THE LIMITATION ACT
(ACT IX OF 1908)

SH. SHAUKAT MAHMOOD
SH. NADEEM SHAUKAT

THIRD EDITION

LAGAL RESEARCH CENTRE
NOOR VILLA

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THE LIMITATION ACT, 1908

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THE
LIMITATION ACT

(ACT NO. IX OF 1908)

[*7th August, 1908*]

An Act to consolidate and amend the law for the limitation of suits, and for other purposes

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

Synopsis

1. Reasons and objects of law of limitation and prescription.
2. Laches and limitation.
3. Interpretation of statutes of limitation.
4. Act in *pari materia*.
5. Construction in favour of right to sue.
6. Sections and Articles.
7. Residuary Article.
8. Several Articles applicable.
9. Column of schedules--use of.
10. Retrospective operation of Act.
11. Limitation bars remedy but does not destroy right.
12. Consolidating and amending Act.
13. Act, if exhaustive.
14. "Certain applications to Courts."
15. Criminal proceedings.
16. Writ petitions.

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1. For Statement of Objects and Reasons, *see* Gazette of India, 1908, Pt. V, p. 22; for Report of the Select Committee, *see ibid*, 1908, Pt. V, p. 223, and for Proceedings-in-Council, *see ibid*, 1908, Pt. VI, pp. 2, 13, 37 and 145.

The Act has been declared to be in force in Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), S. 3.

It has been applied to Phulera in the Excluded Area of Upper Tanawal to the extent the act is applicable in the N.-W.F.P., *see* N.-W.F.P. (Upper Tanawal) (Excluded Area) Laws Regulation, 1950.

It has also been extended to the Excluded Area of Upper Tanawal other than Phulera by the N.-W.F.P. (Upper Tanawal) (Excluded Area) Laws Regulation, 1950 and declared to be in force in that area with effect from the 1st June, 1951, *see* N.-W.F.P. Gazette, Extraordinary, dated the 1st June, 1951.

It has also been extended to the Leased Areas of Baluchistan, *see* the Leased Areas (Laws) Order, 1950 (G.G.O. 3 of 1950) and applied in the Federated Areas of Baluchistan, *see* Gazette of India, 1937, Pt. I, p. 1499.

1. Reasons and objects of law of limitation and prescription. The interests of the State require that there should be an end to litigation. Statutes of limitation and prescription are thus statutes of peace and repose.[2] The Act is not intended to deprive a person of his property. It provides against dilatoriness and negligence in enforcement of one's rights.[3] Limitation does not confer a right. It is only a regulatory statute and merely regulates the right which are inherent in the parties. It seeks to prescribe time limit for invoking remedies in order to curtail period of suspense and uncertainty and ensure peace of mind to the parties.[4] In order to avoid the difficulty and error that necessarily result from lapse of time, the presumption of coincidence of fact and right is rightly accepted as final after a certain number of years. Whoever wishes to dispute this presumption must do so, within that period; otherwise his rights, if any, will be forfeited as a penalty for his neglect. In other words the law of limitation is a law which is designed to impose *quietus* on legal dissensions and conflicts. It requires that persons must come to Court and take recourse to legal remedies with due diligence. The main purpose of the Limitation Act is to guillotine cases which seek reliefs at a point of time which is beyond the period specified thereunder.[5]

Substantive rights are not covered by law of limitation. Law of Limitation is only a procedural law and not a substantive law so as to create vested rights in favour of a party.[6] Vested rights may neither be extinguished nor remedies be cut down by regulatory statutes like the Limitation Act unless all conditions prescribed for such curtailment be fully complied with in letter and spirit. Benefit of doubt, if any, should be given to a party acquiring rights for good consideration and not to one trying to back out from his commitment pocketing all advantages and trying to shield himself behind regulatory provisions of the statute and seeking to deprive others from rights acquired by them.[7] Therefore substantive right of parties under a bond or a decree cannot be derived from or sought for in the Limitation Act.[8]

Muslim Law. If Muslim Law in its original state was not conversant with the rules of Limitation, those were introduced by the decrees of the Rulers from time to time at the later stages in respect of certain matters which did not, of course, relate to mortgages amongst other matters. Limitation for bringing matters in the Courts was recognised by Muslim Jurists as valid procedural law restricting the jurisdictional sphere of the Courts of Qazis.[9] It has been held that law of limitation *vis-a-vis* suits for pre-emption are not repugnant to injunctions of Islam.[10]

Prescription and limitation--distinction. Law of prescription prescribes period on expiry of which not only judicial remedy is barred, but a substantive right is extinguished in one and acquired by the other, whereas law of limitation does not

2. PLD 1958 Lah. 936 = PLR 1959 (1) W.P. 956 + (1852) 5 Moo. Ind. App. 234 (P.C.) + AIR 1957 Pat. 442 (DB) + 1946 A.M.L.J. 13 + ('86) 8 All 425 (DB) + AIR 1958 Bom. 51.
3. NLR 1988 AC 578.
4. PLJ 1986 Kar. 73.
5. 19 DLR 544.
6. 1987 CLC 972 = NLR 1987 CLJ 58 + PLJ 1986 Lah. 156 (DB).
7. PLJ 1986 Kar. 73.
8. AIR 1946 Cal. 500 (FB).
9. PLD 1981 Pesh. 46 (Sh. B).
10. NLR 1988 SD 80.

destroy the right, but only extinguishes the remedy.[11] The rule of limitation is a rule of procedure, a breach of the adjective law, and does not either create or extinguish rights, except in the case of acquisition of title to immovable property by prescription under section 28, Limitation Act. After the expiry of the period prescribed for filing a suit to recover possession of a property, the title of a person is extinguished under section 28 and the same is created in favour of the person in possession. However, under the law of limitation it is only the remedy by way of a suit that is barred, but the right itself continues to exist and if there is some other remedy by which that right can be enforced the Limitation Act cannot come in the way.[12]

Point of limitation must be decided. If a question of limitation arises in a case it has certainly to be decided either expressly or by necessary implication.[13]

2. Laches and limitation. The rigours of law of limitation and doctrine of laches are distinct in scope and application. The former extinguishes the remedy by force of the Statute and a valuable right accrues in favour of opposite side when the matter becomes barred under the Limitation Act or limitation prescribed by special statute, but principles of laches are invoked where statutory limitation is not prescribed but the Court takes into account the conduct of a party involving indolence and excessive inaction equivalent to acquiescence or waiver of the remedy, which resulted in causing prejudice to the opposite side. Sometimes, the interest of an innocent third party may have intervened on account of laches. In such like cases, the Court on equitable consideration and keeping in view the requirements of justice refuses to exercise its discretionary jurisdiction in favour of a person guilty of laches who approaches the Court for discretionary relief. The rigours of law of limitation are rigid and Courts insist upon explanation of each day's delay beyond the period prescribed and sufficient cause must be established for extension of time whereas the decision of question of laches would depend on facts and circumstances of each case and delay can be explained to the satisfaction of the Court.[14] Laches is not the same thing as limitation. Every grievance, is not required to be promptly ventilated and pursued in a legal forum. Litigation is to be avoided rather than invited. Whether or not limitation is provided, before recourse to law is taken, an aggrieved person has to be sure that a point of no return has reached and that redress must be sought. However where limitation is invocable he must act within the prescribed period. But no period, as may constitute laches, can be quantified. In the absence of a bar of limitation, the period within which remedy is to be sought has, however, invariably to be a reasonable one. Element of due diligence is also to be reconciled. What is more, delay should never be such as to generate a belief or situation of abandonment of the right because, then, vested rights come into operation and cannot be deviated from. Still, whether or not laches is involved in a particular case depends on the facts of such case. But, it is only when a right is firmly and finally repudiated, leaving no legitimate scope for retraction that, in the absence of a bar of limitation, a person is obliged to resort to legal proceedings.[15] A person may by his

11. 1989 CLC 279 = PLJ 1989 Kar 142 = NLR 1989 AC 247 + NLR 1989 AC 664.
12. 1989 CLC 279 = PLJ 1989 Kar. 142 = NLR 1989 AC 247 + PLD 1973 Lah. 207 (DB).
13. 1986 PSC 1217.
14. NLR 1984 Civ. 751.
15. 1990 MLD 563 (DB).

conduct or acquiescence make a transaction impeachable by him, unimpeachable after lapse of time.[16] The plea must be established by evidence of facts amounting to waiver, abandonment or acquiescence on the part of the plaintiff and such evidence must be plain and unambiguous.[17] The doctrine of laches is not an arbitrary or technical doctrine. In a case in which it would be practically unjust to grant remedy either because the party has by his conduct done that which might fairly be regarded as tantamount to a waiver of the remedy, or where he has by his conduct and neglect, though perhaps not waived the remedy yet has rendered the situation of the other party such as it would not be reasonable to render it; in both these cases lapse of time and delay are most material if afterwards the remedy is asserted by the party making delay.[18] Thus where arbitration proceedings are stayed under S. 34, laches on the part of the party who had knowledge of the facts and his association in arbitration proceedings would constitute a waiver of his claim for stay.[19]

No limitation of time in laches. Laches may be adapted to the facts of a particular case but limitation is a matter of inflexible law. A positive rule of limitation cannot depend upon whether there is laches or not.[20] In other words there is no special limit of time as to laches. But the determination of a case must depend upon the circumstances of each particular case and the conduct of the person who seeks to set aside a transaction after a long period is a circumstance which must be taken into account.[1]

Estoppel by laches only in case of discretionary orders. Except in the case of discretionary orders, the defence of laches or acquiescence cannot prevail when a statutory period of limitation is prescribed for an action.[2]

Prejudice to opposite party necessary. Mere delay cannot be a bar to proceedings unless it has altered the position of the opponent.[3] Where the discretionary orders of the Court are claimed such as specific performance, permanent or temporary injunction, etc. Courts can refuse relief where delay on the applicant's part has prejudiced the defendant even though the applicant might have come to Court within the period prescribed by the Limitation Act.[4] Thus mere delay in bringing a suit for specific performance will not disentitle the plaintiff to a decree for specific performance, but if there is complete inaction for a long time without any adequate explanation, that inaction debars the plaintiff from equitable relief by way of specific performance.[5] Where it was contended that there was acquiescence on the part of the defendants so as to preclude them from denying the right of the plaintiff to use certain trade marks, relying on two

16. 18 Ind. Cas. 805 (DB) (Cal).
17. AIR 1925 Nag. 104.
18. AIR 1925 Mad. 360 (DB).
19. AIR 1957 All 91 (DB).
20. AIR 1914 Mad. 526 (DB) + AIR 1918 Law Bur 131.
1. AIR 1953 Cal. 103.
2. AIR 1940 Mad. 281 + ('74-75) 2 Ind. App. 48 (P.C) + AIR 1955 Pat. 201 (DB). (It would not be proper to refuse to decree a suit for specific performance merely because the plaintiff instituted this suit just before the period of limitation expired) + AIR 1954 Nag. 65.
3. AIR 1916 Cal. 938 (DB).
4. ('75) 1 All 82 (DB).
5. AIR 1956 Pat. 53.

facts, namely, some delay on the part of defendants to file a suit for declaration of their right to the trade marks and use by the plaintiff of the trade marks for a short period without being questioned; it was held that these facts were not sufficient to substantiate a plea of acquiescence.[6] For the same reason mere delay and acquiescence not amounting to waiver or estoppel does not bar the right of a person adversely affected to apply for revocation of grant of probate in a non-contentious proceedings. Estoppel, or waiver of the right with full knowledge of material facts must be established.[7]

The right of a creditor for balance due for supply of necessary materials for the preservation of an estate in the hands of a woman, will not be defeated merely because of his forbearance to sue for the same during her lifetime. Unless there was waste on the part of the lady and he connived at it, he cannot possibly be deprived of his dues and the same will be recoverable from the estate after the death of the woman.[8] Where *A* purchased the interest of some tenure holder but he was not impleaded in a suit for rent by the landlord. The property was sold in Court auction but a compromise was arrived at between the defendants and the auction-purchaser in a petition to set aside the sale. *A* intervened in the compromise and was promised some payment which was not made in time and the sale was ultimately confirmed. *A* filed a suit for a declaration of his title. It was held that *A* was not estopped from filing the suit.[9]

Laches where statute prescribes period of limitation. It may be taken as the law both of Courts of law and equity, that mere laches short of the period prescribed by statutes of limitation, is no bar whatever to the enforcement of a right absolutely resting in the plaintiffs at the time of suit.[10] Thus a daughter is not estopped from claiming her property from collaterals by her inaction for 11½ years.[11] Where an alienee from a co-sharer in exclusive possession of joint land has made unauthorised constructions in spite of the objections of the other co-sharer, the latter would be entitled to bring a suit for mandatory injunction for demolition of the constructions and to restore the land to its original condition. The mere fact that a suit is brought after 5 years of the completion of constructions cannot affect his right when there are no circumstances showing either that the plaintiff has waived his remedy or that it would be inequitable to give the relief asked for by the plaintiff.[12] But where a claimant knows that a party against whom he has a claim is altering his position in the belief that the claimant has abandoned or will not enforce his claim and even then, the claimant does nothing, his inaction may bar his claim even within the period of limitation.[13] Where *A* was not indebted but only *B* was indebted for a sum of Rs. 90 to the plaintiff for which the plaintiff auction-purchased the properties of both *A* and *B* in 1938, the plaintiff never took possession of the suit properties, there was a

6. AIR 1951 Mad. 631 (DB).
7. 91 Cal. L. Jour 224.
8. 10 Cal. 823 (FB).
9. AIR 1938 Cal. 500 (FB).
10. PLD 1983 SC 344 = NLR 1983 Cr. L. J. 529 = PLJ 1983 SC 501 + PLJ 1982 SC 373 + PLD 1949 Lah. 1 + AIR 1914 Lah. 204 (DB). (Laches in suing does not prevent mortgagee from asserting his rights).
11. AIR 1929 Mad. 467 (DB) + 1911 Pun. L.R. No. 64, p. 286 (DB).
12. AIR 1951 All 338 (DB).
13. PLD 1949 Lah. 1 = PLR 1948 Lah. 94.

salish in which the plaintiff admitted that he did not and could not acquire any title by auction-purchase in the property of *A* and therefore he agreed that he would be satisfied for the decretal dues if a sum of Rs. 300 was paid by *B* or his heir, which was admittedly paid by a son of *B* for which the plaintiff executed a *kabala* conveying the property of *B* to *B's* son; *A* was allowed to possess his properties as owner. *A* gifted away some of the properties in favour of other persons and sold some properties to others who, in their turn, sold the same to other persons, these transactions and possession of the properties by *A* were allowed by the plaintiff without any objection from his side and the transferees also took the said properties for a good consideration, believing that the same belonged to *A*; and the plaintiff came to assert his right just within 12 years. It was held that the plaintiff had waived his right and was not entitled to claim any right, by his auction-purchase, in the properties of *A*. If the claim of the plaintiff was allowed, it would be nothing but encouraging fraud which a Court would never countenance.[14]

3. Interpretation of statutes of limitation. The provisions of law of limitation are founded on the policy of law which, in the interests of the community as a whole, requires that there should be some point after which old and ancient disputes should not be agitated. The periods of limitation prescribed in pursuance of such a policy must necessarily, at least in some cases, be artificial and arbitrary and must be applied regardless of hardship in individual cases.[15] It follows that equitable considerations are out of place in construing the provisions of a statute of limitation and the strict grammatical meaning of the words is the only safe guide.[16] But where a particular provision in a statute of limitation is not clear and definite, in construing such provision considerations of justice and equity cannot be ignored. Thus when more than one interpretation is fairly and reasonably possible, that which leads to manifest absurdity or injustice must be avoided. It would be a lamentable and intolerable state of law if it were not so.[17]

Special Law. Where any special law prescribes for an appeal, a period of limitation, it is the duty of the Court or Tribunal to notice such plea whether plea of limitation is raised or not.[18]

Bar of limitation, strict construction necessary. Law of limitation, would be construed strictly against the party who sets up a plea of limitation. As Limitation Act deprives a party of valuable rights, unless provision thereof, is clear and

14. PLD 1952 Lah. 430 + PLD 1960 Dacca 1037 = 14 DLR 444 (*Ref.* 61 IA 388 = 19 CWN 1172 + AIR 1943 Cal. 544 = 10 CWN 747 + AIR 1954 SC 82).
15. PLD 1958 Lah. 936 = PLR 1959 (1) W.P. 956 + AIR 1954 Trav. Co. 499 (DB).
16. PLD 1962 Dacca 381 = 14 DLR 765 = PLR 1962 Dacca 455 (FB) + PLD 1958 Lah. 936 = PLR 1959 (1) W.P. 956 + AIR 1964 Ker. 66 + AIR 1962 S.C. 1716 + AIR 1941 P.C. 6 = ILR 1941 Kar. (P.C) 1 + AIR 1932 P.C. 165 + AIR 1958 Punj. 132 (FB) + AIR 1957 Punj. 49 (FB) + AIR 1960 Andh Pra. 456 (DB) + AIR 1955 Nag. 145 (FB) + AIR 1953 Cal. 50 (DB) + AIR 1956 All 435 (DB) + AIR 1956 All 435 (DB) + AIR 1950 Orissa 125 (FB) + AIR 1953 Ker. 6 + AIR 1958 Punj 942 (DB) + AIR 1957 Mad 431 (DB) + AIR 1957 Punj. 273 (DB) + AIR 1947 Nag. 239 (DB).
17. PLD 1958 Lah. 926 = PLR 1959 (1) W.P. 956.
18. 1989 SCMR 864.

beyond doubt, a benevolent construction, favourable to the party whose valuable right is being taken away may always be adopted.[19]

Considerations of expediency. When the Legislature in its wisdom has fixed a period of limitation for a particular action, it is not within the province of the Court to alter, much less shorten it, by interpreting the provision in the name of considerations of expediency. It is also not open to parties to alter the prescribed period of limitation or to contract themselves out of the operation of statute.[20]

Extension of meaning. The Court should not extend the meaning of provisions of the Act while interpreting them. Thus the question whether a particular Article of the Limitation Act is a bar to an appeal is not to be influenced by any extension of the Article but by its clear language as manifesting the legislative intent.[1]

Limitation Act is not a penal statute. A Court ought not to put such an interpretation upon a statute of limitation by implication and inference as may have a penalising effect unless the Court is forced to do so by the irresistible force of the language used.[2] If a provision of law of limitation is fairly susceptible of two constructions, the Court is not bound to adopt the one which is more harsh. The words of a limitation provision are not to be construed or understood in any exceptional manner divorced from well-established rules of interpretation and settled and salutary principles of law.[3]

Conflict between preamble and sections. It is well settled that where the language of the Act is clear, the preamble is to be disregarded and full effect is to be given to the express provisions of the Act, even though they appear to go beyond the terms of the preamble. There appears to be a conflict between the preamble and sub-section (2) of section 29 of the Limitation Act. The preamble of the Limitation Act cannot override the express provisions of sub-section (2) of section 29 and the operation of the word "application" in that sub-section cannot be limited to applications, which are made in a Court only. The word "application" will include applications made to a *persona designata*.[4] But when the words are merely declaratory or enabling, a legislative mandate cannot be evolved from inferences, particularly where to do so would take the matter out of the purview of the Act as set out in the preamble.[5]

Conflict between articles. Where there are a variety of articles dealing with a variety of particular cases, the articles must be construed so as to make them harmonious and consistent with one another.[6]

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19. PLD 1987 Kar. 86.
20. PLD 1989 Lah. 390 = PLJ 1989 Lah. 336 = KLR 1989 CC 661 (FB).
1. AIR 1961 Punjab 391 (DB).
2. AIR 1953 Cal. 50 (DB).
3. AIR 1961 Jammu and Kashmir 62.
4. AIR 1965 Himachal Pradesh 44.
5. ('91) 13 All 126 (DB).
6. 31 Cal. 681 (FB). (Articles 136, 137 and 138) + AIR 1964 Trav. Co. 451 = ILR 1954 Trav. Co. 267 (DB). (Several provisions of the Act have to be construed in such a way as to give full effect to all of them) + 11 Bom. 133.

English Law. English Law of Limitation should not be applied to Pakistan cases.[7]

Repeal of Special Law of Limitation--Effect. Where a special law of limitation is repealed, the general law of limitation, *e.g.*, the Limitation Act applies to the cases previously governed by the repealed statute.[8]

Repeal of statute of limitation--effect. Where on the repeal of a statute providing limitation for a suit right to institute proceedings has already been lost on the date when new Act came into force. The right is not revived by repeal of statute under which limitation for institution of proceedings had already expired. Where period of limitation provided under the Punjab Limitation (Custom) Act (1 of 1920) would have expired on 30-3-1965. The Act was, however, repealed on 31-12-1962 by the West Pakistan Muslim Personal Law (Shariat) Application Act (V of 1962). It was held: That period of limitation was not governed by Act, I of 1920.[9]

4. Acts in 'pari materia'. Acts in *pari materia* may be treated as forming one Code and read together, but when the Acts are not in *pari materia* the construction put upon the one cannot be relied upon as a guide to the construction of the other.[10]

Civil Procedure Code. The Civil Procedure Code and the Limitation Act being in *pari materia* are to be taken as forming one system, interpreting and enforcing each other.[11] but where the definition of a word in the Limitation Act is by law governed by the General Clauses Act, it is not competent to import a meaning of the word from the Civil Procedure Code.[12]

5. Construction in favour of right to sue. Where the language of the Act is clear, the Court is bound to give effect to its plain meaning uninfluenced by extraneous considerations but where the language is of doubtful import recourse may be had to extraneous considerations.[13] The law of limitation, as is well-known, has not to be utilised as a trap for depriving the citizens of their right to establish their claims in Courts of law but is really meant to prevent stale cases being revived and indeed they are for this reason called statutes of repose.[14] Therefore where the language of this Act is not clear the Act must be construed in favour of the right to sue.[15] The Courts should not so construe the Act as to deprive a litigant of the

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7. PLD 1975 Kar. 1096 (DB).
8. 1981 CLC 43.
9. PLJ 1984 Lah. 449 = KLR 1984 CC 325.
10. AIR 1915 Mad. 889 (DB). (The Contract Act and the Limitation Act are not in *pari materia*) + 9 Mad. 134 (DB). (Court-fees Act and Limitation Act not in *pari materia*) + 4 Bom. 515 (FB).
11. AIR 1939 All 403 (FB) + AIR 1952 Mad. 186 (FB) + AIR 1950 Orissa 125 (FB) + AIR 1953 Bom. 10 (DB) + AIR 1926 Mad. 159 + AIR 1931 Pat. 241 (FB).
12. AIR 1915 Nag. 99 = 11 Nag. L.R. 18.
13. AIR 1941 P.C. 6 = II.R 1941 Kar. (P.C.) 11. (Considerations of hardship should not be taken into account) + AIR 1945 Lah. 324 (FB). (Do) + (1849) 5 Moo Ind. App. 43 (P.C.) + AIR 1932 P.C. 165 = 59 Ind. App. 283 + AIR 1948 Mad. 246.
14. AIR 1962 Punj. 142.
15. PLJ 1980 SC 386 = 1980 SCMR 485 + AIR 1939 Nag. 150 (DB) + AIR 1945 Lah. 324 (FB) + AIR 1934 All 626 (FB) + AIR 1955 Raj. 97 (FB) + 6 Bom. 719 (FB) + AIR 1920 Lah. 447 (DB) + AIR 1931 Sind 146 (DB).

benefit of any exemption under the Act or make the Limitation Act more stringent than it is.[16] In other words a citizen is to be non-suited only if his case clearly falls within the letter of a provision of the statute of limitation. Unless an Article in the Limitation Act clearly and without doubt applies to the case made out in a plaint, a litigant should not be non-suited on the ground of time bar.[17]

A construction having the effect of destroying a right before it has effectively arisen or of dating the cause of action before the remedy is available should be avoided if possible.[18]

6. Sections and Articles. Sections control the application of articles except so far as a particular article clearly precludes the application of any section.[19]

Interpretation of Articles. The words of the Articles should be construed strictly.[20] In construing the words of a particular Article, it is not always safe to rely on the meaning of similar language in all other Articles.[1]

7. Residuary Article. A residuary article applies only if no other article is applicable.[2]

8. Several Articles applicable. Where *prima facie* Articles are applicable to a suit the correct article applicable has generally to be determined by ascertaining the exact frame of the suit.[3] Where a suit, as framed, falls, under an Article with a longer period of limitation, it cannot be contended that the suit ought to have been framed so as to fall under an article providing a shorter period.[4] But that does not mean that the Court should not examine the facts of the case and the relief claimed, to see whether the suit, has been correctly framed or not. It is not on the facts alleged in the plaint but on the facts proved or admitted that any particular Article is to be applied.[5] In the matter of deciding which Article of the Limitation Act governs a particular case, the Court has in the first instance to peruse the plaint and consider the averments contained therein. What has to be seen is the true effect and the real nature of the suit and not its formal or verbal description. The plaintiff is entitled to so frame his suit as to make a certain Article giving longer period of limitation applicable, and it is not open to the defendant to urge that the plaintiff should have framed the suit in a different

16. AIR 1939 Nag. 150 (DB). (By unduly restricting language) + 29 All 264 (DB) (Do) + 33 Cal. 1278 (DB) (Do) + 27 Mad. 343 (DB) (Do) + AIR 1956 Madh-B. 158. (The law of limitation should receive a liberal interpretation so as to enable the decree-holder to obtain the fruits of his decree and the language should neither be strained nor stretched + AIR 1914 Cal. 50 (DB) (Language should not be extended by figures of speech) + AIR 1921 Cal. 277 (DB). (By importing words which are not there) + 32 Bom: 14 (FB) (Do) + AIR 1932 Mad. 19
17. AIR 1962 Punj. 124 + AIR 1962 Punj. 526 (DB).
18. AIR 1933 Bom. 439 (DB) + AIR 1919 Mad. 972 (FB) + AIR 1924 Cal 600 (DB) + AIR 1918 Mad. 1187 (FB) + AIR 1928 Cal. 646 (SB) + AIR 1920 Mad 1 (FB).
19. 21 Mad L Jour 1041 (DB).
20. AIR 1922 Mad. 150 (FB) + ILR (1953) 3 Raj. 111. (The language of articles of the Limitation Act should be interpreted as it stands and not as one may wish it to be).
1. AIR 1934 All 661 (FB) + AIR 1916 Cal. 488 (FB) + AIR 1956 All 32.
2. AIR 1933 Lah. 615 (Article 120) + AIR 1924 Mad. 137 (DB) (Article 181) + 26 Cal. 564 (FB) (Article 120) + 25 Mad. 507 (DB) (Article 144).
3. AIR 1935 Mad. 709 (DB) + AIR 1954 Pepsu 133 (DB) + AIR 1929 Lah. 208.
4. AIR 1932 All 358 (DB).
5. AIR 1940 Oudh 134 (DB) + AIR 1929 Nag. 124.

manner to make applicable an Article providing a shorter period of limitation. In other words the question would depend on the true interpretation of the nature of the suit as framed by the plaintiff and the argument that the suit could have been more appropriately framed in a different manner attracting a different Article is irrelevant just as the argument that the limitation is to be governed by the apparent label attached to the suit without trying to discover its real purport and content. But if the facts ultimately found or admitted are different from those alleged in the plaint and the plaintiff asks for relief on the basis of the facts found and the defendant resists the relief on the same facts, the question of limitation must be determined with reference to such facts and not to the facts alleged in the plaint.[6] Where the suit is clearly wrongly framed, in determining which article applies to the case, regard should be had not to the suit as framed but as it ought to have been framed, because a litigant cannot be merely attaching a different label to the suit (or by deliberately suppressing facts) bring it under a different Article of the Limitation Act, from that under which it would come on a true interpretation of the nature of the suit. The true test to determine the period of limitation is to see the true effect of the suit not its formal or verbal description.[8]

Particular and general Article--application of. Where two Articles appear to be applicable, the particular article covering the case should be applied rather than the general Article.[9] But the Court should not, where the suit naturally falls within a particular article, strain the construction so as to bring it under a category which gives a more favourable period of limitation.[10]

Right to sue should be kept alive. Where two articles are equally applicable that which keeps alive the right to sue, should generally be preferred.[11] Thus where a longer period of limitation is applicable to all circumstances, and the shorter to special circumstances only, the longer term ought to be applied unless there is clear proof of the special circumstances.[12]

9. Column of schedules--use of. For the purpose of finding out what article in the schedule to the Limitation Act will apply in a suit or matter, the proper thing to do is to look to the first column of the article.[13] Unless the particular relief asked for in the suit strictly comes within the wording of the first column of an article, the limitation prescribed therein cannot be applied.[14] It is further to be noted that where first column of the article is applicable but not the third column which contains the starting point of limitation, the Article must be rejected.[15]

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6. PLD 1964 Lah. 444 (DB).
7. AIR 1942 Oudh 33 = 17 Luck. 1 (DB).
8. PLD 1974 Lah. 458.
9. NLR 1986 Civ. 46 + AIR 1926 Pat. 401 (DB) + AIR 1953 S.C. 125 + ILR (1953) 3 Raj 111 (Articles 31 and 48) + AIR 1920 Cal. 357 (FB) + AIR 1931 Nag. 47 + 26 Bom. 430 (DB) + AIR 1925 Lah. 478 (DB) + AIR 1916 Mad. 314 (FB) + 26 All 482 (DB) (Articles 2 and 28) + 26 Cal. 564 (FB).
10. 13 All 282 (FB).
11. AIR 1925 Pat. 765 (DB) + AIR 1956 Vindh Pra 26 + AIR 1934 Bom. 491 + AIR 1930 Nag. 300.
12. 14 Cal. L. Jour 598 (DB).
13. AIR 1957 Cal. 153.
14. AIR 1927 Nag. 10.
15. 8 Ind. Cas 882 (Mad.) (26 Mad. 780. *Rel. on*).

Third column of Schedule. The third column of the schedule is intended not to define causes of action but to fix the starting point of limitation.[16] The column has been loosely worded. The Court is entitled by way of construction to go behind its language to find out the intention of the Legislature and to give effect to it.[17]

One of the rules of interpretation of the column is that the same words appearing in the first and third columns of the Schedule should be given the same meaning.[18]

10. Retrospective operation of Act. No statute has a retrospective operation unless its language plainly requires it.[19] But enactments dealing with procedure are an exception to the above rule and are always retrospective, at the time of their enactment.[20] Thus where some of the provisions of a procedural enactment affect vested rights, retrospective operation is given to such provisions.[1]

This Act does not create a right in favour of any person but merely prescribes a time-limit for the remedies.[2] It does not create any obligation to institute proceedings.[3] The Act deals with rules of procedure and consequently no one has any vested right in a period of limitation unless the contrary follows from the rules themselves.[4] The proper approach to determining whether a statute had retrospective effect was not by classifying it as procedural or substantive but by seeing whether, if applied retrospectively to a particular type of case, it would impair existing right and obligations; and an accrued right to plead a time bar, which was acquired after the lapse of the statutory period, was in every sense a right even though it arose under a statute which was procedural.[5]

The law of limitation in force on the days on which a proceeding is instituted applies to the proceeding notwithstanding that the cause of action may have arisen before such Act came into force.[6]

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16. 15 Cal. W.N. 882 (DB).
17. AIR 1957 Cal. 153.
18. AIR 1919 Mad. 972 (FB) (Word 'transfer' in Art. 134).
19. AIR 1928 P.C. 128 + 1901 App. Cas. 297.
20. AIR 1933 Pat. 282 (DB) + AIR 1927 P.C. 242 + AIR 1933 Cal. 435 (SB) + AIR 1931 All 489 (FB) + AIR 1960 Manipur 51 + AIR 1958 Bom. 137 (DB) + AIR 1957 Hyd. 21 + AIR 1957 Pat. 538 (DB) (AIR 1927 P.C. 242. *Followed*).
1. AIR 1925 Lah. 446 (DB) + AIR 1927 P.C. 242 + AIR 1914 Cal. 806 (FB).
2. 21 Cal. 8 = 20 Ind App 183 (P.C.) + AIR 1931 All 635 (FB) + AIR 1930 Rang 228 (FB).
3. AIR 1915 Mad. 1196 (DB).
4. AIR 1938 Mad. 688 (DB) + AIR 1960 Pat. 306 (DB) + AIR 1953 All 747 (FB) + AIR 1957 Hyd. 21 + AIR 1952 Trav-Co. 554 (DB) + 1959 B.L.J.R. 39 (DB) + AIR 1953 Punj. 76 + AIR 1937 Pat. 605 + AIR 1930 Cal. 422 (DB) + AIR 1930 Cal. 34 (DB) + AIR 1931 All 635 (FB).
5. 1983 PSC 1200 (PC).
6. 1981 CLC 34 + AIR 1940 P.C. 116 + AIR 1960 Bom. 411 (DB) + 1959 B.L.J.R. 39 (DB) + 8 S.T.C. 440 (DB) (Pat.) + AIR 1957 Hyd. 21 = ILR 1956 Hyd. 884 + AIR 1956 Bom. 600 + AIR 1956 Raj. 6 = ILR (1955) 5 Raj 939 (DB) + AIR 1956 Trav-Co. 113 (DB) + AIR 1955 Bom. 406 + 1954 Ker. L. Tim 613 + AIR 1955 Nag. 126 (DB) + AIR 1955 Lah. 97 (FB) + AIR 1952 Bilaspur 12 + AIR 1952 Manipur 10 + AIR 1952 Trav-Co. 554 (DB) + AIR 1946 Pat. 60 (DB) + AIR 1947 Lah. 117 + 40 Ind. App. 74 (P.C.).

Remedy barred by previous Act. Where a particular Limitation Act is repealed by another Act a suit barred according to the repealed Act cannot be revived by the change in the law.[7]

Remedy not barred by previous Act, when barred by subsequent Act. Where a suit is within time according to the old Act but barred by the new Act, and the new Act comes into force at once, the suit can be instituted within the time prescribed by the old Act.[8] But where the suit is within time according to the old Act but barred according to the new Act and a further date is fixed for its coming into operation, the new Act would be applicable.[9]

New Act prescribing shorter term of limitation. Where the suit is within time according to the old Act but the repealing Act prescribes a shorter term of limitation than the former Act, the provision of the new Act would apply.[10]

Pending proceedings not affected by change in limitation. An alteration of the law of limitation during the pendency of a proceeding does not affect such proceedings.[11]

Limitation in previous Act may be specifically treated under new Act. It is always open to the Legislature by express words to apply a new statute of limitation so as to take away a right of suit or other proceeding existing under the old Act.[12]

New right created. The rule against retrospective operation is intended to apply not so much to a law creating a new right as to a law creating a new obligation on interfering with vested rights. Where the new right is created expressly under conditions which prevent its imposing any new obligation on, or its interfering with any vested rights in others, the reason against its retrospective operation ceases to exist.[13]

11. Limitation bars remedy but does not destroy right. Limitation, as distinguished from prescription, merely bars the remedy but does not destroy the right, which remains available in other ways.[14] The law of limitation wherever applied does not always mean to usurp or help usurp a right. It rather operates on the principle that if a claimant does not press his claim in the time specified by

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7. 1983 PSC 1200 + KLR 1982 FSC 163 + PLJ 1980 Lah. 296 + PLD 1974 Lah. 458 + AIR 1940 Cal. 115 (DB) + AIR 1922 P.C. 187 + AIR 1957 All 740 (DB).
8. AIR 1923 Lah. 642 (DB) + AIR 1955 Raj. 97 (FB) + AIR 1955 Raj. 173 + AIR 1951 Kutch 41 + AIR 1951 Kutch 15 + AIR 1916 Mad. 912 (DB) + AIR 1924 Pat. 183 (DB) + AIR 1927 (P.C.) 242.
9. AIR 1939 Pat. 282 (DB) + AIR 1939 Pat. 122 (DB) + ('85) 9 Bom. 475 (DB) + AIR 1922 Mad. 417 (DB) + AIR 1921 Mad. 650 (DB) + AIR 1923 Nag. 166 + ('82) 8 Cal. 51 (P.C.).
10. AIR 1924 Bom. 40 (DB) + AIR 1955 Kutch 2 + AIR 1953 Kutch 11 + AIR 1955 Trav-Co. 554 + AIR 1926 All 93 (DB) + AIR 1946 All 58 + AIR 1930 Cal. 34 (DB) (Fact that the date of the coming into force of the new Act was postponed is immaterial)
11. AIR 1934 P.C. 77 = 61 Ind. App. 50.
12. AIR 1937 Pat. 605 + AIR 1956 Pepsu 58 (DB) + AIR 1955 Kutch 9 + ('11) 34 Mad. 292 (DB) + AIR 1921 Bom. 40 (DB) + ('13) 21 Ind. Cas. 113 (DB) (Cal.) + AIR 1917 Lah. 144 = 1916 Pun. Re. No. 131 (DB).
13. ('95) 22 Cal. 767 (FB) (*Overruling* 14 Cal. 636).
14. 1989 CLC 279 = PLJ 1989 Kar. 142 + PLD 1980 Lah. 446 = PLJ 1980 Lah. 150 + AIR 1921 Lah. 17 (DB) + AIR 1957 Bom. 178 (DB).

law, through an authority appointed for the purpose by law, it will be presumed that either the claimant waived his right or was not serious and rather idolent so as to have acquiesced. The concept of law is only this that the authority created or appointed for helping a claimant in such a situation will not help if the claimant knowing the position of law did not ask for it within the prescribed period.[15]

Time-barred debt. A debt is not extinguished merely by the period of limitation having run out and, though the remedy may be barred, the debt exists.[16] Therefore the debtor may pay the barred debt and the payment cannot be recalled on the ground of failure of consideration.[17] Similarly where the right to take out the execution became barred by time, that did not mean that the judgment-debt was extinguished and the decree ceased to exist.[18]

12. Consolidating and amending Act. Limitation Act is a consolidating and amending statute and is exhaustive of all matters dealt with by it. Courts are not permitted to travel beyond its provisions to add to or to supplement them. High Court has no powers to add to or modify the provisions of the Act except when such power is conferred upon it by statutory authority.[19] In the case of a consolidating statute the construction must be in relation to the circumstances existing at the time of the consolidation itself, and the law should thenceforth be ascertained from that enactment itself and not from any prior decisions.[20]

13. Act, if exhaustive. Limitation Act is an exhaustive Code in respect of all matters specifically dealt with by it and the Courts cannot travel beyond its provisions to add to or supplement them.[1] Therefore, before the right of a person can be taken away under the Limitation Act it has to come within the specific terms of the Act. A Court is not justified in applying any limitation by inference to a species of cases for which the Limitation Act does not provide.[2]

Local or special law. Where period of limitation prescribed by a special law or local law is different from that of the Limitation Act, then period prescribed by the latter prevails over that of the Limitation Act and in case of conflict on the express words, Limitation Act yields.[3]

14. "Certain applications to Courts". The Act does not govern an application which does not fall under one or the other of these articles.[4]

Obligatory actions by Court. The Limitation Act does not apply when the application relates to an action which the Court ought to take of its own motion, whether the parties apply for it or not.[5] Similarly an application relating to an

15. PLD 1989 FSC 89.
16. PLD 1951 Lahore 195 = PLR 1951 Lahore 179 = 3 DLR 465 (FB).
17. AIR 140 Lah. 166 + AIR 1940 Mad 908 + AIR 1939 Bom. 494 + ('77) 1 Mad. 267 (DB).
18. 1983 Law Notes 165 (Lah).
19. PLD 1989 Lah. 390 = PLJ 1989 Lah. 336 = KLR 1989 CC 661 (FB).
20. ('95) 22 Cal. 788 = 22 Ind App. 107 (P.C.) + ('96) 23 Cal. 563 = 23 Ind. App. 18 (P.C.).
1. AIR 1940 Rang. 276 (FB) + AIR 1935 P.C. 85 + AIR 1933 Mad. 418 (FB).
2. AIR 1955 Cal. 484.
3. 1990 SCMR 164.
4. AIR 1928 Bom. 236 (DB). (Application to ascertain mesne profits).
5. AIR 1916 Cal. 231 (DB) + AIR 1930 Nag. 206 + ('04) 28 Mad. 127 (DB) + AIR 1915 Oudh 140 + ('06) 30 Bom. 415 (DB) + AIR 1929 Pat. 368 = 8 Pat. 482 (DB) + ('92) 19 Cal. 132 (FB).

action to be taken by the Court which the Court has no discretion to refuse is not governed by this Act.[6]

Ministerial acts. An application to the Court to take action which is only ministerial or of a formal character does not fall under this Act.[7]

Application against person from whom no relief claimed. The Act bars a remedy only against a person against whom a right exists and not one against whom no relief is claimed.[8]

15. Criminal Proceedings. Unlike civil litigation, in which after the expiry of the prescribed period of limitation the opposite party gets a vested right in criminal cases, generally the State cannot possibly claim the same privilege as in the nature of things it has to be impersonal having no other object in view than the fact that an accused should have the full opportunity to defend himself unhampered by the bar of limitation. It is for this reason that Supreme Court has generally remained liberal, and condoned the delay in criminal cases coming before it.[9] The Law of Limitation is not known to criminal jurisprudence for it is necessary that criminal proceedings should be outside that law, otherwise the accused will be able in many cases to earn exemption from prosecution by secretly placing obstacles in the way of investigation and thereby preventing it from completion within a reasonable time.[10] There is no limitation for preferring a complaint of a criminal offence unless the penal law creating the offence prescribes any period within which a complaint may be made in respect thereof.[11] Similarly there is no limitation for an application for sanction to prosecute,[12] or applications made under the special provisions section 195, Cr.P.C.[13] But long delay in filing a criminal appeal without any reasonable explanation for the same would not be excused.[14]

Muslim Law. Generally speaking for civil actions the period of limitation is prescribed by the statute and it varies according to the nature of the right claimed. In some cases the period of limitation may be only days while in others it may be years. If the principle of *Tamadi* prescribed for civil actions is extended to criminal proceedings, it will give handle to the prosecution or the complainant to create false evidence and it may be possible that true witnesses who saw the actual occurrence may not be available after such a long period--some may have even

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6. ('87) 9 All 364 (Application to bring decree into conformity with judgment)+1897 Pun. Re. No. 12, p. 49+('10) 37 Cal. 796 (DB). (Application under O. 34, R. 3, C.P.C.)+('08) 11 Oudh Cas. 208. (Application to amend description of property in decree).
7. ('87) 10 Mad. 51 (DB). (Application to bring decree into conformity with judgment—No limitation)+AIR 1952 Punj. 423 (Formal character)+('82) 6 Bom. 586 (DB) (Application for sale certificate)+('81) 4 Mad. 172 (DB)+1883 All W.N. 262 (DB)+('81) 6 Cal. 60 (Formal character).
8. AIR 1927 Cal. 794 (DB)+('07) 6 Cal. L. Jour 558 (DB).
9. NLR 1980 SCJ 1=PLD 1980 SC 14.
10. PLD 1960 Lah. 986=PLR 1961 (2) W.P. 108=(1960) 2 DLR W.P. Lah. 73.
11. AIR 1925 Mad. 186 (Madras District Municipalities Act. V of 1920, S. 180--Offence under--Three months limitation is provided)+('11) 10 Ind. Cas. 787 (Low Bur). (Section 15 of the Merchandise Marks Act. IV of 1889)+('99) 22 Mad. 488 (DB).
12. AIR 1924 Lah. 569.
13. AIR 1916 Mad. 1110 (FB).
14. KLR 1983 Cr. C. 272.

died or otherwise may not remember the exact details of the occurrence. In modern time the delay in criminal proceedings may be misused by the interested party against the other which may defeat the very purpose of justice. Therefore, the principle *tamadi* or the periods of limitation which are applicable in civil matters cannot as such be extended to or made applicable to criminal proceedings as *taqadum*.[15]

16. Writ petitions. There is no law of limitation, as such with regard to writ petitions. But, it is well-settled that High Court will refuse to exercise its discretion to issue writs of *mandamus* or orders of a like nature, if the petitioners do not come to Court with due diligence and expedition. The petitioners are not entitled to a speedy and summary relief, if they are themselves guilty of undue delay and laches in seeking it. They would then be left to pursue other remedies in accordance with law. The reason for this is obvious, namely, that those who wish to seek a speedy and summary relief, must show an anxiety to seek it with diligence and promptness.[16]

Plea of limitation not raised before lower Court. Where the question of limitation was not raised before the Custodian with regard to the entertaining of a revision petition by the Rehabilitation Commissioner beyond period of limitation prescribed which was decided against the petitioners and so it could not be allowed to be agitated in a writ petition. The delay in filing the revision petition before the Rehabilitation Commissioner should be deemed to have been condoned by that authority when the case between the parties was decided on merits, and that authority was competent to do so.[17]

Decision on question of limitation, challenge to. Where a Labour Court and the Labour Tribunal entertained the plea and have decided it. High Court refused to interfere with the orders in its constitutional jurisdiction and held that if an authority has jurisdiction to entertain a matter it has also the jurisdiction to decide the question of limitation rightly or wrongly.[18]

PART I

PRELIMINARY

1. *Short title, extent and commencement.* (1) This Act may be called the[19] Limitation Act, 1908.

[20][(2) It extends to the whole of Pakistan.]

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

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15. 1983 PSC 194 (FSC).
16. PLD 1961 Dacca 278 = 13 DLR 794 (DB).
17. PLJ 1981 AJ&K 112 = PLD 1981 AJ&K 21 = NLR 1981 Civ. 231.
18. KLR 1985 L&S 160 = NLR 1986 Lab. 163 (DB).
19. The word "Indian" omitted by the A.O., 1949.
20. Subs. by the Central Laws (Statute Reform) Ord., 1960 (21 of 1960), S. 3 and Second Sch. (with effect from the 14th October, 1955), for sub-section (2) which was amended by the A.O., 1949.

Synopsis

1. Foreign decree, execution of. 2. Jirga in PATA.

1. Foreign decree, execution of. Limitation is a part of the law of procedure in any country, and the general principle of International Law is that the limitation in regard to suits will be governed by *lex fori*. Therefore, the rule of limitation applicable for execution of a decree of a foreign Court will have to be found in the Limitation Act.[1]

2. Jirga in PATA. Provisions of the Limitation Act, 1908 do not apply to cases falling for adjudication by a Jirga constituted under PATA Civil Procedure (Special Provisions) Regulation, 1975. Rewaj, Customs or usage having force of law in the area falling under PATA governs question of limitation to the exclusion of the Limitation Act in view of S. 4, PATA Civil Procedure (Special Provisions) Regulation, 1975.[2]

2. *Definitions.* In this Act, unless there is anything repugnant in the subject or context,--

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

1. Objection and scope of interpretation clause. The object of a definition clause is to declare that certain words used in the Act shall have the meaning given to them by the definition thereof.[3] The meaning assigned to a word by the definition clause is the meaning of the word wherever it occurs in the Act, unless there is anything repugnant in the subject or context.[4]

Plain words. As a general rule, the interpretation clause should be used for interpreting words which are ambiguous or equivocal and not so as to disturb the meaning of such as are plain.[5]

Enlargement of meaning of words by definition clause. A definition may include in the connotation of the word defined, certain things which may not fall within the ordinary acceptation of the term.[6]

The word "includes" is a word of extension and is generally used to enlarge the meaning of the word.[7] It is however to be noted that by 'including' certain things in the definition, others are thereby not excluded.[8]

'Means and includes.' Where a definition exhaustive of the signification of the word is intended, the expression "means" or "means and includes" is used.[9]

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1. AIR 1964 Madras 221 (DB).
2. NLR 1989 Civ. 650.
3. ('86) 12 Cal. 430 (DB) + AIR 1926 Sind 58 (FB).
4. ('86) 12 Cal. 430 (DB) + AIR 1916 Pat. 133 (FB) + ('09) 2 Ind. Cas. 632 (DB) (All).
5. AIR 1916 Pat. 133 (FB).
6. AIR 1926 Sind 58 (FB) + ('11) 11 Ind. Cas. 610 (DB) (Bom.).
7. ('06) 4 Cri. L. Jour 23 (DB) (Bom.).
8. ('98) 22 Bom. 235 (DB) + ('79) 4 Cal. 483 (FB).
9. 2 Mad. 5 (DB) + ('79) 4 Cal. 483 (FB).

Meaning of word in other statutes. A definition given in another statute not in *pari materia,* or the incidents attached to the word by another statute, cannot be made applicable except so far as provided by the statute itself.[10]

General Clauses Act, meaning of words in. Where a word is not defined in this Act but is defined in the General Clauses Act, 1897, that definition should be applied unless there is anything regugnant in the subject or context.[11]

[12][(2) "Bill of exchange" has the same meaning as in section 5 of the Negotiable Instruments Act, 1881 (XXVI of 1881), and includes a *hundi* and a cheque.]

Synopsis

1. Bill of exchange. 2. *Hundi.*
3. Cheque

1. Bill of exchange. The definition of "bill of exchange" as given in Limitation Act is wider in its scope than the definition given in the Negotiable Instruments Act. Bill of exchange has been defined in the Negotiable Instruments Act, section 5. Under that section essential character of a bill of exchange is that it shall contain an order to accept or to pay and that acceptor should accept it. In the absence of such a direction to pay, the document will not be a bill of exchange or a *hundi*.[13]

Order to pay must be unconditional. A bill of exchange must make an unconditional order to pay. If the order is conditional the instrument ceases to be a bill of exchange subject to the exception stated in para 2 of section 5, Negotiable Instruments Act. A document ran as follows: "I agree to pay you or to your order on demand the sum of Rs. 10,000 only being the amount my brother and I have agreed to pay you for bringing about the sale to the I.L.T.D. Company Ltd. of *G* of our site in *G* with interest thereon at 12 per cent from this day till realisation." It was held that the party could not call in aid para 2 of S. 5, Negotiable Instruments Act because time for payment was not postponed.[14]

2. **'Hundi.'** Under the Negotiable Instruments Act, a *hundi* may or may not be a bill of exchange. Thus a *hundi* payable at sight is a bill of exchange as defined in S. 5.[15] But a *Shahjog hundi* does not technically fall within the definition of a bill of exchange.[16] Where a *hundi* does not fall within the definition of bill of exchange as given in the Negotiable Instruments Act, the matter is governed by the general law of contract and local usage relating thereto.[17] but under the definition in the Limitation Act a *hundi* is always included in a bill of exchange.

10. 31 Mad. 408 (DB). (Definition in statute not *pari materia*) + AIR 1932 Pat. 281 (Do) + 12 Cal. 430 (DB). (Incidents attached to word in another statute) + 15 All 141.
11. *See* S. 3 of that Act.
12. Subs. by Ord., 62 of 1980. S. 2.
13. AIR 1955 Cal. 562.
14. AIR 1959 Andh Pra 370 (DB).
15. AIR 1953 Ajmer 34.
16. AIR 1960 Pun. 157 (DB).
17. AIR 1919 Nag. 39 + AIR 1936 All 396 (DB).

3. Cheque. A cheque is a peculiar sort of instrument in many ways resembling a bill of exchange, but in some entirely different. In the ordinary course, it is never accepted, it is not intended for circulation, it is given for immediate payment, it is not entitled to days of grace. In addition, a cheque is presented for payment, whereas a bill in the first instance is presented for acceptance unless it is a bill of demand. A bill is dishonoured by non-acceptance, this is not so in the case of a cheque, because the holder of a cheque, as between himself and the drawer, has no right to require acceptance.[18] But for the purposes of the Limitation Act, a cheque has been included in the definition of "bill of exchange".

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

Synopsis

1. Bond.
2. Bond imposing money obligation.
3. Conditional obligation to pay.
4. Promissory note and bond.
5. Bond imposing liability to pay grain, etc.

1. Bond. A bond must create an obligation. The thing to be done must be the payment of money or the delivery of grain or other agricultural produce, but the instruments need not be for a definite sum of money.[19]

Receipts and bond--distinction. The essential ingredient of a receipt is the acknowledgment of money or bill of exchange, cheque or promissory note, or movable property, etc., having been received. The essence of a receipt is the acknowledgment or the receiving of the article in question. But bonds are documents which contain an obligation on the part of the executant to pay a specified sum of money to the petitioner, are attested by witnesses and they are not payable to order or to bearer.[20] Thus where a document was captioned *"rasid amanatnama"* but the leading and principal object of the document was to witness payment of money for purchase of a piece of land under a regularly registered sale-deed in the name of the person advancing money and on failure to do so to return the money advance; it was held that all other recitals in the document were accessory to the main object of purchasing land and as such it was a bond.[1]

2. Bond imposing money obligation. A bond imposes an obligation to perform or not to perform an act. Where an instrument did not impose any such obligation it was not a bond, but an agreement.[2] Distinction between an obligation under a bond and an obligation under an ordinary contract is that breach of an obligation under a bond does not 'sound in damages' whereas 'damages' is what

18. 9 Moo P.C. 46 + AIR 1944 P.C. 58 = ILR 1944 Kar. (P.C.) 246.
19. 1897 Bom. P.J. 382 (FB).
20. PLD 1963 Karachi 962.
1. PLD 1971 Lah. 938.
2. PLD 1961 Lah. 655.

one who breaks on ordinary contract is subjected to.[3] Where an instrument contained an agreement that the executant would pay a certain amount to his pleader, in addition to what he had already paid him if his case ended successfully but that if it failed, he would pay nothing; the instrument was a "bond".[4] Similarly an engagement taken from a licensed stamp-vendors is a "bond". A security bond under S. 22, Punjab Pre-emption Act creates an obligation to pay money for discharge of the costs. The obligation being express, the document is a 'bond' not only by its nomenclature but also by its substance and is clearly covered by the definition of 'bond'.[5]

3. Conditional obligation to pay. The use of the word "includes" shows that the definition is not exhaustive and that the word "bond" is not limited in its meaning to a conditional bond.[6] An instrument which is a bond is no less a bond because it does not come into operation unless and until a certain event happens.[7]

4. Promissory note and bond. While a promissory note may be a bond, a bond will not necessarily be a promissory note.[8] In order to determine as to whether a particular document is a promissory note or a bond, the intention of the parties is a very necessary circumstance to be taken into consideration and it must be seen whether the parties intended that the document should be negotiable or that it was merely to serve as evidence of a debt.[9] An instrument which is payable to a person or order is a promissory note and not a bond, in spite of the fact that it is attested.[10] On the other hand if the sum due under it is not payable to order or bearer and is attested by a witness, it is bond and not a promissory note.[11]

Conditional undertaking to pay. In a promissory note there must be an unconditional undertaking to pay a certain sum whereas in a bond the undertaking need not be unconditional. Thus where a document provided as follows:-- "Promissory note executed in favour of *A* residing at *P* by *K*. The sum found due to you is Rs. 3,000.00. As this sum had to be paid to you, I shall pay the same together with interest at Re. 0.25 per month per Rs. 100.00 in six equal instalments and discharge the same." The document was held to be a bond and not a promissory note as there was no unconditional undertaking to pay a certain sum of money.[12]

5. Bond imposing liability to pay grain, etc. An attested instrument containing a promise to repay in kind a loan of grain or agricultural produce is a 'bond'.[13] Therefore an attested instrument containing an agreement for delivery of

3. AIR 1916 Low Bur 100 (DB).
4. 1870 Pun. Re. No. 82, p. 209 (DB).
5. PLD 1970 AJ&K 66 (FB).
6. 1947 Marwar L.R. (Civ.) 94 (DB).
7. 20 Bom. 791 (DB).
8. AIR 1936 P.C. 171 = 17 Lah. 557.
9. AIR 1953 Hyd. 154.
10. AIR 1933 Nag. 391 + 8 Mad. 87 (FB).
11. AIR 1962 Pat. 325 (DB).
12. AIR 1955 Mad. 652 (FB).
13. AIR 1927 Nag. 72 + ('83) 7 Bom. 137 (DB) + AIR 1957 Andh Pra 779 + AIR 1925 Lah. 415 (DB).

grain or other agricultural produce in pursuance of an agreement for the sale of such articles will be a "bond".[14]

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

1. Scope. In construing the law of limitation, the Court must confine itself strictly within the terms of the Limitation Act and not enlarge the scope of the Act by introducing a 'notional' defendant in place of the word 'defendant'.[15] Thus in a suit to which Art. 144 is attracted the burden is on the defendant to establish that he was in adverse possession for 12 years before the date of suit and for computation of this period he can avail of the adverse possession of any person or persons through whom he claims but not the adverse possession of independent trespassers.[16] But where one tespasser derives his title through another then the possession of the one can be tacked on to that of the other.[17]

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

Synopsis

1. Scope.
2. Right in favour of fluctuating body of individuals.

1. Scope. In the absence of definition of "easement" in this Act, Courts have adopted the meaning given to it under the English law as extended by the definition in this clause.[18] Under this clause easement includes not only a profit *a prendre appurtenant,* but also a profit *a prendre in gross, i.e.,* a profit *a prendre* unconnected with the ownership or occupation of any property by the person claiming the right.[19] Thus a right of pasturage,[20] or a right of fishery on the land of another (not being an exclusive right),[1] or a right to hunt and appropriate the game or the right of fishery and of grazing,[2] are all easements covered by this clause.

2. Right in favour of fluctuating body of individuals. There can be no easement in favour of a fluctuating and indeterminate body of individuals.[3] But a

14. ('06) 8 Bom. L.R. 234 (SB) + ('87) 9 All 585 (FB) + AIR 1941 All 243 (FB) + AIR 1927 Nag. 72 + AIR 1925 Lah. 415 (DB).
15. AIR 1951 Cal. 518 (DB).
16. AIR 1965 S.C. 1553.
17. AIR 1957 Pat. 37 (DB).
18. AIR 1917 Cal. 681 (DB) + AIR 1927 Lah. 492.
19. 5 Cal. 945 (DB) + AIR 1954 All 393 (DB) + AIR 1950 Pat. 202.
20. AIR 1957 Manipur 1.
1. 5 Cal. 945.
2. AIR 1917 Pat. 640 (DB).
3. AIR 1939 Lah. 191 + AIR 1960 Manipur 18 + AIR 1955 Pat. 1 (SB) + 53 Cal. W.N. 346 + AIR 1926 Mad. 625 (DB) + AIR 1917 Pat. 640 (DB) (Indeterminate and fluctuating body is not "a person") + AIR 1922 Upp. Bur. 23 (Do).

right in the nature of an easement may be acquired by a fluctuating body by custom or by long user.[4]

(6) "foreign country" means any country other than [5][Pakistan, [6]* * * *]:

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

1. Good faith. A person can only claim having acted in good faith if he can show or if it can be said that the plaintiff had acted with due care and attention. It is impossible to lay down any hard and fast rule to the effect that inadvertence and good faith are irreconcilable or that every inadvertence necessarily indicated want of due care and attention.[7] Where a person claims that he has been pursuing a remedy in good faith in a Court, in deciding whether the proceeding was prosecuted in good faith, the Court must examine the conduct of the lawyer. If on scrutiny, it is found that the mistake could have been committed by any senior member of the Bar, the client is entitled to condonation of delay. This must, however, be determined with reference to the facts and circumstances of each particular case.[8] Thus where a plaint bearing the heading 'In the Court of the Munsiff' was originally intended to be filed in the Munsiff's Court but subsequently the plaintiff changed his mind and reduced the amount claimed so as to bring it within the jurisdiction of the Small Cause Court. The plaint was, however, actually filed in the Munsiff Court on the last day of limitation, *viz.*, 23-1-1954 by the pleader of the plaintiff. The plaint was ordered to be returned to the plaintiff for presentation to the proper Court on 28-1-1954 after the plaintiff had supplied the deficiency in court-fees as ordered by the Court. The plaintiff took back the plaint on 29-1-54 and presented the same to the Small Causes Court but it was dismissed as time-barred. It was held that in the circumstances of the case it could not be said that the plaintiff had acted without due care and attention. There was nothing to show that the plaintiff did not act with due diligence in taking back the plaint on the 29th though the orders for return of plaint was passed on the 28th. The mistake in filing the plaint in the wrong Court was entirely due to plaintiff's lawyer and S. 14 protected a bona fide mistake of lawyer when the plaintiff himself acted in good faith.[9]

Party not acting in good faith. Where initial filing of a suit is attributable to carelessness, the subsequent prosecution of the suit cannot be said to be in good faith.[10]

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4. ('49) 53 C.W.N. 346 (Right to catch fish claimed by villagers of certain village on basis of custom; 15 Cal. 460 (FB). *Foll.*) + ('04) 31 Cal. 503 (P.C.). (Right by long user) + AIR 1926 Mad. 625 (DB) (Right claimed on basis of custom) + AIR 1917 Pat. 640 (DB). (Right on basis of custom).
5. Subs. by the Federal Laws (Revision and Declaration) Act, 1951 (26 of 1951), S. 4 and Third Sch., for "British India".
6. Omitted by Ord., 27 of 1981, S. 3 & Sch.
7. AIR 1961 All 564.
8. AIR 1964 Orissa 55 + AIR 1956 Orissa 124 + AIR 1937 P.C. 276.
9. AIR 1961 All 564 + AIR 1927 All 719.
10. AIR 1959 Cal. 21.

Where a decree-holder has no less than 3 times allowed his execution application in a wrong Court to be dismissed for default,[11] or where the execution is taken out in a Court which did not pass the decree without a certificate under O. 21, R. 6, Civil P.C., it cannot be said that there was due care and attention. Similarly, there is no due care and attention, where the decree sought to be executed is one which is non-existent.[12] Where in an execution application the decree holder omitted to set out the mode of execution and the property which was to be attached and sold, the application is not made with due care and attention and the decree holder cannot be given the benefit of good faith.[13]

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

Synopsis

1. Scope and definition.
2. "Derives his title to sue."
3. Shebaits, trustees, hereditary officer's, etc.
4. Vendor and purchaser.

1. Scope and definition. The expression "plaintiff" includes any person who is entitled to sue on the same cause of action, although he may not derive his right to sue from him.[14] This goes on to show that the definition merely illustrates the general principle that when the cause of action for a suit is the same, limitation begins to run at the same time against all persons who are or who may become entitled to sue on such cause of action.[15]

2. "Derives his title to sue." Where a right of action arises in favour of or against any person in a representative capacity, such right may be enforced by or against any person on whom such representative capacity devolves or by or against the person represented.[16]

Hindu widow or reversioner. The cause of action for a suit by the reversioner for the recovery of movables arises on the death of the widow and not before, and limitation for such suit runs only from the date of the widow's death.[17] Where a widow adopts a son and the latter thereupon becomes entitled to the estate, limitation for a suit for possession by him would commence to run only from the time of his adoption notwithstanding that Article 141 does not apply to such cases.[18]

Reversioner's right to sue, whether derived from other reversioner. Where a cause of action arises in favour of a reversioner in his representative capacity, the

11. AIR 1946 Pat. 301 (DB).
12. AIR 1955 Bom. 93 (DB).
13. AIR 1948 Nag. 189.
14. AIR 1927 Mad. 216+AIR 1918 Mad. 675 (DB).
15. AIR 1919 Mad. 911 (FB).
16. AIR 1918 Mad. 464 (DB).
17. ('99) 26 Ind. App. 71 (P.C.)+AIR 1922 Cal. 321 (DB).
18. ('05) 2 Cal. L. Jour 87 (DB)+AIR 1915 Mad. 539+AIR 1921 Nag. 111 (DB)+(1900) 2 Bom. L.R. 411 (DB)+('95) 19 Bom. 809 (DB).

same cause of action applies to any other reversioner who may become entitled to sue in respect of the same matter.[19]

3. **Shebaits, trustees, hereditary officer's, etc.** Shabaits, trustees, etc., derive their right to sue from their predecessors-in-interest. Therefore where adverse possession begins against the shebait of the idol or the trustee of a temple or other religious endowment, the successor of such shebait will not have a fresh right to sue or a fresh starting point of limitation from the date of his accession to office.[20]

4. **Vendor and purchaser.** Where *A* sells to *B* property of which *C* is in adverse possession, *B* derives his right to sue from *A* and will be affected by the limitation that has run against *A*.[1]

[2][(9) "Promissory note" has the same meaning as in the Negotiable Instruments Act, 1881 (XXVI of 1881)].

1. **Promissory note.** The definition of 'promissory note' as given in the Negotiable Instruments Act (1881) has been made applicable to construction of the Limitation Act.

Specified sum of money. Where an amount due under an instrument including interest can be found out from the instrument itself without any extraneous aid, it is a specified sum of money without the meaning of S.2 (9) even though a little calculation may be necessary.[3]

Default clause in promissory note. A clause in a promissory note that if the promisor fails to pay, he and his properties shall be liable for the principal, interest and all damages consequent on such default does not amount to an agreement making the liability of the promisor conditional.[4]

War-bond. A Government war-bond payable at a particular place is a promissory note within S.2(9).[5]

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

1. **Suit.** The word 'suit' is confined to such proceedings as, under that description, are directly dealt with by the Code of Civil Procedure or such, as, by the operation of the particular Acts which regulate them, are treated as suits.[6] A proceeding which does not commence with the presentation of a plaint and which is not treated as a suit under any other Act is not a 'suit' for the purposes of the Limitation Act.[7]

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19. AIR 1938 Pat. 510+AIR 1919 Mad. 911 (FB)+AIR 1922 All 301 (FB)+('90) 14 Bom. 512 (DB)+AIR 1915 P.C. 124=42 Ind. App. 125.
20. (1900) 27 Ind. App. 69 (P.C.)+('10) 37 Ind. App. 147 (P.C.).
1. AIR 1924 Cal. 394 (DB)+AIR 1926 Mad. 1155 (DB).
2. Subs. by Ord., 62 of 1980, S. 2.
3. 1947 Marwar L.R. (Civ.) 94 (DB). (An instrument does not cease to be a promissory note merely because it contains a stipulation for payment of interest).
4. AIR 1955 Trav-Co. 141 (DB).
5. AIR 1933 Mad. 376 (DB).
6. ('95) 22 Cal. 943.
7. AIR 1933 P.C. 63=60 Ind. App. 13.

The proceedings specified below are not "suits".

(*a*) An application for execution of a decree.[8]

(*b*) A claim against a company in voluntary liquidation made by a proceeding not instituted by the presentation of a plaint.[9]

(*c*) An application under O.9, R. 13, Civil Procedure Code.[10]

Several claims included in one suit. Where a suit consists of several independent claims which can be split up, it must, as regards each of such claims, be regarded as a separate suit for the purposes of applying the articles of the Act.[11]

Appeal. The word "suit" does not include an appeal.[12]

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

Synopsis

1. Guardian. 2. *Benamidar.*

1. Guardian. A guardian appointed under the Guardians and Wards Act has been held to be a trustee within the meaning of S.2 (II) though he is not a trustee in the sense of the term as defined in S.3, Trusts Act, 1882.[13]

2. 'Benamidar.' A *benamidar* may be a trustee in a general sense but he is not so for the purpose of the Limitation Act.[14]

PART II

LIMITATION OF SUITS, APPEALS AND APPLICATIONS

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

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

8. ('75) 1 All 97 (FB) + ('75) 2 Cal. 336 (FB).
9. AIR 1933 P.C. 63 = 60 Ind. App. 13.
10. AIR 1923 Pat. 88 (DB).
11. AIR 1931 Lah. 309 (DB) + AIR 1922 Lah. 198 = 2 Lah. 376 (FB) + AIR 1931 All. 752 (DB).
12. AIR 1964 A.P. 314 + ('98) 22 Bom. 612 (DB).
13. AIR 1949 Nag. 335 (DB).
14. ILR 1950 Nag. 877 (DB).

the Court, when the claimant first sends in his claim to the official liquidator.

Synopsis

1. Scope.
2. "Subject to the provisions of sections 4 to 25."
3. Suit--meaning of.
4. Institution of suit, what constitutes.
5. "Period of limitation prescribed therefor by the first schedule."
6. "Shall be dismissed."
7. Pauper proceedings and limitation.
8. Company in liquidation.
9. Limitation bars remedy but does not destroy right.
10. Limitation does not bar defence.
11. Duty of Court to raise and decide question of limitation.
12. New plea as to limitation.
13. Duty of appellate Court.
14. *Res judicata* and plea of limitation.
15. Consent decree for time-barred claim.
16. Admission on point of limitation.
17. Waiver of plea of limitation.
18. Contract or custom cannot override the statute.
19. Estoppel against pleading limitation.
20. Proceedings to which this section applies.
21. Inherent powers of Court.
22. Set-off and counter-claim.
23. Insolvency proceedings.
24. Exemption from limitation, plea of.
25. Limitation applies only to commencement of proceedings.
26. Amendment of plaint.
27. Conversion of proceedings.
28. Withdrawal of suit and institution of fresh suit.
29. Rejection of plaint.
30. Summary rejection of appeal.
31. Effect of non-compliance with section.
32. Onus of proof.
33. Technical plea of limitation.
34. Delay in filing suit.
35. Concurrent remedies, limitation for.
36. Revision on question of limitation.
37. Review.
38. Supreme Court.

1. Scope. The Limitation Act does not create any right but merely prescribes period of enforceability of such right.[15] The intention of the law of limitation is not to give a right where there is none but to interpose a bar after a certain period to a suit to enforce an existing right.[16] Therefore in case of rights acquired by prescription a party cannot sue for a declaration that the remedy against him having become barred by time, his liability has disappeared or that he has been legally invested with a right and that what was wrongful before the period of limitation had run out has become lawful after the expiration of that period. This result follows from the rule that statutes of limitation being

15. 1981 CLC 43 (Lah).
16. PLD 1951 Lah. 195 = PLR 1951 Lah. 179 = 3 DLR 465 (FB) + ('94) 21 Cal. 8 = 20 Ind. App. 183 (P.C.) + ('11) 33 All. 356 = 38 Ind. App. 87 (P.C.) + AIR 1954 Trav-Co. 451 (DB).

processual enactments assume the existence of a cause of action and do not define or create one.[17]

The section merely makes the question of limitation a material one for determination in every case, whether or not the point has been raised by parties.[18] The law of limitation is addressed to the commencement of a proceeding and not to its disposal or to the consideration of the subject-matter. It is designed to discourage the pursuit of claims which have become stale by efflux of time and, naturally, the diligence it enjoins has reference to the initiation of a proceeding. The test, therefore, always is whether the party did all that he was required to do in order to bring the matter before the Court and set it in motion. If he did so, he instituted the suit or preferred the appeal or made the application, irrespective of whether any consideration of the merits of the case took place.[19] Thus where in an appeal against the decision of an Industrial Tribunal the employer was not impleaded as a party although he was necessary party. It was held that under Order XLI, rule 20 of the Code of Civil Procedure, the Court had power in a proper case to allow a necessary party to be added as a respondent, but the power to take such action was discretionary and should not be exercised in case of extreme neglect and the suit was held barred by time.[20]

Special or local law. Section 3 would apply where any special or local law prescribes for any suit, appeal or application a period of limitation different from the one prescribed therefor by the First Schedule. The Displaced Persons (Compensation and Rehabilitation) Act, 1958 is a special law and, therefore, whether the plea of limitation was raised or not it was the duty of the Settlement Court to notice the point of limitation.[1] Where period of limitation prescribed by a special law or local law is different from that of Limitation Act, then period so prescribed prevails over that of Limitation Act and in case of conflict on the express words, Limitation Act yields,[2] and limitation, would be determined with regard to the nature of law itself, character thereof and purpose behind the enactment.[3]

Obligation of Court to decide question. The section does not oblige the Court in every case to raise and decide the question whether the suit or other proceeding has been instituted after the period of limitation. That question has to be raised and decided only when the Court is called upon to adjudicate upon the rights of the parties in any manner.[4] An issue of limitation which is linked up with other controversial matters cropping up in litigation. Cannot be treated as an issue purely one of law and disposed of without receiving and considering evidence of parties. The better course for Court to decide such suit would be to frame all

17. PLD 1951 Lah. 195 = PLR 1951 Lah. 179 = 3 DLR 465 (FB).
18. AIR 1940 Rang 207 (DB) + 1965 All. L. Jour 264. (Some of the defendants not objecting to plaintiff's suit on ground of limitation--This does not affect the question whether the suit is within time or not).
19. AIR 1954 Cal. 352 (DB).
20. PLD 1964 Supreme Court 559 = 16 DLR (S.C.) 386.
1. PLD 1986 Pesh. 195 = PLJ 1986 Pesh. 104 (DB) + PLJ 1981 Kar. 615.
2. 1990 SCMR 164.
3. PLD 1986 Pesh. 195 = PLJ 1986 Pesh. 104 = NLR 1986 Civ. 914 (DB).
4. 21 DLR 63 (DB).

issues and give findings thereon after receiving evidence of parties.[5] Where the bar of limitation appears on the face of the proceedings the Court is bound under S. 3 to go into the question of its own accord although it is not raised by the parties.[6]

No limitation prescribed. Where no limitation period, was prescribed for an application seeking correction of accidental omission or clerical mistake. Such power of correction could be exercised by the Court *suo motu*. Correction of judgment or decree would take effect retrospectively, from the date of judgment or decree sought to be corrected.[7] Similarly as dismissal of revision for non-prosecution before admission in *Kutcha Peshi,* was neither dismissal on merits nor withdrawal of pending matter. Such dismissal of revision before admission in *Kutcha Peshi* would not obstruct filing of fresh revision petition against the same matter.[8]

Starting point of limitation not ascertainable. Where there is no possibility of ascertaining the starting point of limitation, there is no scope for the operation of S. 3.[9]

Laches. Rigours of law of limitation and doctrine of laches are distinct in scope and application. Limitation extinguishes remedy by force of Statute and a valuable right accrues in favour of opposite side when matter becomes barred under the Limitation Act or limitation prescribed by special statute. Principles of laches are invoked where statutory limitation is not prescribed but Court takes into account conduct of a party involving indolence and excessive inaction equivalent to acquiescence or waiver of remedy and which resulted in causing prejudice to opposite party. When interest of an innocent third party intervened on account of laches, Court on equitable consideration and keeping in view requirements of justice in circumstances of a case refused to exercise its discretionary jurisdiction in favour of a person guilty of laches who approached Court for discretionary relief. Rigours of law being rigid Courts insist upon explanation of each day's delay beyond period prescribed and sufficient cause must be established for extension of time. Decision of question of laches would depend on facts and circumstances of each case and delay can be explained to satisfaction of Court.[10] It is to be noted that the question of laches comes in when the plaintiff seeks to obtain an equitable relief. But the principle of laches, which is based on equitable doctrine, is not applicable to a case where the Court has to determine the legal rights of a party. An objection as to delay or laches does not avail the defendant when a legal relief is sought against him except as a circumstance to show abandonment. He can of course rely on the statute of limitation but if the suit is instituted within the period prescribed by the

5. NLR 1987 Civ. 840 (DB).
6. AIR 1948 Nag. 41 (DB) + AIR 1960 Andh Pra. 222 (DB) + AIR 1956 All. 660 (DB) (Where the claim is time-barred on the allegations contained in the plaint itself the plea of limitation should be upheld even if raised in the appellate Court).
7. NLR 1986 Civ. 337 = PLJ 1986 Pesh 14 (DB).
8. 1986 CLC 581.
9. ('49) 53 Cal. W.N. 713 (DB).
10. 1984 CLC 3270 = PLJ 1984 Lah. 496.

Limitation Act, his suit cannot be thrown out because of any amount of laches or delay.[11]

Foreign decree executed in Pakistan. Where a foreign decree is being executed in Pakistan, the Pakistan law of limitation will apply in order to see whether the execution application is within time or not.[12]

Null and void orders. No period of limitation is to be observed for setting aside a void order.[13] An order which is null and void may be challenged at any time. It does not obtain sanctity merely by the passage of time.[14] If on the basis of a void order subsequent orders have been passed either by the same or other authorities, the whole series of such orders, together with the superstructure of rights and obligations built up on them, must unless some statute or principle of law recognizing as legal the changed position of the parties is in operation, fall to the ground because such orders have as little legal foundation as the void order on which they are founded. In this view of the matter, a void order will have no value whatever and is simply to be ignored and consequently no question of limitation will arise against such an order.[15] Where property of the petitioner was illegally declared evacuee property, he may challenge the order as soon as he comes to know of the order.[16] Where judgment and decree was passed by trial Court on incorrect assumption of jurisdiction and by deciding matter without considering merits of the case. The judgment and decree being nullity, objection regarding delay in filing appeal would have no legal sanction.[17] But the other view is that a void order or an order without jurisdiction is only a type of illegal order passed by a Court and the fact that it has been passed and may therefore create rights cannot be altered by describing it as void order without jurisdiction. Therefore if the proceedings in which void order was passed were within the knowledge of the party affected by it or he knew well about it, question of limitation cannot be overlooked for the reasons that impugned order was a nullity.[18]

Void transaction ,challenge to. Where the gift which is challenged is void *ab initio* for want of delivery of possession limitation loses importance.[19]

Orders passed without hearing opposite party. If an impugned order has been passed without hearing and notice to a party whose presence is otherwise necessary before the authorities concerned, then the order will be a nullity in the eye of law and no question of limitation would arise.[20] Where under the Civil Procedure (Special Provisions) Ordinance, 1968, a party was not served with a notice properly, he can urge that limitation is to start from the date of his

11. PLD 1978 Kar. 940 + AIR 1963 Madhya Pradesh 155 (DB).
12. AIR 1962 Punjab 228.
13. 1985 CLC 1411.
14. 1986 SCMR 462 + PLJ 1988 Rev. 52 + 1986 SCMR 1238 + 1985 CLC 526 = 1985 LN 29 + PLJ 1981 Quetta 155 (DB) + 1983 CLC 2972 + PLD 1977 Lah. 843 = PLJ 1977 Lah. 481 + PLD 1973 Quetta 1 + 1973 LN 552.
15. PLD 1974 Lah. 434 = PLJ 1974 Lah. 598.
16. PLD 1988 AJ&K 14 = NLR 1988 CLJ 203 = PLJ 1988 AJ&K 30.
17. PLJ 1987 Quetta 92 = NLR 1987 Civ. 130 = 1986 CLC 2951.
18. NLR 1988 CLJ 9 + PLD 1977 SC 599 + PLD 1975 BJ 29 + PLJ 1987 Tr. C. 102.
19. PLD 1990 AJ&K 34.
20. 1986 SCMR 962 + NLR 1985 UC 294 + NLR 1982 SCJ 166 + KLR 1983 CC 486.

knowledge.[1] Where an order of cancellation of allotment in favour of the petitioner was passed without notice to him, the same was a nullity in the eye of law and the petitioner had the right to ignore it absolutely and the question of limitation would thus not arise at all.[2] Where limitation period is provided in statutory provisions for invoking remedy against illegal order, the person aggrieved thereby must invoke his remedy against such presumed illegal act within the prescribed time. As a competent Court a Tribunal alone is empowered to ignore or set aside, an illegal order, an aggrieved person ignoring such order presuming it to be illegal does so at his own risk.[3] But where the appellant accepts the main order of the Court, he cannot seek condonation of delay in making an application for amendment by pleading nullity of the entire decree.[4]

Wrong orders. Distinction must be drawn between void orders and wrong orders. An order passed in utter lack of jurisdiction or in excess of jurisdiction, is a void order.[5] But an authority having jurisdiction to pass the order may pass wrong orders which may not be strictly justified on law or facts. But for that reason the law of limitation will not cease to apply to a wrong order.[6]

When illegal void orders are required to be set aside, the time starts running from the date of knowledge even in a case where the impugned order is termed to be a nullity.[7] Limitation to challenge such order would commence only from the date when something is done, such as disturbing possession of the plaintiff in pursuance of the order, so that he feels aggrieved by the order.[8]

Validity of section. Since Article 203-B debars a Shariat Bench Court to examine validity of "any law relating to the procedure of any Court or Tribunal". Therefore, the High Court was justified in holding that section 3 of the Limitation Act being a procedural provisions, it was beyond its jurisdiction to examine its validity under the aforesaid provision of the Constitution.[9]

2. "Subject to the provisions of sections 4 to 25." Section 3 of the Limitation Act stands by itself and sections 4 to 25 of the Limitation Act are not subject to it and should be independently construed.[10]

The Court has no power, apart from the provisions of sections 4 to 25 to relieve a litigant from the bar of limitation.[11] The Court cannot grant an exemption from limitation on equitable considerations or on grounds of

1. PLD 1986 Quetta 107 = NLR 1986 CLJ 398 = KLR 1986 CC 363 (DB).
2. 1983 CLC 2357 (DB) + PLD 1975 Lah. 707 = PLJ 1975 Lah. 163.
3. PLJ 1987 Tr. C. 102.
4. NLR 1978 Kar. 89.
5. 1985 CLC 1411.
6. PLD 1979 Kar. 443.
7. PLD 1975 BJ 29 = PLJ 1975 BJ 373 (*Rel.* PLD 1970 Lah. 6 + PLD 1964 SC 97 + PLD 1964 SC 236 + PLD 1974 SC 260) + PLJ 1987 Tr. C. 102.
8. NLR 1986 Rev. C. 79.
9. PLD 1981 SC 12 = PLJ 1981 SC 136.
10. PLD 1964 Karachi 399.
11. AIR 1939 Bom 1 (DB) + AIR 1958 All. 311 + AIR 1935 Cal. 333 (DB) + AIR 1926 Lah. 379 + AIR 1927 Lah. 342 + AIR 1928 Mad. 509 (DB) + AIR 1923 Sind 14 = 17 Sind L.R. 255 (DB).

hardship.[12] Therefore the mere fact that a case falls within any of the exceptions expressly recognised by the statute is not sufficient to extend such exception to the case.[13] Thus the mere fact that the plaintiff was by some arrangement or negotiation prevented from suing within the prescribed period,[14] or mere mistake on the part of the plaintiff as to the date of the cause of action,[15] or ignorance of the residence of the defendant,[16] or the fact that the defendant was in jail, does not entitle the plaintiff to an extended period of limitation.[17]

Extension of limitation under inherent powers. The inherent power of the Court under S. 151 of the Civil Procedure Code cannot be invoked to obtain an extension of limitation.[18]

State, limitation law applies to. The state as such is not entitled to any exemption from limitation.[19]

Juristic persons. Juristic persons like other plaintiffs are subject to the law of limitation and enjoy no special privilege in this respect.[20]

Extension of limitation under Provincial Statute. Where a Provincial Act has been validly passed and it makes it obligatory on the Courts to exclude a period when computing the period of limitation, the Courts have to exclude that period.[1]

Execution Court, extension of time by. An executing Court while rejecting an application for execution cannot extend the period of limitation by ordering that the decree-holder may file a fresh application within a certain period.[2]

3. **Suit--meaning of.** The word "suit" ordinarily means a civil proceeding instituted by the presentation of a plaint.[3]

Acknowledgment--effect of. If there is an acknowledgment within the meaning of the proviso to Art. 183, saving limitation under that very article, S. 3 would not be attracted at all. But where, judged by the provision contained in the relevant Article, an application is out of time, and it is *'prima facie'* liable to be dismissed, S. 3 will come into play and the application will be dismissed only if there is nothing in Ss. 4 to 25 to save limitation for it.[4]

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12. AIR 1940 Rang 276 (FB)+AIR 1937 Trav-Co 171 (DB)+AIR 1954 All 252=1954 Cri. L. Jour 512 (AIR 1930 Pat. 14. *Dissented from*)+AIR 1939 Bom. 1=ILR 1939 Bom. 173 (DB)+AIR 1935 P.C. 85=62 Ind. App. 80+AIR 1942 Pat. 335 (DB)+AIR 1928 Cal. 646 (SB).
13. AIR 1926 Cal. 65 (DB)+AIR 1916 Mad. 350 (DB)+AIR 1928 Cal. 646 (SB).
14. 1 Agra 248 (DB).
15. AIR 1916 Cal. 709 (DB).
16. 2 NWP. H. C.R. 173 (DB).
17. 1869 Pun. Re. No. 39.
18. AIR 1924 All 668=46 All 631+AIR 1926 Lah. 135+AIR 1935 Rang 466=13 Rang 595 (DB)+AIR 1935 Pesh. 146 (DB)+AIR 1922 Pat. 479=1 Pat. 277 (DB)+AIR 1924 Mad 114=47 Mad. 171 (DB).
19. 4 Mad. 155 (DB).
20. AIR 1938 Lah. 369 (FB).
1. AIR 1955 All 41 (FB). (AIR 1938 All 217 (FB) and AIR 1947 All 199. *Overruled;* AIR 1929 Cal. 68. *Disting;* AIR 1937 Oudh 26 (DB). *Ref*).
2. 1909 Pun. L.R. No. 75. p. 273.
3. AIR 1933 P.C. 63.
4. AIR 1958 Cal. 1 (DB).

Liquidation proceedings. A claim by a company in liquidation which is not instituted by the presentation of a plaint, is not a suit.[5] The effect of the explanation is only that in the case of a suit against a company which is being wound up by the Court, the suit must be deemed to be instituted on the date on which the claim is first sent to the official liquidator.[6]

Claim or relief consisting of several parts. Where a claim on which a suit is based is capable of being divided into parts, the suit is to be regarded as a separate suit in respect of each such part and the rule of limitation is to be applied to each such part separately. In such cases the entire suit must not be dismissed on the ground of limitation.[7] Similarly a suit which comprises several reliefs or claims should be treated as a separate suit in regard to each such reliefs or claim and the rule of limitation must be applied to each such claim or relief separately.[8]

4. Institution of suit, what constitutes. The mere presentation of a plaint is sufficient to constitute the institution of a suit under the section.[9] Therefore it could not be said that if the suit was within time on the day the plaint was duly represented, it became time barred simply because the plaint could be rejected under clause (*b*) or (*c*) or for that matter clause (*a*) or (*d*) of rule 11 (after the period of limitation for the reasons mentioned in the said clauses). The suit could not be dismissed on the ground of limitation merely because the plaint when originally otherwise duly presented in a Court, was not correctly stamped.[10]

Presentation must be to Court having jurisdiction. A civil suit is deemed to be instituted only, when a plaint is validly presented by a duly authorised person to the proper person; and to the Court which has jurisdiction to try the suit. Where Court to which plaint is presented has no jurisdiction, be it pecuniary, territorial or as to subject-matter, the suit cannot be deemed to be validly instituted.[11] Presentation to a Court having no jurisdiction is not sufficient to save limitation.[12] Thus where a suit is first instituted in a Court and on its being found that the Court has no jurisdiction, the suit is filed in another Court which has jurisdiction, the suit must be deemed as instituted only when it is filed in the latter Court.[13] It is however to be noted that the time taken in prosecuting the suit in the wrong Court can (in proper cases) be deducted under S. 14.[14]

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5. AIR 1933 P.C. 63.
6. AIR 1933 P.C. 63.
7. (1865) 3 Suth W.R. (Act X Rule) 131 (DB).
8. PLD 1956 Lah. 689 = PLR 1957 (1) W.P. 322 + AIR 1936 Mad. 804 (DB) + AIR 1922 Lah. 198 (FB) + AIR 1931 Lah. 309 (DB) + AIR 1941 Mad. 786 + (1900) 24 Bom. 260 (FB) + 12 Ind. App. 12 (P.C.).
9. AIR 1927 Bom. 480 (DB) + AIR 1956 Cal. 644. (Limitation for a claim is judged by the point of time when the claim is instituted and not by the day when the Court itself actually takes up the claim for disposal).
10. PLJ 1983 SC 150 = PLD 1983 SC 226 = NLR 1983 Civ. 398 = 1983 PSC 618.
11. 1989 CLC 1405 = PLJ 1989 Lah. 377.
12. 9 Oudh Cas. 1 (DB) + 17 Cal. W.N. 515 (DB) + 1871 Pun. Re. No. 64. p. 171 (DB) + 36 Mad. 131 (DB) + 10 Bom. H.C.R. 495 (DB). (5 Bom. H.C.R. (A.C.) 117. *Overruled*) + 1894 All W.N. 159 (DB)
13. AIR 1929 P.C. 103 = 56 Ind. App. 128 + AIR 1958 Andh Pra. 424 + AIR 1940 Mad. 689 (DB).
14. AIR 1929 P.C. 103 = 56 Ind. App. 128.

Return of plaint for presentation to other Court. Where a plaint is presented in time to the proper Court but is returned for representation to another Court to which the suit is transferred, representation of the plaint in the latter Court is only a continuation of the suit.[15]

Deficit court-fee paid. Institution of the suit is by presentation of the plaint when it is accepted by the presiding officer "any defects notwithstanding". Its validity for limitation is not affected by deficient court-fee. Therefore when considering the options for exercise of discretion for grant of time for supply of deficiency in the court-fee, considerations relevant to bar of limitation shall not be taken into account.[16] Where court-fee was paid according to the order of the Court although late. It was held, since limitation was no impediment in the payment of court-fee, it could be paid at any time and the objection in that regard would not be sustainable.[17]

Date of Registration of suit. For the purpose of limitation, presentation of plaint is the material step, registration of the plaint is not necessary for presentation of plaint.[18]

5. "Period of limitation prescribed therefor by the first schedule." A statute of limitation is a law of procedure and must apply to all proceedings from the moment of its enforcement, irrespective of the dates on which those proceedings were instituted subject, of course, to express provisions to the contrary, and to the non-revival of extinguished rights.[19]

No limitation prescribed by Act. Where for an appeal under a Special Act, no period of appeal or revision was provided by this Act, that question of limitation would not arise.[20]

Agreement restricting period of limitation. A plain reading of section 3 of the Limitation Act and section 23 of the Contract Act will show that an agreement to enhance the period of limitation or a promise by the defendant not to raise the plea of limitation is in effect a covenant to defeat the provisions of the Limitation Act: It will be contracting oneself out of the statute of limitation and such agreement will be void. There is however a marked distinction between a condition which shortens or limits the time within which a suit may be brought. There is nothing in the above provision to justify the inference that a stipulation allowing a curtailment in the period of limitation in an agreement is void. Accordingly an agreement stipulating a period of parties' own choice for reference to arbitration is not covered by section 28. This section clearly distinguishes between an ordinary tribunal and an arbitrator and applies to those agreements only which prohibit either wholly or partially the parties from having recourse to a

15. AIR 1963 Punjab 208 (DB) + (1865) 3 Suth W.R. 20 (DB) + 1895 Pun. Re. No. 7, p. 31 + AIR 1916 Lah. 202.
16. PLD 1984 SC 289 = PLJ 1984 SC 262 = NLR 1984 CLJ 474 = 1984 PSC 567 + NLR 1988 Rev. 48 = PLJ 1987 Lah. 628 = 1987 CLC 2428.
17. 1990 CLC 546. (*But see:* AIR 1947 Lah. 210 (DB).
18. AIR 1921 Cal. 277 (DB) + AIR 1934 Bom. 91 (DB).
19. PLD 1963 Lahore 311 (DB) + AIR 1965 S.C. 241.
20. 1984 Law Notes 348 = PLD 1984 Pesh 139 (DB).

Court of law. The arbitration clause in the agreement of contract in the case was not a bar to a suit in a Court of law and in no way was repugnant to section 28.[1]

Determination of Article applicable. The article in the first schedule applicable to a suit must be determined with reference to the nature of the plaintiff's claim.[2] In determining the nature of the plaintiff's claim, regard must be had to the substance of the claim and not merely to the formal and verbal expression of it.[3] Thus where facts found are different from those alleged in the plaint, and the plaintiff asks for relief on the basis of facts found, the question of limitation must be determined with reference to such facts and not the facts alleged in the plaint.[4]

Objection to frame of suit. Where a suit as framed falls under a particular article, the defendant cannot say that the suit ought to have been framed in a different manner so as to make another article, which provides a shorter period, applicable.[5]

Two Articles equally applicable. The well-settled principle of law of limitation is that where two articles of such law may be wide enough to cover a given right of suit and it can be postulated of neither of them that the one applies more specifically than the other, then the Court should lean in favour of the application of the provision which would keep the right of suit alive in preference to that which would destroy it.[6]

6. **"Shall be dismissed."** Section 3 requires that a suit or other proceeding instituted after the period of limitation shall be dismissed,[7] though question of limitation had not been set up in defence.[8] Where the Court decreed a suit although it was evident from the record that it was barred by limitation. It was held to have acted without jurisdiction and the decree was set aside.[9] Under this section the Courts are bound to act *suo motu* wherever the suit is instituted beyond limitation. That parties have not noticed the point is immaterial. The Act must be applied at whatever stage it is found to apply, provided it is done before a final order or decree is passed.[10] Inaction, omission and negligence in not filing legal proceeding within the prescribed period would create a right in favour of

1. PLD 1973 Lah. 131.
2. AIR 1926 Mad. 1190 (DB) + AIR 1956 Mad. 15 (DB) + AIR 1956 Trav-Co. 262 (DB) + AIR 1955 Mad. 288 (DB) + AIR 1950 Bom. 401 (DB) + AIR 1933 Lah. 404 (DB) + AIR 1933 Lah. 491 + AIR 1933 Bom. 276 (DB) + AIR 1927 Nag 10 + AIR 1932 All 358 (DB) + AIR 1945 Lah. 164 (DB).
3. AIR 1934 Lah. 725 (DB) + AIR 1960 Punj. 542 (DB) + (Law of Limitation--Not evaded by altering relief) + AIR 1956 Mad. 15 (DB). (For the purpose of deciding the question of limitation, the allegations in the plaint and the reliefs claimed must be analysed to ascertain the real nature and scope of the suit) + AIR 1924 Nag. 125 + AIR 1929 Mad. 313 (DB) + AIR 1927 Lah. 826.
4. AIR 1929 Nag. 124.
5. AIR 1932 All 358 (DB).
6. AIR 1962 Raj. 83.
7. 1987 CLC 240 = PLJ 1987 Lah. 127 + 1986 CLC 233 = KLR 1986 CC 119 = NLR 1986 CLJ 1462 (DB) + PLJ 1985 SC 186 + PLD 1966 Lah. 319 (DB) (L.P. Appeal against decision in writ jurisdiction) + AIR 1955 Mad. 637 (DB).
8. 1986 CLC 233 = KLR 1986 CC 119 = NLR 1986 CLJ 462 = PLJ 1986 Quetta 52 (DB).
9. PLD 1978 Lah. 317 = PLJ 1978 Lah. 41 (DB).
10. PLD 1985 SC 153 + PLD 1978 Kar. 818 = PLJ 1978 Kar. 275 + AIR 1948 Nag. 41 (DB).

opposite party. Such right could not be snatched away lightly by extending the period either under S. 5 or S. 14, Limitation Act, 1908.[11] Therefore no applied extension of time can be inferred from the mere fact that the Court admitted an appeal to a regular hearing. It is well settled that there could not have been *ex parte* condonation or extension of time and even in cases where *ex parte* condonations are made, the affected parties can always, on coming to know of such orders, take exception thereto and claim that the matter is barred by time, the extension of time, if any, is illegal and that effect to a plea of limitation should be given.[12] Even if the order of the admitting Bench purports concisely to condone delay, the matter can be reagitated by the opposite party on the ground that he had no notice in this behalf and no opportunity to defend the finality of the judgment and decree already made in his favour.[13]

Section 3 of the Limitation Act makes no distinction between an 'illiterate village woman' and other persons so far as the application of the Limitation Act or the running of the period of limitation thereunder is concerned. Sections 3 and 28 of the Limitation Act apply to all irrespective of the illiteracy or the gender of the persons involved.[14]

Rejection of plaint, etc. Where a proceeding has not been duly instituted, the proper procedure is to reject it and not to dismiss it.[15] But where, after summonses had been issued to defendant and an issue had been framed on the question of limitation, the trial Court came to a finding that the suit was time-barred, but proceeded to reject the plaint by recourse to clause (*d*), rule 11 of O. VII, Code of Civil Procedure. It was held, that in such cases, the Court should, in fact, proceed under section 3 of the Limitation Act which provides that if a suit is brought after the period of limitation prescribed thereof, the Court is bound to dismiss it, although the defendant does not raise an objection on ground of limitation.[16] Where no plea of limitation was raised before an executing Court, the plea involving a pure question of law could be advanced at any stage, and the petition dismissed as barred by limitation.[17]

Withdrawal of suit. The provisions of this section do not fetter the power of the Court under O. 23, R. 1, Civil P.C. to allow a suit to be withdrawn.[18]

Effect of dismissal. An order dismissing a suit or appeal from a decree, as being barred by limitation, is a decree.[19]

Effect of not dismissing proceeding barred by limitation. It cannot be said as a general proposition that failure to dismiss a proceeding although time-barred, always amounts to the exercise of jurisdiction not vested in the Court by law. A Court having initial jurisdiction to entertain a proceeding has jurisdiction to decide the question of limitation as well. The Court may decide it rightly or

11. 1986 CLC 233 = KLR 1986 CC 119 = NLR 1986 CLJ 462 = PLJ 1986 Quetta 52 (DB).
12. PLD 1966 Lah. 319 (DB).
13. PLD 1966 B.J. 14 (DB).
14. 1979 CLC 882 = NLR 1988 SCJ 541 (SC AJ&K).
15. AIR 1930 All 112 (DB).
16. PLD 1968 Lahore 367 = 20 DLR (W.P.) 113 = PLR 1967 (1) W.P. 244 (DB).
17. 1981 CLC 369 = 1980 Law Notes 571.
18. 13 Sind L.R. 1 + 7 Mad. L. Tim. 223.
19. 7 All 42 (DB) + 12 Cal. 30 (DB) + 9 Bom. 452 (DB) + 27 Mad. 21 (DB).

wrongly, a wrong decision is not vitiated for want of jurisdiction.[20] Therefore until such decision is set aside in revision, appeal or possibly review, that decision stands.[1] It must however be noted that the discretion to condone delay vests in the trial Court and the appellate, revisional, or the High Court, may interfere with such discretion only if the lower Court has not exercised the power on correct and judicious principles.[2]

7. Pauper proceedings and limitation. An application for leave to sue as pauper must be signed and verified in the manner prescribed for the verification of pleadings. But such signature and verification are not essential for the constitution of the application and although they are made on a latter day, the application must be deemed to be made on the date on which it was originally presented.[3]

Court-fee paid on pauper application. Where Court-fee is paid during the pendency of an application to sue as pauper, the suit is to be taken as instituted on the date of filing of application and not on the date of payment of court-fee.[4] But the provision in the explanation to the section as to a suit by a pauper does not apply to cases where leave to sue as a pauper is refused and full court-fee is paid thereafter.[5]

8. Company in liquidation. Proceedings for the winding up of a company do not stop the running of limitation both with reference to suits and other proceedings against as well as those on behalf of the company.[6]

Claim by creditor. A claim against a company in liquidation not made by the presentation of a plaint is not a suit and is not directly subject to any period of limitation. Such claim, however, would be allowed if a suit for its enforcement would have been within time on the date of winding up order.[7] Thus where the plaintiff first lodged a claim for damages for breach of contract against a company which was being wound up by the Court, before the joint liquidation on 14-6-1952. On a reference by the liquidators of the claim to the District Judge who was dealing with the winding up, the same was investigated and dismissed on 30-4-1955, on the ground that the claim could not be disposed of summarily in liquidation proceedings. After obtaining leave of the District Judge to file a suit for the claim, the plaintiff filed the suit for damages on 6-6-1955. It was held (i) that, for purposes of limitation, the suit though in truth instituted on 6-6-1955, was by virtue of the Explanation to S. 3, Limitation Act, in law instituted on 14-6-1952, the date when plaintiff lodged his claim in the first instance before the joint liquidators.[8]

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20. AIR 1956 Pepsu 83 (DB).
1. PLD 1962 Karachi 8 = PLR 1962 (1) W.P. 523.
2. 1974 SCMR 184.
3. AIR 1931 Bom. 47.
4. AIR 1949 Pat. 465 (DB).
5. AIR 1939 Cal. 394 + 28 Cal. 427 (DB) + AIR 1943 Bom. 292 (DB).
6. AIR 1933 P.C. 63.
7. AIR 1933 P.C. 63 + AIR 1927 All 161 (FB).
8. AIR 1964 Bom. 76 (DB).

Suit by official liquidator. An application by the official liquidator under S.186 of the Companies Act, 1913, for the recovery of money due from a contributory will not be maintainable after the expiry of limitation for a suit for the money.[9]

9. Limitation bars remedy but does not destroy right. Except in cases specifically provided for, the fact that a remedy is barred by limitation does not by itself put an end to the right to which the remedy relates.[10] Law of Limitation was only a procedural law and not a substantive law as to create a vested right in favour of a party.[11] Thus limitation can only be set up as a bar to a claim and that by itself it furnishes no cause of action to a party except where section 28 of the Limitation Act is applicable and the party in possession of a property has acquired a prescriptive title to it. In such exceptional cases threatend dispossession or actual dispossession of the party who has prescribed for the requisite period may constitute a good cause of action for that party. But where section 28 is not applicable, a party cannot sue for a declaration that the remedy against him having become barred by time, his liability has disappeared or that he has been legally invested with a right and that what was wrongful before the period of limitation had run out has become lawful after the expiration of that period. This result follows from the rule that statutes of limitation being processual enactments assume the existence of a cause of action and do not define or create it.[12]

Time-barred debt. Where after the expiry of limitation for a suit for the recovery of a debt the debtor pays the debt, he cannot claim back the amount.[13] Where a debtor pays money to his creditor, he can appropriate payment to a particular debt. Failing that the creditor has the choice to appropriate payments even to time-barred debts.[14] Thus where *A*, who owes several debts to *B*, pays a sum of money to him, the latter can adjust the payment towards any of these debts, although a suit for the recovery of such debt may be barred by limitation.[15]

Agreement to pay time-barred debt. Under S. 25(3) of the Contract Act, 1872, an agreement in writing undertaking to pay a time-barred debt is valid.[16]

No pious obligation on son to pay father's time-barred debts. The pious obligation of a Hindu son to pay off his father's debts does not extend to time-barred debts.[17]

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9. AIR 1933 P.C. 63 + AIR 1955 Vindh Pra. 28.
10. PLD 1951 Lah. 195 = PLR 1951 Lah. 179 = 3 DLR 465 (FB) + AIR 1941 All 278 + AIR 1950 All 598 (FB) + AIR 1947 Oudh 195 (FB) + AIR 1960 Cal. 243 (DB) + AIR 1960 Punj. 590 (DB) + AIR 1959 Punj. 508 + AIR 1958 All 149 + AIR 1957 Bom. 39 (DB) + ILR (1955) 1 All 128 + 1955 AMLJ 47 + AIR 1952 Kutch 27 + AIR 1950 All 7 + AIR 1949 East Punj. 29 (DB) + AIR 1947 Bom. 375 (DB) + AIR 1939 Bom. 494 + AIR 1939 Cal. 163 (DB) + AIR 1939 Pat. 138 (DB) + AIR 1932 All 543 (DB) + AIR 1931 Lah. 668 (DB) + ('77) 1 Mad. 267 (DB).
11. 1987 CLC 972 = NLR 1987 CLJ 58.
12. PLD 1951 Lahore 195 = PLR 1951 Lahore 179 = 3 DLR 465 (FB).
13. AIR 1924 All 543 (DB) + AIR 1940 Lah. 166 + AIR 1939 Bom. 494.
14. AIR 1947 Pat. 273.
15. AIR 1940 Lah. 166 + AIR 1923 Bom. 82 (DB) + AIR 1930 Mad. 594.
16. AIR 1929 All 586 (DB) + AIR 1923 Lah. 481 (DB).
17. AIR 1926 Pat. 427 (DB) + AIR 1927 Oudh 52 (DB).

10. Limitation does not bar defence. Limitation cannot generally apply to a plea in defence.[18] Therefore although a suit to enforce a right may be barred by limitation, such right may be set up in defence.[19] Thus where a transaction is voidable at the instance of *A*, he may defend, on this ground, a suit to enforce the transaction although the period of limitation for a suit to set aside the transaction may have expired.[20]

Time-barred debt, may be set up in defence. Ordinarily a time-barred debt cannot be decreed but it may be decreed in certain circumstances when it is owed to a defendant. Thus in a suit for accounts, a decree may be passed in favour of the defendant for the balance found due to him although a suit by him for such balance would have been barred by limitation.[1] In a suit for the redemption of a mortgage, under which the mortgagee has been in possession of the mortgaged property, the mortgagee is bound to account for the rents and profits of the property although if a separate suit were to be brought for such rents and profits, it would have been barred by limitation.[2] Similarly a mortgage barred by limitation can still be used by mortgagee as defence to his right of possession.[3] In a suit for administration, a debt due by an heir to the deceased may be deducted from the share payable to the heir although a suit for the recovery of such debt may be barred by limitation.[4]

Attorney's lien for time-barred costs. An attorney's lien for costs against his client can be availed of although a suit for the recovery of such cost may be time-barred.[5]

Right destroyed by limitation. To the general rule there is an exception and that is, where the expiry of limitation destroys the right itself, such right can neither be sued upon nor set up in defence to a suit.[6]

Plea of fraud. If the suit was brought to obtain possession on the basis of sale deed, the defendant would have been 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 a defendant.[7]

11. Duty of Court to raise and decide question of limitation. It is the duty of the Court to raise and decide the question of limitation, even if it is not raised by the parties.[8] The question of limitation may be one of fact or of law; if the former,

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18. PLD 1963 Dacca 777 = 14 DLR 663.
19. AIR 1962 Punjab 412 + AIR 1939 Cal. 163 (DB) + AIR 1916 P.C. 172 + AIR 1959 Punj. 508 + ILR (1955) 1 All 128 + 1955 AMLJ 47 + AIR 1949 East Punj. 29 (DB).
20. AIR 1949 East Punj. 29 (DB) + AIR 1950 All 7 + AIR 1946 Oudh 129 (DB).
1. AIR 1916 Mad. 720 (DB).
2. AIR 1925 Mad. 825 + AIR 1951 Trav-Co. 17 (DB) + AIR 1957 Trav-Co. 174.
3. AIR 1943 Mad. 370 (DB).
4. ('81) 7 Cal. 644 + ('13) 6 Low Bur Rul. 34 (DB).
5. AIR 1921 Cal. 67.
6. AIR 1921 Bom. 257 (DB).
7. PLJ 1981 SC 420 = PLD 1981 SC 165.
8. 1987 CLC 651 = NLR 1987 Civ. 24 + PLD 1985 SC 153 + KLR 1986 CC 119 = 1986 CLC 233 = NLR 1986 CLJ 246 (DB) + 1985 SCMR 799 = PLJ 1985 SC 207 = 1985 PSC 441 = NLR 1985 SCJ 238 + PLJ 1985 SC 186 + 1983 CLC 888 + 1982 CLC 760 + PLJ 1976 Kar. 433

the Court is not bound to got into it unless raised by the parties, and if the latter the Court is as a general rule bound to raise and decide it, although not raised by the parties.[9]

Under S. 3 it is the duty of the Court not to proceed with a suit or application, etc., if it is made beyond the period of limitation prescribed.[10] Question of limitation can be taken into account by High Court *suo motu* even if it is not taken up by the parties.[11] But the Court can refuse to proceed only when it is called upon to adjudicate upon the rights of the parties in any manner.[12] No doubt under section 3 of the Limitation Act, every suit instituted after the period of limitation prescribed therefor by the Limitation Act has to be dismissed even if limitation has not been set up as a defence yet it does not override the general rule of procedure that the Court ordinarily should not raise and decide a question of fact of its own motion.[13]

Where the question of limitation is purely one of law capable of determination on the facts admitted or proved, the Court is bound to raise the question *suo motu* and decide it.[14] Where on the facts proved or admitted the suit or other proceeding does not appeal to be barred by limitation, that Court is not bound to raise the question of limitation *suo motu*.[15]

Bar of limitation pleaded by party. Where the defendant raises the question of limitation in his written statement, the Court is bound to go into it.[16] Therefore, no objection could be taken to order rejecting objection as having been filed beyond time prescribed by Art. 158 notwithstanding the fact that opposite party had failed to plead it specifically in pleading.[17] Where the question of limitation raises issues of fact not arising from the plaint, the defendant is bound under O. 8, R. 2, Civil Procedure Code, to raise such question in his written statement. If he fails to do so, thereafter it is within the discretion of the Court to allow the question to be raised or not.[18]

A defendant can plead a substantive right or in the alternative that the plaintiff's suit is barred by limitation.[19] The mere fact that the defendant does not refer to the article of the Limitation Act specifically in his written statement will

(DB)+PLJ 1981 Kar. 615 (Matter under the Displaced Persons (Compensation and Rehabilitation) Act, 1958).

9. PLD 1954 Peshawar 96.
10. AIR 1964 Supreme Court 1336.
11. NLR 1988 CLJ 9.
12. 21 DLR 63 (DB).
13. PLD 1954 Pesh. 96.
14. PLD 1954 Pesh. 96+AIR 1940 Rang. 207 (DB)+1949 Ker. L. Tim. 194 (DB)+AIR 1925 Oudh 182+('05) 9 Cal. W.N. 56+('01) 28 Cal. 86 (DB)+AIR 1919 Mad. 698 (DB)+AIR 1930 All 815+('12) 8 Nag. L.R. 174.
15. PLD 1954 Pesh. 96+AIR 1914 Cal. 155 (DB).
16. ('67) 7 Suth W.R. 212 (DB)+AIR 1953 Assam 30 (DB). (Question of limitation raised in pleadings and specific issue framed)+AIR 1922 Cal. 544 (DB).
17. NLR 1987 Civ. 24=1987 CLC 651.
18. AIR 1940 Rang 207 (DB)+29 Ind App. 76 (P.C.)+AIR 1959 Andh. Pra. 96 (DB).
19. ('03) 7 Cal. W.N. 294 (DB).

not debar him from showing subsequently, on the admitted or proved facts, that the suit is barred by time.[20]

Facts must be stated when raising plea. The mere fact that pleas with respect to the suit being barred by limitation were raised by the defendant would be of no avail in the absence of a clear statement of facts on which the pleas could be based. No amount of evidence can be taken into consideration or regarded as sufficient in proof of any fact, if specific mention of it is not made in the pleading.[1]

Court not raising and deciding question—effect. It is true that S. 3 of the Limitation Act is peremptory and that it is the duty of the Court to take notice of this provision and give effect to it even though the point of limitation is not referred to in the pleadings. Even so it cannot be said that where the Court fails to perform its duty, it acts without jurisdiction. If it fails to do its duty, it merely makes an error of law and an error of law can be corrected only in the manner laid down in the Civil Procedure Code. If the party aggrieved does not take appropriate step to have that error corrected, the erroneous decree will hold good and will not be open to challenge on the ground of being a nullity.[2] But such orders when challenged in appeal may be set aside as illegal.[3]

Appellate Court, interference by. In the question of limitation, a superior Court would be entitled to intervene if it appears that fact finding authority acted without any evidence which cannot reasonably be entertained or facts found are such that no person acting judicially and properly instructed as to relevant law could have come to the conclusion reached.[4]

12. New plea as to limitation. Plea of limitation, like a plea of *res judicata*, is a plea of law which concerns jurisdiction of the Court which tries the proceedings. Plea of limitation is a pure question of law, unless it involved taking of fresh evidence and can be allowed to be raised as a matter of right at any stage of proceedings even in the Court of last resort.[5] Where the plea of limitation involves only a question of law which can be decided on the facts proved or admitted before the Court, it can be raised at any stage of the proceedings, *i.e.*, in appeal, second appeal or even before the Supreme Court,[6] and also at revisional stage.[7] Where a suit for possession was dismissed by the trial Court as barred by Limitation resting its decision mainly on Art. 142. On appeal the decision was reversed on the ground that Art. 144 was applicable but no mention or discussion relating to Art. 142 was made in the judgment of the appellate Court. In second appeal the defendant-appellant at the stage of hearing before the Full Bench sought to raise the point as to applicability of Art. 142 even though no such specific ground had been taken by him in the grounds of appeal or in the

20. AIR 1955 Vind Pra. 28.
1. AIR 1958 Punj. 351 (DB).
2. AIR 1964 Supreme Court 907.
3. 1982 CLC 760 (DB).
4. KLR 1984 CC 674.
5. 1989 CLC 1405 = PLJ 1989 Lah. 377.
6. 1989 CLC 1405 = PLJ 1989 Lah. 377 + NLR 1988 UC 346 + NLR 1985 CLJ 333 + NLR 1985 Civ 114 + 1984 CLC 1046 + PLD 1970 Lah. 168 + (Plea allowed to be raised in second appeal).
7. 1980 Law Notes 571 = 1981 CLC 369.

arguments before the Division Bench which had made reference to the Full Bench. It was held that no new facts had to be proved and all that had to be seen was whether according to the pleadings of the parties and the findings which had been given and which were binding on them, the suit would be governed by Art. 142. In these circumstances there would be every justification for deciding the aforesaid point and affirming the decision of the trial Court with regard to it.[8] In such cases the plea of limitation can be raised notwithstanding its previous abandonment.[9]

Question of fact involved. Where a plea of limitation depends on a question of fact, the plea cannot be raised for the first time in appeal, as a matter of right. But the appellate Court has a discretion to allow such question to be raised.[10] Where the question cannot be decided without taking fresh evidence, the appellate Court will generally refuse to entertain the plea, especially so in the case of a second appellate Court or the Supreme Court.[11] Where no objection to entertaining of a suit was taken in the trial Court, such objection was not allowed to be taken in appeal.[12] The question whether application under section 20 of the Arbitration Act was time barred, is not a pure question of law. The question depends on a determination of the date with effect from which the period of limitation started to run. Such a question of fact is a matter for the trial Court to go into and decide in the first instance, and cannot be raised for the first time in appeal,[13] or the High Court.[14] A new plea of limitation which was not purely one of law but a mixed question of law and fact should not be allowed to be raised for the first time at the stage of arguments in second appeal by the High Court especially when it was raised by the non-contesting defendant who had not filed a written statement in the suit. If the High Court felt overwhelmed by the provisions of S. 3 of the Limitation Act, it should at least have given an opportunity to the parties which supported the decree of the trial Court to meet the plea of limitation by amending their pleadings. After allowing the pleadings to be amended, the High Court should have framed an issue and remitted it for a finding to the trial Court under O. 41, R. 25, C.P.C.[15]

New plea, Courts are not obliged to entertain. First Appellate Court or High Court is not obliged to examine question of limitation which was not raised before

8. AIR 1965 Punjab 415 (FB).
9. AIR 1933 Lah. 404 (DB)+AIR 1934 All 386 (DB)+('08) 7 Cal. L. Jour 152 (DB)+('08) 7 Cal. L. Jour 152 (DB)+AIR 1927 Mad. 273+AIR 1925 Rang 313 (DB).
10. NLR 1988 U.C. 521 (1)+AIR 1937 Nag. 184+AIR 1955 Trav-Co. 188. (The appellate Court is not bound to consider a plea of limitation set up for the first time in appeal if it is a mixed question of fact and law and if the question cannot be decided without taking fresh evidence)+AIR 1949 East Punj. 283 (DB)+AIR 1927 Cal. 30 (DB)+(1846-51) 4 Moo Ind. App. 403 (P.C.)+AIR 1920 All. 172.
11. 1986 LN 333+NLR 1985 Civ. 114+PLD 1957 Kar. 258+PLD 1963 Kar. 161 (DB)+AIR 1939 Rang. 42 (DB)+AIR 1929 P.C. 158=56 Ind. App. 192=51 All 367+AIR 1937 All. 696. (Second Appeal)+AIR 1937 Lah. 312 (Do)+AIR 1928 Nag. 329 (Do.)+AIR 1920 Pat. 735 (DB) (Do)+AIR 1929 Mad. 38 (DB) (Do)+AIR 1939 Cal. 467 (DB) (Do)+AIR 1926 Bom. 40=49 Bom. 847 (DB) (Do)+AIR 1921 P.C. 27=48 Ind. App. 24 (Privy Council)+AIR 1928 P.C. 47 (Do).
12. NLR 1978 Civ. 1186 (DB).
13. 1989 SCMR 89+AIR 1961 All. 558 (DB).
14. 1989 SCMR 89.
15. AIR 1963 S.C. 1165.

the trial Court.[16] The petitioners had not taken any plea in that behalf in their written statement, nor was any issue struck thereon, nor indeed had they taken any ground in that behalf in the memorandum of appeal filed by them in the Court of the District Judge. The District Judge and the High Court were justified in refusing to entertain the plea.[17] Where a point of limitation is a mixed question of law and fact. It cannot be raised for first time before the Supreme Court in case it was never raised before any of Court below.[18]

Constitutional jurisdiction. Plea of limitation as a bar to suit having not been raised in written statement, could not be raised subsequently especially in constitutional jurisdiction of High Court.[19]

Remand. Where it was not possible for the first appellate Court to decide the question of limitation, it was justified in remanding the case for decision of the point by the trial Court which would meet the ends of justice.[20]

Plea abandoned in lower Court. Where the plea of limitation raised a question of fact and was abandoned by a party, he could not subsequently raise the plea as a matter of right.[1] This however, would not mean that if in the circumstances of such a case the High Court examines the question of limitation regarding the institution of the proceedings before a lower forum without the same being raised before it, then it would be committing any illegality--the emphasis being only on the point that it is not under a legal duty to do so. If therefore, it fails to do so when the party concerned did not raise it and the argument is advanced in Supreme Court, that the High Court should have examined it *suo motu*, as legal duty Supreme Court would not be obliged to interfere.[2] But even in such cases the Court has discretion to allow, at a subsequent stage of the suit, a plea of limitation. However, the Court will generally refuse to do so where it involves the taking of fresh evidence.[3]

Revision. Point of limitation has to be raised at the earliest. In absence of plea of limitation having been raised in pleadings itself, or before Trial Court, or in memo. of revision petition, revisional authority would not be justified in making such plea as a ground for remanding the case.[4] A new point of limitation which involves an investigation into fresh facts will not be allowed to be raised for the first time in revision.[5] Where plea of limitation was neither raised by defendant before Trial Court in his written statement nor assailed in appeal by him against preliminary decree, it could not be taken up by him at the stage of appeal against final decree or before High Court in revisional jurisdiction.[6] Where a specific point was raised in the plaint that the suit was within time and it was not controverted in written statement, it would be presumed that the suit was within

16. 1989 SCMR 89 + NLR 1989 AC 441.
17. PLJ 1979 SC 335.
18. NLR 1985 AC 436 (SC AJ&K).
19. 1990 MLD 117 (Lah).
20. 1984 CLC 1046.
1. NLR 1988 AC 499 + AIR 1940 Lah. 475 = ILR 1941 Lah. 843 (DB) + AIR 1930 P.C. 18.
2. 1985 SCMR 709 = PLJ 1985 SC 207 = NLR 1985 SCJ 238 = 1985 PSC 444. 504, 1324.
3. AIR 1925 Pat. 549 + AIR 1955 Vindh Pra. 28 + 25 Mad. 55 (DB) + AIR 1930 All 497 (DB).
4. PLD 1988 Quetta 60 (DB).
5. AIR 1925 Mad. 986 + AIR 1927 Lah. 555.
6. 1988 CLC 1400.

time and therefore the Court would not allow the question to be raised for the first time in revision.[7] Where issue of limitation was decided against defendant by Trial Court. Defendant did not press the point of limitation in appeal. He cannot as of right raise question of limitation at revisional stage nor can any grievance be made on the point of limitation when it was not pressed or examined by the Appellate Court.[8]

Consent decree. Where Trial Court had passed a consent decree no appeal lies against it and High Court cannot remand the case to the trial Court on the question of limitation.[9]

13. Duty of Appellate Court. It is necessary for the appellate or revisional forum, where the Limitation Act is applicable to, examine under section 3 of the Limitation Act whether the proceedings instituted before itself are within limitation notwithstanding the fact that the other party did not raise or having raised, did not press the bar of limitation.[10] Where an appeal is presented out of time, the appellate Court is bound to dismiss the appeal although the respondent has not raised the plea of limitation, unless the appellate Court decides to excuse the delay under section 5.[11] Where a respondent raises an objection that the appeal was incompetent as the appellant was not impleaded within the period of limitation the legal representative of a party to the suit as parties to appeal, the Appellate Court should first determine the question of the competency of the appeal before issuing notice of the appeal to legal representatives. In any case, the question ought to be decided at the final hearing, of the appeal. Even if the respondent gives up the point at the final hearing, the appellate Court is not relieved of the duty of deciding the question which goes to the root of its jurisdiction to entertain the appeal.[12]

The Appellate Court can, in a proper case, treat an appeal filed beyond limitation as cross-objections in another appeal.[13]

Question not raised in memorandum of appeal. Where the point of limitation has not been taken in the memorandum of appeal, the appellate Court is not bound to go into the question.[14]

Suit filed beyond limitation. It has been held in 1986 SCMR 1957 as also in some other recent judgments of this Court that the High Court would not be obliged to examine the question of limitation *vis-a-vis* institution before a lower Court if the question is raised by the party concerned before the lower Court. It would, however, be open to it if, in the circumstances of a particular case, it is deemed proper to notice and examine the question of limitation.[15] The Appellate Court is certainly bound to consider whether the appeal is within time or not but it is not called upon to consider whether the suit has been rightly held to be within

7. NLR 1985 SCJ 539 + 1968 S.C.M.R. 981 (DB) + NLR 1985 CLJ 192.
8. 1989 CLC 1584 = NLR 1989 Civ. 466.
9. PLJ 1989 SC 357 + 1989 SCMR 1826.
10. 1985 SCMR 799 = PLJ 1985 SC 207 = NLR 1985 SCJ 238 = 1985 PSC 444, 504, 1324.
11. AIR 1935 All. 92 (DB).
12. Madh B.L.J. 1954 H.C.R. 391.
13. AIR 1922 Lah. 423 + AIR 1934 Lah. 273.
14. AIR 1938 Pat. 323 + AIR 1918 Mad. 1173 + 8 Bom. 535 (DB) + AIR 1929 All. 485 (DB).
15. PLD 1988 SC 631 + NLR 1989 AC 893 + 1985 SCMR 799 = 1985 PSC 504 = PLJ 1985 SC 207.

time, if no appeal or cross-objection is filed.[16] Therefore a point of limitation *vis-a-vis* Trial Court not having been pressed before a lower appellate forum, next higher appellate forum would not be compelled to entertain same on plea raised by a party who gave it up before lower appellate forum.[17]

Where an Appellate Court finds that suit in the lower Court was instituted after the prescribed period of limitation, it is the duty of the appellate Court to dismiss such suit although the defendant had not set up the plea of limitation.[18] Thus where the suit was liable to be dismissed as barred by time on the short ground that S. 6 of the Limitation Act was inapplicable, the fact that the question was not pointedly raised, nor specifically considered by the Courts below in its proper perspective would not preclude the appellate Court from considering the same. If any of the provisions contained in sections 4 to 25 (inclusive) are inapplicable the mandatory provisions of S.3 are attracted with the result that the Court is bound to dismiss a suit which on the face of it appears to be barred by time.[19]

Where a decree has been passed against several defendants and one of them appeals against the decree, the appellate Court can go into the question whether the suit as against all the defendants was instituted after the period of limitation, and if it finds it was so instituted, it can dismiss the suit as against all the defendants.[20]

Although an appeal may be only from a portion of the decree, the appellate Court has power under Order 41, Rule 33 to consider whether the whole suit was barred by limitation and to dismiss such suit if it be so barred.[1]

14. 'Res judicata' and plea of limitation. The doctrine of *res judicata* applies as well to the decision of a question of limitation as to that of any other question.[2]

It depends on the facts and circumstances of each case whether the question of limitation is *res judicata*.[3] Where a question of limitation has been expressly adjudicated upon and there is no appeal against it, the decision is binding on the parties and on the appellate Court. Where the question of limitation was raised

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16. PLD 1973 SC 295 = PLJ 1974 SC 30 (1985 CLC 2238 not good Law).
17. 1986 SCMR 1957.
18. NLR 1989 AC 464 + PLD 1959 Kar. 760 = PLD 1960 (1) W.P. 441 + AIR 1939 Pat. 421 (DB) + AIR 1953 Assam 30 (DB) + AIR 1953 Bom. 353 (DB) + AIR 1952 Bilaspur 12 + AIR 1951 Cal. 551 + AIR 1936 Nag. 285 + 30 Cal. 761 (DB).
19. AIR 1965 M.P. 102 + AIR 1935 P.C. 85.
20. AIR 1923 Mad. 392 (DB) + AIR 1916 Mad. 887 (DB) + 1958-2 Andh W.R. 339. (No distinction can be made by a Court under S. 3 of the Limitation Act between *ex parte* defendants and defendants who were before the Court).
1. AIR 1941 Oudh 1 (DB) + 8 Nag. L.R. 174.
2. 8 Ind. App. 123 (P.C.) + AIR 1921 P.C. 23 = 48 Ind. App. 45 + AIR 1956 Kutch 13 (Where a question of limitation has been considered and decided by the Court, it cannot be reopened by the Court at a later stage of the same proceedings nor can it be re-agitated and reconsidered in a subsequent proceeding).
3. AIR 1940 Oudh 226 + AIR 1957 Assam 127 (DB) + AIR 1954 Pat. 502 (AIR 1930 Pat. 330 *Foll.*) + AIR 1950 Cal. 515 (DB) + AIR 1938 All. 89 (DB) + AIR 1937 Cal. 581 + AIR 1925 Nag. 82 + AIR 1922 Bom. 118 (DB) + AIR 1920 Pat. 570 (DB) + AIR 1924 Mad. 673 (DB) + AIR 1933 Pat. 210 (DB) + AIR 1929 Lah. 334 + AIR 1928 Lah. 653 (DB)

before the trial Court which held, after hearing the parties that the suit was within limitation and the plaintiff, feeling dissatisfied with a part of the decree, appealed against it, the appellate Court, in the exercise of its duty under S.3, could not go behind and reverse the decision of the trial Court on the question of limitation where the defendant had submitted to the decree and had filed no appeal on the ground that the appeal was time barred. The principle of *res judicata* would prevail and prevent the appellate Court from reversing the decision of the trial Court on the question of limitation.[4]

Where the question whether an application for execution is within time, depends on whether a prior application was within time and it was decided in that application that it was within time, the decision operates as *res judicata*.[5]

15. Consent decree for time-barred claim. Where the Court is satisfied that the parties have entered into a lawful compromise the Court is bound to record such compromise and pass a decree in accordance with it. The fact that it is based on an agreement to satisfy a time-barred claim will not make it unlawful within the meaning of S. 23, Contract Act.[6]

16. Admission on point of limitation. An admission of a counsel on a point of law as to limitation will not bind his client.[7]

17. Waiver of plea of limitation. A party cannot waive a plea of limitation,[8] even when the period of limitation is prescribed by a special or local law.[9] Parties to a suit by agreement neither can waive nor drop plea of limitation nor can they curtail or extend the period as prescribed by the Act except as provided by the Act itself.[10] An agreement to extend period of limitation is illegal, hence not enforceable. Statutory provisions cannot be negated by consent of parties.[11] Therefore consent by defendant vendee not to produce his evidence if plaintiff were to pay him sale price, can in no way be interpreted as relinquishment of defendant's objection pertaining to the suit being time-barred.[12] The bar of limitation, though it may appear to create hardship for the consenting parties, has got to be enforced, as the Legislature has cast a duty upon the Courts to see that remedies are sought within the prescribed time and never after.[13]

Where a party has waived the plea and the Court has not consequently considered the question the party or the Court can take it up again.[14]

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4. AIR 1961 All. 386 + AIR 1921 P.C. 23 + AIR 1921 P.C. 11 + AIR 1936 All. 21 (FB).
5. 8 Ind. App. 123 (P.C.) + AIR 1935 Cal. 664 (DB) + AIR 1921 P.C. 23 = 48 Ind. App. 45.
6. AIR 1920 P.C. 139 = 47 Ind. App. 200 + AIR 1926 Oudh 311 (DB).
7. AIR 1938 Lah. 368 + AIR 1927 Lah. 284.
8. 1989 SCMR 864 + PLD 1985 SC 153 + PLD 1969 S.C. 167 = 21 DLR S.C. 139 + AIR 1940 Lah. 75 + AIR 1956 Pepsu 83 (DB) + AIR 1924 Oudh 127 (DB) + AIR 1915 Mad. 979 (DB).
9. 1989 SCMR 864 + PLD 1985 SC 153 + PLD 1969 SC 167 = 21 DLR SC 139 + PLD 1976 Lah. 686 + PLD 1976 Kar. 433 (DB).
10. 1983 CLC 888 (Kar).
11. PLJ 1980 Kar. 387 = 1980 CLC 921.
12. NLR 1988 CLJ 372 (DB).
13. PLJ 1985 SC 186 + PLD 1976 Kar. 973 = PLJ 1977 Kar. 200.
14. PLJ 1985 SC 186 + AIR 1940 Lah. 75.

Waiver of plea of limitation by one of the judgment-debtors cannot bind the others.[15]

18. Contract or custom cannot override the statute. An agreement to extend the period of limitation would come within the provisions of S. 23, Contract Act, as tending to defeat the provisions of the Limitation Act, and would, therefore, be void.[16] Similarly an agreement not to plead limitation would be void under S. 23, Contract Act, and cannot be relied upon in answer to a plea of limitation.[17] But an agreement by a promise under a contract to extend time for performance of the promise by the other party is valid and is not affected by S. 23, Contract Act.[18]

Agreement reducing period of limitation. There is nothing in this section to justify the inference that a stipulation allowing curtailment of period of limitation in an agreement is void.[19] But in a Peshawar case it was held that even such agreement was void and a clause in a contract providing that no claim or dispute of any sort whatever can be recognised, if not made in writing within 60 days from due date of payment does not take away the statutory right of a plaintiff to bring his claim within the time prescribed by law.[20]

'Wajib-ur-arz.' Entries in a *wajib-ul-arz* cannot override the law of limitation.[1]

19. Estoppel against pleading limitation. Every person against whom a suit has been instituted cannot be estopped from contending that it has been instituted after the prescribed period of limitation.[2] However, in exceptional cases, a defendant has been held to be debarred from raising the plea of limitation on the general principle of estoppel arising from his conduct. This will be particularly so if the plea belatedly taken involves an inquiry on facts.[3] Similarly a person cannot approbate and reprobate the same transaction, therefore where he has elected a certain course and by accepting benefits under it, he has lead the other party to act in a particular way, he will be estopped from subsequently changing his stand and raising a plea of limitation.[4]

Waiver of plea of limitation by parties. Limitation being a matter of statute and provisions being mandatory, it could not be waived and even if waived could be taken up by party waiving it and by Court itself. Defendant, however, in exceptional cases, was debarred from raising plea of limitation on general principle of estoppel arising from his conduct particularly if plea belatedly taken

15. AIR 1940 Lah. 75.
16. PLD 1973 Lah. 131 + 1980 CLC 921 = PLJ 1980 Kar. 387 + AIR 1925 Oudh 502 (DB) + AIR 1917 Pat. 132 (DB) + AIR 1932 All. 273 (FB) + AIR 1923 All 1 (FB). All 273 (FB) + AIR 1923 All 1 (FB) + AIR 1915 Mad. 979 (DB).
17. AIR 1917 Mad. 892 (DB) + (1849) 5 Moo. Ind. App. 43 (P.C.) + AIR 1917 Pat. 132 (DB) + AIR 1926 Oudh 311 (DB).
18. AIR 1927 All 451 (DB) + AIR 1917 Mad. 539 (FB).
19. PLD 1973 Lah. 131.
20. PLD 1969 Pesh. 313 = 21 DLR (W.P.) 367 (DB).
1. 28 All 337 (DB).
2. AIR 1932 All 273 (FB) + 3 All. 585 (FB) + AIR 1921 Bom. 252 (DB) + AIR 1915 Mad. 244 (DB).
3. PLJ 1985 SC 186.
4. AIR 1965 S.C. 241.

involved an inquiry on facts.[5] The fact that the counsel has waived plea of limitation does not estop his client from raising the plea.[6]

20. Proceedings to which this section applies. The section applies to suits, appeals and applications for which a period of limitation is prescribed by the first schedule to the Act. A proceeding which does not fall within any of these categories is not subject to any period of limitation under the Act.[7] The concepts, authorities and procedures under the Frontier Crimes Regulation are different from those under ordinary laws. Therefore this Act does not apply to provisions under the Regulation.[8]

Application by liquidator or company. Although an application by the liquidator of a company for an order under section 186, Companies Act, for the recovery of money due from a contributory may neither be a "suit" nor an application to which the first schedule of the Act apples, yet such application will not be maintainable if on the date of the application recovery of the sum by suit is barred by limitation.[9]

Application by Official Assignee. An application by the Official Assignee under section 7, Insolvency Karachi Division and Dacca Act, for recovery of money due from a debtor to the insolvent's estate, though not a "suit" is equivalent to a suit for purposes of limitation.[10]

Alternate remedy to suit provided by law. Where the normal remedy for the recovery of money is by suit and the law provides a summary and concurrent remedy by means of an application, it cannot be the object of the law to make it possible to recover by the summary proceeding money, the recovery of which by a suit is barred by limitation.[11] But where the other remedy is not an alternate remedy but an independent remedy, the limitation provided by that remedy is not superseded by the schedule to this Act. The liability of a contributory to pay the money due on shares in a company in liquidation is a statutory liability under section 156, Companies Act, and although a suit for such money may be barred by limitation under Article 112, Limitation Act, the liability under S. 156, Companies Act, can be enforced against him.[12]

Proceeding for which no limitation is provided. The Act does not apply to applications to the Court to do anything which the Court can do of its own motion and for which no application is necessary.[13]

An application for the amendment of clerical and arithmetical errors in judgments and decrees is not subject to any period of limitation.[14]

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5. PLD 1985 SC 153=NLR 1985 AC 551.
6. AIR 1938 Lah. 368.
7. AIR 1917 Low Bur 17+AIR 1948 Bom. 387.
8. PLD 1970 Quetta 93 (DB).
9. AIR 1933 P.C. 63=60 Ind. App. 13.
10. AIR 1936 Mad. 778 (FB).
11. AIR 1933 P.C. 63=60 Ind. App. 13.
12. 20 Bom. 654 (DB)+31 Mad. 66 (DB)+AIR 1916 All 317 (DB).
13. AIR 1924 Lah. 331 (DB)+22 Cal. 425 (DB)+30 Bom. 415 (DB)+8 All 519 (DB)+4 Mad. 172 (DB).
14. 8 All 519 (DB)+11 Bom. 284 (DB)+AIR 1929 All 337+AIR 1927 Rang. 57 (DB)+AIR 1929 Nag. 34 (DB).

Application for revision under S. 115, Civil P.C. is not governed by any period of limitation.[15] But the High Court will refuse to interfere where application for revision has been made after undue delay.[16]

Proceedings under the Workmen's Compensation Act are not governed by the Limitation Act.[17]

Juristic person. Suits by juristic persons are subject to the law of limitation and enjoy no special privilege.[18]

Sacred property, suit as to. The section applies without distinction to suits concerning both sacred and secular property. Therefore a suit relating to a mosque is subject to the rules of limitation prescribed in the Act.[19]

Arbitration proceeding. Under S. 37 of the Arbitration Act. X of 1940, all the provisions of the Limitation Act are applicable to arbitrations as they apply to proceedings in Court.[1]

21. Inherent powers of Court. An application to the Court to exercise its inherent powers is not governed by any period of limitation.[2] But as it is discretionary with the Court to exercise its inherent powers, it can refuse to do so if there has been undue delay in invoking such powers.[3] Therefore a person who has failed to avail himself of a definite remedy provided by law within the prescribed period of limitation cannot invoke the inherent power of the Court.[4]

22. Set-off and counter-claim. An equitable set-off can be claimed where a suit for the amount claimed would have been barred by limitation.[5] Thus in proceedings for the winding-up of a company, the Official Liquidator in exercising his rights under the mutual credit clause can set-off against a debt due from the company, a debt which the debtor owes to the company although the latter debt may be time-barred.[6]

Counter-claim. In the case of set-off, the date with reference to which the test of limitation is applied is the date of the institution of the suit wherein the set-off is claimed; in the case of a counter-claim the date with reference to which

15. AIR 1922 Pat. 525 (DB) + AIR 1952 Ajmer 11 + AIR 1950 Assam 6 (DB) + AIR 1930 Oudh 401 + AIR 1933 Pesh. 51.
16. AIR 1933 Lah. 175 + ILR (1951) 1 Cal. 198. (The invariable practice followed by the Calcutta High Court is that such application should be made within ninety days of the passing of the order sought to be revised) + AIR 1953 Him. Pra. 60. (Revision under Art 227 of the Constitution + AIR 1952 Him. Pra. 63 + AIR 1951 Him. Pra. 16 + AIR 1922 Mad. 63 + AIR 1933 Pat. 582 + AIR 1926 Nag. 65 + AIR 1930 Oudh 496 (DB) + AIR 1926 All 577 + AIR 1928 Mad. 528 (DB).
17. AIR 1938 Cal. 348 (DB).
18. AIR 1938 Lah. 369 (FB)
19. AIR 1938 Lah. 369 (FB).
1. AIR 1960 Cal. 6 (SB).
2. AIR 1927 All 439 (DB) + AIR 1949 Pat. 112 (DB).
3. AIR 1925 All 236 (DB).
4. AIR 1935 Cal. 336 (DB) + AIR 1925 Lah. 321 + AIR 1933 Mad. 258 (DB) + AIR 1924 Rang. 274 (DB) + AIR 1932 Oudh 220 (DB) + AIR 1928 Nag. 91.
5. AIR 1926 Pat. 77 (DB) + AIR 1925 Cal. 1146 (DB) + ('82) 6 Bom. 628.
6. AIR 1941 All 278 + AIR 1957 Ker. 100.

limitation is determined is the date on which the written statement making the counter-claim is filed.[7]

Where the defendant in a suit makes a counter-claim against the plaintiff, such counter-claim can be made only where at the date when it is made an independent suit for the amount claimed would have been in time.[8]

23. Insolvency proceedings. A debt not barred by limitation on the date of adjudication is provable in insolvency, although barred on the date of its proof.[9]

Application by creditor. Application by a creditor under the Provincial Insolvency Act to be brought on the schedule of creditors is not governed by any period of limitation. But such application may be refused on the ground of undue delay on his part.[10]

Application by official Assignee. An application by an Official Assignee under S.7 of the Presidency Towns Insolvency Act for recovery of money due to the estate of the insolvent cannot be allowed if on the date of the application a suit for recovery of the moneys would have been barred by limitation.[11]

24. Exemption from limitation, plea of. Where a suit is instituted after the period of limitation, the plaint should show grounds upon which exemption from limitation is claimed.[12] This may be done directly or indirectly to satisfy the provisions of O.7, R.6. It is not necessary that the ground of exemption, should be set forth in explicit terms.[13]

Amendment of plaint. Where a plaint does not state the ground of exemption from limitation, a Court can allow the plaint to be amended by including in it such ground,[14] or an additional ground of exemption or substituting a new one.[15]

Where a plea of exemption is capable of determination on the facts before the Court, the point can be allowed to be raised at any stage.[16] But a plaintiff will not be allowed to plead a ground of exemption at a late stage of the proceedings where such ground raised new questions of fact and cannot be disposed of on the facts before the Court.[17]

Rejection of plaint. Where a suit is instituted after limitation and no grounds of exemption from limitation are set out, the Court may reject the plaint under

7. AIR 1934 All 427 (DB)+1956 Trav-Co. 239 (DB)+AIR 1921 Cal. 67+AIR 1923 Bom. 113.
8. AIR 1925 Nag. 445+AIR 1920 Mad. 819 (DB)
9. AIR 1924 Oudh 351 (DB)+AIR 1925 Pat. 438 (DB)+AIR 1926 Oudh 621 (DB).
10. AIR 1927 Rang. 263 (DB).
11. AIR 1936 Mad. 778 (FB).
12. AIR 1937 Mad. 826+AIR 1952 Pepsu 85 (DB)+AIR 1947 Oudh 91+AIR 1935 Cal. 255+('10) 34 Bom. 540 (DB)+AIR 1933 Lah. 491+AIR 1924 Nag. 80+AIR 1924 Pat. 806 (DB)+AIR 1914 Sind 70 (DB).
13. ('08) 7 Cal. L. Jour 560 (DB)+('09) 11 Cal. LJour 34 (DB).
14. ('10) 34 Bom. 250 (DB)+AIR 1918 Lah. 220=1918 Pun. Re. No. 102+AIR 1927 Mad. 504+AIR 1920 Nag. 200+AIR 1935 Oudh 501 (DB).
15. AIR 1935 Mad. 158+AIR 1948 Nag. 334 (DB).
16. AIR 1918 Mad. 238 (DB).
17. AIR 1934 P.C. 208+AIR 1941 Nag. 100.

O.7, R.11, Civil P.C., the plaintiff cannot be allowed to rely on any ground not shown in his plaint.[18]

Bar of limitation appearing during proceedings. Where the bar of limitation appears only during the course of the trial, failure of the plaintiff to plead in his plaint exemption from the ordinary rule of limitation will not preclude him from raising such point at the hearing.[19]

25. Limitation applies only to commencement of proceedings. The bar of limitation can only be raised against the commencement of proceedings. It does not touch proceedings at a subsequent stage. Where a suit dismissed for default is restored to the file, it does not become a fresh suit but is only a continuation of the old suit.[20] Similarly where a suit is validly instituted, but the plaint is returned for some purpose and represented, such representation is only a continuation of the suit and does not affect the question of limitation.[1]

26. Amendment of plaint. Where a proposed amendment does not alter substantial nature of the suit, there is no question of the defendant being deprived of any possible defence of limitation and the amendment can be allowed even when a fresh suit on the cause of action had been barred by limitation at that time.[2] Where a Court allows amendment of a plaint, presentation of amended plaint relates back to original presentation of plaint and the date of original presentation of plaint has to be taken to be date of institution of suit for the purpose of Section 3, Limitation Act, and this principle can be applied to amendment sought for to correct misdescription of property.[3] Where an amendment was sought in a suit for declaration to add the consequential relief of possession, the Court repelled the contention that as at the time of application for amendment limitation for suit had expired, the suit should be dismissed.[4] Where delay was caused by proceedings to determine whether an amendment in plaint was necessary or not. It was held that the plaintiffs cannot be blamed for the delay that occurred in applying for the amendment. Almost all the time was spent in getting a decision from the Courts at various levels on the questions whether the amendments were indeed necessary or not. In the special circumstances it would appear that the amendments could be allowed even if a fresh suit involving these reliefs would have been barred by time on the date of the application for amendment.[5]

Amendment of substantial character. A Court will refuse an amendment, if it alters substantial character of the suit and if, at the time when amendment is sought, a fresh suit would have been barred by limitation.[6] It has however been

18. AIR 1923 Nag. 30 + AIR 1922 Lah. 39 (DB) + ('07) 17 Mad. LJour 281 (DB) + ('04) 31 Cal. 195.
19. AIR 1919 Lah. 20 = 1 Lah. 89 + AIR 1919 All. 227 (DB) + AIR 1922 Oudh 135.
20. 1909 Pun. Re. No. 31, p. 87 (DB).
1. AIR 1930 Lah. 480 + AIR 1956 Cal. 644.
2. PLJ 1981 AJ&K 144 = PLD 1981 AJ&K 110 = NLR 1981 CLJ 646 + AIR 1957 SC 363 + AIR 1948 Nag. 334 (DB).
3. 1984 PSC 867 = PLD 1984 SC (AJ&K) 115 = PLJ 1984 SC (AJ&K) 99.
4. PLJ 1983 SC 538 + PLJ 1981 AJ&K 144 = PLD 1981 AJ&K 110 = NLR 1981 CLJ 646.
5. PLD 1973 SC 507 = PLJ 1973 SC 128.
6. AIR 1938 Pat. 44 (DB) + AIR 1957 S.C. 363 + AIR 1937 Mad. 122 + AIR 1932 Bom. 367 + AIR 1931 All 160 (DB) + AIR 1924 Sind 144 = 19 Sind L.R. 262 (DB) + AIR 1931 Nag.

held that even if an amendment alters substantial character of a suit and at the time when the amendment is sought a fresh suit would be barred, the amendment can be allowed where the plaintiff through clumsy blundering asserts rights in form not permitted by law,[7] or where natural justice is not on the side of defendant and his plea of limitation is purely technical.[8]

27. Conversion of proceedings. Where a Court has discretion to convert a proceeding of one character into a different kind of proceeding and where the proceeding as converted would be barred by limitation, the Court will refuse to convert the proceeding.[9]

28. Withdrawal of suit and institution of fresh suit. Under O. 23, R. 2, a plaintiff withdrawing a suit under O. 23, R. 1 with liberty to sue again and instituting a fresh suit is not entitled to deduct from the period of limitation applicable to his second suit, the time taken up by the withdrawn suit.[10] The rule applies only where a period is fixed by the law of limitation. Hence, where a plaintiff who is required by the order of a Revenue Court to institute a suit within three months, does so within three months but withdraws the suit with liberty to sue again, his subsequent suit brought on the basis of such liberty is not barred, though it may be instituted after the expiry of three months from the Revenue Court's order.[11]

29. Rejection of plaint. See O. 7, R. 11, C.P.C.

30. Summary rejection of appeal. An appeal cannot be rejected summarily without fixing a date for the appearance of the appellant and hearing him even though it may be barred by limitation.[12]

31. Effect of non-compliance with section. The decision of a Court decreeing or allowing a suit or other proceeding which is barred by limitation constitutes illegal assumption of jurisdiction,[13] but until the decision is set aside in revision, appeal or possibly review, that decision stand.[14] An implied extension of time cannot be inferred from the mere fact that the Court admitted the appeal to a regular hearing, It is well settled that there could not have been *ex parte* condonation or extension of time and even in cases where *ex parte* condonations are made, the affected parties can always, on coming to know of such orders, take exception thereto and claim that the matter is barred by time, the extension of time, if any, is illegal and that effect should be given to a plea of limitation.[15] Even if the order of the admitting Bench purports concisely to condone delay the matter can be reagitated by the opposite party on the ground that he had no notice in this

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74+AIR 1932 Rang. 26+AIR 1932 Bom. 117 (DB)+AIR 1933 Lah. 774=14 Lah. 807+AIR 1931 Mad. 542 (DB).

7. AIR 1921 P.C. 50=47 Ind App. 255.
8. ('68) 9 Suth W.R. 9 (P.C.).
9. AIR 1917 Mad. 453 (DB).
10. 20 Ind Cas. 205 (DB) (Cal.)+AIR 1934 All 688 (FB)+AIR 1938 Bom. 281 (DB).
11. AIR 1914 All 400.
12. AIR 1925 Oudh 643+('09) 5 Low Bur Rul. 15.
13. PLD 1973 Kar. 603+PLD 1962 Kar. 8=PLR 1962 (1) W.P. 523+AIR 1932 All 273 (FB)+8 Ind. App. 123 (P.C.).
14. PLD 1962 Karachi 8=PLR 1962 (1) W.P. 523.
15. PLD 1966 Lahore 319 (DB)+PLD 1969 S.C. 167=21 DLR (S.C.) 139.

behalf and had no opportunity to defend the finality of the judgment and decree already made in his favour.[16]

32. Onus of proof. The onus of proving that a suit has been instituted within the period of limitation is on the plaintiff.[17] Where a suit is prima facie barred by limitation the onus of proving the circumstances which save the suit from such bar is on the plaintiff.[18]

Admission by defendant. In the absence of a specific denial in the written statement of an allegation made in the plaint, the defendant may be held to have admitted the truth of the allegation.[19]

Burden, when shifts to defendant. To succeed in rejection of an action, it is enjoined upon the party seeking dismissal of suit on ground of limitation to prove that the action was beyond time and this would depend upon the nature of an action and circumstances on which it rests.[20] In this connection regard must always be had to the party in whose knowledge the relevant facts may appear to be.[1] Where the plaintiff has given prima facie proof in support of his allegations, the onus will shift to the defendant and it will be for him to demolish the case made out by the plaintiff.[2] Similarly where the suit as framed is within limitation but the defendant sets up different facts and limitation, it is for the defendant to establish the bar of limitation.[3] In other words a party raising the plea of limitation should establish the facts on the basis of which it can be concluded that the suit is barred by time.[4]

Where time does not begin to run unless and until the plaintiff has knowledge or notice of certain facts, the onus of proving knowledge of facts at a date earlier than that admitted by the plaintiff lies on the defendant.[5] Thus where an *ex parte* decree was set aside on the ground of want of knowledge of the decree by the defendant after expiry of limitation, the burden of proving want of knowledge lay upon the respondent, and the decree should not have been set aside unless he proved such want of knowledge.[6]

Execution petition. The onus to establish that on execution application is within limitation is on the decree-holder. When the decree-holder complies with the requirements of O. 21, R. 11 (2) (*f*), it is open to the judgment-debtor in his

16. PLD 1966 Baghdad-ul-Jadid 14 (DB).
17. NLR 1989 SD 410 + PLD 1959 Lah. 295 (DB) + AIR 1940 Mad. 639 + AIR 1948 P.C. 36 = 74 Ind. App. 285 = ILR 1947 Lah. 727 = ILR 1947 Kar. (P.C.) 422 + ('69) 12 Moo Ind. App. 289 (P.C.) + AIR 1926 P.C. 9 = 53 Ind. App. 24 + AIR 1959 Ker. 377 (DB) + AIR 1955 Trav-Co. 188 + AIR 1955 Nag. 126 (DB) + AIR 1953 Pepsu 74 (DB). (This is more so in a case where time begins to run from the date of the plaintiff's knowledge of particular event) + AIR 1950 East Punj. 157 + 1948 All W.R. (Rev.) 165.
18. AIR 1926 P.C. 9 = 53 Ind. App. 24 + AIR 1955 Trav-Co. 188 + ILR (1954) 4 Raj. 1019 + AIR 1947 Lah. 322.
19. AIR 1916 Bom. 103 (DB) + AIR 1916 Pat. 39 (DB) + AIR 1923 Cal. 578 (DB).
20. PLD 1988 SC (AJ&K) 199 = NLR 1988 SCJ 408 = 1988 PSC 1988.
1. AIR 1956 Nag. 126 (DB).
2. 7 All 677 (DB) + AIR 1929 All 908 (DB) + AIR 1917 Pat. 443 (DB).
3. AIR 1957 All 575 (DB).
4. PLD 1984 Kar. 211.
5. 2 Nag. L.R. 98.
6. PLD 1973 Kar. 603.

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objection petition that the execution application was not in accordance with law or did not constitute a step in aid of execution or was not made to the proper Court.[7]

33. Technical plea of limitation. The provisions of the Act must be given effect to although in the particular case the effect may be inconsistent with natural justice.[8] But where a defendant has no merits on his side and succeeds purely on a technical plea of limitation, the Court will take this fact into consideration while passing orders as to costs.[9]

Amendment of plaint to deprive defendant of plea of limitation. Where an application for the amendment of a plaint is opposed on the ground that the defendant would thereby be deprived of defence of limitation, the Court would generally allow the amendment if it considers that the plea raised by the defendant is a technical one.[10]

34. Delay in filing suit. In the absence of the acquiescence on the part of the plaintiff, mere delay by him in the institution of proceedings where limitation has not actually expired will not defeat his rights except in cases in which it is within the discretion the Court to grant him the relief asked for.[11] Undue delay on the part of the plaintiff in bringing his suit will be a circumstance which the Court will take into consideration in judging the truth of the allegations put forward by him.[12]

35. Concurrent remedies, limitation for. Where an *ex parte* decree is passed against a person, each of the remedies available to him will be governed by its own period of limitation.[13]

Remedies not separable. Where the concurrent remedies available are not separable, a party would have to abide by one limitation only. Thus an 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. and S. 42 of the Specific Relief Act. Limitation for both the reliefs would, therefore, run from the date on which the right to sue accrued to him.[14]

Suit dismissed for default. Where a suit has been dismissed for default, or an *ex parte* decree has been passed, an application for review cannot be granted merely on the ground that application for restoring the suit or for setting aside an *ex parte* decree would be barred by limitation if made at that time.[15]

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7. AIR 1964 Orissa 170.
8. AIR 1929 Cal. 641 + AIR 1924 Sind 47 (DB) + AIR 1951 Mad. 491.
9. 20 Bom. 109.
10. AIR 1921 P.C. 50 = 47 Ind. App. 255.
11. 29 Mad. 500 (DB) + AIR 1960 Cal. 351 (DB) + AIR 1955 Pat. 201 (DB). (Contract for the sale of land--Delay in filing suit--Suit held should not be dismissed on that ground) + AIR 1954 Nag. 65 (Suit for specific performance filed on last date of limitation--Plaintiff not guilty of laches) + AIR 1953 Mys 22.
12. AIR 1922 P.C. 378 - AIR 1930 All 322 (SB).
13. AIR 1920 Mad 633 (DB) + AIR 1929 Sind. 38 (DB).
14. AIR 1964 Orissa 111 (DB).
15. AIR 1933 Pat. 557.

36. Revision on question of limitation. Where decision of the Court on point of limitation is affected with any irregularity or illegality as to the manner in which such decision has been arrived at, a revision will be competent.[16] Therefore refusal or failure of the Court to decide a material question of limitation may be a ground for interference in revision.[17] Waiver of question of limitation by respondent before appellate Court and omission on the part of that Court to decide the question, would, not deprive High Court of its power under S.115, C.P.C. to *suo motu* go into the question if material already on record was sufficient to establish that suit was beyond time.[18] If in construing the necessary provision of the Limitation Act or in determining which provision of the Limitation Act applies, the Subordinate Court comes to an erroneous decision, it is open to the High Court in revision to interfere with that conclusion as that conclusion led the Court to assume or not to assume the jurisdiction to proceed with the determination of that matter.[19] It must however be noted that even where otherwise a revision is competent, High Court will refuse to interfere except where it is necessary in the interests of justice to do so.[20]

Point not pressed in appeal. Where it was pleaded in written statement that suit was not within time and issue was framed on this objection. The issue was decided against petitioner and was not pressed at the time of hearing of appeal. Petitioner cannot raise the question in civil revision before High Court.[1]

Where the question of limitation was not taken before appellate Court but was taken for the first time before High Court in revision and even then he did not give in the revision petition material on which his contention was based, High Court refused to interfere in revision.[2]

Provincial Small Cause Courts Act. The powers of the High Court under section 25 are not limited to the question of jurisdiction but extend to the power to see whether the judgment has been rendered according to law. Section 3 of the Limitation Act being mandatory it is indisputable that it has to be obeyed in full. Any decision contrary to that section must be open to interference in exercise of the powers of revision.[3]

37. Review. The mere fact that a judgment does not state that certain aspects of the question of limitation were considered is not a sufficient ground for review.[4] But where the bar of limitation is clear on the facts found by the Court, and the Court has failed to notice such bar, the decision can be set aside in review.[5]

16. PLD 1985 SC 153 = NLR 1985 AC 551 + AIR 1929 All 593 (DB) + 12 Bom. 617 (DB).
17. AIR 1938 Bom. 209 + AIR 1938 Rang. 87 (DB) + AIR 1919 Lah. 422 + AIR 1927 Mad. 436 (DB) + AIR 1926 Cal. 444 (DB) + AIR 1915 All 240 (DB) + AIR 1933 Pat. 132.
18. PLD 1985 SC 153 = NLR 1985 AC 551.
19. AIR 1964 S.C. 1336.
20. AIR 1925 All. 164.
1. PLJ 1989 Lah. 541.
2. 1986 Law Notes 242.
3. AIR 1964 A.P. 462 + AIR 1963 S.C. 698 + AIR 1915 All 449 + AIR 1935 Lah. 137 + AIR 1935 All 716.
4. AIR 1929 Nag. 89.
5. AIR 1928 Lah. 919 (DB) + AIR 1929 Nag. 185 (DB).

38. Supreme Court. Where the plea of limitation was not raised before lower Court, Supreme Court refused to entertain it.[6] However bar of limitation may be applied by Supreme Court in place of concurrent finding to the contrary by Courts below.[7]

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

Synopsis

1. Scope.
2. Acts directed to be done by decree or order of Court.
3. Private agreement between parties.
4. Proceedings under local and special laws.
5. Expiry of period prescribed.
6. Acknowledgment or payment during vacation.
7. Assignment of interest during vacation.
8. Suit on end of legal disability to sue.
9. Exclusion of time for obtaining copies.
10. Proceeding in wrong Court-exclusion of time.
11. When Court is closed.
12. Court' means proper Court.
13. "Suit, appeal or application may be instituted, preferred or made.".
14. "Day that Court reopens."
15. Closure of Court, if mention of in pleading necessary.

1. Scope. This section is based on the general principle of law enunciated by the maxims *"Lex non cogit--a dispossibilia"* the law does not compel a man to do that which he cannot possible perform, and *"Actus curiae neminem gravabit"* an act of the Court shall prejudice no man.[8] The language employed in section 4 of the Limitation Act indicates that it has nothing to do with computing the prescribed period. What the section provides is that, where the period prescribed expires on a day when the Court is closed notwithstanding that fact, the application may be made on the day that the Court reopens, so that there is nothing in the section which alters the length of the prescribed period.[9]

General Clauses Act, S. 10. The section does not apply to other acts allowed to be done by law on a certain day or within a prescribed period. Such cases are governed by S. 10 of the General Clauses Act, 1897.[10]

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6. 1988 SCMR 1526.
7. PLJ 1974 SC 132.
8. 1980 SCMR 375+AIR 1949 Nag. 141 (DB)=AIR 1955 Nag. 300=ILR 1956 Nag. 242.
9. 1989 CLC 1033+PLD 1990 AJ&K 1+PLJ 1981 Lah. 329+1980 SCMR 375+PLD 1962 Pesh. 21 (DB)+AIR 1935 P.C. 85.
10. AIR 1942 All 429=ILR 1943 All. 84 (FB). (Per Full Bench--Section 10, General Clauses Act, applies to petition of insolvency under S. 9, Provincial Insolvency Act; Section 4, Limitation Act also applies)+AIR 1955 Nag. 300=ILR 1956 Nag. 242 (DB). (Even if S. 4, Limitation Act is not applicable to cross-objection the respondent can invoke S. 10, General Clauses Act)+('06) 3 Cal. L. Jour 339 (DB).

Limitation prescribed by O. 45, R. 7, C.P.C. Where period of limitation for appeal is prescribed under O. 45, R. 7 for deposit of costs in Supreme Court and on the day on which limitation expires the Court is closed this section does not apply but S. 10, General Clauses Act applies to the case.[11]

Payment under. O. 21, R. 89, C.P.C. Tender of amount under O. 21, R. 89 must be considered as an application governed by this section.[12] Where tender was made on the last day and the Court, though not closed was yet unable to receive the deposit, the tender could be received next day on the general principle that the act of a Court shall prejudice no party.[13]

2. Acts directed to be done by decree or order of Court. Section 10, General Clauses Act, is limited in its scope. It does not apply to cases where the act is to be done under a decree or order of a Court within a particular period and the period expires on a holiday. In such cases the general principle will apply,[14] and a valid tender of money to Court on the re-opening day will be equivalent to actual deposit and if the Court is unable, for no fault of the party to accept the deposit on that day, the deposit on the next day will be accepted as proper on the principle that the act of the Court shall prejudice no man.[15] Where the Court ordered deposit of pre-emption money by a specific date, that date being a holiday, the pre-emptor, on re-opening of Court, made application for deposit of pre-emption amount which was resisted by vendee who made application for dismissal of suit due to failure of pre-emptor to deposit the amount on specified date. All that the pre-emptor was required to do under the decree was to make payment into the Court which he did and subsequent proceedings regarding the deposit of the amount in Treasury or Bank being conducted by him were in aid of the Court and was not his individual responsibility under the decree. Non-deposit of amount on that very day was not the result of any negligence on pre-emptor's part for which he could not be legally deprived of the fruit of valid decree passed in his favour. Direction contained in the decree for payment of balance of sale consideration had thus been duly complied with and there was an executable decree for possession through pre-emption of the suit land in favour of pre-emptor which the Executing Court was bound to execute.[16]

3. Private agreement between parties. This section does not apply to payments to be made under a private agreement between the parties.[17] Thus where the condition for repurchase has under the terms of the agreement to be performed within the stipulated time and the deed expressly states that the

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11. AIR 1939 Pat. 667.
12. AIR 1922 All 195.
13. AIR 1926 Nag. 331+AIR 1950 All 367+AIR 1948 Nag. 63=ILR 1947 Nag. 494. (Court away on casual leave--Tender must be made on next day).
14. ('11) 9 Ind Cas 181 (Cal.)+AIR 1955 Nag. 300=ILR 1956 Nag. 242 (DB) (If neither of S. 4, Limitation Act nor S. 10, General Clauses Act applies to a cross-objection, the respondent can invoke the general principle)+AIR 1927 Mad. 1196 (DB)+AIR 1921 Lah. 6 (FB)+AIR 1923 Nag. 246=19 Nag. L.R. 116+AIR 1926 Nag. 331+3 Cal. L. Jour 339 (DB)+AIR 1949 Nag. 141=ILR 1948 Nag. 612 (DB)+('08) 11 Oudh Cas 144+AIR 1924 All 218=46 All 328 (FB) (*Overruling* AIR 1918 All 13 and AIR 1922 All 278)+('98) 21 Mad. 385 (DB).
15. ('08) 11 Oudh Cas 144+('11) 10 Ind Cas 51 (DB) (Cal.).
16. 1990 CLC 3 (DB).
17. AIR 1920 Pat. 122 (DB)+AIR 1934 Oudh 303=9 Luck. 475.

condition would be void after the 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.[18]

Suit, limitation for. Where in spite of a condition, corresponding to para 3 of R. 6 of Art. 3 of the Act, contained in the contract between the parties, under which a suit for damages should have been brought within one year from the date of delivery of the goods or from the date the goods should have been delivered the consignee did not bring the suit within the prescribed period due to the fact that the Court was in recess and brought the suit on the date on which the Court reopened, although by that time, the prescribed period had expired. It was held, that the suit was within time. The period of one year having been prescribed not by any enactment but only by a contractual term, neither S. 4 of the Limitation Act (1908) nor S. 10 of the General Clauses Act (1897) applied to the case.[19]

4. Proceedings under local and special laws. The section is applicable to the following proceedings under special or local laws:--

(a) Application under S. 23 of the Press (Emergency Powers) Act, 1931.[20]

(b) Petition of insolvency under S. 9,[1] or application under S. 54 of the Provincial Insolvency Act.[2]

5. Expiry of period prescribed. This section assumes that the period prescribed expires on a day on which the Court is closed and says that notwithstanding such expiry the proceeding may be taken on the day the Court re-opens.[3]

Exclusion of time under S. 14. Where there is ground for excluding certain periods under S. 14, in order to ascertain what is the date of the expiration of the prescribed period, the days excluded from operation by way of limitation have to be added to what is primarily the prescribed period.[4] If on the date of the

18. AIR 1961 Madras 276.
19. AIR 1964 Kerala 190 (DB).
20. AIR 1939 Pesh. 6 (DB).
1. AIR 1955 Trav-Co. 2 (FB).
2. AIR 1938 Nag. 454 = ILR 1939 Nag. 377.
3. PLD 1962 Pesh. 21 + AIR 1940 Mad. 908 + AIR 1954 Mad. 112 (Promissory note becoming time barred on 15th--Suit filed in Small Cause Court on 19th on which Court re-opened after summer vacation--Suit held was not barred) + AIR 1954 Mys. 49 = ILR 1954 Mys 281 (DB) (Period prescribed by Special Act expiring on day when Courts are closed--Election petition can be filed on day Courts re-open) + AIR 1948 Nag. 63 = ILR 1947 Nag. 494 + AIR 1940 Nag. 401 (DB) + AIR 1938 Lah. 234 = ILR 1938 Lah. 193 (FB) (AIR 1937 Lah. 642, *Reversed* on another point) + AIR 1932 Mad. 287 = 55 Mad. 630 (FB) + AIR 1935 P.C. 85 = 62 Ind. App. 80 (There is nothing in the section which alters the length of the prescribed period) + AIR 1942 All 429 (FB) + AIR 1947 Oudh 3 = 21 Luck 447.
4. AIR 1935 P.C. 85 = 62 Ind. App. 80.

expiration of the prescribed period ascertained after excluding periods operating by way of limitation the Court is closed, then under this section, the proceeding may be taken on the day that the Court re-opens.[5]

6. Acknowledgment or payment during vacation. Acknowledgment or payment made during vacation after the expiry of the prescribed period but before the Court re-opens cannot be said to be made "before the expiration of the prescribed period" and cannot give a fresh period of limitation under Ss. 19 and 22.[6]

7. Assignment of interest during vacation. On the last day of limitation for filing a suit on a pronote, Courts were closed for summer vacation and on reopening day the payee under a promissory note assigned his rights and the assignee filed a suit on the same day. The suit was held to be within time in view of this section.[7]

8. Suit on end of legal disability to sue. This section would apply to a suit to be filed by a person who was under a legal disability when the cause of action arose and was permitted under the law to file the suit after certain period of the ceasing of such disability. Thus where *A* under legal disability on 1st January, 1920 became entitled to sue for recovery of a loan and the disability ceased on 1st January, 1923. The period of limitation was three years from this date. Where the Court was closed on 1st January, 1928 and reopened on 5th January, 1928 the suit could be instituted on 5th January, 1928.[8]

9. Exclusion of time for obtaining copies. In a case to which S. 12 applies the date of the expiration of the period prescribed must be ascertained by adding the days excluded to the prescribed period and if on such date the Court is closed the appellant or the applicant can, under this section, prefer the appeal or make the application on the date when the Court re-opens.[9]

Application for copies made after expiry of limitation. The only privilege that is granted by S. 4 is that a suitor may file his suit on a particular day. If he delays making his application for copies until that day, then he is applying for copies after the expiry of the period of limitation and the extension of time allowed under S. 4 cannot be combined with the extension which he seeks under S. 12.[10] Where limitation for filing an appeal expires on the 19th of August, 1961, but as on that date and the following days of the month of August the Civil Courts were closed,

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5. AIR 1925 Cal. 315 (DB)+AIR 1948 Nag. 15=ILR 1947 Nag. 375 (DB). (Section 4 can be tacked on to S. 14)+AIR 1921 Lah. 124+AIR 1942 Cal. 566=ILR (1942) 2 Cal. 160+AIR 1947 Lah. 168=ILR 1946 Lah. 107 (DB).
6. AIR 1941 Nag. 100=ILR 1941 Nag. 144 (DB) (AIR 1928 Nag. 192. *Overruled*)+AIR 1940 Nag. 401 (DB)+AIR 1939 All 252 (DB)+AIR 1938 All 606=ILR 1938 All 861 (DB)+AIR 1938 Lah. 234=ILR 1938 Lah. 193 (FB)+AIR 1931 Cal. 785=58 Cal. 1148+('02) 26 Bom. 782 (DB)+AIR 1929 Cal. 68=55 Cal. 1210+AIR 1937 Mad. 367+AIR 1947 Oudh 3=21 Luck 447.
7. AIR 1949 Mad. 908+AIR 1940 Cal. 443=ILR (1940) 1 Cal. 323.
8. AIR 1932 Mad. 139 (DB)+AIR 1928 Mad. 1255 (DB)+AIR 1924 Oudh 385 (DB).
9. AIR 1935 P.C. 85=62 Ind. App. 80+AIR 1954 Madh B. 18.
10. PLD 1962 Pesh. 21+AIR 1935 P.C. 85+AIR 1961 Orissa 133+AIR 1942 Mad. 604=ILR 1942 Mad. 868+AIR 1960 Mys. 216. (Application for copies after expiry of limitation--Period not extended by S. 4)+AIR 1959 All 699 (DB) (19 All 342, 25 Bom. 584 and 25 Bom. 586 held no longer good law in view of AIR 1935 P.C. 85).

under section 4 of the Limitation Act the respondents were entitled to present their appeal on the day the Courts reopened, namely, the 1st of September, 1961. But the period of limitation did not stand extended up to the 1st of September, 1961. The time spent in obtaining a copy of the order appealed against could only be excluded under section 12 of the Limitation Act if an application for the copy had been made before the expiry of the period of limitation; and not after such expiry, as was done in the present case. As the appeal was presented not on the 1st of September, but on the 15th of September, 1961 it must be held to be barred by time.[11]

10. Proceeding in wrong Court--exclusion of time. Sections 4 and 14 are not similar in their effect. Whereas under S. 14 of the Act the time spent can be excluded, S. 4 does not entitle a person to add the days on which the Court is closed to the statutory period.[12] The effect of S. 4 is merely to relieve the hardship arising out of the fact that the last day of limitation happens to be a holiday and extend the time for filing an appeal to the next working day. This provision does not pertain to computation of the period of limitation. Section 14 is among the sections which bear computation of the period of limitation. It deals with a plaint filed in a wrong Court, and provides for exclusion of the time taken there and adding the same to the period of limitation when it is filed in the proper Court. In effect, what that section enables, is to add to the period of limitation prescribed, the period which the plaintiff who filed the plaint in the wrong Court is entitled under its provisions to exclude. Reading Ss. 4 and 14 together, it is clear that, where the plaint is out of time on the date when it is filed in a wrong Court, section 14 will be of no avail.[13]

11. When Court is closed. Where the Court is closed on a public holiday on the last day of limitation for filing a suit, the suit may be filed on the next day when the Court reopens.[14] The question whether in a particular case the Court is closed is one of fact depending upon the practice prevailing in that Court.[15]

It is clear that in section 4 of the Limitation Act the expression "Court" means the place where the Court is held and does not refer to the presiding officer because it is only a place that can be closed. If for some reason the court-room is closed so that nobody can enter it, it is obvious that the Court is closed. But if the court-room is open, it does not necessarily follow that the Court is not closed. For example, the Court-room may be open on a day, but it may not be possible to transact any business therein on that day, just as on a holiday, and if that be so, the Court will have to be deemed to be closed on that day for the purposes of section 4 of the Limitation Act.[16]

Gazetted holiday. The only Court holidays which are to be allowed in addition to the prescribed period of limitation for filing a suit, appeal or application are those which fall on the day of the expiry of that period or immediately following it. If the period of limitation is still running when the Court

11. PLD 1962 Pesh. 21.
12. AIR 1948 Nag. 63 = ILR 1947 Nag. 494.
13. 1980 CLC 972 + AIR 1965 Mad. 459.
14. PLJ 1981 Lah. 329.
15. AIR 1955 Nag. 300 = ILR 1956 Nag. 242 (DB) + AIR 1952 Cal. 542 = ILR (1952) 1 Cal. 88.
16. PLD 1960 Lahore 757 = PLR 1961 (1) W.P. 831.

reopens the plaintiff or the appellant cannot claim exclusion of such holiday.[17] A Court is deemed closed for purposes of this section on a gazetted holiday, in spite of the fact that the Judge holds Court on that day.[18] When the day on which the period of limitation expired for an appeal is a gazetted holiday, and the District Judge holds Court on that day, a presentation of persons on the next following day is not barred.[19]

Where a certain day was declared a gazetted holiday but after that day had passed, the holiday was cancelled by a gazetted notification; it was held that the Court would be deemed to be closed on that date for the purpose of this section.[20]

Office of the Court open during vacation. The notification of the High Court permitting the litigation to file plaints, etc., during the vacations cannot override the statutory provisions of section 4 of the Limitation Act nor deprive the litigants of the benefit of excluding the period of vacations in computing the time of limitation. Therefore in spite of the notification of the High Court permitting the litigants to file a petition during the Summer Vacations, the litigants were entitled to the benefit of section 4 of the Limitation Act and could exclude the period of vacation while computing the time of limitation for filing suit.[1] Thus where limitation for institution of suit expired during summer vacations. Suit filed on first day of reopening of Court after the vacations was within time.[2] But where although certified copies were ready for delivery during the vacations taking delivery thereof after re-opening of Court and filing appeal after five days of re-opening of Court would not entitle appellant for condonation of delay.[3] Where the 90 days period of limitation prescribed for an application under Art. 177, Limitation Act (IX of 1908) for bringing on record legal representatives of a deceased respondent, in accordance with R. 4 of O. XXII, Civil Procedure Code, expired during the summer vacation when the Court was closed "for civil business" but the office was open to receive petitions "from such persons as may choose to present them", and the application was presented on the day the Court re-opened. It was held that the application was within time.[4]

Officer of Court authorized to receive plaints, etc., in Camp. A Court is not closed within the meaning of this section, if the officer authorised to receive plaints is absent from headquarters and is in camp.[5]

Presiding officer working in other district. Where the presiding officer of a Court is working in another district and there is no one authorized to receive plaints, etc., at his headquarter, the Court would be deemed to be closed for the period of his absence. Where a subordinate Judge of *S*, used to sit for a week every month at *L*. During his absence from *S*, the plaintiff presented his plaint at *S*, which was accepted by Naib-Sheriff of the Court. It was placed before the

17. PLD 1973 Lah. 710 (DB).
18. 13 Mad. L. Jour 316 (DB).
19. 20 Mad. 469 (DB).
20. AIR 1963 J&K 1.
1. 1983 CLC 3126 (DB) (Kar.) + 1980 SCMR 375 + 1975 SCMR 452 + PLD 1957 Kar. 843.
2. PLJ 1986 Lah. 268 (DB) = KLR 1986 Rev. C. 46 (DB) + 1987 CLC 650 = NLR 1987 Civ. 37.
3. 1987 CLC 650 = NLR 1989 Civ. 37.
4. PLD 1957 Karachi 843 = PLR 1958 (2) W.P. 398.
5. AIR 1916 Mad. 3 = 38 Mad. 295 (FB).

Subordinate Judge on his return from *L*, who dismissed it as time-barred; it was held that the Court at *S* should be deemed to have been closed during the time when the Subordinate Judge was absent from *S*.[6]

Court open but particular act could not be done. Where the Court was open, but the act of depositing purchase money, which a party desired to carry out through the Court, was refused so that he was not able to carry it out on the day in question; the Court must be considered to have been closed on that date.[7] Similarly though the Court offices may be actually open during the vacation for other work, if there is no one lawfully required to be present for the purpose of receiving a plaint or a petition of appeal or application, the Court will be held to be 'closed' for the purposes of section 4 of the Limitation Act.[8]

When no judicial work was done on a particular day but the Court was open on that day and an appeal, suit, etc., could have been filed on that day, the Court cannot be deemed to have been closed simply because it did not take up any judicial work. Thus where it was stated that "plaints, execution applications and other papers will be received only on the days on which the Judge sits", and it further provided for sitting of vacation Judge on Wednesday and Thursday, the Court was not closed.[9]

Presiding officer of Court on leave. When the Civil Judge is on leave but the office remains open and the plaints are received by his Clerks. It shall be presumed that the Clerk has been authorised to receive the plaints. The authorization does not require a formal order in writing. The Clerk can be authorised even verbally to receive the plaints. At worst it may be said that the Clerk of the Court was not authorised to receive plaints in the absence of the Presiding Officer. Then the Court shall be deemed to have been closed during the time the Presiding Officer is on leave.[10] In that case presentation of plaint before the Presiding Officer on the day of his arrival would tantamount to institution of the suit on the day of opening of the Court and the period during which the Court remained closed due to leave of the Presiding Officer, has to be excluded as plaintiff cannot be condemned for no fault of his.[11]

12. 'Court' means proper Court. The words "the Court" mean the proper Court in which the application ought to be made.[12] Where a plaintiff presents a plaint to a wrong Court of first instance, he is not entitled to any deduction on account of holidays under S. 4.[13] Where the period of limitation expired during summer vacation and the suit was instituted on the opening day in the Court of Civil Judge, First Class but the plaint was returned for presentation to the proper Court and the suit was instituted in the Court of Civil Judge Second Class next

6. PLD 1967 AJ&K 78 (DB) + AIR 1934 Lah. 622 = 15 Lah. 308.
7. AIR 1926 Nag. 331.
8. PLD 1967 AJ&K 78 (DB).
9. AIR 1923 Mad. 435 = 46 Mad. 938 (DB).
10. PLD 1971 AJ&K 16 (DB) + PLD 1960 Lah. 757 = PLR 1961 (1) W.P. 831.
11. PLD 1990 AJ&K 1.
12. AIR 1935 P.C. 85 = 57 All 242 = 62 Ind. App. 80 + AIR 1953 Bom. 353 = ILR 1953 Bom. 565 (DB). (AIR 1921 Bom. 379, held *overruled* by P.C. in AIR 1935 P.C. 85) + AIR 1952 All 396 + AIR 1951 Ajmer 50 (Limitation expiring on holiday--Suit filed on reopening day in a Court not competent to try suit--Plaintiff is not entitled to benefit of S. 4).
13. AIR 1937 Lah. 464.

day. Section 4 has no application as the suit is not filed in the proper Court on the opening day and it is therefore barred by time.[14]

Right to file suit in one of two Courts. Where a party is entitled to file a suit or make an application in two Courts of concurrent jurisdiction, and one of the Courts is closed on the last day of limitation, the party can have benefit of this section notwithstanding the fact that the other Court is open on that day.[15]

13. "Suit, appeal or application may be instituted, preferred or made." A suit, appeal or application is instituted, preferred or made when it is presented to the proper officer.[16] Where according to the parties the Court petitions used to be thrown in a box kept for that purpose, the act of throwing an application into such box is a valid presentation.[17] A proceeding presented to a wrong Court,[18] or presented to an officer who is not authorised to receive plaints is not a valid institution of such proceeding.[19]

Understamped plaint, etc., presented to Court. Presentation of an understamped plaint, etc., is not proper presentation but if the Court grants time to make good the deficiency and the deficiency is made good within that time, then under S. 149 of the Civil P.C. proceeding presented on an insufficient stamp shall have the same effect as if full stamp had been paid in the first instance.[20]

Presented after time for presentation fixed by Court. An appeal otherwise properly presented will not be too late, because it was presented after the hour fixed by the Judge for the reception of papers.[1]

14. "Day that Court reopens." The "day" means the day on which the Court actually re-opens.[2]

15. Closure of Court, if mention of in pleading necessary. A plaint need not state explicitly under O. 7, R. 6 of the Civil P.C. that on the day on which the period of limitation expired, the Court was closed.[3] Where a plaint is presented on the re-opening date after Court-holidays, and the period of limitation has expired during the holidays, the fact that the ground of exemption under section 4 of the Limitation Act was not specifically mentioned in the plaint will not entail dismissal of the suit, inasmuch as the Court is bound to take judicial notice of the holidays.[4]

5. *Extension of period in certain cases.* Any appeal or application for [5][a revision or] a review of judgment or for leave to

14. AIR 1937 Nag. 215 = ILR 1937 Nag. 217.
15. AIR 1940 Mad. 495 = ILR 1940 Mad. 684 + AIR 1940 Cal. 443 = ILR (1940) 1 Cal. 323 + AIR 1938 Bom. 209.
16. AIR 1927 Bom. 480 = 51 Bom. 848 (DB).
17. 1900 Pun. L.R. No. 133, p. 545.
18. AIR 1921 Mad. 654 = 44 Mad. 817 (DB).
19. AIR 1923 Pat. 150 = 2 Pat. 264.
20. 32 Mad. 305 (FB).
1. 1884 Pun. Re. No. 140, p. 369 (DB).
2. 31 Cal. 150 + AIR 1948 Mad. 521 (DB).
3. AIR 1920 Nag. 200 = 16 Nag. L.R. 198 + AIR 1937 Pesh. 41.
4. PLD 1967 AJ&K 78 (DB).
5. Ins. by the Limitation (Amendment) Ord., 1962 (43 of 1962), S. 2 (with effect from the 7th June 1962).

appeal or any other application to which this section may be made applicable [6][by or under any enactment] for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

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

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Synopsis

1. Scope and applicability.
2. "Sufficient cause."
3. Discretion to admit.
4. Reasonable diligence in prosecution of proceedings.
5. Prosecution of wrong proceedings.
6. Negligence of party.
7. Negligence of party's agent.
8. Mistake of fact by party or his agent.
9. Mistake of law of party or his agent.
10. Amendment of decree.
11. Illness of party.
12. Minority of party.
13. Fraud.
14. Poverty or want of funds.
15. Subsequent decision altering law.
16. Imprisonment of party.
17. Non-availability of Court-fee stamps.
18. Mistake of Court or its officers.
19. Discovery of fresh evidence.
20. Mistake as to holidays.
21. *Pardanashin* lady.
22. Party being Government or autonomous body.
23. Importance of matter.
24. Application for leave to appeal in *forma paupris.*
25. Party engaged in important litigation.
26. Application in revision treated as appeal.
27. Failure of Court of Wards to file appeal.
28. Two appeals against same decree.
29. Delay in obtaining copy of judgment in second appeal or review.
30. Unforeseen circumstances causing delay.
31. Other causes of delay.
32. *Ex parte* admission or order if may be re-opened.
33. Burden of proof of sufficient cause.
34. Exercise of discretion, binding nature of.

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6. Subs. by the Indian Limitation (Amendment) Act, 1922 (10 of 1922), S. 2 for "by any enactment or rule".
7. A section 5-A was temporarily ins. here for a period of six months with effect from the 13th February, 1948, *see* the Negotiable Instruments Act (Temporary Amdt.) Ordinance, 1948 (6 of 1948). S. 3 and the Ministry of Finance Notification No. D, 2702-F-48, dated the 11th May, 1948, Gazette of Pakistan, 1948, Pt. I, p. 258.

35. Revision against order.
36. Discretion, may be exercised.
37. Reason for order
38. Formal application, if necessary for condonation of delay.
39. Order under S.5, if open to Letters Patent Appeal.
40. Order under section 5, if one passed on appeal.
41. Appeal on behalf of or against dead person.

1. Scope and applicability. Where the order appealed from is without jurisdiction or void, an appeal lies from it and applicability of sections 5 and 14 of the Act need not be considered for admitting the appeal.[8] Similarly if a person is able to make out that he was entitled to a notice or hearing before the impugned order is passed, he can prefer an appeal even after the expiry of the period of limitation provided he establishes that the order was without notice to him.[9]

Agreement to extend period of limitation. An agreement to extend period of limitation was illegal and not enforceable. Therefore the parties to an arbitration agreement, cannot waive the statutory requirements of limitation.[10]

Amendment in appeal admitted. This section applies to the original institution of an appeal and not to one which has already been instituted but is amended later on owing to some defect in the memo of appeal.[11] The Court has jurisdiction under this section to grant permission to the appellant to make necessary amendment for correcting valuation of appeal and to make good any deficiency in court-fee even after the expiry of time for filing the appeal.[12]

Leave to appeal as pauper. The words 'leave to appeal' includes leave to appeal as pauper.[13] Therefore an application to be allowed to appeal as a pauper could be admitted after the period of limitation has expired if the conditions required by section 5 of the Limitation Act were fulfilled.[14]

Leave to appeal under S.449, Cr.P.C. The section applies to an application for leave to appeal under S. 449 (c), Cr. P.C.[15]

Leave to appeal under S.417, Cr. P.C. Where an appeal against acquittal has been preferred after the period of limitation it would not be proper to allow for extension when no reason is given for inordinate delay in the submission of an appeal. The general principle followed in the submission of such appeals is that they should be preferred with the least possible delay.[16]

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8. PLD 1973 Quetta 1 + Law Notes 1973 Lah. 552.
9. PLD 1973 Lah. 215 (DB).
10. 1980 CLC 921 = PLJ 1980 Kar. 387 (Kar).
11. AIR 1940 Lah. 314.
12. ILR 1950 All 86 (DB).
13. AIR 1928 All 499 (DB) + AIR 1957 Mys. 25 = ILR 1956 Mys. 225 + ILR (1955) 5 Raj. 474 + AIR 1953 Kutch 31 + AIR 1951 All 242 = ILR (1951) 2 All 655 (DB) + AIR 1951 Sau 12 + AIR 1942 Oudh 240 = 17 Luck 628.
14. PLD 1952 Lahore 156 = PLR 1952 Lah. 188. (*Diss.* ILR 15 Luck, 390: AIR 1927 Nag. 197). (*Ref.* ILR 17 Luck 628: ILR 12 All 79, ILR 39 Cal. 790, AIR 1928 All 99).
15. AIR 1927 Cal. 307 = 54 Cal. 52 = 28 Cr. L. Jour 481 (DB).
16. PLD 1954 Baluchistan 33 = 7 DLR (W.P.) Bal. 6.

Suit. Section 5 of the Limitation Act is not applicable to suits.[17] But in a Court entertaining original suits, the refusal to entertain a plaint filed after Court hours puts an end to the claim of the plaintiff if that is the last day of limitation. Therefore, though a judge is not bound to accept a plaint or an application presented to him after Court hours, as far as possible, if that is the last day of limitation, he should, if it is not too inconvenient, accept the plaint or application and direct it to be put up before him the next day in Court for further orders.[18]

Section applies only to applications falling under it. This section does not apply to applications not falling within the classes mentioned in the section.[19] The provisions of section 5 do not apply to objection petition filed beyond time prescribed by Act. 158,[20] or to an application under rule 19, Order XLI, C.P.C seeking readmission of appeal dismissed in default by the appellant. Application for re-admission has to be made within 30 days of dismissal of appeal as prescribed by Art.169.[1] Similarly provisions of S. 5 do not apply to application for re-hearing an appeal heard and decided *ex parte*.[2] However the inadequacy of sufficient cause should not stand in the way of justice on merits. It should not culminate into the end loss to allow the dismissal of a suit in default or keep an *ex parte* decree intact for the end objective of the Courts is to do full and substantial justice in the cause after allowing opportunity of hearing to the parties. The

17. PLD 1984 SC 289 = 1984 PSC 567 = NLR 1984 CLJ 474 = PLJ 1984 SC 262.
18. AIR 1965 Andhra Pradesh 386.
19. PLD 1958 Kar. 467 (Application to re-hear *ex parte* appeal) + PLD 1971 Quetta 69 (Application under O. 22, R. 4) + PLD 1968 Karachi 59 (Application under O. 9, R. 9, C.P.C.) + PLD 1967 Lah. 151 (Application under O. 41, R. 19) + PLD 1967 Lahore 1098 (DB) (Do) + AIR 1962 Tri. 20 (Do) + AIR 1941 Rang. 56 = 1940 Rang. L.R. 725 (DB). (Application for execution) + AIR 1960 Cal. 291 + AIR 1960 Mad. 142 = ILR 1959 Mad. 1030 + AIR 1960 Mys. 184 + AIR 1960 Punj. 207 (By virtue of O. 22, R. 9(3), Civil P.C. S. 5. Limitation Act, is application to applications filed under O. 22, R. 9 (2), Civil P.C.) + AIR 1959 Raj. 290 = ILR (1959) 9 Raj. 492 (DB) + AIR 1958 Andh Pra. 426 = ILR 1957 Andh. Pra. 538 (Application under S. 68, Provincial Insolvency Act) + AIR 1958 Mys. 189 = ILR 1957 Mys. 99 (DB) + AIR 1957 Manipur 13 + AIR 1957 Pat. 117 = 35 Pat. 802 + AIR 1956 Hyd. 29 = ILR 1955 Hyd. 734 (DB). ("Application under O. 9, R. 13, Civil P.C.") + AIR 1952 Cal. 544 = ILR (1952) 2 Cal. 338 (FB). (Do) + AIR 1956 Mad. 422 (DB). (Section made applicable to application under O. 9, R. 13, Civil P.C.) + AIR 1951 Mad. 472. (Do) + ILR 1956 Punj. 1250 + AIR 1955 Mad. 637 = ILR 1956 Mad. 676 (DB). (Application for leave to defend summary suit. AIR 1949 Mad. 742 and AIR 1953 Mad. 909, *Overruled*) + ILR (1955) 1 Cal. 139 + AIR 1954 Mad. 766. (Section made applicable to application under O. 22, R. 13, Civil P.C.) + ILR (1954) 4 Raj. 840. (Application under O. 9, R. 9, Civil P.C.) + AIR 1953 Bhopal 35. (Revision application) + AIR 1953 Kutch 11. (Application for execution) + AIR 1953 Mad. 561 = ILR 1953 Mad. 583 (DB). (Application to set aside award) + ILR (1951) 1 Raj. 827. (Application governed by Act. 168. Limitation Act) + AIR 1950 Cal. 217 + AIR 1950 East Punj. 255 (DB) + 1949 Bur L.R. (H.C.) 394 (DB) ("Application for final decree") + AIR 1948 Mad. 480 + AIR 1947 Mad. 153 (DB) + AIR 1939 Cal. 310 = ILR (1939) 1 Cal. 452 (Application to set aside execution sale) + AIR 1939 Mad. 163 (Application under O. 21, R. 2, Civil P.C.) + AIR 1935 P.C. 85 = 62 Ind. App. 80 = 57 All 242. (Application for final decree) + AIR 1943 Sind 132 = ILR 1943 Kar. 409 (DB). (Application under O. 41, R. 19, Civil P.C.) + AIR 1946 Mad. 381 = ILR 1946 Mad. 889 (DB). (Application for final decree under O. 34, R. 5, Civil P.C.) + AIR 1944 Mad. 571 (DB). (Application under O. 41, R. 21, Civil P.C.) + AIR 1963 Orissa 61 (Application under O. 34, R. 8, C.P.C. S. 5 does not apply).
20. PLD 1986 Quetta 321 = PLJ 1987 Quetta 1 = NLR 1987 Civ. 581.
1. NLR 1989 AC 828 + NLR 1984 UC 166 (Lah.).
2. NLR 1985 Civ. 1 = 1985 SCMR 1305 + 1984 CLC 1640.

adversary who has obtained an *ex parte* decree must have faced the rigours and hardship of fruitless litigation but for that he can be compensated by award of adequate costs.[3]

Application for impleading legal representative..Section 5 is not applicable to petitions under Order XXII, rule 4 of the Civil Procedure Code, 1908.[4] Therefore where an application is simply for impleading the legal representatives of respondents and there is no prayer for setting aside the abatement. Filing of the application under section 5 of the Limitation Act is of no help because that section is not applicable to an application for impleading legal representatives of a deceased respondent.[5]

Application under O.41, R.10. The provisions of Section 5 of the Limitation Act are not attracted to applications under Order, 41 Rule 10, CPC.[6]

Appeal not competent. Where the appeal before a Court is not competent that Court has no jurisdiction to condone delay in filing the appeal.[7]

Special and Local Law. While section 5 confers a power to condone delay in the institution of a cause the relevant provision relating to the applicability of section 5 in proceedings under a special or local law is contained in section 29 (2) of the Limitation Act.[8] The words "by or under any enactment" appearing in section 5 of the Limitation Act indicate that Section 5 does not apply to all enactments but its application can be extended to the provisions of any enactment. In the case of special laws application of section 5 has also been excluded by clause (*b*) of sub-section (2) of section 29. The cumulative affect of these provisions of the Limitation Act is that section 5 thereof would not apply to a special enactment unless such an enactment contains an express provision extending thereto the application of S. 5.[9]

Special or local law prescribing different periods of limitation. This section does not apply to periods of limitation prescribed by any special or local law different from that prescribed by this Act.[10] Thus the period of limitation prescribed by rules of High Court for Letters Patent cannot be extended if there is no power under the said rules to extend it.[11] Similarly the section has no application to cases arising under the Court-fees Act, under which review application presented on or after the ninetieth day of judgment must be stamped with full Court-fee leviable on plaint. Where a review application is filed on the

3. NLR 1986 AC 304 = PLD 1986 Pesh. 81 = 1986 Law Notes 574 (DB).
4. 1982 CLC 1190 (DB) (Lah.).
5. 1983 CLC 2565 (Lah.).
6. NLR 1989 Civ. 424.
7. 1980 CLC 361.
8. 1981 CLC 568.
9. PLD 1982 Lah. 239 = PLJ 1982 Lah. 65 = 1982 Law Notes 86 + PLD 1975 Quetta 39.
10. 1983 SCMR 1239 (Limitation for appeal under the W.P. Under Rent Restriction Ord.) + PLD 1979 Lah. 917 = 1979 LN 345 + AIR 1936 Cal. 388. (Application under Bengal Tenancy Act, S. 26F) + AIR 1955 Mad. 162 = ILR 1955 Mad. 1239 (DB) + AIR 1952 Cal. 76 (DB). (Does not apply to application under S. 26G (5) of the Bengal Tenancy Act of 1885) + AIR 1951 Cal. 402. (Does not apply to appeal filed under the Bengal Tenancy Act of 1885).
11. AIR 1928 All 708 = 50 All 865 + AIR 1952 Pepsu 21 = 3 Pepsu L.R. 446 (DB) + AIR 1951 Pepsu L.R. 132 = 3 Pepsu L.R. 365 (DB) + AIR 1949 East Punj. 299.

ninetieth day because the eighty-ninth day was a holiday, full stamp cannot be excused by reference to S. 5.[12]

This section does not apply to Arbitration proceedings therefore when an application is filed for setting aside an award after the expiry of limitation, the delay cannot be condoned under S. 5.[13] For the same reason where the lower Court completely misconceives the law as to the application of doctrine of waiver and estoppel and comes to the wrong conclusion that an award was passed beyond time and fails to exercise jurisdiction vested in it under S. 17 of the Arbitration Act to pronounce judgment according to the award, it is the duty of the Court of revision to set aside the judgment of the lower Court.[14]

There can be no condonation of delay under this section where the application is presented under S. 18, Land Acquisition Act,[15] or to appeals filed under S. 18, Displaced Persons (Land Settlement) Act (XLVII of 1958),[16] or to proceedings under the W.P. Waqf Properties Ordinance, which provides a special period of limitation of its own.[17]

There is no provision authorising the Commissioner to have recourse to section 5, Limitation Act in connection with an application presented before him under section 66 (2), Income Tax Act. That section contains no saving clause and gives neither the Commissioner nor the High Court any power to condone delay if the assessee does not present his application within the time prescribed.[18]

Special or local law prescribing same period of limitation as in Limitation Act. Where the same period is prescribed both in Sch. 1, Limitation Act and in the special law, the provisions of Ss. 3 of 25, Limitation Act will apply.[19]

Special or local law may make this section applicable. A special or local laws may expressly or by necessary implication make this section applicable to proceedings under it.[20]

12. ('12) 15 Cal. L. Jour 505 (DB)+1879 Pun No. 39, p. 106.
13. PLD 1962 Lahore 830.
14. AIR 1965 Orissa 17+AIR 1953 Mad. 561.
15. PLD 1970 Lah. 321=PLR 1970 (2) W.P. 957 (DB)+PLD 1967 S.C. 191=19 DLR S.C. 117+PLD 1971 AJ&K 33 (DB).
16. Law Notes 1973 Lah. 552+PLD 1970 Lahore 6=PLR 1970 (2) W.P. 986 (DB).
17. Law Notes 1970 S.C. 358.
18. PLD 1951 Baghdad-ul-Jadid 42+AIR 1963 Orissa 19+1950-18 ITR 72 (DB) (All). (Section not applicable to application under S. 66 (1), Income-tax Act)+AIR 1948 Nag 385=ILR 1948 Nag. 523. (Three months' period prescribed by S. 9(1), Provincial Insolvency Act--Delay in filing petition cannot be condoned under sections 5 and 14, Limitation Act)+1947 Pat. W.N. 23 (Section not applicable to cases of revenue sales under the Bengal Land Revenue Sales Act and appeals arising therefrom)+AIR 1937 Lah. 876=ILR 1938 Lah. 229 (DB). (Application under S. 66, Income Tax Act)+AIR 1918 Mad. 213=41 Mad. 169 (FB) (Petitions under the Provincial Insolvency Act).
19. AIR 1955 Cal. 578 (DB).
20. AIR 1939 Cal. 310=ILR (1939) 1 Cal. 452. (Appeals and application under S. 78, Provincial Insolvency Act)+AIR 1934 Lah. 33+AIR 1942 Mad. 400+AIR 1937 Rang. 283 (DB)+AIR 1953 Mad. 465+AIR 1953 Bom. 827 (DB)+PLD 1970 Lah. 6=PLR 1970 (2) W.P. 986 (DB)+1946 Rang. L.R. 270 (DB)+AIR 1929 Nag. 185 (DB). (Cases arising under the Companies Act).

In accordance with rule 17-A of the rules framed under the Pakistan (Administration of Evacuee Property) Ordinance, section 5 of the Limitation Act is applicable to proceedings before the Custodian.[1]

Section 5 of the Limitation Act has been made applicable to all the proceedings under the Rehabilitation Act.[2]

The provisions of section 5 of the Limitation Act apply to an application under section 174 (3) of the Bengal Tenancy Act.[3]

Where a *vakalatnama* was not filed with the appeal and was filed after the expiry of the period of limitation, and it was submitted that this was due to the file of appeal having been misplaced, an application under S. 5 was accepted and delay in filing the *vakalatnama* was condoned.[4]

Muslim Family Laws Ordinance. The provisions of section 5 do not apply to proceedings under the Ordinance.[5]

Land Revenue Act. Delay cannot be condoned under the provisions of S. 5 of the Limitation Act, where appeal or application had been filed under the provisions of the Land Revenue Act which provides special period of limitation of its own.[6] But where non-observance of legal formalities created doubt that proceedings had taken place in clandestine manner. Limitation starts in such cases from the date of knowledge of order and not from the date when such order was passed. Advertisement for summoning of parties given in a weekly paper with very limited circulation in area also tends to constitute a good ground on which petitioner could claim exemption from limitation.[7]

W.P. Urban Rent Restriction Ordinance. Section 5 does not apply to proceedings under the W.P. Urban Rent Restriction Ordinance, 1959.[8] In this case time allowed for filing appeal by special law being different from that given in the Limitation Act, 1908, S. 5 stands excluded by virtue of S. 29 (2) which permits application of only Ss. 4,9 to 18 & 22, Limitation Act, 1908.[9]

Cantonment Rent Restriction Act. Provisions of S. 5, Limitation Act, 1908 being not applicable to appeals arising out of the Cantonments Rent Restriction Act, 1963, question of condoning delay in filing appeal would not arise.[10]

Sind Rented Premises Ordinance. Application of Section 5 of the Limitation Act, 1905 in context of the Sind Rented Premised Ordinance, 1979, is excluded by section 29(2)(a)(b) of the Limitation Act, 1908. Application under S. 5 of the

1. PLD 1964 Supreme Court 236 = 16 DLR S.C. 298.
2. PLD 1965 Lahore 411.
3. 9 DLR 90.
4. PLD 1965 Kar. 170 (DB).
5. NLR 1982 Civ. 506.
6. 1989 CLC 124 + 1984 CLC 1724 (DB).
7. 1989 CLC 124.
8. 1983 SCMR 1239 = NLR 1984 CLJ 107 + PLD 1982 SC 88 + 1985 CLC 526 = 1985 LN 29 + PLD 1975 Oudha 39.
9. 1983 SCMR 1239 = NLR 1984 CLJ 107 + PLD 1982 SC 88.
10. 1990 MLD 211 (Lah) + NLR 1986 CLJ 87 (SC).

Limitation Act, 1908 for condonation of delay was dismissed being not competent.[11]

Service matters. No hard and fast rule can be laid down for condonation of delay in service matters and the question of sufficiency or otherwise of the cause is to be examined in the light of facts of each case. There have been cases where eight years' delay was overlooked. On the other hand there are cases in which few months delay was treated to be uncondonable. The principle, however, is well settled that Courts of Equity have always refused aid to enforce stale claims or demands.[12] But of late it seems that Service Tribunal has evolved a theory of continuous wrong in the cases of adverse orders passed against civil servants, and if this principle is accepted, then the period of limitation prescribed for filing an appeal to the Service Tribunal will be completely out of place.[13] Where appellant was a semi-literate person not well versed in legal procedure. He had to do lot of running about to seek advice and arrange finances for filing appeal. Because of all these factors plus long distances involved between his village and Quetta, just 3 days' delay was condoned.[14] But where appeal was filed after expiry of 15/16 years from the date of passing order by High Court in writ petition. It was filed after 3/4 years of return of petitioner to Pakistan from abroad on 31-12-1986, and no cogent reason given in the application for condonation of delay. Appeal was dismissed as grossly time barred.[15]

W.P. Consolidation of Holidays Ordinance, 1960. In proceedings under the W.P. Consolidation of Holidays Ordinance, provisions of S. 5 of the Limitation Act, 1908, being applicable, Collector had right to condone delay and decide appeal on merits.[16]

Workmen's Compensation Act. Delay in making a claim under the Workmen's Compensation Act cannot be condoned under this section because Commissioner under that Act is not a Court and the provisions of the Act do not apply to him. But the Workmen's Compensation Act expressly enact that the provisions of section 5 of the Limitation Act shall be applicable to appeals under the Act.[17]

Banking Companies (Recovery of Loans) Ordinance, 1979. For computing period of limitation for application for leave to defend suit of three modes of service of summons, by bailiff, by post or by publication, whichever is later is to be taken to be the date from which period of limitation should be computed; and delay, if any from that date may be explained.[18]

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11. 1985 CLC 2622 = NLR 1985 AC 32.
12. PLD 1976 SC 258.
13. 1986 PSC 589 (SC).
14. PLJ 1989 Tr. C. 93.
15. PLJ 1989 Tr. C. 71.
16. PLD 1984 Rev. 21.
17. PLD 1971 Quetta 23+AIR 1951 Pat. 260 (DB) (Under S. 30 (3), Workmen's Compensation Act, provisions of S. 5 apply to appeals under that section).
18. PLD 1986 Kar. 369 = PLJ 1986 Kar. 319.

Bangladesh Special Powers Act, 1974. Section 5 of the Limitation Act has no manner of application for condonation of delay in filing an appeal under section 30 of the Special Powers Act, 1974.[19]

Incomplete appeal. Where an appeal when presented beyond limitation period is incomplete (as for example, where it is not accompanied by a copy of the decree appealed from) it is not competent for the Court to pass an order admitting the appeal under S. 5.[20]

Null and void order. Condonation of delay on ground of nullity of the order appealed against, can be allowed only if the order was without jurisdiction.[1] The power of the appellate authority to decide the case on merits will not be hinged by any consideration of limitation, if the order appealed against is found to be a nullity.[2]

2. **"Sufficient cause."** The right accruing to a party cannot be taken away unless a valid ground is made out and causes of delay are satisfactorily explained.[3] Where sufficient cause for delay is not shown, delay cannot be condoned under this section.[4] The words "sufficient cause" should receive a liberal construction so as to advance substantial justice.[5] When no negligence or inaction nor want of bona fides is imputed to litigant.[6] "Sufficient cause" being a question of fact, varies from case to case and ultimately it rests on the satisfaction of the Court. When the Court is satisfied that a circumstances or set of circumstances shown by a party, justified that act or omission of such party for not preferring appeal or application within the described period, the Court can extend the time.[7] The section gives a wide discretion in determining what is sufficient cause, but the discretion has to be exercised judicially and not arbitrarily. Although the expression "sufficient cause" should be liberally construed so as to advance substantial justice, yet it must be determined by a reference to the circumstances of a particular case.[8]

Plea as to sufficient cause. The plea as to sufficient cause must be raised before the trial Court. Benefit of Ss. 5 and 14 cannot be extended to a party in the absence of any averment as to sufficiency of cause for delay or bona fide mistake in resort to wrong Court.[9] Where a certain plea was not raised before the trial Court, it could not be raised for the first time before the Supreme Court.[10] The lower Courts must have the discretion to decide the question whether a certain set of facts amounts to sufficient cause or not within the meaning of S. 5 and unless it can be said that a Court has taken a perverse or absurd view, the exercise of the discretion by it should not be interfered with in appeal.[11]

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19. 1987 DLR 164 (DB).
20. AIR 1960 Punj. 370.
1. NLR 1978 Civ. 99 (DB).
2. PLD 1970 Lah. 6 (DB).
3. 1983 CLC 2613 (Kar).
4. 1990 MLD 379 + PLD 1975 Lah. 1136 (DB).
5. PLD 1985 Quetta 74 (DB) + AIR 1954 SC 411 = 19 All. 348 (FB) + PLJ 1985 Kar. 309.
6. 1985 CLC 1788 + PLD 1985 Quetta 74 (DB).
7. PLD 1983 SC (AJ&K) 25 = PLJ 1983 SC (AJ&K) 110.
8. PLD 1983 SC (AJ&K) 25 = PLJ 1983 SC (AJ&K) 110 + PLD 1969 Lah. 500 (DB).
9. NLR 1989 Civ. 545.
10. 1980 SCMR 922.
11. AIR 1962 Punj. 417

What is 'sufficient cause.' Term "sufficient cause" includes any honest, just, fair, due or lawful cause, which in the circumstances of a given case, a Court regards as sufficient to explain the absence or default on the part of a party to the proceedings.[12] The expression "sufficient cause" must mean a cause which is beyond the control of the party invoking the aid of the section.[13] A genuine or good cause or a cause which is beyond the control of a party or a cause which is unavoidable despite care and attention, may constitute "sufficient cause."[14] Thus when copies were not delivered to the party in time in spite of his endeavour to get them, he has sufficient cause to seek extension of limitation.[15] Ignorance of death of a party can be deemed to be a good ground for delay in presenting an application to bring the legal representative of the deceased respondent on record when such ignorance is not attributable to any negligence.[16]

A cause for delay which, by due care and attention, the party could have avoided cannot be a sufficient cause. The test, therefore, whether or not a cause is sufficient is to see whether it could have been avoided by the party by the exercise of due care and attention in other words, whether it is a bona fide cause, inasmuch as nothing shall be deemed to be done bona fide or in good faith which is not done with due care and attention.[17] In civil matters, delay in filing appeals or petitions, save in exceptional cases should not be lightly condoned, for a valuable right has accrued to the other party of which it cannot be deprived except for very substantial reasons. To make departments of Government exception to this rule would be placing a premium on negligence and want of proper diligence in public offices. It is pertinent to observe that where Legislature considers it necessary to make the Government an exception to the ordinary rule of limitation, it always makes express provisions in that behalf.[18] Where condonation of delay is sought on the ground that one partner of the firm had gone for *Umra*, but the Court found that there were other partners in the country who could file the appeal. Delay was not condoned.[19] Condonation of delay of seven days was not granted on the ground that the petitioner had gone to attend on a sick relative,[20] or that his counsel suddenly left town, as in the latter case another Advocate could have filed the appeal.[1]

In determining sufficient cause while dealing with the same expression in Order IX, Rule 8, C.P.C. and Order IX, Rule 3, C.P.C. the Courts had been lenient and had been condoning some negligence, *i.e.*, negligence to the extent to which it is regarded as human though they never condoned gross negligence. At the same time the Courts had always been strict in demanding proof of sufficient

12. 1990 CLC 206.
13. 1986 CLC 768+1984 CLC 2515+1981 CLC 1740+1980 CLC 1446+PLD 1980 Pesh. 171+PLD 1977 SC 102=PLJ 1977 SC 340+PLD 1952 B.J. 8+PLD 1964 SC 236=16 DLR 298+PLD 1968 Lah. 923+AIR 1921 All. 23 (DB).
14. NLR 1983 SCJ 336 (SC AJ&K).
15. AIR 1964 Manipur 28.
16. AIR 1961 Pun 358 (DB).
17. PLD 1984 Kar. 190+1980 CLC 1446+PLD 1952 B.J. 8 (*Rel.* 13 Mad. 269+AIR 1938 Bom. 408 (DB)+AIR 1954 Cal. 238 (DB)+1949 Bur L.R. (SC) 105.
18. 1974 SCMR 38.
19. PLJ 1982 Kar. 332 (DB).
20. 1978 SCMR 457.
1. PLJ 1976 Kar. 42.

cause for every day which had expired after the ordinary period of limitation.[2] Where in a suit for pre-emption the sale took place on 20-1-1966. The suit was filed on 10-1-1967 with a deficient court-fee. However, the Civil Court granted time to the petitioner to make good the deficiency in Court-fee till 30-1-1967, because, the petitioner had not received the relevant *fard-munafa* in time. Despite the fact that the aforesaid documents had been received by the petitioner on 21-1-1967, he did not make good the deficiency in Court-fee on 30-1-1967 and again prayed for and obtained a further extension of time for the purpose aforesaid, by making a false statement and by cheating the Court by a pretence that the relevant *fard-munafa* had not yet been delivered to him. The suit was rightly dismissed as barred by time.[3]

Want of knowledge of proceedings. Delay may be condoned where the applicant did not have knowledge of the proceedings in which the impugned order was passed.[4]

Good faith necessary. In considering whether "sufficient cause" has been made out or not within the meaning of section 5, the question of bona fides has got to be taken into account.[5] In considering what is a sufficient cause, good faith with which a person must be shown to have acted will appropriately be taken to mean that variety which pre-supposes due care and attention rather than mere honesty.[6] Where appellants properly explained the delay in filing appeal and their conduct did not appear to be mala fide, contumacious or without due care and caution. No inaction, negligence, want of bona fides or lack of due care or attention could be imputed to appellants. Slow movement on the part of appellants could not lead to an inference of want of bona fides, inaction or negligence. Delay was condoned and appeal held to be within time.[7]

Proof of sufficient cause. The question of the existence of 'sufficient cause' is one of fact to be decided on the facts and circumstances of the particular case.[8] For this purpose no hard and fast rule can be laid down nor is it desirable that this should be done. Each case has to be considered on its own facts. What may be sufficient in one case may well not be sufficient in another case, but this much is certain that where by lapes of time a valuable right has accrued to the other side, it should not be lightly taken away.[9] Where the petitioners seek condonation on the ground that they were prevented from filing the petition in time because of the assurance given by the Municipal Corporation, they have to show that the Municipal Corporation was aware of the fact that they were going to the Supreme

2. PLD 1964 S.C. 236 = 16 DLR S.C. 298.
3. 1982 PSC 86 = PLJ 1982 SC 186 = PLD 1982 SC 41.
4. 1983 SCMR 183.
5. 1983 CLC 865 (Kar).
6. AIR 1940 Rang. 14 = 1939 Rang L.R. 639 + AIR 1947 Lah. 76.
7. 1989 CLC 2110.
8. PLD 1959 Lah. 8 = PLR 1959 (1) W.P. 758 = 11 DLR W.P. 60 (DB) + AIR 1933 Oudh 523 = 9 Luck. 193 (FB) + AIR 1956 All 677 (DB) + AIR 1949 Assam 24 = ILR (1949) 1 Assam 183 (DB) + AIR 1948 All 213 = ILR 1948 All 237 (DB) + 19 Ind. Cas. 931 (Cal) + 25 Mad. 166 (DB). (Sufficient cause is something more than legally sufficient.)
9. 1970 SCMR 558.

Court and some competent official of the Municipal Corporation prevented them from moving the Supreme Court by holding out a clear and definite assurance.[10]

Burden of proof. Sufficient cause being circumstances beyond the control of a party the Court would demand proof of sufficient cause for delay of every day.[11] While condoning delay, the Court or Tribunal must come to the conclusion that there exists sufficient cause for condoning such delay. In the instant case, the onus was upon the respondent, who had filed that appeal, to show that. there was sufficient cause as required by law for the condonation of the said delay. He had failed to discharge that onus. Therefore delay was held to have not been condoned.[12]

Existence of sufficient cause not always sufficient for extension of time. If no cause has been shown at all there is no room for the applicability of the power to excuse delay.[13] But the Court may in its discretion refuse to extend time even though there may be sufficient cause,[14] because the existence of sufficient cause is merely a condition that must be satisfied before the Court can exercise its power of granting or refusing to grant extension of time.[15]

Each day's delay must be explained. In the matter of condonation of delays in availing of legal remedies each day's delay has to be explained satisfactorily.[16] Condonation of delay was refused where the petitioner was unable to satisfactorily explain the long delay of 105 days involved in this case, nor had he made out any sufficient cause for condonation of delay.[17] Where the quantum of delay is not known and, therefore sufficiency or otherwise of the reason for the delay cannot be judged, there is no possibility of exercising discretion to condone delay.[18] Similarly where the order appealed against has been passed several years ago, time for appeal cannot be extended except on very strong grounds.[19]

Presumption as to "sufficient cause". Where an appeal, etc., is admitted it cannot be presumed that the Court doing so was satisfied that the petitioner had

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10. 1974 SCMR 132.
11. PLJ 1984 SC (AJ&K) 5 = PLD 1984 SC (AJ&K) 51 = NLR 1984 SCJ 281 = 1984 PSC 356.
12. 1986 CLC 768 + PLD 1976 Lah. 132.
13. AIR 1965 Orissa 193 + AIR 1914 All 521 + AIR 1957 S.C. 648 = 1957 S.C.R. 1151 = 1957 Cri L. Jour 1026 + AIR 1960 Orissa 177 (DB) + AIR 1960 Punj 298 = ILR 1959 Punj. 298 = ILR 1959 Punj. 2259 + AIR 1959 Pat. 112 (DB) + 1 Sau L.R. 19 + 5 Sind L.R. 47 (DB) + AIR 1925 Oudh 371 = 28 Oudh Cas 378 + AIR 1933 Pat. 134 + AIR 1930 Cal. 422 = 57 Cal. 148 (DB).
14. AIR 1965 Orissa 193 + AIR 1962 S.C. 361 + AIR 1935 All 620 = 57 All 983 (FB).
15. AIR 1962 S.C. 361 + AIR 1917 P.C. 156 = 45 Cal. 94 = 44 Ind. App. 218 = 1917 Pun Re. No. 104 + AIR 1954 Cal. 238 (DB) + AIR 1951 Punj. (Simla) 170 = ILR 1951 Punj. 136.
16. 1989 SCMR 1441 (Delay of 15 days not explained condonation refused.) + NLR 1984 SCJ 347 + NLR 1984 SCJ 153 + 1988 CLC 1937 + PLJ 1988 SC 96 = 1988 PSC 352 = PLD 1988 SC 144 + 1985 CLC 2234 = PLJ 1985 Kar. 305 + 1985 CLC 769 + PLD 1984 SC (AJ&K) 104 + 1984 CLC 2515 + PLJ 1981 Rawalpindi 753 = PLD 1981 Lah. 620 (Delay of 118 days not properly explained--Condonation of delay refused) + 1980 CLC 53 + 1973 Dhaka LR 254.
17. 1980 SCMR 875.
18. PLD 1963 Karachi 551 = PLR 1964 (1) W.P. 93 = 15 DLR (W.P.) 93 (DB).
19. AIR 1942 Oudh 339 (DB).

sufficient cause. In such cases the presumption of regularity of official acts cannot be drawn.[20]

Implied condonation of delay. Limitation cannot be impliedly condoned. Proceedings beyond the period of limitation are bound to be dismissed under S.3 of the Limitation Act.[1] Mere disposal of the appeal on merits is not sufficient to lead to the inference that the delay must have been condoned. There must be something in the order or judgment itself to show that the Court concerned was conscious of the fact that the proceeding was out of time and had applied its mind to the question of limitation before dealing with the proceeding on merits.[2] Where the authority, hearing the appeal was conscious of question of limitation, and it decided the appeal on merits, the delay was held to be impliedly condoned.[3]

Some grounds of exemption pleaded, others may be urged. The Courts are bound to apply the law of limitation to a suit whether it is pleaded or not and dismiss a suit which is apparently beyond time, Conversely they are bound not to dismiss, as barred, a suit which, on the face of it, is not barred. It is again well established that where a plaintiff has brought a suit beyond limitation but has relied on ground, of exemption in the plaint, he can prove a ground other than those stated in the plaint to get over the bar of limitation.[4]

3. **Discretion to admit.** In the event of condonation of delay, Court is bound to consider each and every fact on the basis of which such condonation is sought and then pass an order manifesting by itself reasons which persuaded him to form a particular opinion.[5] Discretion must be exercised, not in any arbitrary, vague or fanciful manner, but on judicial principles.[6] The Court has no jurisdiction to extend time causelessly or capriciously. Where time within which an appeal may be taken has been fixed, the Court has no power to extend it as a matter of indulgence. In the exercise of the discretion which vests in the Court, it has only to find out whether the condition justifying the extension exist. There is no general discretion to grant relief regardless of the statutory requirement of sufficient cause.[7] Where the Court condoned the delay on the sole ground that the appellant had not been served but it was found that the Court had treated question of effectiveness of service of summons upon defendant in a very cursory manner and without giving a positive finding whether service of summons was duly effected in accordance with law. It was held that this was a wholly improper approach to

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20. 1981 CLC 735 (DB)+PLD 1969 SC 167+PLD 1964 SC 260 (PLD 1962 Kar. 285 does not lay down correct law).
1. 1980 CLC 53 (Lah.).
2. 1989 SCMR 864+1987 SCMR 1664=1987 PSC 1048+NLR 1981 SCJ 567+PLD 1969 SC 167=21 DLR (SC) 139+1981 LN 522 (DB)+PLD 1976 Lah. 686+PLJ 1976 Kar. 433 (DB)+PLJ 1981 Kar. 615+PLD 1980 Kar. 187 (DB).
3. 1970 SCMR 170+1981 LN 522 (DB).
4. PLD 1968 Lahore 1151.
5. NLR 1980 Civ. 285=PLJ 1980 Quetta 5 (DB).
6. PLJ 1987 Quetta 92=1986 CLC 2951=NLR 1987 Civ. 130+PLJ 1987 Tr. C. 102+1985 CLC 1788+PLD 1968 Lah. 1299=PLR 1969 (2) W.P. 1037+AIR 1962 Punjab 450 (DB)+AIR 1965 Orissa 193+AIR 1938 Bom. 408=ILR 1938 Bom. 704 (DB)+AIR 1955 Mys. 133=ILR 1955 Mys. 415+AIR 1938 Pat. 413=17 Pat. 507 (DB)+AIR 1926 Cal. 677+AIR 1933 Oudh 523=9 Luck. 193 (FB)+AIR 1925 Sind 60=17 Sind L.R. 306 (DB).
7. AIR 1962 Punjab 450 (DB).

question of service, legality of which was challenged on factual basis. The order was set aside.[8]

The discretion given by S.5 is very wide but it has to be exercised judicially and on well recognised principles. The judicial exercise of discretion does contemplate an enquiry into the fact whether the claimant has been so grossly negligent or inactive or that there is such a serious lack of bona fides that to uphold the plea of sufficient cause may result in injustice to the opposite party.[9] It has been held that if the Court bases its discretion on a wrong notion of law, the use of discretion is arbitrary and not judicial.[10]

Exercise of discretion should appear on record. There must be something in order itself to show that proceedings were out of time and Court had applied its mind to question of limitation before deciding proceedings on merits. The order condoning delay must indicate that delay was condoned and cogent reasons must be given for such condonation.[11]

Discretion should not be lightly exercised. When the time for appeal or applying has passed a very valuable right is secured to the successful party of which he should not be deprived of lightly.[12] The High Court has power in second appeal to examine the grounds upon which the lower appellate Court has admitted an appeal beyond time. It has to see that the duty of exercising discretion in a judicial manner cast upon the lower appellate Court, has been discharged properly or not. If discretion has not been exercised at all, or has been exercised whimsically or arbitrarily, the Court of second appeal will be acting within the ambit of section 100, Civil Procedure Code, while interfering with such an order of the lower appellate Court.[13]

Party seeking relief should be diligent. The question of excusing delay has to be approached from the point of view of petitioner's conduct rather than of the advantage gained by the other side.[14] Therefore the fundamental rule is to see whether the party claiming indulgence has been reasonably diligent in prosecuting his appeal or application.[15] The appellant has not only to explain the actual delay

8. NLR 1984 Civ. 124 (SC).
9. AIR 1961 Punjab. 184.
10. PLD 1954 Lahore 50 = PLR 1953 Lahore 269 (DB) (*Rel.* 183 P.R. 1888 (FB)).
11. 1986 CLC 671.
12. PLJ 1986 Quetta 52 = 1986 CLC 233 = KLR 1986 CC 119 = NLR 1986 CLJ 462 + PLJ 1984 SC (AJ&K) 5 = PLD 1984 SC (AJ&K) 51 = 1984 PSC 356 + PLD 1984 Kar. 190 + PLJ 1983 Lah. 225 = 1983 LN 167 + 1983 CLC 1773 + PLD 1973 Lah. 567 = 1973 LN 17 (DB) + AIR 1925 Sind 60 (DB) + AIR 1928 Lah. 216 (DB) + AIR 1962 SC 361 + 8 DLR 167 (DB) + 1973 Dhaka LR 254.
13. AIR 1962 Punj. 450 (DB).
14. AIR 1942 Mad. 170.
15. PLD 1973 Lah. 809 (DB) + AIR 1938 Nag. 156 = ILR 1938 Nag. 409 (DB) + AIR 1917 P.C. 156 = 45 Cal. 94 = 44 Ind App 218 = 1917 Pun Re No. 104 + AIR 1946 F.C. 13 = 1946 F.C.R. 32 = ILR 1946 Kar. (FC) 1 + AIR 1954 Madh. B 18 + AIR 1954 Pepsu 126 = ILR 1953 Patiala 497 (DB) + AIR 1953 Mys. 137 = ILR 1953 Mys. 165 + AIR 1951 Pepsu 132 = 3 Pepsu L.R. 365 (DB) + AIR 1951 Punj. (Simla) 209 = ILR 1950 Punj. 434 (DB) + 1948 All 213 = ILR 1948 All 237 (DB) + AIR 1925 Sind 60 = 17 Sind L.R. 306 (DB) + AIR 1924 Bom. 399 = 48 Bom. 442 (DB) + AIR 1932 All. 459 = 54 All 280 (DB) + AIR 1936 Oudh 9 + AIR 1932 Cal. 534 = 59 Cal. 1052 (DB) + AIR 1930 Lah. 216 = 11 Lah. 111 (DB) + 1888 Pun Re No. 183, p. 478 (FB).

beyond the period of limitation but he has also to show that his conduct through out the period between the date of the impugned judgment and the filing of the appeal has been of such a character that it would be proper to condone the period of delay that has occurred beyond the period of limitation.[16] Delay of 66 days in filing appeal due to reasons beyond the control of the party and his counsel was condoned irrespective of consideration of the question whether impugned judgment was without jurisdiction and a nullity.[17] Where appellant applied for condonation of delay of 8 days in filing appeal on ground of its counsel having fallen ill for 4 days, and the appeal having been filed after proper preparation after his recovery. The condonation of delay was refused as reason for condonation of delay was tenuous and no justification was made out for delaying the matter for further 4 days for the preparation of the appeal.[18]

Proper application not filed. Where an application for condonation of delay was styled as one for "condonation of delay, if any" and even blanks left in the affidavit for dates were not filled. Such application was neither signed by the applicant nor by his counsel. The application showed lack of interest, carelessness and negligence. It was held that such types of applications did not entitle the applicant to discretionary relief for condonation of delay.[19]

Notice to opposite party necessary. The Court, before exercising discretion under this section, must give notice to the other party and should also give him an opportunity of being heard. Where that is not done and time is extended, the order is illegal being opposed to the principles of natural justice,[20] and the respondent is not precluded from questioning its propriety.[1]

Appeal against refusal to condone delay. Where the lower Court has exercised discretion and refused condonation of delay, the Supreme Court would not grant leave to appeal to go into the question.[2] Where delay was not condoned by Settlement Authority, High Court did not interfere.[3]

Constitutional jurisdiction. Whether delay should or should not be condoned, vested in discretionary domain of Tribunal seized of the matter and discretion was not open to interference in writ jurisdiction,[4] unless the discretion was exercised, illegally, capriciously or arbitrarily.[5]

Supreme Court. Supreme Court has ample power to condone delay when at late stage of appeal it might not be advisable to hold an enquiry *suo motu* into factual controversy.[6]

16. PLD 1973 Kar. 618 = Law Notes 1973 Kar. 855 + PLD 1973 Kar. 503.
17. 1981 CLC 933 (Kar).
18. PLJ 1983 Lah. 255 = 1983 Law Notes 167.
19. PLD 1983 Lah. 677 = PLJ 1983 Lah. 616 = 1983 Law Notes 782.
20. NLR 1989 UC 559 + AIR 1964 A.P. 50 (DB).
1. PLD 1985 Lah. 56 = KLR 1985 CC 69 + PLD 1980 Pesh. 171.
2. 1989 SCMR 340 + PLJ 1976 SC 244.
3. 1974 SCMR 184 + PLJ 1973 Lah. 433 (DB).
4. 1985 CLC 2562 + NLR 1984 Civ. 315 = 1984 CLC 1521.
5. PLD 1985 Lah. 56 = KLR 1985 CC69.
6. PLD 1985 SC 324 = PLJ 1985 SC 423.

4. Reasonable diligence in prosecution of proceedings. When a person having the knowledge of limitation, without sufficient cause sleeps over the matter and allows to run out the period of limitation, he cannot afterwards seek the indulgence of the Court for condonation of delay.[7] Inaction, omission and negligence in not filing a legal proceeding within the prescribed limitation period creates a right in favour of the opposite party, which right cannot be snatched away lightly by extending the period either under section 5 or under section 14 of the Limitation Act.[8] Limitation cannot be extended on surmises and conjectures.[9] The question of excusing delay under section 5 has to be approached from the point of view of applicant's conduct. The Court has no jurisdiction to extend the time where the applicant has been grossly negligent and inactive.[10] A party can get relief under this section only if he can show that he has shown diligence in prosecuting the proceedings. Delay of each and every day has to be explained satisfactorily before advantage can be taken of this section.[11] Where the defendant was negligent in prosecuting the suit as well as application filed under order IX, rule 7 to set aside a decree passed *ex parte* and he made no attempt to file application in time after knowing about the *ex parte* decree and filed an application for condonation of delay three months thereafter. Delay was not condoned in the circumstances.[12] Where details explaining each day's delay were not incorporated in application for condonation of delay. The petitioner having knowledge of limitation without sufficient cause slept over the matter and allowed the period of limitation to run out. Nothing was stated as to the petitioner having been hampered in moving the petition for leave to appeal in time. Delay was not condoned.[13] Where no explanation or cogent reasons for delay in filing the appeal beyond the period of limitation is shown, the appeal may be dismissed as barred by time.[14] It is upto the appellant to show that his conduct throughout the period between the date of the impugned judgment and the filing of the appeal has been of such a character that it would be proper to condone the period of delay that has occurred beyond the period of limitation.[15] Where the appellant did not pursue the appeal diligently as a result of which carelessness the respondent was made to go to a wrong Court for a pretty long time. If the conduct of the appellants would have been fair in the wrong Court, benefit of section 5 could be extended to them. Therefore, it cannot be held that there is sufficient cause for invoking provisions

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7. 1988 P. Cr. LJ 2428. (SC AJ&K).
8. KLR 1986 CC 119 = PLJ 1986 Quetta 52 = NLR 1986 CLJ 462 = 1986 CLC 233 (DB).
9. 1983 CLC 522 (DB) (Kar.).
10. 1986 CLC 2151 + NLR 1981 AC 121.
11. PLD 1988 SC 144 = 1988 PSC 352 = PLJ 1988 SC 96 = 1988 LN 177 + 1984 CLC 182 = PLJ 1984 Kar. 48 (DB) + PLD 1984 Kar. 190 + NLR 1984 SCJ 153 + 1983 CLC 2199 + 1983 CLC 522 + 1983 CLC 1763 + 1983 CLC 1773 + NLR 1983 AC 155 + 1982 SCMR 285 + PLJ 1982 Tr. C. 54 + PLJ 1982 Kar. 409 + 1980 CLC 1446 + 1980 SCMR 36 = PLJ 1980 SC 351 (Unexplained delay of one day not condoned) + 1980 CLC 1478 + PLD 1975 Kar. 1025 = PLJ 1976 Kar. 23 + 1973 SCMR 304 + 1975 SCMR 377 (1) (Delay not condoned) + 1974 SCMR 482 + 1974 SCMR 427 + PLD 1976 Kar. 811 + PLD 1977 Kar. 564 (Delay of one day not explained) + 1976 SCMR 102 + PLD 1974 Note 67, p. 107.
12. 1983 CLC 2199 (Kar.).
13. PLD 1982 SC (AJ&K) 13 = KLR 1982 Cr. C. 315 = NLR 1982 Cr. C. 12 = NLR 1982 SCJ 130.
14. KLR 1983 C.C. 383 + 1983 SCMR 17.
15. PLJ 1973 Kar. 72.

of section 5 read with section 14.[16] A litigant who has no knowledge of the law of limitation does not act in good faith or with due diligence if he takes it upon himself to determine the time for filing a suit, an appeal or application in disregard of the time prescribed by law and no extension of time can be granted to him.[17]

Where the appellant failed to explain delay of each day in filing the appeal, the delay was not condoned.[18]

A litigant is not required to show diligence prior to the last day of limitation. If the cause of delay arose on the last day of limitation and it is a sufficient cause time may be allowed under this section.[19] But want of due diligence in prosecuting his proceeding after the cause for the delay is removed will disentitle the party to any indulgence under this section.[20] Thus where omission to file a copy of judgment with the memorandum of appeal was brought to the notice of the appellant on the date of filing an appeal and though he had sufficient time to file the copy which was all the while with him, within limitation, he made abnormal delay in filing it, in spite of the extensions given by the Registrar and filed it long after the expiry of limitation. It was held that the facts disclosed gross negligence and inexcusable carelessness and want of bona fides on the part of the appellant and that it was impossible to hold that the appellants have made out a case for condoning the delay.[1]

Delay in coming to know of judgment appealed against. Where appellants claimed ignorance about the decision of the High Court. The mere fact that decision was announced in summer vacations would not justify ignorance about the announcement of judgment of the High Court because when judgment is to be announced, a copy of the cause list is sent invariable to the Advocate who is counsel in that particular case. the Court did not condone the delay.[2] Where petition was barred by 44 days. It was not mentioned in the application as to how and when did the petitioners come to know of the impugned judgment. The petition was dismissed.[3]

Abatement. The Court while exercising its discretion to excuse the delay that has occurred in the preferment of an application for setting aside abatement, must do so on sound judicial principles. An abatement is not to be set aside lightly or as a matter of course because a valuable right has accrued to the party in whose favour the abatement operates. Therefore, unless sufficient cause is shown for excusing the delay in making the application for setting aside the abatement and for bringing on record the legal representatives of the deceased, the abatement cannot be set aside.[4] It follows that the petitioner, under Order 22, Rule 9 (3),

16. 1983 CLC 675 (DB) (AJ&K).
17. PLD 1970 SC 287 = 70 SCMR 656.
18. NLR 1982 SCJ 498 + 1982 CLC 214 (Delay of eleven days) + PLD 1982 Lah. 287 = PLJ 1982 Lah. 174 + PLJ 1982 Tr. C. 54 + 1981 SCMR 1145 (Delay of two months) + 1980 CLC 628.
19. AIR 1962 S.C. 361 (*Overruled* AIR 1916 Nag. 39 + AIR 1919 Pat. 503).
20. ('03) 30 Cal. 309 = 30 Ind. App. 20 (P.C.) + AIR 1933 Cal. 462 (DB) + ('26) 96 Ind. Cas. 121 (DB) (Nag.) + AIR 1921 Nag. 141 + AIR 1914 All. 303.
1. AIR 1961 Patna 129.
2. 1989 SCMR 1441.
3. 1989 SCMR 1381.
4. PLD 1973 Lah. 567 = 1973 Law Notes 17 (DB).

C.P.C. can make an application under section 5 of the Limitation Act, wherein he should explain each day's delay and satisfy the Court (*a*) that there was sufficient cause for not making an application for substitution, and (*b*) that he had also sufficient cause for not making an application for setting aside the abatement within a period of 60 days under Article 171; and in case the petitioner fails to explain the delay for each and every day, he is not entitled to the benefit of section 5 of the Limitation Act as is made applicable under Order 22, Rule 9, sub-rule 3, C.P.C.[5] When the Court did not believe the appellants in that they did not know about the death of first respondent for more than a year, *i.e.*, till the death of another respondent and the absence of knowledge was put forward as the only ground for condonation of delay on which the finding was against the appellants. It was held that they had been grossly negligent in making the application for impleading the legal representatives of the first deceased. A right having accrued in favour of the respondents it was not a fit case for condonation of delay.[6]

Burden of proof. A party wishing to take advantage of section 5 of the Limitation Act must satisfy the Court that it had not been negligent and had been prosecuting its case with due diligence and care.[7] The petitioners are under a strict legal duty to furnish a reasonable explanation and to show sufficient cause for condonation of inordinate delay. The delay was not condoned where the petitioners had not mentioned in the review petition as to when and how they came to know of the "new and important matter." They simply said that "the new evidence, which was previously not in the knowledge of the petitioners has been discovered now". In the application under section 5, the explanation was "that the delay in filing the review petition is neither intentional nor deliberate." In the said application it was mentioned "that it is expedient and desirable in the interest of justice to condone the delay and adjudicate the review petition on merits." These were not sufficient grounds for condonation of delay.[8] Where, the Advocate of the appellant was informed by the High Court about the death of *H*, one of the respondents. After one year of the death the appellant put in an application stating that she was not a necessary party to the suit and consequently it was not necessary to implead her legal representatives. It was also stated that the plaintiffs who claimed to be the heirs of the deceased were party to the appeal and, therefore, the appeal could not abate. In the alternative it was alleged that the appellant had no information about the death of *H*, and had therefore, sufficient cause for not presenting the application earlier. The Court refused to set aside the abatement of the appeal.[9]

5. Prosecution of wrong proceedings. The existence of circumstances mentioned in S. 14 may be regarded as sufficient ground for excusing delay caused by wrong proceedings.[10] It cannot be said that section 5 did not apply because section 14 was not in terms applicable to a particular proceedings. The underlying

5. PLJ 1974 AJ&K 46 + PLD 1973 Lah. 809 = PLJ 1973 Lah. 486 + PLD 1973 Lah. 372.
6. PLD 1973 BJ 24.
7. PLD 1973 Kar. 503 = PLJ 1973 Kar. 68 = 1973 LN 835 + PLD 1959 Lah. 500 (DB).
8. PLD 1978 Lah. 1016 = NLR 1978 Civ. 266.
9. PLD 1958 Lah. 257.
10. PLD 1985 Quetta 74 (DB) + 1974 LN 327 + PLD 1970 Dacca 394 + AIR 1937 P.C. 276 + AIR 1917 P.C. 156 = 45 Cal. 94 = 44 Ind App 218 + AIR 1947 Lah. 76 + AIR 1936 Sind 43 (DB) + AIR 1933 Lah. 541 (DB).

principles would not ordinarily be excluded when considering a case under section 5 of the Limitation Act.[11] But where an appeal was competent against an order under the relevant statute, inter-Court appeal filed against it was incompetent and benefit for time taken in pursuing this incompetent appeal, could not be allowed.[12] But when appellant committed a bona fide mistake of law or rule of procedure, which was bound to render the proceedings abortive he would be entitled to exclude the time spent in the previous proceedings on the principle laid down in section 14 of the Limitation Act. The essential object of section 14 and the principle which underlines it is that the bar of limitation should not affect a person doing his best to get his case tried on merits but failing through the Court being unable to give him such a trial. The principle is clearly applicable not only to cases in which a man files his case in wrong Court, *i.e.*, a Court having no jurisdiction to entertain it but also where he brings the suit in the wrong Court in consequence of a bona fide mistake or defect of procedure. The circumstances contemplated in section 14 of the Limitation Act should ordinarily constitute a case within the meaning of section 5 of the Limitation Act.[13]

Mistaken advice by counsel. In cases where an appeal is presented to a wrong Court on the wrong and mistaken advice of the pleader, tendered, however, with due care and caution, it is a sufficient cause within the meaning of section 5 of the Limitation Act, 1908, for condonation of delay; but a negligent advice can never be considered to be a good ground for extension of time. In cases of gross negligence of counsel delay cannot be condoned because the negligence of the counsel is the negligence of the party.[14] A party taking a matter before a wrong forum due to mistaken advice of counsel cannot take benefit of provisions of the Limitation Act, 1908 particularly when no affidavit of counsel was filed in support of the allegations.[15] Where an appeal was filed, within the period of limitation, before the District Judge under an honest though mistaken belief that the appeal was competent before that Court. In the circumstances it would not be just and proper to penalize the appellant for the wrong advice tendered by his counsel. In this view of the matter the appellant would be entitled to the benefit of section 5 of the Limitation Act, 1908, and the time spent in the Court wrongly approached would be deduced in his favour.[16] Where the appellant had filed the appeal in the District Court within time, and the District Judge returned the appeal to the appellant after the period of limitation, and when the appeal was returned to him, the appellant lost no time in filing it in the High Court on the same day, but by then the appeal had become time barred the Court condoned the delay as the appellant had acted with due diligence.[17]

Difficult question as to valuation of suit. Where appellant faced a curious order passed by trial Court which placed him in a fix and he remained in the hands of an Advocate who was under a bona fide mistake of law *qua* value of suit

11. PLD 1983 SC 262 = PLJ 1983 SC 226.
12. 1987 SCMR 1153.
13. KLR 1986 L & S 207 (DB).
14. PLJ 1983 SC 563 = PLJ 1983 SC 385 = 1983 PSC 1025 + 1983 CLC 3059 + PLD 1982 Lah. 1632 (DB) + PLD 1966 Lah. 542 + PLD 1952 BJ. 8 + NLR 1988 CLJ 9.
15. PLD 1982 Lah. 632 (DB).
16. PLD 1984 Pesh. 64.
17. PLD 1983 Pesh. 169 = 1983 CLC 27.

and determination of forum of appeal which point was not free from difficulty. Delay was condoned.[18] Where there was a bona fide mistake as to valuation which resulted in presentation of the appeal to a wrong Court, delay in filing it in the proper Court would be excused. Thus where the circumstances which led the counsel to file the appeals before the District Judge were as follows: He did not notice any valuation in the copies of the decrees because instead of appearing at the usual place it was mentioned in the first line at the top on the first page, an almost unusual, and improper place for stating the jurisdiction value. In the unattested copy of the plaint supplied to the counsel by the client, the value was stated to be Rs. 20. As this value did not seem to accord with the facts in the judgments the learned counsel valued the appeals at Rs. 3,000 and 1,400, respectively, the amounts for which the two sales had been effected. When the two appeals came up for hearing before the District Judge on the 15th August, 1953, it was noticed that the valuation of each of the suits was Rs. 7,500 and the appeals were, refore, returned to the appellant for presentation to the proper Court. They were filed in the High Court on the same day. The mistake of the counsel in these cases was bona fide and excusable and the Court condoned the delay accordingly.[19]

Small Causes Court, appeal from. Where a suit triable by a Small Causes Court originally initiated in a Court having such jurisdiction was subsequently transferred to another Court not vested with jurisdiction of Small Causes Court. The decision by the transferee Court was nevertheless the decision of Court of Small Causes by fiction of law contained in S. 24, C.P.C. An appeal against such decision was therefore not competent. A second appeal, a *fortiorari,* was also incompetent. A belated application under S. 25, Provincial Small Causes Courts Act, 1887, was however, entertained and delay, under the circumstances, in filing the same was condoned under Ss. 5 and 14, Limitation Act, 1908.[20] The Court condoned the delay in filing an appeal where it found that the carelessness in not filing it within time was not intentional and further that the other party could be compensated by payment of costs. It was held that the ends of justice would be met if the application under Order XXII, Rule 9 of the Civil Procedure Code is granted on condition that the respondent No. 1 is ordered to pay a sum of Rs. 1,000 as costs to the appellant.[1]

Time spent in prosecuting a review application can be reckoned for condonation of delay in filing an appeal.[2]

Period between return of appeal and filing it in proper Court. When extension of limitation for an appeal is prayed for under S. 5 on a ground analogous to that provided under S. 14, it is imperative that the party asking for the indulgence must explain the delay which has taken place between the termination of the period sought to be excluded and presentation of the appeal. It is well established that when an appeal is filed in a wrong Court and is therefore taken back, it must be presented to the proper Court as speedily as possibly. The same rule applies

18. 1986 CLC 120.
19. PLD 1958 Lahore 340 = PLR 1958 (2) W.P. 1028 (DB) + PLD 1951 Lah. 479 (DB).
20. PLD 1967 Dacca 441 = PLD 1960 Dacca 1053.
1. PLD 1962 Karachi 608 (DB).
2. 1980 CLC 1558 (Lah.).

where, prior to the presentation of the appeal, the appellant was engaged unsuccessfully in review proceedings. As soon as the review is rejected, the appeal must be filed without delay and if there is any delay it must be duly accounted for.[3] Where an appeal is wrongly filed before a Court under mistake of fact and the memorandum of appeal is returned to the appellant for filing the same in proper Court and then the appellant files the appeal before the proper Court (High Court) and prays that the time taken for prosecution of appeal before the other Court be condoned and the appeal treated as within time, the appellant must explain the delay between the date of return of the memo of appeal and the filing of the same before the proper Court.[4] But where in such a case neither returned appeal itself was presented with the appeal filed in High Court nor it was alleged that some bona fide mistake had been committed in filing that appeal before District Judge. Copy of order returning appeal was not even filed. Extending any benefit of section 5, Limitation Act due to absence of any averment about sufficiency of cause for condonation, was not possible. Provisions of section 14 could not be called in aid of appellant in the circumstances. The appeal being governed by Art. 156, Limitation Act, thus was hopelessly time barred.[5]

Where an appeal was maintainable before the District Judge and the petitioner inadvertently filed it in the High Court. In the order returning it for presentation to the proper Court, it was observed that the District Judge may dispose of the appeal on merits but may not dismiss it on technical ground of limitation. The observations of the High Court that the appeal may not be dismissed on technical grounds of limitation, were made in respect of the time that the respondent had already spent in wrongly filing the appeal in the High Court or for some reasonable time that he might have taken for filing the appeal before the Court of District Judge. The observation had not given any guarantee to the petitioner to present the appeal at any time of her own choice and will. Under such circumstances, the observation made by the High Court would neither help nor come for the rescue of the petitioner.[6]

Proceedings conducted without due diligence. Where a party has been pursuing his remedy bona fide in a wrong forum he can seek condonation of delay in going to the proper forum only when he has been acting with diligence in the wrong forum and not otherwise.[7]

Proceedings conducted without due care and attention. Where there are no reasonable grounds at all for prosecuting wrong proceeding, it cannot be said that it was prosecuted in good faith (*i.e.* with due care and attention).[8] Where the petitioner presented his case before a wrong forum, with full knowledge that it had abated and the Court had ceased to exercise jurisdiction. Plea of good faith or diligent in prosecution before wrong forum could not be accepted.[9] Where the

3. AIR 1963 Madh-Pra 20 (DB) + AIR 1926 All. 252.
4. NLR 1980 AC 105 (Lah.) + AIR 1963 J&K 53.
5. 1989 CLC 2493.
6. PLD 1979 Quetta 32 = PLJ 1979 Quetta 17 (DB).
7. NLR 1982 CLJ 618 (DB).
8. 1982 SCMR 752 + 1981 SCMR 817 + 1981 CLC 740 + AIR 1940 Oudh 310 + AIR 1956 Assam 63 (DB) + AIR 1925 Cal. 253 (DB) + 1888 Pun Re No. 183. p. 478 (FB) + AIR 1923 Rang 75 + AIR 1927 Bom. 221 (DB).
9. PLD 1983 Pesh 134 = 1983 Law Notes 443 + PLJ 1982 Kar. 409.

petitioner deliberately filed an appeal in a wrong Court, he could not seek condonation of delay caused by the proceedings in such Court on the ground that the appeal was admitted and transferred to another Court, or that such Court illegally granted an injunction in his favour.[10] Where a party filed a review application although an appeal was clearly competent. It was held that the petitioner had no sufficient ground for not preferring his appeal within the time prescribed by law. The proceedings in the review were not reasonably prosecuted and were not in good faith and therefore, his application under section 5 of the Limitation Act must be rejected.[11]

Where wrong proceedings are taken without due care and attention, delay caused by the proceedings cannot be excused.[12] When the advocate of the party filed an appeal in the District Court whereas it should have been filed in the High Court. It was held that act of the Advocate could not be regarded as a bona fide and honest or excusable mistake on his part as he did not act with due care and attention and did not take the trouble to consider whether the value of the suit or the decretal amount determined the jurisdiction of the forum of appeal. The mistake of the counsel for the appellant amounted to gross negligence on his part and did not entitle him to the indulgence of extension of time under section 5, Limitation Act.[13] Where the advocate filed an appeal in District Court thinking that the decree was for Rs. 3,000 although that was only one item of the decree and the total amount involved was Rs. 29,000 the Court held that there was no mistake of law but clear negligence was involved. Therefore no extension of time was allowed.[14] Similarly where an application for certificate of fitness to file an appeal was filed when no such certificate was required in view of provisions of the constitution and a clear pronouncement of the Supreme Court, the delay caused by pursuing the application was not condoned.[15] Where a counsel affixed deficient court-fee on an appeal although he had taken full amount from his client. It was held that appeal having been returned to the counsel for being deficiently stamped and the counsel having already received full amount of court-fee, the appeal could be refiled on the very date of return and no occasion arose for writing to the client and waiting for 3 days. Delay was not condoned.[16]

A proceeding contrary to a clearly expressed provision of law cannot be regarded as prosecuting another civil proceeding in good faith in the sense in which the words 'good faith' are defined in section 2 (7) of the Limitation Act. It cannot be a rule of law that any mistaken advice given by a lawyer is a sufficient ground under section 5 or section 14 of the Limitation Act.[17] Where the Supreme Court had declared the law that provisions of sections 109, 110, C.P.C. were not applicable to appeals before Supreme Court but the petitioner continued to

10. PLD 1977 SC 102 = PLJ 1977 SC 340.
11. PLJ 1983 SC (AJ&K) 27 + 1980 SCMR 869 + 8 DLR 662 (DB).
12. PLD 1966 Lah. 542 + PLD 1952 B.J. 8 (DB) + AIR 1925 Cal. 175 (DB) + ('91) 14 Mad. 81 + ('04) 6 Bom. L.R. 373 (DB) + AIR 1916 Cal. 670 (DB) + AIR 1918 Lah. 91 = 1918 Pun Re No. 107 (DB) + ('04) 28 Bom. 235 (DB) + AIR 1956 Lah. 672.
13. 1989 SCMR 1498 + KLR 1985 CC 142 (DB) + PLD 1959 Baghdad-ul-Jadid 43 (DB).
14. PLD 1958 Lah. 525 = PLD 1958 (1) W.P. 1030 + AIR 1961 M.P. 336.
15. 1974 SCMR 158.
16. 1979 SCMR 46 = PLJ 1979 SC 370.
17. KLR 1985 CC 142 (DB) + 1984 SCMR 1068 = 1984 PSC 1366 + 1983 CLC 3059 + PLJ 1983 Tr. C. 208 + AIR 1963 Orissa 19.

pursue his application for certificate of fitness for appeal, and filed an appeal after rejection of the application. Delay in filing the appeal was not condoned.[18]

One of two remedies pursued. Where two remedies are open to a party and he elects one of them and fails on the merits, the time during which it was prosecuted cannot be excused for the purpose of seeking, thereafter, the other remedy.[19] But where an appeal against an *ex parte* decree became time-barred because the party spent some time in getting the *ex parte* proceedings set aside. It was held that if the attempt to get the proceedings set aside was bona fide and they were prosecuted with due diligence, the time spent in it would be excluded.[20] Similarly where the appellant had been diligently and in good faith prosecuting her review petition before the District Judge. The necessity for filing a second appeal arose only on dismissal of her review petition and hence the appellant was not expected to have applied for copies of the impugned judgment and decree before disposal of his review petition. Delay in filing the appeal was condoned even when application for copies was made after limitation for appeal against order appealed against had expired.[1]

Appeal not within time after deducting time spent in wrong Court. Where the period from the date of the decree to the date of the appeal, even after deducting the time spent in the wrong proceeding, exceeds the period allowed by law for preferring the appeal, sufficient cause and due diligence must be shown in respect of the period in excess.[2]

6. Negligence of party. A person who having knowledge of limitation sleeps over matter without sufficient cause and allows remedy to run out of limitation period cannot afterwards seek indulgence of Court for condonation of delay.[3] In cases of delay, appellant has not merely to explain actual delay beyond period of limitation but he has also to show that his conduct throughout the period remained vigilant enough.[4] A cause arising from the negligence of the party cannot be sufficient cause within the meaning of the section.[5] Delay vests opposite party with a right to defend decree passed in his favour which becomes

18. 1974 SCMR 158 + 1974 SCMR 393.
19. AIR 1938 Bom. 459 + AIR 1956 Hyd. 161 = ILR 1956 Hyd. 45 (DB) + AIR 1942 Oudh 362 (DB) + AIR 1932 Cal. 558 = 59 Cal. 1057 (DB) + AIR 1928 Pat. 265 (DB) + AIR 1916 Pat. 352 (DB) + AIR 1930 Rang. 41.
20. PLD 1960 Kar. 380 = PLR 1960 (2) W.P. 379 (DB).
1. 1981 CLC 1297 = NLR 1981 CLJ 16.
2. AIR 1926 All 252 + AIR 1929 Cal. 240 (DB) + ('02) 25 Mad. 166 (DB) + 1911 Pun. L.R. No. 140, p. 518.
3. NLR 1989 SCJ 85.
4. PLJ 1985 Tr. C. 65.
5. 1970 SCMR 428 + 1986 CLC 2151 + PLD 1984 SC (AJ&K) 104 = PLJ 1984 SC (AJ&K) 67 + NLR 1987 AC 374 (DB) + AIR 1945 Lah. 233 (DB) + AIR 1959 Raj. 17 = ILR (1958) 8 Raj. 1189 + AIR 1957 All 772 + AIR 1957 Him Pra 26 + AIR 1954 Cal. 238 (DB) + AIR 1954 Hyd. 104 = ILR 1954 Hyd. 12 (DB) + AIR 1953 Hyd. 167 = ILR 1952 Hyd. 1018 (DB) + AIR 1952 Vindh Pra 85 + AIR 1955 All 473 = ILR (1955) 2 All 147 = 1955 Cri. L. Jour 1213 (DB) + AIR 1951 Punj. (Simla) 170 = ILR 1951 Punj. 136 = AIR 1949 All 338 (DB) + 1940 All W.R. (CC) 120 + AIR 1938 Mad. 218 = ILR 1938 Mad. 275 (DB) + AIR 1938 Rang. 214 + AIR 1921 All 23 = 43 All 660 (DB) + AIR 1925 Cal. 175 (DB) + AIR 1935 Lah. 478 (DB) + AIR 1936 Lah. 793 (DB) + AIR 1932 Oudh 167 + AIR 1940 Cal. 530 + AIR 1938 Bom. 408 = ILR 1938 Bom. 704 (DB).

unimpeachable by expiry of limitation. Premium should not be placed upon negligence and inaction of appellant for coming late to Court.[6] Where judgment of High Court was delivered on 3-12-1975 and the application for grant of certified copy was submitted on 7-2-1976 *i.e.*, 65 days after the judgment was delivered. The petition, was barred by time even when the application for the grant of certified copy was submitted. The copy was ready for delivery on 19-2-1976 and the delivery was taken on 24-2-1976. The petition was, however, filed on 28-4-1976. Thus these petitions became further barred by time but no application was even filed to explain the delay and the grounds on which it may be condoned. The action was not condoned.[7] Even after engaging a counsel it was his duty to keep himself fully informed of proceeding and he was not relieved of his obligation to do so merely because he had engaged a counsel to appear on his behalf. Therefore, delay could not be condoned on the ground that the petitioner had no intimation of date of hearing of the suit or passing of a decree for the reason that his Advocate did not inform him about dates of hearings of suit or passing of decree and he came to know of this fact when he inspected the file of the case and failure of the Advocate to intimate the date of hearing to the petitioner constituted sufficient cause for condonation of delay in preferring the appeal in time and as such petitioner could not be penalized for negligence of Advocate.[8]

Where delay is caused in obtaining copies, in order to get the benefit of section 12. The determination of the question of the time requisite under section 12 of the Limitation Act in a particular case is a pure question of fact to be decided after proper appreciation of evidence and the circumstances of that particular case before the Court. In order to get the benefit of this provision of law the applicant is bound to prove that no part of delay in getting the copies was due to his slackness, negligence or carelessness. The explanation given must be reasonable and convincing so that the Court may form an opinion that the applicant was all along vigilant and making every effort in getting the copies in time. There may be cases where the applicants in spite of honest endeavour may not be able to get the copies in time though the same may have been prepared earlier than the actual date of delivery and in those cases the period of limitation can be further extended in the special circumstances to be explained. But where the period of limitation had already expired but the appellant took delivery of copies and filed the appeal after about more than two months and furnished no explanation for delay. Conduct of appellants negated the claim of bona fides and he was not entitled to condonation of delay.[9] But the Court condoned delay in filing an appeal where it found that the carelessness in not filing it within time was not intentional and further that the other party could be compensated by payment of costs. It was held that the ends of justice would be met if the application under Order XXII, Rule 9 of the Civil Procedure Code was granted on condition that respondent No. 1 would pay a sum of Rs. 1,000 as costs to the appellant.[10]

'Ex parte' decree, setting aside of. The defendant cannot avail of section 5 as the same had not been made applicable to an application under Order IX, rule 13,

6. NLR 1985 CC 394 = KLR 1985 CC 6.
7. 1988 SCMR 304.
8. 1974 SCMR 223 = 1983 CLC 1773 (Kar.).
9. PLD 1983 Pesh 143 = NLR 1983 Civ. 474 (DB).
10. PLD 1962 Karachi 608 (DB).

C.P.C. in the Province of Sind.[11] Liberal interpretation of Order IX, rules 9 and 13, Civil Procedure Code cannot be made to justify gross negligence on part of a party. Where the defendant failed to show sufficient cause for setting aside the *ex parte* decree and order of dismissal, application to set aside *ex parte* decree was dismissed.[12]

7. Negligence of party's agent. The negligence of a party's agent is, in law the negligence of the party himself and will not furnish sufficient cause for delay.[13] But if the party was diligent though the agent was negligent, it cannot be said that the party was negligent and extension of time may be granted.[14] It is to be noted that even after engaging a counsel it was the duty of the litigant to keep himself fully informed of proceedings and he was not relieved of his obligation to do so merely because he had engaged a counsel to appear on his behalf. Therefore delay cannot be condoned on the ground that petitioner had no intimation of date of hearing of suit or passing of decree because his Advocate did not inform him about dates of hearings of suit or passing of decree.[15] But the presence of parties in certain situations was not necessary as, when arguments alone remained to be heard. In such cases counsel would be duty bound to inform the party about the date of hearing failure to do so which might cause the party to suffer. Party in such situation, cannot be penalized for the conduct of the counsel.[16]

Advocate or his clerk, negligence of. A party's pleader or pleader's clerk stands on the same footing as an agent and his negligence will have the same consequences as the negligence of the party himself.[17] Where delay in filing appeal occurred due to misplacement of copies of judgment by counsel for appellant. It was held: Advocate being required to take care of copies by exercising due diligence and caution, explanation given did not constitute a valid ground for overlooking the delay.[18] Failure of counsel to inform his client about the fate of litigation would not constitute sufficient cause for condonation of delay.[19] Where an application for condonation of delay in filing petition was prayed for on ground of delay having been caused solely due to counsel's omission to inform the petitioner of the result of his case in the High Court and such petition was supported by counsel's certificate. It was held that there was no material before the Court to come to the finding that the Advocate, was so seriously ill during all this period as not to be able to send any intimation to the petitioner regarding the order made by the High Court. Therefore, this was a case of clear negligence on the part of the counsel. Delay was not condoned.[20] But where the affidavit of the defendants is to the effect that the defendants had no knowledge or information about the date of hearing. They expected that the suit would be fixed in due course and they would be informed by their Advocate. The defendants came to

11. PLD 1978 Kar 818 = PLJ 1978 Kar. 275.
12. 1983 CLC 2199 (Kar).
13. AIR 1924 All 176 + AIR 1954 Pepsu 126 = ILR 1953 Patiala 497 (DB) + AIR 1920 Pat. 594 (DB) + ('11) 7 Nag L.R. 67 + ('10) 12 Cal. L. Jour 615.
14. AIR 1929 All 351 + AIR 1956 All 677 (DB) + AIR 1919 Mad. 581 (DB).
15. 1983 CLC 1773 (Kar) + 1981 SCMR 126 + 1981 SCMR 194 = PLJ 1981 SC 252.
16. 1990 CLC 206.
17. NLR 1982 Civ. 437 = PLD 1958 Lah. 959 = 10 DLR (WP) 75 (DB) + PLD 1958 Lah. 257.
18. PLJ 1987 Lah. 598 = PLD 1987 Lah. 555 = 1987 Law Notes 812 + NLR 1987 CLJ 236.
19. 1981 SCMR 312 = PLJ 1981 SC 268.
20. 1981 SCMR 126 = PLJ 1981 SC 297.

know of the fate of the suit *i.e., ex parte* decree only on 21-8-1986, when they were served with notice of execution of the *ex parte* decree. In the circumstances and particularly in view of the affidavit of the counsel himself delay was condoned.[1]

A pleader who gives advice without reference to the law with regard to a matter of which he is ignorant, cannot be said to have acted with due care and attention.[2] There can be no cajole with proposition that want of reasonable skill on part of the counsel would stand on the same footing as negligence. Every mistaken advice of counsel cannot be a good ground for condoning delay as it would amount to defeating valuable rights that accrues to the adversary under the law.[3] Where the point involved was not such as would pose two views. A man of ordinary skill with due care and attention could easily find out the relevant Article of the Limitation Act prescribing the period of limitation for such appeals. The mere fact that the counsel for the appellant misconceived the provision of law relating to limitation for appeal and by reason of such mistake omitted to bring an appeal in time is not sufficient ground for enlarging time.[4]

Where the advocate of the appellant was informed by the High Court about the death of *H*, one of the respondents. After one year of the death the appellant put in an application stating that she was not a necessary party to the suit and consequently it was not necessary to implead her legal representatives. It was also stated that the plaintiffs who claimed to be the heirs of the deceased were party to the appeal and, therefore, the appeal could not abate. In the alternative it was alleged that the appellant had no information about the death of *H*, and had therefore, sufficient cause for not presenting the application earlier. The Court refused to extend time.[5] Where the pleader, no doubt states in his affidavit that he gave wrong advice in good faith, apparently meaning thereby that he honestly believed that there was no difference with regard to the period of limitation between regular appeals and appeals sought to be filed in *forma pauperis* in the High Court. It was held that it was a case of ignorance and negligence of the legal adviser. In the circumstances delay in the presentation of the application for leave to appeal as a pauper cannot be condoned and the application must be dismissed.[6]

Wrong advice given by a counsel is not a good ground for the condonation of delay in filing appeal. Where a proceeding has become time barred by negligent advice of the counsel, the party affected cannot be given relief under this Article but he can proceed against the counsel for damages.[8]

Honest mistake of counsel. An honest, though negligent, mistake of the pleader is a sufficient cause for condonation of delay.[9] It is to be noted that

1. PLJ 1987 Kar. 140 = NLR 1987 UC 271 = 1987 CLC 218.
2. PLD 1955 Dacca 63 = PLR 1953 Dacca 219 = 5 DLR 265 (DB) + PLR 1971 Lah. 332 (DB) + PLD 1966 B.J. 14 (DB).
3. 1990 MLD 386 + NLR 1981 AC 433.
4. PLD 1967 J & K. 47 (DB).
5. PLD 1958 Lah. 257.
6. PLD 1955 Dacca 63 = PLR 1953 Dacca 219 = 5 DLR 265 (DB).
7. 1980 SCMR 332 + 1983 CLC 1528 (DB) (Lah.) + 1984 CLC 1386.
8. PLR 1958 Lah. 959 = PLR 1959 (2) W.P. 79 = 10 DLR (W.P.) 75 (DB).
9. NLR 1981 AC 433 + PLD 1971 Lah. 332 (DB) + AIR 1932 All. 490 = 44 All. 636 (FB) + AIR 1925 Mad. 462 (DB) + AIR 1926 Nag. 503.

mistaken advice of counsel can be a good ground only when it is given *bona fide*, with due diligence and after due application of mind.[10]

Agent deliberately acting against interest of principal. Where an agent acted deliberately against the interest of his principal, the latter was permitted to file an appeal beyond limitation.[11]

8. Mistake of fact by party or his agent. A bona fide mistake of fact on the part of a party will be a sufficient cause.[12] It is to be noted that a mistake which might occur even in the most carefully conducted business cannot be said to be a negligent mistake.[13] Thus where due to omission of the name of one respondent in the copy of judgment given to the appellant that name was omitted in the appeal which was filed within the period of limitation but that name was introduced by amendment after the period of limitation had expired, the delay in impleading the party was condoned as a bona fide mistake of fact.[14]

Where reasons for delay were stated in an affidavit. No counter-affidavit was filed to challenge it. The delay was condoned.[15]

Mistake of agent. Mistake of agent cannot be sufficient cause unless it is committed bona fide, *i.e.*, unless it is one that has occurred in spite of due care and attention.[16] But if the party has acted without due care and attention in relying upon the agent, the mistake of the latter even though bona fide, will not be sufficient cause.[17]

Appeal filed in wrong Court. Where an appeal is wrongly filed before the Commissioner under mistake of fact and the memorandum of appeal is returned to the appellant for filing the same in proper Court and then the appellant files the appeal before the proper Court (High Court) and prays that the time taken for prosecution of appeal before the Commissioner be condoned and the appeal treated as within time, the appellant must explain the delay between the date of the return of the memo of appeal and the filing of the same before the proper Court.[18]

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10. KLR 1982 CC 381.
11. PLD 1977 AJ&K 86.
12. AIR 1931 Cal. 506 = 58 Cal. 793 (DB) + 1958 All. L. Jour 119 + AIR 1957 Raj. 330 = ILR (1957) 7 Raj. 530 + AIR 1953 Punj. 252 = ILR 1954 Punj. 326 (DB) + AIR 1952 Assam 48 = ILR (1951) 3 Assam 252 (DB) + ILR (1953) 2 Cal. 395 + AIR 1949 Mad. 624 + AIR 1926 Lah. 509 (DB) + AIR 1916 Oudh 257 + AIR 1920 Lah. 508 + 11 All. L. Jour 779 + AIR 1938 Mad. 218 = ILR 1938 Mad. 275 (DB).
13. 11 All L. Jour 779.
14. Law Notes 1973 NUC 329 (Lah.).
15. 1976 SCMR 79 + PLD 1977 SC 182 = PLJ 1977 SC 381 + 1984 CLC 1208 = PLJ 1984 Lah. 250 (DB).
16. AIR 1925 Oudh 182 + 5 Bur L. Jour 227 + AIR 1925 Oudh 374 + AIR 1919 Cal. 585 (DB) + AIR 1928 Lah. 488 + 11 All L. Jour 779 + AIR 1932 Mad. 142 + AIR 1932 Lah. 134 + AIR 1930 All 112 (DB) + AIR 1927 All 816. (*Vakalatnama* signed by *vakil* but his name not entered in body) + AIR 1927 Lah. 618. (*Vakalatnama* not properly signed) + AIR 1937 Nag. 65 = ILR 1937 Nag. 494 + AIR 1934 Pat. 290 (DB).
17. AIR 1933 Cal. 462 (DB).
18. AIR 1963 J&K 53 + AIR 1933 Oudh 523 (FB) + AIR 1959 Madh Pra. 52 + AIR 1963 M.P. 20 (DB).

Mistake in calculating limitation. Where there was a delay of one day in filing an appeal. It was due to the lawyer's bona fide mistake in calculating the period of limitation. The delay should be condoned.[19]

Delay in filing 'vakalatnama'. Any delay or irregularity in filing a *vakalatnama* may be condoned.[20]

Delay in obtaining copies. Where the delay in obtaining copies is due to a bona fide default on the part of the counsel's clerk, it may be condoned.[1]

9. Mistake of law of party or his agent. A mere mistake or ignorance of law is not *per se* sufficient reason for condoning delay.[2] Therefore, a party having no knowledge of law of limitation, did not act in good faith and with due diligence if he took upon himself to determine the question of limitation.[3] The maxim *ignoratia legis niminem excusat* (ignorance of law is no excuse) has been so firmly settled both in England and Pakistan, that it would be shaking established authority to maintain that ignorance of law or mistake of law are reasons which furnish elements for extending the period of limitation which the statute law provided. To hold that ignorance of law is sufficient cause would amount to place a premium on ignorance. Ignorance of law unaccompanied by negligence in action or want of bona fide, may in proper cases be a sufficient cause, but section 5 of the Limitation Act was not provided to encourage negligence, procrastination and laxity.[4] Thus a misconception regarding the time allowed for obtaining copies was no ground for condonation of delay.[5]

Mistake of law and ignorance of law--distinction. There is a clear distinction between ignorance of law and mistake of law. Ignorance of law is the ignorance of a right of the party which law confers upon him. Mistake of law is mistake in establishing those rights, for instance going to one forum instead of another. Where the party knows his rights he wants to assert them and establish them but through mistake in understanding the provisions of law he goes to a wrong forum instead of going to the forum which the law has set up for the determination of his rights, the Courts have almost unanimously taken the view that the time taken by asserting the rights in a wrong Court or wrong forum should be excused and the Courts have largely been influenced by the principle underlying section 14 of the Limitation Act. But ignorance of law is not only no excuse but not a sufficient cause for not asserting the rights in establishing the law.[6]

Gross ignorance of counsel--remedy of client. Gross ignorance of law on the part of counsel could not be regarded as an ill-advice, and for that reason if client

19. PLD 1961 Dacca 29 = 12 DLR 507 = PLR 1959 Dacca 224 (DB) + AIR 1965 Orissa 193.
20. AIR 1954 Bilaspur 12.
1. AIR 1955 Mys. 64 = ILR 1955 Mys. 225.
2. 1980 SCMR 964 + PLJ 1984 SC (AJ&K) 5 = PLD 1984 SC (AJ&K) 51 = 1984 PSC 356 + PLD 1980 Pesh 171 + 1979 SCMR 52 + PLD 1968 Lah. 1106 (DB) + AIR 1917 P.C. 156 + AIR 1960 Punj. 512 (DB) + AIR 1943 Oudh 57 (DB) + AIR 1925 Lah. 602.
3. PLD 1984 SC (AJ&K) 104 = PLJ 1984 SC (AJ&K) 67.
4. PLD 1985 Quetta 74 (DB) + PLD 1966 Lahore 319 (DB).
5. 1975 SCMR 304.
6. PLD 1985 Quetta 74 = NLR 1985 Lab. 1. (DB).

had suffered he could seek redress against counsel. The ground of gross ignorance of law by counsel could not prevail for condonation of delay.[7]

Bona fide mistake. Mistake of law committed bona fide is regarded as sufficient cause.[8] Thus ignorance of law accompanied by circumstances not indicating want of good faith or negligence may in circumstances of particular case furnish sufficient ground within the meaning of S. 5, Limitation Act, 1908. Where a Tribunal did not advert to such facts in his order refusing to condone delay, and failure to do so indicated that the tribunal did not apply his mind to provisions of S. 5 and his order thus suffered from infirmity, which rendered it without lawful authority and of no legal consequence.[9]

Wrong advice by lawyer. Wrong advice for want of reasonable skill on the part of an Advocate constitutes negligence.[10] Where a party consults legal practitioners of inferior standing and little experience and acts upon their advice, he cannot be said to have acted with due care and attention.[11] Even where wrong advice of counsel amounts to sufficient cause, it must be shown that the appellant or applicant has otherwise been reasonably diligent in prosecuting his proceeding.[12] Mistaken advice of counsel when coupled with negligent conduct of party himself cannot be pleaded as sufficient for condonation of delay.[13]

If the mistake of the lawyer is one that can be condoned under the section and the party has acted on his advice, the party is not prevented from relying upon it for claiming indulgence under this section.[14] Acting upon wrong advice will amount to "sufficient cause" when the advice was itself given bona fide, *i.e.*, after the exercise of due care and attention.[15] In other words the mistake should be such

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7. 1984 SCMR 890 = 1984 PSC 854.
8. PLD 1968 Lah. 1106 = PLR 1966 (1) W.P. 125 = PLR 1969 (1) W.P. 778 (DB) + 1913 Pun. L.R. No. 59, p. 223 (DB) + AIR 1960 Him. Pra. 28 + AIR 1953 S.C. 419 = 1950 S.C.R. 754 + AIR 1954 Bom. 537 = ILR 1954 Bom. 1389 (DB) + AIR 1953 Assam 41 + AIR 1953 Raj. 7 = ILR (1952) 2 Raj. 121 (DB) + AIR 1952 Cal. 753 (DB) + AIR 1951 Ajmer 54 + AIR 1937 Rang. 199 + AIR 1932 Cal. 589 = 59 Cal. 781 (DB) + 1 Ind. Cas. 902 (All) + 73 Ind Cas 788 (Pesh) + AIR 1936 Nag. 246 + AIR 1918 Mad. 703 (DB) + 3 Oudh Cas 13 (DB) + AIR 1936 Lah. 168 (DB).
9. 1973 Dhaka LR 203 + PLD 1968 Lahore 1106 = PLR 1966 (1) W.P. 125 = PLR 1969 (1) W.P. 778 (DB).
10. NLR 1982 Civ. 473.
11. 1980 CLC 2183 (Lah) = NLR 1980 Civ. 179 + 1975 SCMR 259 + PLJ 1982 Lah. 393 (DB) + PLD 1976 Kar. 811 + 1913 Pun L.R. No. 254, p. 859 (DB).
12. AIR 1924 All 867 + AIR 1927 Cal. 829 (DB).
13. NLR 1984 AC 195.
14. PLD 1976 Kar. 104 + PLD 1977 Kar. 203 (DB) + AIR 1918 P.C. 135 + AIR 1937 P.C. 276 + AIR 1955 Cal. 553 (DB) + ILR 1954 Madh B 478 + 1955 All L. Jour 452 + AIR 1954 Cal. 532 = ILR (1955) 2 Cal. 67 (DB) + AIR 1953 Cal. 800 + AIR 1953 Cal. 624 + AIR 1946 Bom. 437 = ILR 1946 Bom. 431 (DB) + AIR 1942 Lah. 94 + AIR 1942 Oudh 125 = 17 Luck. 487 (DB) + AIR 1945 Oudh 94.
15. 1987 CLC 1307 (DB) + PLD 1984 SC (AJ&K) 51 = PLJ 1984 SC (AJ&K) 5 = 1984 PSC 356 + PLD 1961 Lah. 137 + PLD 1971 Lah. 332 (DB) + PLD 1952 B.J. 8 + PLD 1958 Lah. 959 = PLR 1959 (2) W.P. 79 = 10 DLR W.P. 75 (DB) + PLD 1958 Lah. 325 = PLR 1958 (1) W.P. 1030 + PLD 1960 Kar. 562 + AIR 1964 Punjab 289 (DB) + AIR 1927 Rang 20 = 4 Rang. 265 (FB) + AIR 1956 Madh. B. 127 (DB) + AIR 1954 Raj. 25 = ILR (1952) 2 Raj. 782 + 1949 Bur. L. R. (S.C.) 105 + AIR 1945 Oudh 94 + AIR 1940 Rang. 14 = 1939 Rang. L.R. 639 + AIR 1959 Orissa 31 = ILR 1959 Cut. 265 (DB) + AIR 1938 Pat. 413 = 17 Pat. 507 (DB) + 32 Pun. L.R. 389 (DB) + 17 Cal. W.N. 807 + AIR 1930 Oudh 49 (DB) + AIR 1916 Lah. 268.

as even a practitioner possessing reasonable skill is likely to commit.[16] Where the appellant filed his appeal in the District Court instead of High Court relying on the mistaken advice of senior lawyers who enjoyed high status and reputation in the legal profession, and the appellant acted with due diligence and in good faith in prosecuting the appeal in the District Court right upto the stage when the appeal was presented to the High Court, and, if the time taken up in prosecuting the appeal before the District Court was excluded, the appeal to the High Court would be within the period of limitation. It was held that delay in filing the appeal in the High Court occasioned by the appellant's prosecuting proceedings in the wrong Court was "sufficient cause" within S. 5 and must be condoned.[17] Delay in presenting appeal before District Court instead of presenting it before High Court was condoned by High Court on the ground that appellant's Advocate was misled by figure of decretal amount. High Court treated appeal as within time and deciding it on merits.[18] Delay caused due to wrong impression of counsel that time does not run during vacation of Court was condoned.[19] The delay caused by wrong advice of a legal adviser on the ground of his not knowing a recent change in the law curtailing the period of limitation is a "sufficient cause".[20]

Where appeals were filed without decree sheets and an erronous belief that no decree sheet was required was prevalent during the relevant period; the appellants were entitled to the benefit of S. 5. Delay in filing the decree sheets was condoned.[1] Where the appellant was misled by conflicting decisions of the Court and the practice that had developed. It is a sufficient cause to condone delay and extend the time of appeal.[2]

Mistaken advice by counsel, when not sufficient cause for condoning delay. It is not every wrong advice by a legal adviser that will amount to a sufficient cause.[3] Only such mistaken advice can be considered as sufficient ground for condoning delay in availing of a legal remedy which has been given bona fide, with due diligence and after due application of mind. The negligent advice of a counsel can obviously be not made a basis for condoning delay as it would amount to giving a premium on one's own neglect. There can be no cajole with the proposition that want of reasonable skill on the part of the counsel would stand on the same footing as negligence. It may also be observed that if it be laid as a broad principle that every mistaken advice of the counsel is a good ground for condoning delay as has been convassed by the counsel for the appellant, it would amount to defeating

16. AIR 1938 Pat 413 = 17 Pat. 507 (DB) + AIR 1955 Cal. 578 (DB) + Madh B.L.J. 1954 H.C.R. 389 + AIR 1951 Sau 12 + 1948 Bur. L.R. (H.C.). 606 (DB) + AIR 1942 Lah. 94 + AIR 1945 Oudh 94 + AIR 1926 Cal. 688 (DB) + AIR 1922 All 490 = 44 All 636 (FB) + 17 Ind. Cas. 155 (DB) (Cal.) + AIR 1933 Rang. 96 (DB).
17. 1963 Gujerat 119.
18. NLR 1987 CLJ 357 (DB).
19. 1974 SCMR 149.
20. AIR 1924 Bom. 399 = 48 Bom. 442 (DB).
1. AIR 1961 Punjab 81.
2. PLD 1961 Karachi 317 = PLR 1961 (1) W.P. 263 (DB).
3. 1986 SCMR 1493 + PLD 1966 SC 276 + 1977 SCMR 306 + AIR 1963 J&K 53 + AIR 1937 P.C. 276 = 31 Sind L.R. 672 + AIR 1952 Assam 100 = ILR (1952) 4 Assam 401 (FB) + AIR 1959 Orissa 31 = ILR 1959 Cut 265 (DB) + AIR 1954 Raj. 25 = ILR (1952) 2 Raj. 782 + 1949 Bur L.R. (S.C.). 105 + AIR 1950 Raj. 2 + AIR 1947 Pat. 225 = 25 Pat. 432 (DB) + AIR 1932 Cal. 589 = 59 Cal. 781 (DB) + AIR 1926 Nag. 162.

the valuable right that has accrued to the adversary under the lay by lapse of the prescribed period of limitation.[4] Thus the Courts will not excuse delay caused by a mistake proceeding from culpable negligence of the legal adviser,[5] or where the mistake is not bona fide.[6] It is to be noted in this context that an obvious mistake cannot be said to be bona fide.[7] Therefore as the judgments of the District Judge and that of the Sub-Judge are not at all required to accompany the petition for leave to appeal, delay in obtaining copies of such judgments cannot be excluded in computing the period of limitation.[8]

The Court will not excuse delay caused by a mistake which could have been avoided by due care and attention.[9] Thus where the mistake had been committed on account of negligence in not studying the law on the subject, and by not exercising due care and caution, no ground for condoning the delay existed in law. A valuable right having been created in favour of a party it was not liable to be defeated on flimsy grounds.[10]

The Court will not excuse delay caused by mistake due to want of reasonable skill on the part of the legal adviser.[11] Therefore where a party consulted legal practitioners of inferior standing and little experience and acted upon their advice, he could not be said to have acted with due care and attention.[12]

Advice based on untrue statement. Where wrong advice given by the legal adviser is honest and bona fide, but it is based on an untrue statement of facts made by the party to the pleader; acting upon the advice so given cannot be a sufficient cause for delay.[13]

Affidavit as to mistake by lawyer necessary. Where extension is claimed on the ground of mistake of the legal adviser, there ought to be proper evidence establishing the fact that there was a mistake and that it was bona fide. The legal

4. PLJ 1981 Lah. 753 = PLD 1981 Lah. 620.
5. 1988 SCMR 4 + PLD 1977 SC 102 + 67 Cal. L. Jour 107 (DB) + AIR 1959 Madh Pra 52 + Madh B.L.J. 1954 H.C.R. 389 + ILR 1954 Patiala 639 + AIR 1953 Punj. 298 (DB) + AIR 1951 Punj. (Simla) 209 = ILR 1950 Punj. 434 (DB) + AIR 1944 Oudh 135 (DB) + AIR 1945 Oudh 94 + AIR 1938 Nag. 156 = ILR 1938 Nag. 409 (DB) + AIR 1933 Oudh 523 = 9 Luck. 193 (FB) + AIR 1929 Bom. 393 (DB) + AIR 1934 Nag. 52 + AIR 1930 Rang 209 + AIR 1933 Nag. 219 = 29 Nag. L.R. 295 + AIR 1926 Lah. 343.
6. 1986 SCMR 64 + PLD 1985 SC 124 = 1985 PSC 100 + AIR 1940 Rang 14 = 1939 Rang. L.R. 639 + AIR 1958 Madh Pra 96 (DB) + AIR 1954 Raj. 25 = ILR (1952) 2 Raj 782. (Appeal filed beyond time--Change in law of limitation 11 months prior--Mistaken advice of lawyer--Not bona fide) + AIR 1949 Assam 24 = ILR (1949) 1 Assam 183 (DB) + AIR 1944 Oudh 135 (DB) + AIR 1939 Oudh 245 = 14 Luck. 701 (DB) + AIR 1923 Lah. 612 + AIR 1932 Cal. 589 = 59 Cal. 781 (DB) + AIR 1918 Pat. 336 (DB) + AIR 1933 Oudh 523 = 9 Luck. 193 (FB) + AIR 1928 Lah. 216 = 9 Lah. 76 (DB) + AIR 1938 Lah. 81 = ILR 1938 Lah. 379.
7. AIR 1924 Rang. 148 = 1 Rang. 584 (DB) + AIR 1955 Cal. 578 (DB) + 34 Cal. 216 (DB) + AIR 1945 Oudh 94 + AIR 1929 Mad. 91 (DB).
8. PLJ 1984 SC (AJ&K) 5 = PLD 1984 SC (AJ&K) 51 = NLR 1984 SCJ 281 = 1984 PSC 356.
9. 1987 CLC 1307 (DB) + 5 Nag. L.R. 25 + AIR 1958 Punj. 365 = ILR 1958 Punj. 960 (DB) + 12 Ind. Cas. 677 (DB) (Cal.) + AIR 1924 Nag. 279 (DB) + 110 Ind Cas 533 (DB) (Lah.) + 13 Cal. 62 (DB).
10. PLD 1971 Lahore 332.
11. 67 Cal. L. Jour 107 (DB) + AIR 1950 Raj. 2 + AIR 1944 Oudh 135 (DB) + AIR 1945 Oudh 94 + AIR 1923 Pat. 140 (DB) + AIR 1932 Cal. 171 (DB).
12. 1913 Punj. L.R. No. 254, p. 859 (DB).
13. AIR 1919 Pat. 38 (DB).

adviser should file an affidavit to that effect.[14] Where the counsel who was alleged to have given wrong advice did not submit an affidavit in that respect before the Court, delay was not condoned.[15]

10. Amendment of decree. An amendment of decree may be a "sufficient cause" under this section for not filing an appeal within time.[16] If the grounds of appeal are intimately connected with the amendment of the decree, or if the grounds are directed against the decree only in so far as it has been amended, the Court should exercise discretion in the appellant's favour.[17] Therefore where after an appeal is preferred the name of a defendant which had been omitted in the decree is added by way of amendment, and the appellant gets such name substituted in the appeal but after the expiry of the period of limitation; it would be sufficient cause within the meaning of section 5.[18]

When the grounds of appeal have no reference to the amendment, the discretion under S. 5 cannot be exercised in favour of the appellant.[19]

11. Illness of party. A mere plea of sickness is not a sufficient cause.[20] The question whether the effect of the sickness is such that it afforded sufficient cause is one of fact to be decided in the circumstances of the particular case.[1] Where medical certificate produced in support of application under S. 5, Limitation Act, did not show that appellant-petitioner was in such serious condition that he could not call his counsel to his house for consultation or speak to him on telephone or could not send a person to enquire about progress of case, application for condonation of delay was dismissed.[2] Where the petitioner was ill, but was not unable to give instructions for filing the appeal, delay was not condoned.[3] Where a copy of judgment was obtained by some one on behalf of the petitioner and there was no explanation given as to why such person could not file the appeal also. Condonation of delay on the ground of illness of the petitioner was refused.[4] Where an appeal was filed 29 days after the expiry of limitation. It was held that it was not impossible that owing to illness and old age the appellant was not in a position to do all that could have been possibly done for the prosecution of the matter. As the question involved in the appeal was of general importance, the Court admitted the appeal.[5]

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14. PLD 1985 SC 124 = 1985 PSC 100 + AIR 1918 Cal. 53 (DB) + AIR 1918 Lah. 67 = 1917 Pun. Re. No. 95 (DB).
15. PLD 1985 SC 124 = 1985 PSC 100 + NLR 1984 UC 390 + 1980 SCMR 232.
16. AIR 1931 Cal. 578 (DB) + AIR 1929 Cal. 676 = 57 Cal. 549 (DB) + AIR 1935 Oudh 461 = 11 Luck 413 (DB) + AIR 1919 Lah. 250 = 1919 Pun Re. No. 64 (DB).
17. ('06) 3 Cal. L. Jour 188 (DB) + AIR 1932 Cal. 534 = 59 Cal. 1052 (DB) + AIR 1919 Oudh 91 + AIR 1930 Pat. 142 (DB).
18. AIR 1936 All 666 (DB).
19. AIR 1920 Pat 622 (FB) + AIR 1921 All 60 = 43 All. 380 (DB) + AIR 1930 Oudh 463.
20. PLJ 1985 Tr. C. 65 + NLR 1980 SCJ 305 = 1980 SCMR 561 (1) + AIR 1922 Pat. 47 (DB). (Illness of agent of party) + AIR 1954 Mys. 86 + AIR 1925 Cal. 175 (DB). (Illness in party's family).
1. KLR 1985 CC 6 = NLR 1985 Civ. 394 + AIR 1936 Rang. 183 = 14 Rang. 155 (DB).
2. PLD 1988 Kar. 334 = NLR 1989 AC 269 (DB).
3. PLJ 1985 Tr. C. 65 + PLD 1984 Pesh. 15 = NLR 1984 AC 153 + 1976 SCMR 173 + 1976 SCMR 347.
4. 1976 SCMR 347.
5. PLD 1965 Karachi 621.

For condonation of delay a medical certificate cannot come to the rescue of the petitioner, because, evidence is available on the record in the form of obtaining certified copies of various documents, etc., that despite the aforesaid illness the petitioner was attending to the case, and there was no explanation as to why only institution of this petition was delayed for all the period involved in this case, and particularly the delay even after obtaining the relevant certified copies, still remained unexplained.[6] Where the delay was of 103 days the Court refused to condone it on the ground that appellant was old and suffered from kidney disorder.[7] Where condonation of delay is sought on the ground that the appellant was suffering from dysentery and anaemia. It was held that the petitioner was not suffering from such a malady and was not bedridden so as to be prevented from being in a position to visit a lawyer. There was no sufficient cause to excuse delay. Petition was dismissed as barred by limitation.[8]

Typhoid fever was not sufficient ground for condoning delay in filing an appeal.[9]

Diligence prior to illness not necessary. Failure of appellant to account for his non-deligence during the whole of the period of limitation prescribed for the appeal does not disqualify him from praying for the condonation of delay under S. 5. Where the appellant did not file the appeal till the last day of limitation and as he fell ill on the last day of limitation, he filed the appeal thereafter asking for the delay to be excused; it was held that his want of diligence till the last day of limitation would not disqualify him from applying for excusing of the delay.[10]

Illness after expiry of limitation. The illness of a party after expiry of the period of limitation will not be a sufficient cause for condoning the delay.[11]

Proof of illness. Where an appellant seeks to get his appeal restored on ground of illness, he should produce medical certificate along with the application for restoration and in any case before the final hearing of the appeal particularly where the respondent opposed the application for condonation of delay.[12]

12. Minority of party. There is no absolute right to the extension of time on the ground of minority so far as appeals and applications other than those mentioned in section 6 are concerned.[13] As a rule a minor is in no better position than his guardian would be if he were the appellant.[14] Thus where the guardians of the minors acted with propriety in consulting pleaders and not filing an appeal on their advice; there was no sufficient cause for extending time on application of the minor.[15] Similarly where the minor applicants applied for condonation of delay

6. 1982 SCMR 387.
7. PLD 1972 Kar. 103 (DB).
8. 1980 SCMR 782.
9. PLJ 1976 Kar. 23.
10. AIR 1962 Supreme Court 361 (*Overruled* AIR 1916 Nag. 30+AIR 1919 Pat. 503)+AIR 1931 Cal. 298+AIR 1928 Rang. 165.
11. AIR 1934 Lah. 464.
12. PLD 1961 Karachi 231 (DB).
13. AIR 1918 Oudh 163 (DB).
14. NLR 1981 SCJ 590+1906 Pun. L.R. No. 164, p. 544. (Laches of guardian—delay cannot be excused).
15. ('06) 30 Bom. 329 (DB).

under section 5, it was held that the delay could not be condoned on the only ground that the delay was caused by carelessness of the guardian of the minor. As no other sufficient ground was made out, the application was refused.[16]

When delay may be excused. Minority is a factor to be taken into account when considering circumstances which justify the application of this section.[17] Where infants are concerned they ought not, when they can be protected consistently with fairness to other people, to be prejudicially affected by the negligence or omission of their adult relations.[18] Thus where an appeal on behalf of a minor was filed after the expiry of limitation, the Court condoned the delay in view of the minority of the appellants and the huge amount involved in the appeal.[19]

A guardian's failure to appeal due to his having a strong personal motive opposed to the interests of the minor was a sufficient cause for extending time.[20]

Criminal cases. In criminal appeals a minor should ordinarily be granted extension of time because no valuable right accrues to the opposite party. Thus where the appellant, a boy of 12 who was not expected to know that the appeal should have been filed within sixty days from the order convicting him under section 380, Penal Code, filed an appeal against the order 56 days beyond the time prescribed for filing of criminal appeals, the High Court condoned the delay.[1]

Time spent in obtaining succession certificate. Delay caused due to proceedings for obtaining succession certificate is sufficient cause for extending time for an application to implead minor legal representative of the deceased decree-holder.[2]

13. Fraud. Where delay in filing an appeal is caused by fraud and the appellant or his counsel are not in any way negligent, time may be extended under this section. Where the appeal is not presented owing to deliberate fraud of Advocate's clerk in running away with money and the Advocate was not negligent and the party implicitly trusted him; the Court extended time for filing the appeal.[3] But the plea of fraud must be bona fide. Where a party came to Court after one year of the alleged fraud by his counsel in not making up the Court fee within limitation, the Court refused to condone the delay.[4] Similarly where an appeal filed in a representative suit was returned for corrections but was fraudulently not represented by the appellants. The persons represented applied to be allowed to prosecute the appeal; the application was treated as a fresh appeal and delay was excused.[5]

16. PLD 1964 Peshawar 97.
17. AIR 1939 Lah. 439 = ILR 1939 Lah. 443 (DB).
18. AIR 1916 Bom. 153 = 41 Bom. 15 (DB) + AIR 1955 Mys. 133 = ILR '955 Mys 415 + AIR 1948 Mad. 201 + AIR 1948 Pat. 300 = 26 Pat. 220 (DB).
19. PLD 1973 Lah. 60 (DB).
20. ('96) 20 Bom. 104 (DB).
1. PLD 1960 Lahore 85 = PLD 1960 (2) W.P. 166.
2. AIR 1924 Oudh 83 = 26 Oudh Cas. 244.
3. AIR 1934 Lah. 986 (DB).
4. NLR 1981 CLJ 619.
5. AIR 1928 Mad. 456 (DB).

Mere threat not sufficient. A mere threat against the applicant, is not a sufficient cause for delay in filing an application.[6]

Orders procured by fraud, appeal against. If an order has been procured by means of fraud or misrepresentation then question of limitation would not be involved in such cases as fraud vitiates even most solemn proceedings.[7]

Collusive decree, delay in appeal against. Where there was delay in filing appeal against a collusive decree. Failure by plaintiff decree-holder to raise objection on point of limitation after admission of appeal, disentitles him to urge that delay was not condoned because there was no mention of the same in judgment ultimately passed.[8]

14. Poverty or want of funds. The poverty of a party or his want of funds is not a "sufficient cause" within the meaning of this section.[9] Where there was a delay of 44 days in filing the petition for special leave and the only ground urged in support of the application for condonation of delay was that the petitioners had to collect money from amongst a large number of petitioners who were interested in the case. It was held, that that was not a sufficient ground for condoning the delay.[10]

15. Subsequent decision altering law. The fact that subsequent to a decision given against a party the High Court or the Privy Council has given another decision which has the effect of modifying the law or practice is not a sufficient ground for extending the time.[11]

16. Imprisonment of party. The imprisonment of a party may constitute a sufficient cause for excusing delay.[12] The mere fact that the party was in jail without anything more is not necessarily a sufficient cause for extending time.[13] It all depends on the facts and circumstances of each case. The Court has to consider whether in jail at the material time the defendant was in any way embarrassed or handicapped in his defence by reason of the jail authorities having not given him proper facilities for giving instructions to his lawyer or otherwise having caused disability to the defence.[14]

If a person is imprisoned at a place far from the seat of the Court, time may be extended but where the defendant prisoner made an application for setting aside the *ex parte* decree after about eight months from the date of his transfer to the jail of the place where the Court held its seat; his previous spell of

6. AIR 1915 Mad. 132.
7. KLR 1984 CC 325 = PLJ 1984 Lah. 449 + PLJ 1974 BJ 88 (*Rel.* PLD 1970 Lah. 614 + PLD 1956 FC 72 + PLD 1954 Lah. 745).
8. NLR 1985 Civ. 743.
9. 1970 SCMR 582 + PLD 1984 SC (AJ&K) 104 + PLD 1982 SC (AJ&K) 13 + AIR 1947 Lah. 210 (DB) + ('86) 13 Cal. 78 (DB) + ('09) 19 Mad. L. Jour 209 + ('90) 12 All 461 (FB) + AIR 1919 Lah. 252.
10. PLD 1956 S.C. (Ind.) 323.
11. PLD 1962 Pesh. 21 + AIR 1942 Oudh 447 + 9 Beng. L.R. 187 (DB) + 1871 Pun Re No. 51, p. 115 + 9 Suth W.R. 181 (FB) + 10 Suth W.R. 178 (DB).
12. 1986 SCMR 74 + 1904 Pun Re No. 21, p. 69.
13. AIR 1915 All 240 (DB) + 4 Oudh Cas 303 (DB) + AIR 1963 Orissa 102.
14. AIR 1963 Orissa 102.

imprisonment at a place away from the seat of the Court could not be held to be sufficient cause for excusing delay.[15]

Criminal appeal. Where an appeal was barred by time by five years. Accused explained that during the intervening period he had been shifted from one jail to another consequent upon his false implication by Police in a number of cases. Factum of detention of accused in various jails was not controverted. Delay was condoned.[16] But where the convict handed over judgment to a friend for consulting some lawyer and filing his appeal but he was let down by him as he did not show up. Accused again applied for certified copy of judgment and submitted his appeal through jail authorities. Explanation was held to be plausible and delay was condoned particularly when criminal revision application for enhancement of his sentence had been already admitted for regular hearing.[17] In the case of criminal offences it is not a sufficient cause for the convict to say that he did not know that he had a right of appeal or that he thought his relations would prefer an appeal.[18] Where appellant in jail gave thumb impression on application for appeal but it was sent late by jail authorities. Evidence on record did not furnish requisite corroboration for conviction of appellant for offence alleged to have been committed. Delay in filing of appeal was condoned.[19]

Mitigating circumstances in criminal appeal. Where the prisoner had been sentenced to death for murder but there was the mitigating circumstance of family honour being involved, the motive of offence being to stop deceased from visiting petitioner's house for immoral purpose. Leave to appeal was granted on question of sentence only and delay in filing the appeal was condoned.[20]

17. Non-availability of Court-fee stamps. Difficulties encountered in procuring the necessary court-fee stamps, may constitute "sufficient cause" for delay if the party was reasonably diligent.[1] Where stamps of Rs. 2 and Re. 1 were affixed and it was sho n that at the time of filing the appeal no single court-fee label of Rs. 3 which was the fee required by law was procurable; time should be extended.[2]

18. Mistake of Court or its officers. Law of limitation would not have strict application where mistake was committed by Court or its officials.[3] Where the appellant is misled by a doubtful point of practice or by a change of practice, the delay generally amounts to sufficient cause.[4] Where an application was made later

15. AIR 1963 Orissa 102.
16. 1986 P. Cr. L J. 812 = KLR 1986 T&C. 1.
17. 1985 P. Cr. L J. 808 (DB).
18. 1891 All W.N. 10 (DB).
19. PLJ 1984 FSC 210.
20. 1987 SCMR 501.
1. AIR 1917 Pat. 701 = 1 Pat. L. Jour 163 + AIR 1917 Pat. 26 (DB). (Appellant deliberately paying insufficient court-fee—He cannot get time to make good deficiency).
2. 1887 All W.N. 212 (DB).
3. NLR 1989 SCJ 96.
4. AIR 1925 Pat. 765 = 4 Pat 448 (DB) + AIR 1952 Cal. 176 (DB) + AIR 1950 Assam 83 = ILR (1950) 2 Assam 12 (DB) + AIR 1941 Nag. 308 = ILR 1942 Nag. 487. (Conflicting decision as to whether appeal or revision lay) + AIR 1921 Pat. 173 (FB) + AIR 1941 Pesh. 74 (DB) (Conflict of views on certain point) + AIR 1927 Cal. 718 (DB) + 39 Cal. 766 (DB) + AIR 1935 Mad. 725 = 48 Mad. 631 (DB) + AIR 1927 Nag. 247 + 1890 All W.N. 122 (DB).

relying on a Division Bench decision of the High Court that delay in such cases was immaterial. But when the matter was taken up the case had been overruled by Supreme Court and therefore objection was made on ground of laches. It was held, that the precedents of the superior Courts are always a guidance for the public at large as they provide at least some degree of certainty upon which individuals can rely to arrange or adjust their transactions and conduct their affairs. "Thus the judgment of the Division Bench held the field at the relevant time and the party could validly and justifiably rely on that. Had this case been decided prior to the judgment of the Supreme Court no objection would have succeeded. Therefore delay was condoned in the case.[5] But where the practice of the Court is clear, a party cannot claim that he was misled by the practice of another High Court.[6]

Mistake in order of Court. The fact that the party was misled or prevented from filing an appeal within time by a mistaken order of Court will be a sufficient cause.[7] Where under the law, the Court is bound to inform the parties of the date of delivery of judgment, the delay caused by failure to give such information will be a sufficient cause.[8] Similarly omission to give timely notice of time and place at which vacation judge proposed to hold his sitting was held to be sufficient cause.[9]

Where default in deposit of decretal amount was not due to gross negligence of decree-holder but due to Court's neglect to do its duty. It was sufficient cause for enlargement of time.[10] Where the appeal was in time but the District Court returned it to appellant on the ground of want of pecuniary jurisdiction. He did not notice the fact that its pecuniary jurisdiction had been increased by an amendment and he could hear it. The fact that it had become barred by time when it was sent back to the High Court would be of no significance in such a case.[11]

Mistake of office of Court. Where delay is caused by mistake or slackness of the office of the Court, the Court would extend time under this section. The right of the parties cannot be determined because of undue delay or laches on the part of officers of the Court. Thus where the memorandum of appeal was presented in the office of the Court five days before the expiry of the period of limitation, the memorandum was actually returned to the appellant five days after the expiry of the period of limitation and the appellant had duly refiled the same on the following day. If it were returned to the appellant within 2/3 days of the presentation, the appellant could and would have represented the appeal well within the period of limitation and therefore, the appellant was entitled to the

5. PLD 1976 Lah. 1304 = PLJ 1976 Lah. 69.
6. AIR 1920 Pat 267 (DB).
7. 1912 Pun WR No. 189, p. 507 + AIR 1954 Pepsu 45 = ILR 1953 Patiala 271 + AIR 1950 Cal. 356 = ILR (1951) 1 Cal 45 (DB) + AIR 1923 Oudh 238 = 26 Oudh Cas. 56 + AIR 1923 Oudh 93 = 26 Oudh Cas. 24 (DB) + AIR 1924 Nag. 271 = 26 Nag. L.R. 131 + AIR 1924 Lah. 692 + AIR 1937 All 82 (DB) (Misled by frame of decree) + AIR 1914 Mad. 418 (DB) + AIR 1930 Rang. 235.
8. AIR 1919 Lah. 102 = 1919 Pun Re. No: 27 (DB) + AIR 1956 Raj. 113 = ILR (1956) 6 Raj 388 + AIR 1941 Rang 194 = 1941 Rang. L.R. 213 (DB).
9. 22 Cri. L. Jour 426 (DB) (Cal.) (Criminal appeal which had to be presented in person).
10. PLD 1984 SC (AJ&K) 150.
11. 1982 SCMR 1219.

benefit of section 5.[12] Similarly where the clerk of the counsel on his own altered the proper forum of the appeal in the memorandum and this, according to him, was done on the advice of the office (an allegation, which had not been properly rebutted) and certainly without consultation with his master, and when, subsequently, the memorandum of appeal was presented before the proper Court, the appeal was barred by time, and the appellate Court refused to extend time under section 5. It was held that the lower appellate Court had committed a grave error in refusing to extend time in the judicial discretion exercised by him. It was a fit case for interference in the exercise of discretion, in second appeal.[13]

Delay in giving copies. Where the delay is attributed to the copying department and not to the party himself, it may be a sufficient cause for condoning delay.[14]

19. Discovery of fresh evidence. The grounds for granting review on account of the discovery of fresh evidence may, in certain cases, be a ground for also extending time under section 5.[15]

20. Mistake as to holidays. Where a particular day is gazetted as a public holiday. Subsequently another day is substituted in its place and the appellant is misled thereby. It is sufficient cause for extending period for presenting appeal.[16]

21. 'Pardanashin' lady. The mere fact that the appellant is a *pardanashin* lady is, by itself, not a sufficient cause.[17] That ground can be available only where this fact has prevented the party from presenting the appeal herself or from retaining counsel to do so.[18]

22. Party being Government or autonomous body. The previous view was that Limitation Act does apply to the Government as much as to any other citizen unless of course, its application is excluded under some other law.[19] In civil matters, delay in filing appeals or petitions, save in exceptional cases should not be lightly condoned, for a valuable right has accrued to the other party of which it cannot be deprived except for very substantial reasons. To make departments of Government exception to this rule would be placing a premium on negligence and want of proper diligence in public offices. It is pertinent to observe that where Legislature considers it necessary to make the Government an exception to the ordinary rule of limitation, it always makes express provision in the behalf.[20] The State is not entitled to any special consideration in the matter of condoning of-

12. AIR 1965 Punj. 129 (DB).
13. AIR 1962 Punj. 417.
14. PLD 1987 SC (AJ&K) 5 = PLJ 1987 SC (AJ&K) 9 = 1987 PSC 489 + 1985 CLC 1788 + 1941 All W.P. (Rev.) 87 + AIR 1952 Punj. 226 + AIR 1939 Lah. 492 = ILR 1940 Lah. 447 (DB) + AIR 1938 Nag. 287 + ILR 1940 Lah. 312 + AIR 1936 Lah. 670 (DB) + AIR 1914 Oudh 146 + AIR 1936 Lah. 550 + AIR 1931 Oudh 314 = 6 Luck. 578 + 3 Cal. W.N. 55 (DB) + 9 All L. Jour 15 (DB).
15. AIR 1921 Nag. 174 + AIR 1918 Cal. 888 (DB).
16. AIR 1918 Lah. 396 = 1917 Pun Re No. 77 (DB).
17. NLR 1984 UC 487 + AIR 1933 Cal. 796 (DB) + 9 All 655 (FB).
18. 9 All 11 (DB) + AIR 1953 Kutch 31.
19. KLR 1984 Rev C. 9 (DB) (Kar).
20. 1974 SCMR 38.

delay.[1] But this view has now been modified by the Supreme Court by holding that a just and proper approach is to treat the request for condonation on its own merits like that of any other litigant; and not to shut out the plea on simple formula that it is mere departmental delay or negligence. It is well-known that indiscriminate application of 1970 SCMR 558 has caused immense loss to the public exchequer wherein an innocent third party, namely, the tax-payer in ultimate analysis, suffers the loss. This is besides those cases where delays are collusive so as to avoid dictates of justice and law. Hence, a departmental delay whenever put forward as a ground for condonation of delay requires consideration on its merits and may be rejected or accepted accordingly, as the case may be. In the cases of laches, however, the principles of condonation would be totally different. It being in the field of equity, it will not be denied: Where either the negligence is not culpable *vis-a-vis* the merits of the case; or, when there is no equity in favour of the party who would be the gainer in case the condonation is denied. It is for the very same reason that bar of laches in equitable jurisdiction has rightly been equated with principle of estoppel and not the statutory bar of limitation.[2] Therefore the strict view of law taken in the following cases should be modified by keeping in view this dictum of the Supreme Court. An extension of time under the section cannot be granted merely on the ground that the prescribed period of limitation was not sufficient so far as the Government was concerned,[3] because the matter had to pass through the hands of several officers, or the delay was due to oversight of the clerks concerned.[4] Where it was contended that a lot of time was consumed in official correspondence from office to office and reference to Law Division for obtaining sanction to file appeal as such there was no deliberate delay in filing appeal. Condonation of delay was refused on the ground that no material was brought on record to show how much time was taken in inter-office correspondence, obtaining copies and then sanction of Law Division. For purposes of condonation of delay, delay of each day has to be explained.[5] Where an appeal against decision of a single judge was filed after the expiry of limitation without any application for condonation of delay in the first instance but the explanation advanced was that it was "caused due to the fact that the matter was examined by different departments". It was held that the Government Departments should be more vigilant and efficient being staffed by educated paid officers than private citizens. The latter are not shown indulgence for such consultation. Condonation of delay was refused.[6]

Where a Government department had failed to explain each day's delay and the only explanation offered was that there was delay in obtaining sanction for

1. PLJ 1983 SC (AJ&K) 31 = PLD 1983 SC (AJ&K) 70 + PLJ 1981 Kar. 51 = 1981 CLC 1148 + PLJ 1983 Lah. 184 = PLD 1983 Lah. 246 = 1983 LN 258 (DB) + PLD 1977 Lah. 55 = 1977 Lah. 728 + PLD 1982 Lah. 287 = PLJ 1982 Lah. 174 + PLD 1973 Kar. 618 = L.N. 1973 Kar. 855 + AIR 1964 Punjab 154 (DB) + AIR 1962 Pb. 308 (DB) + AIR 1952 Assam 48 (DB).
2. 1987 SCMR 1119 = PLJ 1987 SC 433 = 1987 PSC 796 = 1987 Law Notes 456.
3. PLD 1984 Kar 190 + 1983 LN 258 = PLD 1983 Lah. 246 = PLJ 1983 Lah. 184 + 1975 SCMR 91 + AIR 1962 H.P. 16.
4. PLD 1983 Lah. 246 = PLJ 1983 Lah. 184 = 1983 LN 258 (DB) + PLD 1983 SC (AJ&K) 70 = PLJ 1983 SC (AJ&K) 31 + PLD 1973 Kar. 618 = L.N. 1973 Kar. 855 (Delay of 20 days).
5. 1984 CLC 2310 (DB).
6. 1988 SCMR 1229 + 1988 SCMR 1906 + PLJ 1983 Lah. 184 = PLD 1983 Lah. 246 = 1983 Law Notes 258 + 1981 SCMR 37 = PLJ 1981 SC 212 + PLJ 1980 Lah. 701 = 1980 CLC 574.

filing appeal. Nothing was available on record to show the date on which sanction was sought or the date on which it was accorded. Circumstances resulting in delay on part of sanctioning authority had not been spelt out. Application for condonation of delay was not accompanied by an affidavit. Convincing explanation for delay in filing of appeal having not been given, appeal was dismissed on ground of limitation.[7]

Where an application for condonation of 442 days' delay in filing an appeal against award of Court under section 93-A, Land Acquisition Act, 1894, was made by the Government on the plea that the file relating to the subject had been misplaced and lost. It was held that since the negligence of a servant of a private litigant is not considered to be sufficient cause for condonation of delay, the Courts would not show any indulgence to the Government.[8] Where the application of Superintendent, Central Excise for special leave to appeal was time barred by 57 days. It was held that no extended period of limitation is provided for Government as litigants before the Supreme Court. This is so because it is felt that enjoying usual facilities for preparation and conduct of their cases, as against those available to private litigants, Government does not need any greater latitude in respect of limitation than the ordinary litigant.[9] Where the appellant happens to be the Government and the reason given out for the delay in filing an appeal from an award made under the Land Acquisition Act is that the delay occurred because on the last day of the limitation, the appellant discovered that it had not sufficient money to buy the necessary court-fee but no explanation is forthcoming as to why such state of affairs was allowed to come into existence except, of course, sheer negligence in not providing for the necessary amount in good time, the appellant is not entitled to the benefit of section 5.[10] Where intimation about the death of the sole respondent was given to the clerk of the Government, but the appellant Government did not make an application for setting aside abatement within the period of limitation. It was held that the clerk's knowledge of the death of the respondent must be attributed to the appellant also and his negligence in not moving the Court in time must be deemed to be that of the appellant. Even if there was a strong case for acceptance of the appeal on merits, that could not be a ground for condonation of the delay, for the abatement stands in the way of the appeal being heard on merits.[11]

When extension may be granted to Government. The statute of limitation makes no distinction between Government and private individual except when it so states, for instance in section 27 and Article 149, Limitation Act; but a just and proper approach which has not been prohibited by the rule in Abdul Hamid Darji's case (1970 SCMR 558), is to treat the request for condonation on its own merits like that of any other litigant; and not to shut out the plea on simple formula that it is mere departmental delay or negligence; because the decision itself, does not lay down such an inflexible rule. The facts of that case and the condition that each case is to be seen on its own circumstances, cannot at all be

7. 1987 CLC 1643 = PLJ 1987 Lah. 354.
8. 1969 DLC 642 = 21 DLR 924 (DB).
9. PLD 1958 S.C. 167 = PLR 1958 (2) W.P. 21 = 10 DLR 168 = 1958 (1) PSCR 141 (Rime was extended in this case as a special case).
10. AIR 1962 H.P. 16.
11. 1983 PLC 244 (SC).

ignored. It is well-known that indiscriminate application of this decision has caused immense loss to the public exchequer wherein an innocent third party, namely, the tax-payer in ultimate analysis, suffers the loss. This is besides those cases where delays are collusive so as to avoid dictates of justice and law. Hence, a departmental delay whenever put forward as a ground for condonation of delay requires consideration on its merits and may be rejected or accepted accordingly, as the case may be.[12] There is another aspect of the matter. The State machinery moves or functions through so many agencies. Where the machinery is run by so many hands it is not always possible for such machinery to come before the Court within the shortest possible time. Although the Court is generally reluctant to consider the question of delay in favour of the Government, yet in the context of things it should not be ignored that the Government machinery runs through several hands and the delay in such circumstances cannot altogether be avoided. Moreover, the different links of the Government are so connected that one cannot work without the co-operation and assistance of the other. In the instant case the Deputy Commissioner who initiated the proposal to prefer an appeal to the High Court could not do so without obtaining the necessary papers and opinion of the local Government Pleader. The Deputy Commissioner had to depend upon the advice of the Government Pleader. The Government Pleader having been away the Deputy Commissioner was somewhat helpless. Taking all the relevant facts into consideration the Court accepted the explanation of delay of 221 days and condoned the same.[13] Therefore, while considering the provisions, which confer a discretion on the Court to condone delay in a given case for sufficient reason, the Court is not debarred, as a matter of law from drawing distinction between a private individual and Government. A private individual has only to make up his own mind and is normally presumed to be aware of or familiar with all the relevant factors and aspects of his case, whereas in the case of Government, public interest has to be duly considered and, comparatively speaking longer time must, looking at things in a practical way, be required for enquiry and consideration before taking final decision and then acting on it. It may thus not be wholly unreasonable to state that a duration of time, which may be sufficient for a private litigant may not necessarily be held to be so in the case of Government.[14]

Where from the facts disclosed in the application in appeared the copies of the judgment and decree was not received by the office of the A.A.G. in time. The Solicitor to the Government had sent copies of the judgment and the decree along with a covering letter dated the 28th December 1957, but the same was not received by the office of the Additional Advocate-General. The office of the Additional Advocate-General wrote to the Solicitor that the copy of the judgment and the decree had not been received by his office. An application for certified copies of the judgment and decree was made on the 8th January, 1958, within time for filing the appeal. It was held that there is no reason to disbelieve the office of the Additional Advocate-General that though the Solicitor to the Government sent copy of the judgment and decree in time it was not received by the office of the Additional Advocate-General. The delay was condoned.[15] Where the delay

12. 1987 SCMR 1119 = PLJ 1987 SC 433 = 1987 PSC 796 = 1987 Law Notes 456.
13. 1973 DLR 280.
14. AIR 1962 Punjab 308 (DB) + AIR 1929 Sind 211 (DB).
15. PLD 1961 Karachi 722 (DB).

was due to the negligence of the dealing officials in the office of the Land Commission. In the application for condonation of delay, it was admitted and it was mentioned that action had been initiated against the defaulting officials. In the circumstances a short delay of four days might be excused.[16] The Court also condoned delay by the State in a case because by not doing so, it would create an anamoly.[17] Where some of lower functionaries seemed to have misconducted in the matter of vigilance and preparation of petition for leave to appeal, against whom departmental action was being taken. Delay was condoned and leave granted as very valuable property of over a crore of rupees was involved and questions raised were of public importance.[18]

Appeal against acquittal. The power given to the Court under S. 5 of the Limitation Act to condone delay has to be exercised on well-recognised principles in which judicial power and discretion ought to be exercised and delay in filing an appeal ought not to be excused unless there are special circumstances. The Courts are always influenced by the consideration whether extension of period of limitation is likely to affect the rights which have come to vest in the opposite party by efflux of time. No right can be said to vest in the State to have the conviction of an innocent person upheld and the accused person is entitled to claim that, save in exceptional circumstances, delay in filing the appeal should not be condoned.[19] Where initially the Provincial Government took a decision not to file an appeal and it allowed the period of limitation to lapse. Subsequently, on certain observations made by the High Court, while considering a revision petition that it was a fit case where the Government should file an appeal and on notice being issued by the High Court to the Government in the matter, the appeal was filed three months after limitation had expired. It was held that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. Where there was no such cause, and the High Court erred in condoning the delay.[20]

WAPDA, delay by. Where there was eleven days' delay by WAPDA in filing appeal. The explanation given that delay occurred in transmission of sanction for preferment of appeal was held to be not sufficient in the absence of a statement to show how the Legal Department at Headquarters Office stumbled in the matter.[1]

16. 1975 SCMR 352.
17. PLD 1958 S.C. 167 = PLR 1958 (2) W.P. 21 = 10 DLR 168 = 1958 (1) P.S.C.R. 141.
18. PLJ 1989 SC 411 = PLD 1989 SC 627 = 1989 PSC 990.
19. AIR 1965 Mys. 31 (DB).
20. 1982 PSC 751.
1. NLR 1986 Civ. 860.

23. Importance of matter. The fact that the matter is important or that the value of the subject-matter of litigation is considerable cannot have any weight.[2]

Criminal case. The mere fact that an important question was involved in a criminal petition for leave to appeal would not allow the Supreme Court to use its discretion in an arbitrary way to override provisions of the Limitation Act, 1908 and the Supreme Court Rules, 1978.[3]

24. Application for leave to appeal in 'forma pauperis'. Where an application to appeal as pauper is rejected after limitation, an extension of time may be granted to the appellant if he wants to pursue his remedy after paying full court-fee.[4] Where an appeal filed with deficient court-fee is returned and thereafter the appellant applies for leave to appeal as pauper, the Court may extend time for the application.[5]

25. Party engaged in important litigation. The fact that the party had been engaged in important litigation and could not file his appeal or application earlier is not a sufficient cause for extending time.[6]

26. Application in revision treated as appeal. Where the time for filing an appeal has expired on the date when a revision is converted into appeal, the Court has discretion under this section to excuse the delay, if any, in the presentation of appeal.[7] But where the party has acted negligently and without due care and caution the delay will not be excused.[8]

27. Failure of Court of Wards to file appeal. Where a decree against a ward under the superintendence of the Court of Wards was not appealed against by the Court of Wards, and after the release of the estate from the superintendence of the Court of Wards, the ward applied for leave to appeal to the Privy Council but after the expiry of the period prescribed; it was held that there was no sufficient cause to extend the time.[9]

28. Two appeals against same decree. Where two appeals were filed against the same order with one copy of it and the second copy was filed after expiry of limitation for the appeal; the delay in filing the copy was excused.[10]

29. Delay in obtaining copy of judgment, in second appeal or review. Where under the rules of the High Court the memorandum of second appeal should be accompanied by a copy of the first Court's judgment also, and a delay is caused in obtaining the first Court's judgment, the delay may be excused if the party can be said to have acted bona fide.[11] Where no intimation regarding preparation of copy

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2. PLD 1970 S.C. 287 = 1970 SCMR 656 + 17 Cal. L. Jour 596 (DB) + 1886 Pun. Re. No. 92, p. 230.
3. PLD 1984 SC (AJ&K) 237 = PLJ 1984 SC (AJ&K) 67.
4. AIR 1916 Lah. 6 = 1916 Punj. Re. No. 74 (DB) + AIR 1945 Oudh 172 (DB).
5. AIR 1928 All 499 + AIR 1942 Oudh 240.
6. 4 N.W.P.H.C.R. 74 (DB).
7. AIR 1918 Lah. 67 = 1917 Pun. Re. No. 95 (DB).
8. AIR 1922 Lah. 233 (DB).
9. AIR 1918 Oudh 163 (DB).
10. AIR 1922 Pat. 349 = 12 Pat 36 (DB) + AIR 1915 Mad. 493 (DB).
11. 1986 SCMR 800 + PLD 1968 Lah. 1205 + PLR 1969 (1) W.P. 822 + PLD 1957 Lah. 381 = PLR 1957 (2) W.P. 433 + AIR 1928 All 416 + AIR 1954 Assam 80 = ILR (1953) 5

of office was given to appellant. Appellant also meanwhile went to Karachi and fell ill. It was held that no rebuttal of explanation having been furnished, delay in filing appeal, if any, may be condoned.[12] Where revision petition was dismissed and the party did not know of dismissal because his counsel's name had not appeared in the cause list and he had not appeared in the case on that date, the Court condoned the delay in obtaining copies of order for filing review petition.[13] Where an appeal was filed after limitation and the time had been spent in obtaining copies of judgment, the Court condoned the delay.[14]

Time between preparation and delivery of judgment. The period between date on which copy was ready and date on which it was delivered could not be excluded as a right. However, delay could be condoned only on furnishing sufficient explanation.[15] Where the appeal was being preferred long after expiration of the prescribed period of limitation, the appellant should have specifically pleaded that the date on which copies were ready for delivery was not intimated to it and, therefore, it was entitled to extension of time upto the date of delivery of the copies. Where this was not done by making an application or filing an affidavit. A specific averment in this regard was also not made in the memorandum of appeal. Condonation of delay was refused.[16] Where an appeal was filed within time on 12-3-1951 but without a certified copy of judgment of trial Court. Certified copy of judgment was filed on 14th of March. The copy was applied for in November, 1950 and was not received up to the day when the appeal was filed, although copy became ready for delivery from the Copying Department at *D* on 11-3-1951; it was received by post by counsel at *S* on 14th of March and it was filed the same day. It was held that there was sufficient ground for condoning delay and extending time.[17]

Copy of judgment obtained within limitation. Where a copy of judgment was applied for and obtained within the period of limitation. Delay in filing the copy beyond the expiry of vacations of the Court was not condoned.[18] But where copy of judgment was ready one day before vacation of the Court but in spite of due diligence by the petitioner and his agent, it could not be taken delivery of on that day. It was held that time should be extended to the date when the Court reopened after vacations.[19]

Copy of judgment not required to be filed with appeal. Delay caused by obtaining copy of judgment which is not required to be filed but which is obtained merely for purposes of consultation, cannot be excused.[20]

Late filing of application for copies. Where an application for a copy of the trial Court's judgment is filed after the date of expiry of the period of limitation

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Assam 167 + AIR 1947 Lah. 276 + AIR 1936 Lah. 1007 + AIR 1925 Rang 344 = 3 Rang. 310 (DB) + AIR 1927 Lah. 92 (DB).

12. PLJ 1985 Lah. 94 = PLD 1985 Lah. 185 = NLR 1985 AC 281 (DB).
13. 1972 SCMR 410.
14. 1986 PSC 170 + PLD 1956 Lah. 222 = PLR 1956 W.P. 536 (31 days delay)
15. PLJ 1988 SC 144 = PLD 1988 SC 258 = NLR 1988 SCJ 414.
16. 1987 CLC 1612 = KLR 1987 CC 660.
17. AIR 1957 Punj. 27 = ILR 1956 Punj. 1129 (FB).
18. PLD 1985 SC 324 = PLJ 1985 SC 423 + PLD 1978 Lah. 1456.
19. 1969 DLC 574 = 21 DLR 910.
20. AIR 1925 Rang. 361.

including the time spent in obtaining copy of the judgment of the lower appellate Court, it cannot be said that it is a fit case where any indulgence can be shown to the appellant, either under section 5 of the Limitation Act or in the matter of dispensing with the filing of a copy of the trial Court's judgment.[1]

Copy admitted by Court after limitation. Where Court of second appeal passed orders for the filing of a copy of judgment of lower Court but the copy was filed after appeal had become time barred. However, copy of requisite judgment was ordered to be placed on record. It was held that delay in filing such a copy could be condoned only under provisions of S. 5, Limitation Act but there was neither a prayer for condonation of delay nor any cause had been set up for that purpose. Therefore, although in consequence of acceptance of such copy, defect with regard to institution and competence of second appeal was removed, yet second appeal would be deemed to have been validly instituted only on the day of final hearing of appeal. As the hearing was held after twelve years, the second appeal being barred by the time was dismissed under S. 3 of the Limitation Act. [2]

Supreme Court appeal. A copy of the decree is not required to be filed along with the petition for special leave to appeal. Therefore the time for filing the petition for special leave begins to run from the date of delivery of judgment but even if a copy of the decree has to be filed it does not give a fresh lease of limitation but the time spent in obtaining the copy of the decree may be taken into consideration in condoning the delay, provided the petitioner has satisfactorily explained each day's delay.[3]

Review. Where under the practice of the Court a copy of judgment reviewed should be filed, and is filed subsequently on requisition by Court, the delay, if any, may be excused under S. 5.[4]

30. Unforeseen circumstances causing delay. An unforeseen circumstance which causes delay may be a "sufficient cause".[5]

31. Other causes of delay. Even when a prayer under section 149 is rejected and extension of time refused for the payment of remainder of the court-fee still the High Court is not precluded from exercising its jurisdiction in granting time and condoning the delay if a proper case is made out for that purpose.[6] Where an appeal-memo filed on the last date of limitation with deficit court-fee is rejected without calling upon the appellant to make up the deficiency and an application under S. 41, R. 19, Civil P.C. is also rejected; a fresh memo of appeal with an application under section 5 filed on Court's advice is also rejected. The rejection of the memo is invalid, and the appellant is entitled to the benefit of section 5.[7]

Delay in filing copy of decree. Where a copy of the decree is filed after expiry of the period of limitation for filing an appeal and in the circumstances of the case

1. 1987 CLC 2043 + AIR 1960 Punjab 298 + AIR 1921 Lah. 73 + AIR 1926 Lah. 626 + AIR 1927 Lah. 747.
2. PLD 1988 Lah. 706 = PLD 1988 Lah. 507.
3. 1971 SCMR 54.
4. AIR 1935 Pat. 486.
5. AIR 1923 All 170 + AIR 1946 Pat. 417 (Disturbed state of country to 1942).
6. PLD 1970 Dacca 532 = 20 DLR 506 = PLR 1960 (2) Dacca 952.
7. AIR 1941 Pat. 108.

it cannot be said that the mistake proceeded from any culpable negligence of the counsel or that it was due to want of reasonable skill on his part, the delay could be condoned under section 5.[8] Where a decree for ejectment of a tenant was passed on 12-6-1958 and the tenant immediately filed an appeal accompanied by an unattested copy of the order of the trial Court in order to obtain stay of ejectment and subsequently on 17-6-1958 filed an application for copies of decree and judgment. Further applications were made by tenant for treating copy of application as urgent as there was delay on the part of the copying department. The appellant was ultimately intimated on 22-9-1958 that record being with the appellate Court, copy of the application was being returned. The appellant filed a fresh application for copies to the appellate Court with a prayer to treat the application as one in continuation of his original application for copies. The copies supplied by the appellate Court were promptly filed in connection with the appeal. It was held that in the circumstances of the case the appellate Court was perfectly justified in treating the copy of application filed before it as continuation of the original application and therefore the appeal was not time barred.[9]

Delay in applying for copy of decree. Where a party makes a delayed application for a copy of the decree, the delay in filing the appeal as a consequence of that delay cannot be excused.[10]

Party filing appeal after other party has resiled from agreement to treat judgment as final. Where there was an agreement between the parties to end litigation and accept High Court's decree as final but one of the parties resiled from it and filed an application for leave to appeal, and an application for leave to appeal was filed by the other party some days out of time. It was held that there was sufficient cause for extending time.[11]

Small Cause Court, Review application filed without making deposit. While making an application for review of judgment of Small Cause Court, the requirements of section 17 of the Provincial Small Cause Courts Act must be complied with. Where an application was made on the last date without deposit or security and time was granted to make the deposit, the application was held to be not properly made within time and time was not extended as there was no sufficient cause.[12]

Appeal consequent on favourable judgment in like case. Where there were two suits involving a common question and decrees, the fact that the party had been engaged in important litigation and could not file his appeal or application earlier is not sufficient cause for extending time.[13]

Wrong date on uncertified copy of decree. Where the appellant's advocate was misled by the wrong date on an uncertified copy of the decree and appeal was

8. ILR 1954 Patiala 639.
9. AIR 1964 Punjab 408 (DB).
10. AIR 1939 Mad. 293.
11. AIR 1938 Lah. 836 (DB).
12. AIR 1920 Cal. 207 (DB).
13. ('72) 4 N.W.P.H.C.R. 74 (DB).

consequently filed out of time. It was held that there was no sufficient cause within the meaning of this section.[14]

Copy of judgment lost. Where there was an accidental loss of copy of judgment on the date when the appeal was to be filed, the delay caused thereby was condoned.[15] Where the plaintiff's suit was dismissed on 22-2-1952. He applied for a copy of decree and judgment on 1-3-1952 and the copies were supplied to him on 22-3-1952, but lawyer's clerk misplaced the copies. He obtained fresh copies of the documents in question and produced them in Court on 17-4-1952. It was held that it was within the competence of the Court in exercise of powers under section 5 to extend the period of limitation and to condone the delay which had been occasioned.[16]

Difference between appellants as to filing of appeal. The fact that two of the appellants were quarrelling between themselves is not sufficient cause to excuse delay under section 5 read with O. 22, R. 9, C.P.C.[17]

Appellant ignorant as to execution proceedings, delay in filing appeal. When a party to the suit who had no notice of execution proceeding or who would have no knowledge of such proceedings but against whom an order adversely affecting his rights had been passed wants to challenge the order under section 47 even after the expiry of the period of limitation provided for the appeal or application to have the order set aside, he can either move the executing Court itself or the appellate Court after claiming the benefit of this section 5.[18]

Party involved in other suits. Where after she obtained a decree in her favour in a suit on mortgage, the mortgagee decree-holder tried, during a period of 18 years, to realise her decretal dues. But she was not successful, as litigation dogged her heels throughout this long period of time when she was a party defendant as a puisne mortgagee in no less than three different suits involving the same mortgaged properties. It was held that in the circumstances of the case there was "sufficient cause for condoning delay".[19]

Appeal against acquittal. Delay in filing an acquittal appeal caused by want of clearness in communications between the District Magistrate and Government cannot be excused under this section.[20] Similarly where in the case of an appeal against acquittal delay in filing the appeal beyond time was sought to be condoned on the ground that papers concerning the case were mislaid in office, it was held that there was no sufficient cause for condoning delay.[1]

Complaint under S. 476, Cr. Q.P.C. Delay in filing appeal against an order directing that complaint may be filed under section 476 may be condoned by the Court.[2]

14. AIR 1914 Sind 83 = 8 Sind L.R. 235 (DB).
15. AIR 1927 Lah. 734.
16. ILR 1956 Punj. 982.
17. AIR 1916 Mad 869 (DB).
18. AIR 1956 Bhopal 62.
19. AIR 1955 Cal. 484.
20. 6 Cri. L. Jour 221 (DB).
1. AIR 1955 Punj. 164 = ILR 1955 Punj. 186 = 1955 Cri. L. Jour 1204 (DB).
2. AIR 1955 Mad. 129.

Minor, appeal on behalf of. An appeal presented by an unauthorised person as next friend of the minor who was appointed next friend of the minor after removal of previous next friend when the period of limitation for appeal had expired. The appeal must be taken to have been presented on the date of his appointment and as such barred by time. The Court has power in such a case under section 5 to extend time.[3]

Person away on military duty. Where the party against whom judgment had been given was away on military duties he was not present when judgment was given against him and he came to know of the judgment when he came on casual leave and thereafter he applied for and obtained the copy of the judgment and preferred an appeal, there was sufficient justification to condone delay and admit the appeal.[4]

Delay caused by counsel's forgetfulness. Delay due to Counsel's forgetfulness to file an appeal due to exceptional circumstances was sufficient cause for condoning delay.[5]

32. 'Ex parte' admission, or order if may be reopened. Where an appeal or application filed beyond time is admitted to the detriment of the opposite party, the latter is entitled at the hearing to object to the admission and the Court can reopen the question and decide whether there was sufficient cause for admitting the appeal or application beyond time.[6] Where a petition for setting aside an auction-sale held by an Official Receiver under the Provincial Insolvency Act was filed beyond 21 days. An application for condoning delay under section 5, Limitation Act was also filed and the Court without even ordering notice to the Official Receiver or the auction-purchaser, condoned the delay and entertained the application for setting aside the sale. It was held that there was violation of the principle of natural justice contained in maxim *audi alteram partem.* Therefore the question can be reopened.[7]

Transferee Court. Where an appeal is admitted *ex parte* after the period of limitation and the appeal was subsequently transferred to another Court, the transferee Court can reopen the question of sufficiency of cause at the hearing.[8]

Stage for raising objection. Where an appeal is admitted *ex parte,* the respondent cannot wait till the hearing, but must apply by motion as early as possible to set aside the order.[9] But where, as in the case of an acquittal appeal there is no provision for motion for cancelling admission of an appeal, the plea of limitation can be taken at the final hearing.[10]

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3. AIR 1952 Pepsu 63 = 2 Pepsu L.R. 608.
4. AIR 1959 Assam 7 = ILR (1956) 8 Assam 517.
5. AIR 1960 Cal. 574.
6. PLJ 1981 Kar. 51 = 1981 CLC 1148 + AIR 1917 P.C. 179 + AIR 1954 SC 411 = 1955 S.C.R. 140 + AIR 1958 Mad. 312 = ILR 1958 Mad. 507 = 1958 Cri. L. Jour 779 + AIR 1942 Cal. 606 = ILR (1942) 1 Cal. 403 (DB). (Letters Patent Appeal under Cl. 15--Extension of time without notice to respondent held irregular + AIR 1929 All 31 + AIR 1918 Cal. 53 (DB) + AIR 1936 Mad. 600 + AIR 1936 Oudh 9 + 1 All 34 (FB) + AIR 1922 Pat. 47 (DB).
7. AIR 1964 A.P. 50.
8. 2 Cal. W.N. 461 (DB) + 14 Bom. 594 (DB) + 21 Mad. 228 (DB) + 1897 All W.N. 15.
9. AIR 1923 Mad. 82.
10. AIR 1965 Mys. 31 (DB) + AIR 1917 P.C. 179.

No objection to admission raised. Where at the hearing of the appeal the respondent did not object to the *ex parte* admission, the High Court will refuse to interfere in revision.[11]

Constitutional jurisdiction. The question whether delay should or should not be condoned, held, vested in discretionary domain of Tribunal seized of the matter and exercise of discretion was not open to interference in writ jurisdiction unless it was exercised, illegally, capriciously or arbitrarily.[12]

33. Burden of Proof of sufficient cause. Burden rests on the party who seeks indulgence of Court in his favour to adduce distinct proof of the sufficient cause on which he relies.[13] It is for the appellant to show that his conduct throughout, the period between the date of the impugned judgment and the filing of the appeal has been of such a character that it would be proper to condone the period of delay that has occurred beyond the period of limitation.[14] Therefore where condonation is claimed on the ground that the appellant did not know of the order to be appealed against, in order to condone delay in filing an appeal the appellant must satisfy the Court as to the exact date when he came to know of the order appealed against and he must further explain the reason for the delay of every day after he came to know of it.[15]

Delay of every day to be explained. The delay of one day is as fatal as a delay of fifty days.[16] Therefore every day's delay must be properly explained.[17] But where the Court before exercising the powers under section 5 of the Limitation Act feels satisfied upon the facts of the case under consideration that the explanation given for the delay is sufficient, the discretion under section 5 of the Limitation Act should be exercised and the Court should take a liberal view in considering the "sufficient cause", shown by the applicant. The Court should not press for explanation of each hour's or day's delay.[18] Where *R*, whose suit was partly decreed and partly dismissed by the trial Court on the last working day before the summer vacation, applied for copies of the judgment and decree on the very day through his counsel. A day prior to the reopening of Courts he was murdered and though the Counsel's clerk took delivery of copies, no information whatsoever was sent by the clerk to *H*, the son of *R*, till *H* appeared as a prosecution witness in the murder trial where he was cross-examined by the same counsel who had accepted *Vakalatnama* on behalf of the murderers of *R*. That was the first time that *H* came to know about the judgment or decree passed in the suit. He was naturally disturbed at his counsel's attitude. He took advice, went home and having failed to obtain the support of co-plaintiffs with his father in the suit, for filing an appeal, filed the appeal with an affidavit and an application praying for condonation of the

11. AIR 1925 Oudh 148.
12. PLD 1985 Lah 56 = KLR 1985 CC 69.
13. PLD 1984 Quetta 52 = PLJ 1984 Quetta 1 + AIR 1917 P.C. 179 + AIR 1960 Punj. 335 (FB) + AIR 1952 Assam 100 (FB) + AIR 1938 Nag. 156 (DB) = AIR 1932 Cal. 589 (DB) + AIR 1933 Lah. 681 (DB) + AIR 1936 Sind 169 (DB).
14. PLD 1973 Kar. 618 = Law Notes 1973 Kar. 855 + 1973 SCMR 499.
15. AIR 1961 Manipur 52.
16. AIR 1917 Sind 52 = 10 Sind L.R. 165 (DB).
17. 1984 CLC 182 = PLJ 1984 Kar. 48 + PLD 1973 Lah. 372 + PLD 1971 Quetta 69 + PLD 1952 Lah. 361 + AIR 1960 SC 260 + AIR 1947 Lah. 276.
18. PLR 1964 Dacca 235.

delay under section 5. The appellate Court, though sympathetically inclined to condone the delay, required each day's delay to be explained conclusively and refused to condone, otherwise. Subsequently, a decree pursuant to the dismissal of appeal was drawn up. It was held in revision that in the peculiar circumstances of the case, it would be sufficient if each day's delay is not established conclusively but by furnishing some general reasonable explanation. A period of 10 days from the date of knowledge of the decree and order could not be said to denote any inaction or negligence on the part of *H*. It was eminently a fit case for condonation of delay and refusal to do so amounted to failure to exercise jurisdiction.[19]

Condonation of delay not opposed. Where application for condonation of delay is not opposed by the opposite party, it may be granted.[20]

34. Exercise of discretion, binding nature of. The question whether the facts and circumstances constitute sufficient cause for condonation of delay is one of law and can be raised in second appeal.[1] The High Court has power in second appeal to examine the grounds upon which the lower appellate Court has admitted the appeal beyond time. It has to see whether the duty of exercising discretion in a judicial manner cast upon the lower appellate Court has been discharged properly or not.[2] But it does not mean that where a trial Court has given a finding on the question of limitation against a particular party, he can still, without filing an appeal or cross objection, challenge that finding in the higher Court of Appeal. The Appellate Court is certainly bound to consider whether the appeal is within time or not, but it is not called upon to consider whether the suit has been rightly held to be within time, if no appeal or cross-objection is filed.[3]

The appellate Court will not interfere with the discretion exercised by the lower Court in excusing delay unless it has not been exercised at all or has not been exercised on judicial principles.[4] In other words where discretion exercised by concerned authority in not condoning delay is neither illegal nor arbitrary it cannot be interfered with.[5] But if the discretion has been exercised whimsically or arbitrarily, the Court of second appeal will be acting within the ambit of section 100, Civil Procedure Code, while interfering with such an order of the lower appellate Court.[6] Thus where general rule of guidance in the matter of exercise of discretion has been laid down in decisions of the High Courts but the lower Court held that there was no rule applicable for exercise of discretion; the Privy Council

19. AIR 1964 All 190.
20. 1986 CLC 1086.
1. 1968 SCMR 212+AIR 1962 Punjab 450 (DB)+AIR 1932 Lah. 183+AIR 1942 Lah. 94+AIR 1947 Lah. 76.
2. AIR 1962 Punjab. 450.
3. PLD 1973 SC 295.
4. 1970 SCMR 588+PLD 1962 Kar. 608 (DB) (Delay condoned by single judge—No interference by Letter Patent Bench)+AIR 1938 Bom. 708=ILR 1938 Bom. 704 (DB)+AIR 1956 All 677 (DB)+1955 All L. Jour 452+55 Pun L.R. 224+AIR 1954 Mys. 86=ILR 1953 Mys. 416+AIR 1953 Mys. 137=ILR 1953 Mys. 165+1950 Bur L. R. (S.C.) 128+AIR 1947 Lah. 76+AIR 1945 Oudh 94+AIR 1944 Oudh 193+AIR 1938 Pat. 413=17 Pat. 507 (DB)+AIR 1936 Sind 169=30 Sind L.R. 242 (DB)+AIR 1929 Nag 8+AIR 1937 Lah. 767+AIR 1917 P.C. 179=41 Mad. 412=45 Ind App 25+AIR 1933 All 294 (DB)+AIR 1926 Cal. 677.
5. 1980 SCMR 722+PLJ 1981 SC 17+1980 CLC 1446.
6. AIR 1962 Punjab 450 (DB)+AIR 1962 Punjab 417.

interfered with the order of the Court and set it aside.[7] Similarly when the Court did not apply its mind to consider explanation for delay, or acted illegally in admitting the application, the Appellate Court interfered.[8] Where the clerk of the counsel on his own, altered in effect the proper forum of an appeal in the memorandum and this, according to him was done on the advice of the office (an allegation, which had not been properly rebutted) and certainly without the consultation of his master, and when, subsequently, the memorandum of appeal was presented before the proper Court, the appeal was barred by time, and the appellate Court refused to extend time under S. 5. It was held that the lower appellate Court had committed a grave error in refusing to extend time in the judicial discretion exercised by him. It was a fit case for interference in the exercise of discretion, in second appeal.[9]

Condonation of delay, challenge to on remand. Where condonation of delay by the Court was not challenged initially. It could not be challenged on remand of the case in appeal.[10]

Supreme Court. Where exercise of discretion by the trial Court in excusing delay was challenged before the Supreme Court. It was held that the question whether delay should not be condoned in a given case falls within discretion of forum trying the case. Discretion exercised by such forum cannot be interfered with unless it is exercised illegally capriciously or arbitrarily.[11] Where a time-barred appeal was allowed by Service Tribunal. A plea was raised before Supreme Court that even though no objection had been taken by appellant before the Tribunal on ground of limitation, it was the duty of the Tribunal to give effect to bar of limitation which appeared *ex facie* from record before it. It was held: If appellant had not raised or controverted it before Service Tribunal in spite of an application under S.5 of the Limitation Act having been filed by respondent appeal before Supreme Court was not a stage where it could be successfully raised.[12] But where the Supreme Court condoned delay subject to all just exceptions. Respondents could take exception to order condoning delay which was passed without hearing them. Objection of respondents that no sufficient cause was made out for condoning delay was found to be well-founded. Appellant's petitioner for leave, was dismissed on ground of limitation.[13]

35. Revision against order. When an order has been passed by the lower Court in exercise of its discretion it cannot be interfered with in revision.[14] But where the Court has come to its conclusion on no evidence and has omitted to

7. AIR 1917 P.C. 156=45 Cal. 94=44 Ind. App. 218=1917 Pun. Re. No. 104.
8. AIR 1914 All 521+AIR 1915 All 240+AIR 1918 Lah. 396=1917 Pun. Re. No. 7 (DB)+AIR 1930 Lah. 1068+12 All. 57 (Court acting illegally in admitting application).
9. AIR 1962 Punjab. 417.
10. PLD 1978 Lah. 22.
11. NLR 1980 SCJ 287.
12. 1986 SCMR 580.
13. 1987 SCMR 245.
14. AIR 1964 S.C. 1336+AIR 1914 Mad. 149. (Even for showing that appeal was not really time-barred)+AIR 1956 All. 677 (DB). (Unless it can be said that the Court has taken a perverse or absurd view, the exercise of the discretion by it will not be interfered with in appeal and much less in revision)+ILR 1950 All. 86 (DB)+AIR 1949 Mad. 624+35 Pun. L.R. 374+AIR 1936 Pesh. 97+AIR 1922 Mad. 193+AIR 1914 Nag. 60=10 Nag. L.R. 139+AIR 1925 Oudh 148.

consider whether there was sufficient cause for delay, it acts with material irregularity and the High Court will interfere.[15] Where the appellate Authority erroneously found that the application was not barred by limitation, that finding would lead either to failure to exercise jurisdiction or wrong assumption of jurisdiction and the High Court under section 115, Civil P.C. would be entitled to interfere.[16]

36. Discretion, may be exercised. The question of exercising discretion will not arise until period of limitation has actually expired or until computation of time has been made.[17] Where a motion to present an appeal in *forma pauperis* was rejected on the ground of limitation. Thereafter an application for extending time was preferred. It was held that as there was no application for leave to appeal pending, the application under S. 5 did not lie.[18]

Sufficient cause must be present. The existence of sufficient cause for not filing the proceeding in time is merely a condition that must be satisfied before the Court exercises its power of granting or refusing to grant extension of time. If the condition is not satisfied, there is no room for the applicability of the power to excuse delay. Thus, where no cause has, at all, been shown, that is, where no explanation has been given for filing the proceedings out of time, there arises no opportunity of considering the sufficiency or otherwise of the reasons for that fact, and there cannot be any room for exercise of the discretion given by the section. If the condition is satisfied, then the Court gets a discretionary power to grant or refuse the prayer for extension of time.[19]

Where discretion may not be exercised. Where a plaintiff puts ridiculously low court-fee, or where the plaint appears to have been filed not for any bona fide object of its serious pursuit, but to tease or harass another or others concerned, then a Court will not be justified to allow time for validating such a plaint and destroy the plea of limitation which may have been perfected in favour of a defendant in the meantime sheerly due to non-seriousness of the plaintiff or causes of similar nature. A plaintiff who is guilty of contumacy, positive mala fides, or lack of bona fides will not be entitled for any indulgence. In this respect similarly poverty or ignorance will also be no excuse.[20]

37. Reasons for order. A Court passing an order under S. 5 must give its reasons so as to enable an Appellate Court to see whether it has properly arrived at its conclusion.[1]

38. Formal application, if necessary for condonation of delay. A formal application for condonation of delay under section 5 is necessary even in a case where sufficient cause for delay is evident on the record.[2] Ordinarily in the absence of an application under Section 5 of the Limitation Act, it cannot be

15. AIR 1938 Pat. 413=17 Pat. 507 (DB)+AIR 1951 All 614+AIR 1923 Mad. 503+AIR 1925 Mad. 494.
16. AIR 1964 Pat. 73 (DB)+AIR 1917 P.C. 179+AIR 1949 P.C. 239+AIR 1954 Pat. 384.
17. AIR 1934 Nag. 145=30 Nag. L.R. 294+12 All 461 (FB). (Computation of time).
18. AIR 1933 All 308.
19. 1980 CLC 1446+PLD 1973 Lah. 567=1973 LN 17 (DB)+PLD 1952 B.J. 8 (DB).
20. PLD 1979 SC 821=PLJ 1979 SC 108=NLR 1979 Civ. 500.
1. 1981 CLC 735 (DB)+AIR 1929 All 101+AIR 1926 Cal. 1105 (DB)+AIR 1920 Pat. 280.
2. 1985 CLC 1072=PLJ 1985 Lah. 124=NLR 1985 Civ. 235+PLD 1977 Lah. 1058.

determined whether there was sufficient cause for the respondent's delay in filing an appeal in the District Court, and the question of condoning that delay cannot arise,[3] and delay could not be excused by resort even to S. 151, C.P.C.[4] Thus where not only was there no application under section 5 of the Limitation Act for condoning the delay, but there was also no discussion on the point during the course of arguments, the Court would not condone delay.[5] Where an application for setting aside an *ex parte* decree was filed beyond 30 days even by excluding time spent on obtaining copies. No application was made for condonation of delay. It was held that failure of plaintiff-petitioner to lead evidence on the issue of limitation could not result in decision of an issue against her.[6]

Where the petitioner made an application for impleading legal representatives and also made a prayer for setting aside the abatement after more than 7 months of the death of the plaintiff. It was held that in the absence of any specific prayer claiming the benefit of section 5, the Court would have no jurisdiction whatever to set aside the abatement and it is incumbent on the Court where no application under section 5 is moved to reject the application for setting aside abatement as time-barred, in that it is well-established principle of law that the Court cannot grant unsought for relief.[7]

Oral request. Oral submission made for condonation of delay was not sufficient compliance with law.[8]

'Suo motu' exercise of discretion. The Court, in the circumstances of a certain case, could *suo motu* enlarge the time and condone the delay.[9] But where no reasons for condonation was shown in application for delay and the Court did not give any reasons for condonation of delay. The order of condonation was set aside.[10]

39. Order under S. 5; if open to Letters Patent Appeal. An order allowing an appeal or application to be filed beyond time is not a "judgment" within the meaning of the Letters Patent.[11]

40. **Order under section 5, if one passed on appeal.** An order dismissing an appeal as barred after refusing an application to extend time under S. 5 is an order "passed on appeal" within S. 109(*a*) of the Civil Procedure Code.[12] It is a decree open to appeal.[13]

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3. PLD 1962 Pesh 21.
4. 1985 CLC 1972 = PLJ 1985 Lah. 124 = NLR 1985 Civ. 235.
5. PLD 1961 Karachi 656 (DB).
6. PLD 1981 AJ&K 126.
7. PLD 1967 Pesh. 186 = PLR (1967) 2 W.P. 426.
8. 1986 SCMR 1624.
9. 1980 CLC 110 (SC AJ&K) + NLR 1989 SCJ 689 + AIR 1936 All 666.
10. 1986 Law Notes. 675.
11. PLD 1962 Kar. 608 (DB) + AIR 1935 All 620 = 57 All 983 (FB) + AIR 1929 Cal. 214 = 56 Cal. 135 (FB) + AIR 1936 Mad. 387 = 59 Mad. 656 (DB).
12. AIR 1921 Cal. 415 (DB) + 23 Mad. L. Jour 219 (DB) + AIR 1926 Pat 102 (DB).
13. 9 Bom. 452 (DB) + AIR 1954 Mys. 86 = ILR 1953 Mys. 416.

Order admitting appeal. An order admitting an appeal by excusing delay is not adjudicating an appeal.[14] It is not a "final order" within the meaning of S. 109 of the Civil Procedure Code.[15]

Order admitting writ petition. Where a writ petition was admitted for regular hearing subject to any objection as to limitation at the time of final disposal. It was held that if the petitioner had any grievance against the said order, he should have challenged the same through a petition in the Supreme Court within the prescribed period of limitation in which behalf, however, he took no steps, and consequently the contention urged on his behalf has to be repelled. To put it differently, the petitioner had evidently acquiesced in the order of rejection which to all intents and purposes was a final order in so far as it concerned the admission of his writ petition to regular hearing, and consequently he cannot be permitted to challenge the same after a lapse of ten years.[16]

41. Appeal on behalf of or against dead person. Where an appeal was filed by mistake on behalf of a dead person and subsequently his legal representatives applied to continue the appeal, the Court treated the application as an appeal by the representatives themselves and excused the delay.[17]

Appeal filed against dead person. Ignorance of death of the respondent is not sufficient to extend the period of limitation; it has to be linked with care and diligence on the part of the applicant and has to be disassociated from laches and negligence in pursuing the appeal.[18] Where an appeal is filed against a deed person under a bona fide mistake and the time expires before the representatives are brought on record, the time may be extended under section 5.[19] The applicant must explain the delay in presenting the appeal afresh against the heirs of the dead person. If he can make out sufficient cause for making the belated prayer, the Court may allow the same, amend the cause title of the memorandum of appeal by incorporation of the names of the heirs and legal representatives of the dead person and treat the appeal as a freshly presented appeal against the heirs.[20] Where the deceased defendant was resident in a village other than that of the plaintiff and the latter pleaded in an application for abatement that he was ignorant of the death of the defendant, the Court set aside the abatement and condoned delay in bringing the legal representatives of the deceased defendant on record.[1]

Negligence and want of care of applicant. The Court while exercising its discretion to excuse the delay that has occurred in the preferment of an application for setting aside the abatement, must do so on sound judicial principles. An abatement is not to be set aside lightly or as a matter of course because a valuable right has accrued to the party in whose favour the abatement operates. Therefore, unless sufficient cause is shown for excusing the delay in

14. 25 Mad. L. Jour 281 (DB).
15. AIR 1926 Pat. 102 (DB).
16. PLD 1980 SC 49 = NLR 1980 SCJ 260.
17. ('08) 18 Mad. L. Jour 461 (DB).
18. 1961 Punjab 555 (DB) + AIR 1960 Punj. 335 (FB).
19. AIR 1936 Pesh. 192 + AIR 1950 Mad. 52 + ILR (1948) 1 Cal. 25 (DB).
20. PLD 1968 Dacca 552 + AIR 1965 Calcutta 459 (DB).
1. PLD 1969 Lah. 642 = PLR 1970 (1) W.P. 35.

making application for setting aside the abatement and for bringing on record the legal representatives of the deceased, the abatement, cannot be set aside.[2] Where, during the pendency of an appeal, one of the respondents died and the appellant did not make an application to bring on record his legal representatives within the period of limitation, and subsequently applied for extension of time; it was held that for condonation of delay, the delay of each day must be explained. In this case extension of time could not be granted as the conduct of the appellant was marked by carelessness and want of vigilance in ascertaining the respondent's death. Even if it be assumed that the appellant was ignorant of the death of the respondent, that would not constitute a sufficient cause as the appellant had not shown that ignorance of death was not attributable to negligence or want of vigilance.[3]

Delay after knowledge of death. Where an application to implead the legal representatives of the deceased respondent was filed after a lapse of about one year from the date of death, though the appellant's counsel had knowledge of the death at least one month prior to filing of the application, and no satisfactory explanation for each day's delay from the date of knowledge of the death till the date of the application has been given, delay in impleading the legal representatives cannot be condoned on the ground of want of knowledge of death under section 5.[4] For the same reason where precise date of knowledge of death of deceased and reason for not presenting the application earlier was not disclosed applications for setting aside abatement and for bringing on record legal representatives of the deceased-respondent were disallowed.[5] Where the advocate of the appellant was informed by the High Court about the death of *H*, one of the respondents. After one year of the death the appellant put in an application stating that she was not a necessary party to the suit and consequently it was not necessary to implead her legal representatives. It was also stated that the plaintiffs who claimed to be the heirs of the deceased were party to the appeal and, therefore, the appeal could not abate. In the alternative it was alleged that the appellant had no information about the death of *H*, and had therefore, sufficient cause for not presenting the application earlier. The Court refused to extend time and condone delay under section 5.[6]

[7][6. *Legal disability.* (1) Where a person entitled to institute a suit [or proceeding] or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned a minor, or insane, or an idiot, he may institute the suit [8][or proceeding] or make the application within the same period after the disability has ceased, as would otherwise have been

2. PLD 1973 Lah. 567 = Law Notes 1973 Lah. 17 (DB) + PLD 1973 B.J. 15 (DB) (Pre-emption suit--Abatement should not be lightly set aside).
3. PLD 1973 Lah. 809 (DB) + PLD 1973 B.J. 24 + AIR 1965 Himachal Pradesh 28 + AIR 1964 S.C. 215 + AIR 1960 Punj. 335 (FB) + AIR 1962 Punj. 493 (DB).
4. AIR 1964 Punj. 336 + AIR 1962 S.C. 361.
5. AIR 1965 Punjab 367 (DB).
6. PLD 1958 Lahore 257.
7. Ss. 6 to 9 have been declared not to apply to suits, appeals or applications under the Bengal Public Demands Recovery Act, 1913 (Ben. 3 of 1913).
8. Ins. by the Limitation (Amendment) Ord., 1962 (43 of 1962), S. 3 (with effect from the 7th June, 1962).

allowed from the time prescribed therefor in the third column of the First Schedule [9][or in section 48 of the Code of Civil Procedure, 1908 (Act V of 1908)].

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

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

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

Illustrations

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

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

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

Synopsis

1. Scope.
2. Applicability to number of persons collectively.
3. "Person entitled...an application."
4. Proceedings to which section applies.
5. Person to whom section applies.
6. Disability--must exist at time of commencement of limitation.
7. Suit by after-born member of Hindu joint family to set aside alienation of joint family property.
8. Suit by Hindu reversioner to set aside alienation or adoption by widow.
9. Suit by reversioner or adopted son succeeding to an estate after a Hindu widow.
10. Special or local Acts, limitation under.

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9. Added *ibid.* (with effect from the 7th June, 1962).

11. Section 48, C.P.C. period fixed under.
12. Period fixed by Court.
13. Disabilities to which section applies.
14. Child in womb, applicability to.
15. Muslim child born after accrual of cause of action.
16. Minority negatives knowledge.
17. "Insane."
18. Onus of proof and evidence as to disability.
19. Suit on behalf of Hindu idol.
20. Time allowed under this section.
21. Section does not bar running of limitation.
22. Acquisition of prescriptive title against person under disability.
23. Effect of existence of guardian for person under disability.
24. Estate under management of Court of Wards.
25. Estate in hands of executor.
26. Receiver appointed to estate.
27. Assignee from person under disability, if entitled to extension of time.
28. Extension of time, quantum.
29. Death of person under disability.
30. Legal representative.

1. Scope. Sections 6, 7 and 8 are supplementary to each other and not mutually exclusive.[10] Section 6 is controlled by section 8 which serves as an exception to sections 6 and 7. The combined effect of sections 6 and 8 is that where the ordinary period of limitation expires before the attainment of majority, the minor will no doubt be entitled to a fresh starting point of limitation from the attainment of his majority but in no case the period extended by section 6 shall by virtue of section 8 exceed three years from the attainment of majority.[11] Thus where a pronote in favour of a minor was transferred for collection to another person during minority, the pronote was re-endorsed in favour of the minor. A suit was filed within 3 years after attaining majority but after 12 years from the date of endorsement for collection; the suit was not barred.[12]

2. Applicability to number of persons collectively. Where a number of persons are under a disability, the time when the last of the persons under disability ceases to be under disability, should be taken as the time when the disability of the persons entitled to sue comes to an end.[13]

3. "Person entitled.....an application." This section contemplates cases where there is only one person entitled to sue or apply, and he is under disability, or where all the persons entitled to sue or apply are under a disability.[14]

Persons must be entitled to sue, etc., in his own right. The section applies only to cases in which a person, who is entitled in his own right to institute a suit or

10. AIR 1965 Mad. 541+AIR 1919 All 209=41 All 435 (DB) (Proceeding barred under S. 7 even as against person under disability on the ground that a discharge could have been given without his concurrence--It cannot be contended that under S. 6 the person under disability is entitled to extension of time so far as he is concerned).
11. 1957 B.L.J.R. 645+AIR 1965 Mad. 541.
12. 1958-2 Andh W.R. 279.
13. 25 Mad. 26 (DB)+AIR 1965 Mad. 541.
14. AIR 1935 All 631=63 Cal 92 (DB) (Obiter).

make an application, is under a disability.[15] Thus where letters of administration were granted to *A* in respect of an estate in which *B* was beneficially interested and an Administration bond was executed by *A* in favour of an officer of Court. A suit was filed on the bond. The fact that *B* was a minor at the time when the bond was broken, *i.e.*, the time from which limitation runs, does not make section 6 applicable.[16]

Section applies only where there is a cause of action. The section does not apply where cause of action has ceased to exist. Thus where *A* executed a sale-deed on 9-7-1931 in favour of *B* with a condition that *B* should reconvey the properties on repayment of the debts within a period of four years. Admittedly the consideration was not paid and there was no demand for reconveyance within the period stipulated. A suit was filed by *A's* son *K* on 26-2-1984 for enforcement of the agreement for resale on the ground that his father having died on 11-4-1933 (*i.e.*, before the end of four years) when the plaintiff was a minor, the suit was governed by the provisions of the Limitation Act and was in time. It was held, that the accrual of the right of reconveyance was dependent upon the term of the contract namely, that it should be exercised within a period of four years from 9-7-1931 and as this was not admittedly done, no right accrued in the plaintiff or his father to demand a reconveyance. Therefore no cause of action accrued at all, and there was no question of invoking the provisions of the Limitation Act to sustain the claim.[17]

4. Proceedings to which section applies. The section applies to institution of suits,[18] and to applications for the execution of decrees.[19] Thus where the plaintiff is a minor, period of limitation for execution of a decree may be extended upto a period of three years from the date of his attaining majority.[20] It is to be noted that an application for restitution is an application for execution of a decree within the meaning of this section.[1]

The section does not apply to appeals.[2]

The section does not apply to the following proceedings:--

(*a*) Application for final decree in mortgage suit.[3]

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15. 28 Mad. 479 (DB).
16. AIR 1941 P.C. 6=67 Ind App 416=ILR 1941 Bom. 202.
17. 68 Mad. L.W. 553.
18. PLD 1969 Kar. 52=21 DLR W.P. 140 (DB).
19. PLD 1969 Kar. 52=21 DLR W.P. 140 (DB)+AIR 1918 Oudh 379 (DB)+AIR 1924 Oudh 31=26 Oudh Cas. 206. (An application for the continuance or revival of a previous execution proceeding struck off or suspended for no act or default of the decree-holder is substantially an application for the execution of a decree).
20. NLR 1980 A.C. 134.
1. AIR 1917 Bom. 210=41 Bom. 625 (DB)+AIR 1926 Oudh 199=1 Luck. 40 (DB).
2. 1969 SCMR 246+PLD 1979 Lah. 846=PLJ 1979 Lah. 411=1979 LN 33+PLJ 1974 Lah. 67+PLD 1969 Kar. 52=21 DLR W.P. 140 (DB)+12 All 461 (FB)+4 Ind. Cas. 1002 (DB) (Lah.)+18 Mad. 484 (DB).
3. AIR 1941 Bom. 203=ILR 1941 Bom. 435 (DB)+AIR 1933 Cal. 508 (DB)+AIR 1918 All. 76=40 All. 203 (DB)+AIR 1918 Nag. 63=15 Nag. L.R. 36.

(*b*) Application for personal decree against mortgagor under O. 34, R. 6, Civil P.C.[4]

(*c*) Application for restoration of suit or appeal dismissed for default.[5]

(*d*) Application to set aside *ex parte* decree.[6]

(*e*) Application for setting aside execution sale.[7]

(*f*) Application for bringing on record legal representatives.[8]

(*g*) Application for leave to appeal.[9]

(*h*) Application for pre-emption under S. 26-F of the Bengal Tenancy Act, 1885.[10]

(*i*) An application to file an award.[11]

5. Person to whom section applies. The section does not apply to a person who is not entitled to sue or apply on the commencement of limitation but becomes entitled to do so subsequently.[12] Therefore where limitation begins to run against one person and thereafter another person becomes entitled to sue on the same cause of action, there is no fresh starting point of limitation and the disability of such person at the time of his so becoming entitled to sue is no ground for extension of limitation under this section.[13] Where the cause of action accrued in favour of a woman but she adopted a son after the accrual of cause of action, and the son on attaining majority sought benefit of this section. It was held that the right of the adopted son to sue would accrue to him upon his adoption when he would be considered to be born. That means that, the adopted son, his adoption being subsequent to accrual of cause of action, was not a person entitled to institute the suit at the commencement of the period of limitation to claim benefit of S.6 (1) and his disability of minority was subsequent disability of an after-born son, which attracted provisions of S. 9 of the Limitation Act.[14]

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4. AIR 1930 Cal. 34 = 56 Cal. 1117 (DB).
5. AIR 1921 Bom. 20 = 45 Bom. 648 (DB).
6. AIR 1917 Lah. 144 = 1916 Pun Re. No. 101 (DB) + 35 Mad. 678 (DB) + AIR 1921 Pat. 69 = 5 Pat. L. Jour 460 (DB).
7. AIR 1935 Pat. 450 (DB) + AIR 1943 Mad. 55 (DB).
8. AIR 1917 Low Bur 132 + 1897 All W.N. 42 (DB).
9. AIR 1918 Oudh 163 (DB).
10. AIR 1952 Cal. 75.
11. AIR 1923 Rang. 226 = 1 Rang. 256 (DB) + AIR 1936 Pat. 161 = 14 Pat. 855 (DB).
12. AIR 1941 P.C. 6 = 67 Ind App 416 = ILR 1941 Bom. 202 + AIR 1925 P.C. 33 + 52 Ind App 69 = 47 All 165 = 27 Oudh Cas 343 + AIR 1957 Andh Pra 386. (Persons not in existence at the time when limitation began to run cannot invoke S. 6) + AIR 1942 Pat. 99 = 20 Pat. 727 (DB). (The section does not give a fresh period of limitation. The person claiming to take advantage of it must be a person entitled to institute the suit at the commencement of limitation) + AIR 1941 Mad. 449 = ILR 1941 Mad. 599 (FB) + AIR 1945 Bom. 63. (Person not in existence at the commencement of limitation).
13. 18 Ind. Cas. 306 (DB) (Oudh) + 1946 Jaipur L.N. 136 (DB) + 16 Cal. W.N. 1015 + 27 Cal. 379 (DB) + AIR 1935 Lah. 144 + AIR 1917 Low Bur 100 (DB) + AIR 1920 Lah. 209 (DB) + 36 Bom. 498 (DB) + 1 Nag. L.R. 180 + 27 All 704 (DB) + 29 Bom. 68 (DB).
14. AIR 1965 M.P. 102 + AIR 1925 P.C. 33 + AIR 1941 P.C. 6.

If for any special reason there is a fresh start of limitation in favour of the person deriving his right to sue from another his disability at the time from which such fresh period of limitation begins to run will entitle him to the benefit of this section.[15]

6. **Disability must exist at time of commencement of limitation.** The section applies where the disability exists at the time from which the period of limitation is to be reckoned.[16] Where the plaintiffs were minors when cause of action arose and were still minors when joined as plaintiff in the suit. The suit was not barred by time.[17] But where limitation period has already started running before accrual of cause of action to minors, Ss. 6 and 8 would be of no avail to them.[18]

7. **Suit by after-born member of Hindu joint family to set aside alienation of joint family property.** An after-born son has an independent cause of action. His suit must be brought within 12 years under Art. 126 unaffected by any extended period of limitation available under S. 6 to a co-parcener existing at the time of the alienation.[19] Thus where there was alienation of joint family property by *A*, and *B* son of *A* was an adult at the time of alienation. *C*, another son was born to *A* subsequent to alienation but before limitation for suit to set aside alienation by *B* expired. It was held that the right of *C* was based on the same cause of action as that of *B* and limitation did not start afresh on his birth.[20] Similarly where there was alienation of joint family property by *A* (father) in 1910. *B*, a minor son of *A*, was 5 years old at the time of alienation . Another son *C* was born in 1912. It was held that *C* was not entitled to take advantage of the extension of limitation till 1926 in *B*'s favour. Only *B* being in existence at the time of alienation and being a minor then, can bring a suit within three years of his attaining majority. *C's* right to set aside alienation would expire in 1922.[1]

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15. 13 Mad. 135 (DB). (Entirely new period runs from date of acknowledgment)+AIR 1960 Mad. 403 (DB). (Acknowledgment in favour of minor creditor--Creditor entitled to benefit of S. 6)+AIR 1945 Mad. 149. (Disability continuing till death--Legal representative can take benefit of provision)+AIR 1933 All 100=54 All. 1019 (DB)+AIR 1942 Bom. 248=ILR 1942 Bom. 574+AIR 1919 Lah. 177+14 Ind. Cas. 694 (DB) (Cal)+AIR 1935 Lah. 144. (Decree-holder dying leaving a minor son--Application on behalf of minor for execution made and dismissed--Minor gets a fresh start of limitation from date of dismissal)+25 Mad. 431 (FB)+23 Cal. 374 (DB)+(1900) 22 All. 199 (FB)+20 Bom. 383 (DB).
16. 1979 CLC 882=NLR 1988 SCJ 541+AIR 1918 All 183=40 All 630 (FB)+20 Ind App. 38+1979 CLC 882+AIR 1960 Mad. 403 (DB). (Acknowledgment in favour of minor creditor--Creditor entitled to benefit of S. 6)+AIR 1956 Sau 20 (DB). (Where the limitation for bringing a suit under Art 91 has once commenced to run against the plaintiff's predecessor who had knowledge of the gift it will not be interrupted by the fact of plaintiff's minority)+52 Mys. H.C.R. 332 (DB)+AIR 1943 Oudh 296.
17. PLD 1975 Kar. 914=PLJ 1975 Kar. 430.
18. NLR 1988 SCJ 541=1979 CLC 882.
19. AIR 1957 Andh Pra 386+AIR 1940 Nag. 94. (After-born son are entitled to avoid alienation of joint family property not as the representatives of their father but in their own right).
20. AIR 1925 P.C. 35=52 Ind App 69=47 All 165=27 Oudh Cas 343+AIR 1940 Nag. 94 (The principle will be applicable where the alienation is not by the father but by some other co-parcener)+1946 Jaipur L.R. 136 (DB).
1. AIR 1920 Lah. 39=1 Lah. 558 (DB)+AIR 1922 Lah. 275=3 Lah. 99 (DB).

Suit by the pre-existing co-parcener. Where the pre-existing co-parcener sues and succeeds, an after-born co-parcener is entitled to share in the relief, though on the date of the suit, a suit by the latter himself would have been time barred.[2]

A suit by the pre-existing co-parcener after the expiry of limitation as against the after-born co-parcener is not liable to be dismissed for want of necessary parties on the ground that limitation having expired as against the latter, he cannot be joined as a party to the suit by the former.[3]

Death of pre-existing co-parcener. Where the pre-existing co-parcener who is under a disability at the time of the alienation dies before the cessation of the disability, the after-born co-parcener cannot be treated as legal representative of the deceased so as to entitle him to sue within the extended period of limitation conferred by clause (3) of this section.[4]

Expiry of limitation in favour of pre-existing co-parcener. Where an after-born co-parcener comes into existence after the expiry of limitation as against the pre-existing co-parcener, the after-born co-parcener will not be entitled to sue at all apart from the question of limitation.[5]

8. Suit by Hindu reversioner to set aside alienation or adoption by widow. Where at the time of alienation or adoption by a Hindu widow, there is a reversioner competent to sue and limitation to sue against him begins, a reversioner who subsequently becomes entitled to sue gets a fresh starting point of limitation and hence he is entitled to the benefit of this section.[6] Thus time spent in obtaining copies of decree or judgment cannot be excluded in calculating period of limitation.[7]

Setting aside adoption. Limitation for setting aside adoption starts from the date of knowledge of the entire body of reversioners; the fact that the reversioner next in rank is a minor or is under a disability will not stop the period or give him an extended period of limitation prescribed under S. 6, although the suit is brought by the minor.[8]

9. Suit by reversioner or adopted son succeeding to an estate after a Hindu widow. Where adverse possession commences against a widow during her lifetime and a reversioner succeeds to the estate thereafter, the reversioner has an independent cause of action to sue for possession and such cause of action accrues to the reversioner on his succeeding to the estate on the widow's death.[9] But where the adverse possession had commenced in the lifetime of the last full owner, the reversioner or adopted son succeeding to the estate will not have a

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2. 40 Cal. 966 = 40 Ind App 213 = 10 Nag. L.R. 1 (P.C.).
3. AIR 1922 Bom. 319 = 46 Bom. 535 (DB) + 16 Mad. 436 (DB) + 9 Cal. L. Jour 623.
4. AIR 1935 Mad. 431.
5. AIR 1916 All. 356 = 38 All 126 (DB). (33 All 654, *Disting*).
6. AIR 1959 Orissa 179 = ILR 1959 Cut 122 (DB). (AIR 1922 Lah. 39 & AIR 1944 Lah. 409 (FB). *Rel. on*) + AIR 1924 Cal. 481 = 51 Cal. 101 (DB) + AIR 1935 Pat. 256 (DB) + AIR 1944 Lah. 409 = ILR 1944 Lah. 231 (FB) (*Overruling* AIR 1933 Lah. 524).
7. PLJ 1978 Kar. 275 = PLD 1978 Kar. 818 (*Diss.* AIR 1916 Pat. 267 & AIR 1936 Lah. 976).
8. AIR 1951 Mad. 824 (DB).
9. AIR 1929 P.C. 166 = 51 All 439 = 56 Ind App 267 + AIR 1928 All 561 = 51 All 188 (FB).

fresh cause of action but will be bound by the limitation that has run before he succeeds to the estate.[10]

Where the reversioner or the adopted son is under any disability at the time of his succeeding to the estate, he will be entitled to the benefit of this section.[11]

10. Special or local Acts, limitation under. The section only applies to cases in which a period of limitation is laid down in the first schedule to this Act.[12] It does not apply to cases where a period of limitation is provided for by any special or local law.[13] But it must be remembered that minority affords a general ground of exemption from the law of limitation apart from the statute.[14] Therefore under the Fatal Accidents Act, S. 1 even if the suit was not filed by a representative of the person deceased within one year of the date of the accident, yet the minor respondents cannot be deprived of the benefit of either section 6 or section 7 of the Limitation Act.[15]

Special Act may specifically apply this section to proceedings. The section will apply where a special or local law itself provides that it would apply to any period of limitation prescribed by such special or local law.[16]

11. Section 48, C.P.C. period fixed under. Since S. 6 in expressly limited to cases where the limitation is provided for in the Limitation Act, *i.e.* in the third column of the first schedule, there is no scope for holding that S. 48, C.P.C. could be construed as being subject to S. 6 and on the other hand the latter provision is subservient to the former.[17] Therefore the minority or other disability of the decree-holder will not be a ground for extending the period of twelve years fixed by S. 48, Civil Procedure Code.[18]

12. Period fixed by Court. This section refers to extension of the period fixed by law and not to a period fixed by the Court.[19]

13. Disabilities to which section applies. The only ground on which limitation can be saved under this section are minority, lunacy and idiocy of the person entitled to sue or make an application for execution. The fact that the

10. AIR 1922 Mad. 12=45 Mad. 361 (DB)+AIR 1921 Mad. 272=44 Mad. 951 (DB).
11. 4 Cal. 523 (DB)+2 Cal. L. Jour 87 (DB).
12. 18 Ind. Cas. 306 (DB) (Oudh).
13. PLD 1952 Dacca 79=PLR 1951 Dacca 86+1 Ind. App. 167 (P.C.)+AIR 1958 All. 311=ILR (1957) 2 All 233 (DB). (S. 6 cannot be availed of in a suit under U.P. Tenancy Act, 17 of 1939)+29 Cal. 813 (DB)+1943 All. W.R. (Rev.) 187 (DB). (The section is not applicable in execution applications in proceedings under the U.P. Tenancy Act)+AIR 1914 Lah. 85=1914 Pun Re. No. 64 (DB)+AIR 1915 Cal. 541 (DB)+AIR 1918 Nag. 247+18 Mad. 99 (FB).
14. 16 Bom. 536.
15. PLD 1971 Karachi 864 (DB).
16. AIR 1926 Nag. 236+11 Oudh Cas. 118 (DB)+AIR 1929 Lah. 819+AIR 1926 Lah. 188.
17. AIR 1963 A.P. 492 (DB)+AIR 1915 All 349 (2) and AIR 1944 Lah. 68 and AIR 1939 Nag. 245 and AIR 1941 Pat. 45 and AIR 1944 Lah. 106 and AIR 1938 Cal. 25.
18. AIR 1915 All 349=37 All 638 (DB)+AIR 1938 Cal. 25=ILR (1937) 2 Cal. 373 (DB)+AIR 1914 Mad. 526=37 Mad. 186 (DB)+AIR 1944 Lah. 68=ILR 1945 Lah. 448 (DB)+AIR 1944 Lah. 106=ILR 1944 Lah. 592 (DB)+AIR 1939 Nag. 245=ILR 1939 Nag. 559 (DB)+AIR 1941 Pat. 45=20 Pat. 1 (DB).
19. 1884 Pun Re No. 31, p. 79 (DB).

plaintiff is a disqualified proprietor whose estate is under the management of the Court of Wards will not save limitation.[20]

14. Child in womb, applicability to. A child who is in the womb of his mother at the time from which limitation is to be reckoned cannot be regarded as being under the disability of minority at that time.[1]

15. Muslim child born after accrual of cause of action. Where the plaintiff and the defendants were co-sharers. The defendants were in adverse possession of the suit property. The cause of action accrued to the plaintiff's father in 1917 during father's minority, when the plaintiff was not born. After the death of his father, the plaintiff got a right to sue but he was then a minor for several years. It was held that the plaintiff was not born in 1917 when the cause of action accrued, and as such, he could not, on coming of age, avail himself of the benefit of S. 6. Section 6 was subject to the provisions of S. 8 and that section not being applicable, the question of extending the period of limitation to a period three years from the cessation of disability did not arise.[2] Where at the time of the alienation some of the reversioners were alive and they brought a suit challenging the alienation, which was decreed. Time began to run from the date of alienation and the subsequent birth of the plaintiff could not stop it from running.[3]

16. Minority negatives knowledge. Where starting point of limitation depends on the knowledge of the plaintiff, the minority of the plaintiff would negative such knowledge.[4]

17. "Insane." A state of mental weakness on account of injuries sustained is not insanity within this section.[5] Illness of plaintiff caused by the shock of death of his son by accident would not bring his case within this section.[6]

18. Onus of proof and evidence as to disability. The burden of proving that a suit or application for execution is saved from the bar of limitation by virtue of the provisions of this section is on the person who relies on such provisions.[7] Where a plaintiff relies on this section as saving his suit from the bar of limitation such fact must be clear from the plaint itself.[8] The plaintiff must allege in the plaint that his case comes within one of the provisions of this section and then prove the facts on the strength of which he is entitled to rely upon those provisions.[9] In the case of a plaintiff who claims that at the time when the cause of action arose he was a

20. AIR 1918 P.C. 180=46 Cal. 696=46 Ind App. 60+AIR 1946 Pat. 154 (DB).
1. PLD 1958 Lah. 226+AIR 1939 Lah. 290+AIR 1929 Lah. 254 (DB)+AIR 1943 Lah. 281 (FB)+AIR 1957 A.P. 386.
2. AIR 1963 Pat. 108 (DB).
3. PLD 1949 Lah. 435=PLR 1948 Lah. 181.
4. ILR (1954) 4 Raj. 145. (If the plaintiff was a child of only few months at the date of the ouster then it can hardly be said that the ouster was to the knowledge of the plaintiff)+AIR 1941 Sind 50=ILR 1940 Kar. 534. (There can be no adverse possession against minor because he is not in a position to know of or resist acts of ouster).
5. AIR 1924 Bom. 290 (DB).
6. NLR 1988 UC 200 (DB).
7. PLD 1984 Pesh 278+NLR 1985 CLJ 19 (2)+PLD 1953 B.J. 1+AIR 1924 Cal. 420 (DB)+AIR 1930 Oudh 97=5 Luck. 658 (DB)+AIR 1928 Lah. 763+17 Cal. W.N. 667 (DB)+AIR 1923 Lah. 254+AIR 1917 Mad. 920 (DB).
8. 17 Cal. W.N. 667 (DB).
9. AIR 1952 Pepsu 85=ILR 1952 Patiala 142.

minor and therefore competent to sue within three years of his becoming major, it is necessary to state in unequivocal terms as to when the cause of action actually arose, when he became a major and further how much time he took after becoming major to come to Court. All this requires that not only approximate but actual relevant dates should be given in the plaint and also proved by evidence. In a case of succession it is incumbent upon the minor to prove the exact date of his father's death, and also the exact date of his own birth. Medical evidence only gives approximate age. Unless it is supported by some other definite evidence it cannot be regarded as final. It might be said that in the case of illiterate litigants who cannot be expected to know or trace the relevant dates this rule will operate as a great hardship. This might be so. But law must be administered as it is and not as it ought to be.[10]

Specific pleadings not necessary. The plaintiff need not specifically plead exemption under this section, it is enough if the fact of reliance on the saving provisions is somehow apparent on the face of the plaint.[11]

19. Suit on behalf of Hindu idol. An idol is not a perpetual minor for purposes of limitation.[12] But where the *shebait* is under disability at the time from which the period of limitation is to be reckoned, he is entitled to the benefit of this section.[13]

20. Time allowed under this section. Section 6 enables a person under disability to sue or apply for execution within the same time from cessation of disability as would have otherwise been allowed from the time specified in the third column of the first schedule.[14] Thus the plaintiff whose property has been alienated by his mother during his minority need not set aside the transfer which is void but he can institute a suit for possession within twelve years from the date of sale or within three years from the date of his attaining of majority whichever may be the later date. If the suit is not so instituted his title in the property would be extinguished under section 28 of the Act and the subsequent suit would be barred by limitation.[15]

Where the defendant has come into possession of land on the basis of sale or pre-emption decree during minority of plaintiff, a suit instituted by the plaintiff beyond a period of three years of his attaining majority is barred by time.[16]

Where a suit is instituted within the time allowed under this section but necessary parties are impleaded after three years of his attaining majority, the suit

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10. PLD 1953 B.J. 1.
11. 14 Cal. W.N. 128 (DB).
12. AIR 1927 Pat. 49 (DB)+AIR 1949 Orissa 1+3 Ind Cas 93 (Cal)+AIR 1930 Pat. 455=9 Pat. 885 (DB)+AIR 1926 All 392=48 All 348 (DB).
13. 32 Cal. 129=31 Ind App. 203 (P.C.)+51 Cal. W.N. 388+76 Cal. L. Jour 363.
14. AIR 1949 East Punj. 20 (DB)+AIR 1956 Orissa 165 (DB). (An application for substitution as plaintiffs in the final decree for foreclosure should be filed within three years after the death of their father or at least within three years after they attained majority).
15. PLD 1952 Dacca 347=PLR 1951 Dacca 781=3 DLR 305.
16. PLD 1984 Pesh 65=NLR 1984 Civ. 359.

would be barred by limitation as a suit instituted without impleading necessary parties cannot be said to be duly instituted.[17]

Calculation of time. In calculating extra period allowed under this section, the date on which the disability ceases must be excluded.[18]

21. Section does not bar running of limitation. This section does not bar running of limitation against a person under disability, it only extends time so as to give him some extra time after the end of the period of his disability. Thus where a person enters into possession in assertion of a title hostile to that of the person under disability, limitation begins to run from the date of his entering into possession and is not postponed till the cessation of disability.[19] But the minor is entitled to an extended period of limitation under the provisions of sections 6 and 8.[20] Where, however, adverse possession was not running against a minor alone but was running against his elder brother (a major) and mother as well, the minor cannot obtain the benefit of the extension under this section.[1]

22. Acquisition of prescriptive title against person under disability. The law presumes that whosoever enters into possession of property belonging to a minor does so on behalf of the minor and such possession continues with him for and on behalf of that minor. No Court will ever countenance a person having entered into possession of a property on behalf of a minor setting up his own title thereto during such possession. He cannot do so until, after the minor attains majority he does something to change that possession into a wrongful one.[2] Therefore where the person entitled to sue is under a disability and is entitled to an extension of limitation his right cannot be extinguished until the expiry of such extended period.[3]

23. Effect of existence of guardian for person under disability. The mere fact that there is a guardian for the person under disability does not deprive such person of the indulgence granted by this section.[4] But where a document is executed in favour of a guardian in his own name, this section will not apply to a suit by the guardian on the document, although the party beneficially interested may be a minor or other person under disability.[5]

Suit by guardian during disability of plaintiff. Section 6 of the Limitation Act refers to a period of minority of the infant. It is a provision which gives minor additional time but it does not mean that the minor is prevented from instituting

17. AIR 1963 Kerala 344.
18. 10 Cal. 748 (DB).
19. AIR 1922 Mad. 12=45 Mad 361 (DB)+AIR 1941 Nag. 357=ILR 1942 Nag. 564 (DB)+27 Bom. 515 (DB)+AIR 1920 Mad. 793 (DB)+1909 Pun. Re. No. 100, p. 491 (DB)+AIR 1928 Oudh 481.
20. Madh. B.L.J. 1955 H.C.R. 1128.
1. 1943 All L.W. 160.
2. AIR 1962 Mys. 3.
3. AIR 1935 Lah. 924+24 Mad. 387=28 Ind. App. 81 (P.C.)+AIR 1943 Oudh 296.
4. AIR 1938 Pat. 92+31 Cal. 129=33 Ind. App. 203 (P.C.)+ILR 1957 Madh. Pra. 3 (AIR Commentaries on Limitation Act, Vol. I, Note 35, *Approved.*)+AIR 1934 All 434 (DB)+AIR 1929 Lah. 661+16 Oudh Cas 206+AIR 1936 Pat. 194 (DB).
5. AIR 1927 Bom. 61=50 Bom. 831 (DB)+7 Cal. W.N. 594 (DB)+AIR 1924 Bom. 468 (DB)+AIR 1936 Pat. 194 (DB)+14 Ind. Cas. 694 (DB) (Cal.)+28 Mad. 205 (DB).

proper proceedings through the next friend before he attains majority.[6] A suit or application filed on behalf of a person under disability by his next friend during the continuance of disability but after the expiry of the ordinary period of limitation will also be saved under this section.[7]

24. Estate under management of Court of Wards. Where a decree is passed in favour of minors whose property is under the management of the Court of Wards, the fact that the decree stands in the name of the manager of the Court of Wards is no ground for denying the minors' extension of limitation conferred by this section.[8] Where lease of property is granted by the Court of Wards; the minor on release of his estate from the management of the Court is entitled to sue on the lease and claim extension of limitation under S. 6.[9]

25. Estate in hands of executor. Where the executor fails to sue within the ordinary period of limitation, the minor beneficiary cannot subsequently do so, by claiming the benefit of this section.[10]

26. Receiver appointed to estate. Where a receiver failed to sue within the ordinary period of limitation, a suit by the minor subsequently would also be barred though the extended period to which he was originally entitled under this section had not expired.[11]

27. Assignee from person under disability, if entitled to extension of time. A person deriving his right to sue from a person under disability is not entitled to claim the extended period that would have applied to a suit by the person under disability himself.[12] But when a person entitled to the benefit of S. 6, transfers property to another, though the transferee himself may not be entitled to the benefit of that section, a suit could be filed by the transferor and the transferee and such a suit would not be barred though ultimately the benefit of the decision in the suit would go to the transferee.[13] Where *A*, a minor after attaining majority assigns his right to *B* to recover property transferred during his minority, a suit by

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6. 18 DLR (1966) 575.
7. PLD 1969 Kar. 52 (DB)+AIR 1962 Pat. 182 (DB)+AIR 1963 M.P. 100+AIR 1939 Pat. 33 (DB)+AIR 1954 All 71+1955 (2) Mad. L. Jour 456+Madh B.L.J. 1954 H.C.R. 1749+23 Bom. 544=26 Ind. App. 32 (P.C.)+AIR 1930 Bom. 593 (DB)+AIR 1934 Lah. 908 (DB)+AIR 1929 Mad. 394 (DB)+AIR 1936 Sind 84=30 Sind L.R. 30 (DB)+AIR 1936 All 152+6 Low. Bur. Rul. 52 (DB).
8. AIR 1936 All 63.
9. AIR 1948 Pat. 313=26 Pat. 312 (DB). (Lease of coal mine by Court of Wards on behalf of minor proprietor).
10. AIR 1924 Pat. 721=3 Pat. 880 (DB).
11. AIR 1914 Cal. 35 (DB)+23 Bom. 544=26 Ind. App. 32 (P.C.) (Cause of action accruing to minor--Administrator being appointed thereafter--*Held*, suit by administrator after ordinary period of limitation was not barred).,
12. AIR 1933 Bom. 358+9 Cal. 663 (FB)+AIR 1960 Orissa 151=ILR 1960 Cut 71 (DB)+1960-1 Mad. L. Jour 346 (Reference to S. 71 in the body of the judgment seems to be a misprint for S. 6)+AIR 1956 Mad. 15=ILR 1956 Mad. 182 (DB)+AIR 1919 Cal. 893 (DB)+AIR 1918 Lah. 374+AIR 1935 Bom. 420+AIR 1919 Mad. 317=42 Mad. 637 (DB)+1888 All W.N. 183+1901 All W.N. 12 (DB)+AIR 1926 Oudh 20+AIR 1922 Oudh 31.
13. AIR 1956 Mad. 15=ILR 1956 Mad. 182 (DB).

B jointly with *A* within three years of *A's* attaining majority, will not be barred by limitation.[14]

28. Extension of time, quantum. The additional period to which the plaintiff or applicant is entitled under this section is "period prescribed" for the suit or application.[15]

29. Death of person under disability. Where a person under disability dies his legal representative cannot avail of the extended period applicable to the deceased person.[16] Thus where a minor Hindu widow adopts a son and the adopted son succeeds to her estate, there is no death of the minor widow within the meaning of this clause and the adopted son (assuming that his cause of action is the same as that of the widow) is not entitled to a fresh period of limitation from the date of his adoption.[17] Where, after the commencement of adverse possession against a lunatic, he dies as a lunatic, his widow as his legal representative will be entitled to sue within three years from the date of his death but if the widow fails to sue within the period of three years, the reversioner succeeding to the estate afterwards will not be entitled to a fresh start of limitation from the death of the widow.[18]

Case falling under Article 44. As the clear language of S. 6 excludes its applicability to a case filling under Art. 44, the application of S. 6 (3) to the case to which Art. 44 applies is not justified and the period under the latter article cannot be computed from the date of the death of the minor, when the minor dies before attaining majority.[19]

30. Legal representative. The term "legal representative" can properly apply only to those persons who represent the estate of a deceased person and will not apply to a transferee of property *inter vivos*.[20]

Where there is no executor or administrator, as a general rule, the heir or legatee of the deceased will be the legal representative of the deceased in respect of the property left by him.[1] Similarly where the executor refuses to accept office, the heir-at-law of the deceased will be the legal representative of the deceased and can sue on behalf of the estate.[2]

[3]7. *Disability of one of several plaintiffs or applicants.* Where one of several persons jointly entitled to institute a suit [4][or proceeding]

14. AIR 1938 Bom. 358.
15. AIR 1935 P.C. 85=62 Ind App. 80=57 All. 242+AIR 1950 Bom. 94=ILR 1949 Bom. 741 (DB).
16. AIR 1929 Mad. 313 (DB)+AIR 1943 Nag. 284=ILR 1943 Nag. 331+9 Cal. 663 (FB).
17. AIR 1955 Bom. 420.
18. AIR 1922 Mad. 12=45 Mad. 361 (DB).
19. AIR 1954 Mad. 585=ILR 1955 Mad. 562 (DB). (Alienation by minor's guardian--Death of minor before attaining majority--Suit for possession by legal representative--No extension under section 6 (3)=AIR 1930 Mad. 821. *Overruled*).
20. AIR 1929 Oudh 353 (DB)+AIR 1929 All. 444 (DB).
1. 3 Cal. W.N. 843 (DB)+17 Bom. 758 (DB).
2. AIR 1938 Mad. 157=ILR 1938 Mad. 533 (DB).
3. Ss. 6 to 9 have been declared not to apply to suits, appeals or application under the Bengal Public Demands Recovery Act, 1913 (Ben 3 of 1913).
4. Ins. *ibid* S. 4 (with effect from the 7th June, 1962).

or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all: but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Illustrations

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

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

Synopsis

1. Scope.
2. Jointly entitled.
3. Period fixed under S. 48, C.P.C.
4. Disability of one of several joint decree-holders.
5. Disability under this section.
6. Discharge--meaning of.
7. Discharge by one joint claimant without concurrence of others.
8. "Where no such discharge can be given."
9. Joint decree-holder's competency to give valid discharge.
10. 'Mitakshara' joint family.
11. 'Dayabhaga' family.
12. Hindu reversioner challenging alienation by limited owner.
13. Joint creditors.
14. Co-heirs.
15. Partners.
16. Joint trustees.
17. Co-sharers entitled to sue for mesne profits.
18. Guardian appointed for minor.

1. Scope. Section 7 only lays down conditions under which the disability of one of the joint plaintiffs or applicants shall or shall not entitle any of them to the exemption to which the former, if he were a sole plaintiff or sole applicant, would be entitled. The section only supplements S. 6.[5] Therefore this section cannot be invoked in favour of an after-born reversioner not existing at the time mentioned in S. 6.[6]

The section is based on the principle that where several persons are jointly entitled to sue on the same cause of action, such cause of action cannot be barred as to some of them and not barred as to the others.[7]

The extension of limitation does not take place with reference to the person under disability alone.[8] The section does not warrant the construction that the

5. AIR 1965 Mad. 541.
6. AIR 1943 Lah. 281 = ILR 1944 Lah. 287 (FB).
7. 25 Mad. 26 (DB).
8. AIR 1951 Trav-Co. 33 (DB). (Decree for redemption in favour of joint decree-holders--Other plaintiffs unable to give valid discharge without concurrence of minor plaintiff--Time for execution of decree does not run against any of them during latter's minority)

benefit accruing from the suspension of the period of limitation is a purely personal benefit available only to the original parties and not to others who acquire their rights. For instance, so long as a decree for redemption in favour of several plaintiffs one of whom is a minor, is kept alive by virtue of section 7, there is no reason to restrict the right to execute the decree in favour of the original decree-holders alone. Such right must be equally available to their assignees or transferees also.[9]

2. Jointly entitled. Section 7 applies to cases such as of firms or of a joint Hindu family, where a partner in the case of the former and a *karta* in the case of the latter can give a complete discharge notwithstanding the disability of one of the partners or one of the members of the joint Hindu family; therefore, to attract the provisions of section 7, the claimants must be persons whose substantive right is joint, that is, where more than one individual possesses the same identical substantive right.[10] The sons of the daughter of a Hindu take the property of their maternal-grandfather with mutual rights of survivorship and they come under the expression "persons jointly entitled to sue".[11]

Distinct causes of action. The section does not apply to cases in which several persons, each having a distinct cause of action, are entitled to combine their causes of action in the same suit.[12] The words, 'persons jointly entitled to institute a suit' mean persons who have a right to bring a suit jointly. It is not possible to limit the meaning of the expression "jointly entitled to institute a suit" to a case where the substantive right is joint. What is of significance is that the right to sue or apply must be joint and this is the connotation of the expression "jointly entitled to institute a suit".[13] Where *X*, a member of a Hindu joint family, transfers certain property belonging to the family. The circumstances are such that *X* can sue to set aside the transfer on the ground that it was brought about by fraud. The circumstances are also such that *Y*, another co-parcener can sue to set aside the transfer on the ground that it is not binding on the family. *X* and *Y* are not "jointly entitled" to sue and the section does not apply.[14] Where *A* and *B* constitute a Mitakshara joint family and a cause of action accrues to *A* in his own individual right, this section does not apply.[15]

The rights of heirs of a Muslim are not joint. They are distinct rights and one heir cannot give a valid discharge of debts owed to the deceased.[16]

Tenants-in-common. Where several persons are in the position of tenants-in-common with regard to substantive rights and each of them can sue separately in regard to his own interest in the right, neither the substantive right nor the right to sue is joint and this section does not apply to such a case.[17] The interests of beneficiaries under the Fatal Accidents Act are distinct and several and each

9. AIR 1952 Trav-Co. 33 (DB).
10. PLD 1963 Karachi 631.
11. AIR 1947 Mad. 102.
12. PLD 1963 Kar. 631 + AIR 1959 Orissa 179 = ILR 1959 Cut. 122 + 28 Mad. 479 (DB).
13. PLD 1971 Karachi 864.
14. AIR 1939 Mad. 907.
15. 10 Bom. 241 (DB).
16. PLD 1971 Kar. 864 (DB) + PLD 1963 Kar. 631.
17. AIR 1919 Cal. 378 (DB).

dependent is a tenant-in-common with others in respect of the claim and he is entitled to give discharge to the extent of his interest only.[18]

3. Period fixed under section 48, C.P.C. The period of twelve years under section 48 of the Civil Procedure Code cannot be extended under this section.[19]

4. Disability of one of several joint decree-holders. Where one of the decree-holders is a minor and the other decree-holders are not competent to give a valid discharge without his concurrence, time would not run against any of them till the minor attains majority.[20]

5. Disability under this section. The disability contemplated by this section is of the same description as that referred to in section 6.[1] In other words this section applies only to cases in which one of the persons entitled to sue or apply is a minor, insane or an idiot. It does not apply to any other kind of disability,[2] and it must exist at the time from which limitation is to be reckoned.[3]

6. Discharge--meaning of. The expression "discharge" is not confined to discharge of a debt or other pecuniary liability. It applies to any form of acquittance whereby the rights and liabilities of parties are put an end to.[4] It does not include a mere non-filing of a suit.[5]

A discharge that can be given only with the permission of the Court does not fall within the section.[6]

Manager of joint Hindu family. The fact that the manager of a joint Hindu family can give a discharge only for the benefit of the family does not make him a person who cannot give a discharge.[7]

Joint claimants. The section would apply only where all the conditions laid down by the sections are fulfilled. Where there is no right in a joint claimant to institute a suit or file an application, the mere fact that he can lawfully give a discharge would not be sufficient to bar a person from a right to extension of time. The right of a joint claimant to give a discharge without the concurrence of the other claimants is not identical with the right to sue or apply for execution without their concurrence or without joining them as parties to the proceeding.[8]

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18. PLD 1971 Kar. 864 (DB).
19. AIR 1941 Pat. 45 = 20 Pat. 1 (DB) + AIR 1938 Cal. 25 = ILR (1937) 2 Cal. 373 (DB).
20. AIR 1945 Cal. 387 (DB).
1. AIR 1941 Pat. 45 = 20 Pat. 1 (DB) + AIR 1921 Oudh 196 = 24 Oudh Cas. 330.
2. AIR 1954 Trav-Co. 237 = I..F 1952 Trav-Co. 426 (DB). (Even if a petition filed by the judgment-debtor under S. 16 of the Debt Relief Act has the effect of staying the execution of the decree, the resultant disability of the decree-holder cannot be said to be a disability under S. 7).
3. 1979 CLC 882 + AIR 1924 All 912 + AIR 1943 Lah. 281 (FB) + 1946 Jaipur L.R. 136 (DB) + AIR 1921 Oudh 196 = 24 Oudh Cas 330 + AIR 1923 Oudh 52 (DB).
4. AIR 1955 All 186 (DB). (Execution of decree for partition--Manager of Joint family including minor can give discharge and can execute decree) + AIR 1950 Trav-Co. 57 = 1950 Trav-Co. L.R. 467 (DB).
5. AIR 1963 Orissa 133 + AIR 1959 Orissa 179 = ILR 1959 Cut 122.
6. AIR 1919 All 297 = 41 All 473 (DB) + AIR 1935 Cal. 631 = 63 Cal. 92 (DB).
7. AIR 1921 Bom. 289 = 45 Bom. 446 + AIR 1933 Lah. 479.
8. 25 Mad. 26 (DB).

Guardian's power to give discharge. The power which a joint claimant has, as a guardian of another claimant, to give a discharge on the latter's behalf is not sufficient for the purposes of this section.[9]

Muslim mother acting as 'de facto' guardian of minors. A Muslim mother, who is a *de facto* guardian having no authority to transfer or deal with the property of the minors, cannot give a valid discharge for payments made to the minors.[10]

Receiver. Where a receiver is appointed for the estate of minors and he has the capacity to give discharge. The minors are not entitled to extension of limitation.[11]

7. "Discharge by one joint claimant without concurrence of others. Where the substantive right is joint in the sense that each of the joint creditors is a creditor for the whole, any one of them can give a discharge so as to bind the other, but where the co-owners are entitled to distinct interest in the substantive right, one of them alone is not entitled to receive payment and give discharge on behalf of all.[12]

8. "Where no such discharge can be given." This section applies only to cases "where persons who could give a discharge, could not do so on account of incapacity such as lunacy, or minority or some such thing".[13] Where the liability is based on a tort, none of the persons jointly entitled to sue in respect of it can give a discharge without the concurrence of the others, except in some special cases and the section does not apply.[14]

Effect on limitation. Where none of the joint creditors is in a position to give a discharge, the additional period of limitation under the section is to be computed from the time when one of the creditors becomes capable of giving a discharge.[15]

9. Joint decree-holder's competency to give valid discharge. As a general rule, one joint decree-holder cannot give a discharge to the judgment-debtor without the concurrence of the other decree-holders.[16] Thus where a decree is passed jointly in favour of several persons who are Muslim co-heirs, one of them cannot give a discharge in respect of the decree on behalf of all.[17]

Joint decree-holders authorised to give discharge. When the decree itself authorised one of the decree-holders to receive the decretal amount and to give a discharge to the judgment-debtor he can do so without the concurrence of the other decree-holders.[18]

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9. PLD 1971 Kar. 864 (DB) + 25 Mad. 26 (DB) + AIR 1935 Cal. 631 = 63 Cal. 92 (DB).
10. PLD 1971 Kar. 864 (DB) + AIR 1919 All 297 + 41 All 473 (DB).
11. AIR 1914 Cal. 35 (DB).
12. 6 Cal. L. Jour 383 (DB).
13. AIR 1927 Mad. 216.
14. 6 Cal. L. Jour 383 (DB).
15. AIR 1938 Bom. 392 (DB).
16. AIR 1929 All 267 (DB) + AIR 1931 Lah. 5 + 14 Cal. 50 (DB) + 1 Nag. L.R. 24 + 26 All. 318 (DB).
17. AIR 1929 Lah. 467 + AIR 1931 Lah. 5 + AIR 1924 Lah. 681.
18. AIR 1934 Mad. 103 + AIR 1929 Bom. 382.

Hindu joint family. Where a decree is passed in favour of Hindu joint family, the manager of the family can give a valid discharge to the judgment-debtor.[19] Even where the manager of a Hindu joint family is not the next friend or guardian-*ad-litem* of a minor member thereof, O. 32, R. 6 or R. 7 does not apply to him and the fact that there is some other person who is the next friend does not deprive the manager of his power to receive moneys under a decree and give a discharge for them.[20]

Minor decree-holder. This section refers to the status of parties under the substantive law and is not affected by any rule of procedure which requires the intervention of the Court for completing the discharge of the judgment-debtor.[1] Therefore a natural guardian of a minor co-decree holder cannot be treated as a co-decree holder with other decree-holders and cannot give a valid discharge on behalf of the minor decree-holder during the continuance of his minority. Section 7 will therefore operate to save limitation in favour of the decree-holders in such a case.[2]

The guardian of a minor decree-holder who is a joint decree-holder with him cannot give a valid discharge to the judgment-debtor on behalf of the minor without the permission of the Court, even though the decree-holders constitute a joint Hindu family and the guardian is the manager of such family. The competency of such guardian to give a discharge with the permission of the Court is not sufficient for the purpose of the section.[3] But where the decree itself permits one of the joint decree-holders who is also the guardian of the minor decree-holder to receive the decretal amount, no fresh permission from the Court is necessary to enable him to receive the amount and give a discharge to the judgment-debtor.[4]

10. 'Mitakshara' joint family. In regard to rights of action affecting the family property, as a general rule the members of a Mitakshara joint family are jointly entitled to sue within the meaning of this section.[5] But one of the members alone cannot give a discharge in regard to causes of action in favour of the family.[6] Thus where two brothers were majors and one brother was a minor, the two brothers who were jointly entitled to institute a suit for setting aside alienation by their guardian could not give a valid discharge without the concurrence of the third brother who was a minor.[7]

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19. AIR 1919 All 209=41 All 435 (DB)+94 Ind Cas. 922 (DB) (All)+AIR 1929 Bom. 13=52 Bom. 441 (DB)+AIR 1935 Cal. 631=63 Cal. 92 (DB)+21 Mad. L. Jour 1088 (DB)+AIR 1936 Mad. 434 (DB)+AIR 1915 Oudh 227.
20. AIR 1936 Mad. 434 (DB)+AIR 1927 Pat. 329 (DB).
1. AIR 1919 All 209=41 All. 435 (DB).
2. AIR 1949 Pat. 212=26 Pat. 744 (DB).
3. AIR 1925 Mad. 78=47 Mad. 920 (DB). (AIR 1919 All. 209, *Distinguished* and held correctly decided)+15 Ind Cas. 664 (DB) (Cal)+AIR 1935 Cal. 631=63 Cal. 92 (DB)+AIR 1939 Pat. 33 (DB)+AIR 1925 Mad. 78=47 Mad. 920 (DB)+15 Ind Cas 664 (DB) (Cal)+AIR 1937 Cal. 649 (DB)+AIR 1942 Lah. 280 (DB)+ILR 1943 Mad. 596 (DB).
4. AIR 1929 Bom. 382+AIR 1934 Mad. 103.
5. AIR 1941 Oudh 165 (DB).
6. AIR 1938 Bom. 206 (DB)+AIR 1918 Mad. 29=41 Mad. 637 (DB)+AIR 1933 Bom. 245 (DB).
7. AIR 1963 Orissa 133.

Manager of joint family. A member who is the manager of the joint family can give a discharge.[8] It is to be noted in this connexion that there can be no presumption that the elder brother becomes the manager of the family on attaining majority. Whether a person is the *Karta* of the family or not is a pure question of fact. Cases are in abundance to indicate that in every case the eldest member of the family is not the manager of the family. Section 7 of the Limitation Act would not operate as a bar if the elder brother was not manager of the family during the relevant period.[9]

Partition suit. In regard to a suit for partition on behalf of a branch of the family which has been excluded from the enjoyment of the joint property, the father or other senior member of the branch can give a discharge within the meaning of this section.[10]

Alienation of joint family property, setting aside of. The managing member of a Mitakshara joint family can give a discharge in regard to suits to set aside alienations of the family property.[11]

A member who is not the manager of the family cannot give a discharge.[12] Where the father is alive and his sons bring a suit to set aside alienation by the father, this section would apply and limitation does not run against all the sons, including the minor.[13]

Where there are several wards constituting members of a Mitakshara joint family and guardian of such wards transfers family property for the purpose of a suit by the wards to set aside alienation by the guardian, if the ward who first attains majority is found competent to give discharge without concurrence of the other wards, time will begin to run as against all the wards on that ward's attaining majority. Each of the wards will not be entitled to a fresh start of limitation from the date of his attaining majority.[14]

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8. AIR 1941 Oudh 165 (DB)+AIR 1938 Bom. 392 (DB)+AIR 1933 Bom. 245 (DB)+AIR 1933 Lah. 479+AIR 1929 Cal. 165 (DB). (*Distinguishing* AIR 1916 P.C. 148)+AIR 1945 Mad. 498 (DB)+AIR 1941 Sind 166=ILR 1941 Kar. 72 (DB)+1 Ind. Cas. 670 (DB) (Cal.)+AIR 1928 Lah. 484 (DB)+AIR 1924 All. 738 (DB)+AIR 1920 Mad. 645=43 Mad. 842 (DB), (*Distinguishing* AIR 1916 P.C. 148).
9. AIR 1963 Orissa 133+AIR 1941 Oudh 165 (DB)+AIR 1959 Orissa 179+AIR 1957 Andh Pra 434 (DB) (AIR 1945 Mad 498, *Foll.*)+Madh B.L.J. 1955 H.C.R. 1128+AIR 1938 Bom. 500 (DB)+AIR 1937 Pat. 155+AIR 1927 All. 188+AIR 1922 Bom. 319=46 Bom. 535 (DB)+AIR 1927 Cal. 952=55 Cal. 608 (DB)+AIR 1933 Lah. 479+AIR 1925 Nag. 385+AIR 1929 Mad. 394 (DB)+31 All 156 (DB).
10. AIR 1920 Mad. 793 (DB)+AIR 1923 Oudh 61 (DB).
11. AIR 1941 Oudh 165 (DB)+AIR 1950 Trav-Co. 57=1950 Trav-Co. LR. 467 (FB)+AIR 1934 Mad. 469=58 Mad. 155 (DB)+AIR 1921 Bom. 289=45 Bom. 446 (DB)+AIR 1935 Bom. 259+AIR 1929 Lah. 14+AIR 1925 All 672 (DB)+AIR 1933 Lah. 479+AIR 1929 Nag. 267+AIR 1935 All 746=57 All. 891 (DB)+AIR 1937 Pat. 435=16 Pat. 422 (FB)+AIR 1936 Mad. 434 (DB).
12. ('09) 31 All 156 (DB)+AIR 1928 Mad. 1055=51 Mad. 627 (DB)+AIR 1926 Mad. 1190 (DB)+AIR 1937 Pat. 155.
13. AIR 1926 P.C. 16=48 All 152=53 Ind. App. 36+AIR 1934 Mad. 469=58 Mad. 155 (DB)+AIR 1929 Lah. 14+AIR 1933 Lah. 479.
14. AIR 1938 Mad. 914+AIR 1928 Mad. 42 (DB)+AIR 1914 Bom. 300=38 Bom. 94 (DB).

Redemption of mortgaged property. The manager of a joint family cannot give a discharge on behalf of the whole family in regard to a suit for the redemption of a mortgage so as to make the suit time-barred as against all the members of the family.[15]

11. 'Dayabhaga' family. In case of a joint Hindu family of the Dayabhaga School of Hindu Law, one member of the family cannot give a discharge in regard to a cause of action accruing in favour of the members of the family.[16]

12. Hindu reversioner challenging alienation by limited owner. Where two Hindu daughters inherit their father's property as limited owners and one daughter alienates the property, and there are in existence on the date of the alienation two sons of the other daughter, one of whom is a major and the other a minor; limitation will not run against them so long as the minor son does not become a major, because one son cannot give a valid discharge for both.[17]

13. Joint creditors. Co-creditors of a defendant (secured or unsecured) should be presumed to be in the position of tenants-in-common and not joint tenants. One co-creditor cannot give a good discharge for the entire debt without the concurrence of the others.[18]

14. Co-heirs. Co-heirs, except when they are Hindus governed by the *Mitakshara* law and inherit the property of a male ancestor, are in the position of tenants-in-common with regard to the property,[19] and as a general rule, one of several co-heirs who are in the position of tenants-in-common cannot give a discharge in respect of the right in regard to which they are jointly entitled to sue.[20] Thus where upon the death of an obligee of a money bond the right to realise the money devolves in specific shares upon his heirs, each of such heirs cannot maintain a separate suit for recovery of his share of money.[1] Thus a suit brought by the heirs of a deceased mortgagor for redemption of the mortgage within three years of the date when the youngest plaintiff attained majority was held to be within time.[2]

Heirs of decree-holder. Where a decree-holder died leaving several heirs. The latter constitute one legal representative of the deceased decree-holder and one of them cannot execute the decree nor can give a valid discharge.[3]

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15. AIR 1922 Bom. 319=46 Bom. 535 (DB).
16. AIR 1920 Mad. 645=43 Mad. 842 (DB).
17. AIR 1947 Mad. 102+AIR 1944 Mad. 512.
18. ('11) 38 Cal. 342 (DB)+AIR 1934 Cal. 1 (DB)+('10) 32 All 164 (DB)+AIR 1921 Pat. 27 (DB)+AIR 1920 Pat. 464 (DB)+('03) 25 All 155 (DB)+AIR 1917 Mad. 269 (DB)+AIR 1918 Mad. 29=41 Mad. 637 (DB).
19. ('02) 25 Mad. 26 (DB)+('07) 6 Cal. L. Jour 383 (DB) (property inherited by Hindu brothers from maternal-uncle. They are tenants-in-common)+AIR 1919 Mad. 172 (DB). (Muhammadan co-heirs are entitled to the estate as tanants-in-common).
20. ('07) 6 Cal. L. Jour 383 (DB)+('02) 25 Mad. 26 (DB)+AIR 1919 Bom. 78=43 Bom. 487 (DB)+('03) 27 Bom. 292 (DB)+AIR 1916 Mad. 1128 (DB)+AIR 1920 Pat. 464=5 Pat. L. Jour 151 (DB).
1. ('85) 7 All 313 (FB).
2. AIR 1919 Bom. 78=43 Bom. 487 (DB).
3. AIR 1931 Lah. 5.

Heir holding succession certificate. Where one or more of several co-heirs who are in the position of tenants-in-common have taken out a succession certificate in respect of the debt which is the subject of the suit he or they can give a good discharge so as to bind the other co-heirs and limitation will run against all the co-heirs.[4]

Partner's heirs. Heirs of a deceased partners are jointly entitled to sue within the meaning of this section.[5] On the death of a *Karta* of joint Hindu family who was a partner of a firm, the surviving co-parceners are entitled to the assets in the dissolved partnership representing the shares of the profits of the deceased partner by right of survivorship. They, therefore, will be covered by the expression "persons jointly entitled to sue" used in section 7 of the Limitation Act as they will have mutual rights in the assets of the dissolved partnership by right of survivorship.[6]

Debts incurred by deceased. Where debts had been incurred by the deceased and a decree had been obtained against his property, his co-heirs cannot separately sue for their respective shares. Their right is joint in respect of the cause of action based on transactions entered during lifetime of the deceased and separate in respect of cause of action based on those entered into after the death of the deceased.[7]

Co-heir indebted to deceased. Where one of the co-heirs was himself the debtor of the deceased, the right of co-heirs is necessarily split up and there is no joint right to sue within the meaning of the section.[8]

15. Partners. Though partners may be in the position of tenants-in-common and not joint tenants with regard to their rights as partners, yet, one of them can give a good discharge to the debtor in respect of debts due to the partnership.[9] The authority to receive and give discharge for debts due to the partnership extends to cases in which the partnership has been dissolved.[10] Thus on the death of a *Karta* of joint Hindu family who was a partner of a firm, the surviving co-parceners are entitled to the assets in the dissolved partnership representing the share of profits of the deceased partner by right of survivorship. They, therefore, will be covered by the expression "persons jointly entitled to sue" used in section 7 of the Limitation Act as they will have mutual rights in the assets of the dissolved partnership by right of survivorship.[11]

16. Joint trustees. A joint trustee cannot give a good discharge on behalf of all the joint trustees.[12]

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4. AIR 1924 Cal. 710 = 51 Cal. 566 (DB).
5. AIR 1917 Mad. 197 (DB).
6. AIR 1964 Allahabad 53.
7. AIR 1953 Trav-Co. 450 (DB).
8. AIR 1929 All. 142 (DB) (7 All 313. *Distinguished*).
9. ('11) 13 Cal. L. Jour 231 (DB) + ('09) 19 Mad. L. Jour 221 (DB). (Discharge given in fraud of other partners is not binding on them).
10. AIR 1918 Mad. 238 = 41 Mad. 446 (DB) + AIR 1919 Mad. 146 (DB).
11. AIR 1963 Allahabad 53.
12. AIR 1916 Mad. 692 = 39 Mad. 597 (DB). (*Dissenting from* 1 Bom. L.B. 607- One joint trustee can however give discharge if he is authorised by his co-trustees).

17. Co-sharers entitled to sue for mesne profits. Where land belonging to two tenants-in-common has been wrongfully taken possession of by a stranger, each of the tenants-in-common is entitled to sue separately for his share of the mesne profits. One of them cannot give a discharge for the entire claim so as to bind the other co-sharer.[13]

18. Guardian appointed for minor. Where a certificate guardian has been appointed for a minor who is a partner in a family business, the other partners cannot give a valid discharge on behalf of the minor.[14]

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

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

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

(*c*) A right to sue as landlord to recover possession from a tenant accrues to *A*, who is an idiot. *A* dies three years after the accruer, his idiocy continuing up to the date of his death. *A*'s representative-in-interest has, under the ordinary law, nine years from the date of *A*'s death within which to bring a suit. Section 6 read with this section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

Synopsis

1. Scope.
2. Pre-emption suit.
3. Suit within ordinary period of limitation.
4. Extension of limitation for person under disability.

1. Scope. Section 8 confers a personal privilege on the minor which can be availed of either by him or by his legal representatives but not by his assignees.[16]

Child born after cause of action arose. The section applies to a child in the womb of the mother when the cause of action arose. Thus where a suit was filed by a posthumous son within three years of his attaining majority, for setting aside

13. ('07) 6 Cal. L. Jour 383 (DB) + ('87) 14 Cal. 50 (DB).
14. 1967 Cal. L. Jour 88 (DB).
15. Ss. 6 to 9 have been declared not to apply to suits, appeals or applications under the Bengal Demands Recovery Act, 1913 (Ben. 3 of 1913).
16. AIR 1960 Orissa 151 = ILR 1960 Cut 71 (DB). (Exception to this rule is where the assignor and assignee are joined as co-plaintiffs in one suit).

a *Kobala* executed by his widow mother when he was in womb, the suit was not barred by limitation.[17] But it does not apply to a child who had no existence at all at the time when cause of action arose. Thus where the plaintiff and the defendants were co-sharers. The defendants were in adverse possession of the suit property. The cause of action accrued to the plaintiff's father in 1917 during the father's minority when the plaintiff was not born. After the death of his father, the plaintiff got the right to sue but he was then a minor for several years. It was held that the plaintiff was not conceived in 1917 when the cause of action accrued, and as such he could not, on coming of age, avail himself of the benefit of section 6. The section was subject to the provisions of section 8 and the former section not being applicable, the question of extending the period of limitation to a period of three years from the cessation of disability did not arise. In this view of the matter the period of three years could not be counted from the date when the plaintiff attained majority.[18]

2. **Pre-emption suit.** The extended period of limitation under section 6 or section 7 does not apply to suits for pre-emption.[19] Therefore where the pre-emptor was a minor when right to sue accured. The suit must be filed on his behalf within one year. The section is not applicable to extend limitation in such cases.[20] Where the mother of the minor female who claimed pre-emption on behalf of the minor had knowledge about the impugned transfer of land from the service of notice of such transfer upon the minor female at the residence of her maternal uncle, the minority of the female co-sharer pre-emptor cannot by itself be accepted as a valid and legal plea as against the delay of 7 years in filing the pre-emption case.[1]

3. **Suit within ordinary period of limitation.** The section is no bar to a suit being instituted within the ordinary period of limitation even though such period may extend to more than three years from the cessation of disability.[2]

4. **Extension of limitation for person under disability.** Sections 6 and 7 are subject to this section which provides that nothing in those sections shall be deemed to extend the period of limitation to more than three years from the events specified in section 8.[3] In other words the maximum period for which

17. AIR 1964 Calcutta 354 (DB).
18. AIR 1963 Patna 108 (DB).
19. PLD 1975 Quetta 12 + AIR 1919 Lah. 25 = 1919 Pun Re. No. 86 (DB) + AIR 1924 Mad. 57.
20. PLD 1975 Quetta 52.
1. 1982 DLR 219.
2. AIR 1925 Pat. 30 = 3 Pat 275 (DB) + AIR 1953 Mys. 84 + ILR 1953 Mys. 419 (DB). (The combined effect of sections 6 and 8 would be to enable a person who has been dispossessed during his minority, to file a suit within three years of his attaining majority or within the usual period of time ordinarily allowable to a major whichever is longer) + AIR 1952 Orissa 31 (DB). (Plaintiff cannot claim any period longer than twelve years after the possession becomes adverse) + AIR 1951 J&K 52 = 10 J&K L.R. 47 (DB) (Suit under Art 142--Plaintiff attaining majority after 3 years of the cause of action--He can sue within 9 years of the date of attaining majority--No further extension under S. 6 can be allowed) + AIR 1950 Pat 191. (Period of 12 years under Art. 142 expiring after three years of attaining majority--No further extension allowed) AIR 1948 Oudh 351 + ('68) 4 Mad. H.C.R. 54 (DB) + ('68) 10 Suth W.R. 44 (DB).
3. AIR 1965 Mad. 541 + AIR 1948 Oudh 351. (Minor only gets another three years after attaining majority if time expires before 3 years) + AIR 1948 Bom. 150 = ILR 1947 Bom

extension is allowed is three years. Where the period of limitation for an act is less than three years only the period allowed in the ordinary circumstances can be allowed to the person under disability from the date of cessation of his disability.[4] It is only where the period provided by the First Schedule is of three years and it expires before the cessation of disability, that the suit may be brought at any time within 3 years after the cessation.[5] Similarly where the period provided by first schedule was more tnan three years, a suit may be brought within three years from the cessation of disability.[6]

Where the period provided by first schedule was more than three years, a suit cannot be brought after three years of the cessation of disability.[7] Thus where the first plaintiff became manager of the family on the death of his father in April, 1948, he became major in 1946 and the second plaintiff was a major in 1949. The first plaintiff as manager could even in 1948, under the personal law give a valid discharge on behalf of his brothers without their concurrence as required under section 7. In any event he should therefore, have filed the suit within three years from the death of his father, when he became manager. The fact that the third defendant had relinquished his interest in favour of the first and second defendants, in no way affected the position. The youngest of the sons whose minority could be relied upon had in fact, released his interest in favour of the alienees. The two plaintiffs who filed the suit became major more than three years prior to the suit, and on a reading of sections 6, 7 and 8 together, there was no room for doubt that the suit was barred by limitation.[8]

Calculation of extended period. The time extended in case of a person under disability begins to run from the day his disability ceased. Thus where minority of a person ends on 3rd May the period of three years runs form 3rd and not 4th May. So excluding the date from which time runs, limitation must be computed from 4th May and not from 5th May.[9]

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750 (DB). (Suit to set aside alienation by son on attaining majority--Benefit of Ss. 6 & 8 can be claimed by him).

4. 1981 CLC 1156=NLR 1981 A.C. 656+17 Mad. 316 (DB)+AIR 1955 Pat. 386 (DB)+AIR 1954 Mad. 675 (DB) (Sale confirmed on 29-8-1938--Plaintiff becoming major on 27-9-40--Period for setting aside sale being one year under Art. 12(*a*), the suit must be brought within one year of 27-9-1940)+1950 Ker. L. Tim 46 (DB) (Suit for cancellation of court-sale--Period of limitation being one year, minor has only one year after attaining majority)+AIR 1925 Mad. 379 (DB)+AIR 1918 Lah. 330=1918 Pun Re No. 113.
5. 1981 CLC 1156=NLR 1981 A.C. 656+1946 Jaipur L.R. 319 (DB).
6. ('10) 33 Mad. 366 (DB)+AIR 1936 Sau 89 (DB). (Suit for partition and possession--Both plaintiffs were minors when adverse possession of defendants commenced--Suit brought within three years where one of plaintiffs attained majority while the other was still a minor--Suit held was not barred by 12 years' adverse possession by virtue of S. 6)+Madh B.L.J. 1955 H.C.R. 1128 (Although the minority of the plaintiff does not prevent limitation from running against him or possession from becoming adverse against him, he will be entitled to an extended period of limitation under the provisions of Ss. 6 and 8)+ILR (1954) 4 Raj 145+AIR 1916 Mad 33=38 Mad. 1076 (DB)+AIR 1924 All. 625=46 All. 575+AIR 1916 All. 356=38 All. 126 (DB)+AIR 1935 Lah. 924.
7. AIR 1918 P.C. 118=41 All 63=45 Ind. App. 284=21 Oudh Cas 228+('01) 24 Mad. 387=28 Ind. App. 81 (P.C.).
8. AIR 1965 Madras 541+AIR 1915 Mad. 1201 (FB)+AIR 1937 Pat. 435 (FB)+AIR 1920 Mad. 793.
9. AIR 1950 Pat. 206 (DB).

Partition--suit to set aside. There can be an unjust and unequal partition without any element of fraud coming in. In such case, when reopening of partition is prayed for, *terminus a quo* for limitation would be the date of attainment of majority and, in view of section 8, the suit must be brought within three years from the date of termination of minority.[10]

[11]9. *Continuous running of time.* Where once time has begun to run, no subsequent disability or inability to sue stops it:

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

Synopsis

1. Scope.
2. Disability or inability to sue.
3. No exemption from limitation except as otherwise provided for by statute.
4. Where cause of action has not arisen.
5. Suits based on different causes of action.
6. Different persons having distinct causes of action.
7. Satisfaction or discharge and revival of cause of action.
8. Fusion of interest of debtor and creditor.
9. Agreement to refer dispute to arbitration.

1. Scope. This section is based on the general principle that when once limitation has begun to run, it will continue to do so unless it is stopped by virtue of any express statutory provision.[12] But the section does not affect any exemption from limitation which may operate without stopping time from running.[13]

Cause of action ceasing to exist. This section contemplates cases where the cause of action continues to exist, and cannot apply to cases where the cause of action is cancelled by subsequent events.[14]

2. Disability or inability to sue. "Disability" has been defined as want of legal qualification to act and "inability", as the want of physical power to act.[15]

The expression "disability or inability to sue" refers to something which pertains to the plaintiff.[16] Thus the fact that a plaintiff, an alien, is prevented from

10. 1958 Andh L.T. 718 (*Held*, that allegations of fraud had not been proved) Art. 95 did not apply.
11. S. 9 has been declared not to apply to suits, appeals or applications under the Bengal Public Demands Recovery Act, 13 (Ben. 3 of 1913).
12. PLD 1988 AJ&K 1=PLJ 1988 AJ&K 1+AIR 1950 Mad. 552+AIR 1953 Pat. 35=31 Pat 822 (DB). (Limitation for personal decree under O. 34, R. 6, Civil P.C. begins from confirmation of sale--Subsequent objections to sale--does not suspend limitation).
13. ('91) 5 C.P.L.R. 38.
14. AIR 1943 Nag. 178=ILR 1943 Nag. 422 (DB).
15. AIR 1918 Pat. 505 (DB)+25 Cal. 496 (FB)+29 Bom. 68 (DB). (The expressions are distinct from each other)+AIR 1919 Cal. 1078 (Do).
16. 8 Bom. 561+AIR 1961 Cal. 353 (SB)+AIR 1935 Cal. 333+AIR 1943 Nag. 178

suing on account of the outbreak of war between his mother-country and Pakistan will amount to either a disability or inability within the meaning of this section.[17]

Applications--section applies to. Though the section uses the words disability or inability to sue, it applies to application.[18]

Subsequent disability or inability. A disability or inability to sue arising after time has begun to run cannot stop it.[19] The right to sue of the adopted son would accrue to him upon his adoption when he would be considered to be born. That means that the adopted son, his adoption being subsequent to accrual of cause of action, was not a person entitled to institute the suit at the commencement of the period of limitation to claim benefit of S. 6 (1) and his disability of minority was subsequent disability of an after-born son, which attracted provisions of S. 9 of the Limitation Act.[20]

Disability which arises after limitation has begun to run but which exists at the time from which a fresh period of limitation is to be computed under S. 19 consequent on an acknowledgment of liability by the debtor under that section, will extend the period of limitation under S. 6 although under this section such disability cannot stop the running of time.[1]

3. No exemption from limitation except as otherwise provided for by statute. Ordinarily unless a case comes within any of the exceptions contained in sections 4 to 25 there is no exemption from the bar of limitation arising under the Act.[2] The exemption, which are not provided by the statute, cannot be assumed either on grounds of hardship or of reasonableness.[3] Therefore if time began to run in the lifetime of the plaintiff's husband with respect to a document to which he was a party and cause of action had accrued to him to have have the same set aside, time would commence to run from that date and the suit would be barred after the expiry of the period, irrespective of the fact whether the heir of the executant of the document became aware of fraud subsequently or not. If time has commenced to run against the predecessor, it will not stop, but still continue to run against the heir also.[4] But in special cases the law Courts do recognise general principles of suspension of limitation and right of action in cases, where a party is prevented under certain circumstances from taking action in pursuance of his rights.[5] In such cases the Court must find out if there are any special circumstances which can

17. AIR 1919 Cal. 706=46 Cal. 526 (DB).
18. 29 Bom. 68 (DB)+36 Bom. 498 (DB)+AIR 1920 Mad. 1=43 Mad. 185 (FB).
19. AIR 1927 All 818=50 All 152 (DB)+ILR (1951) 1 Raj. 741 (DB)+AIR 1918 Cal. 580 (DB)+AIR 1924 All 912.
20. AIR 1965 M.P. 102.
1. AIR 1933 All 100=54 All 1019 (DB)+AIR 1956 Orissa 193 (DB). (If the other party makes an acknowledgment of the debt during the period of the minority of the heir S. 9 cannot take away the privilege given by S. 19; 13 Mad. 135, *Rel. on*)+13 Mad. 135 (DB).
2. AIR 1939 Bom. 1=ILR 1939 Bom. 173 (DB)+AIR 1929 Pat. 694=9 Pat. 385 (FB)+AIR 1919 Cal. 1078+AIR 1926 Cal. 65 (DB)+AIR 1924 Lah. 40=4 Lah. 90 (DB)+6 C.P.L.R. 67+AIR 1927 Lah. 200=8 Lah. 54 (DB).
3. AIR 1958 Punj. 341.
4. 1958-1 Andh W.R. 166.
5. AIR 1947 All 256=ILR 1946 All 633. (Money decree in favour of certain persons--Suit by one for recovery of his share of decree realised by others--Circumstances preventing suit--Suspension of limitation)+AIR 1961 Cal. 353 (SB).

suspend or modify the ordinary law of limitation as applicable or a particular case, *e.g.*, (1) where the rights of the litigant have been fully satisfied and thereafter the decision is reversed; (2) where the decree itself is in such a form and the circumstances are such that it is incapable of execution except on the happening of certain events; (3) where by some provisions of an enactment the institution of the suit or the making of the application has been suspended; (4) where the execution of the decree has been suspended by no act or default of the decree-holder; (5) where the rights of the parties have been determined by passing a preliminary decree in a partition action and then the party takes no steps; (6) where the rights of the parties to have the amount of mesne profits calculated are determined by a decree and the applicant takes no further steps; (7) or where a collateral proceeding decided in the meantime prevents the reaping of its fruits.[6]

This section is made inapplicable by certain statutes to proceedings under it, and in those cases also exemptions or extensions in cases of limitation may be granted by the Courts apart from the Limitation Act.[7]

Execution of lease. The period of limitation for execution of a decree cannot be extended because some other proceedings in the matter intervened. Thus where in execution of a decree obtained on 12-4-1940, a piece of land belonging to judgment-debtor was sold on 27-10-1941. In a title suit filed by the judgment-debtor the sale was set aside by the lower appellate Court on 22-2-1947. A second appeal against the order was dismissed by the High Court on 21-7-1949. Thereafter the decree-holder filed an execution application on 2-4-1952. It was held that the application was barred by limitation as the period of three years was to be counted from 22-2-1947 when the sale was set aside.[8] Where *R* the owner of a shop obtained on Ist October, 1947 a decree for eviction against *P* and *C*, her tenants, the son of *P*, being a sub-tenant. On 19th April, 1949 the property of *R* was declared evacuee property. *J*, the son of *P* made payments to the Custodian, of rent obtaining receipts in his name. Before 1956 on 2nd Feb., 1955 the shop in question was restored to *R*. On 4th January, 1956, *R* made an application for execution of the decree for eviction dated 1st October, 1947. On 12th January, 1956 *R* sold this property along with some other property to *K* by means of a deed of sale. *R* also assigned the benefit of the decree to *K*. On 24th March, 1956 the execution application filed on 4th January, 1956 by *R* was dismissed as unsatisfied. On 9th May, 1957 an execution application was filed by *K*. The only substantial objection that was raised related to the bar of limitation. It was held that before *R's* property was declared evacuee property, time had already begun to run for the purpose of Article 182 of the Limitation Act and as provided by section 9 of the Limitation Act no subsequent disability or inability to sue could stop it, and therefore the execution application by *K* was barred by time.[9] Similarly where a holding was sold for arrears of rent against the recorded tenant and purchased by one *R*, on the 8th April, 1937, in the execution case. *R* obtained delivery of possession of the holding by process of the executing Court on the 3rd September, 1937 and thereafter settled the holding with *A*. *A* obtained possession of the land

6. AIR 1947 Pat. 225 = 25 Pat. 432 (DB).
7. AIR 1961 Cal. 353 (SB) (S. 185, Bengal Tenancy Act makes S. 9, Limitation Act inapplicable to suits specified in its Sch. III).
8. AIR 1958 Pat. 542 = 37 Pat. 891.
9. AIR 1963 Punj. 457.

but was subsequently dispossessed by the judgment-debtor. Thereafter *A* filed the above-mentioned suit, for recovery of possession of the land. The suit was decreed on the 11th April, 1946, and the decree was affirmed on appeal on the 16th November, 1946. In the meanwhile certain other persons who claimed to be the mortgagees of a portion of the holding, made an application under Order 21, R. 90. Code of Civil Procedure, for setting aside the sale held on the 8th April, 1937. The application was allowed *ex parte* and the sale was set aside on the 12th April, 1947. The decree-holder, *i.e. A*, then instituted another suit alleging that he was not bound by the *ex parte* order passed in the execution case and the order of the executing Court setting aside the sale was erroneous. This suit was finally decreed by the High Court on 4-1-1957. On 14-2-1958 *A* filed an application for execution of the decree obtained by them on 16-11-1946. It was held that the suit was time barred. Limitation started to run from 16-11-1946. It was not permissible in law for *A* to deduct the period from 12-4-1947 to 4-1-1957 for computing the period of limitation applicable under Art. 182.[10]

Where a decree is passed in favour of *A* and he dies without having taken any steps for the execution of the decree and thereafter his executor applied for execution the time taken by the executor for obtaining probate of the will could not be excluded in computing the period of limitation applicable to such application.[11]

Negotiations for settlement, time spent in. Negotiations for amicable settlement do not suspend the running of limitation and are not a ground for excluding the period taken for such negotiations in computing the period of limitation.[12]

Agreement as to extension of time. When once limitation has begun to run the period can only be extended in the manner laid down in the Limitation Act and not by mere agreement of the parties which does not come within any of the extending sections of the Limitation Act.[13]

Time spent in proceeding with other suit. In a suit for mesne profits, the period during which a prior suit by the plaintiff for possession was pending cannot be excluded in computing the period of limitation.[14]

The mere fact that a creditor has instituted a suit for administration of the estate of a deceased debtor does not save limitation for a suit by another creditor.[15]

Permission to sue prince, time spent in obtaining. In computing the period of limitation for a suit against a Native Prince, the time taken for obtaining the necessary permission of the Government under S. 86 of the Civil Procedure Code, for instituting the suit cannot be excluded.[16]

10. AIR 1964 Pat. 347 (DB)+AIR 1924 Lah. 40+AIR 1926 Mad. 857+ILR 9 Cal. 255 (P.C.)+ILR 35 All 227 (P.C.).
11. AIR 1923 Rang. 98.
12. (1849) 5 Moo Ind. App. 43 (P.C.)+AIR 1925 All 276.
13. AIR 1947 Oudh 128=22 Luck 33.
14. PLD 1959 Lah. 295 (DB)+AIR 1927 All 446=49 All 565 (DB).
15. AIR 1936 Bom. 423.
16. AIR 1929 Bom. 14=53 Bom. 12 (DB).

Writ petition, time spent in proceeding with. Unless there is any specific statutory provision to that effect or unless the High Court grants a stay order, mere filing of an appeal or a writ petition under Art. 98 of the Constitution of 1962 would not save limitation.[17]

Companies Act, S. 168. The principle under S. 168, Companies Act (1913) as to relating back is restricted in scope and cannot be extended so as to interfere with the law of limitation and especially with the rule embodied in S. 9, Limitation Act.[18]

4. Where cause of action has not arisen. Unless the cause of action for a suit has arisen, limitation for such suit cannot being to run.[19] Although a suit may fall within the class of suits described in the first column of an article. If the cause of action, on which the suit is based has not arisen at the time specified in the article as the starting point of limitation, the article will not apply to the case.[1] The true test to determine when a cause of action has accrued is to ascertain the time when plaintiff could first ever maintain his action to a successful result. If an infringement of a right happens at a particular time, the whole cause of action will be said to have arisen then and there.[2]

5. Suits based on different causes of action. Where the plaintiff had instituted two suits, one for a permanent injunction and another for recovery of arrears due to him, and he contended that the first suit kept the limitation for the second in abeyance. It was held that the appellant had two distinct causes of action totally independent of each other, and he could bring two separate suits. There was nothing to prevent him from bringing a suit for the recovery of his own claim during the pendency of the other suit for a declaration and permanent injunction, and as such the first suit could not put in abeyance the cause of action in respect of the other suit. The second suit was held to be time barred.[3] Where a tenant mortgaged property belonging to the landlord and the landlord who had knowledge of mortgage did not take steps to challenge it and the property was brought to sale in the mortgage decree. The landlord objected to the sale. It was held that dismissal of objection did not give him a fresh period of limitation.[4]

Declaratory suits. In case of declaratory suits, every fresh invasion of plaintiff's rights gives him a fresh cause of action, and limitation for each such suit begins from the date of fresh invasion.[5] Where a plaintiff brings a declaratory suit, but threat to the plaintiffs rights is obviated and he does not persue the suit, but after some time plaintiff's right is again in jeopardy; the plaintiff gets a fresh cause of action.[6]

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17. AIR 1964 Orissa 111 (DB).
18. AIR 1958 Punj. 341.
19. AIR 1919 Mad. 972=40 Mad. 1040 (FB)+AIR 1924 Cal. 600 (DB)+AIR 1946 Nag. 277=ILR 1946 Nag. 159 (DB).
1. AIR 1919 Mad. 972=40 Mad. 1040 (FB)+17 All 39 (DB)+AIR 1939 Pat. 688 (DB)+19 Cal. 646 (DB).
2. AIR 1958 Pat. 217=36 Pat. 1198+(1958)-1 Andh. W.R. 166.
3. PLD 1959 Lahore 295 (DB).
4. AIR 1936 Lah. 394=17 Lah. 403 (DB).
5. AIR 1930 Lah. 284 (DB).
6. AIR 1933 Bom. 276 (DB).

Express promise to provide fresh period of limitation. Where a claim has become time barred, any express promise relating to that claim will give a fresh starting point of limitation relating to it.[7]

6. Different persons having distinct causes of action. Where two persons have different causes of action, in respect of the same matter, distinct periods of limitation will apply to them. Thus an adopted son gets a right to sue for possession on his adoption and this right is independent of the widow's right to sue for possession and is not affected by the limitation that may have run out in respect of such right.[8] Similarly where *A* is entitled to a life-interest in an estate and *B* is entitled to the remainder, and the cause of action for a suit for possession of such estate accrues in *A's* lifetime, *B* gets a fresh cause of action on the termination of *A's* life-interest and the falling into possession of *B's* estate.[9]

Where a cause of action accruing to one person subsequently passes on to another person, time will begin to run from the date when the cause of action first arose. Where a cause of action accrues in favour of *A* and thereafter *B* becomes entitled to sue on the same cause of action, he will not be entitled to a fresh period of limitation from the time he becomes so entitled.[10]

Defendant absent from Pakistan. Where the defendant is absent from Pakistan, not at the commencement of limitation but subsequently, this section is no bar to the exclusion of time under the section.[11]

7. Satisfaction or discharge and revival of cause of action. Where the satisfaction or the discharge of the cause of action is nullified by subsequent events, the plaintiff is entitled to a fresh cause of action, consequent on such nullification and a fresh period of limitation in respect of such cause of action.[12] But where the circumstances ensuing after the accrual of a cause of action do not result in the satisfaction or discharge of such cause of action, limitation will not

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7. AIR 1936 Lah. 164.
8. AIR 1915 Mad. 539 (DB) + 2 Cal. L. Jour 87 (DB).
9. AIR 1929 P.C. 158 = 56 Ind. App. 192 = 51 All 367.
10. AIR 1941 Bom. 197 + 20 Cal. 560 = 20 Ind. App. 38 (P.C.) + AIR 1943 P.C. 83 = ILR 1943 Kar. (P.C.). 69.
11. 4 All 530 (DB) + 8 Bom. 561 + 25 Cal. 496 (FB) + 5 C.P.L.R. 88 + 1897 Pun. Re. No. 26, p. 131 (DB).
12. AIR 1939 Bom. 1 = ILR 1939 Bom. 173 (DB) + AIR 1950 All 526 + AIR 1943 Nag. 178 = ILR 1943 Nag. 422 (DB) + 12 Moo Ind App 244 (P.C.) (Sale of *patni taluk* for arrears of rent set aside for irregularity--Landlord sues for some arrears--He is entitled to fresh period of limitation) + AIR 1935 Cal. 333 = 62 Cal. 66 (DB). (After accural of cause of action rights of parties merge into decree--Decree set aside subsequently--Fresh suit competent--Plaintiff will be entitled to fresh cause of action and fresh period of limitation in respect of such cause of action) + AIR 1921 Lah. 71 = 2 Lah. 320 (DB) (Do) + 11 All 47 = 15 Ind. App. 211 (P.C.) (*A* owed sum of money to *B*--Sum agreed to be treated as part of consideration for sale of land which *A* was to execute to *B*--Parties failed to agree as to other terms--Suit by *A* for specific performance of agreement dismissed--This decree held imposed new obligation on *A* who became bound to pay that which he had retained in payment for his land.) + AIR 1920 Mad. 1 = 43 Mad. 185 (FB). (Sale in execution confirmed--Application made to set aside sale--Auction purchaser cannot apply for possession, but if application is dismissed and sale is confirmed again, auction-purchaser gets fresh right to apply for delivery of possession and fresh period of limitation in respect of such application--Old field, J. *dissenting*).

stop running and the plaintiff will not be entitled to any exemption from the ordinary law of limitation, except under any of the special provisions which create exemption from such law.[13] Thus where *A*, a stranger, is in adverse possession of property against *B*. *A* sues *B* for declaration that *B* had no right to dispossess *A* and for injunction restraining *B* from interfering with his possession. Decision is given against *A*. Thereafter *B* sues *A* for possession after more than twelve years of adverse possession by *A*; the suit is barred by limitation which began to run when *A's* possession became adverse to *B* and not from the date of decision in suit by *A* against *B*.[14] Where *A*, a mortgagee, was entitled to sue the mortgagor for possession on a certain date subsequently the mortgagor was dispossessed by a prior mortgagee. The mortgagor again recovered possession. It was held that in the circumstances of the case *A's* cause of action was not suspended during the interval.[15] Where mortgages were executed by *A* in favour of *B* and then in favour of *C*. A private sale of mortgaged property was held by *A* in favour of *B* in satisfaction of his mortgage. A suit was filed by *C* and sale in *B's* favour was held invalid. A suit was filed under section 101, Transfer of Property Act, by *B* on his mortgage against *C*. It was held that *B* could not get a fresh cause of action on account of *C's* suit.[16]

New agreement. When parties have entered into a new agreement, the cause of action would be determined by the terms of that new agreement and not the superseded original contract. Where under the original contract deliveries were stipulated to be made to the plaintiff by the defendant in April, May and June, 1947, but the settlement date 14-2-1947 stipulated for resale of the same goods to the plaintiff but the defendant was liable to pay the plaintiff the difference between the prices fixed, the cause of action for claiming the difference arose on 14-2-1947 and not on the dates fixed for deliveries, *i.e.*, 30th April, 31st May and 30th June, 1947.[17]

8. Fusion of interest of debtor and creditor. When the interests of the debtor and creditor become vested in the same person, such a fusion of interests will amount in law to a satisfaction of the cause of action.[18] Where thereafter there is a separation of the two interests, the person on whom the interest of the creditor devolves, will have, a fresh cause of action from the date of such separation of interests.[19] But before a fresh period of limitation can be claimed

13. AIR 1920 Mad. 948 (SB). (A sues Government for recovery of cess paid under protest in respect of a year–Suit dismissed in trial Court but decree in appellate Court–Cancellation and revival of plaintiff's cause of action for similar suit against Government in respect of cess paid for subsequent year cannot be brought about)+AIR 1919 P.C. 44=43 Mad. 244=46 Ind App. 285. (*A*, a stranger, dispossesses *B* and *C*, two co-owners of land and holds the land adversely against them–*B* dies and *A* succeeds to his interest–This does not put an end to *C*'s cause of action against *A*)+AIR 1918 P.C. 151=46 Cal. 670=46 Ind. App. 52. (Where a cause of action is furnished by a decree, such cause of action is not affected by an appeal being filed against such decree and the dismissal of the appeal does not cause a revival of the right so as to furnish a fresh period of limitation).
14. AIR 1939 Bom. 1+ILR 1939 Bom. 173 (DB).
15. AIR 1924 Lah. 40=4 Lah. 90 (DB).
16. AIR 1949 Mad. 255 (DB).
17. AIR 1958 Andh. Pra. 438.
18. AIR 1916 Oudh 290.
19. AIR 1923 Mad. 461=46 Mad. 579 (DB)+AIR 1918 Mad. 526 (DB)+('09) 4 Ind. Cas. 402 (Cal.)+('08) 10 Bom. L.R. 346+('07) 31 Bom. 433.

there should be a fusion of interests of debtor and creditor, followed by separation of such interests. Where after execution of mortgage the interest of mortgagee became vested in Hindu Lady who became entitled to widow's interest in such mortgage right. The widow then transferred the mortgagee interest to *A*, in whom was vested also equity of redemption. After the widow's death, transfer by the widow was set aside and *A* sued for redemption. It was held that there was no fusion of interest of mortgagor and mortgagee so as to furnish fresh cause of action on separation of two interests.[20]

9. Agreement to refer dispute to arbitration. Where an agreement to refer a matter to arbitration was entered into in respect of a cause of action that had accrued, there was no cessation of such cause of action so as to affect the running of limitation.[1]

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

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

Synopsis

1. Scope.
2. "Vested."
3. Trust.
4. Trust for a specific purpose.
5. Form of trust for specific purpose.
6. Alleged trustee must be owner of trust property.
7. Obligation must arise out of confidence.
8. Benamidar.
9. Executor or administrator.
10. Trustee *de son tort*.
11. Deposit of money.
12. Deposit of specific movable property.
13. Legal representative.
14. "Assigns."
15. Recovery of trust property.
16. Suit for accounts.
17. Persons entitled to benefit of section.
18. Religious and charitable endowments.
19. Limitation for suits for recovery of trust property from strangers.
20. Limitation for suits against trustees by operation of law.

20. ('13) 35 All 227=40 Ind. App. 74 (P.C.) (On appeal from 3 Ind. Cas. 725).
1. AIR 1917 Mad. 892=40 Mad. 701 (DB)+AIR 1921 Pat. 166=6 Pat. L. Jour 273 (DB).
2. Ins. by the Indian Limitation (Amendment) Act, 1929 (1 of 1929), S. 2.

1. Scope. This section grants a total exemption from the bar of limitation in regard to the suit mentioned therein.[3]

Nature of transaction. The mere use of the word trust does not make a transaction fall under this section. Where the plaintiff used the word trust for the payment he had made but it was clear that the payment had been made in the course of a partnership business and was not made in trust. This Article did not apply to the case.[4]

Suit must be against trustee or his representative. This section applies only to suits against a trustee or his representative. Where a suit is for declaration against defendants not as trustee but as rival beneficiaries, this section does not apply. Article 120 applies.[5]

Article 98 and this section. Article 98 is of wider import and covers even those trustees who do not come within the scope of this section. Thus though a guardian appointed under the Guardians and Wards Act is not a person in whom the property of the ward is vested for a specific purpose within the meaning of this section, he is a trustee within the meaning of Art. 98.[6]

Where a case is covered by this section, Art. 98 will not apply and the suit will not be barred by any length of time.[7]

2. "Vested." The expression "trust for a specific purpose" implies the vesting of ownership in the alleged trustee.[8] It may be actual conveyance of property or ownership of a right. Thus the mere right to possession may be the subject of a trust and the owner of such a right will be a trustee as such right is vested in him for the benefit of another.[9]

Guardian in possession. A guardian of property appointed under the Guardians and Wards Act is not a person in whom the property is vested within the meaning of this section.[10]

Manager of temple. In the case of a Hindu temple there can never be a vesting of trust property in the manager.[11]

Bank. Where a banker accepts a deposit of trust money with notice of the trust, he does not become a trustee of the money in the strict sense of that

3. PLR 1949 Lahore 1=AIR 1948 P.C. 168+('11) 34 Mad. 257=38 Ind. App. 129 (P.C.)+('71) 14 Moo Ind. App. 289 (P.C)+ILR (1946) 2 Cal. 447.
4. 1982 CLC 2448.
5. AIR 1944 Oudh 139=19 Luck 515 (DB).
6. AIR 1949 Nag. 235=ILR 1948 Nag. 794 (DB).
7. PLD 1955 Dacca 96=PLR 1953 Dacca 209=5 DLR 175+AIR 1928 Bom. 58=52 Bom. 184 (DB). (32 Bom. 394, *Rel. on.*)+AIR 1955 Andh 18+AIR 1931 Nag. 30=ILR 1940 Nag. 94 (DB).
8. AIR 1939 Bom. 126=ILR 1939 Bom. 154 (DB)+AIR 1938 Cal. 673=ILR (1938) 1 Cal. 652.
9. AIR 1934 Cal. 87=61 Cal. 119 (DB). (Agent or manager in possession having no right to possession is not the owner of any interest or right in the property and no property can be said to be vested in him)+('35) 62 Cal. 393+AIR 1947 Sind 187=ILR 1947 Kar. 109 (DB)+AIR 1923 Mad. 578 (DB)+AIR 1926 Mad. 109.
10. AIR 1949 Nag. 235=ILR 1948 Nag 794 (DB).
11. AIR 1959 Andh Pra. 186 (DB).

expression and consequently a suit for recovery of the deposit by the *cestui que trust* will not be governed by S. 10, Limitation Act.[12]

3. Trust. 'Trust' in this section is used in the same sense as in the Trust Act, 1882.[13] The latter Act calls express trusts simply as trusts, while all other types are designated 'obligations in the nature of trusts.' It is well settled that S. 10, Limitation Act, covers only cases of express trusts and excludes all other categories.[14] Thus the mere fact that a person is loosely called a trustee for the sake of convenience and has obligations analogous to those of a trustee will not make him a trustee under this section.[15] It was held that mere returning of dividend warrants, requiring defendants to remit them back after correction, was a normal commercial transaction between parties without any notice of creating any trust.[16]

Revoked trust. The section contemplates a subsisting trust and does not apply to a case where a trust has been created but has been dully revoked.[17]

4. Trust for a specific purpose. Section 10, Limitation Act, 1908, contemplates cases of express trust created for specific purposes.[18] The section leaves no room for doubt that unless the property of one person is transferred to another as a trust for a specific purpose, the transaction cannot be regarded as a trust for the purposes of that section.[19]

Where a suit is filed against an express trustee, the suit is not subject to the law of limitation.[20]

'Specific purpose' what is. The expression 'specific purpose' is merely a more expanded mode of expressing the idea conveyed by the expression "express trust" in English law.[1] Under this section 'specific purpose' must be a purpose that is either actually and specifically defined in the terms of the will or settlement itself, or a purpose which, from the specified terms, can be certainly affirmed.[2] Therefore where on occasion of betrothal, bridegroom's father made over a sum of money to the keeping of bride's father as a fund constituting her *palla* or dowry in accordance with usual practice of the caste; a trust was created for a specific purpose.[3] Where a Hindu widow, natural guardian of her minor sons, handed over a sum of money to her brother for benefit and education of her sons. She

12. AIR 1946 Mad. 519.
13. AIR 1946 Mad. 519 = ILR 1946 Mad. 429 (DB) + AIR 1959 A.P. 186 (DB).
14. AIR 1959 Andh. Pra. 186 (DB).
15. AIR 1922 P.C. 123 = 48 Ind. App. 302 = 44 Mad. 831 + AIR 1943 Mad. 691 = ILR 1944 Mad. 284 (DB).
16. 1986 CLC 2808 = NLR 1988 CLJ 388.
17. ('09) 1 Ind. Cas. 347 (DB) (All) + AIR 1925 Pat. 68 (FB).
18. PLD 1984 Kar. 97.
19. PLD 1959 Lah. 295.
20. PLD 1966 Lah. 1151 + PLD 1955 Dacca 96 = PLR 1953 Dacca 200 = 5 DLR 175.
1. ('08) 32 Bom. 394 (DB) + AIR 1930 All 96 + ('82) 4 All 187 (DB) + AIR 1921 Cal. 571 (DB) + AIR 1929 Lah. 753 = 11 Lah. 325 (DB) + AIR 1923 Lah. 58 (DB) + AIR 1941 Mad. 841 + AIR 1932 Mad. 685 (DB) + AIR 1929 Nag. 298 + AIR 1918 Bom. 183 (DB).
2. AIR 1922 P.C. 212 = 49 Ind. App. 37. (Specific purpose means a purpose which is specified or expressed.) + AIR 931 P.C. 9 = 8 Rang 645 = 58 Ind. App. 1 + AIR 1946 Bom. 131 = ILR 1945 Bom. 1047 + AIR 1943 Mad. 691 = ILR 1944 Mad. 284 (DB).
3. ('08) 32 Bom. 394 (DB) + AIR 1941 Mad. 841.

constituted her brother trustee for a specific purpose.[4] Where a sum was set apart from the family funds for payment of debts of a member, *V*; the sum of money was placed with *D* to discharge debts and pay balance to *V*. A hundi given to *D* was cashed by him. It was held that *D* was constituted trustee of money for the specific purpose of paying debts of *V* and the balance to *V* himself.[5] Where a father executed a settlement deed by which he gave certain properties to his son and directed him to pay a certain amount to the settlor's daughters. A specific trust was held to have been created in favour of the daughters.[6] Where *A* handed over a certain sums of money to *B* in order that the latter should carry on a money lending business in his own name, but for the benefit of *A*. It constituted a trust for a specific purpose.[7] Where *S*, a testator by his will appointed his son *R* and two other persons *A* and *B* to be executors and trustees of his will and bequeathed all the properties after providing for the maintenance of his widow. One moiety of the property was to be in trust for his son *R* upon his attaining 21 years of age and the other moiety in trust for the male issues of *R*. In case *R* died without male issues the moiety was to go to a certain trust fund. In case *R* died issueless before attaining 21 years of age, his moiety was also to go to the trust fund. It was held that there was a trust for a specific purpose.[8]

The conducting of *pujas* and ceremonies and the upkeep of the temple are sufficiently specific to satisfy the requirements of S. 10.[9]

Where *A* contracts to sell his immovable property to *B*, *C* buys the property from *A* although he has notice of such a contract, under these circumstances the law makes *C* a trustee for *B*. But it is not a trust for a specific purpose within the meaning of this section.[10] Where a person is convicted for treason and Government takes possession of certain property which was in his possession as forfeited property but really the property was of some other person, the Government is not a specific trustee with regard to such person.[11] Where there is a sale of equity of redemption contrary to O. 34, R. 14, Civil P.C. and a suit for redemption is filed by the mortgagor the section does not apply.[12] Similarly a debenture trust cannot be said to be a trust for a specific purpose.[13]

Trust by operation of law. The expression will not apply to a trust arising by operation of law.[14]

4. AIR 1928 Bom. 58 = 52 Bom. 184 (DB).
5. AIR 1936 Mad. 876 (DB).
6. AIR 1934 Mad. 273.
7. AIR 1926 Mad. 109 (DB).
8. AIR 1940 P.C. 45 = ILR (1940) 1 Cal. 415 = ILR 1940 Kar. (P.C.) 109 = 67 Ind App. 129.
9. AIR 1955 Andh. 18.
10. AIR 1929 Nag. 298.
11. ('85) 8 Mad 525 = 12 Ind. App. 120 (P.C.).
12. AIR 1920 Cal. 363 = 47 Cal. 377 (FB).
13. AIR 1962 A.P. 274 (DB).
14. AIR 1939 Mad. 722 (DB) + AIR 1954 Sau 35. (Section 10 cannot apply in the case of a partner, a manager or an agent or a guardian, unless they are trustees in the strict sense of the word and the property vests in them in trust for some specific purpose) + AIR 1938 Cal. 673 = ILR (1938) 1 Cal. 652 + ('13) 37 Bom. 447 (DB) + AIR 1914 Sind 81 + 8 Sind L.R. 132 + AIR 1930 All 96 + AIR 1928 All 689 (DB) + AIR 1921 Cal. 571 (DB) + AIR 1929 Lah. 753 = 11 Lah. 325 (DB) + AIR 1927 Lah. 773 (DB) + AIR 1923 Mad. 578 (DB) + AIR 1929 Nag. 298 + AIR 1925 Pat. 68 (FB).

Constructive trust. A constructive trust or a transaction by way of a trust is not included in the term "trust for a specific purpose." Thus where money which ought to be received by *A* is received by *B*, *B* will only be a constructive trustee for *A* under the law in regard to such money and the section will not apply to such a trust.[15] In such a case every breach of trust will give a new cause of action for a suit.[16] Where *A* is express trustee for *B* ; *C*, with notice of the trust, takes a mortgage of the trust property and receives from *A* interest on the mortgage, *C* is only a constructive trustee for *B* in regard to the interest received by him.[17] Where a person directs another to acquire property for him (the person directing) and furnishes some money for the purpose, but after some time he withdraws from the venture completely but the person directed continues his exertions, and as their result, acquires the property, there is only a constructive trust and section 10 does not apply.[18] For the same reason this section does not apply to a case where property is held by a donee under a deed of gift which was obtained by undue influence.[19]

Express trust not covering total trust property. Section 10 includes cases of resulting trusts which resulted not upon or from the failure of the declared trust or trusts but because of the complete execution of the same without exhausting the trust property, the declared trust or trusts being such as could not by themselves under any conceivable circumstances, have exhausted the whole of the trust property. Such a resulting trust can be legitimately called a trust for a specific purpose.[20] Where, on the face of the instrument creating a trust, the purposes specified are not adequate to exhaust the property transferred in trust, the author of the trust will be taken to have expressed a trust in respect of the balance also and the trust in respect of such balance is regarded as a "trust for a specific purpose" within the meaning of this section.[1]

Bailment. Where specific property, such as metal sheets for fabricating vessels, belonging to the plaintiff gets into the hands of the defendant and the defendant is under an obligation to return that property but either by negligence or by misconduct there is a loss caused to the property belonging to the plaintiff it is an ordinary case of bailment to which S. 10 cannot apply.[2]

Property held by directors of company. Section 10 of the Limitation Act only applies to legal estates, the property cannot be said to be vested in a trustee unless the ownership of the property is also vested in him. The question whether a director is a trustee within section 10 of the Limitation Act has been considered in

15. ('83) 6 Mad. 402 (DB) + ('96) 24 Cal 309 (DB).
16. 23 Bom. 659 (DB).
17. AIR 1921 Mad. 125 = 44 Mad. 277 (DB).
18. AIR 1925 Pat. 68 (FB).
19. AIR 1945 P.C. 54 = 72 Ind. App. 21 = ILR 1945 Bom. 440 = ILR 1943 Kar. (P.C.) 115.
20. ILR (1955) 2 Cal. 109.
1. ('77) 2 Bom. 388 (FB) + AIR 1922 P.C. 212 = 49 Ind. App. 37. (Where the trust fails or is avoided wholly or partly and the purpose expressed is defeated to that extent with the consequence that a resulting trust arises by operation of law in favour of the author of the trust or of his heir-at-law or of his next-of-kin this section will not apply) + AIR 1949 Mad. 257.
2. AIR 1956 Mad. 96.

number of decisions and the consensus of opinion is that he is not a trustee within the meaning of this section.[3]

Dividend held by company for payment to share-holders. Dividend money kept by a company for payment to share-holders is kept in trust for them. No limitation is prescribed for a suit to recover the money.[4]

Bank. Where a payment is made to a Bank under protest subject to a claim for any excess amount found due to the constituent on account of devaluation of currency and subsequently the plaintiff in his suit claimed the excess amount which was due to him on account of devaluation on the ground that the defendant held the amount in trust for him. It was held that under the circumstances a trust for specific purpose was constituted within the meaning of this section.[5]

Adverse possession by trustee. Where a person is a *mutawalli* of a public charitable trust all his acts which are claimed as acts showing adverse possession are referable to his lawful fiduciary position as *mutawalli.* Adverse possession in such circumstances, is a notion almost void of content. However, flagrant the breaches of duty be on the part of the *mutawalli* he acts on behalf of the trust and has no right to claim adverse possession. Having entered into possession as trustee he is stopped from setting an adverse title until he obtains a proper discharge from the trust.[6] But if the trust is found to be void this section does not apply and if the trustee claims to be in adverse possession, he would acquire good title by 12 years' possession.[7]

5. Form of trust for specific purpose. No particular form is necessary to create a trust for a specific purpose.[8] A trust for a specific purpose may be created where the trustee himself is partly entitled to the benefit of the trust.[9]

6. Alleged trustee must be owner of trust property. Unless the alleged trustee is the owner of the property to which the trust relates, there will be no trust and as such no trust for a specific purpose.[10] Thus the Directors of an Insurance Company were not trustees.[11] Similarly where *X* claims a piece of land

3. PLD 1971 Supreme Court 8=23 DLR (S.C.) 81.
4. PLD 1975 Kar. 21=PLJ 1975 Kar. 20=PLJ 1975 Kar. 250.
5. PLD 1960 Dacca 255=12 DLR 10.
6. AIR 1946 Nagpur 401+34 Mad. 257=38 Ind. App. 129 (P.C.)+AIR 1954 Mad. 258 (DB).
7. AIR 1942 P.C. 64=ILR 1942 Kar. (P.C.) 166=69 Ind App 137.
8. AIR 1936 Mad 876 (DB)+AIR 1926 Mad. 109 (DB).
9. AIR 1927 Mad. 1134.
10. PLD 1971 S.C. 8=23 DLR (S.C.) 81+AIR 1940 Pat. 90 (DB)+AIR 1957 All. 553 (DB)+AIR 1948 Mad. 76=ILR 1948 Mad. 296 (DB)+AIR 1947 Sind 187=ILR 1947 Kar. 109 (DB)+AIR 1929 P.C. 77+AIR 1922 P.C. 123=48 Ind. App. 302=44 Mad. 831+AIR 1946 Mad. 116=ILR 1946 Mad. 423 (DB)+AIR 1941 Nag. 181=ILR 1942 Nag. 92 (DB) (A person who is merely in possession of property on behalf of another as his manager or agent is not a trustee for him in regard to the property)+AIR 1938 Cal. 673=ILR (1938) 1 Cal. 652+AIR 1937 Bom. 334=ILR 1937 Bom. 636 (DB). (Guardian of an infant who is in possession of the infant's property on the latter's behalf is not a trustee)+AIR 1949 Nag. 235=ILR 1948 Nag. 794 (DB).
11. PLD 1971 S.C. 8=23 DLR (S.C.) 81.

as owner and *Y* claims to be entitled to possession till certain dues of his were paid. Land is settled with *Y* in accordance with his claim and *X* is directed to redeem it by paying the dues. It was held that *Y* was not a trustee.[12] A vendor who leaves a portion of purchase-money in the hands of vendee for the purpose of paying the same to his minor son after he attains majority is not a trustee.[13]

7. Obligation must arise out of confidence. A trust is created only where the obligation arises out of confidence. An obligation based on a contract cannot give rise to a trust.[14] But it is to be remembered that every obligation in respect of property which is based on confidence and not on contract need not give rise to a trust.[15]

8. 'Benamidar.' A benamidar is not a trustee for a specific purpose within the meaning of this section.[16]

9. Executor or administrator. An executor of a will is not as such a trustee for a specific purpose within the meaning of this section.[17] Thus where a debtor of a testator becomes his executor under his will, he will not be a trustee for a specific purpose in regard to such debt.[18] Similarly where a person named as executor in a will never acted as such and always tried to nullify the will, he could not be regarded as trustee and section 10 did apply to him. His possession is adverse to the legatee.[19] But where a testator appoints a person as executor and also bequeaths to him certain properties, directing him at the same time to pay out of such properties certain specified legacies or debts, the executor will be a trustee for a specific purpose.[20]

Administrator. A person to whom letters of administration to the estate of a deceased person have been granted is not a trustee for a specific purpose, although the estate vests in him under the law for the benefit of others.[1]

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12. AIR 1925 Pat. 61 (FB) + ('11) 33 All 125 = 38 Ind. App. 23 = 14 Oudh Cas 95 (P.C.).
13. AIR 1939 Mad. 722 (DB).
14. AIR 1939 Mad. 722 (DB) (*A* enters into a contract with *B* for the payment of a sum of money to *C*—This does not give rise to a trust in favour of *C*) + AIR 1919 Pat. 344 + ('11) 9 Ind Cas 988 (Cal.) + AIR 1925 Nag. 115 (DB) (Relationship between a debtor and creditor is based on contract and the debtor is not a trustee for the creditor) + AIR 1914 Mad. 171 (DB) + AIR 1939 Bom. 126 = ILR 1939 Bom. 154 (DB). (An agent is not a trustee for his principal in respect of the latter's moneys in the hands of the banker).
15. AIR 1936 Mad. 170.
16. AIR 1922 Mad. 57 = 45 Mad. 415 (DB) + ILR 1950 Nag. 877 (DB).
17. AIR 1938 Pat. 600 = 17 Pat. 350 (DB) + AIR 1927 Bom. 424 + AIR 1926 Cal. 1 (DB) + ('09) 9 Cal. L. Jour 383 + AIR 1929 Lah. 753 = 11 Lah. 325 (DB) + AIR 1915 Mad. 1184 + ('10) 7 Mad. L. Tim 123 + AIR 1936 Bom. 30 + AIR 1944 Nag. 377 = ILR 1945 Nag. 817 (DB).
18. ('09) 11 Bom. L.R. 1187.
19. AIR 1953 Pat. 97.
20. AIR 1940 P.C. 45 = ILR (1940) 1 Cal. 415 = ILR 1940 Kar. (P.C.) 109 = 67 Ind. App. 129 + AIR 1942 Sind 145 = ILR 1942 Kar. 392.
1. AIR 1917 Pat. 74 = 2 Pat. L. Jour 642 (DB) + ('10) 7 Mad. L. Tim 123 + AIR 1929 Lah. 753 = 11 Lah. 325 (DB).

10. Trustee 'de son tort'. The section does not apply to a suit against a trustee *de son tort*.[2] It has been held that a trespasser *ab initio* cannot be said to be a trustee or manager *de son tort* within the meaning of clause 2 of this section.[3]

11. Deposit of money. A deposit of money by *A* with *B* under which *B* is constituted the owner of the money and is entitled to use it for his own purpose subject only to the liability of returning an equivalent sum to the depositor, does not amount to a trust.[4] Thus a banker is not a trustee for the customer in regard to the customer's moneys in his hands.[5]

Money deposited as security. A deposit of money with another as security for some purpose does not make the depository the owner of the money and he is not a trustee for the depositor.[6]

Money deposited for payment to another. Where money was left with the defendant for being paid to a third person the money did not vest in the defendant and, he was not a trustee.[7]

Money deposited in trust. Where money is deposited with a solicitor or other person standing in a fiduciary relationship to the depositor and it is intended to vest the ownership in the depository, the parties may be presumed to intend that the depository should hold the money for the benefit of the depositor and a trust for a specific purpose may arise in such cases.[8]

12. Deposit of specific movable property. Movable property deposited by one person with another for a specific purpose on the understanding that it must be returned to the depositor *in specie*, does not constitute him trustee for a specific purpose.[9]

13. Legal representative. The expression "legal representative" in this section refers to the person who succeeds to the private estate of a deceased trustee and not to a person who succeeds to his office as trustee.[10]

14. "Assigns." This section applies, *inter alia*, to suits against gratuitous transferees of the trust property.[11]

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2. AIR 1941 All 1 = ILR 1940 All 815 (DB) + AIR 1959 Andh Pra. 186. (Trustee *de son tort, de facto* trustee and constructive trustee--Distinction pointed out) + AIR 1952 Mys 14 = ILR 1952 Mys. 102 + AIR 1924 All. 884 = 47 All 17 (DB) + AIR 1925 Bom. 148 (DB) + AIR 1937 Oudh 373 = 13 Luck 344 (DB).
3. AIR 1945 Sind 57 = ILR 1945 Kar. 40 (DB).
4. AIR 1914 Mad. 171 (DB) + AIR 1919 Lah. 322 = 1919 Pun. Re. No. 4 + AIR 1932 Mad. 685 (DB).
5. AIR 1914 Mad. 171 (DB) + AIR 1946 Mad. 519 = ILR 1946 Mad. 429 (DB).
6. AIR 1919 Cal. 519 (DB) + ('10) 13 Oudh Cas. 286.
7. ('04) 1 All. L. Jour 422.
8. 1893-2 Q.B 390 = 69 L.T. 585.
9. AIR 1919 All. 102 = 41 All 643 (DB).
10. AIR 1917 Mad. 706 (DB).
11. AIR 1940 P.C. 45 = ILR (1940) 1 Cal. 415 = ILR 1940 Kar. (P.C.) 109 = 67 Ind. App. 129 + ('50) 54 Cal. W.N. 960 (DB) + AIR 1943 Pat. 289 = 22 Pat. 133 (DB).

Assignment for consideration. The section does not apply to suits against transferees for consideration.[12] The assignment for valuable consideration referred to in this section will include every kind of transfer to the trust property for consideration.[13] A gift of temple property in consideration of services to be performed is assignment for consideration.[14] An assignment of lease-hold interest is also covered by the section.[15]

Valuable consideration. The expression "valuable consideration" is not synonymous with "adequate consideration" and when the consideration, though small, is not in any sense illusory, having regard to the state of affairs prevailing at the time when the transaction took place, the case would come within the terms of the exception laid down in the section.[16]

Notice of trust. The question as to the transferee having taken the transfer with notice of the trust is not material for the purposes of this section.[17]

15. Recovery of trust property. The expression "following trust property" implies that in order to bring a suit within the expression, the object of the suit must be to restore to the trust the property which rightfully belongs to it, but which has been improperly removed from it.[18] Thus a suit for recovering from the trustee, trust property misappropriated by him is within S. 10.[19]

Pursuit of rights not covered by section. This section contemplates the following or pursuit of concrete property and not that of a right.[1] Therefore this section does not apply to a suit against an executor for recovery of arrears of annuity under a will.[2] Similarly the section does not apply to a suit for recovery of a share in the balance of income after meeting expenses of worship of an idol for which the trust has been created.[3]

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12. AIR 1940 Cal. 228+AIR 1923 P.C. 175=50 Ind. App. 295=46 Mad. 751+('09) 36 Cal. 1003=36 Ind. App. 148 (P.C.)+AIR 1953 S.C. 514=1954 S.C.R. 235 (lease for consideration--Section does not apply)+('50) 54 Cal. W.N. 960 (DB)+AIR 1943 Pat. 289=22 Pat. 133 (DB)+AIR 1964 A.P. 393 (DB).
13. ('98) 20 All 482 (FB)+AIR 1953 S.C. 514=1954 S.C.R. 235+AIR 1940 Cal. 228+AIR 1923 P.C. 175=50 Ind. App. 295=46 Mad. 751.
14. AIR 1918 Bom. 183 (DB).
15. AIR 1964 A.P. 393 (DB).
16. AIR 1964 A.P. 393 (DB)+AIR 1953 S.C. 514=1954 S.C.R. 235.
17. AIR 1923 P.C. 175=50 Ind. App. 215=46 Mad. 751+AIR 1953 Mys. 84=ILR 1953 Mys. 419 (DB) (Section 10 does not by reason of the fact that the property was to his knowledge trust property, prevent a purchaser from a trustee, who has paid valuable consideration from pleading adverse possession).
18. AIR 1942 Sind 145=ILR 1942 Kar. 392+AIR 1922 P.C. 212=49 Ind. App. 37. (Properties disposed of on trust by testator but his heirs sue trustee for such properties--Section does not apply)+AIR 1941 Bom. 307. (Settlor's heir's heir claiming property alleging that trust was void, does not claim property against trustee holding for express purpose--This section will not apply--Ordinary limitation will bar suit)+('83) 6 All 1=10 Ind. App. 93 (P.C.) (Trust properties not removed from purposes of trust but plaintiff only sues for establishment of his own right to office of trustee or to control management of trust--Section will not apply)+AIR 1919 P.C. 62=43 Mad. 253=46 Ind. App. 204+AIR 1921 P.C. 97=43 Mad. 665=47 Ind. App. 191.
19. ILR (1946) 2 Cal. 447.
1. AIR 1943 Sind 57=ILR 1945 Kar. 40 (DB).
2. AIR 1938 Pat. 600=17 Pat. 350 (DB).
3. ('01) 3 Bom. L.R. 422 (DB).

16. Suit for accounts. Where the property sought to be recovered is not in the hands of the defendant and it is sought to make him liable on the footing that certain property came into his hands and that he is liable to account for such property and to make good such portion of it as he does not duly account for. The suit would not be one for following trust property but one for accounts, and such suit is expressly included in this section.[4] Even when a suit is brought against legal representative of the trustee, it would come under this section.[5] But where the case is one of back accounting a Court has discretion to limit the period of accounting and if it is found to be a fit case, it can exercise that discretion in favour of the defendants.[6]

Property not coming into hands of trustee. A suit to enforce the liability of the trustee or his representative for property which would have come into his hands but for his wilful default or negligence will not be within this section.[7]

17. Persons entitled to benefit of section. A suit of the kind defined in the section by whomsoever brought will be governed by the section.[8]

18. Religious and charitable endowments. Where property is specifically transferred to a person to be held by him in trust for an idol or religious institution, there is a trust for a specific purpose even without recourse to the special provision contained in the second paragraph of this section.[9] But where there is nothing to show that the trust was for a specific purpose, a difficulty arose and the second paragraph of this section was added to Act, 1 of 1929 in order to get over the effect of the Privy Council decision in AIR 1922 P.C. 123=48 Ind. App. 302=44 Mad. 831.[10] The necessary condition for the application of section 10 is satisfied by the fiction introduced by the amendment. It will not be, therefore, necessary in each case to establish by independent evidence that the property has become vested in trust for any specific purpose.[11]

Amendment not retrospective. Act 1 of 1929 is applicable to all suits instituted after coming into force of the Act, although endowment was created before that.[12] But where the right of the plaintiff had become barred by limitation before the amending Act of 1922 was passed, the mere institution of the suit after 1929 cannot have the effect of reviving that right.[13]

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4. AIR 1920 Cal. 558 (DB)+AIR 1955 Andhra 18. (AIR 1938 Nag. 30, *Dissented from*)+AIR 1924 Cal. 160 (DB) (Obiter)+AIR 1922 Mad. 409 (DB)+AIR 1916 Mad. 720=39 Mad. 365 (DB)+AIR 1928 Bom. 58=52 Bom. 184 (DB).
5. ILR (1947) 1 Cal. 48.
6. AIR 1955 Andh. 18.
7. AIR 1940 Rang. 207=1940 Rang. L.R. 273 (DB)+AIR 1918 Mad. 624+41 Mad. 319 (DB)+AIR 1922 Mad. 409 (DB).
8. AIR 1936 Mad. 876 (DB)+AIR 1958 Andh Pra. 451=ILR 1958 Andh. Pra. 502 (DB)+AIR 1920 Cal. 558 (DB)+('98) 18 Mad. 266 (DB).
9. AIR 1922 P.C. 123=48 Ind. App. 302=44 Mad. 831+AIR 1943 Mad. 691=ILR 1944 Mad. 484 (DB)+AIR 1918 P.C. 37+1908 Pun. Re. No. 127, p. 573 (FB).
10. AIR 1922 P.C. 123=48 Ind. App. 302=44 Mad. 831.
11. AIR 1955 Andh 18.
12. AIR 1935 Mad. 483 (DB).
13. AIR 1945 All. 121=ILR 1945 All. 75 (DB)+AIR 1943 Pat. 289=22 Pat. 133 (DB)+AIR 1934 P.C. 77=61 Ind. App. 50.

Mutawalli. In a suit for a declaration that the property in possession of the Mutawalli is *wakf* property no question of limitation can arise in respect of the property, if the property is found to comprise a *wakf* estate.[14]

Manager of endowment. The Manager of an endowment is a trustee within the meaning of this section and the manager covers *de facto* manager in the second paragraph of the section, and such a manager should be deemed to be an express trustee within the meaning of the section.[15] But the person to whom manager of a religious endowment entrusts endowed property for safe custody and management is not a trustee.[16]

Joint family trustee. The word "person" in section 10 includes joint family. If the properties in the hands of the family are impressed with the character of trust, the trustee family, by becoming sub-divided, cannot throw out that character; if by an arrangement in the family, one person is to discharge certain religious duties, that does not mean that the family as such renounced the trusteeship and the other members can claim to be holding trust properties adversely to the trust.[17]

Parsi religious endowment. 'Vahivatdars' of Parsi Anjuman are trustees for a specific purpose within the meaning of this section.[18]

19. Limitation for suits for recovery of trust property from strangers. Suits against transferees for consideration and strangers who have acquired possession by dispossessing the trustee are subject to the ordinary law of limitation.[19] The section would not apply to an assignee without consideration, and therefore limitation for a suit for restoration of trust property will not be extended beyond the period allowed by the law. Thus where *A*, trustee of a house, in defiance of the trust, gift it away as his own property to *B*, his wife, who occupies the said house in her capacity as donee and subsequently sells it to *C* (a third party) for valuable consideration, a suit by the beneficiaries claiming under the trust against *C* and *B* for recovery of the alleged trust property would be governed for purposes of limitation neither by section 10 nor by Art. 134 but by Art. 144 and the starting point of limitation would be the date of gift-deed by *A* in favour of *B* on which day her possession of the house became adverse to the beneficiaries. The period of *B's* adverse possession can be tacked to that of *C's* adverse possession in his capacity of a bona fide purchaser without notice.[20]

Beneficiary of private trust. In the case of private trusts, where the trust properties are improperly alienated by the trustees, section 63 cannot be read as exhaustively dealing with all the remedies available to the beneficiary. In a proper case, the beneficiary is entitled to sue for the removal of the trustee appointed under the trust, for the appointment of a new trustee and for delivery to the new trustee of the property improperly alienated by the previous trustee. Such a suit

14. PLD 1957 S.C. (Ind.) 111 + AIR 1948 P.C. 168 = PLR 1949 Lah. 1.
15. AIR 1959 Andh Pra. 186 (DB).
16. AIR 1941 Nag. 181 = ILR 1942 Nag. 92 (DB).
17. AIR 1953 Mad. 842 (DB).
18. AIR 1934 Bom. 1 (DB).
19. AIR 1935 Mad. 483 (DB) + ('94) 18 Bom. 507 (DB) + AIR 1923 Cal. 142 = 50 Cal. 292 + AIR 1929 All. 315 = 51 All. 621 (DB) + AIR 1926 All. 392 = 48 All. 348 (DB) + AIR 1933 Cal. 295 = 60 Cal. 54 (DB) + AIR 1945 Sind 57 = ILR 1945 Kar. 40 (DB).
20. AIR 1961 All. 434.

for constructive possession is not prohibited by section 63. Prima facie, section 10 of the Limitation Act seems to contemplate on action by a beneficiary under a trust to which section 10 applies and provides that in such an action the beneficiary may follow the property and ask for a proper order as to the delivery of the said property to the new trustee. If that be so, the provisions of section 10 would suggest that the remedies prescribed by section 63 are not exhaustive.[1]

20. Limitation for suits against trustee by operation of law. The expression "trust for a specific purpose" used in section 10 did not apply to a trust arising by operation of law. The insolvency Court or the official receiver were trustees for the creditors only by operation of law and hence section 10 could not be utilised against them.[2]

11. *Suits on foreign contracts.* (1) Suits instituted in [3][Pakistan] on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act.

(2) No foreign rule of limitation shall be a defence to a suit instituted in [3][Pakistan] on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

Synopsis

1. Scope.
2. Suit on judgment of foreign Court.
3. Execution of foreign decree.

1. Scope. The question of limitation of actions are governed only by the *lex fori* as they are essentially matters relating to procedure.[4] In other words they are governed by the law which is applicable to the forum which has issued the decree in question or the forum where its execution is pending.[5] The fact that an action on a contract entered into in a foreign country is not barred under the law of that country cannot enable the person entitled to any right thereunder to sue in any other country, if in respect of a claim under such a contract the right of suit had become barred under the law of the country where the suit is laid. To hold otherwise will be to apply foreign rule of limitation to suits in Pakistan. That is quite contrary to section 11 (1) of the Limitation Act. Therefore when a liability under a foreign contract is sought to be enforced in a country outside it, two rules must apply. (1) the rights under the contract should not have been extinguished

1. AIR 1962 Supreme Court 633.
2. AIR 1962 All. 256 (DB).
3. Subs by the Central Laws (Statute Reform) Ord., 1960 (21 of 1960). S. 3 and Second Sch. (with effect from the 14th October, 1955), for "the Provinces and the Capital of the Federation" which were subs. by the A.O., 1949, for "British-India".
4. PLD 1967 S.C. 68=19 DLR S.C. 177+(1851) 5 Moo Ind App. 234 (P.C.)+AIR 1955 Mad 96=ILR 1955 Mad. 116 (FB). (Special rules contained in Sections like S. 13 would also apply by virtue of S. 11)+AIR 1952 Kutch 27+AIR 1950 Kutch 58+1950 Ker. L.T. 54 (DB).
5. AIR 1957 Assam 127=ILR (1957) 9 Assam 278 (DB).

under the law of that country where the cause of action arose and (2) the contract should be enforceable by the law of procedure of the country in which it is sought to be enforceable. The question whether a suit in this country on a foreign cause of action would be within time or not has got to be decided by computing time from the date when the cause of action arose under the contract and not from the date the last acknowledgment of liability.[6]

Limitation extinguishing right. The Court will not apply a foreign law of limitation which affects the remedy only and is, therefore, a matter of mere procedure. The foreign law of limitation will be applied where it extinguishes the right or creates a title so that it ceases to be a matter of mere procedure.[7] There may be provisions in limitation statutes such as section 28, Limitation Act, which extinguish the rights of the parties. In such a case, that is, where there is no right alive by reason of its extinguishment by a statute there could obviously be nothing to be enforced in that country or in any foreign country. Provisions of that kind cannot be regarded as merely procedural as they create or destroy substantive rights of parties. This principle has been recognised in a statutory form in section 11 (2) of the Limitation Act.[8]

2. Suit on judgment of foreign Court. Where the plaintiff obtained a judgment in a foreign Court on a claim barred under the Limitation Act but not barred under foreign law, a suit on that judgment in Pakistan Court is maintainable. The result would be the same even if the contract had been made originally in Pakistan.[9]

3. **Execution of foreign decree.** An application for execution of a decree of a Princely State in a Pakistan Court under section 44 of the Civil Procedure Code, is governed only by the Pakistan Limitation Act.[10]

PART III

COMPUTATION OF PERIOD OF LIMITATION

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

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the

6. AIR 1964 Madras 527 (DB).
7. AIR 1956 Cal. 216 (DB) + AIR 1964 Mad. 527 (DB).
8. AIR 1964 Madras 527 (DB).
9. AIR 1924 All. 161 = 46 All. 119 (DB) + AIR 1916 Low Bur 67 + ('79) 2 Mad. 400 (DB) + ('08) 2 Sind L.R. 51.
10. ('83) 9 Cal. 181 (DB) + AIR 1916 Bom. 200 = 40 Bom. 504 (DB) + ('68) 10 Suth W.R. 10 (FB).