR 1951 Him Pra. 54 + AIR 1951 Trav-Co. 232 = ILR 1951

under a specific [illegible] section 125 will be governed by this article.

Thus where a declaratory suit was filed to challenge validity of a mutation made by a limited owner, this Article would apply.[8] Where *G*, the mother of the deceased took possession of his land on his death as the parties were governed by Muslim Law. The plaintiffs brought a declaratory suit on the ground that they were governed by customary law and the mutation of the name of *G* was void. Moreover they claimed possession of land and prayed for declaration that alienation by *G* were ineffective. Art. 120 applied to the case.[9] Similarly a suit for a declaration that an alienation is not binding on a creditor under S. 53, T.P. Act, is governed by Art. 120.[10] A suit by a rate-payer for a declaration under S. 42 of the [illegible] Punjab Act (1877) challenging the validity of a sale-deed of Municipal land excited by a Municipality in contravention of S. 47(2) of the Punjab Municipal Act (3 of 1911) is governed by the residuary Art. 120 of the Limitation Act and the starting point of limitation is the date of the execution of the sale-deed sought to be impugned.[11]

A purchased share in land from *R*, in 1937. Land however continued to remain in name of *R* in revenue record. Land was acquired by T.D.A. in 1951 and compensation was paid to *R*. *A* filed a suit for declaration of title in 1962. It was held: that the acquisition authority clearly treated *R* as owner of the property having right to the award of compensation either in cash or in kind or in both. The period of six years under Article 120 in these circumstances, would expire in the year 1957. The suit filed in the year 1962 was, therefore, clearly barred by time.[12]

Government servant, suits by. A suit by a Government servant for a declaration that the order discharging him from service was null, void and inoperative, and for consequential reliefs of reinstatement, damages and arrears of salary is governed not by Art. 14 but by Art. 120, Limitation Act, 1908 in so far as the relief of declaration is concerned,[13] and the plaintiffs would be entitled to arrears of salary for a period of 3 years and no more under Art. 102.[14] Similarly a suit by a Government servant for correction by his date of birth recorded in his order of recruitment,[15] or a declaration that the order of his posting in a certain capacity was illegal and inoperative was governed by this Article.[16] Where order of retirement of a Government servant are challenged, starting point of limitation is

---

Trav-Co. 194 (FB) + AIR 1951 Ajmer 1 + AIR 1949 Mad. 542 + AIR 1945 Sind. 57 = ILR 1945 Kar. 40 (DB) + AIR 1945 All. 367 = ILR 1945 All. 494 (DB).

7. AIR 1941 Bom. 161 = ILR 1941 Bom. 226 (DB) + AIR 1957 Hyd. 29 = ILR 1956 Hyd. 868 (DB) + AIR 1951 Nag. 327 = ILR 1950 Nag. 633 (DB) + 27 Mys. L. Jour 119 (DB) + AIR 1940 All. 424 + 1903 Pun Re No. 56, p. 247 + AIR 1942 P.C. 47 = ILR 1942 Kar. (PC) 122 + AIR 1943 Cal. 460 (DB) + AIR 1925 P.C. 42 = 4 Pat. 244 = 52 Ind. App. 109.
8. KLR 1984 CC 325.
9. PLD 1951 Baghdad-ul-Jadid 36.
10. AIR 1959 Andh. Pra. 280 (DB).
11. AIR 1961 Punjab 352.
12. 1978 Law Notes 602 (Lah.).
13. PLD 1990 Lah. 153 + AIR 1955 AP 188 + AIR 1962 SC 8 + AIR 1948 FC 23.
14. AIR 1965 Andhra Pradesh 188 + AIR 1962 S. C. 8 + AIR 1948 F.C. 23.
15. PLD 1981 Lah. 433 = NLR 1981 Ser 162 = PLJ 1981 Lah. 271.
16. PLD 1961 Dacca 616 = 20 DLR 332 (DB).

the day on which the orders are passed and not the date on which charge was relinquished by him.[17]

Time of six years to file a declaratory suit challenging order of termination of service, cannot be enlarged by taking into consideration time spent by plaintiff in filing appeal etc., not provided under the law.[18]

Gift suit to challenge. A declaratory suit to challenge the validity of a gift was governed by this Article. Therefore where the suit was filed 12 years after the making of the gift, the suit was held to be barred by time.[19]

Declaration as to membership of tribe. Where there is a denial of right to be member of agricultural tribe. Suit filed within three years is not barred by limitation.[20]

Representative suit. Article 120 does not apply to a representative suit on behalf of a community filed under O. 1, R. 8, Civil P.C. for a declaration that a certain property is wakf.[1]

Suit for declaration and other relief. A declaratory suit does not cease to be governed by this article by reason merely of the fact that unnecessary, superfluous or premature reliefs are also asked for. Therefore if the suit, through framed as one for possession is really one for a declaration, this article will govern the case.[3] Limitation for suit for declaration of title in respect of the land and challenging the correctness of entries made in the *jamabandis* pertaining to the years 1921-22 as well as subsequent *Jamabandis* with consequential relief for possession would be governed by Art. 120 of the Limitation Act, 1908.[4] But a declaratory suit pertaining to inheritance wherein consequential relief by way of possession is prayed is not governed by Art. 120.[5]

Suit for further relief. Where the plaintiff seeks further relief than a mere declaration, the relief of declaration is only an ancillary one and the suit would be governed for purposes of limitation, by the article governing the suit for such further relief.[6] Therefore to a suit for declaration that plaintiff's dismissal from service was wrongful and for arrears of salary as consequential relief, Art. 102 and not Art. 120 would apply.[7] Similarly to a suit for a declaration that landlord was not entitled to recover in execution of his decree arrears of rent in excess of the

17. 1987 SCMR 1911.
18. NLR 1989 Ser. 90.
19. NLR 1980 SCJ 328 = PLJ 1980 SC 131 = 1980 LN 50 (SC) = 1979 SCMR 625 + PLJ 1987 Lah. 654 = NLR 1988 Civ. 30.
20. 1976 SCMR 436.
1. AIR 1946 Nag. 401 = ILR 1946 Nag. 518.
2. AIR 1929 Cal. 417 (DB) + AIR 1935 Pesh. 95 + 1908 Pun. Re. No. 61, p. 301 + AIR 1921 Cal. 786 (DB).
3. AIR 1922 Cal. 419 = 49 Cal. 544 (DB) + AIR 1936 Oudh 387 = 12 Luck. 371 (DB) + AIR 1916 Cal. 751.
4. PLD 1990 Lah. 193.
5. NLR 1985 UC 113.
6. AIR 1923 Rang. 11 (DB) + AIR 1959 Madh. Pra. 46 + AIR 1951 Madh. B. 40 + AIR 1922 Bom. 438 (DB) + 15 Ind. Cas. 545 (All.)
7. AIR 1959 Madh. Pra. 46.

rent determined by Rent Controller and for recovery of excess amount realised in execution. Art. 120 and not Art. 28 or Art. 29 would apply.[8]

Starting point of limitation. The question when a right to sue will accrue in suits for declaration, will to a certain extent depend upon the facts and circumstances of each case.[9] A suit for a declaration of title to plaintiff's right to such property is a subsisting right, and the right to bring a declaratory suit is a continuing right, so long as the right to the property itself is subsisting.[10]

The right to sue accrues when the right in respect of which the declaration is sought is denied or challenged,[11] by the defendant.[12] A mere denial is, however, not sufficient to furnish a cause of action; there must be some overt act accompanying the denial.[13] Where plaintiff was in possession or constructively, he may not bring a suit when an adverse mutation is made. He may bring a suit when his possession is threatened. Time for the suit will begin to run from the date of the said threat.[14] Where the defendant got her name inserted in revenue record as owner but she did not interfere with the possession of the plaintiff, limitation for a suit by the plaintiff for a declaration that the defendant had no right would begin to run from the date when the defendant makes an attempt to interfere with his rights. Where the first time, she asserted any right in respect of the property was by way of suit for redemption. The plaintiff might have ignored that and could start his limitation from the date of decree for redemption or possession. Time starts running only when rights are actually interfered with. In such cases a fresh cause of action would arise when plaintiff is sought to be ousted after the wrong entry in the revenue record, and time does not necessarily run from the date of the wrong entry.[15] Thus a mere entry in the revenue papers of the defendant's name as owner of the property, without any act of denial on the part of the defendant, will not furnish a cause of action unless defendant does something which is in denial of plaintiff's title.[16] But an entry in the revenue papers which is the result of the denial by the defendant will furnish a cause of action.[17] Where the

8. AIR 1960 Madh. Pra. 30.
9. AIR 1916 Cal. 751 (DB) + AIR 1953 Pat. 151 = 31 Pat. 382 (DB) + AIR 1922 Cal. 8 (DB) + AIR 1933 Lah. 270 + 7 Oudh. Cas. 187 (DB) + AIR 1942 Mad. 660.
10. 8 Oudh Cas. 303 + 7 Suth W R 96 (DB).
11. AIR 1940 Cal. 501 = I L R (1940) 2 Cal. 464 + ILR 1959 Ker. 728 (DB) + AIR 1957 Hyd 29 = ILR 1956 Hyd. 868 (DB) + AIR 1949 Ajmer 23 + AIR 1940 All. 424 + AIR 1938 Lah. 671 (DB) + 19 Bom. 43 (DB) + AIR 1920 Cal. 885 = 47 Cal. 331 (DB) + AIR 1914 Oudh 235 + 35 All. 149 (DB) + AIR 1933 Lah. 412 (DB) + 8 Mad. L. Tim. 249 (DB) + 15 Bom. 422 (DB) + AIR 1964 Oudh 118.
12. AIR 1937 Pesh. 94 + AIR 1952 Cal. 58 = ILR (1953) 1 Cal. 1 (DB) + AIR 1935 All. 174 + AIR 1930 P.C. 270 = 11 Lah. 657 = 57 Ind. App. 325 (PC).
13. AIR 1965 A.P. 471 (DB) + AIR 1939 Oudh. 257 = 14 Luck. 723 (DB) + AIR 1938 Mad. 193 (DB) + AIR 1922 Cal. 8 (DB) + AIR 1932 Lah. 81 (DB) + AIR 1938 Lah. 318 (DB) + AIR 1933 Oudh 283 (DB) + AIR 1931 Bom. 269 (DB) + AIR 1932 Bom. 15.
14. PLJ 1988 Lah. 456 = NLR 1988 AC 500 (DB) + 1986 Law Notes 265.
15. 1983 CLC 800 = PLJ 1983 Lah. 251.
16. 1983 CLC 800 = PLJ 1983 Lah. 251 + AIR 1922 Cal. 251 (DB) + AIR 1919 Cal. 1050 (DB) + AIR 1916 Cal. 392 (DB) + AIR 1929 All. 529 (DB) + AIR 1919 Lah. 66 + AIR 1943 Pesh. 83 + AIR 1942 Oudh 346 = 18 Luck. 38 (DB) + AIR 1933 Mad. 503 + AIR 1914 All. 184 = 36 All. 492 + AIR 1928 Lah. 516 = 9 Lah. 428 (DB) + (1900) 24 Bom. 555 (DB).
17. PLD 1951 BJ 36 + AIR 1937 Oudh 291 = 13 Luck. 143 + AIR 1953 J&K 39 = 12 J & K L R 16 (DB) + AIR 1914 All. 123.

plaintiffs were in possession, they were not bound to sue on every denial of their title and could file a declaratory suit at their option.[18] The plaintiff in possession need not bring a suit to challenge a sale of the property by another co-sharer till the threat to her possession had become not only visible but more real, and that would be the point when the right to seek the reliefs claimed in the suit would accrue to her.[19] Where the defendant tried to take forcible possession from the plaintiff, action taken by Ilaqa police for security proceedings between the parties, furnishes a fresh cause of action within the meaning of Art. 120, for the purpose of a suit for declaration of his right by plaintiff.[20]

Knowledge of denial. It is necessary that the plaintiff should have knowledge of the denial and time will run only from the date of such knowledge.[1]

Successive denial. Where there are successive denials of the right of the plaintiff, every denial or invasion of plaintiff's right will furnish a cause of action.[2] Where, however the invasions are of different nature and intensity and the later invasion is of a more serious and different kind it will furnish a cause of action.[3] Therefore a suit filed on 22-4-1980 to challenge mutation attested on 15-10-79 of sale registered on 18-12-68 was well within time.[4] In another case it was held that a declaratory suit filed in 1981 to challenge mutation attested in 1933 was within time.[5]

Exclusion of time spent in abortive proceedings. Where the plaintiff seeks to challenge a mutation entry, he cannot take advantage of the fact that he had filed a time-barred appeal from the mutation proceedings, for extending the period of limitation.[6]

Declaration that property is not liable to attachment. Limitation for a suit for a declaration that the property is not liable to attachment and sale begins to run from the date when his objection petition filed during the proceedings for attachment before judgment was dismissed and not from the date on which the property is subsequently attached again in execution.[7]

---

18. 1983 CLC 1643 (Lah.) + PLD 1952 Lah. 307.
19. 1987 SCMR 66 = 1986 PSC 1429 + 1988 CLC 1925.
20. NLR 1985 CLJ 150 = 1985 CLC 512.
1. AIR 1916 Mad. 130 (DB) + AIR 1951 All. 408 + 1 Cal. L. Jour 73 (DB) + AIR 1914 Mad. 429 (DB) + AIR 1928 All. 172 = 50 All. 559 (FB) + AIR 1927 Oudh 21 + AIR 1942 Oudh 374 = 17 Luck. 805 (DB).
2. PLD 1968 Kar. 52 = PLR 1969 (1) W.P. 109 + AIR 1941 Mad. 81 = ILR 1941 Mad. 275 (FB) + AIR 1960 Andh Pra. 535 (DB) + ILR (1956) 8 Assam 252 (DB) + 1954 All. W R (HC) 525 + AIR 1953 Pat. 283 = 32 Pat. 555 (DB) + AIR 1952 All. 392 + AIR 1951 Orissa 342 = ILR (1949) 1 Cut 540 (DB) + AIR 1947 Mad. 5 = ILR 1947 Mad. 190 + AIR 1941 Mad. 498 = ILR 1941 Mad. 544 (DB) + AIR 1940 Oudh 283 = 15 Luck. 487 (DB) + AIR 1938 Cal. 804 = ILR (1939) 1 Cal. 349 (DB) + AIR 1947 Cal. 70 = ILR (1946) 2 Cal. 420 + AIR 1940 Lah. 154 = AIR 1939 Lah. 428 = ILR 1940 Lah. 180 + AIR 1919 All. 383 = 41 All. 509 (DB) + AIR 1935 All. 174 + AIR 1947 Pesh 15 + AIR 1942 Oudh 374 = 17 Luck 805 (DB) + AIR 1935 Pat. 33 = 13 Pat. 517 (DB).
3. NLR 1989 AC 348 + AIR 1930 P.C. 193 = 58 Cal. 301 = 57 Ind. App. 214 + AIR 1925 Lah. 391 = 6 Lah. 132 (DB).
4. NLR 1989 CLJ 214.
5. NLR 1984 Civ. 529.
6. PLD 1971 Supreme Court 762.
7. AIR 1963 Madhya Pradesh 261 (DB).

Burden of proof. Where in a suit for declaration of the plaintiff's title the defendant pleads that he was holding the property on a denial of the plaintiff's title for more than 12 years before the suit, it is for the plaintiff to establish that the denial took place within six years of the suit.[8]

37. Suit for possession of and for removal of person from office. A suit for possession of an office which is not hereditary would be governed by this article.[9] Therefore where lands or emoluments are attached to a non-hereditary office, a suit to recover the lands and the office would be governed only by this article.[10] If no suit is brought within the time limited by this article for possession of a non-hereditary office, the right of the owner is extinguished by the operation of section 28.[11] The cause of action for a suit for possession of office governed by this article is not when the plaintiff's right to possession accrues but when the defendant adversely possesses it.[12]

Hereditary office. A suit for a declaration that the plaintiffs are entitled to the hereditary office when the defendant is not in possession is not a suit for possession and it cannot, therefore, be governed by Art. 124 which applies to suits for possession of hereditary office. Article 120 applies to such suit.[13]

Removal from office. A suit for removal of a person from an office is governed by this article.[14] The cause of action for a suit to remove a person from office arises when the defendant takes up the office.[15] Where the defendant is sought to be removed on the ground of change of religious views, the cause of action for the suit arises from the date of such change.[16]

38. Hindu Reversioner, suit by. A suit, for declaration that an alienation of land by a limited female owner is void, which does not fall under Art. 125 would be governed by this article.[17] Thus where a limited female owner is in possession of life estate by virtue of a bequest or grant or transfer *inter vivos*, a suit by a reversioner to declare that an alienation by her is not binding on him is governed by this article.[18] Similarly a suit by a reversioner for a declaration that a transaction by the limited owner which does not amount to an alienation of land is

8. AIR 1951 All. 408.
9. AIR 1927 Cal. 130 (DB) + AIR 1954 Nag. 212 = ILR 1954 Nag. 302 (DB) + AIR 1935 Mad. 449 (DB) + AIR 1930 All. 866 (DB) + 6 All. 1 = 10 Ind. App. 90 (P.C.).
10. 2 Mad. 283.
11. AIR 1927 Cal. 130 (DB) + 26 Mad. 113 (DB).
12. AIR 1926 Mad. 245.
13. AIR 1965 Andra Pradesh 471 (DB).
14. AIR 1918 Mad. 1016 (DB) + AIR 1909 Pun. Re. No. 53, p. 180 (DB) + 41 Pun. L. R. 166.
15. AIR 1918 Mad. 1016 (DB).
16. 1909 Pun. Re No. 53, p. 180 (DB).
17. AIR 1941 Cal. 41 = ILR (1941) 1 Cal. 234 (DB) + AIR 1916 Cal. 606 (DB) + AIR 1915 Mad. 800 = 38 Mad. 396 (DB) + AIR 1917 Mad. 30 (DB) + AIR 1915 All. 130 = 37 All. 195 (DB) + AIR 1916 Lah. 144 = AIR 1916 Pun Re No. 15 (DB) + AIR 1920 Lah. 424 = 1 Lah. 69 + 14 Bom. 512 (DB) + AIR 1933 All. 856 + AIR 1924 Oudh 381 = 27 Oudh. Cas. 173 + AIR 1947 Mad. 102 + AIR 1957 Andh Pra. 280 (DB).
18. AIR 1936 Pat. 323 = 15 Pat. 151 (DB) + AIR 1950 Pat. 447 (DB) + 1947 Lah. 290.

not binding on him would not be governed by Art. 125 but would be governed by this article.[19]

A suit by a reversioner, not during the lifetime of the limited female owner but after her death, for a declaration that the alienation by the limited owner does not bind him would be governed by this article.[20]

Alienation by guardian of limited owner. Where an alienation is made by the guardian of a limited owner, a Hindu female, appointed under Guardians and Wards Act, a suit by the nearest reversioner for a declaration that the alienation is not binding on the estate is governed by this article and not by Art. 125.[1]

Starting point of limitation. The cause of action in suits by a reversioner to declare an alienation by a limited owner is not binding on him would arise on the date of the alienation or other transaction impeached.[2] The fact that the alienee from the limited owner himself alienates the property to a third person, will not furnish a fresh cause of action for the reversioner to impeach the alienation by the limited owner.[3] Therefore where a widow transferred property and the transferee again transferred it to *A*. *A* was added as a party to the suit by the reversioners for a declaration that the transfer by the widow will not affect their rights. Article 1 of Punjab Limitation (Custom) Act, 1 of 1920, applied only to the suit as regards the original transferor and not as regards the impleadment of *A*. Therefore a claim against *A* was governed by this article.[4]

Several reversioners. The whole body of reversioners have only a single cause of action arising on the date of the alienation. Therefore limitation will begin to run for all on the same date.[5]

Suit to set aside decree. Where a decree was fraudulently obtained against a Hindu widow the cause of action of a reversioner's suit to declare that the decree was not binding on him arose on the date of attachment under decree and not on the date of decree.[6]

Suit for appointment of receiver. A suit by a reversioner against a limited owner for the appointment of a receiver of the estate for the purpose of preventing waste and for the preservation of the property, is governed by this article.[7]

---

19. AIR 1927 Nag. 193. (Surrender by widow.) + AIR 1913 Pun. L. R. No. 29, p. 109 = 1912 Pun. Re. No. 108 (DB) + AIR 1914 Lah. 408 = 1914 Pun. Re. No. 70 + AIR 1936 Pat. 535 + 26 Mad. 488 (DB) + AIR 1919 Mad. 706 (DB).
20. AIR 1935 Pat. 256 (DB) + 18 Mad. L. Jour 275 (DB) + 44 Mad. L. W. 208.
1. AIR 1924 Cal. 481 = 51 Cal. 101 (FB).
2. AIR 1941 Cal. 41 = II.R (1941) 1 Cal. 234 (DB) + AIR 1916 Cal. 606 (DB) + AIR 1915 All. 130 = 37 All. 195 (DB) + AIR 1920 Lah. 424 = 1 Lah. 69 + AIR 1916 Lah. 144 = 1916 Pun Re No. 15 (DB) + 24 Mad. L. Jour 183 (DB) + AIR 1936 Pat. 535 (DB) + AIR 1924 Oudh Cas. 381 = 27 Oudh Cas. 173.
3. AIR 1929 Lah. 579.
4. AIR 1941 Lah. 304.
5. AIR 1938 Pat. 510 + AIR 1929 Lah. 579 + 22 All. 33 (FB) + AIR 1915 P.C. 124 = 38 Mad. 406 = 42 Ind. App. 125 + AIR 1916 P.C. 117 = 39 Mad. 634 = 43 Ind. App. 207.
6. 36 Mad. 402.
7. AIR 1918 Mad. 1198 (DB) + AIR 1921 Mad. 234 = 44 Mad. 984.

39. Suit to set aside alienation by Hindu father. Where a property, though joint family property, cannot be said to be ancestral property in the sense in which it is ordinarily interpreted in the Hindu Law, a suit to set aside an alienation of such property by the father would not be governed by Art. 126 but only by this article.[8] Where the alienee does not get possession of the property alienated, a suit by the son to set aside the alienation by his father is governed by this article and not by Art. 126.[9]

40. Partition, suit for. A suit for the partition of a family business,[10] or for partition and possession of movable property of the family would be governed by this article.[11] Even a suit for partition of *Shamilat* by co-sharers is governed by this Article.[12]

Suit by purchaser of co-parcener's right. A suit for partition by a purchaser of a co-parcener's share in the joint family property is governed by this article and not by Article 144.[13] But where both parties to the suit are strangers to the joint family a suit for partition of his share by an alienee from a co-parcener is governed by Art. 114 and not by this article.[14] Similarly a suit for partition and possession by a Court auction-purchaser of an undivided interest of a co-parcener in a joint Hindu family is governed by Art. 138 and not by Art. 120 or Art. 127 or Art. 136 or Art. 137 and therefore a suit brought within twelve years from the date when the sale became absolute would be within time.[15]

Starting point of limitation. In the case of joint property, there is a continuing right of suit so long as the parties are co-owners.[16]

41. Emoluments of hereditary office, suit for. A suit by a person holding hereditary office of *dwaris* of a temple to recover arrears of emoluments in respect of services rendered to the temple,[17] or a suit to recover a sum of money as marriage dues attached to an hereditary office of a temple is governed by this article.[18] Therefore a claim for remuneration for services rendered by a holder of hereditary office falling due beyond six years of the suit would be barred.[19]

42. Suit to enforce mortgage or pledge. A suit to enforce a pledge of movable property would be governed by this article.[20]

---

8. AIR 1934 Lah. 397.
9. AIR 1927 All. 702 (DB) + AIR 1954 Pepsu 52 = ILR 1953 Patiala 166 + 1957 B L J R 645 + AIR 1929 All. 750 (DB) + AIR 1947 Bom. 82.
10. AIR 1937 Mad. 599 (DB).
11. AIR 1915 All. 148 = 37 All. 318 (DB).
12. PLD 1955 Lah. 234 = PLR 1955 Lah. 215.
13. AIR 1939 Bom. 322 (DB) + AIR 1946 Bom. 192 + ILR 1946 Bom. 109 (DB).
14. 52 Hys. H. C. R. 568 (DB).
15. AIR 1955 Mad. 202 = ILR 1955 Mad. 981 (DB).
16. AIR 1917 Mad. 244 (DB) + 1 Cal. L. Jour 73 (DB).
17. AIR 1926 Pat. 205 = 5 Pat. 249 (DB).
18. 22 Mad. 351 (DB).
19. AIR 1926 Pat. 205 = 5 Pat. 249 (DB).
20. 27 Mad. 528 (FB) + ILR 1958 Punj. 128 + AIR 1955 Cal. 172 + AIR 1918 All. 344 = 40 All. 512 (DB) + 22 Cal. 21 (DB) + AIR 1917 All. 309 = 39 All. 74 (DB) + AIR 1935 Bom. 213 = 1 Low Bur Rul. 154.

Mortgage. A suit to enforce a mortgage is governed by Art. 132 and has to be filed within twelve years from the date on which the money sued for becomes due, unless the period of limitation so prescribed is extended in the manner provided by Part III of the Limitation Act. But where the mortgagee is deprived of the mortgage security or where he is not secured in his possession of the mortgaged property or where possession is not delivered to him as agreed, the claim maintainable by the mortgagee is one for compensation and the period of limitation for a suit to recover the mortgage money is governed by Art. 120 of the Limitation Act and runs from the date of destruction or deprivation of the mortgage security and not from the date when the mortgage money is repayable.[1] Thus a suit to enforce a mortgage of a turn of worship is governed by this article.[2] But where the purchaser from a mortgagor paid off a mortgage debt and he was required to give up possession of the property purchased, as the mortgagor was found to have no title to the same, a suit for re-imbursement is governed by Art. 15, and not by Art. 120.[3] A suit for foreclosure on the basis of an anomalous mortgage is a suit to enforce payment of money charged upon immovable property within the meaning Art. 132 and therefore would not be governed either by the residuary Art. 120 or by Art. 147.[4]

43. Suit to enforce award. A suit for possession based on an award would not be governed by this article.[5] But where in the enforcement of an award for partition of joint family property in order to equalise shares *A* was made to pay a certain amount to *B*, a suit by the latter against the former for recovery of such amount was governed by Art. 120.[6]

Foreign award. In cases of applications under section 3 of the Arbitration (Protocol & Convention) Act, 1937, Article 120 which applies to suits and not Article 181 which applies to application, is applicable. This is so, as under the specific provisions of the Act, applications under section 5 are registered as suits. Being registered as suits under the Statute, the residuary Article 120 of the Limitation Act would be applicable whereunder the period is 6 years.[7]

44. Suit for taxes. A suit for the amount due as tax under a statute is governed by this article.[8] But where the suit for recovery of taxes is brought by the State, Art. 149 would apply and Art. 120 is applicable only for determining the date when limitation begins to run. Therefore when a suit for recovery of a statutory cess is filed by the Federal Government the period of limitation of 60 years under Art. 149 should be computed from the date when the right to sue

1. AIR 1964 Supreme Court 1295.
2. AIR 1919 Cal. 671 = 46 Cal. 455 (DB).
3. AIR 1957 Mys 65 = ILR 1957 Mys. 1 (DB).
4. AIR 1960 Bom. 411 (DB).
5. AIR 1929 Rang. 275 (DB) + AIR 1948 Bom. 101 = ILR 1948 Bom. 309 (FB) + AIR 1949 Bom. 64 = ILR 1948 Bom. 610 (DB).
6. AIR 1957 Madh Pra. 234.
7. NLR 1981 UC 175.
8. 20 Cal. 51 (FB) (*Overruling* 18 Cal. 234) + 71 Mad. L W 44 + AIR 1952 Pat. 239 = 31 Pat. 187 (DB) + AIR 1938 Sind. 48 (DB). (For recovery of terminal tax) + AIR 1936 Sind. 184 = 30 Sind. L R 146 (DB) (For recovery of fee for use of municipal land) + AIR 1938 Pat. 192. (Licence fee payable to municipality) + AIR 1933 Pat. 65. (House and latrine taxes) + 3 Mad. 124 (DB) + AIR 1939 All. 510.

accrues. The right to sue accrued when the defendants refused to pay the cess when demanded.[9]

Charges of Port Trust, suit for. The right of Karachi Port Trust authorities to recover fees and charges from those who use their sheds or plinths for storing their goods, is a statutory right conferred upon them by the Karachi Port Trust Act, 1886 and is not one based on contract. As between the Port Trust and the Importer who stores his goods in their premises there is no relationship of landlord and tenant. The dues recovered from such Importers are storage charges or demurrage fees and not rent in the sense in which the term is used as between lessor and lessee. A suit for such charges, therefore, cannot be regarded as one for rent and consequently the suit would be governed by Article 120 and not by Article 110 of the Limitation Act, 1908.[10]

Refund of taxes paid. A suit against a municipality to recover licence fees and professional tax wrongly levied is governed by Article 62 and not by Art. 120.[11]

45. Suit by creditor against alienee from devisee. A suit brought by the creditor of testator to follow the lands of the latter in the hands of transferee from devisee who had knowledge of the existence of such debts is governed by this article.[12]

46. Restitution of conjugal rights, suit for. A suit for restitution of conjugal rights would be governed by this article. The cause of action for such a suit is a continuing one, inasmuch as refusal of the wife or the husband to live with the other is a continuing wrong within the meaning of S. 23.[13]

47. Dissolution of marriage, suit for. Suit for dissolution of marriage of persons who are not governed by the Divorce Act would be governed by this article. The cause of action for such a suit would arise when the facts furnishing the grounds for divorce first come into existence.[14] Similarly a suit for a declaration that a marriage was nullity is governed by Art. 120. The right to sue accrues on the date of the marriage or at all events when the defendant claimed his marital rights.[15]

48. Exclusive right to worship, suit for. A suit to establish the plaintiff's exclusive right to worship a certain idol will be governed by this article.[16]

49. Hindu son's pious obligation to pay his father's debts. A suit to enforce the pious obligation of the son for father's liability is governed by this article.[17] the

9. AIR 1962 Supreme Court 1281.
10. PLD 1966 Karachi 518 (DB) + PLD 1967 Kar. 191 (DB) + PLD 1962 Kar. 34 = PLR 1962 (1) W.P. 498 + AIR 1962 Mad. 415
11. AIR 1943 Mad. 191 = II.R 1943 Mad. 521 (DB).
12. 4 Cal. 897 (DB).
13. AIR 1936 Bom. 289 + 13 All. 126 (DB).
14. AIR 1922 Oudh 109.
15. AIR 1945 Cal. 484 = II.R (1946) 1 Cal. 32.
16. 4 Cal. 683 (DB).
17. AIR 1965 A.P. 285 + AIR 1916 Cal. 279 = 42 Cal. 1068 (FB) + AIR 1916 Pat. 203 = 1 Pat. L. Jour 497 (DB).

starting point of limitation for a suit to enforce the pious obligation of the sons would be the date when the money falls due.[18]

50. Record-of-rights, suit for correction of or declaration as to entry in. A suit for the correction of an entry in the Record-of-Rights, where such a suit lies, is governed by this article.[19] But a suit for ejectment on the ground that the defendant is a tenant-at-will is not one for the correction of the Record-of-Rights.[20]

For correction of an entry in the Record-of-right, the right to sue arises either on the date of the entry in the Record-of-Rights or on the date when such record was sanctioned.[1] The cause of action for the suit accrues when an entry is made in the Jamabandi for the first time. The opposition by the opposite party to an attempt by the plaintiff to change the entry in his favour does not amount to a fresh invasion of the plaintiff's right so as to give the plaintiff a new cause of action from the date when his attempt to enter a correction in the Jamabandi failed. There must be some attempt on the part of the opposite party to oust the plaintiff in possession in order to give the plaintiff a fresh cause of action. Therefore, where plaintiffs were out of possession and the defendants were in possession of the suit land and they did not do anything new to invade the entitlement of the plaintiffs, if any, to the disputed land. Their complacency in ignoring the continued adverse entries in the Revenue Record coupled with the admitted position that possession of the exchange land was not handed over to them shall expose the plaintiffs to the bar of limitation prescribed by law.[2] A fresh cause of action may also arise when the plaintiff's right is placed in jeopardy by reason of such entry.[3] Where on the death of a person mutation entry was made whereby his daughter was not entered as a co-sharer but other co-sharers went on giving her share of produce from land. When ultimately they refused to give her share of produce, she brought a suit to challenge the mutation entry made 30 years earlier on the ground that she lived in another village and had been kept in the dark about the mutation and that she had come to know of it when she was refused her share of produce. It was held that plaintiff, could be deemed to be in possession of suit land just before the institution of the suit. Plaintiff, also being a co-sharer of property in dispute could be deemed to be in possession of her share as well on behalf of other co-sharers. In such case no point of limitation could be pleaded against the plaintiff.[4] Where the case of plaintiffs is that they came to know of mutations in question on start of consolidation proceedings and prior to that they enjoyed possession unchallenged and unthreatened. Fresh cause of action had arisen in favour of respondent-plaintiffs when they were threatened of deprivation of their rightful shares through consolidation proceedings. It was held that right to sue and cause of action having accrued 4 months before filing of suit,

18. AIR 1921 Oudh 230 + 24 Oudh Cas. 395 + LAIR 1931 Bom. 542.
19. PLJ 1989 Pesh. 23 = 1989 CLC 803 + 20 Ind. Cas. 262 (DB) (Cal.) + AIR 1919 All. 175 = 41 All. 492 (DB) + AIR 1916 Cal. 594 (DB).
20. 9 Ind. Cas. 804 (Cal.).
1. 1989 CLC 803 = PLJ 1989 Pesh. 23 = NLR 1989 CLJ 328 + 1879 Pun. Re. No. 79, p. 218 (DB).
2. 1989 CLC 2206 = NLR 1989 Civ. 623.
3. AIR 1930 Nag. 92 = 26 Nag. L. R. 94 + 1956 Raj. L. W. 18.
4. 1989 CLC 1721.

and it being within 6 years of limitation under Article 120 of the Limitation, Act, there is no question of suit being time-barred.[5] Thus a person against whom an entry has been made in Record-of-Right may wait until there is a fresh invasion of his right and then sue for a declaration within six years of such fresh invasion.[6]

Declaratory suit. A suit by a person allowed by S. 42 of the Punjab Land Revenue Act, 1887, to sue under S. 42 of the Specific Relief Act would be governed by this article, and the cause of action would arise when the plaintiff feels aggrieved by an entry in the Record of Rights and from the date of the entry in the Record-of-Rights.[7] Thus a suit for rectification of revenue record based on a compromise decree obtained in a partition suit, is governed by Art. 120.[8] In such cases limitation begins from the open denial of plaintiff's right by defendants and not from the date of first erroneous entry in revenue records.[9]

Mutation entry, suit for. A suit to compel mutation of the plaintiff's name in the Revenue Register is also governed by this article, and time will run from the date when the mutation was refused.[10]

51. Suit for damages. A suit for damages not covered by any other Article would fall under this Article. Thus this Article applies to a claim or interest or damages not governed by any other article;[11] or a suit for damages for enticing away plaintiff's wife;[12] or a suit for damages for breach of covenant not falling under Article 116;[13] or a suit for damage by vendor who has been damnified by vendee not paying mortgagee according to covenant;[14] or a suit for compensation for the loss occasioned to the mortgagor by the wrongful act of the mortgagee in possession.[15]

Recovery of money. A suit for recovery of money as damages is governed by this Article. Thus where the defendant used plaintiff's land without permission for non-agricultural purposes and the plaintiff who had to pay fine to the Government sued to recover the money, the suit was governed by this article.[16]

Damages for rent. Where a lessor of a shop served notice upon the lessee to vacate it by a certain dates but the lessee failed to do so. A suit by the lessor to recover compensation for use and occupation was governed by neither Article 39 nor 115 but by Art. 120.[17] Where a purchaser at revenue sale annulled under-tenure by not accepting rent, he is entitled to damages from the date of sale. A suit for damages based on rent is not a suit for rent and is governed by Article 120

5. PLJ 1989 Lah. 130 = PLJ 1989 Lah. 399.
6. AIR 1935 Cal. 801 = 62 Cal. 969 (DB) + AIR 1934 Cal. 192 (DB) + AIR 1917 Pat. 627 = 2 Pat. L. Jour 557 (DB) + AIR 1918 Pat. 609 = 3 Pat. L. Jour 361 (DB).
7. PLD 1968 Pesh. 148 + AIR 1936 Lah. 37 (DB).
8. PLD 1966 Karachi 608 (DB).
9. PLD 1969 Peshawar 148.
10. 15 Mad. 350 (DB). (Conditional refusal does not furnish starting point).
11. 5 Cal. W. N. 356 (DB) + AIR 1946 Mad. 207 (DB).
12. AIR 1936 All. 454 = 58 All. 903 (DB) (AIR 1935 All. 855, *Reversed*).
13. AIR 1930 All. 771 = 52 All. 604 (DB).
14. AIR 1932 All. 454 (DB) + AIR 1931 All. 549 = 53 All. 702 (SB).
15. AIR 1954 Bom. 417 = II.R 1954 Bom. 1131.
16. AIR 1922 Bom. 257 (DB).
17. AIR 1947 All. 31.

and not by Article 110.[18] Similarly a suit by an auction-purchaser for recovery of rents received by the judgment-debtor between the dates on which the sale is held and the date on which it is confirmed is governed by Art. 120 of the Limitation Act. Art. 109 is not applicable to such suit.[19]

Recovery of price as damages. Where *A* sold property to *B* and he received the sale price from a third person but was subsequently compelled to refund the same. A suit thereafter for the price against *B* was governed by Article 12..[20]

52. Suit for money under S. 68, T.P. Act. To a suit for recovery of mortgage money personally from mortgagor in the events specified in clauses (*b*), (*c*) and (*d*) of S. 68 (1), T.P. Act, Article 97 read with Art. 116 applies and the plaintiff is entitled to six years period of limitation.[1]

53. Suit against buyer for charges for care and custody of goods. A claim by the seller of goods against the buyer for reasonable charges for care and custody of goods, arising under S. 44, Sale of Goods Act, 1930, is governed not by Art.110 or Art. 155 but by this article.[2]

54. Suit for money promised to be paid. Where subsequent to entering into a contract by the Government with a contractor, the Chief Engineer made a promise to the contractor to make payment of an additional sum to meet the increase in wages of labour. A suit by the contractor for obtaining additional payment would be governed by Art. 120 and not by Arts. 56 and 115.[3] Where a Government servant entered into a contract on behalf of the Government with a third person for construction of certain works to be carried out by the latter and the contract contained a provision that the government will reimburse sales tax payable by contractor in respect of such construction works, therefore a suit by a contractor against Government for recovery of sales tax paid by him was governed by Art. 120 and not by Art. 62 or Art. 115.[4] Similarly where the defendant took '*theka*' of a shop for one year from plaintiff and agreed to pay certain sum by instalments, but failed to pay the agreed sum and the plaintiff filed a suit for recovery of defaulted instalments without claiming any compensation or damages for the breach of contract. It was held that the suit was governed by Art. 120 ad not by Art. 155, for it was not a suit for compensation for breach of contract, but for enforcement of the agreement to pay '*theka*' money.[5]

Starting point of limitation. Where plaintiff supplied coal to an undertaking which later on became liability of defendant. A suit brought for recovery of money due within six years from the date when first refusal was made was held to be within time.[6]

---

18. AIR 1939 Cal. 468.
19. AIR 1963 Allahabad 44.
20. AIR 1914 Lah. 62.
1. AIR 1920 Lah. 355 + 1900 Punj. L R No. 53, p. 134.
2. AIR 1951 Nag. 148 = ILR 1951 Nag. 40.
3. AIR 1964 Pat. 225 (DB).
4. AIR 1962 Orissa 117 (DB). (*But see* AIR 1963 Cal. 307).
5. AIR 1962 Allahabad 438 (DB).
6. 1986 CLC 2593.

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

Synopsis

1. Scope and applicability.
2. Suit must be against parties to judgment or their agents.
3. Extension of period of limitation.
4. Starting point of limitation.

1. Scope and applicability. Under the English Common law, actions on judgments lie whether the remedy by execution is available or not.[7] But an executable judgment cannot be sued upon.[8]

Suit wrongly formulated. A suit cannot be allowed to be formulated as a suit based on a judgment to extend the period of limitation when the suit is in fact one based on another cause of action. Thus where *A* obtained a decree for money against *B* and execution against the family properties of *B* in the hands of his sons was refused. *A* thereupon sued the sons of *B* on his pious obligation to pay the decree against *B*. It was held that the suit was not one on a 'judgment' but a suit to enforce the pious obligation.[9]

Decree not executable. Where a decree is not executable a suit on the judgment is competent. Therefore in cases outside the prohibition of S. 47, Civil P.C., a suit on judgment lies and would be governed by this article.[10] Similarly where a decree becomes, owing to subsequent events, incapable of execution, a suit on the judgment will be governed by this article.[11] A suit to enforce an order declaring the plaintiff's right to the payment of money from the defendant when there is no provision made for the execution of that order is maintainable.[12] A suit on a judgment may be filed on a *solenamah* or compromise agreement filed in Court, and accepted by it, where no decree is drawn up with the usual provision for execution,[13] or on a report of the Commissioner in a prior suit for dissolution and accounts of a partnership, accepted by the Court in awarding profits to one of

7. AIR 1925 Mad. 279 = 48 Mad. 482 (DB).
8. 3 Agr 381 (FB) + 27 Mad. 243 (FB) + 3 Ind. App. 241 (P.C.) + AIR 1925 P.C. 34 = 52 Ind. App. 79 = 52 Cal. 314 + 3 N W P H C R 62 (FB).
9. 27 Mad. 243 (FB) + (1900) 23 Mad. 292 (FB).
10. AIR 1916 Cal. 661 (DB).
11. 3 Bom. 193 (DB).
12. AIR 1925 Mad. 279 = 48 Mad. 482 (DB) + AIR 1956 Nag. 250 = ILR 1956 Nag. 821 (DB) + AIR 1934 Mad. 665 (DB) + 2 Agra 23 (DB).
13. 4 Suth. W R (S C R) 7 (DB).

the partners,[14] or on a garnishee order absolute.[15] But no suit on judgment may be filed on an arbitration award, which is not filed into Court or incorporated in a decree of Court.[16]

Order of High Court in insolvency jurisdiction. A suit to enforce an order passed by the High Court in its insolvency jurisdiction awarding costs has been held to be maintainable.[17]

2. Suit must be against parties to judgment or their agents. A suit against a person not a party to the judgment is not on a judgment and this article would not apply.[18]

3. Extension of period of limitation. Time spent in prosecuting an application for execution of a decree can be deducted in computing the period of limitation for a subsequent suit on the judgment.[19]

4. Starting point of limitation. In the case of a decree for money payable by instalments, the date of the "judgment" in respect of a particular instalment is the date on which the instalment falls due.[20]

122.	Upon a judgment obtained in [1][Pakistan] or a recognisance.	[2][Twelve years]	The date of the judg-ment or recognis-ance.
123.	For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	[2][Twelve years]	When the legacy or share becomes payable or deliverable,

Synopsis

1. Scope and applicability.
2. Distributive share.
3. Administration suits.
4. Suit between co-heirs for share of inheritance.
5. Suit by Hindu reversioner.
6. Suit by heir against person in wrongful possession.
7. Suit for accounts against executor.
8. "Legacy."
9. Starting point.
10. Applicability of S. 6 to suits under the Article.

14. AIR 1934 Mad. 665 (DB).
15. 17 W R (Eng.) 577.
16. AIR 1916 Mad. 583.
17. 33 Cal. 560.
18. 23 Mad. 292 (FB) + 27 Mad. 243 (FB).
19. 1885 Bom. P J 196 (DB).
20. 3 Bom. 193 (DB) + 12 Bom. 65 (DB) + 17 Mad. 122 (DB).

1. Subs. by Ord. 21 of 1980 S. 3 & Sch.
2. Subs. by the Repealing and Amending Act, 1923 (11 of 1923). S. 2 and First Sch., for "Ditto".

1. Scope and applicability. The article applies only where the suit is brought against some person who is legally charged with the duty of paying the legacy or distributing the estate.[3] Mere possession of the estate by the plaintiff as a legatee does not attract Article 123 which says that possession must be with a duty to distribute the legacy which lies ordinarily on an executor or an administrator. It is not upon a legatee, *qua* legatee or a claimant *qua* claimant under the will as it is the duty of somebody on whom the duty is cast either by the terms of the will as executor or by an order of the Court as an administrator.[4]

A person to whom property has been bequeathed with a direction to pay a certain legacy is a person "charged with the duty of paying such legacy". A suit against him for the legacy would be governed by this article.[5] Where the estate of a deceased Muslim was sold in accordance with the wishes of majority of the heirs and the sale proceeds were kept with the defendant for distribution to the heirs according to their shares, a suit for recovery of his share by one of "the heirs" cannot be regarded either as one for the administration of the estate or as a suit against a person legally charged with the duty of distributing any portion of it under this article.[6] The period of limitation prescribed by this article was held to govern the suit of the heirs to establish their claim to the deceased's property against the person who with their permission was in possession after the death of the deceased and the cause of action for the suit arose when the latter openly refuted the title of the former and occupied the property adversely to them.[7]

Executor and administrator. A suit against an executor or administrator for the reliefs specified in the first column will be governed by the period prescribed by this article.[8] Thus a suit against an executor *de son tort* for a legacy, etc., would be governed by this article.[9]

2. Distributive share. The words "distributive share" would imply that there is somebody whose duty is to distribute to the several heirs their respective shares.[10] This article will apply only to the distributive shares of the *corpus* of the estate as left by the intestate, that subsequent profits of the estate do not form part of the property of the intestate, and that some other article should apply to a claim for such subsequent profits.[11] Similarly a suit against an executor for the whole of the residue left by the testator will be governed by this article.[12]

3. Administration suits. Where the suit for legacy entails administration of the testator's estate, a suit for administration has been held to be governed only

3. AIR 1932 P. C. 81 = 59 Ind. App. 74 = 54 All. 93 + AIR 1943 Pesh. 11 (DB) + 34 Mad. 511 (FB) + 21 Cal. 157 = 20 Ind. App. 155 (P.C.) + AIR 1963 Cal. 520 (DB).
4. AIR 1963 Calcutta 520 (DB) + AIR 1932 P.C. 81 + AIR 1955 Mad. 369 (AIR 1924 Lah. 561 does not lay down correct law).
5. AIR 1940 Cal. 93 (DB) + AIR 1943 Pesh. 1 (DB) + AIR 1935 All. 239 = 56 All. 711 (DB).
6. AIR 1946 Mad. 116 = II.R 1946 Mad. 423 (DB).
7. AIR 1952 Manipur 8.
8. AIR 1921 Bom. 56 = 45 Bom. 519 (DB) + AIR 1956 Bom. 30 (DB) + AIR 1963 Cal. 520 (DB) + AIR 1932 P. C. 81.
9. AIR 1922 Mad. 457 = 46 Mad. 190 (DB). (*Confirmed in* AIR 1925 P.C. 105).
10. AIR 1928 All. 467 = 51 All. 101 (FB).
11. AIR 1924 Rang. 155 = 1 Rang. 405 (DB).
12. 2 Cal. L. R. 112 (*Confirmed in* 4 Cal. 455).

by this article and not by Art. 120.[13] Thus if the claim for legacy or share has become barred under this article, a suit for administration would also be equally barred.[14]

A suit for administration against certain heirs of a Muslim by a person entitled to part of the interest of one of the heirs is not governed by this article but is governed as regards immovable property, by Art. 144 and as regards movable property by Art. 120.[15]

4. Suit between co-heirs for share of inheritance. Co-heirs in possession cannot be regarded as persons who are by law charged with any duty of distributing the estate and suits between co-heirs of a person dying intestate taking as tenants-in-common are not governed by this article.[16]

5. Suit by Hindu reversioner. This article does not apply to cases of reversioners suing to recover property which had been held for some intervening time by a widow. The suit by the reversioners would not be one for a "distributive share".[17]

6. Suit by heir against person in wrongful possession. A suit against a person who is in possession of the property of the deceased but who claims adversely to such estate, for property to which the plaintiff has become entitled by virtue of a bequest or by heirship is not one "for a legacy or for a distributive share of the estate" and is not governed by this article.[18] After the death of the owner, a person not an heir, was in possession, and such person was succeeded by others claiming to be the heirs of the original owner. All the persons in possession were merely trespassers. It was held that a suit by the real heir for recovering the property was governed by Art. 144 and that the successive trespassers could not tack on their period of adverse possession.[19] But where the person in possession takes out letters of administration, the heirs must sue for their share within the period prescribed by this article.[20]

7. Suit for accounts against executor. In a suit for account, the plaintiff is not ordinarily entitled to go beyond six years before the suit.[1] Therefore where the administration of the estate had ceased six years before the suit, a legatee is not entitled to any account from the executor.[2] But where a residuary legatee sues the executor for recovery of his share under the will, he is entitled to get such an account from the executor as is necessary for ascertaining the residuary share and

13. 25 Mad. 361 (DB) + 36 Bm. 111 (DB).
14. 9 Bom. L. R. 316 (DB).
15. AIR 1940 P. C. 215 = II.R 1940 Kar. (PC) 410 = 67 Ind. App. 406.
16. AIR 1932 P.C. 81 = 59 Ind. App. 74 + 20 Ind. App. 155 (PC) + 34 Mad. 511 (FB) + 16 Mad. 61 (FB) + AIR 1928 All. 467 = 51 All. 101 (FB) + AIR 1949 Bur L. R. (HC) 420 + AIR 1940 Lah. 475 = ILR 1941 Lah. 843 (DB) + AIR 1940 P.C. 215 = ILR 1940 Kar. (PC) 410 = 67 Ind. App. 406.
17. 10 Bom. L. R. 210.
18. 17 Cal. 137 = 16 Ind. App. 148 = 1890 Pun Re No. 23 (PC) + 16 Cal. 473 = 16 Ind. App. 23 (PC).
19. AIR 1917 Nag. 7 = 14 Nag. L. R. 82 + AIR 1916 Oudh 50 = 18 Oudh Cas. 289 (DB).
20. 23 Bom. 80 (DB).
1. 5 Cal. 910 (DB) + 8 Cal. 788.
2. 19 Mad. 425 (DB).

such a suit will be governed by this article and the executor will be liable to render accounts for the full period of twelve years.[3]

Executor, position of. A suit against an executor of a will is not governed by S. 10 and will not exempt him from the bar of limitation under this or some other appropriate article.[4] But where an executor is also expressly made a trustee under the provisions of a will,[5] or where an executor, by his own act, constitutes himself as an express trustee, there will be no bar of time for a suit against him.[6]

8. "Legacy." A testator may grant as a legacy a sum of money, or a debt due to the testator, or an estate, and suits to recover these will be governed by this article.[7]

Annuity granted as legacy. A testator may grant, as a legacy, an annuity, a suit to recover which will be governed by this article.[8] But where the right to receive an annuity is repudiated, a suit to recover arrears brought more than 12 years after the repudiation is governed by Art. 131 ad not by this article.[9]

Maintenance granted as legacy. A suit for maintenance allowance to be paid out of particular properties granted as a legacy is governed by this article.[10]

Legacy charged on property. Where a legacy is charged on property and the charge is sought to the enforced, Art. 132, and not this article will apply.[11]

9. Starting point. Time runs from the date on which the legacy or share becomes payable or deliverable and not from the time when the will is construed by a competent Court or where the intestacy is declared by a decree established beyond appeal.[12] It is to be noted that a legacy does not become payable until the executor or other person liable to pay it has in his hands money with which it could be paid.[13]

Where the testator has himself fixed a date on which the legacy is to be paid or the distribution made, the starting point will be such date.[14] But a mere direction by the testator that the executor shall have powers of management

3. AIR 1915 Cal. 219=41 Cal. 271 (DB)+19 Mad. 425 (DB)+AIR 1918 Mad. 526 (DB)+AIR 1929 Lah. 753=11 Lah. 325 (DB) (Executors *de son tort*).
4. AIR 1938 Pat. 600=17 Pat. 350 (DB)+AIR 1929 Lah. 753=11 Lah. 325 (DB)+12 Bom. L R 881+AIR 1915 All. 12=37 All. 238 (DB)+14 Suth W R 354 (DB)+AIR 1915 Mad. 1184.
5. AIR 1922 P.C. 212=49 Ind. App. 37.
6. 132 R R 320+9 Eq. 37.
7. 25 Mad. 361 (DB). (A sum of money)+2 Agra 171 (DB)+7 Oudh Cas. 176 (A debt due to the testator)+AIR 1924 Lah. 561 (DB) (An estate.) (*But see* AIR 1918 Mad. 526 (DB)).
8. AIR 1938 Pat. 600=17 Pat. 350 (DB)+AIR 1940 Pat. 254.
9. AIR 1947 Pat. 47=25 Pat. 211 (DB).
10. AIR 1931 Cal. 670 (DB)+AIR 1943 Pesh. 11 (DB)+AIR 1929 Lah. 834 (DB).
11. 15 Cal 66=14 Ind. App. 137 (PC).
12. AIR 1922 P. C. 212=49 Ind. App. 37.
13. AIR 1925 P.C. 105=48 Mad. 312=59 Ind. App. 214+AIR 1922 Mad. 457=46 Mad. 190 (FB)+AIR 1943 Mad. 276=ILR 1943 Mad. 477 (DB).
14. AIR 1922 P.C. 212=49 Ind. App. 37+AIR 1946 P.C. 185+ILR 1947 Mad. 159=ILR 1947 Kar. (PC) 15=73 Ind. App. 264.

during the minority of the legatees, will not postpone the period of distribution of the estate to the date of the legatees' attaining majority.[15]

Legacy falling under Succession Act. A legacy share in cases governed by the Succession Act becomes payable or deliverable only on the expiration of one year from the death of the testator.[16]

Legacy payable annually. In the case of legacies payable annually, the starting point for each year's payment is the date on which it is payable. In a suit for arrears of such payments, arrears for twelve years before suit can be obtained under this article.[17]

10. **Applicability of S. 6 to suits under the Article.** A legacy given to a minor is deliverable on the death of the testator, and is not postponed to the date of his attaining majority even though there is a direction in the will that the executor shall have powers of management during the legatee's minority,[18] and if the legacy is not paid, the minor can sue for it within three years of his attaining majority.[19]

Where an heir to the deceased person dies without claiming his share in the estate the minor heir of such heir must sue within the period fixed by this article.[20]

124. For possession of an hereditary office.	[1][Twelve years]	When the defendant takes possession of the office adversely to the plaintiff. *Explanation*--An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.

15. 23 Cal. 563 = 23 Ind. App. 18.
16. AIR 1922 Mad. 457 = 46 Mad. 190 (FB).
17. AIR 1938 Pat. 600 = 17 Pat. 350 (DB) + AIR 1935 All. 239 = 56 All. 711 (DB) + AIR 1931 Cal. 670 (DB).
18. 23 Cal. 563 = 23 Ind. App. 18 (PC).
19. 9 Bom. L. R. 316.
20. [illegible]

1. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch. for "Ditto".

Synopsis

1. Scope.
2. What is an office.
3. Hereditary office.
4. Article applies only to suits for possession of office.
5. Adverse possession of defendant.
6. Adverse possession of hereditary office--what is.
7. Defendant obtaining letters of administration to office.
8. Suit for property attached to office.
9. Starting point of limitation.
10. Section 28 and this article.
11. Bar to right to office applies to successors also.

1. Scope. This article applies to suits for possession of an hereditary office.[2] A suit for the possession of an office which is not hereditary is not governed by this article, but will fall under art. 120.[3]

Object of suit. The intention of the article is to treat hereditary offices like land for the purpose of barring suits for possession of office and extinguishing the right to the possession thereof after a certain period.[4]

Nature of suit. A suit for possession of office only falls under this Article. A suit for a declaration that the plaintiffs are entitled to the hereditary office when the defendant is not in possession is not a suit for possession and it cannot, therefore, be governed by Art. 124 which applies to suit for possession of hereditary office.[5]

The nature of the suit contemplated by this article is one of possession by the plaintiff who claims to be entitled to the office, against one who, at the time, holds the office himself.[6] A suit for possession of trust property against an alienee who claims to hold it in his right as owner, is not governed by this article.[7]

2. What is an office. The existence of an office involves the existence of some duties to be performed by the holder of the office.[8] In the absence of any duties, there can be no office for which a suit will lie in civil Court.[9]

It is not essential that the office need be one which brings in any profits to those claiming it,[10] or to which any fees or emoluments are attached as of right.[11]

---

2. AIR 1920 Cal. 800 (DB) + AIR 1953 S.C. 125 = 1953 S C R 503 + AIR 1931 Mad. 505 + AIR 1918 Mad. 675 = 41 Mad. 4 (DB).
3. AIR 1941 All. 1 = ILR 1940 All. 815 (DB) + AIR 1954 Nag. 212 = ILR 1954 Nag. 302 (DB) + AIR 1938 Cal 709 (DB) + AIR 1930 All. 866 (DB) + 19 Cal. 776 (DB) + 26 Mad. 113 (DB) + AIR 1935 Mad. 449 (DB).
4. AIR 1932 Cal. 791 = 60 Cal. 482 (FB) + AIR 1953 S.C. 125 = 1953 S C R 503.
5. AIR 1965 Andhra Pradesh 471 (DB).
6. AIR 1928 Mad. 377 (DB) + 10 Ind. Cas. 573 (DB) (Mad.).
7. 27 Bom. 363 (DB) + 2 Moo Ind App. 390 (PC).
8. AIR 1917 Pat. 3 = 2 Pat L Jour [illegible] (Duties must be established by law or by usage) + AIR 1928 Mad 377 (DB) (Rendering of voluntary service does not constitute office) + AIR 1931 Bom 273 (DB).
9. 32 All. 527 (DB) + 28 Mad. 23 (DB) + 19 Mad. 62 (DB).
10. 15 Cal. 159 (DB).
11. 13 Bom. 429 (DB) + AIR 1927 Cal. 783 = 54 Cal. 614 (DB).

Hindu temple, office attached to. It has been held that an office in connection with temples and other such institutions must be regarded as bundle of duties liable to be performed by the same persons under a particular designation and carrying with it certain emoluments.[12]

3. Hereditary office. Where a person gets a right to an office on account of his being the heir of a certain person, the office is hereditary. Where a person gets a right to the office by reason of the fact that he is the heir, the mere fact that he is also to be appointed by the Revenue Authorities would not make the office a non-hereditary one.[13] The office of *shebait* of a Hindu idol becomes, under certain circumstances, vested in the founder of a worship of an idol and his heirs, and is hereditary in their hands.[14] Where a testator after appointing two persons as trustees directed, that after them the office should be hereditary the office became hereditary.[15] Similarly where the founder of a religious endowment nominated a particular person to the office of a *shebait* but did not provide for further succession thereto, the shebaitship, after the death of the nominee, vested in the founder's heirs and became, in their hands, an hereditary office.[16]

Where succession to the office is by nomination or appointment, and there is no right to the office independent of such nomination or appointment the office is not hereditary.[17] Thus when the founder of a religious endowment give directions as regards succession to the office of *shebait.* He empowered every *shebit* to appoint a future *shebait.* He further directed that if any of the *shebaits* died without making an appointment then the eldest heir of the *shebait* would succeed him. It was held that the shebaitship was not hereditary.[18]

4. Article applies only to suits for possession of office. This article does not apply unless the suit is one for possession of an hereditary office.[19]

Suit for declaration. A suit for a declaration that the plaintiff is entitled to an office is not one for possession.[20] Therefore a suit for declaration of the plaintiff's right to the office and for the recovery of the emoluments thereof received by the defendant, is not within this article.[1] Where *X* obtained a decree for money against the *shebait,* and in execution thereof, purchased three and-a-half annas share of the profits which the defendant was entitled to receive as *shebait,* and began to receive the profits, *X*, however, not being a Brahmin, could not hold the office of *shebit*, *Y* who became entitled to the office, filed a suit against *X* for a declaration of his right to receive the three and-a-half annas share of the profits. It was held that the suit was not for possession of an office.[2] The question whether a

12. AIR 1928 Mad. 377 (DB).
13. AIR 1937 Nag. 84 = ILR 1937 Nag. 151.
14. 23 Mad. 271 = 27 Ind. App. 69 (PC) + AIR 1932 Cal. 791 = 60 Cal. 452 (FB).
15. AIR 1926 Mad. 245.
16. AIR 1941 All. 1 = ILR 1940 All. 815 (DB) + AIR 1937 Oudh 373 = 13 Luck. 344 (DB).
17. AIR 1941 All. 1 = ILR 1940 All. 815 (DB) + 37 Cal. 266 (DB) + AIR 1927 Cal. 130 (DB) + AIR 1926 Mad. 245 (DB) + AIR 1926 Mad. 1012 (DB) + AIR 1937 Oudh 373 = 13 Luck 344 (DB).
18. AIR 1938 Cal. 709 (DB).
19. AIR 1914 P.C. 72 = 42 Cal. 244 = 41 Ind. App. 267 + AIR 1959 S.C. 798.
20. AIR 1965 A.P. 471 (DB) + 17 Mad. 395 (DB) + AIR 1917 Mad. 467 (DB).
1. AIR 1928 Mad. 377 (DB) + AIR 1959 S.C. 798 (AIR 1928 Mad. 377. *Approved*).
2. AIR 1914 P.C. 72 = 42 Cal. 244 = 41 Ind. App. 267.