—S. 20

Held : that the Chakla Kanungo in seizing the movables was acting under the authority and as an agent of the Court and not as an agent of the judgment-debtor. He could not, therefore be said to be acting under the implied authority of the judgment-debtor in selling the property and making over the proceeds to the decree-holder. The part payment was not therefore one by an agent duly authorised in that behalf within S. 20 Limitation Act. *Brojamohan Vs. Ramendra* AIR (33) 1946 Patna 131.

—(As amended in 1942) Not retrospective.

The law of limitation to a suit is the law applicable which prevails at the date when the suit is instituted. Section 20 as amended therefore applies only to suits instituted after it came into force *Jogadish Prasad Vs. Saligram Lal.* AIR (33) 1946 Pat. 60.

—The amendment to S. 20 cannot have retrospective operation in the sense that it can apply to a suit which had been instituted prior to this amendment. *Jagadish Prasad Vs. Saligram Lal* AIR (34) 1946 Patna 59.

Redemption—extension of time for—Not permitted by section.

The wording of section 20 is clear and to extract from it an extension of the time for redemption would involve reading into the section something which is not there, and this could only be justified if it appeared to be necessary in order to give effect to the intention of the Legislature to be ascertained from the Act as a whole. *Muhammad Akbar Khan Vs. Motai* PLD 1947 Privy Council 322.

Amending Act of 1927 : *Retrospective Effect* — As the law of limitation is a law of procedure, the amending Act (1 of 1927) must govern all future payments and all future applications for executions, even though they may be in pursuance of a decree passed previously. 1932, 143 Ind. Cas 324, (All.), (Sulaiman C.J.).

Section Restricted to Suits for Debts and Legacies—Section 20 extends only to the remedies of persons entitled to a debt or legacy 1903. 26 All 167 ; 1922. 46 Bom. 1000, and, therefore, the section does not operate to enlarge the period allowed by law (Article 148) to the mortgagor to redeem his property. 1904. 26 All. 167; 1922, 46 Bom 1000.

Payment of Interest : *Debtor's Intention to Pay as Such*—Some force must be attributed to the exprerssion "as such" (in section 20); and consequently something more than mere payment of interest must be established to entitle the creditor to the benefit of section 20. 1917 43 Ind, Cas. 812 (Cal) at. p. 814.

In order to save limitation under section 20, a payment towards interest must be made "as such' i.e., it must be expressly made towards interest. The section (20) has nothing to do with the general right of the creditor of appropriating a payment either towards interest or towards principal. 1925, 87 Ind. Cas. 746 (Cal); 1927, 51 Mad 549 at p. 557. Interest must be paid as interest, i.e., it must be distinctly stated at the time of payment that it is

paid on account of interest, or else there must be evidence from which payment as interest may be distinctly inferred, and, if so, mere proof of payment is sufficient. Starling, p. 140; 1907, 9 Bom. L.R. 1329.

Mere Unspecified Payment, if Appropriated by Creditor towards Interest, cannot save Limitation either as a Payment of Interest, as such or as a Part payment of the Principal—Where a debtor makes a payment to his creditor generally on account, i.e., without specifying whether it was towards principal or towards interest, and there is admittedly a document in the debtor's handwriting from which the fact of the payment appears, in such a case, even if the evidence does not establish that the payment was made on account of interest as such, still there is evidence establishing the payment plus the document in writing proving the fact of payment. On that evidence a Court of fact is entitled to come to the conclusion that the payment was a part payment on account of principal. 1916,44 Cal, 567, commented on by Rachpal Singh, J. one of the majority judges, in 1935,58 All. 261, (F.B.) at p. 296, and by Niamatullah J. in 1934, 154 Ind. Cas. 1007 (All). Although the fact of payment may appear in the debtor's handwriting, where money is paid by a debtor without specifying whether the payment is towards interest or towards principal, leaving it to the option of the creditor to appropriate it as he likes, and the creditor appropriates it towards interest, there is neither a payment of interest as such nor a part payment of the principal within the meaning of section 20 of the Limitation Act. 1935.58 All, 261 (F.B.). (majority judgment). A debtor may pay a certain sum in part satisfaction of what is due from him, without caring to specify that the sum is to be appropriated towards interest or principal; the creditor may, however, appropriate such payment towards interest, as he is entitled to do under section 61, Contract Act, but the payment cannot be considered to be the payment of interest as such, within the meaning of section 20, Limitation Act. If a payment is made generally to the creditor and there is subsequent appropriation by the creditor towards interest with the knowledge, consent and ratification of the debtor, it would be a payment of interest as such under section 20. See 1929,5 Luck. 1(P.C.), (National Bank's case), and observations of their lordships, during the arguments, as reported in 121 Ind. Cas. 193.

Payment of Lump Sum by Debtor : Allocation by Creditor Towards Interest with Knowledge, Consent and Ratification of Debtor.—"Supposing that money is remitted on 23rd December on general account, and on 31st December, the parties agree that it is to be paid for interest as such, that would satisfy the requirements of section 20." 1929, 121 Ind. Cas. 193 (P.C.) at p. 197, per Sir Benod Mitter, in argument, (*S.C.* 5 Luck 1, P.C., National Bank's case); 1928, 117 Ind. Cas. 124 (Mad).

Payment of Interest : Money Paid Towards General Account. Where the debtor at different times made payments to the creditor in reduction of the general balance of the account against him, but without intimating that any of such payments was to be appropriated in satisfaction of interest due on

—S. 20

his debt, in a case like this there is no payment of interest as such. 1879, 3 Bom. 198; 1935, 58 All 261 (F.B.). The meaning of section 20 is that there must be either an express intimation by the debtor or proof of the existence of circumstances which show that the payment was on account of interest; in other words, if payments are made in reduction of a general balance of account without intimation by the debtor that they are to be appropriated in satisfaction of interest, such payments are not payments of interest as such within the meaning of sec. 20. 1917, 43 Ind. Cas. 812 (Cal); 1935, 58 All 261, (F.B.). In Mitra on Limitation, Vol. 2, pp. 923, 924, the opinion is expressed that where interest in excess of the amount paid is due and the debtor does not specifically state that the payment is to be appropriated towards interest or principal, the proper inference is that he paid interest as such unless it was "avowedly" made towards interest. 1934, 154, Ind. Cas. 1007 at p. 1008(All.), (Niamatullah, J.); 1935, 58 All. 261 (F.B.). Where payment are made towards satisfaction of a debt, and there is nothing to show whether they are made in respect of principal or interest, or both, or indefinitely on general account, they cannot enlarge time under section 20 unless it is established clearly that the payments are made on account of interest as such. 1903, 5 Bom. L.R. 350, (fol. in 1913, 19 C.W.N. 237).

Payment of Interest : Agreement to Appropriate Payments or Rents Towards Interest.—It has been said that in case of mortgages, bonds, and other securities, where the principal carries interest, but the interest does not (i.e., where interest on interest or compound interest is not chargeable), the rule is, that payments made are presumed to be paid in respect of interest before principal Hals. Vol. 19, p. 68. But under section 20 of the Indian Limitation Act a mere pressumption to this effect cannot apparently be sufficient for sbowing that the payment was made as interest. Cf. 1918, 46 Ind. Cas. 532 (Cal.), (payment treated as one for interest). See 1928, 117 Ind cas. 790, (Mad.), payment towards interest cannot be presumed. For purpose of section 20, where the method of appropriation is determined at the outset by express contract between the parties the law does not require a specific appropriation to be made on the occasion of each yayment. 1913 19 Ind. Cas. 849 (Nag.), (foll. in 1926,164 Ind. cas. 945 at p. 956, Oudh); In the case of a mortgage-debt, the terms of the mortgage, and the appropriation of payment to interest by the creditor, and the conduct of the parties might be taken into account so as to raise the inference that payment was made as auch, that is to say, as interest. 1909,31 All. 285 (foll. in 1925,93 Ind. cas. 295, All., and in 1926, 99 Ind. Cas. 694 (Mad.).

Payment of Interest : Mode of Proof.—A payment of interest may be proved like any other fact; a writing by the debtor is not necessary. Darby p. 120; 1897, 1 C.W.N. 229 (short notes). Proof must be given (though not necessarily by documentary evidence) that the payment was made on account of interest as such. 1908, 35 Cal. 813 at p. 116; 124 P.R. 1894.

—S. 20

The onus is on the creditor to establish that interest was paid as such. 1929, 121 Ind. Cas. 193 (P.C.) at p. 197.

Part Payment of Interest. Even a part payment of interest sufficies to save the statute. 1913, 35 All. 378. The proviso to seetion 20 (as to handwriting) has, of course no application to such cases. 1914, 26 Ind. Cas. 507 (Mad.). But under the proviso (as amended in 1927) there must be a written acknowledgment even in respect of a payment of interest. See 1935,58 All. 261 (F.B.).

Payment of Interest on Debt not Carrying Interest. Payment of interest operates as an admission of a subsisting debt still due, 124 P, R. 1894, and therefore it is effectual although interest is not expressly reserved. 1880, 14 Ch. D. 687; Lightwood, p. 375.

Part Payment of Principal.—In order that a part payment may save the statute there are two requisites besides proof of the mere fact of payment : (a) it must appear that the payment was made on account of a larger debt; (b) that the debt is the one sued for. Sm. L.C., Vol. 1, p. 581. In order to make a part payment sufficient it must be made under circumstances from which an admision of liability and a promise to pay the residue can be inferred. Dart, V. and P., p. 465. Partial paynmet of a note by the maker under circumstances showing that he understood it was partial only, and which did not indicate an unwillingness on his part to pay the balance, is evidence from which, if there is nothing to control it, a Court should find a new promise, tolling limitation. Wood, p. 600. A payment accompanied with expressions or circumstances showing that the debtor did not intend ever to pay more is not sufficient. 1847, 1 Exch. 118. Wamman v. Kynman. Where the debtor, when making the payment, expressly states that it is not on account, it is not a part payment. 1847, 1 Exch. 118, Wamman v. Kynman. If a lump sum be paid by a debtor to his creditor and no intimation be given as to how it is to be appropriated and there is nothing written by the payer as to its payment, it cannot be treated as a part payment of the principal because of want both of appropriation and of a writing, and it cannot be treated as a part payment of interest because it was not paid as such, 1879,3 Bom. 108; 124 P. R. 1894. If a debtor merely hands over a sum of money to the creditor, such payment itself will operate neither as payment of interest nor as part payment of principal, unless it is proved to have been made as payment of interest or as part payment of principal. 124 P.R. 1894.

Part Payment of Principal Implies Admission of Right, and Acknowledgment of Liability. It is a principle applicable to part payment under all statutes of limitation that it must be made as an admission of right, 1882, 19 Ch. D. 539;1886 11. A.C, 639 at p. 645 i.e., of a right in the recipient to the balance of the debt; in other words, the payment must be such as amounts to an acknowledgment of liability. 1882, 19 Ch. D. 539 at p. 548. Consequently it must have been made as a payment on account and must

not purport to be in satisfaction of the entire debt. 1934, 68 M.L.J. 73. A payment, to prevent the bar of limitation, must be an acknowledgment by the payer of his liability and an admission of the right of thd payee. 1882, 19 Ch. D. 539, per Jessel M.R. Part payment shall take the case out of the Act, only when the fact of the payment appears in the handwriting of the person making the same. Supplement to "Gazette of India", (April 11th 1871), (quoted in 124 P.R. 1894, at p. 479 of the report. Even under sec. 20 of the Indian Limitation Act the statute is not checked unless the part payment is made as an admission of a right in the recipient to the balance of the debt; in other words, the payment must be such as to amount in effect to an acknowledgment of liability. See 1934, 68 M.L J. 73 at p. 74; 1925,29 C W.N. 496 at p. 500.

If a debtor makes a payment (which the evidence discloses is only in part), unaccompanied by any qualifying act, the Court may legitimately infer that the payment implies an admission of a right in the payee to the balance of the debt. 1936,17 Lah. 737 at p. 756.

Payment of Principal Saves Limitation for Interest, and Vice Versa.—A debt is composed of principal and interest and a payment of intetest is consequently a part payment of the whole debt and this reasoning would seem to be equally applicable to the converse case Banning, 2nd ed., p. 70 Where a debt carries interest, the principal and interest constitute one demand; and therefore payment in respect of either principal or interest will take both out of the statute Hewitt, p 37. Payment of interest removes the statute as to the entire debt, both principal and interest. Wood, 4th ed. p. 542; Byles p. 324.

Part Payment "Without Prejudice".—No words such as "without prejudice" can override the words of the statute (sec. 20), which lay down that a part payment shall extend limitation, if it is in the handwriting, etc, of the debtor. 1936,17 Lah. 737 at p. 757. But it is submitted that the payment must be one from which acknowledgment of liability could be inferred 1934,68 M.L.J. 73; 1935,58 All. 261 (.F B) at p. 272.

Handwritting.—In case of a part payment of the principal the corresponding section of Act 1871 required that the fact of payment should appear in the payer's handwriting on the instrument. or in his own books, or in the books of the creditor 124 P. R. 1894; 1930,58 Cal. 649 at p. 666. The present section is not so restricted and accordingly the handwriting may be made anywhere. 1919, 23 C.W.N. 336 at p 339. Under the proviso to section 20, as amended in 1927, the acknowledgment of payment may be either in the handwriting of or in a writing signed by the payer. 1934,68 M.L.J. 63 Since the word used in the new proviso to sec. 20 is "or" and not "and", it is not requisite that the acknowledgment of payment should be both in handwriting of and signed by the payer; 1934, 157 Ind. Cas. 1052 (All) at. p. 1053.

Handwriting : Joint Debtors.—Where two persons jointly borrow a sum of money and pass one khata signed by both, the part payments appearing in

the handwriting of one of them but signed by both save limitation against both of them under section 20, Limitation Act 1923,25 Bom. L R. 354.

Handwriting by Payer Himself Except when Illiterate.—Section 20 requires that in the case of a part-payment of the principal of a debt, the entry recording the payment should be written by the person who makes the payment when such person knows how to write; his mere signature to the entry written by another is not a sufficient compliance with the section 1913, 38 Mad 438; see 1927 53 M L.J. 555.

Handwriting: Effect of Amending Act of 1927 *as Regards Literate and Illiterate Debtors.* By the amending Act of 1927, the law has been made less stringent upon this point, and therefore even in the case of a literate debtor, it is sufficient that either there should be an "acknowledgment of payment" in the handwiting of the person making the payment (though unsigned) or that the writing (which includes printing, etc., and therefore "typing", vide section 3 of the General Clauses Act. 1897) should be signed by him, though not in his handwriting. See 1934, 68 M L.J 63. As regards illiterate debtors (i e who are unable to write), it is provided by the General Clauses Act, 1897, section 3, Caluse (52) that "sign", with its grammatical variations and cognate expressions shall, with reference to a person who is unable to write his name, include "mark", Accordingly, under the amended proviso to section 20 of the Limitation Act, it is sufficient, in the case of an illiterate debtor, if the acknowledgment of payment (written by some one else) is followed by the debtor's mark. *See* 1928, 52 Bom, 356 at p. 359; 1935, 58 All 261, (F.B.) at p. 303.

Handwriting: Must Recite Part Payment as Payment. The fact of payment and that it is a part payment must appear in writing. 1886, 9 Mad, 271 at p. 273, but the fact of its being in part payment of the principal need not be stated in so many words; it may be inferred from the writing itself. Starling, p. 140; 1907 9 Bom. L.R. 1329; 84 P.R. 1904; 1901, 6 C.W.N. 218.

Handwriting : Payment of Interest "As Such" : Effect of Amending Act of 1927.—Though under the proviso to section 20 as amended in 1927, even a payment of interest must be evidenced by a written acknowledgment, it is not requisite that the writing should on the face of it indicate that the payment was made towards interest. 58 All. 261(F.B.). 165 Ind. Cas, 225 (Mad).

Handwriting : Payment by Cheque or Money order :—A cheque signed by the debtor is merely an order for payment and does not satisfy the requirement of the proviso. 1886,9 Mad. 271 ; I.P.R. 1897 ; 1897 19 All. 307. But this view has since been modified, and it has been held by most of the High Courts that even a cheque per se is a sufficient "handwriting" for the purpose of the proviso to section 20. 42 Cal. 1043; 1930, 129 Ind. Cas. 909 (Sind).

Handwriting also Suffices as Acknowledgment. A writing, sufficient for the purpose of the proviso to section 20, is not necessarily and perse a sufficent acknowledgment within the meaning of section 19, but, of course, it can come under the latter section, if its requirements (e.g., as to signature, etc) are fulfilled. 1882, 5 All. 201; 1916, 40 Mad 698.

—S. 20

Oral Evidence and Date of Handwriting. If the writing is (e.g) lost, secondary evidence may be given, vide the Indian Evidence Act (e.g sec. 65). The writing may be undated. Field on Evidence, p. 134, and oral evidence is admissible to prove the time.

Payment in Money or *Other Modes.* Section 20 does not specify any particular mode or form of payment. 1898, 25 Cal. 844 at. p. 852 (P C.). The Legislature never intended that the payment should necessarily be in actual money, but it will suffice if it be made in any mode which the parties agree shall be treated as equivalent to a money payment. 1900, 24 Bom. 493 and 619.

Mere Book Entries Repayment of Interest, Etc. not Sufficient. A mere credit of interest by the debtor in his books, even though made in the creditor's presence, is not a payment of interest. 1889, 13 Bom. 438. But it may suffice under section 19 as an acknowledgment of liability, provided the writing is signed (e.g., by the debtor). 1909, 3 Ind. Cas. 407 (Mad.); 1917, 41 Mad. 446 at p. 448.

Payment by Goods or Settlement of Account. Payment may be in goods or by settlement of accounts between the parties or by receipt of produce of land, but it must be of such a nature that it would be a complete answer to a suit brought by the creditor to recover the amount. 1900, 24 Bom. 493; 1867, 2 Exch. 153. It is not necessary that either money or goods should actually pass, for payment may be made by settlement of account. Wood, p. 561.

Payment by Cheque, Bill of Exchange, Etc. Where the debtor made a payment by a bill (of exchange) and the bill proved ultimately worthless (e.g. dishonured), the bill nevertheless saves the statute. 1854, 3 El. and Bl. 136. Delivery of bill (of exchange), note or cheque as part payment of a debt is sufficient payment to oust the statute and its subsequent dishonour is immterial; for when a bill of exchange has been so delivered in payment on account of a debt, statute is answered as from the time of such delivery, whatever afterwards takes place on the bill. Sm. L C p. 585; 1854, 3 El. and Bl. 136, (Turney v. Dodwell).

Payment by Receipt of Surrender Value on Debtor's Policy. Where policy of asurance on the mortgagor's life is mortgaged, and the mortgagee subsequently surrenders it to the Insurance Company and receives the surrender value, quoere, whether the receipt of such money makes limitation run afresh for the mortgage debt ? 1900, 1 Ch. 774; Banning. p. 169. The answer seems to be in the affirmative. 1892, 29 L.R. Ir 199, (Re Coulant's Estate); Lightwood. p. 362. But there must be an actual receipt. So the principle does not apply in regard to bonuses which the mortgagee elects to have added to the policy instead of receiving them in cash. 1884, 13 L.R. Ir. 461, (Re Green's Estate); Lightwood, p. 363.

Constructive Payments: Instances of. Where a debtor put his hand into his pockets as if for the purpose of paying interest due, and the creditor anticipated actual payment by handing him a written receipt for it, this was sufficient

payment. 1900, 24 Bom. 493 at pp. 501. If by agreement services are rendered by the debtor in lieu of interest, this may be a sufficient payment. 1916, 33 Ind. Cas. 134 (Mad.).

Same Hand to Pay and to Receive: Actual Payment Dispensed With. If the debtor is also (in effect) the creditor, so that the same hand which is to pay is also the hand to receive, interest on the debt will be deemed to have been paid so as to keep alive the debt; 1887, 35 Ch. D. 607 e.g., where a husband is liable to pay and his wife is entitled to receive the interest, and the two are living together in amity 1892, 41 W.R. 173 (English), Re Hawes; Lightwood, p. 361.

"Rent or Produce of Mortgaged Land." Rent paid by a tenant in occupation of the land is equivalent to a payment vide clause 2 of section 20 as amended by the Limitation Act, 1908. Cf. 1880, 2 Mad. 165 and 1880 When mortgagee is in possession of the mortgaged property and in receipt of the usufruct, such receipts are treated as payments to the mortgagee for purposes of limitation. 1905, 28 Mad. 473 at p. 478 If there is an express agreement between the parties that the mortgagee is to receive the rents and profits in lieu of interest, in such an event, the receipt of the rents and profits by him would be tantamount to a payment of interest as such. 1921, 45 Bom. 1206; 1928, 110 Ind. Cas. 561 (All.) at p. 562.

Payment Must Relate to the Particular Debt Sued For—It must appear that the payment (whether of interest or principal) was made, not merely on account of a debt. but on account of the debt for which the suit is brought. Banning, p, 50; 1910,8 Ind Cas. 81 (Cal). The onus is on the plaintiff to show that the payment on which he relies is applicable to the debt sued for. 1848,3 Ex. 89; Burkett v. Blanshand. Where a partial payment on an existing debt is made to apply on a debt consisting of many items, all of them are thereby saved from the effect of the statute. 1935, 158 Ind. Cas. 260 (Lah,)

Payment on Several Debts: Creditor not Competent to make Appropriation. If more debts than one are due and a payment is made which is not specifically appropriated by the debtor, the question in respect of which debt the payment was made is one of fact to be decided on a consideration of the whole of the circumstances given in evidence. 1879, 49 L.J., Ch. 5, (Re-Rainforth) The payment is only effective if made on account of all the debts or if appropriated by the debtor to any one or more of the debts Hals. Vol. 19, p. 69; 1928, 10 Lah. 750.

Payment into Court under Compulsion or as Result of Execution Sale. A compulsory payment is not effective to remove the statutory bar. Wood, p. 514. In no case can a part payment that is enforced by law be treated as sufficient to remove the statutory bar. Wood, 1st. ed., p. 210. Thus a payment of interest on a debt under compulsion of a judgment recovered for such interest is insufficient to take the principal out of the statute. Sm. L.C.,

p. 582; see 1882, 6 Bom. 626. Part payment made under order of Court out of a fund belonging to the debtor which is in Court, is sufficient. Hals, Vol. 19, p. 95.

Payment to Creditor or His Agent. A payment to a person having no authority to receive it is not sufficient. 1892,1 Q.B. 765. The principle laid down in the English Decision. in this respect, is of universal application: see 1934. 68 M.L.J. 73. In other words, payment to a mere stranger is ineffectual. Hals. Vol. 19 p.73. Payment to a third party is sufficient, if made at the creditor's request and under agreement that it shall go in part liquidation of the debt. 1845, 7. Q.B. 479 (Worthington v. Grimsditch). Payment to husband upon a debt due to the wife is sufficient, the husband being considered as the wife's agent Darby, p. 115.

Payment by Whom. Under section 20, in case of payment of interest, it must be by a person liable to pay the debt or legacy (or by his agent). 1932 10 Ran 398 of p, 402 but the part payment of the principal must be made by the debtor himself, or by his agent. 1918 47 Ind. Cas. 655 (Oudh) To make payment effective against a party to save the statute. it must have been made by him or for him by his authorized agent. Wood, 4th ed. p. 1480; 1920 54 Ind. Cas. 318 (Mad.),

"Person Liable to Pay" does not Necessarily Connote all Persons so Liable : Payment by any one of them Suffices. Section 20 does not contemplate that, when there is a plurality of persons liable in respect of a debt, all of them should join in making the payment. The words "person liable to pay" in section 20 mean any person liable to pay the debt. Accordingly, a payment by one of the persons liable can avail not merely against the person making the payment and his successors but even against other persons liable in respect of the same debt. 1934,58 Mad. 418 at p. 422; 1932, 12 Pat. 93, (foll. in 1936, 163 Ind. Cas. 808.

Payment by Court —Where a payment has been ordered by a Court, that Court can be said to be acting as the agent of the debtor, 1923, 46 M.L J. 453. Where a judge has a duty cast upon him by law to make payment on behalf of the debtor, even against the wishes of the debtor. he (the judge), in making the payment acts as the agent of the debtor, and it is immaterial in such a case, to consider whether the debtor himself appointed the judge as his agent or not. 1934, 12 Ran. 610 at p. 613.

Payment under Mortgage must be by person Liable or Interested. Payment made by a person who under the terms of the mortgagee contract is entitled to make a tender and from whom the mortgagee is bound to accept a tender, is sufficient payment to save the statute. Darby, p 228; Cf. 3 P.R. 1918. If equity of redemption in the mortgaged property comes into the hands of different owners, a part payment or payment of interest by the owner of part of the property will set time running afresh not only against that part of the property, but also against all the property originally mortgaged. Darby p. 461; 1864, 11 H.L.C. 115. Chinnery v. Evans. (foll in 1921, 44 Mad. 544, and in 1926, 54 Cal, 179, and in 1932, 60 Cal. 87.

—S. 20

Mortgagor Bound by Payments made by His Assignee, and Vice Versa. The payment of interest by the assignee of the equity of redemption will keep alive the creditor's right of action upon the covenant of the mortgagor. 1853, 8 Exch, 716, Forsyth v. Bristowe 1920; 44 Mad. 544; 1926,54 Cal. 179. The a signee makes the payment as an agent of the mortgagor Darby, p. 155.

Payment by a mortgagor after he has assigned the property charged does not prevent time running in favour of the assignee 1886, 33 Ch.D. 127 (Newbould v. Smith.)

Payment by Insolvent's Assignee—Payment of dividend (in respect of a debt) made by the debtor's assignee under the Insolvency Act is insufficient. 1902, 1 K. B. 676; 1914, 2 Ch. 68 at p. 77; 1920,2 K.B. 200 at p. 212.

Official Assignee, Payment By.—The official assignee is not the insolvent's agent to make a payment on his behalf 1932, 58 Bom 505.

Tenant for Life—Payment By. Payment of interest or of part of the principal by a tenant for life (who is liable to pay) is binding on the remainder-man and keeps alive the debt as against the latter also. 1893,2 Ch 429 ; 1888,37 Ch. D. 651.

Execution Proceedings. Limitations Act, section 20, expressly provides that "a fresh period of limitation shall be computed from the time when the payment was made," and it does not make the certification (of the payment) a fresh starting point so as to enable the decree-holder to compute limitation from the date of certification. 1928,51 All. 237(F.B.) at p. 246, (Sulaiman C.J.)

Uncertified Payments. A payment by the judgment-debtor (which was duly certified) would save limitation under section 20. Limitation Act, assuming of course, that the requirements of that section (e.g. as to handwriting in case of a part payment of the principal) were complied with. 1909 31 All. 590. An uncertified payment cannot now operate to enlarge the period of limitation for applying for execution. 1916,38 All. 204 ; 1917 45 Cal. 630.

May be Certified at any Time. If the payment is, in fact, made within the period of limitation (i.e., before time for execution runs out), the mere circumstance that it is certified after the period has expired is immaterial It may be certified by the decree holder at any time, See 1918, 3 Luck. 684 (P.C.). (Raja Shri Prakash Singh's Casej, 1924,54 Cal. 143 ; 1918, 52 Ind. Cas 804 (Sind. F.B).

Certification of Payment Valid, though Decree then Prima Facie Time-barred but for such Payment. The certification by the decree holder must take place within such time as is required to save the application for execution from being barred by limitation. 1918,23 C.W.N. 320 at p, 321 ; 1924,54 Cal. 143 at p. 149.

Privy Council held that the certification (by the decree-holder) can take place even when execution of the decree is prima facie time barred but for the payment certified. 1926, 1 Luck. 428, affirmed on substantially the same

grounds, in 1928, 3 Luck. 684, (P.C.), Raja Shri Prakash Singh's case, where their lordships approved of the Full Bench decision in 1928, 51 All. 237(F.B.) on the above point.

Payment, if otherwise Valid under section 20, may be Certified by Decree Holder "At any Time", but cannot Enlarge Limitation as a "Step-in Aid" Article 182 —When a decree-holder claims an extension of limitation under section 20 by reason of a payment of interest, &c., "the certification of payment, being a step in furtherance of execution can be regarded as a step-in-aid of execution", presumably under clause 5 of article 182. 1932,7 Luck, 590(F.B.), at p. 597. But a payment which does does not satisfy the requirements of section 20, (e.g., if the payment be made after the statute has barred the claim or if it be not evidenced by writing of the judgmeut-debtor) is nothing either under that section or uuder article 182, and the decree-holder cannot, by applying to certify the payment, get a fresh terminus a quo under article 182, clause 5, inasmuch as it has been held (overruling the earlier decisions to the contrary) that the certification by the decree-holder is not an "application" at all within the meaning of clause 5 of article 182. See 1931,59 Cal 760 (F.B), and other cases cited under Art. 182, clause (5), under the heading "TO CERTIFY PAYMENT OR ADJUSTMENT".

Payment must be within Period of Limitation. The payment to be operative under section 20 must be made before limitation for the suit or application has fully run out. 1881,6 Cal, 815 ; 1888, 11 Mad. 218 ; the contrary view taken in 1878, 2 C.L.R. 346 is bad law.

Payment made Beyond Time, But in Vacation while Right of Suit Still Subsists. If the period of limitation expires when the Court is closed, the plaintiff's right to sue is still subsisting in the sense that he can, on there-opening of the Court, bring a suit (vide section 4) But a payment of interest or part of the principal made after the period of limitation, though during such closing of the Court, cannot be deemed to be made "before the expiration of the prescribed period" within the meaning of section 20 of the Limiration Act, and such payment is therefore ineffective to give a fresh starting point of limitation under section 20. 1928, 55 Cal. 1210, per Rankin C.J. (approving 1902, 26 Bom. 782).

Successive Payments Section 20 does not restrict its operation to a single payment ; each payment causes the statute to run anew. 1933,55 All. 632 at p. 633, 1933,57 Bom. 453 at p. 454.

Memorandum of Payment by Creditor is Evidence of Payment After His Death. An endorsement by the creditor on a bond, pronote, &c., of payment of interest, or of part payment of principal made before the statute had run, is after his death evidence of such a payment for purpose of taking the case out of the operation of the statute as being a declaration of a deceased person against his interest. Sec 32, clause 3, Indian Evidence Act; Field on Evidence, p. 133.

Burden of Proof. The burden of establishing the fact of a payment of interest or a part payment of the principal, and all the elements requisite to

give it effect, is upon the plaintiff. 1909,31 All. 590 at p. 592; 1929,49 C.L.J. 560, per Rankin C.J,

Legacy : Part Payment of Principal. In case of a legacy, at part payment of the principal does not under section 20 save the statute. See 1934,68 M.L. J. 73 at p. 76.

Fraudulent Payment. Quoere, whether a payment which upon the debtors subsequent insolvency is held to be fraudulent is sufficient to save the statute. 1889,23 Q F.D. 74.

Amendment of section

Retrospective effect—Amendment does not revive barred debts—Not retrospective.

Where the debt has become barred by limitation long before the amendment of S. 20. Limitation Act, took effect, the amendment cannot be relied upon to operate retrospectively so as to revive the barred debt. *S. Venkatappayya Vs. Y. Venkatappayya* AIR (33) 1946 Madras 72 Rel: AIR 1944 Madras 398.

Part payment towards principal—Acknowledgment of payment by debtor —Limitation saved.

Under S. 20 where part of the principal of debt is paid by a debaor or by his agent duly authorised in this behalf, and an acknowledgment of the payment appears in the handwriting of or in a writing signed by the person making the papment limitation is saved. *Bulakhidas Ns. Ganpatrao* AIR (33) 1946 Nagpur 112.

Open payment—Appropriation should be towards interest—Payment of sum more than interest due—No presumption that it was to be appropriated in part towards interest and in part towards principal.

In the case of an open payment, it can only be treated to have been paid towards interest if from the circumstances it can be found as a fact that it has bee paid towards interest "as such". It is not necessary that the writing itself should contain the indication that it is being paid towards interest "as such", the plaintiff is entitled to show from the evidence and the circumstances in the case that the payment was made towards interest "as such". Where the plaintiff does not say that he appropriated a portion of the amount paid by the defendant, which exceeds the interest due on the date of payment towards the principal within the period of limitation, but on the other hand says that he received the amount towards interest but there is a clear finding of fact, that the amount was not paid towards interest "as such" it cannot be held that a part of the amount went to pay off the principal and that a part was necessarily paid as interest and the plaintiff cannot take advantage of any part of the provisions of S. 20. *Ajodhya Prasad Vs. Gobind Missir* AIR (33) 1946 Patna 404. Rel: AIR 1940 P.C. 53 AIR 1946 Patna 59 AIR 1945 Patna 271.

—S. 20

Payment not specified as towards interest or principal. Creditor may appropriate it towards principal to save limitation before limitation expires In order to obtain a fresh period of limitation under S. 20 any appropriation by the creditor towards the principal of any sum paid by the debtor without indicating whether the payment is towards interest or principal, must be before the expiration of the period of limitation. *Sarubdeva Prasad Vs. Dwarka Prasad* AIR (33) 1946 Patna 59. Fol: AIR 1940 P.C. 63.

Authority to pay—Need not be in writing:

It is not necessary that to be binding the authority to pay should always be express; an implied authority is equally binding. *Rahmatullah Vs. Sardar* PLD 1961 (W.P) Peshawar 51.

Payment on account—Limitation not saved.

Where a debtor believes that principal and interest are both payable and makes a payment merely on account, it cannot save limitation *Pearey Lal Vs. Solu Gir* AIR (33) 1946 Allahabad.

Joint debtors—paymeat by one—others not affected—Difference between sections 19 and 20.

The provisions of sections 19 and 20 of the Limitation Act, 1908 are exactly parallel. Under section 19 the acknowledgment is to be made by the party against whom the property or right is claimed or by some person through whom he derives title or liability, and under section 20 there is a corresponding restriction, namely, that the payment towards interest or principal is to be made by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf. The difference in wording is due entirely to the difference in subject matter, section 19 relating to the very broad and general terms "property" and "right" while section 20 is concerned only with debts and legacies. No distinction, therefore, can logically be drawn between sections 19 and 20 of the Act with respect to the effect of an acknowledgment and of payment. Sub-section (2) of section 21 of the Act operates as an explanation to both, making it clear that under section 20, as under section 19, the liability is confined to the persons described in the sections and joint contractors cannot be bound by an acknowledgment or payment made by another of them. Payment by one of the several joint debtors, therefore, does not bind the others under section 20 of the Act. *Rahmatullah Vs. Sardar* PLD 1961 (W.P) Peshawar 51.

Effect of payment of interest or principal.

Mode of payment.

s. 20 does not specify any particular mode or form of payment. 25 C. 844: 25 I. A. 95: 2 C.W.N. 402 *P.C.*

Payment may be made by any medium. B. 24 619.

Payment by way of adjustment of account is sufficient. 1929 Mad. 432.

—S. 20

Payment by cheque.

In case of payment by cheque signed by debtor fresh period is to be computed from the date when the cheque is actually handed over and not from the date it is cashed. If the cheque is not signed there is no acknowledgment of part payment within s. 20. 29 C.W.N. 496: 1925 Cal. 937, 19 C.W N. 724: 42 C. 1043, 9 Pat. 851, 1933 Lah. 741.

When there are several debts.

Where there are dealings between two parties which give rise to a continuous account so that one item, if not paid, shall be united wtih another and form one continuous demand, the whole together forms but one cause of action and cannot be divided and payment made in a lump sum may save limitation. 42 C 1043: 19 C.W.N. 274. This case has been differed from and commented on by the Allahabad H C. where it has been held that in the case of a trades man's account for goods sold from time to time, in respect of each item the liability to pay arises hence the limitation commences under Art. 52 on the date of delivery. So in case of payments from time to time made by the customer without specifying the particular item for which the payment was made the plff, is entitled to appropriate them to the earlier items but not to credit them to the entire balance due up to date in the sense of saving limitation for each or everyitem. Art. 85 is not applicable to such a case. 1935 All. 53: 1935 A.L.J. 33

Where there are two debts payable to the same creditor it is the intention of the debtor to which debt he makes the payment that saves the limitation and not the appropriation by the creditor. 30 Punj L R. 233: 1939 Lah. 288 (44 B. 392, 88 P.R. 1904, 1221 All. 335) *Dist.*

When there are several debts to the same creditor and payment is made without specification, limitation will not be ordinarily saved thereby but special circumstance may be looked to, to determine whether the payment of interest was made on account of all or any of the debts then due. 13 C.L.J. 139.

Endorsement as to payment.

The date of endorsement does not avail but the date of actual payment. 1929 Mad. 432.

Actual payment is necessary. 1928 Mad. 509: 51 M. 549.

But endorsement of payment saves limitation although actually no payment is made. 38 I.C. 293, 16 I.C. 754, 23 I.C. 15, 10 M.L.J. 25, but statement made after the period of limitation does not save limitation. 71 I.C. 17 : 19 N.L R. 6.

A written statement filed in suit which recites payment cannot be called in aid under s. 20 for the purpose of the suit itself. 39 C.W.N. 139 : 60 C.L.J. 396 : 1935 Cal. 255.

—S. 20

Acknowledgment need not be simultaneous with payment. 1931 All. 375 : 131 I.C. 867.

An acknowledgment of payment need not be before the expiry of the period of limitation. 1940 Oudh 177 : 186 I.C. 163, 1937 Cal. 284 : 172 I.C. 362.

Time runs from date of payment and not from date of acknowledgment of payment. 1942 Pat. 395 : 200 I C, 306.

"Before the expiration of prescribed period".

Payment during vacation after the period of limitation does not save limitation. 55C. 1210 : 1929 Cal 6826B 782

Who is to make the Payment.

Payment by one of the joint debtors will not save limitation 1935 Cal. 648, 1942 Cal, 251, 1943 Bom. 381.

The purchaser of the equity of redemption is "a person liable to pay the debt" within s. 20 (1). 44 C.L.J. 188 : 1926 Cal. 1218 : 98 I. C. 204.

Payment by a purchaser of a portion of mortgaged property saves limitation. 1943 Mad. 395 : 209 I.C, 300,

Payment by mortgagor after transfer of mortgaged property saves limitation. 1942 Mad. 200 : 200 I.C. 218.

Payment by mortgagor after transfer of portion of mortgaged property saves the period against the transferee also. 11 C.W.N. 107. 9 C.W.N, 868: 32 C. 1077 ,36 C.W.N. 1138.

Payment by principal debtor does not give a fresh starting against his surety. 1934 Mad. 639, 28 B. 248, 21 C.W.N. 482:44 C. 978 :25 C.L.J. 238, *contra*. 1940 Cal. 401: 44 C.W.N. 985.

Where a person sends money through a messenger or post, "the person making the payment" is not the messenger or the postman but the person who sends the money. 53 C 163: 94 I.C. 657 : 1926 Cal. 510.

Payment by pleader may save limitation. 20 C.W.N. 28n,. so also payment by court. 44 M. 97 : 41 M.L.J. 423, and by menial servant 61 I C. 918.

The authorisation need not be in writing. 1950 Ajmer 4, 1947 Oudh 173 : 229 I.C. 265.

Where it is agreed between a third person and the promisor that the former would discharge the latter's debt evidenced by promissory note to the promisee, and it is clear from the promisor's evidence that he left it to the third person to do so, an implied authority from the promisor to the third person to pay on his behalf the interest as it became due is established so as to save limitation under sec. 20. A.I.R 1929 P.C. 297: 60 C.W.N. 1136: 34 C.W.N. 145 P.C.

—Ss. 20-21

To whom Payment is to be made.

Payment of interest to one of several mortgagees enures for the benefit of all the mortgagees to save limitation. 110 I. C. 561:26 A.L.J. 722: 1928 All. 387.

Part payment in time but acknowledgment out of time, effect of.

It is enough if the part payment is made in time though the acknowledgment of the payment in the handwriting of the debtor is made after the expiry of period of limitations. 55 A. 280 : 1933 All. 363, 17 M. 92, 1929 Mad. 432, 1923 Nag. 117, 57 B. 453:1933 Bom. 252.

Unspecified payment does not save limitation.

A creditor appropriating an open payment towards interest cannot have a fresh period. 1940 P.C. 63 : 44 C.W.N. 625.

A creditor may appropriate an open payment towards principal, 1945 Pat. 271:220 I.C. 255, 1940 P.C. 63:44 C.W.N. 625:187 I.C. 233 P.C.

Acknowledgment without specifying whether the payment is for principal or interest gives a fresh period of limitation. 1939 Nag. 156 182 I.C. 573.

Payment on account does not save limitation. 1946 All. 58:223 I.C. 175, unless the creditor has appropriated towards principal within limitation. 1946 Pat. 404 :224 I.C. 65.

Where a payment is made without any specification and the debtor does not signify whether he is making the payment of interest as such or of part payment of the principal, there is really no admission on his part that further sum is still due from him and there is no acknowledgment of liability. and also if the creditor appropriates it towards interest, there is neither a payment of interest as such nor a part payment of the principal within this sec. 1935 All. 946 F.B. 1935 All. 47, 55 A. 632 : 1933 All. 453.

Payment of rent and profits of lands

Receipt of rent and produce of land as interest saves limitation. 35 C.L.J. 58 : 64 I.C. 903, 72 I.C. 492.

In the case of an usufructuary mortgage the receipt of profit by the mortgagee does not give fresh starting point to a suit for redemption. 110 I.C. 560.

21. AGENT OF PERSON UNDER DISABILITY.—**(1) The expression "agent duly authorised in his behalf" in sections 19 and 20 shall in the case of a person under disability include his lawful guardian committee or manager or an agent duly authorised by such guardian, committee or manager to sign the acknowledgment or make the payment.**

—S. 21

(2) ACKNOWLEDGMENT OR PAYMENT BY ONE OF SEVERAL JOINT CONTRACTORS, ETC. **Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them**

1. [(3)] **For the purposes of the said sections—**

(*a*) **an acknowledgment signed, or a payment made, in respect of any liability, by, or by the duly authorised agent of, any widow or other limited owner of property who is governed by the Hindu law, shall be a valid acknowledgment or payment, as the case may be, as against a reversioner succeeding to such liability; and**

(*b*) **where a liability has been incurred by, or on behalf of, a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.**

Acknowledgment of debt by defacto guardian of Hindus - minor—Debt may still become time barred.

A defacto guardian of an adopted Hindu minor cannot extend the period of limitation in respect of the debts contracted by the adoptive father, by signing the promissory notes. *Myneni Fyndarikakshayya Vs Kondomudi Sreeramulu* AIR (33) 1946 Madras 1 (F.B.) Rel: AIR 1940 Mad. 33 (F.B.).

A defacto guardian had no power to bind a minor or his estate by his promissory note or acknowledgment of liability, and that the sale was therefore unsupported by consideration as the debt in discharge of which the sale was executed though binding on P was barred and unenforceable at the time of the sale. *Thadavarthi Bopayya Vs. Myneni Pundarikakshayya* AIR (33) 1946 Madras. 198. Rel: AIR 1946 Mad. 1 (F.B.).

(1) Agent of person under disability. (2) acknowledgment by one of several joint contractors. (3) (a) by widow (b) by karta of joint family.

A *defacto* guardian is not a duly authorised agent. 1946 Mad. 1 F.B., 1948 Nag. 293.

Should be limited to cases expressly covered by it and the term "only" in that section is not a mere surplusage. 44 C.L.J. 475 : 1927 Cal. 193 : 98 I.C. 381.

---

1. Sub-section (3) ins. by Indian Limitation (Amdt) Act, 1927 (1 of 1927). S. 3.

—Ss. 21-22

The payment of interest by a debtor does not save limitation against his co-debtors unless the payer is the agent. 1932 Cal. 620 : 36 C.W.N. 487 : 55 C.L.J. 347 : 59 Cal. 1128.

Only lays down that one of the joint contractors cannot be charge able on account of an acknowledgment made by another, but it does not say that the acknowledgment is not binding against the contractor making it. 1928 All. 387.

The authority contemplated by sec. 21 need not be special one for the payment of particular loan. 1933 Cal. 826, but if a debt due by two brothers is allotted to one by partition payment of interest by one will not save limitation against other. 1933 Cal. 826, 1929 P.C. 297 *Dist*.

A partner is presumed to have authority to sign an acknowledgment on behalf of the firm, 1932 Bom. 316, 1932 Lah. 456.

an acknowledgment by a Hindu widow binds the reversioner. 1946 Pat. 120 : 226 I.C. 186.

Acknowledgment by manager of joint Hindu family binds the whole family. 1945 Bom. 511.

22. EFFECT OF SUBSTITUTING OR ADDING NEW PLAINTIFF OR DEFENDANT.—**(1) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.**

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

Where a suit is instituted without impleading a person who is not a necessary party, but is added as a party in the stage of appeal, after the suit as against him has been barred, for the benefit of the parties to ensure them against future litigation, such a suit will not be hit by sec. 22 of the Limitation Act. (1955) 7 DLR 105.

Minor described as a major.

Where a minor is described through mistake as major or vice versa, the mistake can be corrected even after the expiry of the period of limitation. To misdescribe a person who has been made a party is a different thing from an omission to make a person a party. Where it is a case of misdescription of a party, section 22 of the Limitation Act is not relevant. (1954) 6 PLR (Dac) 20.

—S. 22

Sole proprietor—Plaintiff suing in the name of the firm—Amendment correcting the description of the plaintiff does not substitute or add the plaintiff.

In the present case it is clear that the plaintiff intended to sue in his own name and not in the name of the firm and the words "Ismail Haji Sulaiman, a proprietory firm" is a wrong description and the amendment if allowed will not attract the operation of section 22(1) of the Limitation Act, inasmuch as no plaintiff is being substituted or added thereby. ***Ismail Haji Sulaiman Vs. M/s. Hansa Line*** (1961) 13 DLR 66.

Addition of parties—Proper party may be added at appellate stage—Sec. 22 not applicable.

Where a suit is instituted without impleading a person who is not a necessary party, but added as a party in the stage of appeal, after the suit as against him has been barred, for the benefit of the parties to ensure them against future litigation such a suit will not be hit by section 22 of the Limitation Act. ***Kailash Chandra Biswas Vs. Gour Chand Sarder*** (1955) 7 DLR 105.

Misdescription of party—Party suing under wrong name—Amendment of plaint covered by S. 22.

The plaintiff could not sue under the name of the firm but he did so. Later on he applied for amendment of the plaint to correct the misdescription.

Held : Imperfectly and incorrectly a party is designated in a plaint—the correction of the error is not the addition or substitution of a party but merely clarifies and makes apparent what was previously shrouded in obscurity by reason of the error or mistake. The question in such a case is one of intention of the party and if the Court is able to discover the person or persons intended to sue or to be sued a mere misdescription of such a party can always be corrected provided the mistake was bonafide Order XXX, R. 10 C.P,C. Such an amendment does not involve the addition of a party so as to attract section 22(1) Limitation Act. Suits by or on behalf of dead persons stand in a different category. The principle that a misdescription could be corrected by amendment could not obviously be applied to such a case but this is far from saying that merely because the law does not recognise the firm as being a legal entity, the firm could not indicate or designate the individuals composing the firm. ***Ismail Haji Sulaiman Vs. Hansa Line*** PLD 1961 Dacca 693—13 DLR 66 (D.B.)

Party joined at a later stage—Suit deemed to be instituted against the party on the date of joining the party.

In my opinion the suit against a party joined at a later stage can be deemed to have been filed on the date when he was so made as a party to the suit. Therefore, on expiry of the period of limitation against him he can

—S. 22

not be joined as a party. *Chand Oil Mills vs. Muhammad Zakaria & Co.* PLD 1958 Karachi 510.

Scope of Section. Section 22 contemplates cases in which an action is defective by reason of the person or one of the persons in whom the right of action is vested not being before the Court. 1916, 20 C.W.N. 833 (P.C.),

Appeals : Adding Appellant or Respondent after time. The section is wholly inapplicable to appeals, and there is no other provision in the Act analogous to section 22 with respect to appeals. 1880,2 All. 107; 1892. 14 All. 154 (F.B).

Joint Claim : Failure of Entire Suit when Necessary Party Added after Time. Where several persons are jointly liable on a contract, they must all be sued in an action for the breach thereof, i.e., joint contractors must be sued jointly. Dicey on Parties, p. 230.

Joint Right of Action for Tort. Liability of joint wrongdoers is joint and several, and the injured party is entitled to sue them jointly or severally at at his choice. 1907, 6 C.L.J. 383 (suit for mesne profits).

Party Added by Order of Court—Order 1. Rule 10, Civil Procedure Code. On the supposed authority of 1886, 12 Cal. 642 it was held in the under-noted cases, 1900, 27 Cal. 540: 1897 24 Cal. 640, that where a Court acting under section 32, Civil Procedure Code, 1882 (now Order 1, rule 10(2) Civil Procedure Code, 1908) orders the name of any person to be added as a party, no question of limitation arises, and that it is free from the restrictions imposed upon it by section 22, Limitation Act. See 1905, 32 Cal. 582, (S.C. 37 Cal. 229, P.C), (where this question was left open).

Suit in Name of Wrong Plaintiff; Proper Plaintiff Substituted after Time. When a suit is bonafide brought in the name of a wrong plaintiff, the mistake may under section 27, Civil Procedure Code. 1882 (now Order 1, rule 10 (I). Civil Procedure Code, 1908) be corrected by adding the proper person as plaintiff, and the question of limitation does not arise in such cases. 1887,14 Cal. 400; 1897, 22 Bom. 672;149 PR. 1907. 17 Bom 413.

Amendment : Correcting Misdescription.—Where amendment is merely the correction of a misdescription (e.g. of a party). the effect is not to introduce a new party on the record, and consequently no question of limitation arises. 1896, 18 All. 198 (F.B.); 1911, 33 All. 735 (F.B.) at pp. 373, 738.

Amendment : Adding New Cause of Action after Time. Amendments are liberally allowed to save a cause from the statute when the cause of action is not totally changed Wood, 4th ed., p. 1529; 1909, 34 Bom. 250. If the amendment does not present a new or different cause of action. the statute does not bar the amendment. Wood, 4th ed;, p. 1491. 1911, 36 Mad. 378.

Amendment : Substituting Real for Nominal or Wrong Party. A mere substitution of a real for a nominal defendant, as of a company for its Officer, would be permitted even after time. Lightwood, p. 309; cf. 1916, 43 Cal.

—S. 22

441 Section 22 does not apply when there has been misdescription of parties; where the same legal person remains the plaintiff or defendant, but that party has been sued by a wrong name or through the wrong representative 1879,2 All. 296; 1915,20 C W,N 49.

Amendment : Changing Grounds of Liability. When the amendment sets up no new matter or claim, but merely amplifies and re-states with more certainty or in a different form the cause of action set out in the original plaint, it relates back to the commencement of the suit, and the statute is arrested at that point 1924,51 Cal. 845; 1931. 33 Bom L R. 1385 at p. 1389.

Amendment : Changing Capacity in which Party Sues or is Sued.—Change of the capacity in which plaintiff sued from that of an individual to that of a deceased person's administrator may be allowed. even though limitation has then run out 1924,51 Cal. 845;cf.1916, 20 C.W N. 833 (P C.)

Hindu Family : Manager's Authority to Sue alone. The manager of a joint Hindu family is not entitled to sue in his own name to recover debts due or property belonging to the family without joining with him in the suit either as plaintiffs or defendants all other members. and when the latter are impleaded after limitation, the whole suit fails. 1894, 18 Mad. 33; 1883,7 Bom. 217; 69 P.R. 1906; cf. 1907,7 C.L.J. 251.

Hindu Family : All Members Must be Impleaded. A single member of a joint Hindu family cannot sue to recover a particular portion of the family property for himself All members must join either as plaintiffs or defendants, and the suit must be brought to recover the whole property for the benefit of all. If for any cause, such as lapse of time, other members cannot be impleaded, the whole suit must fail. 1904,28 Bom. 11 at pp, 18, 19, 1907,29 All. 311 at p. 317 (reversed in 1911, 33 All. 272, P.C.).

Hindu Family : Suit on Mortgage. A suit to enforce a mortgage can be brought by or against the manager (of the joint vamily) as such, and the other members of the family are not necessary parties ; accordingly, if they are impleaded after time, the suit is not thereby defeated. 1912, 34 All. 549(F.B.), 1912,34 All. 572 (F.B.) ; 1931, 135 Ind. Cas. 248 (All).

Suits on Mortgage. In a suit on a mortgage, where a subsequent purchaser from the mortgagor is impleaded after limitation, the whole suit is not liable to dismissal merely because the mortgage was joint and indivisible In such cases the mortgage-debt should be apportioned between the defendants who are barred and those who are not barred. 1903,30 Cal. 755 ; 1906, 33 Cal. 1079 at p. 1093 ; 1928, 33 C.W.N. 248.

Suit for Partnership Accounts. In a suit by a partner for partnership accounts all the partners are necessary parties, and, therefore, if any of them is impleaded aftet time the whole suit fails. 1887, 14 Cal. 791 ; 1913, 18 C.W.N. 464.

—S. 22

Suit for Possession. In a suit to recover joint property of two or more persons, if all the necessary parties are not impleaded within time, the whole suit fails. 19 6,36 Ind. Cas 77 (Pat.), foll. in 1916, 36 Ind. Cas. 542 (Pat).

Pre-emption Suit. In a suit for pre-emption in respect of a joint and indivisible sale, if all the joint vendees or their representatives are not impleaded as defendants within the period of limitation, the whole suit fails, 1881,4 All. 145, (foll in 1911, 11 Ind. Cas. 938, All. But when the sale is apportionable, plaintiff is entitled to succeed in respect of those defendants who were joined within time. 6 P.R. 1909.

Defendant made Plaintiff and Vice Versa, Transfer of a party from proforma defendant to plaintiff is not adding a new party within the meaning of section 22. 1910,38 Cal. 342 ; 1909,34 Bom. 91, (foll. in 1929,53 Bom. 472. Cases where a plaintiff has been made a defendant or vice versa are now expressly saved from the operation of section 22, Act 1908 (vide the amendment made in section 22 by the Act of 1908). 1934,10 Luck. 203 at p. 205.

Assignee Pendente Lite. Section 22 has no application when a suit is with the leave of the Court under section 372, Civil Procedure Code, 1882 (now Order 22, rule 10), continued by or against an assignee pendente lite. 3 P.R. 1907 : 1915,40 Mad. 722. The contrary view taken in the following cases is no longer tenable. 1907,34 Cal. 612 (F.B.) ;.

"When he was so Made a Party" Refers to Time When he was Brought on Record. Section 22 enacts that as regards a new plaintiff on defendant limitation is checked only "when he was so made a party." This would refer to the time when an application was made for him to be made a party. 1893, 17 Bom 29 (foll in 1926,50 Mad. 372 and in 1930,128 Ind. Cas 675, Sind).

Limitation Checked from Filing of Plaint and not When all Co-plaintiffs Sign and Verify it Where several persons are named as co-plaintiffs in the plaint which is signed and verified by one of them alone, limitation is checked as regards all the co-plaintiffs from the date when the plaint was first filed. 1889, 17 Cal. 580 (P.C), (relied on in 1931,54 All. 57, F.B)

Only one of Several Plaintiffs Allowed to Continue Suit : Limitation Checked When Plaint First Filed When a suit is commenced within time by several persons, and the names of all the plaintiffs (except that of one plaintiff A) are struck off on the ground of misjoinder, and A alone is permitted to continue the said suit, in such an event A would not be time-barred merely because limitation had then run out. 1918, 35 Cal. 495, (citing 1893,1 Q.B 771.

Suit against Dead Man : Joinder of Representative after Time. If a suit is brought against a person who is then dead, and his legal representatives are subsequently joined as defendants, the case is not excluded from the operation of section 22 ; and accordingly, if limitation has run out at the time of such joinder, the suit would be barred. 1885,12 Cal. 330 ; 1907,6 C,L.J. 383.

—S. 22

Suit by or against Legal Representative of Deceased : Proper Representative Joined After Time. Where the debtor has died before suit and plaintiff sues A as the deceased's legal representative and subsequently (A not being in fact such representative) the plaintiff brings the true representative on the record as defendant, the case is covered by section 22 and is not excluded from its operation by clause 2 of that section. See 1873 10 Bom. H.C. 224 ; 1897,21 Bom. 580.

Suit by or against Agent: Principal Joined after Time. When a suit is wrongly brought in the name of an agent, and after time has run out the principal is substituted as plaintiff, the suit is not barred. 1887, 14 Cal. 400, (foll. in 1915, 20 C.W.N. 49.

Suit by or against a Firm or Partners. Where a suit is brought by or against a Firm in the name of the Firm, the joinder of the partners (of the Firm) after limitation does not bar thr suit, the case being one of mere misdescription. 1885, 7 All. 284 at p. 287; 1892, 17 Bom. 413.

Suit by or against Minor: Wrong Description of Party. In case of a suit by or against a minor, the minor himself must be named as a plaintiff or defendant. If by an error the guardian (and not the minor) is named as the party suing or being sued, the mistake cannot be corrected after limitation for the suit has expired. 37 P.R. 1889; 1875, 12 Bom. H.C. 17.

Suit by or against Idol or Temple. A suit by or against an idol must, it seems, be brought in the name of the idol as repre-sented by the manager. If, however, the suit is brought in the name of the manager, the mistake may by corrected, and it would not amount to adding a new party within section 22. 1911, 33 All. 735 (F.B.).

Suit by Executor: Beneficiary added after Time. In a suit brought by an executor for possession, if the beneficiaries are, by leave of the Court, substituted as plaintiffs, that is not, having regard to Order 31, rule 1, Civil Procedure Code, tantamount to substitution of new plaintiffs within section 22, Limitation Act. 1903, 7 C.W.N. 817.

Suit by Insolvent: Official Assignee added after Time. A suit brought by an insolvent in his own name, after his adjudication, is not maintainable, and the substitution of the name of the Official Assignee at a later date amounts to the addition of a new plaintiff, within the meaning of section 22, Limitation Act. 1926, 28 Bom. L.R. 554.

Suit by Unregistered or Unincorporated Society: Members Impleaded after Time. A suit by an unregistered or unincorporated society must be brought in the names of all the members of the society. 1897, 20 All. 167.

Suit against Government: Secretary of State added after time. In a suit against the Government, where the original defendant is an officer of the Government and the Secretary of State for India is impleaded as a co-defendant after limitation, the suit against the latter is barred. 1901, 6 C.WN. 218.

—S. 22

Suit against Municipal Committee. Where, in a suit brought against a Municipal Committee, a wrong official is named as the defendant, and after time has run out, the error is corrected and the name of the proper official substituted, the suit is not barred by section 22. 1879 2 All. 296 (distin. in 1901, 6 C.W.N. 218 and foll. in 1915, 20 C.W.N. 49, and relied on in 1925, 27 Bom. L.R. 1122); in 1892, 16 Mad. 305 the question was left open.

Suit against: "Agent" of Railway Company: Misdescription of Defendant's name. Where a suit was instituted against "The Agent East Indian Railway Company," Held, that the plaintiff was not entitled, after the period of limitation for the suit had expired, to amend the plaint by substitution the "East Indian Railway Company," for the defendant originally sued. "It is not a case of misdescription but if the amendment is allowed it will have the effect of adding a new party to the suit, and section 22 of the Limitation Act will apply." 4 1923, 3 Pat. 230.

Suit against Debutter Estate; Adding Shebait after time. When plaintiff asked for a decree against the debuttor estate and joined as defendant one A both as a receiver of the estate and in his personal capacity, but no one was joined to represent the estate as shebait and subsequently plaintiff amended the plaint and impleaded the said A (who was already on the record as defendant) also as a shebait and as representing the estate. held—the effect of the amendment was merely to make the estate properly rspresented and that no new defendant was introduced. 1905, 32 Cal. 582, (on appeal, 1909, 37 Cal. 229, P.C.

Suit against Surety: Principal added after time. When, in a suit against the surety, the principal debtor is added after time, the suit is barred as regards the latter alone, and it may be decreed against the surety. See 1885, 12 Cal. 330.

Effect of substitution and addition of party

This section does not affect a case when amendment is made with the leave of the court. 19 C.W.N. 1193.

The section applies to suits only and not to applications. 1929 P. 88, nor to execution proceedings. 2 Pat. L.T. 619 : 611. C. 30, nor to application for setting aside *ex-parte* decree 2 Pat. L.T. 771 : 69 I.C. 536, or to application under Or. 21, R. 101 ; the proper Article of limitation to apply to such application is Art. 165. 58 Cal. 55, 1931 Cal. 385.

This section applies to a case where the new plff. is introduced and not to a case where an amendment is made with regard to the dsscription of the plff. 32 C.W.N. 396 : 1928 Cal. 485 : 113 I.C. 24.

Correction of a misdescription of the defendant is not addition 1953 Mad. 838.

—S. 22

Where a new deft. is added at the court's instance after the period of limitation of the suit, s. 22 of the L.Act applies and bars plff.'s remedy as against the added deft. 36 C. 519 : 11 C.W.N. 350 : 5 C.L J. 242: 2 M.L.T. 137, *F. B.*, 24 C 640, 27 C. 640,14 C.W.N. 459, *overruled* 12 C. 642, *Exptd.*, 33 C. 613 : 10 C.W.N. 551 : 3 C.L J 576, *Approved.*, 28 B. 11 p. 20, 14 A. 524,85 I.C. 961 : 1925 Mad. 917, 29 C.W.N. 614 : 52 C. 783 : 90 I.C. 426 : 1925 Cal. 716.

Where the addition of a deft is not essential to the maintainability of the suit but is merely made to protect the interest of the deft. sec. 22 is no bar. 26 C.W.N. 488 : 1922 Cal. 149, 33 C. 1079, 33 A. 272, 28 B. 11.

S 22 applies to a case even where a person who is added as a party is not a necessary party but only a proper party. 33 C.W.N. 248 : 49 C.L J. 16: 1929 Cal. 188. *contra* joinder of proper but not necessary party after limitation period is not fatal. 27 Bom. L.R. 1168 : 1925 Bom. 547 : 94 I C. 575, 22 B. 672, 28 B, 11 *Approved*, 16 C.W.N. 96.

Where certain persons are subsequently added for the benefit of the defds. to ensure them against further litigation the suit may proceed 38 C.W.N. 409 : 59 C.L.J. 295 : 1934 Cal. 187.

A suit under Or. 21 r. 63 C.P.C. fails if the necessary party is added after the period of limitation. 33 C.L.J. 201.

Distinction between necessary and proper party. 1922 Pat. 326.

Where the defts. were first made defts. as sons and representatives of the deceased tort-feasor but subsequently discharged and estate of the deceased was made party and the sons were again reinstated as defts the suit should be deemed to be filed on the date of reinstatement. 1926 M. W. N, 592 : 1926 P.C. 88 *P.C.*

This sec. does not apply when the deft. is transferred from the category of deft. to plff. 19 C.W.N. 1269: 21 C.L.J. 611, 38 C. 342 : 13 C.L.J. 3, 35 C. 1065 : 13 C.W.N. 186: 8 C.L.J. 286, 19 C.W.N. 1269, 66 I.C. 873, 37 C. 229, 14 C.W.N. 261 *P.C.*, 17 C. 580 *P.C.*, 30 M.L.T. 57, 7 C.W.N. 575, 52 C.W.N. 866.

No question of limitation arises by reason of amendment of the plaint when an alleged minor plff. is discovered to be a major on the date of the suit. 1927 Cal. 477, 20 C.W.N. 49.

When a partnership suit plaint is allowed to be amended by putting in the full name of the partners who were at first described by their names constituting the firm it was not addition of new party. 50 C. 549: 75 I.C. 81, (12 C.W.N. 8. 20 C.W.N. 49, 37 C. 229) *Ref.*, 90 I.C. 685; 27 Bom. L.R. 1122: 1925 Bom. 527.

—S. 23

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

Continuing wrong

'Continuing wrong'—whether a particular injury is a continuing wrong depends on whether the act complained of is complete on a certain date or not. If the injury is complete on a certain date that constitutes a complete ouster notwithstanding the fact that the injury continues to be. In such a case, the section has no application. (1957) 9 DLR. 559-8 PLR (Dac). 537.

Its applicability.

When obstruction over a disputed plot of land is of such a nature that it may be called a trespass, section 23 of the Limitation Act applies but where there is a permanent obstruction over the disputed plot of land as may be called a complete ouster the above mentioned section will not be attracted. 9 PLR (Dac.) 340.

Continuing Cause of Action. A cause of action, in respect of which a plaintiff is entitled to have the prospective damages assessed, must be distinguished from a continuing cause of action. Hals. Vol. 10, p. 310; 1926, 98 Ind. Cas 679 at p, 680, (Nag.).

A suit to restrain waste must be brought within 3 years of the time when the waste begins (vide article 41), notwithstanding that it is a continuing wrong. 1901, 25 Bom. 644 at p. 649 (F.B.).

Successive Breaches of Contract,— In the case of an instalment bond in which there is no default provision, successive actions are born as the successive instalments become due. The action for a past instalment may be barred although other and future instalment still remain recoverable. See under Arts. 74, 75, "Scope OF ART. 74".

Continuing Wrongs. There must not be a single wrongful act from which injurious consequences follow, but a state of affairs every moment's continuances of which is a new tort. The commonest examples of coutinuing wrongs are to be found in interference with water-supply and obstructions to rights of way and of light and air. 1935,59 Mad. 75 at pp. 87, 88.

Continuing Nuisance and Trespass :— In case of nuisances and continual trespasses upon land, each instant the trespass or nuisance is continued, there is a fresh cause of action. 1914.25 Ind. Cas. 185 (All).

—S. 23

Continuing Breach by Tenant.— Where a tenant covenants to keep the premises in repair and neglects to do so, time does not run so long as they continue out of repair during the tenancy. 1888, 10 All. 85 at p. 91;. There is no continuing breach where the tenant. against the terms of the lease, sublets the premises. 1875, 10 C. P. 342; Starling, p. 157.

Suit to Recover Wife or for Conjugal Rights. No Bar of Time. A third person who harbours a runaway wife commits a continuing wrong. 80 P.R. 1892; 1891, 13 All. 126, Refusal of a wife to return to her husband and her retention by defendant, with whom she lives, constitute continuing wrong, giving rise to continually recurring causes of action on demand and refusal. 1892, 16 Bom, 715 (note); 1892, 16 Bom. 714.

"Continuing wrong"—What is construction of permanent structures on pathways—Not a continuing wrong.

In considering whether the particular act complained of constitutes a "continuing wrong" within the meaning of section 23 for which the cause of action arises de die in diem; it is necesssary to keep in mind the distinction between an "injury" and the "effects of that injury". Where the injury complained of is complete on a certain date, there is no "continuing wrong" even though the damage caused by that injury might continue. In such a case, the cause of action to the person injured arises, once and for all at the time when the injury is inflicted, and the fact that the effects of the injury are felt by the aggrieved person on subsequent occasions, intermittently or even continuously does not make the injury a "continuing wrong" so as to give him a fresh cause of action on each such occasion If however, the act is such that the injury itself is continuous, then there is a "continuing wrong" and the case is governed by section 23.

Erection of permanent structures over a pathway constitutes a complete ouster and not a continuing wrong within the meaning of section 23 of the Limitation Act and therefore, a suit brought after the period of limitation for the removal of the obstruction from the pathway would not lie. *Azizon Nessa Vs. Abdul Hussain Bhuiya* 9 DLR 559 Foll: AIR 1940 Lah. 359 (F.B.) 19 Pat. 208: AIR 1942 Pat 188 Dis: AIR 1935 Cal. 405; AIR 1935 Cal. 201 AIR 1923 Cal. 356, 6 Cal. 394.

Stoppage of irrigation Channel—continuing wrong—Section applicable.

The defendant stopped the flow of water from a spring which used to irrigate the land of the plaintiff.

Held: It is continuing wrong for every time the plaintiff is deprived of the use of water, which he claims, he suffers injury in the shape of loss to his crops. *Suleman Khan Vs. Abaur Reham* PLD 1959 Azad J & K 31.

Continuing breaches and wrongs.

An obstruction to a watercourse is continuous wrong. 7 I. A. 240: 6 C. 394: 7 C.L.R. 529 *P.C.*, 1942 All. 77.

—Ss. 23-24

Infringement of right of way is a continuous wrong. 1 C.W.N. 96, 1935 Cal. 405, 1942 All. 77; 198 I.C. 532.

Causing of a nuisance is a continuous wrong. 60 I.C. 529.

Where the injury is complete on the erection of a wall, the mere fact that its effect continues does not extend the period of limitation. 28 C.L.J. 495.

Where injury complained of is complete on a certain date there is no continuing wrong. 1950 E.P. 21: 4 D.L.R. Simla 168.

Continuance of possession after trespass is not a continuing wrong. 1945 Nag. 78.

Obstruction of light and air is continuing wrong. 1936 Lah. 334: 162 I.C. 303.

Breach of a covenant to deliver possession is not a continuing wrong. 932 Mad 225: 138 I.C. 119.

Refusal of wife to come to her husband is a continuous cause of action to the husband. 16 B. 714, 34 A. 412.

A suit for divorce under Mahomedan law on the ground of husband's impotency, sec. 23 applies. 1939 Lah. 454: 185 I.C. 744.

In suit to establish the right of a temple to collect the offerings paid by pilgrims, the cause of action accrues every time the offerings are wrongfully received by the alienees of the temple authorities. 40 M. 412, so also in case of interference with the right of worship. 12 Pat. 681: 1933 M.W.N. 882: 35 Bom. L.R. 990: 58 C.L.J. 56: 37 C.W.N. 1021: 1933 P.C. 193 *P.C.*

24. SUIT FOR COMPENSATION FOR ACT NOT ACTIONABLE WITHOUT SPECIAL DAMAGE.—**In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.**

Illustration

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

S. 24—Suit for compensation for act not actionable without special damage.

The word "act" in the sec. includes an "omission". 95 I.C. 913: 1926 All. 605: 24 A.L.J. 550.

—Ss. 24-26

S. 24 is only applicable to suits based on torts. 95 I.C. 913: 1926 All. 605: 24 A.L.J. 550, 1938 Rang. 258: 176 I.C. 608 F.B.

"Injury" in s. 24 of the Limitation Act includes a legal injury. 32 Bom. L.R. 232: 54 B. 226: A.I.R 1930 Bom. 572.

This sec, applies to actions on a contract where there is no definite breach of obligation involving complete loss. 1951 Pat. 348: 28 Pat. 974.

25. COMPUTATION OF TIME MENTIONED IN INSTRUMENTS.—All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations

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

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

Computation of time.

The period shall be calculated according to the Gregorian Calendar. 6 B. 84, 24 C. 382, 47 All. 66: 1925 All 138, 13 C.L.R. 153.

Mistake of the number of days of the month in the bond does not affect period of limitation. 6. C 239: 6 C.L.R. 553, 17 M. 61.

PART IV

ACQUISITION OF OWNERSHIP BY POSSESSION

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

—S. 26

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

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

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

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

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

Illustrations

(*a*) *A suit is brought in* 1911 *for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January 1890 to 1st January 1910. The plaintiff is entitled to judgment.*

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

---

[1]The word "Govt". was first subs. by A O , 1937 and then amended by A O , 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956), to read as above.

--S. 26

S. 26 : Acquisition of right to easement,

An easement right of pasturage cannot be acquired by an indefinite number of people of the certain village, or villages on the basis of a lost grant or by prescription under section 26 of the Limitation Act, but such a right can be acquired by custom when all the requisites of a valid custom are established. (1955) 7 DLR 464.

Where a plaintiff claims a right of easement by grant and adduces evidence to establish it, he cannot use the same evidence of user for the purpose of establishing his right of easement by prescription because of the difference in the animus. The basis of the right of easement by prescription is user of another man's land without any right till the user is ripened into a right by prescription. It is in the nature of an adverse possession. Though it does not partake of the charcetor of adverse possetion. In one case, the easement originates from a legal right, namely, grant and in another case the right of easement accrues from user as of right, which means an adverse exercise of right as against the servient owners. (1959) 11 DLR 97.

"As of right" does not mean "rightfully" or an enjoyment without trespass and under a strict legal right but it refers to enjoyment by a person under a claim or an assertion of right. *Ibid*

When a claim to a right of way is made under section 26(1) of the Limitation Act in virtue of the occupation of a piece of land, the term "person" in that section means and includes the person in occupation of the land whether that person is the same individual throughout the period of 20 years or not.

One can rely on the user of his predecessor-in-interest to complete the period under section 26 of the Act. (1959) 11 DLR 97.

Easement of necessity—onus of proof of that is on the plaintiff.

The plaintiffs must themselves establish all the facts necessary to make out a case of easement of necessity and they cannot even suggest that the defendant must prove that the user was permissive until they themselves have established their case.

Finding on a question of easement of necessity is a finding of fact which High Court in 2nd appeal will not disturb. Safar Ali Vs. Abul Hashim (1962) 14 DLR 640.

Mere user for over 20 years (without proof that the user were as of right) cannot lead to the acquisition of prescriptive right.

The argument has been that the court of appeal below having found that the plaintiff has been using the pathway in dispute which is more than 20 years, he has acquired the prescriptive right over the said portion of the pathway.

—S. 26

Held : This contention cannot be accepted as correct. Mere user for a number of years does not confer a right by prescription to a person claiming sucu a right unless the same has been exercised as a right. *Ibid*

Whatever may be the law in England it is certain that under section 26 of the Indian Limitation Act, which is the law in force in India, the right which the appellants claim must have been used as of righr and it was for the plaintiff who sought to establish such a right, to show that this requirement of the law had been satisfied. *Ibid.*

Mere user of a pathway by a party for long cannot create prescriptive right in his favour unless it is shown that such user has been as of right, peaceably and without any interruption. *Sudheendee Deb Vs. Ambica Singh Monipuri*, (1973) 25 DLR 327.

Injunction prayer for restraining unauthorised construction which obstructs ventilation of the plaintiff's house—Suit filed in October 1969, construction in 1964—Suit barred by limitation.

Each of the period of twenty years under Section 26(1) Limitation Act shall be taken to be period ending within two years next before the institution of the suit in which the claim was contested. Admittedly construction of last floor in the present case was made in 1964 and the suit was filed on 22.10 69 and as such the instant suit was instituted much beyond the said period of two years mentioned in the above section,

Provisions of twenty years necessary under the said first part has to be completed within two years next before the institution of the suit wherein the claim to which such period relates is contested. *Md. Allarakha Vs. Dr. Md. Mobarak Ali* (1973) 25 DLR 438.

"As of right"—Meaning of——Trespass may refer into a right.

"As of right" does not mean "rightfully" or an enjoyment without trespass and under as tirct legal right but it refers to enjoyment by a person under a claimor an assertion of right. The acquisition of right may commence with an act which may be a pure act of trespass but the enjoyment, though it may continue to be a trespass, may nevertheless, be "as of right" so as to ripen into a presciptive title. *Abdul Goffar Vs. Abdus Sattar* PLD 1959 Dacca 491. 11 DLR 97.

Easement and adverse possession—Difference between—Terms explained—Use of basis of grant cannot lead to prescription.

The basis of the right of easement by prescription is use of another man's land without any right till the use is renewed into a right by prescription. It is in the nature of an adverse possession though it does not partake of the character of adverse possession. In one case the easement originates

from a legal right namely grant and in another case the right of easement accrues from user as of right. Which means an adverse exercise of right as against the servient owner.

User on the basis of grant is not purported to be the character of user to be ascribed in order to prove acquisition of the right of easement by prescription. If the enjoyment claimed is consistent with two reasonble inferences, the enjoyment as of right is not established. *Abdul Goffar Vs. Abdus Sattar* PLD 1959 Dacca 491—11 DLR 97.

Easements Act : Application of.—The Easements Act, though not in force in all parts of India, may yet be referred to as an authority on the subject of easements generally. 1903,30 Cal. 503, at p. 505.

Custom Cannot Override Statue. No custom can be admitted to override the provisions of this section. 1878,3 Bom, 174 Stokes, Vol. I, p. 504.

User not Capable of Resistance Cannot Ripen into Easement. A user, which is not capable of interruption cannot be the foundation of an easement. Dart. V. & P., p. 398.

"As of Right."—As of right means an adverse exercise of the right as against the servient owner. 1875, 15 Ben. L.R. 361; 1870. 13 W.R. 344. As of right does not mean rightfully, or an enjoyment without trespass and under a strict legal right, 1875, 23 W.R. 52; 1911, 12 Lah. 741 at p. 747. But it refers to enjoyment by a person under a claim or assertion of a right. 35 C W.N. 605 (P.C.), (appeal from Madras).

Open and Peaceable Enjoyment.—No easement can be acquired by prescription, if the user has been enjoyed vi, clam, aut precario. Goddard. p. 257; 4 P.R. 1917;1918, 1 Ch. 307. The word vis does not simply mean violence or fraud, but it means also strife or contention of any kind. as for instance. that the enjoyment has been had during a period of litigation about the right claimed, or that it has been continually disputed and interrupted by physical obstacles placed with a view of rendering user impracticable or in denial of the right. If the user has been in this sense not peaceably enjoyed, no easement can be thereby acquired. Goddard, p 257; cf 1919, 49 Ind. Cas. 963(Bom.) and 1918, 40 All. 461.

Enjoyment Within two Years of Suit.—No complete right will have been gained by enjoyment for a period. however long, unless it has continued to a ime within two years of suit. Shephard, p. 150;48 P.R. 1918 (Shadi Lal, J.) 1928,56 Cal. 927. Plaintiff cannot succeed merely by proof of enjoyment for 20 years; he must show also that such enjoyment ended only within two years before suit. 1919, 26 C.W.N. 121; 1922,72 Ind. Cas. 909 (Oudh).

Section Requires Enjoyment, not Actuol User. Section 26 renders it necessary that the enjoyment of the right should continued till within 2 years before

—Ss. 26

suit, but it says nothing as to any actual user or exercise of the right within 2 years. In order to establish a right, the enjoyment of it must continue for 20 years, but in case of discontinuous easements (e.g., rights of way), this does not mean that actual user is to continue for the whole period of 20 years. On the contrary there may be days and weeks and months during which the right may not be exercised at all. and yet during all those periods the person claiming the right may have been in full enjoyment of it. 1881, 7 Cal, 132; 1903,30 Cal. 1077. But if under the circumstances it is impossible to infer enjoyment the claim to easement fails under section 26. 1899, 26 Cal. 593, approved in 1918.43 Ind. Cas. 235, (Pat.).

Continuous Enjoyment.—The user must be uninterrupted and continuous in order that it may suffice for the acquisition of an easement by prescription. The continuity must not be broken, and whether or not it has been depended upon the nature of the easement claimed and non-user in reference there to. Wood, 4th ed., p 856; see under section 27. When the user has not been constant the evidence should show that the cessation of the user has not been constant the evidence should show that the cessation of the user was not due to interference by the servient owner. Hals. Vol. 11 p. 264;

Non user.—Mere fact of non-user for any particular period is not necessarily fatal if the non-user is capable of explanation consistently with the continual actual enjoyment of the right. 1876, I Cal. 422; 1919, 26 C.W.N. 121.

Enjoyment Must be in Character of an Easement.— An easement by prescription is capable of being acquired only if the user during the statutory period had been with the animus of enjoying the easement as such on the land of another and not jf the user had been in the consciousness of one's own ownership over the same, But a mere assertion of ownership (in prior or subsequent legal proceedings) while the enjoyment was really as an easement, is not conclusive against a right of easement. The question of animus is, in each case, a question of fact. 1925, 49 Mad. 820 (F.B.), (cases disussed), (overruling 1912, 38 Mad. 1); 1932, 56 Bom. 427.

Service Owner's ignorance of User.—According to English Law, the enjoyment must be one of which the servient owner has knowledge, either actual or constructive. Gale p. 236, (quoted with the approval by Mirza J. in 1928, 31 Bom. L.R. 120 at p. 123. An easement cannot. as a rule, be acquired (in England) by prescription, if the servient owner is ignorant of the user. Goddard p. 246.

Interruption.—The words without interruption do not mean without intermission, and it would be contrary to common sense to require actual continuous user by day and by night for 20 years without any cessation whatever. 1884, 13 Q.B.D. 304; Peacock, 2nd ed. p. 432. It is sufficient, if the claimant has used the (e.g) way as his convenience and necessity required, and that his

user be such as to leave no room to doubt his intention to maintain his use of the way as of right. Wood, Ist. ed. p. 381.

Adverse Interruption Essential.—The "interruption" which defeats a prescriptive right under the statute is an adverse obstruction, e.e., an obstruction by some person acting adversely to the claimant of the easement, and not a mere voluntary discontinuance of the user by the claimant himself. 1842, 3 Q.B. 581, (Carr. v. Foster); 1876, 1 Cal. 432 at p. 429.

Notice of Person Making Interruption.—The mere physical existence of an obstruction is not sufficient notice of interruption. Hals. Vol. 11, p. 273 because, it is not notice of the person making the same. Hals. Vol. 11, p. 273; 1882, 19 Ch. D. 462.

Interruption: Submission or Acquiescence for a Year.—However conclusive an interruption may be, it will have no effect under the statute unless it has been submitted to or acquiesced in for one year. 48 P.R. 1918; cf. 1920, 39 M.L.J 574. Whether there has been such submission or acquiescence is a question of fact. 1920, 54 Ind. Cas 936 (Nag.).

Interruption: Voluntary Discontinuance. But though a voluntary discontinuance by the claimant of the easement himself does not amount to an interruption in the technical sense, it nevertheless prevents the acquisition of the right on other grounds, viz , that no one can be said to be in open enjoyment of an easement, when he has purposely and with the manifest intention of preventing its user created some obstruction of a permanent nature which renders the enjoyment of the easement, so long as the obstruction lasts, impossible. See 1876, 1 Cal. 422. of 1899, 26 Cal. 593.

Interruption: Verbal Objections or Denials. Mere verbal objections to or denial of the right of user, not followed by any act to prevent the user, is not such interruption as will prevent acquisition of thh right by prescription. 1881, 6 A.C 740. The interruption has been said to mean some physical interruption 1931, 12 Lah. 741 at p. 748. There must be an overt act indicating that the right is disputed. Brown p. 430.

Fluctuating or Accidental Interruptions. Trifling, accidental or fluctuating interruptions do not prevent the acquisition of right. 1889, 41 Ch. D. 268.

Dominaut and Servient Tenements United.—When there is a union of ownership of the dominant and servient tenements, it prevents a prescriptive title being gained, for during the union the claimant does not enjoy as of right the easement, but the soil itself 1922, 50 Cal. 356, and when such a break in the continuity of the enjoyment has happened, no effect can be given to the previous user. Shephard p. 149.

Easements Acquired Independently of Section 26.—When an open and uninterrupted enjoyment of an easement has continued for a long time, the Court will, where such enjoyment is wholly unexplained, presume, if it be reasonably

—S. 26

possible that the enjoyment is referable to a right which had a lawful origin. 1901, 2 Ch. 671 at p. 698; and in this manner an easement may be established quite independently of the provisions of section 26. 1881, 6 Cal. 394 (P.C.), Rajrup Koer's case.

Limitation for Suits Relating to Easements.—All persons suing under the statute for a declaration of their right for an easement or for an injunction to protect the same must do so, by reason of paragraph 4 of section 26, within 2 years after the interruption complained of. 48 P.R. 1918.

Easement Against Government. An easement by prescription may be acquired against Government by 60 years' enjoyment; vide clause 2 added to section 26 by the Limitation Act, 1908. 1916, 39 Mad. 304; 1929, 7 Ran. 487; 1927, 106 Ind. Cas. 305, (Oudh).

Profit A Prendre.—What in English Law is called a profit a prendre, i.e., right to enjoy profit out of land or water, is in Indian law an easement, vide definition of "easement" in section 2. 1880, 5 Cal. 945; 1896, 23 Cal. 55; 1926, 53 Cal. 1016. A jalkar or a right of fishery is such an easement.

Right of Way.—A right of way is ordinarily a right of passing in a particular line, or direction, and not a right to vary it at pleasure. 1865, 4 W.R. 49; 1881, 7 Cal. 145 at p. 147. Therefore, a right to the promiscuous use of the whole property (e.g., for purpose of driving cattle over it) cannot be acquired by prescription. 1871, 15 W.R. 295; 1920 43 All. 345. A right of way for a particular purpose for a particular season of the year can be acquired by prescription 1883, 9 Cal. 778, S.C. on appeal 1886, 13 Cal. 136 P.C.

Light and Air.—Section 26 makes the distinction that the enjoyment of the easement of light and air is not required to be open. Clause 1 (of section 26) requires enjoyment of light and air to be as of right; 1883, 7 Bom. 522; 1931, 59 Cal 260 at p. 266, but in the corresponding provision relating to light light and air in the Indian Easements Act, the words as of right are omitted. 1919, 49 Ind. Cas. 963 (Bom) at p. 965. There is no doubt that the intention was to give the mere de facto and accidental enjoyment of light for 20 years the benefit of which in other cases is only conferred upon enjoyment as of right. Markby, Elements of Law, p. 287. The owner of a house cannot by prescription claim to be entitled to the free lateral passage of a current of wind. Stokes, Vol. I, p. 897. A right to the uninterrupted flow of south or any other breeze or wind as such cannot be acquired merely by prescription. 1887, 14 Cal. 839; 1909, I Ind. Cas 961 (Sind).

Extent of Light Acquired by User.—Considerable doubt has existed as to the extent of the right acquired by enjoyment, viz., whether the access of light through a window for the necessary period entiles the owner to object to any substantial diminution of the light which has been accustomed to pass through the window; or whether the adjoining owner may build so as to substantially diminish the light provided that no actual nuisance is created. After a long

controversy the question is now settled in the latter sense. 1904 A.C. 179 (Colls vs. Home Stores) It is in this respect that Colls case (1904 A.C. 179) has to my mind readjusted the law. It is still, as it always has been, a question of nuisance or no nuisance, but the test of nuisance is not 'how much light has been taken, and is that enough materially to lessen the enjoyment and use of the house that its owner previously had ?' but how much is left, and is that enough for the comfortable use and enjoyment of the house according to the ordinary requirements of mankind (per Farwell, J.) 1905, 2 Ch. 210, Higgins. v. Betts; Gale p. 303.

Enjoyment of open Space over Another's Land.—In 1878, 3 Bom. 174 the roof of defendant's house projected over an open space of land belonging to plaintiff, and the Court held that the defendant's enjoyment was equivalent to possession by him of the space occupied by his projecting roof, and as such enjoyment lasted over 12 years, plaintiff's title to the open space was extinguished (the limitation applicable being that appropriate to a suit for possession of immoveable property). The Court further held that if defendant's enjoyment was considered in the light of a mere easement, in such an event, as defendant had had uninterrupted user for over 20 years, he had acquired the easement by prescription. 1178, 3. Bom 174 In Calcutta the Court assumed that an easement may be acquired by 20 years prescription to have a cornice projecting over neighbouring land. 1903, 30 Cal. 503; of 1920.

Immemorial user—Ground for prescription—Twenty-year period sufficient for prescription.

A part from S. 26 Limitation Act, a right of prescription may also be claimed and established on the basis of immemorial user justifying a presumption of grant or agreement. No particular period has been prescribed and can therefore, be said to be essential for the establishment of such right but where it is based on a claim of continuous or uninterrupted user alone proof of enjoyment for any period not exceeding 20 years will ordinarily be considered insufficient to establish immemorial user so as to justify any presumption of easement by lost grant. *Bholanath Ghosh Vs. Mo-mena* AIR 1946 Cal. 444.

"Person"—Meaning of— Tacking of period of user by predecessor—in—interest is allowed.

When a claim to a right of way is made under section 26(1) of the Limitation Act in virtue of the occupation of a piece of land, the term, 'person' in that section means and includes the person in occupation of land whether that person is the same individual throughout the period of twenty years or not.

One can rely on the user of his predecessor-in-interest to complete the period under section 26 of Limitation Act. *Abdul Gaffar Vs. Abdus Sattar* PLD 1959 Dacca 491—11 DLR 97.

—S. 26

Prescription right—May be claimed under custom—Right of pasturage.

When a plaintiff sets up a prescriptive right he cannot be allowed to succeedon the basis of customary right. An easement cannnt be acquired by an indefinite number of people of a certain village or villages on the basis of a lost grant or by prescription under section 26 of the Limitation Act but such a right can be acquired by custom when all the requisites of a valid custom established.

A custom by which a right of pasturage by long user is claimed by villagers to lands in neighbouring village. and belonging to different landlords which result in precluding the land from being brought under cultivation. is unreasonable and is not legally enforceable. *Bariandra Chandra Das Vs. Mvl. Mahbubal Quader* 7 DLR 464.

Repairs of home or wall—Right to go—another person's land for repairs may be acquired under the section.

A right to go upon another's land for the purpose of repairing a wal' or house can be acquired under Section 26 of the Limitation Act. *Ghulam Muhammad Vs. Fazal Karim PLR* 1956 Lahore 781 Rel. 40 CWN. 222.

Water diverted from its natural sources and enjoyed for sixty years– Title to water acquired by prescription.

Where the plaintiff and his ancestors had been in the sole exclusive and undisputed enjoyment of all the waters flowing through the said channel and water-courses flowing into the R tank and to the entire water in the tank itself for over 60 years, that they had become so entitled "not merely by reason of their unchallenged and unchallengable ownership but a'so by immemorial user, custom and prescriptive right.

Held : upon the case as pleaded and upon the evidence his clear duty was to hold that the plaintiff had made out a good title by prescription. *Ramaswami Ayyar Vs. Hairam* PLD 1947 Privy Council 299.

Water from well—Used for twenty years for irrigation of land– Right of Easement established.

Where the plaintiff claimed a right of easement to irrigate his land from the defendant's well and proved user for twenty years but an alternative plea also claimed ownership in the well, which plea was subsequently withdrawn.

Held : that the mere making of an inconsistent allegation in the plaint which was subsequently withdrawn did not show that the right in question had not been enjoyed for the requisite statutory period as an aseasement. *Ismail Vs. Fordil Khan* PLD 1958 Lahore 337.

Acquisition of right to easements

Other easements not specifically mentioned may be acquired. 224 I. C. 286: 1947 Lah. 7 9.

—S. 26

In case for easement for use of water, proof of continuous user is not necessary. 1946 Cal. 444:50 C.W.N. 682.

Para (2) of sub-section (1) controls para (1) of that sub-section. A title to easement is not complete merely by efflux of the period of 20 years, no absolutely indefeasible right can be acquired until the right is brought in question in some suit. Whether the enjoyment has been peaceable and open and as of right are questions of fact. 33 C.W.N. 517.

The object of this section is to make easy the establishment of rights of easement : it is remedial and not prohibitory or exhaustive as to the modes of acquiring easement right. 91 I. C. 712:1926 Cal. 507:53 C. 1016, 1925 Pat. 748.

Easement may be acquired in other ways. 1925 Pat. 748, 1923 Cal. 507, 45 C.W.N. 486.

There is distinction between enjoyment of a right and actual user, s. 26 contemplates enjoyment of right for 20 years and does not speak of actual user. 40 C.W N. 222.

The term "as of right" is not synonymous with "rightfully" but signifies enjoyment by a person in the assertion of a right. 1931 Lah. 395.

Tweaty years' enjoyment of a right to light and air after a partition, which however did not reserve such a right, is enjoyment "as of right." 35 C.W.N. 963.

"An interruption" to be effective must result in actual discontinuance of the enjoyment of the right of the claimant. 10 Cal. 214; 31 I.C. 528. 1931 Lah. 359.

The word "peaceable" in s. 26 means that the plaintiff has neither been obliged to resort to physical force himself at any time to exercise his right within 20 years expiring within two years of the suit, nor had he been prevented by the use of physical force by the defendant in his enjoyment of such right. the word "peaceably" qualifies the verb "enjoyed". A mere denial by the defendant of the plaintiff's alleged right and his successful attempt to have this right negatived in Courts of law, does not affect the plaintiff's acquisition of easement. 1931 Lah. 395, 31 I.C. 528, 49 I.C. 963.

The subject-matter of s. 26 is the access of light into the plaintiff's building over defendant's premises. The fact that the windows through which light passes does not belong to the plaintiff is not material. 35 C.W.N 963.

Where in a case of obstruction of an easement of light and air into a kitchen the lower Court granted injunction and also directed restoration of *status quo*, held in appeal that the discretion of the lower court that injunction and not damages was the proper remedy, need not be interfered with. 35 C.W.N. 963.

The right of fishing on another's water either by himself or by hired men on payment of a fee per head of men employed, cannot be acquired by prescription 9 C. 698, *Ref.* 37 C.W.N. 18.

—Ss. 26-27

This sec. does not govern a claim to take water from a tank where that claim is based on a lost grant. It applies to cases of easements acquired by prescription. 1923 Cal. 291: 67 I.C. 244.

The plff. is not to prove actual user for the 20 years. 26 C.W.N. 211.

In order to establish a right of easement it is enough for the plaintiff to prove that he has been exercising the right without interruption, without express or implied permission of the owner of dominant tenement and without secrecy or stealth. 41 C.L.J. 379: 87 I.C. 19: 1925 Cal. 788.

The owner of dominant tenement is entitled to so much light and air as will suffice for the ordinary purposes of inhabitancy or business according to ordinary notions of mankind; there is no infringement unless, what is done, amounts to nuisance 42 C. 46 *P.C.*

Obstruction to ancient lights when amounts to actionable nuisance. 31 C.W.N. 419: 45: C.L.J. 474: 1927 Cal. 345: 102 I.C. 370.

A customary right of way is not an easement in the legal sense of the term and even if it were an easement it is not necessary to rely on s. 26. In such case lost grant need not be proved. 36 C.L.J. 280: 1923 Cal. 200: 70 I.C. 263, 65 I.C. 509 (C).

A right of easement can be acquired to go on another's land for repairing one's own wall or house. User at long intervals is sufficient and it is called discontinuous easement right. 40 C.W.N. 222.

Cl. (2) does not apply to a suit against a transferee from Govt. 1942 Lah. 124: 200 I.C. 438.

See other cases under **"Easement".**

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

Illustration

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but

—Ss. 27-28

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

Inclusion in favour of reversioner of servient tenement.

S. 27 does not apply to a donee or transferee from Hindu widow in virtue of powers as representing the estate 41 I.C. 47.

28. EXTINGUISHMENT OF RIGHT TO PROPERTY.—**At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.**

Law of limitation, a procedure law—It does not extinguish a right by creating bar to enforce a right—Application of the law of limitation could not apply where right exists. *Mst. Sardar Begum Vs. Mst. Sherin Taja* (1971) 23 DLR (Peshawar), 18.

Can only be set up as a bar to a claim—Suit for declaration that remedy against the plaintiff having became barred—plaintiff's liability has disappeared, not competent.

A suit founded on the allegation that by reason of the period of limitation for the recovery of a sum of money having expired the plaintiff's liability to pay the amount had ceased to exist and the plaintiff had acquired a right to retain the sum in question :

Held : The action is wholly misconceived, because limitation can only be set up as a bar to claim and that by itself furnishes no cause of action to a party except where section 28 of the Limitation Act is applicable.

In cases coming under section 28, a threatened dispossession or actual dispossession of the party who has acquired a prescriptive right over the property may constitute a good cause of action. But where section 28 is not applicable, a party cannot sue for a declaration that the right to recover the money being barred by time, his liability has ceased to exist; the only course open to him is to set up limitation as a defence to suit for recovery of the amount,

The law of limitation is a rule of procedure and does not create or extinguish rights except in the case of acquisition of title to immoxable property by prescription under section 28 of the Limitation Act and though the remedy to recover a debt may be barred, the right itself continues to exist and if

—S. 28

there be any other remedy by which that right can be enforced, the Limitation Act cannot come in the way. (1951) 3 DLR 465.

Delivery of possession amicably.

The auction-purchaser must apply for delivery of possession within 3 years from the date of confirmation of sale. If he comes after that Court will not help and restore possession to him. There is nothing in law which suggests that the auction-purchaser could not acquire title if possession be not taken through Court. If after confirmation of sale he gets possession amicably or otherwise he need not apply for delivery of possession through Court. *Darker v. Monsur Ali.* (1953) 5 DLR 344.

Reference under section 5(1) of the Bengal Alluvial Lands Act is not a suit within the meaning of section 28 of the Limitation Act. and for the law of limitation to apply there must be both absence of possession by the original owner as well as actual possession by another. 1 PLR (Dac.) 129.

Under Art. 142 time begins to run against the rightful owner from the date of discontinuance of possession or dispossession, as the case may be, and under section 28 of the Limitation Act the right is extinguished, if no suit for recovery is instituted by him, within the statutory period.

The mere fact that the plaintiff did not specifically claim title by adverse possession is no reason to disentitle him to the decree which he is otherwise entitled to. (1955) 7 DLR 94.

Possession under a mistaken or invalid title is as effective as that of a trespasser, and, if sufficient in length of time and continuity, gives the holder a good title. *Ibid.*

S. 28—Auction-purchaser—When must apply for delivery of possession—When application to Court not necessary

Scope of Section. The only cases in which lapse of time not only bars remedy but extinguishes the title of a claimant are those provided for by section 28, which is confined to persons, plaintiffs or defendants, whose suit for possession (of property), if brought, would be barred by limitation. 1930, 52 All. 979 at pp. 983, 985. The expression "the right to such property" in section 28 must include the right to joint enjoyment as well as the right of survivorship. 1921, 44 Mad. 131(foll. in 1930, 122 Ind. Cas. 270, Nag.

In Presonal Actions the Statute Bars Merely the Remedy and not the Right. A debt does not cease to be a debt because its recovery is barred by the statute of limitation. Limitation extinguishes the remedy, but, except in the case covered by section 28, does not destroy the right, Section 28 applies only to suits for possession of property, and has no application to the case of a debt. 1924, 46 All. 775(F.B.) at pp. 786, 787.

—S. 28

Barred Debts. As Limitation only bars the remedy, a person is deemed to owe what he pays after the time of limitation has run out, and he is not entitled to recover it back. 40 C.W.N. 465 at p. 467. For purposes of income tax, a statute-barred debt is not necessarily a "bad debt" 1932,36 C.W.N. 797(P.C.) But a time-barred debt is not "money due" for purposes of section 186 of the Companies Act. 1932, 54 All. 1067(P.C.) A time-barred debt may by claimed by way of equitable set off. 1913, 19 C.W.N. 1183(relying on 1905, 32 Cal. 576.) Unappropriated payments may be applied to time-barred debts. 1870, 6 Mad. H.C. 32; 1879, 4 Cal. 283 at p. 297. Statute-barred debts. cannot ordinarily be proved in bankruptcy. See Darby, p. 18. But where the creditor has a lien, he may make use of it to enforce payment of his debt, although it is statute-barred and the debtor has become bankrupt. 1884, 14 Q.B.D. 394 at p. 400.

Barred Debt: Lien Subsists. A lien is a right of defence, not a right of action, and consequently can be claimed in respect of a statute-barred debt. 1880,5 Cal. 897 at p. 899; 1921, 48 Cal. 817.

Time-Barred Decrees. The execution of a decree may be statute barred, but the judgment-debt is not thereby extinguished, 3 P.R. 1887; 1886, 9 All. 23, neither does the decree thereby become inadmissible in evidence. 1874, 23 W.R. 128; 1878, 3 Cal. 383. Because the right to take out execution upon a decree is time-barred, it does not follow that the decree itself "has ceased to subsist" The decree remains, and will ever remain, in full force as an adjudication of the rights of the parties whether execution can be taken out upon it or not. 1881. 7 Cal. 91 at p. 95; 3 P.R. 1887.

Barred Decree for Possession : Right remains. When a right to property has been established by a decree for possession, the barring of the right of execution by limitation does not, under section 28 or any other provision of the law, extinguish the right. The remedy may be gone, but the right remains. 1909 11, Bom. L.R. 1093; 1920,44 Bom. 934 at p. 939.

Party in Possession not affected by Limitation. Section 28 does not apply to persons who, being in actal possession which has never been disturbed, have had no occasion to sue for recovery of it, as a party in possession cannot be prejudicially affected by the law of limitation. 1894,17 Mad. 255; 1889,14 Bom. 222.

Retrospective Extinguishment of Right. When the statutory period for acquiring title by adverse possession had completely run, the title thereby as from date when adverse possession commenced, Barning. p. 92 and not from the last day of the statutory period of limitation. Darby, p. 303.

Accesory falls with Principal. If the landlord's claim to land is barred, so also is his claim to any arrears of rent, 1900,2 Ch. 616; Lightwood, p. 245. If no action can be maintained directly to recover possession of land,

—S. 28

none can be brought to recover the rent. 1865, 5 W.R. 1(P.C.); Lightwood, p. 245; 1934, 157 Ind. Cas. 569(Mad.).

Magistrate's Attachment : Title not Extinguished. When property is attached under section 146, Criminal Proceedure Code, the right and title of the true owner cannot be extinguished under sec. 28, Limitation Act, however long the attachment may continue, nor can the property be ever forfeited to Government, as the legal possession during the continuance of the attachment is (in point of law) in the person having title on the date of the attchment 1903,26 Mad. 410; 1896,1 C.W.N. 569; 1916, 20 C.W.N. 481.

Barring of Declaratory suit does dot Extinguish Title : Rents and Profits not Barred. As a suit for declaration of title to property is not a suit for possession within the meaning of section 28, where such declaratory suit is barred, it does not thereby extinguish the right and title of the true owner to the property. 1903,36 Mad. 410; 1935, 159 Ind. Cas 151 at p. 152 (All.)

Pleadings. The necessity to plead a statute of limitation does not apply where the right and title to the thing is extinguished and gone, and the defence is by denial of that right. 1878, 4 A.C. 51 at pp. 58,59 (Cited in 1889, 11 All. 438 at p. 445.)

Possession under a mistaken or invalid title is as effective as that of a trespasser, and if, sufficient in length of time and continuity, gives the holder a good title.

Under Article 142 of the Limitation Act. time begins to run against the rightful owner from the date of discontinuance of possession or dispossession as the case may be, and under section 28 of the Limitation Act the right is extingusihed, if no suit for recovery is instituted by him within the statutory period.

The mere fact that the plaintiff did not specifically claim title by adverse possession is no reason to disentitle him to the decree which he is otherwise entitled to. *Sanak Ali v. Suruj Ali.* 7 *DLR.* 94. *Rel* : *ILR* 24. *Mad* 387 (*PC*) 461 *A* 285 ; *AIR* 1942 *P.C.* 64.

S- 28. Art. 47....Hindu widow—Suit not instituted within 3 years of magistrate's order under S, 145 Cr. P C,

Reversioner's right to file suit not barred. Failure of a Hindu widow to institute a civil suit within three years of the Magistrate's order under S. 145 Criminal P.C., as prescribed by Art. 47, Limitation Act can only operate to bar her right to file a suit subsequently. The reversioner, not being a party to the litigation, is not bound by it. Nor can he otherwise maintain the suit as his reversionary right is no better than a mere spes succession is till the widow's death. Section 28 Limitation Act can therefore extinguish only the widow's rights to the property after expiry of three years but not those of the

—S. 28

reversioner. *Lalit Mahan Tandon v. Thakurain Lachmi Roj kuar. AIR* (33) 1946 *Oudh.* 213. (*D.B.*).

S. 28—Occupancy not transferable holding—Transferred by tenant without permission of landlord—Suit by landlord after 12 years of transfer—Barred by S. 28 Transferee acquires interest of a tenant.

On transfer of the non-transferable occupancy holding by the original tenant (before the occupancy rights became transferable by amendment of law) the land-lord becomes entitled to re-enter the land at once. If the landlord does not take any steps to recover possession of the property and allows the transferree to remain in occupation of it for 12 years or more, the latter would acquire a limited interest of a tenant by adverse possession and tee right of the landlord to recover khas possession of the land would be barred by limitation. *Naba Chandra v. Nanda Kumar PLD* 1961 *Dacca* 57—(1960) 12 *DLR* 552.

S 28. Art. 144 —Tacking of possession—When possession of one trespasser may be tacked to that of another.

One trespasser cannot add to his own possession the previous independent possession of another trespasser. The adverse possession the previous trespasser can be tacked on the adverse possession of the subsequent trespasser only when the latter derives his liability to be sued from or through the former.

Where, therefore, adverse possession of a widow is succeeded by adverse possession of another person who is not shown to be her adopted son, the adverse possession of the widow cannot be tacked on to the adverse possession of such person as he has not derived his liability to be sued through the widow and must, therefore, be deemed to be an independent trespasser. *Pandappa v. Shiringappa. AIR* 1946 *Bom.* 193.

S 28 Art. 141 or 144 —Title by adverse possession —Not different from possession required for preventing limitation from running under Art. 142 or 144.

The possession necessary to found a title by adverse possession under section 28 of the Limitation Act is not different in character though it may be in duration from the possession required to prevent limitation from running under Article 142 or 144. *Muhammad Fateh v. Sir Swarup Chand. PLD* 1947 *P.C.* 239.

Extinguishment of right to property

Principle of sec. 28 applies to cases governed by local laws. 1935 Lah. 787: 160 I.C. 1000, 1949 E P. 414: 4 D.L.R. Simla 183.

If the true owner suffers his right to be barred his title is extinguished. 1942 P.C. 64: 47 C.W.N. 46: 45 Bom. L.R. 275: 203 I.C. 1 P.C.

On extinguishment of title of the owner the title vests in the wrong-doer. 1939 Cal. 50: 42 C.W.N. 913.

—Ss. 28-29

Right of the true owner is lost by adverse possession and it is not revived by reentry. 32 C.LJ. 151, 18 C.W.N. 904, 1942 All. 42: 198 I.C. 496.

Fishery right in navigable river may be acquired by 60 years adverse possession against the Govt.-Evidence discussed 38 C.W.N. 285: 61 C. 262: 59 C.L.J. 56: 1934 M.W.N. 165: 36 Bom. L.R. 249: 1934 A.L.J. 153 *P.C.*

S. 28 only extinguishes a right if the remedy by suit is barred. It does not say that even a defence will be barred. 89 I.C. 752, 1939 Cal. 163: 42 C.W.N. 630.

PART V

SAVING AND REPEALS

29. SAVINGS.—[1](1) **Nothing in this Act shall affect section 25 of the Contract Act, 1872 (IX of 1872.)**

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

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

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

[2][3)] **Nothing in this Act shall apply to suits under the Divorce Act (IV of 1869.)**

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

---

[1]Subs. by the Indian Limitation (Amdt.) Act, 1922 (10 of 1922), s. 3 for the original sub-section (1)

[2]The original sub-sections (2) and (3) were re-unmbered as (3) and (4), by the Indian Limitation (Amdt.) Act, 1922 (10 of 1922), s. 3.

—S. 29

Bill of lading—Suit for damages to be brought within one year from the date on which the cargo is discharged.

Section 28 of the Contract Act does ont hit the contract as embodied in the bill of lading, nor does it come within the meaning of local or special law referred to in section 29 of the Limitation Act. *Holland Bengal Burma Line vs. Dawood Corpn. Ltd.* (1960) 12 DLR 418.

Suit should be brought within one year from the date on which the cargo is discharged. Only in very special circumstances, namely, when the shipping company or its agent informs the consignee that rest of the consignments were coming at a later date or that delivery would be given after some time, that the consignee could claim an extension of time.

Commerce by sea is of such a nature that it is necessary in the interests of merchants that a time-limit should be put to claims, and that they should not be allowed to be delayed indefinitely. Therefore, the period of one year has been fixed in para 6, Article 3 Schhedule I of the Carriage of Goods by Sea Act and, the period of one year is to be construed strictly, and is not to be allowed to be construed by vague and indefinite arguments and pleas. *Ibid.*

Bill of lading—goods shipped at a foreign port.

The plaintiff company filed a suit against the shipping company for recovery of compensation for goods short delivered. The goods were shipped at a foreign port and for that reason the Carriage of Goods by Sea Act was not applicable to the shipping company. The bill of lading governing the relationship between the plaintiff and the shipping company incorporated the provisions of Article 3. clause 6 of the Schedule to the Carriage of Goods by Sea Act which specifies the period within which a suit for damages must be brought against the shipping company

The suit against the shipping company in the present case was filed after the lapse of that period but the plaintiff company invoked the provisions of section 28 of the Contract Act as well as section 29 of the Limittion Act to get over the bar of limitation.

Held: The effect of the incorporation of Article 3, clause 6 of Schedule to the Carriage of Goods by Sea Act into the bill of lading in this case is that the rights of the plaintiff Company are extinguished as soon as the period provided therein is over.

The words "the carrier and the ship shall be discharged from liability in respect of loss or damage unless suit is brought within one year", incorporated in the bill of lading mean that under the contract they will be totally absolved from liability if the suit was not brought within one year. *Holland Bengal Burma Line vs. Dawood Corpn. Ltd.* (1960) 12 DLR 418.

If the port of shipment and the port of discharge are in Pakistan, the Carriage of Goods by Sea Act, 1924, will be applicable. In that event the Act can be regarded as local or special law referred to in section 29 of the Limitation Act.

—S. 29

But in this case the port of shipment being a foreign port, Carriage of Goods by Sea Act is not applicable, and hence section 29 of Limitation Act is not attracted to it. *Ibid.*

S. 29(2)(a): Court of Wards Act is a special Act but it does not prescribe special law of limitation for a suit against a ward and section 29 (2) of L.A. Act has no application to such a suit. *Manager Court of wards Tajhat. Vs. Saidpur Commercial Bank* (1953) 5 DLR 495.

The expression 'expressly excluded' in section 29(2)(a) means an exclusion by express words that is by express reference to the section and not exclusion as a result of a logical process of reasoning. *Ibid.*

S. 29(2) (b): The words "the remaining provions of this Act shall not apply, in clause (b) mean that the remaining provisions of the Limitation Act shall not apply unless they are made expressly applicable by special local Acts in question. *Nila Magh Madbar. Vs. Hanif Hawladar*, (1957) 9 DLR 89.

Time taken under section 80, C.P.C. is to be deducted in a suit filed under the Carriage of Goods Act.

The shipment being from a port in Pakistan to another port in Pakistan, the contract will be governed by the provisions of the Carriage of Goods by Sea Act, 1925, which is a local law within the meaning of section 29(2) of the Limitation Act and the plaintiff will be entitled to the period necessary for notice under section 80 of the Civil Procedure Code. *East West Steamship Co. Vs. Abdul Rahman Abdul Gani* (1966) 18 DLR 599.

Interpretation—When would the Act apply.

The words "the remaining provisions of this Act shall not apply" in clause (b) mean that the remaining provision of the Limitation Act shall not apply unless they are made expressly applicable by the Special or Local Acts in question. *Nila Magh. v. Md. Hanif.* 9 *DLR* 90 *Foll. AIR* 1940 *All.* 207.

Sale affected by fraud—Provisions of Bengal Public Demands Recovery Act not applicable—S. 29 would apply.

Section 29 of the Limitation Act says that the provisions of section 18 of the Act will apply to a special or local law unless its provisions are expressly excluded by such special or local law. The Bengal Public Demands Recovery Act, a local law, has not oxpressly excluded the eperation of the provisions of section 18 of the Limitation Act in cases where these provisions are applicable.

Therefore, where a sale has been brought about by means of fraud, proviso (a) to section 236 of the Public Demands Recovery Act will not be attracted and the plaintiff will be competent to take advantage of section 18 of the Limitation Act in computing the time for bringing this suit. *Tarangini Debi V. Govinda Malik.* 9 *DLR* 58.

—S. 29

Short delivery of goods by shipping company—Goods loaded at foreign port—S. 29 applicable,—Carriage of Goods by Sea Act not applicable.

Where the goods were loaded in a foreign port and short delivered in Pakistan, and a suit was sought to be brought against the shipping company for the compensation.

The port of shipment being a foreign port, Carriage of Goods by Sea Act, 1942 was not applicable. If the port of shipment and port of discharge be in Pakistan the Carriage of Goods by Sea Act, 1942 will be applicable and in such a case the Act can be regarded as local or special law referred to in section 29 of the Limitation Act 1908. *Holland Bengal Burma Line vs. Dawood Corpn. Ltd. PLD* 1961 *Dacca* 39, (1960) 12 *DLR* 418—*AIR* 1937 *Sind* 11.

Punjab Urban Rent Restriction Act—Limitation provided is excluded limitation under the Act.

Held : the Punjab Urban Rent Restriction Act provides the periods of limitation within which sums which have been made irrecoverable by the Act may be recovered. The learned trial Court was in in error in applying Article 120 of the Limitation Act to this suit. Neither that Article nor any other in the Limitation Act is applicable in view of the provisions contained in section 29 of that Act. The Punjab Urban Rent Restriction Act of which alone the right claimed in this suit is a creature, is a special as well as a local law within the meaning of section 29 of Limitation Act and, therefore, the period of limitation provided therein must be applied to the exclusion of any in the first Schedule to the Limitation Act. *Krishan Lall Malhotra v. Muhammad Sadiq, PLD* 1955 *Lahore* 288—*PLR* 1955 *Lahore* 451.

Applicability of General Provisions of the Limitation Act. to Cases under Local and Special Laws. (A waiver of the question of limitation under any special law is no longer permissible under section 29, Limitation Act, as amended by the Indian Limitation (Admendment) Act, 1922, read with section 3, Limitation Act.) 1923, 73 Ind. Cas. 127 (Oudh).

Letters Patent Appeals. The Letters Patent of the Lahore High Court, together with the Rules framed thereunder. as to the limitation for filing appeals, are a complete Code in themselves, and, therefore, the general provisions of the Limitation Act, including section 4, do not apply to appeals filed under the Letters Patent, 1921, 2 Lah. 127.

Registration Act. The Indian Registration Act is a special Code and complete in itself, and therefore suits instituted under section 77 of that Act are not affected by the general provisions of the Limitation Act (e.g., by section 6 re-plaintiff's disability, or by section 14 re exclusion of time spent in infructuous proceedings). 1920, 47 Cal. 300 (F.B.).

Insolvency Act. It was held by the Allahabad and Lahore Courts that though the Provincial Insolvency Act of 1907 was a special law, it was not

—Ss. 29-32

a complete Code by itself and therefore the general provisions of the Limitation Act were, as far as may be, applicable to cases arising under the Insolvency Act. 1912, 34 All. 496 (F.B.); 89 P.R. 1918.

Companies Act. The provisions of the Limitation Act contained in secs. 5 and 12 (as to sufficient cause for delay in appealing and re exclusion of time requisite for copies) are not applicable to the computation of the period of limitation prescribed by sec. 169 of the Indian Companies Act, 1882, 1911, 33 All. 641; 95 P.R 1908 but the Court has under that section (i.e section 169) power to enlarge the time. 1879, 4 Cal. 704; 1920, 1 Lah. 368.

Land Acquisition Act. In computing limitation for an application to the Collector under section 18, Land Acquisition Act, 1894, the time requisite for obtaining copy of the award cannot be excluded, as section 12, Limitation Act, has no appliction to such cases. 1931, 54 All. 282.

Civil Procedure Code. The Civil Procedure Code is not a special or local law for the purpose of section 29, Limitation Act. 1891, 18 Cal. 631 at p. 634.

Divorce Act. The residuary Article (120) as to suits not specifically provided for, is inapplicable to suits under the Indian Divorce Act, vide section 29 (3) Limitation Act, 1908. 1872, 18 W.R. 480 (P.C.). But appeals under the Divorce Act are nevertheless governed by the Limitation Act (e g., by article 151). 1898, 22 Bom. 612; 22 P.R. 1903.

The amendment of s. 29 by Act x of 1922 does not restrict the scope of the section but extends it, 91 I.C. 563 (M) and the introduction of sub-secs. (1) and (2) merely means that such sections as Ss. 19 and 20 are not to apply by virtue of the Limitation Act to cases under any special or local law : 36 C.W N. 833, 9 Part. 747 *fol.*

C.P. code is not a special law. 1952 Mad. 186 F.B.

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

Ss. 30 and 31: Suit for recovery of damages for short delivery of the goods stolen in transist—Carrier holding out promise to give delivery on future date and consignee agreeing to the same date—Time to run only on carrier's finally ex-pressing his refusal to deliver goods. *Federation of Pakistan Vs. Muhammad Idrees Barry* (1964) 19 *DLR* (*WP*) 185.

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

THE FIRST SCHEDULE

(*See* section 3)

FIRST DIVISION: SUITS

Description of suit	Period of limitation.	Time from which period begins to run.
	Part I.—Thirty days.	
[1][* * *	* * *	* * *]
	Part II.—Ninety days.	
2.—For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in [2][Bangla desh].	Ninety days.	When the act or omission takes place.

Art. 2 :—A claim for damages, for having evicted an allottee from the premises in his occupation against public authorities doing an act under colour of statutory duty is governed by Art. 2 of the Limitation Act. *Prov. of E. Bengal Vs. S.M. Faruque.* (1958) 10 DLR 601.

In order to bring a suit within the provision of Article 2 it is necessary that the public officer should have done what he did with the honest intention of acting as the law authorised. (1951) 3 DLR 87 (88)

Two reliefs had been asked for by the plaintiff : (1) Compensation for wrongful demolition of plaintiff's house by the municipal committee; (2) Permanent injunction restraining the committee from preventing the plaintiff from rebuilding the house on its own foundations.

Held:—Each relief was governed by its own period prescribed in the Limitation Act.

The period prescribed by Art. 2 of the Act applied only to that part of the claim of the plaintiff which related to compensations for the demolition and had no application to the suit in so far as it sought a perpetual injunction to restrain the defendant. (1957) (1) PLR (Lah) 322.

---

[1]. Omitted by Act 53 of 1974.

[2] Subs. *ibid.*

—Art. 2

Applicability—Good faith and honest intention necessary—Illegal commission by public officer—Case not covered by Article 2.

Held: in order to bring a suit within the provisions Article 2 of the Limitation Act, it is necessary that the Public Officer should have done what he did with the honest intention of acting as the statute or law authorised. *Promatha Narayan Bose v. Nowsherali Bepari, and Ali Bepari. PLR* 1951 Dacca 33—PLR 1951 *Dacca* 106.—3 *DLR* 87.

Applicability—Act bonafide believed to be in pursuance of the statute—Covered by the Article.

The Article does not speak of those deeds which are done in pursuance of an enactment but of deeds "alleged to be in pursuance of a statute". They may not be truly in pursuance of a statute provided the allegation that they are in pursuance of it is bonafide and not a mere pretension. *Muhammad Nabi Khan v. Federation of Pakistan. PLD* 1958 (*W.P.*) *Karachi* 596 ; *PLR* 1959 *Karacht* (2) *W.P.* 241

Where a person was unlawfully though under cover of office evicted from premises occupied by him, the authorities thought that they were entitled to evict the allottee, that they performed this act under colour of statutory duty and that their act was in itself a tort. Hence we hold that Article 2 of the Limitation Act will govern the claim for damages for illegal ouster in this case. *Province of East Bengal v. S.M. Foruque. PLD* 1959 *Dacca* 268—10 *DLR* 601.

Compensation for demolition—Relief covered by the Article.

The period prescribed by Article 2 of the Act applied only to that part of the claim of the plaintiff which related to compensation for the demolition and had no application to the sult in so far as it sought a perpetual injunction to restrain the defendant. *Municipal Committee Sialkot v. Ata Elahi. PLD* 1956 (*W.P.*) *Lahore* 689—*PLR* 1957 (1) *W.P.* 322.

Arts. 2 and 36—Damages suit for—Shipping authority negligently issuing licence to company to take ships to sea—Loss to company—Art. 36 and not Art 2 applicable.

The intention of Art. 2 is to meet those cases where the defendant does an act injurious or possibly injurious to another, under powers conferred or honestly believed to be conferred by some Act of the Legislature. It does not apply to a case where the damages arise not from the doing of the act or from the failure to do it, but from doing it in an improper manner out of malice and carelessness. Such a case would be governed by Art. 36. *Muhammadi Steamship Co. Ltd. v. Federatiou of Pakistan, PLD* 1959 (*W.P.*) *Karachi* 232—*Foll* 21 *I.C.* 426.

Arts. 2 and 3

Art 2—For compensation for an act or omission done in pursuance of an enactment,—90 days, from the act or omission.

Meaning of "in pursuance of any enactment." 1935 All. 538: 155. I.C. 131.

When the canal authorities cut the bank of a canal and thereby the plaintiff's adjacent mills were damaged, this Art. did not apply as the alleged act was not done in pursuance of any enactment 31 C.W.N. 835; 39 M.L.T. 343; 28 Punj. L.R. 453: 1927 M.W.N. 334 : 1927 P C. 72 P.C.

It applies where a public office *bona-fide purporting* to act in the exercise of a statutory power have exceeded that power. 1936 Pat. 513: 164 I.C. 860.

Part III.—Six months

3.—Under the Specific Relief Act, 1877, (1 of 1877) section 9, to recover possession of immoveable property.	Six months..	When the dispossession occurs.

[1][* * * * * * * * *]

Art. 3—To recover possession of immovable property under s. 9 of the Specific Relief Act, 6 months, from the date of dispossession.

The landlord is entitled to obtain recovery of possession under sec. 9 against a person who has dispossessed his tenant. 13 C.W.N. 835: 13 C.L.J. 30.

When a non-occupancy raiyat is dispossessed of his holding by the landlord a suit by him would be governed by Art. 120 or 140, the remedy indicated by s. 9 not being the only remedy. 31 C. 647: 8 C W.N. 446 *F.B.*, 7 C.W.N. 218 *overruled.*

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.

[1]Article 4 relating to suits under the Employers and Workmen (Disputes) Act, 1860, omitted by the Repealing and Amending Act, 1937 (20 of 1237), s. 3 and Second Schedule.

Art.			
	[1][*Part. IV—One year*]		
5.	Under the summary procedure referred to in section 128 (2) (f) of the Code of Civil Procedure 1908 V of 1908) [2][wher th provision of such summary procedure does not exclude the ordinary procedure in such suits[3] * *]. ([5] * * *)	[4][One year]	When the debt or liquidated demand becomes payable or when the property becomes recoverable.

Art 5—Under the summary procedure referred to in s. 128 (2)(f) C.P.C three years, when the debt becomes due.

Art. 5 applies to a suit to which the summary procedure applies. 1939 Bom 342: 185 I.C. 149.

Arts. 5 and 73. –Difference between –Pronote payable on demand—Limitation starts on the date of pronote.

The language used in Articles 5 and 73 with regard to the starting point of the limitation for suit mentioned in the Articles is not the same but the reason for this difference is plain. Article 5 applies to suits based on all sorts of pronotes and bills of exchange while Article 73 deals only with prorotes and bills of exchange payable on demand, and it is clear that the same language could not have been employed in both these Articles to indicate the starting point of limitation for the suit. why the starting point of limitation for a suit based on a pronote payble on demand should be different from that mentioned in Article 73 if the suit is in a summary form under Article 3 of the Limitaion Act I might also make a reference to Article 56 of the Limitation Act under which the starting point of limitation for a suit for money lent under an agreement that it shall be payable on demand becomes payable from the date of the execution of the pronote. *Abdus Samad v. Muzaffar Hussain. PLD* 1953 *Lahore* 446.

---

[1]Ins. by the Indian Limitation (Amdt.) Act, 1925 (30 of 1925), s. 2.

[2]Added *ibid.*

[3]The words "and under Order XXXVII of the said Code" omitted by the Civil Procedure and Limitation (Amdt.) Ordinance, 1961 (9 of 1971).

[4]Subs. by Act 30 of 1925, s. 2, for "Six months".

[5]The heading "*Part IV.—One year*" omitted, *ibid.*

Arts. 6-7

THE FIRST SCHEDULE.—*Contd.*
FIRST DIVISION : SUITS—*contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
6. Upon a Statute, Act, Regulation or Bye-law, for a penalty or forfeiture.	One year	When the penalty or forfeiture is incurred
7. For the wages of a house-hold servant, artisan or labourer [1] * * *	[2][One year]	When the wages accrue due.

Art. 7 Suit for wages of house-hold servant, artisan or labourer—1 year from due date.

This Art. deals with lower class of wage earners than that dealt with by Art. 102. 1935 Mad. 128: 155 I.C. 591.

The Art. applies when a household servant, artisan or labourer is hired on wages per day, per week or per month. 1938 Nag. 286: 177 I.C. 345.

A hotel cook is not a domestic servant. 1937 *Mad.* 340: 171 *I.C.* 72.

Relationship of master and servant is not necessary for application of the Art. 1953 *Nag.* 199.

A cook is a domestic servant and a suit by him comes under this Art. 28 *I.C.* 956.

A motor-car driver is an "artisan", within this sec. 1927 *Rang.* 279: 5 *Rang.* 477, 1936 *Lah.* 661: 160 *I.C.* 1042.

When the servant is appointed on monthly salary, limitation commences from the end of each month. 6 *W.R.* 33.

A weighman in a shop is not a house-hold servant, artisan or labourer and a suit by him for wages does not fall under Art. 7 but under Art. 102. 48 *A.* 164: 1926 *All.* 172.

A motor driver is an artisan and not a house-hold servant. 62 *C.L.J.* 562: 1936 *Cal.* 808, 1936 *Lah* 661.

---

[1]The words "not provided for by this schedule, article 4" omitted by the Repealing and Amending Act, 1939 (34 of 1939) s 2 and First Sch.

[2]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Arts. 8-10

A suit for wages as a domestic servant must be brought within one year under this Art. but in case the master gives credit in his account books and treats the servant as a creditor, ordinary law of limitation as to debts will apply. 39 *MLT* 415.

8. For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house.	**[1][One year]**	**When the food or drink is delivered.**

Art. 8. For the price of food or drink sold by the keeper of hotel,—1 year, when the food or drink is delivered.

THE FIRST SCHEDULE.—*contd.*

Firs Division : Suits—*cond.*

Description of suit.	Period of limitation.	Time from which period begins to run.
Part IV— One year—contd.		
9—For the price of lodging.	**[2][One year].**	**When the price becomes payable.**

Art. 9. For the price of lodging. 1 year. when the price becomes payable. —*quoere*, whether Art. 8 and 9 apply to a claim for boarding charges. **1926 *Cal.* 530 : 91 *I.C.* 839.**

10.—To enforce a right of pre-emption whether the right is founded on law, or general usage, or on special contract.	**[2][One year]**	**When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.**

Art. 10 :—In the absence of a proof that physical possession of a property was taken by the vendee on the date of the execution of the deed, the period of one year. under Art. 10 of the Limitation Act. within which the pre-emptor is entitled to exercise his right of pre-emption must be taken to have commenced from the date on which the deed in favour of the purchaser was registered. *Mehr Baksh vs. Mala Dad* (1951) 3 DLR 224.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

[2]Subs. by the Repealing ond Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Art. 10

Applies to cases where sale is by registered deed—Physical possession—Not same as possession—Object of physical possession—To give notice to all concerned of transfer—Mere admission by vendor at time of report to patwari or statement to revenue officer that vendor had surrendered possession to vendee does not bind pre-emptor. 1951 PLR (Lah.) 331.

Vendee is in possession from before the date of sale without plaintiff's knowledge. Limitation will run from the date when vendee overtly asserts the right on the strength of purchase. *Tasaranessa Vs. Tajmuddin* (1961) 13 DLR 318.

Taking of physical possession means possession of whole property—Limitation shall run from the date when the vendee gets possession of the whole of the property.

In the circumstances of a case where the purchaser has only got partial possession of the property purchased by him and not whole of it, time for filling an application for pre-emption will not run till he gets possession of the whole of the property under Article 10 of the Limitation Act. *bid.*

Applicability—applies where sale is by registered instruments.

Article 10 Schedule 1 Limitation Act (1908) obviously applies to those cases where the sale is evidenced by a registered instrument. *Muhammad Sarwar v. Feroz Khan. PLD* 1951 *Lahore* 169 - *PLR* 1951 *Lahore* 331.

Possession—Meaning of possession under the sale—Article unapplicable.

Where the vendee has entered into possession before the sale, his possession cannot be said to be possession under the sale. Art. 10 of the Limitation Act does not apply to the sale. *Said Akbar v. Nor Ahmed Khan. PLD* 1959 *Azad J. & K. I,*

Pre-emption—If Article 10 is not applicable Art. 120 would apply.

When Artible 10 of the Limitation Act has no application either because the sale was not effected by a registered document, or possession was not taken under the sale, Article 120 of the Limitation Act would apply. *Jamil Khan v. Hamzullah. PLD* 1959 (*W.P.*) *Peshawar* 172.

Starting point of limitation—Possession prior to attestation of mutation—Limitation for pre-emption would start from date of possession.

Where the land was sold by the owner to his tenant who was already in possession by a registered deed and the attestation of mutation took place after about two years of the sale. It does not follow from the language of Article 10 of the Limitation Act, that limitation would run in case of attestation of mutation. If the date of possession is earlier than the date of attestation of mutation, I am of the view that the date on which possession of the property in fact was taken would be the date for the commencement of the

Art. 10

limitation under Article 10 and not the date of attestation of mutation *Chulam Sarwar Khan v. Abdul Hamid. PLD* 1960 (*W.P*) *Peshawar* 32.

Uncultivated land—Pre emption—When limitation begins to run—Manner in which possession may be taken.

Held : I cannot see on what principle of law, justice equity or logic can it be held that the act of pointing out uncultivated land by the vendor or his agent to the vendee or his agent can amount to a notice to the persons having a right of pre-emption that the property had been sold. Section 30 of the Punjab Pre-emption Act, 1913, provides as did section 29 of the Punjab Pre-emption Act, 1905, that in order that the time prescribed for bringing a suit for pre-emption should start running the vendee should have taken physical possession of the whole or a part of the property sold that it is obvious that unless physical possession has been actually taken the time does not start running against the pre-emption.

There are a number of ways physical possession may be taken of an uncultivated piece of land. It may, for example, be walled, it may be hedged or it may be cultivated. If any of these things is done, physical possession will have been taken. If the reason for providing that before limitation starts running against a pre-emptor physical possession of the whole or a part of the property sold must have been taken was that taking of physical possession is notice to those interested in the property that it has been sold which in my opinion it was—it is clear that taking of what may be called symbolic possession of uncultivated piece of land cannot be considered to be the taking of physical possession of that land. The possession which can be used to the prejudice of the pre-emptor is physical possession under the sale and no other kind of possession can suffice. If, for example, a person was already in possion of a piece of land in some capacity other than an owner and that piece of land were sold to him, the fact that he was in possession before the sale will stand in the way of his claiming that the period of limitation should be considered to have started running from the date of the oral sale because the possession on which he relies is not physical possession under the sale of which the pre-emptors could have got any information from the fact that he was in possession under the sale of which the pre emptors could have got any information from the fact that he was in possession of the property which was even before the sale in his actual physical possession. *Niaz Ahmad and others v. Mian Abdul Rahman and others. PLD* 1961 *Baghdad-ul-Jadid.* 1—*PLR* 1961 (1) *W.P.* 929.

Suit to enforce a right of pre-emption—1 year from physical possession or date of registration.

Suit for pre-emption on foreclosure is governed by Art. 120, 1950 *All* 647.

Physical possession means *personal and immediate possession.* 24 A. 17: 5 *C.W.N.* 888, *P.C.* constructive possession is not physical possession. 20 A. 315: 18 A.W.N. 61 F.B.

Arts. 10-11

Property in the possession of tenant does not admit of physical possession within this Art. 73 *I.C.* 903. So limitation runs from the date of registration. 26 *Punj L.R.* 780, 86 *I.C.* 130; 23 *A.L.J.* 104: 1925 *All.* 324.

Where the purchaser could not take physical possession of the whole of the property sold, Art. 120 comes into ploy. 4 *D.L.R. Nag.* 157.

Where the subject of sale is not capable of physical possession, and there is no registered deed of sale, a suit for pre-emption is governed by Art. 120 20 *A.* 315 : 18 *A.W.N.* 61 affirmed by *P.C.* in 24 *A.* 17; 5 *C.W.N.* 888, 4 *A.* 218, *F.B.*, 5 *A.* 187.

Right of pre-emption cannot be pleaded in defence. 45 *M.L.J.* 389, 29 *M.* 449, 29 *M.* 336. 40 *M.* 1134, *fol.*

Application of sec. 18 of the L. Act. 1931 *P.C.* 12: 121 *I.C.* 257 *P.C.*

Description of suit.	Period of limitation	Time from which period begins to run.
11.—By a person against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order :	[1][**One year**]	**The date of the order.**
(1) Order under the Code of Civil Procedure, 1908, (V of 1908) on a claim preferred to, or an objection made to the attachmen of, property attached in execution of a decree; [2][* * * *]		

Art. 11.—Even where objection under Order 21, rule, 58 C.P. Code is dismissed for default without making any investigation, the objector in order to avoid its effect, must file suit within a year of such dismissal—When a decree holder abandoning by conduct earlier attachment prays for fresh attchment, the claimant is not barred from putting in objection even though he did not file any suit within a year of the dismissal in default of his earlier claim. (*Mst. Sardar Begum Vs. Mst. Sherin Taja.*) (1971) 23 DLR (Peshawar) 18.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

[2]Clause (2) omitted by the Federal Law (Revision and Declaration Act, 1951 (26 of 1951), s. 3 and Second Sch.

Art. 11

Art. 11. (1)—When a claim preferred under Or. 21, r. 58 of the C.P. Code in an execution proceeding has been dismissed and claimant thereafter brings a suit under the provisions at Or. 21, r. 63 for declaration of his right to the property the suit is governed by Art. 17 (1) of Sch. II of the Court-fees Act and also Art. 11(1) of the Limitation Act and not by section 7(iv) (c) of the Court-Fees Act. *Swadsh Ranjan Das vs. Carew & Co.* (1956) 8 DLR 359.

Claim for execution under Or. 21, r. 58 C.P.C. dismissed—Suit under Or. 21 r. 63 for a declaration of right to property—Art. 11 (1) applicable.

When a claim preferred under Or. 21, r. 58 of the Civil Procedure Code in an execution proceeding has been dismissed and the claimant thereafter brings a suit under the provision of Or. 21, r. 63 for a declaration of his right to the property, the suit is governed by Article 17 (1) of Schedule II of the Court Fees Act and also Article II (1) of the Limitation Act. and not by section (4)c of the Court Fees Act The value of the action must mean the value of the plaintiff. *Swadesh Ranjan Das Minor & others v. M/S. Keru & Co., Ltd.* (1956) 8 *DLR* 359. (*D.B.*).

Art. 11. Suit to establish the right against an order in claim case—1 year from order.

Where a claim is disallowed this Art. applies. 83 *I.C.* 233; 1924 *Cal.* 744, 6. *C.L.J.* 362.

When a claim case is not tried on merit but is rejected on the ground of delay, this Art. applies. 1935 *Cal.* 500: 39 *C.W.N.* 457: 61 *C.L.J.* 5, 41 *M.* 985 *F.B.*, 45 *C.* 785, 23 *C.W.N.* 87 *N.*, 1923 *Nag.* 69: 69 *I.C.* 522, 6 M.*L.J.* 68: 71 *I.C.* 404.

This Art. applies where a claim case has been dismissed on the ground that claimant has no locus standi 1939 *Pat.* 109.

Suit by an unsuccessful claimant against an attachment before judgment is governed by Art. 120. 1945 *Cal.* 449: 49 *C.W.N.* 111, 1954 *Mys.* 39.

Where there was an attachment before judgment but claim was preferred after the order for sale and was disposed ot, this Art. applied. 44 M. 902: 41 M.*L.J.* 252 *F.B.*, 45 M. 90.

Where claim against attachment before judgment is dismissed but subsequently the execution proceeding ends adversely to the D, Hr. but the order is reversed in appeal whereupon the property is again attached and fresh claim is preferred whch is also dismissed, time runs from the dismissal of the last claim case. 87 *I.C.* 756: 1925 *Cal.* 1147.

Suit under Or. 21, r. 63 C.P.C. fails if the transferee of property prior to suit is added as party after limitation period. 33 *C.L.J.* 201: 25 *C.W.N.* 544.

Art. 11A

Description of suit.	Period of limitation	Time from which period begins to run.
11A—By a person against whom an order has been made under the Code of Civil Procedure, 1908. [V of 1908] upon an application by the holder of a decree for the possession of immoveable property or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser, to establish the right which he claims to the present possession of the property comprised in the order.	[1][One year]..	The date of the order.

Art. 11A. Suit to establish right, under Or. 21, r. 103, C.P.C., 1 year from order.

A suit under Or. 21, r. 103 C.P. Code is governed by this Art. 1938 *Cal.* 577: 42 *C.W.N.* 1051: 179 *I.C.* 40.

The Art. does not apply where the order was passed wihout investigation into the facts of the case. 34 *C.* 491: 11 *C.W.N.* 487, 6 *C.L.J.* 362, 27 *M.* 25, 26 *C.W.N.* 853: 35 *C.L.J.* 537, 1950 *Pat.* 25: *P.* 828.

A "person against whom" includes a decree holder. 44 *A.* 607, 15 *C.* 521, 19 *A.L.J.* 53. *Fol.*

Where after delivery of symbolical possession in the prior suit the executing court rejected the plaintiff's application for khas possession on the finding that the

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Arts. 11A-12

defendents were on the land in their own right, a subsequent suit brought after one year was barred under this Art. 45 *C.L.J.* 588, 24 *C.W.N.* 1001 3 *P.L.T.* 33 *P.C.*

Where the cause of action alleged by the plaintiff is one that has arisen subsequent to the date of the order made on the application under Or. 21. *r.* 100, this Art. does not apply. 50 *C.* 311, 38 *C.L.J.* 7, 150, 1924 *Cal.* 97.

Limitation runs from the date of the order in claim case and not from date of High Court's order discharging the rule. 1944 *Pat.* 225: 218 *I.C.* 75.

Application under Or. 21, R 97 was allowed as to an item of property and dismissed as to another because the auction purchaser did not adduce evidence, this Art. would apply. 39 *C.W.N.* 164: 1935 *Cal.* 267.

Application of the Art —C.P.C. Or. 21, *r.* 100. 38 *C.L.J.* 150.

Casee where this Art. does not apply. 1923 *Cal* 607, 30 *C.W.N.* 163: 42 *C.L.J.* 578: 1926 *Cal.* 377, 49 *M.* 596: 1926 *Mad.* 653, 1926 *Mad.* 232.

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS *contd.*

Part IV.— One year—contd.

Description of suit	Period of limitation	Time from which period begins to run.
12.—To set aside any of the following sales :—	[1][One year]. .	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.
(*a*) sale in execution of a decree of a Civil Court;		
(*b*) sale in pursuance of a decree or order of a Collector or other officer of revenue;		
(*c*) sale for arrears of Government revenue, or for any demand recoverable as such arrears;		
(*d*) sale of a patni taluq sold for current arrears of rent.		
Explanation.—In this article "patni" includes any intermediate tenure saleable for current arrears of rent		

[1]Subs. by the Repealing and Amending Act, 1925 (11 of 1925), s. 2 and First Sch., for "Ditto".

Arts. 12-13

Art. 12 Suit to set aside sale—1 year from confirmation.

This Art. does not apply to a sut for declaration that plaintiff's interest is not affected by sale. 1942 *Pat.* 386: 202 *I.C.* 57, 1941 *Cal.* 333: 45 *C.W.N.* 277.

When the sale is sought to be set aside on the ground of fraud. Art. 95 (3 years) applies. 34 *C.* 241: 5 *C.L.J.* 385, 13 B. 221, 9 *M.* 457, 96 *I.C.* 529: 1926 *Pat.* 402: 5 *P.* 759: 8 *Pat. L.T.* 124.

When in pursuance of a money decree against father joint family property was sold, in a suit by son to set aside the sale to the extent of his share this Art. will apply. 1926 *M.W.N.* 767: 1926 *Mad.* 1190: 98 *I.C.* 31, 25 *B.* 327 *P.C. fol.* 34 *C.* 329 *P.C. Dist.*

When the sale is voidable, this Art. applies. 11 *C.* 287, 6 *C.L.J.* 163, 21 *C.* 66 *P.C.*, 31 *C.* 385, 3 *Pat. L.T* 529 but where the sale is void this Art. does not apply. 19 *A* 308: 17 *A.W.N.* 71, 18 *A.* 147, 11 *B.* 429, 8 *C.* 329. 12 *B.* 8, 11 *B.* 130, 1943 *Bom.* 288: 212 *I.C.* 205, 1935 *P.C.* 139: 39 *C.W.N.* 1124: 37 *Bom. L.R.* 794: 157 *I.C.* 485 *P.C.*

To apply this Art. the plaintiff must be a party to the sale proceedings. 18 *M.* 478. 20 *M.* 118. *F.B.*, 9 *M.* 460, 5 *A.* 614, 9 *C.L.R* 18. 4 *M.* 178, 5 *M.* 54, 67 *I.C.* 894, 1942 *Oudh.* 120: 198 *I.C.* 107.

In a suit to set aside a sale under the Bengal Public Demands Recovery Act this Art. applies 45 *C.L.J.* 73: 31 *C.W.N.* 299: 1927 *Cal.* 315: 100 *I.C.* 997, 23 *C.* 775 *Rel. on.*

THE FIRST SCHEDULE—*Contd.*

FIRST DIVISION: SUITS—*Contd.*

Description of suit	Period of limitation.	Time from which period begins to run.
Part IV.—one year—contd.		
13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	**[1][One year].**	**The date of the final decision or order in the case by a Court competent to determine finally.**

Art. 13. [To set aside decision of civil court in any proceeding other than suit,—1 year, from the final order.]

Order of Insolvency Court for sale of interest of insolvent without deciding title, suit by third party to establish title to properties dos not fall under this Art. 1933 Cal. 263: 36 C.W N. 621.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto"

Art. 14

14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	**[1][One year].**	**The date of the act or order.**

Art 14: Applicability—Applies to orders passed by Government Officers—Does not apply to order of Government or Revenue Tribunal.

Article 14 of the Limitation Act applies only to orders passed by the officers of the Government and not to the order passed by the Government itself,

Sind Revenue Tribunal is a statutory body and represents the Government as an appellate authority to hear appeals against the Revenue Officers. It is obvious that Article 14 of the Limitation Act does not apply to the orders passed by such a Tribunal. *Pirdinoshah and others. Vs. Ishaq All Shah and others* PLD 1960 Karachi 385—PLR 1959 (1) W.P. 1302 (D B.)

The plaintiff has not prayed for setting aside any order of any officer of the Government. His prayer is for a declaration that his posting as an Income-tax Officer, Class II Grad III, in the circumstance stated in the plaint, was illegal, inoperative and not binding on him. Apparently it does not come within this Article 14 of the Limitation Act.

In such circumstances, the only Article applicable in the case is the residuary Article 120 of the Limitation Act which provides that for a suit for which no period of limitation is provided elsewhere in the schedule, the period of limitation is six years when the right to sue accrues. *Pakistan Vs. Mahammad Abdul Kuddus*, Income-Tax Officer, Chittagon, PLD 1961 Dacce 616.

Dismissal from Government service—suit to challenge covered by Art. 14.

Article 14 of First Schedule to the Limitation Act applies to a suit "to set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided". It is not in terms applicable to a suit for declaration that the plaintiff's dismissal from service was wrongful and that the order of dismissal was null and void and inoperative *Rais Inayat Vs. Federation of Pakistan*, PLD 1957 Lahore 378—PLR 1957 (2) W.P. 448.

Arts. 14. 62: Import duty levied illegally—Claim to recover is governed by Art, 1962 and not Art. 14.

Held: the claim in the plaint is based on the fact that the levy of the duty was illegal. The recovery of such payment falls under Article 62 of the Limitation Act. Therefore Art. 14 does not apply to such case. *The Federation of Pakistan Vs. Dawood Corporation* PLD 1958 Dacca 472—(1958) 10 DLR 258

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Art. 14

Order passed with jurisdiction to pass it—Article 14 applicable—Limitation starts from the date of order.

Article 14 is only applicable if the order in dispute is passed by an authority having jurisdiction to pass it, and that if the order is without jurisdiction or otherwise invalid. It does not require to be set aside, and Article 14 will consequently not apply.

Limitation under Article 14 begins to run, not from the date of knowledge of the act or order, but from the date on which the act or order was done or passed Foll: ILR 24 Bombay 435. *Muhammad Siddiq Vs. Punjab Province and others.* PLD 1958 Lahore 458—PLR 1958 (1) W.P 316

Arts. 14 and 120 Order passed without juridibtion—Art. 120 applibabie—Six years period of limitation from tne knowledge of order.

If a public officer has passed an order which he has no jurisdiction to pass, the order can be overlooked and the suit to get relief against it can be brought within six years of the passing of the order under Article 120 of the Limitation Act It is further clea that the period of limitation for a suit falling under Article 14 of the said Act will start only from the date on which the person who wants to seek relief against that order in a Court of law came to know of it, because it cannot be expected that a person should come to Court to get relief against an order of the existence of which he had no knowledege. *Ghulam Muhommad vs Hafiz Ahmad. PLD* 1960 (*Lahore*) 1179= *PLR* 1961 (2) *W P.* 113.

In the case where the orders of the Government were void ab initio and it was not necessary to set them aside in order to grant the relief to the plaintiffs, Article 14 of the Limitation Act would not have any application but, in the second case where valid, but in order to make them effective they had to be avoided, then whatever the language of the plaint Article 14 would come into play and if brought more than one year after the impugned order was passed the suit would be barred by time. *The Provtnce vs. Nisar Ahmad PLD* 1960 *Lahore* 801=*PLR* 1961 (1) *W.P.* 957.

Art. 14—Partition proceeding—Party not party to—Suit of declaration of title—Art. 14—applicable.

The words 'set aside' as used in Art. 14 clearly imply that the order complained of is binding on the plaintiff unless and until it is set aside and the Article cannot have any application when it is not necessary for the plaintiff to set aside the act or order to obtain the relief which he claims.

Where the plaintiffs were not partles to the partition proceedings under s. 88, Estates Partition Act, and no notice of those proceedings was served upon them nor was there any adjudication upon their claims in those proceedings, as strangers they can not be affected in any manner by the

Art. 14

decision of the revenue authorities for the partition of properties and there is, therefore, no order binding on them which is necessary to be set aside. Hence a suit by them for declaration of title to the properties partitioned filed more than one year after date of order of partition under s. 88 is competent and not barred under Art. 14. AIR (33) 1946 Calcutta 480 (D.B) *Bimalendu Roy V. Shebaits of Deity Gopal Deb and others* Rel. 29 Cal. 267.

Art. 14, 120—Railway employee—Suit to challenge dismissal from service as illegal—Not covered by Art. 14—Covered by Art. 120.

A Railway employee was dismissed from service illegally. He brought a suit to challenge the order. The question was whether the case was covered by Art. 14 or Art. 120 Limitation Act.

Held: If the order passed by an officer of Government is illegal and void then the person affected is not under any obligation to get it set aside It is not binding on him and he can justifiably ignore it and treat it as a nulity. Therefore, article 14 of the Limitation Act is inapplicable to a case of this nature and both the Courts below erred in holding that the plaintiff's suit was barred by limitation. In fact the only Article of the Limitation Act which is applicable to such a suit is Article 120 which prescribes a period of six years for the institution of a suit *Ibrahim V. Federation of Pakistan* PLD 1957 Lahore 925=PLR 1958 (1) WP 823.

Art. 14. To set aside an act or order of Government officer, one year from the date of act or order.

A judicial order does not fall under this Art. 1940 *Bom.* 188: 188 *I.C.* 531.

Conditions necessary for application of the Art. 1934 *Lah.* 384: 149 *I.C.* 661.

The order contemplated by Art. 14 must be such an order which the officer is empowered under the law to pass and which would be effective unless set aside and which further is an order which under the ordinary law is liable to be set aside by a suit in the civil court. *C.W.N.* 839: 89 *I.C.* 193: 1925 *Cal.* 953.

If the act or order is illegal or *ultra vires* Art. 14 does not apply. 1928 *Bom.* 180, 39 *C.L.J.* 454: 1924 *Cal.* 13, 1951 Bom. 72, 49 *C.W.N.* 117.

Suit for declaration of title brought in the Civil Court more than one year after the order of the Deputy Collector under s. 57 of the Estate Partition Act, the suit not being to set aside the order of the Collector, was not barred by Art. 14 of the Limitation Act. 52 *C.L.J.* 2407: 1931 Cal. 29.

A suit to set aside an order under sec. 167 (17) of Sea Customs Act falls under this Art. 1940 *Bom.* 294 : 191 *I.C.* 867.

Arts. 15-19

Part IV.—One year—contd.

Description of suit	Period of limitation.	Time from which period begins to run.
15.—Against Government to set aside any attachment, lease or transfer of immoveable property by the revenue authorities for arrears of Government revenue.	[1][One year].	When the attachment, lease or transfer is made.

Part V. One year.

Description of suit.	Period of limitation.	Time from which period begins to run.
16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	[1][One year]..	When the payment is made.

Art. 16. To recover money paid under protest, one year, when the payment is made.

This Art. does not apply to recovery of rent paid 1937 *P.C.* 244 : 41 *C.W.N.* 1061: 169 *I.C.* 881 *PC.*

Art. 16 applies to a suit for the recovery of penal assessment. 86 *I.C.* 267: 1925 *Mad.* 474.

Art. 19. Suit for compensation for false imprisonment, 1 year, when the impisonment ends.

Nothing short of actual detention and complete loss of freedom will support an action for false imprisonment. Time begins to run from the date of enlargement on bail. 30 *C* 872: 7 *C.W N.* 729 *P.C.*

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Arts. 17-23

Description of suit.	Period of limitation.	Time from which period begins to run.
17.—Against Government for compensation for land acquired for public purposes.] →	[1][One year]..	The date of determining the amount of the compensation.
18.—Like suit for compensation when the acquisition is not completed.	[1][One year]..	The date of the refusal to complete.
19.—For compensation for false imprisonment.	[1][One year]..	When the imprisonment ends.

Art. 22. Suit for compensation for personal injury.

This Art. does not apply to proceedings under Workmen's Compensation Act. 1934 *Bom.* 28: 149 *I.C.* 247.

In case for damages for personal injury caused by throwing sulphuric acid on the face, Art, 22 applies. 1924 *Bom.* 290.

THE FIRST SCHEDULE.—*contd.*

First Division : Suits—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
Part IV.—One year—contd.		
20.—By executors, administrators or representatives under the Legal Representatives' Suits Act, 1855.	[1][One year]..	The date of the death of the the person wronged.
21.—By executors, administrators or representatives under the Fatal Accidents Act, 1855, (XIII of 1855)	[1][One year]..	The date of the death of the person killed.
22.—For compensation for any other injury to the person.	[1][One year]„	When the injury is committed.
23.—For compensation for a malicious prosecution.	[1][One year].,	When the plaintiff is acquitted, or the prosecution is otherwise terminated.

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Arts. 23-24

Art. 23—"Prosecution"—Word is used in general term—Meaning of—Explained—

Held; the word "prosecution" in Art. 23 limitation Act, is used in the general and not in the technical sense It is not necessary that the original proceeding should have been of such a character as to render the person against whom it was taken liable to be arrested, fined or imprisoned

Held: further. The word "prosecu ion" has thus been used in a more general sense than a trial and includes criminal proceedings by way of appeal or revision before a District Magistrate, a Sessions Court or a High Court. *Sh. Mehtab v. Balaji.* AIR (33) 1946 *Nagpur* 46.

Termination of prosecution when termination takes place.—Date of order in revision is such date.

A prosecution is terminated when it is brought to an end or is concluded. The language implies a order of discharge, is not final and is liable to be set aside in appeal or revision, as the case may be, by an order of the appellate or revisional Court. So long as these proceedings are pending. no action lies on the ground of their wrongful institution.

The plaintiffs were discharged on 29th August, 1933. This order upheld in revision by the District Magistrate on 9th October, 1933 and by the Judicial Commissioner's Court on 8th May, 1934. The suit for damages for malicius prosecution was filed on 4th May, 1935, more than one year after the order of discharge but within one year of the order passed by the Court of the Judicial Comissioner.

Held: That the suit did not terminate on 29th August, 1933 but on 8th May, 1934. The suit was, therefore, within limitation. *Sh. Mehtab v. Balaji.* AIR (33) 946 *Nagpur* 46.

Art. 23. **Suit for compensation for malicious prosecution.**

Limitation starts when the proceedings terminate in appeal or revison. 1938 *All.* 49, 1938 *Mad.* 349, 1942 *Oudh* 489, 1946 *Nag.* 46 : 221 *I C.* 666.

The period of limitation for a suit for malicious prosecution is one year from the time of acquittal, the cause of action cannot be suspended. 47 *B.* 28 : 24 *Bom L.R.* 507.

Part IV.—one year—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
24.—For compensation for libel.	[1][One year]..	**When the libel is published.**

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Arts. 24-29

Art. 24. Suit for compensation for libel. 1 year, when the libel is published.

A suit for damage for preferring a false report to the police, of defamatory character is governed by the Art. 24 A. 368, 18 *C.L.J.* 352, 1937, *All.* 90 : 167 *I C.* 433. So also where a president of a Union Board sends a defamatory report to a Magistrate. 40 *C.W N.* 500.

THE FIRST SCHEDULE.— *Contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part IV.—One year—contd.	
25.—For compensation for slander.	[1][One year]..	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	[1][One year]..	When the loss occurs.
27. For compensation for inducing a person to break a contract with the plaintiff.	[1][One year]..	The date of the breach.

~~Art.~~ 27. Suit for compensation for inducing a person to breck a contract with the plaintiff—1 year, from the date of the breach.

Case—31 *C W.N.* 174: 1926 *M.W.N.* 593: 1926 *P,C.* 88: 96 *I C.* 887 *P.C.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part IV.—One year—contd.	
28.—For compensation for illegal, irreguiar or excessive distress.	[11][One year]..	The date of the distres.
29.—For compensation for wrongful seizure of movable property under legal process.	[11][One year]..	The date of the seizure

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Art. 29–

Arts. 29, 48, 49—Attached property—Damage while in custody of sureties—Suit for damages or for return of property in original condition—Arts 48 or 49 applicable—Art. 29 not applicable.

Where a suit is for compensation for wrongfully taking or detaining the property lost or acquired by theft or by dishonest misappropriation or conversion, Art. 48 would not in terms apply. Even if Art. 48 does not in terms apply, Art. 49 which is a residuary article, would be applicable, since that article deals with suits for specific movable property not otherwise provided for, or for compensation for wrongfully taking or injuring or for wrongfully detaining the same. The period of limitation under both Arts. 48 and 49 is three years and the time is to run from the time when the person having a right to the property first learnt in whose possession it was or when the detainer's possession became unlawful.

A obtained an attachement befor judgment against B and attached a sewing machine belonging to B. The machine was then handed over to two sureties C & D. The attachment was subsequently raised as being illegal on application by B. At the time of taking delivery it was found that the machine was rendered absolutely useless by the removal of important parts thereof and it has also become rusty and unworkable. B. therefore refused to take delivery of the same and filed a suit against A, C and D for the return of the machine in the condition in which it was at the time of attachment or for damages. It was contended that the suit was barred by limitation under Art. 29, Limitation Act, as it was filed after the expiry of one year from the date of attachment.

Held: That the suit was governed by Art. 48 or Art. 49 and not by Art. 29. The suit being admittedly filed within the period prescribed by those articles was not barred by limitation. *Venugopal and brother by its proprietor N. Venugopal Naicker and others V.P. Gopala Chettair, AIR* (33) 1946 *Madras* 453. *Rel: AIR* 1946 *Mad.* 33, *AIR* 1929 *R.C.* 69 22 *Mad.* 278.

In the year 1935, D instituted a suit against K for the recovery of Rs. 99 alleged to be due by way of rent. D applied for the attachment before judgment of two brick kilns which he alleged belonged to K. The application was granted and the attachment effected. As it was not possible to remove the kilns, the Amin left them in the custody of D on his entering into a security bond for the sum of Rs. 1500. The bond was executed on 19th December, 1935, On 17th January 1936, P filed a petition under Or. 21, R. 58 objecting to the attachment on the ground that the kilns belonged to him. On 25th January 1936, P filed an interlocutory application asking the Court to direct delivery of the kilns to him. The Court passed an order cancelling the attachment and directing D to deliver the kilns to P. The delivery was effected on 26th January 1936. P then discovered that all the bricks had been removed from one kiln and a quarter of the brcks from the other kiln. On 4th March, 1936 the Court dismissed D's suit and allowed P's petition under Or. 21 R. 58. On

Arts. 29-30

25th Janury 1936, P filed a suit against D for recovery of the loss of the bricks removed by D.

Held: That the suit was governed not by Arts 68, 29 or 48 but by Art. 49 and was within time being within 3 years from 26th January, 1936. *N P. Krishna Ayyar v. Sudalaimthu Pillai and others*, *AIR* (33) 1946 *Madras* 33.

Art. 29. Suit for compensation for wrongful seizure of movable property.

A suit for compensation for wrongful seizure of movable property under legal process is governed by this Art. 1946 *Mad.* 33, 1950 *Mad.* 734.

A seizure under a writ of court is *prima facie* not wrongful and a suit for compensation does not lie under this Art. 35 *C L.J.* 480, 19*M.* 80, 38 *M L.J.* 315 *fol.* 31 *M.* 431, 42 *C.* 85, 31 *M.L.J.* 257 *Dist*, the Art applies where attachment is illegal *ab initio*. 1925 *All.* 131, 1930 *Mad.* 635: 53 *M.* 621,

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	*Part IV.—One year*—contd. Period of limitation.	Time from which period beings to run.
30.—Against a carrier for compensation for losing or injuring goods.	[1][One year]..	When the loss or injury occurs.

Art. 30.—Time runs from the date when goods are lost—Onus to prove loss is on Railway. 1954 PLR (Lah.) 767.

Burden of proof as to how the goods were dealt with during transit.

In a case governed by Article 30 the onus is upon the defendants to show when actually the goods could be said to have been lost or injured In that case, the defendants would have been under a duty to show as to how the goods were dealt with in all possible stages as long as they were in their custody. *Dada Ltd. Vs. R. S. N. Company*. 1958) 10 DLR 242—8 PLR (Dac,) 287.

Arts. 30 and 31.—The plaintiff sued the defendant-company for non-delivery of goods in the following circumstances. The plaintiff having found that there was a shortage of goods started correspondence with the defendant company who sent a reply on 19-2-51 intimating that the matter would be enquired into and further information would be communicated. Having in vain waited for about 16 months the plaintiff brought the suit for compensation on 12-6-52 that the suit defendant-company. It was contented on behalf of the defenadants that the suit was barred by limitation as the plaintiff was bound to bring his suit within one year of the date on which he took delivery of the goods on 15-1-51.

---

[1]Suds. by the Repealing and Amending Act. 1923 (11 of 1923), s. 2 and First Sch,. for "Ditto"

Art. 30

Held—The suit is not barred either under Article 30 or Article 31 of the Limitation Act. The defendants having failed to communicate the results of the enquiry, as assured by their letter, the suit was perfectly maintainable as having been brought within a reasonable time from the date of defendant's letter dated 19-2-5 . The expression "when the goods ought to be delivered" in Article 31 of the Limitation Act means when the plaintiff could have filed a suit without the risk of the suit being considered as premature *Dada Ltd. Vs. R. S. N. Company.* (1958) 10 DLR 242.

Plaintiff may sue for loss of goods either under Art. 30 *or* 31:

Plaintiff may sue for loss as contemplated under Article 30 or he may sue in alternative within the meaning of Article 31 of the Limitation Act as well. *Ibid.*

Arts. 30, 31—Applicability—Different circumstances in which articles would apply.

The applicability of any of these Articles would depend on the cause of action, or the infringement of right which is the basis of the claim. If the basis of the suit be the act of carrier in losing the goods, Article 30 would apply and if the basis of the suit be the right of the plaintiff to delivery of goods which right has been infringed Article 31 will govern. However, when the goods have in fact been lost the question arises whether the suit would still be governed by Article 31. It is argued sometimes that as there is a specific Article applicable to a cause of loss the Article applicable can only be 30. *Federation of Pakistan v. Muhammad Iqbal. PLD* 1953 *Lahore* 460—*PLR* 1953 *Lahore* 1045.

Art. 30.—Goods lost by carrier—Article 30 applicable—When time begins to run.

Under Article 30 time runs from the date when the goods are lost "Loss" as has been held in East Indian Railway Company v. Jogpat Singh (1) occurs "whenever the Railway company to which the goods have been consigned for conveyance involuntarily or through inadvertence loses possession of the goods, and for the time being is unable to trace them". *Federation of Pakistan vs. Raja Fazal Dad Khan. PLD* 1954 *Lahore* 635—*PLR* 1954 *Lahore* 767—*Rel*: *ILR* 51 *Col.* 615.

Art.30—Goods lost by carrier—Defendant must show when goods were lost—Suit may be governed by Art. 31 in the alternative.

The plaintiff may sue for loss as contemplated under Article 30 of Limitation Act or he may sue in the alternative within the meaning of article 31 as well. *Dada Ltd. vs R.S.N. Co , Ltd. PLR* 1958 *Dacca* 452 -10 *DLR* 242 *PLD* 1954 *Lahore* 635; *PLD* 1953 *Lahore* 460.

Art. 30. Suit against a carrier for compensation for loss or injury to goods, 1 year, when the loss or injury occurs.

Limitation starts when the plaintiff taking delivery finds the loss. 1953 *Pat.* 367.

Arts. 30-31

Railways are carriers. 1938 *Cal.* 2°8: 197 *I C.* 196.

In order to apply this Art. loss must be admitted by the defendant. 12 *C.* 477, 19 *B.* 165, 7 *B.* 478, and the loss or injury to the goods and not to the consignee. 13 *Par. LT* 695, 1951. *Cal.* 462.

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part IV.—One year	
31.—Against a carrier for compensation for non-delivery of, or delay in delivering, goods	[1][One year]..	When the goods ought to be delivered.

Art. 31: No time fixed for delivery—Delivery has to be performed within a reasonable time—Starting point of time. 1954 PLR (Lah) 767.

Where there was no evidence on record to show as to when some of the goods was delivered, the date of the short-delivery certificate given to consignor by the company was presumed to be the date from which limitation should be taken to run in accordance with the Article, *R.S.N. Company Vs. Data Ltd.* (1957) (1) PLR (Lah.) 273.

"When the goods ought to be delivered"—explained.

The expression "when the goods ought to be delivered" in the third column of Article 31 of the Act must be construed to mean when the plaintiff realised that the defendants by their conduct meant to convey that the goods could not be delivered. (1959) 11 DLR (520) *R.S.V. Company vs Dada Ltd.*

Article 31 is applicable even when the plaintiff filed his suit after one year to recover compensation after waiting for a reasonable time to have the matter settled. *Ibid.*

Start of period—when cause of action arises.

Time under Article 31 runs from the definite refusal or expression of inability to deliver the goods made by the defendant. The cause of action in such cases arises when the owner of goods is made aware that there will be no further delivery (1957) PLR (Lah.) 336,

Starting point of limitation—where all packages of goods consigned arrive but short delivery is due to difference in weight—Limitation of time runs from the date when delivery is made

---

[1]1. Subs. by the Repealing and Amending Act, 1923 (11) of 1923), s. 2 and First Sch., for "Ditt."

Art. 31

In case of short delivery of goods where all the packages arrive and the short delivery is due to diffierence in weight, limitation will run from the date of delivery of goods. *Pakistan River Steamers Ltd. Vs. A.K. Adam* (1962) 14 DLR 601.

Limitation in a case would start only when the consignee secured a delivery order but the goods were not delivered to him in accordance with the delivery order. *Abdul Jalil Chowdhury Vs. Muhammadi Steamship Co. Ltd.* (1961) 13 DLR (SC) 214.

Arts. 31, 30.—Applicability—Different circumstances in which articles apply.

The applicability of any of these Articles would depend on the cause of action, or the infringement of right which is the basis of the claim. If the basis of the suit be the act of carrier in losing the goods, artfcle 30 would apply and if the basis of the suit be the right of the plaintiff to delivery of goods which rigat has been infringed Article 31 will govern. However, when the goods have in fact been lost the question arises whether the suit would still be governed by Article 31. It is argued sometimes that as there is a specific Article applicable to a case of loss the Article applicable can only be 30. *Federation of Pakistan vs. Muhammod Iqbal. PLD* 1953 *Lahore* 460—*PLR* 1953 *Lahose* 1045.

Art. 31.—Goods not delivered by Railway—Limitation starts from time when the goods should have been deivered—No date fixed for delivery of goods—Reasonable time should be taken into consideration—When the goods despatched by Railway were not delivered, and the question was when limitation would start for a suit for damages against the Railway.

For determining the point of time from which limitation is to run,we have simply to find out the date when the goods "ought to be delivered". These were have reference to the time when the contract for delivery ought to have been performed. In eases where no time for delivery is fixed it has to be performed within a reasonable time and limitation has to start when the reasonable time expires. Except when there is an extension of time under section 46 of the Contract Act or a novation of contract under section 63 limitation will begin to run on expiry of reasonable time. *Federation of Pakistan v. Raja Dad Khan. PLD* 1954 *Lahore* 635—*PLR* 1954 635, *PLR* 1954 *Lah.* 767.

Art. 31.—Goods partly delivered—Suit for compyensation for short delivery—Limitation starts on the day when goods were partly delivered.

One bag of a consignment was delivered short when other 199 bags were delivered on 18th August, 1951. In case of non-delivery or short-delivery. Article 31 of the Limitation Act, applies According to this Article, time runs from the date the goods 'ought to be delivered'. In this particular case the major portion of the consignment had actually arrived on or before 1st August 1950, when the delivery was actually taken, and it was found on that day that one bag had not arrived, and hence it became a case of short delivery.

Art. 31

In this case the goods were loaded in one wagon and not in several wagons so that there could be a possibility of difference in time of arrival. It, therefore, does not require any effort to determine when the goods ought to have been delivered. *Federation of Pakistan v. Abdul Rehman Abdul Ghani. PLD* 1958 *(W.P.) Karachi* 130.

Art. 31—Goods partly delivered—Consignee writing to company to fix final date for settlement of matter—No reply—Limitation starts running from the date of the letter.

Therefore when the consignee wrote to the carrier to fix a date for the final settlement of the matter and the carrier company inspite of their previous assurances did not reply to the letter.

Held; a suit filed within one year of the last letter was not barred by limitation. When the goods ought to be delivered "in the third column" of Article 31 of the Limitation Act, must be construed to mean when the plaintiffs realised that the defendant company by their conduct meant to convey that the goods could not be delivered. *River Steam Navigation Co. Ltd., v. Dada Ltd. PLD* 1959 *Dacca* 672—(1989) 11 *DLR* 520.

Where part of the consignment had been delivered on an earlier date and part remained to be delivered in respect of which the railway company after making inquiries for a long time- extending over a year—finally informed the consignee that the undelivered articles were not traceable.

Held: That time to institute suit against the railway company for compensation of lost articles under S. 80 Railway Act from after a definite refusal or declaration of inability to deliver by the Railway company held responsible to deliver the lost goods. *Palanichami v. G. G. in Council (Yahya Ali J.) AIR* (33) 1946 *Madras* 131—*Foll*: *AIR* 1923 *All* 22; 17 *I.C.* 419 *(Mad.) AIR* 1933 *Patna* 45: *Dis. AIR* 1927 *Patna* 355; *AIR* 1925 *Lahore* 478.

Short delivery by carrier—Limitation starts from date of short delivery certificate.

Where there was no evidence on record as to when part of the goods was delivered, the date of the short-delivery certificate given to consignor was presumed to be the date, from which limitation should be taken to run in accordance with Art. 31, First Schedule, Limitation Act. *Federation of Pakistan v. Co-operative Insurance Society of Pakistan Ltd , Lahore PLD* 1956 *(W.P.) Lahore* 878—(1) *PLR* 1957 *W.P.* 273 *Ref. AIR* 1925 *Lahore* 478 *Dist.*: *AIR* 1946 *Madras* 133, *AIR* 1947 *Cal.* 98.

Starting of limitation—Time runs from—Test time when cause of action arises.

Where the section is not in terms contravened, it would not be permissible to gather the substance of the notice on a fair reading of the whole document rather than to non-suit the plaintiff on a technical and narrow interpretation of

Art. 31

the section. The advocate who sent the notice may have been misled by the fact that section 80 required the notice to be sent for goods delivered to the General Manager in respect of claims lost in transit by the railway We have no doubt, however, thot there was no express or implied intention in the notice that the General Manager was to be sued personally. *Firm Muhammad Sadiq etc v. Federation of Pakistan.* *PLD* 1956 (*W.P.*) *Lahore* 1093—*PLR* 1957 (1) *W.P.* 336.

The time under Article 31 of the Limitation Act would run from definite refusal or declaration of inability to deliver the goods made by the defendant, and the cause of action in such cases would arise when the owner of the goods is made aware that there would be no further delivery.

The expression "when the goods ought to be delivered" in Article 31 of the Limitation Act, means when the plaintiff could have filed a suit for compensation without being met by a plea that the suit was premature.

Where in a suit for damages of non-delivery of goods the defendant contended that the suit was barred by limitation as the suit was brought after more than one year from the date of delivery of the goods while the plaintiff maintained that the suit was in time as the defendant did not inform the plaintiff as to the result of their promised enquiry till the date of the suit.

Held; that the suit was not barred either under Article 30 or Article 31 of the Limitation Act. *Dada Ltd. v. R S N. Co. Ltd.* *PLD* 1958 *Dacca* 452—(1958) 10 *DLR* 242.

"When the goods to be delivered"—How may be determined—Test.

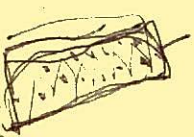
A proper way of determining "when the goods ought to be delivered" is to find out when the plaintiff could have filed a suit for compensation without being met by a plea that the suit was premature. From any date on which he could have filed such a suit and the suit could not have been dismissed on the ground that it was premature, time would begin to run. The plaintiff cannot have it both ways. He cannot say," I would have the right to file a suit, but still the limitation would not begin to run." That would be to give him more than a year for filing a suit and that is not the intention of Article 31. *Federation of Pakistan v. Raja Fazal Dad Khan.* *PLD* 1954 *Lahore* 635—*PLR* 1954 *Lahore* 767

Against carrier for compensation for non-delivery etc., 1 year from when goods ought to be delivered.

This Art applies to all cases of non-delivery other than those due to the loss of goods. 1950 *Cal* 394: 5 *D.L.R. Cal.* 61, 1954 *Bom.* 297.

Limitation starts when Ry. Co informed the consignee that articles are not traceable. 1946 *Mad.* 133, 1954 *Nag.* 115.

Meaning of the words "when the goods ought to have been delivered". 1949 *Pat.* 268: 4 *D.L.R. Pat.* 24, 1950 *Cal.* 394; 5 *D.L.R. Cal.* 61, 1951 *Cal* 462, 1954 *Pat.* 548.



—Arts. 31-32

A suit against a carrier or Railway Company for compensation for non-delivery of goods is governed by Art. 31 whether suit is laid in contract or in tort. 1935 *Lah.* 478, 1925 *Pat.* 611, 90 *I.C.* 135, 1925 *Pat.* 727, 1928 *Cal* 371, 13 *C.W.N.* 851, 1927 *Pat.* 335, 57 *C.* 372 : 22 *C W N* 277 : 86 *I.C.* 127: 1925 *Cal.* 559, 44 *C.* 16 *Diss.*, (26 B. 562, 33 *A.* 544, 42 *A.* 390) *Ref*,

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS—*contd.*

Part V.—Two years.

Description of suit.	Period of limitation.	Time from which period begins to run.
32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Two years..	When the perversion first becomes known to the person injured thereby.

Art. 32. Suit for misusing property, 2 years from knowledge of perversion.

Suit for ejectment and damages against a tenant for excavation. 25 *C.W.N.* 930: 62 *I C.* 778.

Where the raiyat uses the land in a manner which renders it unfit for the purpose of tenancy. Art. 32 L. Act. (2 years) applies. 24 *C.* 160: 1 *C.W.N.* 223, 26 *C.* 564: 3 *C W N* 464 *F.B* So also where there is kabulyat but no stipulation of penalty by way of ejectment. 20 *C.W.N.* 610.

A sust by landlord for ejectment of tenant on the ground that he has diverted the holding to non-agicultural purposes is governed by this Art. 1948 *Nag.* 20.

This Art. does not apply where the defendant ousted the plaintiff and perverted the land. 1937 *All.* 472, 1940 *Pat.* 106: 184 *I.C.* 493, 5 *D.L.R. All.* 45.

In case of breaking a condition on breach of which the tenant is under the contract liable to ejectment Art. 1 *Sch III* (1 year) of the B.T. Act. applies). The period of limitation for a suit to recover compensation for cutting down trees is 2 years (Art. 30 L Act), and for removal of trees is 3 years (Art. 48 *or* 49 *L. Act*) 10 *C.L.J.* 25, 25*C*, 692: 2 *C.W.N.* 265 *F B. Foll.*

Arts. 33-36

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
Part V.—Two years—contd.		
33.—Under the Legal Representatives' Suits Act, 1855, (XII of 1855, against an executor.	[1][Two years]..	When the wrong complained of is done.
34.—Under the same Act against an administrator.	[1][Two years]..	Ditto.
35. Under the same Act. against any other representative.	[1][Two years]..	Ditto.
36.—For compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for.	[1][Two years]..	When the malfeasance, misfeasance or nonfeasance takes place.

Arts 36 and 90: Relation between the Managing Director and the Insurance Company is governed by the Articles of Association and these articles constitute a part of contract between the Company and the Managing Director. Therefore, Article 36 of the Limitation Act not applicable to his case in respect of claim against him for misfeasance, because this article refirs to misfeasance independent of contract. *Naeem Finance Limited Vs. Bashir Ahmed Rafiqui*, (1971) 23 DLR (SC) 81.

Article 36 relates to actions founded on torts which are not based on contract—Article 49 relates to suits in respect of property in possession of some other person and not in possession of the plaintiff.

A suit to recover damages for the loss of a ship caused by collision at sea is an action of torts, and must be brought within two years under the provisions of Article 39 of the Limitation Act.

Article 36 refers to actions founded on the commission of some act which is in itself unlawful, or the improper performance of some lawful act or the omission of some act which a person is by law bound to do. It is a general Article for suits for compensation for acts and omissions commonly known as torts, that is, wrongs independent of contract, and which are not provided for by other Articles.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Art. 36

Article 49 applies only to suits in respect of property in the hands of some other person and not suits in respect of property in the plaintiff's own possession and the injury to property therein mentioned is limited to cases of injury to property while in the custody of some person other than the owner. *I.S.N. Rly Co. Vs. Akam alias Akamuddin.* (1960) 12 DLR 49.

Applicability—Difference between Articles—Collision at sea—Suit for damages for loss—Art. 36 applicable.

A suit to recover damages for the loss of a ship caused by collision at sea is an action of tort founded upon the negligence of the defendant or his servants in the management of his vessel and must be brought within two years under the provisions of Article 36 of Schedule II of the Limitation Act, XV of 1877.

Article 49 of Schedule II of the Limitation Act, V of 1877, applies only to suits in respect of property in the hands of some other person, and not to suits in respect of propery in the plaintiff's own possession and the injury to property there mentioned is limited to cases of injury to property while in the custody of some person other than the owner. *I.G.N. & Rly. Co. Ltd. v. Akam. PLR* 1960 *Dacca* 321—(1960) 12 *DLR* 49

Damages for negligence by government officer resulting in loss—Art. 36 applicable.

The intention of Art. 2 is to meet those cases where the defendant does an act injurious or possibly injurious to another under powers conferred or honestly believed to be conferred by some Act of the Legislature It does not apply to a case where the damages arise not from the doing of the act or from the failure to do it, but from doing it in an improper manner out of malice and carelessness. Such a case would be governed by Art. 36 *Muhammadi Steamship Co. Ltd. v. Federution of Pakistan. PLD* 1959 (*W P.*) *Karachi* 232.

Art. 36 Suit for compensation for any malfeasance, misfeasance of nonfeasance—2 years from when it takes place.

It is a residuary Art. in respect to suits for compensation for acts and omissions amountng to tort. 1942 *Cal.* 483: 46 *C.W N.* 294.

A suit for damages for use and occupation after notice to quit is governed by Art. 120. 1947 *All.* 31: 231 *I.C.* 58.

If the suit is for recovery of particular property or sum of money as such, the suit does not fall under this Art. 1953 *Mad,* 694.

There is a great divergence of opinion as regards the application of Arts. in a suit for damages for cutting and misappropriating crops: some hold that this Art. will apply. 36 *C.* 141: 12 *C.W.N.* 1090: 9 *C.L.J.* 109, 32 *C.* 459: 9 *C.W.N.* 376; others hold that this Art. will not apply. 17 *C.W.N.* 308, 7

Arts. 36-39

C.W.N. 728, 22, *C.* 877, 25 *C.* 692: 2 *C.W.N* 265. *F.B.*, 21 *I.C.* 213: 25 *M L.J.* 447. The period of limitation for a suit to recover compensation for cutting down trees is 2 years (Art 36 L. Act) and for removal of trees is 3 years (Art. 49 L. Act). 10 *C.L-J.* 25, 25 *C.* 692: 2 *C W.N.* 265 F.B. *Fol.*

Suit for damages for personal injury. 1924 Bom. 290, for damages for taking wrongful civil proceedings 49 *C L.J.* 455: 1928 *Cal.* 1, for damages, due to capsizing of boat, 1928 *Cal.* 306, come under this Art.

Art. 36 deals with compensation for malfeasance and misfeasance independent of contract. 47 *A.* 699: 1925*All.* 519.

THE FIRST SCHEDULE—*Contd.*

FIRST DIVISION: SUITS—*contd.*

Part VI.—Three years.

Description of suit.	Period of limitation.	Time from which period begins to run.
37.—For compensation for obstructing a way or a watercourse.	Three years..	The date of the obstruction.

Art. 37. Suit for compensation for obstructing a way or water course; 3 years, from the date of obstruction.

Aa obstruction to a water course being a continuous act of wrong as to which the cause of action is renewed *de die diem* s. 23 applies and a suit brought more than 3 years from the date of obstruction will not be barred. 6 C. 394: 7 C.L.R. 529 *P.C.*

38.—For compensation for diverting a watercourse.	[1][Three years]..	The date of the diversion.
39.—For compensation for trespass upon immoveable property	[1][Three years]—	The date of the trespass.

Art. 39.—Applicability—when would limitation begin to run.

In order to apply Article 39, in the first place, it is to be determined if the suit is for compenstion for trespass upon immovable property. In the second place, in order to apply the period of limitation of three years it is to be determined as to what is the date of the trespass. The period of three years would run from the date af the trespass. *Province of West Pakistan v. Altaf Hussain. PLD* 1960 (*W.P.*) *Karachi* 958.

Tenant remaining in possession after the termination of lease—Suit for Possession not covered by Art. 39 but by Art. 115.

---

[1]Subs. by the Repealing aad Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Arts. 39-43

The action of a tenant who had remained on the property after the determination of the lease and the notice to quit did not constitute trespass upon the property in the required sense and Article 39 did not apply to a suit instituted against him for damages for use aed occupation. That Ariicle 115 has been consistently applied in the case of suits for compensation where the claim for compensation is relatable to a contract, express or implied, but not in writing and registered. *Cantoument Board Murree v. Md. Sharif. PLD* 161 (*W.P.*) *Lahore* 378.

THE FIRST SCHEDULE—*Contd.*

FIRST DIVISION: SUITS—*contd.*

Part VI.—Three year—contd.

Description of suit.	Period of limitation	Time from which period begins Ts. to run.
40.—For compensation for infringing copy right or any other exclusive privilege.	[1][Three years]	The date of the infringement.
41.—To restrain waste..	[1][Three years]	When the waste begins.
42—For compensation for injury caused by an injunction wrongfully obtained.	[1][Three years]	When the injunction ceases.

Art. 42. For compensatioL for injury caused by an injunction wrongfully obtained, 3 years when the injunction ceases.

No suit lies for damages for maliciously and without reasonable and probable cause, obtaining perpetual injunction subsequently dissolved on appeal. 42 C. 550 : 21 *C.L.J.* 68 : 18 *C.W.N.* 1189.

This Art. does not give rise to a cause of action for damages for an injury by an injunction wrongfully obtained, unless it existed independently of this Art. 30 *C.W.N.* 465: 1926 *Cal.* 757.

Time begins to run as soon as the injunction is at an end. 16 *C.L.J.* 34.

Description of suit.	Period of limitation	Time from which period begins to run.
43.—Under the [2][Succession Act, 1925, (XXXIX of 1925) section 360 or section 361] to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	[1][Three years]	The date of the payment or distribution.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto"

[2]Subs by the Repealing and Amending Act, 1930 (8 of 1930), s. 2 and First Sch., for "Indian Succession Act, 1965, section 320 or section 321, or under the Probate and Administration Act, 1881, section 139 or section 140".

Art. 44

THE FIRST SCHEDULE —*Contd*

FIRST DIVISION : SUITS—*contd.*

Part VI—Three year– contd.

Description of suit	Period of limitation.	Time from which period begins to run.
44.—By a ward who has attained majority, to set asaide a transfer of property by his guardian.	[1][Three years]	When the ward attains majority.

Art. 44. –Applicability—Applies to ward whose guardian has been appointen—Not applicable to all minors.

If the Article was intended to apply to a minor other than the minor to whom guardian has been appointed or declared, by the Court under the Guardians and wards Act, the legislature would have used the word ' minor" and not "ward". The term "ward" seems to have been introduced to link up the Article with the Guardians and wards. If the legislature intended to apply the Article to transfer made by all classes of guardians including natural guardians they would have chosen the terms "minor" and not "ward". *Sultan Ahmad v. Fazlul Kabir. PLD* 1954 *Dacca* 104—(1953) 5 *DLR* 383—*PLR* 1952 *Dacca* 578.

Guardian—Meaning of.

A person may neither be a legal guardian nor a guardian appointed by the Court but may have voluntarily placed himself in charge of the person and property of a minor as in the present case. Such a person is called de facto guardian. A de facto guardian is merely a custodian of the person of the minor. *Sultan Ahmad v. Fazlal Kabir. PLD* 1954 *Dacca* 104—(1953) 5 *DLR* 383—*PLR* 1952 *Dacca* 578.

Suit to set aside transfer by guardian—3 years from attaining majority.

In case of transfer by natural guardian, this Art. applies 38 *C.L.J.* 213, 24 *C.W.N.* 1016: 32 *C.L.J.* 48, 23 *M.* 271: 4 *C.W.N.* 329 *P.C.*, 13 *C.L.J.* 277, 238 *B.* 94, 24 *C.W.N.* 1016: 32 *C.L.J.* 48, 38 *M.* 175, 45, *B*, 446.

A suit to set aside an alienation by a guardian of a Hindu minor without legal necessity is governed by this Art. 1945 *Pat.* 298: 24 *P.* 273.

'Guardian' includes any guardian *de facto* or *de jure*. and is not restricted to one appointed under the statute. 13 *C.L.J.* 277, *contra*. In does not apply to case of alienation by *de facto* guardians. 1928 *Mad.* 226, 34 *A.* 213, 38 *M.* 1125, 17 *Bom. L.R.* 1134, 44 *B.* 742, 1931 *M.* 597, 1936 *Mad.* 884: 165 *I.C.* 287, 1951 *Mad.* 817. 1953 *Bom.* 273.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Arts. 44-47

Transfer by unauthorised person is a nullity and need not be set aside, and so in that case this Art does not apply, Art. 144 (12 years) applies. 25 *C.W.N.* 258, 39 *C.L.J.* 394, 68 *I.C.* 731, 87 *I.C.* 1018, 1924 *Cal.* 1008: 28 *C.L.J.* 496, 16 *C.W.N.* 338: 15 *C.L.J.* 271 *P.C.*, 34 *A.* 213, *P.C.* 27 *I.C.* 687, 32 *A.* 392, 1943 *Cal.* 203: 47 *C.W.N.* 288, 53 *C.W.N.* 258. So when a sale is held to be void owing to fraudulent registration. 1931 *Mad.* 45: 45 *M.* 352.

Cases contemplated by Art. 44 are those in which "transfer of property" has been made by a guardian which implies that the property has changed hands; so where the minor is in possession of his property inspite of deeds of transfer executed by the guardian, this Art does not apply. 1930 *All.* 858: 52 *A.* 979.

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION: SUITS—*contd.*

Part VI—Three years—Contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
[1][45 * * * * * *]		
46.—By a party bound by such award to recover any property comprised therein.	[2][Three years]	The date of the final award or order in the case.

Art. 46. By a party bound by award to recover property, 3 years from the date of final award or order.

Where a disputed claim to land was submitted by the parties to arbitration and the arbitrator's award was only filed in court under s. 526 C.P.C. (old), but the plaintiff did not apply for execution thereof, his claim was barred after 3 years from the date of the award under Art. 46. 29 *C.W.N.* 633: 52 *C.* 314 27 *Bom. L.R.* 166: 86 *I.C.* 245: 48 *M.L.J.* 20 *P.C.*

A person who was not a party to an award or order is not bound by it and is not therefore debarred from bringing a suit for possession under the twelve years' law of limitation. 3 *W.R.* 165, 5 *C.L.R.* 452.

Description of suit.	Period of limitation.	Time from which period begins to run.
47. By any person bound by an order respecting the possession of immovable property made under the Code of Criminal Procedure, 1898, (V of (1898)	[2][Three years]	The date of the final order in the case.

[1]Omitted by Act 53 of 1974.

[2]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Art. 47

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION: SUITS—*contd.*

Part VI—Three years (contd.)

Description of suit.	Period of limitation.	Time from which period begins to run.
[1] * * * *		
or by any one claiming under such person, to recover the property comprised in such order.		

Art. 47: A person is not bound by an order made in a proceeding under section 145 Cr. P. C. to which he was not a party—Provisions of article 47 of the Limitation Act is not attracted to his case. ***Serajul Hoque Mukhtar Vs. A.R M. Mustanesar Bill***ah, (1972) 24 DLR 75.

Declaratory suit—Bar provided undar Article 47, Limitation Act—Civil Court while deciding question of limitation can look into and decide if orders passed in a proceeding under section 145 Cr. P. C. was without jurisdiction or not. *Ibid*

Final order—Order passed by Magistrate under s. 145 (6) of Criminal P.C. is final order—order rejecting revision against the order of magistrate—Not final order from which time begins to run.

Where an order is passed by a Magistrate under s. 145 (6) Criminal P.C. and an application revision of that order is rejected in limine, the order dismissing in limine the application for revision is not a final order within the meaning of Art. 47, Limitation Act. The final order is that passed by the Magistrate under s. 145 (6) Criminal P.C., and limitation runs from the date of that order. In such a case there is no analogy between a revision petition and an appeal. The order dismissing an application of this nature does not mean the substitution of the order of the High Court for the order of the Magistrate and therefore it cannot be said to incorporate his order. *Nagabhushanayya v. Kotayya* (*Leach C.J.*) *AIR* (33) 1946 *Madras* 444 *App.*: *AIR* 1916 *Madras* 883.

Hindu widow—Suit not instituted by, within three years of Magistrate order under s. 145 Cr.P.C.—Revisioner's right to sue not barred.

Failure of Hindu widow to institute a civil suit within three years of the Magistrate's order under s. 145 Criminal P.C., as prescribed by Art 47 Limitation Act, can only operate to bar her right to file a suit subsequently. The revisioner, not being a party to the litigation, is not bound by it. Nor can he otherwise maintain the suit as his reversionary right is no better than a mere spes succession is till the widow's death. Section 28, Limitation Act

---

[1]The words, commas and figures "or the Mamlatdars' Courts Act, 1906," omitted by A.O., 1949.

Arts. 47-48

can therefore extinguish only the widow's rights to the property after expiry of three years but not those of the reversioner. *Latif Mchan v. Lachmi Roj Kuar. AIR* (33) 1946 *Oudh* 213.

Art. 47. Suit against order under Cr.P.C.—3 years from final order.

When a Magistrate makes order under s. 145 Cr.P.C. a suit against that comes under this Art. 38 *M.* 432, 45 *A.* 306, and the plaintiff cannot escape this Art. by changing the form of the suit. 45 *A.* 306, but see, 20 *C.W.N.* 481.

But where the order does not affect the possession of the parties this Art. has no application. 30 *C.W.N.* 873: 1926 *Cal.* 1022, 1927 *Mad.* 304, similarly in a suit by one of the successful parties in a proceeding under s. 145 against others for deciding their rights *inter se.* 1926 *M W.N.* 793: 51 *M.L.J.* 652.

A suit by a person who was not a party to the proceedings under sec. 145 does not come under this Art. 1941 Pesh. 65: 196 *I C.* 444.

A suit by an assignee of the person bound by the order falls under this Art. but not by an assignee prior to the order. 1936 *Pat.* 629: 166 *I.C.* 29.

A sessions judge's order refusing to make a reference is not final order. 1951 *Pat.* 325 : 29 *P.* 311.

The date of Magistrate's order is the date of the final order and not the date of the order issued by the H.C., 12 *C.W N* 480.

This Art. does not apply where no legal right of the plaintiff to sue exists on the date of the Magistrate's order but it accrues subsequently. 1927 *Mad.* 586.

A suit for joint possession by a co-owner against the other co-owner whose exclusive possession is maintained under sec. 145 Cr. P.C. comes within this Art. 1943 *Cal.* 67: 46 *C.W.N.* 817.

The co-sharer's right to exclusive possession would be barred after 3 years under this Art. but his title will not be extinguished so as to disentitle him to a decree for partition. 39 *C.W.N.* 851, *contra.* a suit for partition filed after the lapse of 3 years from the date of the final order under s. 145, Cr. P. Code will be barred. 1930 *Cal.* 612 : 51 *C.L.J.* 461, 15 *B.* 299.

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—contd.	
48.—For specific moveable property lost or acquired by theft, or dishonest misappropriation or conversion, or for compensation wrongfully taking or detaining the same	[1][Three years]	When the person having the right to the possession of the property first learns in whose possession it is.

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Art. 48

Arts. 48, 49, 29—Attached property.—Damaged while in custody of sureties—Suit for damages or return of property in original condition Arts. 48 or 49 applicable, Article 29 not applicable.

Where a suit is for compensation for wrongfully taking or detaining the property lost or acquired by theft or by dishonest misappropriation or conversion Art. 48 would be applicable, and not Art. 29. Even if Art. 48 does not in terms apply, Art. 49 which is a residuary article, would be applicable since that article deals with suits for specific movable property not otherwise provided for or for compensation for wrongfully taking or injuring or wrongfully detaining the same. The period of limitation under both Arts. 48 and 49 is three years and the time is to run from the time when the person having a right to the property first learnt in whose possession it was or when the detainer's possession became unlawful.

A obtained an attachment before judgment against B and attached a sewing machine belonging to B. The machine was then handed over to two sureties C and D. The attachment was subsequently raised as being illegal on application by B. At the time of taking delivery, it was found that the machine was rendered absolutely useless by the removal of important parts thereof and it had also become rusty and unworkable. B therefore refused to take delivery of the same and filed a suit against A, C and D for the return of the machine in the condition in which it was at the time of attachment or for damages. It was contended that the suit was barred by limitation under Art. 29, Limitation Act, as it was filed after the expiry of one year from the date of attachment.

Held; that the suit was governed by Art. 48 or Art. 49 and not by Art. 29. The suit being admittedly filed within the period prescribed by those articles was not barred by limitation. *Venugopal v. Gopala Chettiar* (*Yahya Ali J.*), *AIR* (33) 1946 *Madras* 453. *Rel: AIR* 1946 *Madras* 33, *AIR* 1929 *P.C.* 69, 22 *Madras* 478.

In the year 1935, D instituted a suit against K for the recovery of Rs. 99 alleged to be due by way of rent. D applied for the attachment before judgment of two brick kilns which he alleged belonged to K. The application was granted and the attachment effected As it was not possible to remove the kilns, the Amin left them in the custody of D on his entering into a security bond for the sum of Rs. 1500. The bond was executed on 19th December, 1935. On 17th January 1936 P filed a petition under Or. 21, r. 58 objecting to the attachment on the ground that the kilns belonged to him On 25th January 1936, P filed an interlocutory application asking the Court to pass an order cancelling the attachment and directing D. to deliver the kilns to P. The delivery was effected on 26th, the Court dismissed D's suit and allowed P's petition under Or. 21, r. 58 on 25th January 1939, P filed a suit against D for recovery of the loss of the bricks removed by D.

Held : that ~~the suit was governed~~ not by Arts. 68, 29, or 48 but by Art. 49 and was within time being within 3 years from 26th January, 1936. *Krishna Ayyar v. Sudalaimuthu Pillai* (*Leach C J.*) AIR (33) 1946 Madras 33.

Art. 48

Conversion—Suit for damages for conversion.

Burden of proof of conversion within 3 years is on the plaintiff. In a suit for damages for the conversion by the defendant company of specific movable property, viz., coal wrongfully extracted from the plaintiff's mine and sold or otherwise disposed of by the defendant company to their own use, the burden of proving knowledge of the conversion within three years of the suit is on the plaintiff. ***Kalyani Prasad Singh v. Borrea Coal Co.*** AIR (33) 1946 Calcutta 123.

Suit for specific movable property lost etc.—3 years from knowledge of possession.

Scope of Art. 48 and Art. 49, 1948 *Cal.* 97: 51 *C.W.N.* 544.

"Specific movable property" means property which one can demand the delivery *in specie*. 22 *C.* 877, it does not cover money. 11 *C.W.N.* 862, 6 *C.L.J.* 535, 37 *M.* 381, in some cases it has been held to cover money also. 6 *C.L.J.* 535, 1930 *All.* 573, 1930 *All* 397, 5 *A.* 341, 29 *A.* 579. G.P. notes and title deeds are specific movable property. 12 *C.W.N.* 1010, 15 *M.* 157.

Applies to all conversions whether dishonest or not and time runs from date of knowledge of trespasser's possession; 58 *M L.J.* 536: 32 *Bom. L.R* 654: 1930 *P.C.* 113 : 34 *C.W.N.* 483 *P. C.*, 1927 *Cal.* 117 *Reversed*, 56 *M.L.J.* 517 *P.C. Rel. on.*

Onus is upon plaintiff to prove that he came to konw of conversion within 3 years of suit. 1946 *Cal.* 123 : 49 *C.W.N.* 810.

Limitation runs when the plaintiff first learns in whose possession the property is. 40 *M.* 678, 1936 *Bom.* 322 : 165 *I.C.* 184.

Application of Arts. 47 and 48 1936 *Bom.* 322.

Arts. 48 and 49 apply to cases where the plaintiff having the right to the possession of the property learns of the acquisition by theft or dishonest misappropriation or conversion. 54 *All.* 467.

Meaning of the term "conversion". 31 *C.W.N.* 82 : 1927 *Cal.* 117, 27 *A.L.J.* 170 : 49 *C.L.J.* 415 : 32 *C.W.N.* 323 : 10 *Pat. L.T.* 155 : 31 *Bom. L.R.* 702 : 1929 *P.C.* 69 : 114 *I.C.* 604 *P.C.*

A suit for damages for the wrongful attaching, cutting and removing of the crops is governed by this Art. or Art. 49. 1928 *Cal.* 106 : 105 *I.C.* 763.

Arts. 48A-49

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three Years-Contd.	
[1][48A.—To recover movable property conveyed or bequeathed in trust, deposited or pawned, and afterwards brought from the trustee, depositary or pawnee for a valuable consideration.	Three years.	When the sale becomes known to the plaintiff.
[1]48B.—To set aside sale of movable property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Three years.	When the sale becomes known to the plaintiff.
49.—For other specific movable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	[2][Three years]	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.

Art. 49: Contract for sale of movable property.

The contract gave a right to the vendor to seize the property and bring it to sale upon default in payment of three consecutive instalments. It was also provided that by mere default in payment of the instalments, the possession of hire-purchaser did not become unlawful.

Under agreement the hire-purchaser was empowered to keep possession of the apparatus until the price had been paid subject to the right of the vendor to retake possession and sell the apparatus to recover his dues.

Held : It was only when the vendor purported to exercise that right, that is the right to take possession and sell the apparatus and the hire-purchaser resisted that exercise, that there was a breach of the contract on the part of the latter, and from that date, his possession would be deemed to be unlawful. Therefore if the suit is brought within three years commencing from the

---

[1]Entries 48A and 48 B ins. by the Indian Limitation (Amdt.) Act, 1929 (1 of 1929), s. 3.

[2]Subs, by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Art. 49

date of resistence it would be within time and the article applicable for the purpose of limitation is article 49 of the Limitation Act. *Shewram Das Vs. Arobinda Poddar* (1961) 13 DLR (SC) 141.

Applicability—Difference between Articles—Collision at see—suit for damages for loss—Art. 36 and not Art. 49 applicable.

A suit to recover damages for the loss of a ship caused by collision at sea is an action of tort founded upon the negligence of the defendant or his servants in the management of his vessel, and must be brought within two years under the provisions of Article 36 of Schedule II of the Limitation Act, XV of 1877.

Article 49 of Schedule II of the Limitation Act XV of 1877 applies only to suits in respect of property in the hands of some other person, and not to suits in respect of property in the plaintiff's own possession, and the injury to property there mentioned is limited to cases of injury to property while in the custody of some person other than the owner. *I.G.N. & Rly. Co. Ltd. v. Akram* PLD 1960 Dacca 321—(1960) 12 DLR 49.

Hire purchase agreement—term of contract that if party did not pay the instalment the hirer would be entitled to take back the apparatus—Art. 49 applies to suit for possession on breach of contract.

In the hire purchase agreement A was expressly empowered to keep possession of the apparatus until the full price had been paid by himself, subject to the right of the vendor to retake possession and sell the apparatus to recover his dues. It was only when the vendor purported to exercise that right, and Arobinda Podder resisted that exercise, that there was a breach of the contract on the part of the latter, and from that date, his possession would be deemed to be unlawful. It is clear that the suit was brought within the time limited by Article 49, viz. three years commencing from that date. *Shewram Das v. Arobinda Podder.* PLD 1961 Supreme Court 321— 13 DLR S.C. 141—1961 (2) P.S.C.—R 14.

Suit for other specific movable etc.—3 years from the taking of property or its injury or unlawful possession.

Art. 49 applies only to a suit for "specific movable property", that is, the property of which one can demand the delivery *in specie.* It is not applicable to a suit for the recovery of a share in certain movable property. 55 C.L.J. 420: 36 C.W.N. 758.

Specific movable property means property of which one may demand the delivery *in specie* and not its equivalent. 11 C.W.N. 862, 22 C. 877, 6 C.L.J. 535, 37 M. 381.

An 'idol' is not a specific movable property. 38 C. 284 : 15 C.W.N. 36.

Articles lawfully taken but unlawfully detained—application of the Art. 38 M. 783, 105 I.C. 224.

Arts. 49-52

This Art. does not apply where the plaintiff does not claim in personal capacity. 17 C. 3, *P.C.*

When gold is deposited with goldsmith or specific movable property has been deposited with the defendant. suit to recover lies not under this Art. but under Art. 145 (30 years). 23 C.L.J. 145, because Art. 49 is a general Art. for the recovery of specific movable property while Art. 145 is a special Art. 26 C.W.N. 772, 33 M. 56, 60 *fol.*

A suit for damages for the wrongful appropriation by the defendant. of the fish in certain waters is governed by this Art. 61 C. 45 : 1934 Cal. 461.

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation	Time from which period begins to run
	Part VI.—Three years—contd.	
50.—For the hire of animals, vehicles, boats or house-hold furniture.	[1][Three years]	**When the hire becomes payable.**
51.—For the balance of money advanced in payment of goods to be delivered.	[1][Three years]	**When the goods ought to be delivered.**
[2]**52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.**	[1][Three years]	**The date of the delivery of the goods.**

Arts. 52 and 96—Electric supply bills charging less than the amount due—Suit for recovery of amount charged less—Arts. 52 and 96 applicable.

The plaintiff sued the defendant for a certain sum of money on account of electric energy supplied to the defendant for a period of nearly five years, in-

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

[2]For period of limitation for these and certain other suits in the Province of the Punjab, *see* the Punjub Loans Limitation Act, 1904 (Punjab 1 of 1904), and s. 92 (1) (*b*) of this Act.

Art. 52

correct bill having been submitted throughout this period owing to a mistake having been made by the meter reader. It was contended on behalf of the plaintiff that Art. 96 and not Art. 52 applied to the case on the grounds that Art. 52 would not apply to a case where neither party knew how much of the commodity in question had been supplied that no liability arose until a demand was made , and that electric energy was not 'goods' :

Held : (1) That in order that Art. 96 may apply the suit must be founded on a mistake, that is, the money or article claimed must be claimed as due in consequence of the mistake, as where an excess amount is paid or some article is handed over by mistake there being no other cause of action, the claim not being maintainable except on this footing. As in this case the suit was brought for the price of electric energy supplied, the liability to pay this price being in no way affected by mistake the mistake only explaining the delay in making the claim Art 96 was ruled out of consideration.

(2) That in the case of electric energy the consumer is liable to pay according to the consumption shown by the meter and it is for the supplier to make demands accordingly. The plaintiff, therefore, could not be allowed to plead his own mistake or negligence in not making demands within the ordinary period of limitation.

(3) That electric energy should be held to be "movable property" and therefore "goods" within the meaning of Art. 52 and, therefore, under that article the decree should be confined to a period of three years prior to the institution of the suit. *Naini Tal Hotel Vs. Municipal Board* (*Bennett J*) AIR (33) 1946 *A*llahabad 502.

For the price of goods sold and delivered, 3 years from the date of delivery or when fixed period expires.

Electric energy is goods. 1946 All. 502: 1946 A.L.J. 195.

Supplying goods from time to time in continuous dealing constitutes one cause of action. 24 Bom. L.R. 998, 1923 Bom. 113, 42 C. 1043 : 19 C.W.N. 724, *Contra* 11 W.R. 529, 1935 All. 53.

In the case of a supply of goods by a tradesman on credit for which payments are made on presentation of bills, Art. 52 applies and limitation runs from date of delivery of the goods. 88 I.C. 747 : 1925 Pat. 806, 1935 All. 53, 11 W.R. 529 and separately for each item. 1935 All. 53, 42 C. 1943 : 19 C.W.N. 724 *Commented on and differed from.*

Limitation starts from delivery of goods on each occasion unless the case comes under Art. 85, 1943 Mad. 13 : 207 I.C. 133.

Where goods were sold on different dates and no account was submitted to the buyer, limitation starts from each delivery. 1940 Bom. 158 : 188 I.C. 300.

A suit for the recovery of price of medicines supplied is governed by Art. 52. 1931 All. 752.

In a simple transaction of sale of goods, the liability to pay the full price accrues on the date of sale; and time begins to run from the sale. 1931 All. 229.

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three Years Contd.	
[1]53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	[2][Three years]	When the period of credit expires.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange, on such bill being given.	[2][Three years]	When the period of the proposed bill elapses.
55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	[2][Three years]	The date of the sale.
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	[2][Three years]	When the work is done.

Art. 56: For services rendered by a professional mechanic—the limitation for suit in such a case governed by Article 56.

In the present case the plaintiff is a mechanic and his service was obtained not by engaging him for a day, or for a week or for a month on the basis of daily wages but by sending the truck to his workshop without any fixation of wages for a day or so. His remuneration for skilled work was enumerated as per bill submitted by the plaintiff.

In a case like the present one Article 7 has no application rather Article 56 or 102 may be applicable in such cases, and preferably Article 56 as no time limit was provided for payment of the remuneration for the service rendered by the plaintiff to the defendant. *Momtaz Khan Vs. Sheikh Akbar Ali* (1964) 16 DLR 590.

Description of suit.	Period of limitation	Time from which period begins to run
	Part VI.—Three years—contd.	
[1]57.—For money payable for money lent.	[2][Three years]	When the loan is made.

1. For period of limitation for these and certain other suits in the Province of the Punjab, *see* the Punjab Loans Limitation Act, 1904 (Punjab 1 of 1904), and s. 29 (1)(b) of this Act.

2. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Art. 57 : Reciprocal demand between parties– Article 85 and Art. 57 applicable. *Subha Karam Vs. State Bank of Pak.* (1962) 14 DLR 193.

A suit for the recovery of an amount which is recoverable only under provisions of the second paragraph of sub-section (1) of S. 28 of the B. A. D. Act would be governed by the Article 57 of the Limitation Act as money payable for money lent. The limitation of such a suit is 3 years from the date of the signing of the award. *Siddiq Ahmed Khan vs. Gura Mia Khan.* (1956) 8 DLR 417.

A suit to recover debt is governed by Art. 57 of the Limitation Act and the fact that the award has been registered does not make any difference inasmuch as the debt is created by a fiction of law and on the basis of contract by agreement. *Abdur Rahim Chowdhury vs. Md. Lutful Alam Chowdhury.* (1959) 11 DLR 149.

Arts. 57-60—For money lent or deposited—3 years from loan or demand.

When money is deposited for safe custody Art. 60 and not 59 applies and letter of request for the payment thereof is not demand. 25 C.W.N. 981, 1936 Lah. 718.

Suit for recovery of money secured by pledge is governed by Art. 57 1935 Bom. 213 : 156 I. C. 531.

Art. 58 does not apply where the borrower endorses a cheque drawn by another person in favour of the lender, 1938 P. C. 66:42 C. W. N. 514: 40 Bom. L.R. 752 : 172 I.C. 978 P. C.

Distinction between deposit and loan shown. 1927 Bom. 433, 102 I. C. 145, 28 Bom. L.R. 73, 98 I.C. 554 : 1927 Pat. 91, 25 Bom. L.R. 503 : 73 I.C. 978, 140 I.C. 96, 1940 P.C. 132 : 44 C. W. N. 1041 : 42 Bom. L. R. 971 : 189 I. C. 444 P. C.

A demand contemplated under Art. 60 must be unqualified one for the whole sum due. 1932 Mad. 685.

To apply Art. 60 it is necessary to show not only that there was a deposit but that the deposit was under an agreement that it shall be payable on demand. 51 M. 549 : 1928 Mad. 509.

THE FIRST SCHEDULE—*Contd.*

FIRST DIVISION: SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI—Three years contd.	
58.—Like suit when the lender has given a cheque for the money	[1][Three years]	**When the cheque is paid.**
59.—For money lent under an agreement that it shall be payable on demand.	[3][Three years]	**When the loan is made.**

1. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

2. *See* foot-note 1 under article 52, *supra.*

3. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Arts. 60-62

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—contd.	
60.—For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.	**[1][Three years]**	**When the demand is made.**
[52][61.—For money payable to the plaintiff for money paid for the defendant.	**[1][Three years]**	**When the money is paid.**

Art. 61—"When money is paid—Time started running from date of actual payment.

The expression "when the money is paid" means actual payment and not merely a notional payment which a renewal implies. Thus, where a member of Hindu joint family renews a promissory note for a family debt and pays it off ultimately, the limitation for a suit for contribution from the rest of the family begins to run from the date when the debt is paid off and not from the date of the renewal. *Achuta Nand v. Chandrabli Nath* (*Sinha J*) AIR (33) 1946 Allahabad 142.

Art. 61—For money payable to the plaintiff for money paid for the defendent. 3 years, from when the money is paid.

This Art. applies to a suit under sec. 68 Contract Act. 1940 Mad. 106 : 190 I.C. 101.

Money paid to save estate from revenue sale is recoverable under this Art. 25 C. 844 : 2 C. W. N. 402 *P. C.*, 1936 Mad. 782.

According to the Madras H. C. for the application of this Art. it is immaterial whether the payment by a co-sharer was made *voluntarily* or involuntarily. 26 M. 686 *F B.* But according to the Calcutta H. C. realisation of money by sale that is involuntary payment is not payment within this Art. or Art. 99, 18 C.W.N. 480, in such case Art. 120 applies. 26 C. 241, 26 C.W.N. 340.

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—contd.	
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	**[1][Three years]**	**When the money is received.**

52. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 3 and First Sch., for "Ditto".

51. *See* foot-not 1 undes article 52, *supra.*

Art. 62

Art. 62: The suit by the borrowers for refund of money realised in excess of the lawful dues of the money-lender on account, is a suit under section 39(1) of the Money Lenders Act and is governed not by Article 62 but by Art, 120 of the Limitation Act *Ramani Bh. Chowdhury Vs. Mahéndra Kr. Saha.* (1954) 6 DLR 156.

A suit to recover money paid illegally on account of import duty is governed by Art. 62 *Federation of Pak. Vs. Dawood Corpn.* (1958) DLR 258.

For recovery of money :

A suit against legal representatives of an agent is governed either by Article 89 or by Article 62 of the Limitation Act but where the suit is one for the recovery of money only it is governed by Article 62 and where the money was received by the agent, demand was made during his life time and a disregard thereof amounts to refusal also made by the agent, the cause of action really arose on the date of such demand and refusal and the suit would be barred, if brought beyond three years thereof.

Such suits are not governed by Article 120. 55 CWN (DLR) 54.

Art. 62: Criterion for finding, whether money is received by the defendant for the use of the plaintiff is whether, having regard to the circumstances, the law would impute such an intention to the defendant.

The essence of a cause of action for a suit contemplated under Article 62 of the Limitation Act, is that money which in justice and equity, belongs to the plaintiff is received by the defendant, under circumstances which render the receipt by the defendant a receipt for the use of the plaintiff. The criterion for finding, whether money is received by the defendant for the use of the plaintiff is whether having regard to the circumstances, the law would impute such an intention to the defendant. Such a suit need not be based on a contract, express or implied. The mere fact that it was intended to adjust the amounts received towards sums alleged to be due from the plaintiff to the defendant, would not deprive their receipt, of the character envisaged by article 62. *Mohammad Akbar Khan Vs. Province of West Pak.* (1961) 13 DLR SC 4.

Vendor sells land to which he has no title and gives possession thereof to the vendee—Vendee afterwards is dispossessed by the real owner of the property. Time to recover purchase money from the vendor runs from the date of his dispossession from the land—not from the date on which money was paid.

The plaintiff's suit is governed by Article 97 of the Limitation Act and not by Article 62.

If the vendee (i.e., the plaintiff) takes actual possession of the property purchased by him from the vendor (i.e., defendant) who may or may not have a sound and unfettered right to convey and his (i.e. plaintiff's) possession is disturbed, the cause of action for damages or compensation will arise with effect from the date of such disturbances, and the time will begin to run against the vendee (plaintiff) from that date, under Article 97 of the Limitation Act. *Muhammad Ishaq Vs. Sh. Manzoor-ul-Hossain and Brothers* (1965) 17 DLR (W.P.) 45.

Art. 62

Art. 62, Schedule 11: Where Bank to refund excess amount as sufficient "conveyance in trust".

If the money was transferred to the Bank with the obligation annexed that it would refund any excess amount found due as a result of the settlement of the exchange issue later, there would be a sufficient "conveyance in trust", as by definition a "trust" is "an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner", vide section 3 of the Trusts Act, 1882.

S.M. Hanif (Dac) Ltd. Vs. Central Bank of India (1962) 14 DLR (SC) 308.

The suit by the borrowers for refund of money realised in excess of the lawful dues of the money-lender on account, is a suit under section 36(1) of the Money Lenders Act and is governed not by Article 62 but by Art. 120 of the Limitation Act. *Ramani Bh. Chowdury Vs. Mahendra K. Saha.* (1954) 6 DLR 156.

Art. 62.—Applicability—Money retained by defendant for adjustment of accounts with the plaintiff—Art. 62 not applicable.

When a person brings a suit and his claim is denied by the other party, it is his duty to show that the suit was instituted within the prescribed period of limitation. In the present case, it was enough for the defendant to completely deny the plaintiff's claim. We cannot accept the learned counsel's contention, that it lay on the defendant to mention the date on which the cause of action accrued to the plaintiff, or the precise Article of the Limitation Act applicable to the suit. *Muhammad Akbar Khan v. Province of West Pakistan.* PLD 1959 (W.P.) Lahore 295.

Art. 62.—Licence fee charged in excess by Government—Art. 62 Applicable to suit for recovery of the fee—Principles governing the application of Art. 62.

The essence of a cause of action for a suit contemplated under Article 62, Limitation Act 1908 is that money which, in justice and equity, belongs to the plaintiff, is received by the defendant under circumstances which render the receipt by him a receipt for the use of the plaintiff. There is an analogy between such a suit and the action under the English Law for money had and received by the defendant for the plaintiff's use, though the technicalities of English procedure, governing such action need not be imported into our system of law. The criterion for finding whether money is received by the defendant for the use of the plaintiff is whether having regard to the circumstances, the law would impute such an intention to the defendant. Such a suit need not be based on a contract, express or implied, as seems to be the requirement of English Law. Judging by this criterion, it is difficult to see why the money received by the defendant (Government) on account of the proceeds of the sale of the plaintiff's stock, in consequence of expiry of liquor licence of plaintiff, and the excess payment made by the plaintiff to the defendant on account of licence fees, should not

Art. 62

be held to fall within the ambit of Atircle 62. Clearly the money in question were received by the defendant and the circumstances make it plain that this receipt could only have been for the plaintiff's use. The mere fact that it was intended to adjust these items towards sums alleged to be due from the plaintiff to the defendant, would not deprive their receipt, of the character envisaged by Article 62. *Muhammad Akbar Khan v. Province of West Pakistan*, PLD 1961 Supreme Court 13—PLR 1961 (1) W.P. 370 (S.C.)

Arts. 62, 120—Tax charged illegally—Suit for refund of—Art 120 applicable.

Where a suit was brought against the Government for refund of tax levied illegally.

Held : a fee or tax levied by the Government cannot be held to have been received for the use of the tax payer.

The case falls within the residuary Article 120 which provides for a limitation of six years. *Government of West Pakistan v. Haji Ghulam Mohiyuddin and others*. PLD 1960 Peshawar 163 (D.B.)

Art. 62—When money is paid—Time starts running from date of actual payment.

The provisions of Art. 62 might have been applied before the enactment of S. 55. T.P. Act, to cases where there was no covenant and suit was merely on the allegation that the vendor had purported to transfer some property to which he had no title. That would have been on the analogy of the English law on action for money had and received. But since S. 55 has imported into all eransfers, unless the parties agree to the contrary, a covenant warranting the title of the vendor a suit to recover the consideration would be on the basis of that specific covenant and time would begin to run from the date of the deed after it had been established that there never had been any title. In the case, however, where there is an express covenant that covenant must be construed according to the intention of the parties and no general rule can be laid down about the date when the cause of action arises. Such suits, however, would be on the basis of a covenant and the provisions of Art. 97 would apply if there be no registered deed and the provisions of Art. 116 if there be a registered deed. *Babu Ram v. Amba Prasad* AIR (33) 1946 Allahabad 199 (D.B.).

Art, 62—Suit for money received by defendant,—3 years, from the receipt of money.

Distinction between this Art. and Art. 89. 5 D.L.R. All. 281.

This Art. was intended to cover the cases to which the English form of common law action for money had and received applied. 2 C. 393.

This Art. is applicable when the defendant has received money which in justice and equity belongs to the plaintiff. under such circumstances as in law renders the receipt of it a receipt by the defendant to the use of the plaintiff. 49 C. 884: 36 CLJ. 295, 32 C. 527, 32 C. 39, 46 C. 670 *P. C.*, 1942 Mad. 386 : 206 J.C. 539.

Art. 62

'Received' denotes 'actually or constructively received'. 10 I. C. 658 : 21 M. L. J. 705.

In a suit to recover money paid under a void agreement time begins to run when the agreement was discovered to be void within s. 65 Contract Act. 37 C. W. N. 379 : 57 C. L. J. 166 : 1933 A. L. J, 175 : 54 A. 1067 : 1933 M.W.N. 190 : 1933 P.C. 63, *P.C.*, 50 C. 929 *P.C.*, 1943 All. 294 : 209 I.C. 10.

When money is paid to one person for the interest of the other, latter must sue under this Art. 23 C. W. N. 983.

When one heir recovers debts due to the deceased on behalf of all, a suit by otheres comes under this Art. 50 C. 610 : 27 C.W.N. 941 37A. 233, 24 C. 308, 6 A. 442, 16 I.C. 882,41 M. L.J. 274, 69 I.C. 274, In case of fraudulent concealment sec. 18 will apply. 21 I.C. 394 : 25 M. L.J. 531, 69 I.C. 274.

A suit against co-mortgagee for money received by him, comes under this Art. 32 C. 527 : 1 C.L.J. 107, and in case of joint money-lending business if the money is invested by one he is bound to account for the sum to the other and Art. 89 and not this Art., applies. 27 C.W.N. 725 : 32 M.L.T. 86 *P.C.*

A suit for accounts by one co-owner against another is not governed by this Art. 1943 Bom. 216 : 208 I.C. 340.

But a suit by a co-sharer landlord for rent realised by other co-sharer comes under Art. 120. 34 C.L.J. 508.

A suit for recovery of surplus sale-proceeds taken away by defendant falls under this Art. 30 C 440 : 7 C. W. N, 520, 20 C. W. N. 983, 62 I. C. 953.

Suit against tenant for compensation money awarded by Govt. comes, under this Act. 3 C.W.N. 208

A claim for the return of premium paid by the tenant is governed by Art. 62 and not Art. 120. 1932 Bom. 86.

A suit by zeminder against under-naib for collection-money had and received for the use of the zaminder but for which he was to account to the naib, who was to account to the zaminder, comes under this Art. 104 I.C. 704.

Where a sale is void *ab initio*, and possession is not delivered to the purchaser, a suit to recover the purchase money would be governed by Art. 62. But where, the title is imperfect and possession is not handed over and it is subsequently discovered that the contract of sale became void. Art. 97 would apply. 55 B. 656, 19 C. 123 *P.C.*, 38 M. 887, 46 M. 40, 26 A. 519.

Suit against a *benamdar* who has realised money comes under this Art. 25 A. 62, 30 M. 298, 28 I.C. 495, *contra*. 1946 Mad. 248 : 225 I.C. 164.

Arts. 62-64A

Art. 96 should be preferred to Art. 62 in a suit to recover money paid by plaintiff to the defendant by mistake in excess of the amount legally due .4 P. 448 : 1925 Pat. 765, (31 M. 230) *Ref.* 12 C. 533, *Discussed.*

Suit for money received by the pleader of the plaintiffs for his use is governed by Art. 62. 35 C. L. J. 330.

A suit for the recovery of the value of offerings made to a shrine and misappropriated by the defendant comes under this Art. 92 I.C. 731 : 1926 Lah. 228.

A suit for money realised by shebait on behalf of the idol comes under this Art. 1928 All. 689 : 27 A. L. J. 229 : 114 I.C. 734, 25 A.L.J. 1047 *Fol.*

A suit against a *mutwali* for money received by him on behalf of the deity comes under this Art. 50 A. 265 : 25 A.L.J. 1047 : 108 I.C. 452: 1928 All. 134, 44 M. 831 *P,C., Rel on.*

Art. 62 does not apply to an equitable claim against a trustee liable to account, for an account and ascertainment of dues. 60 M. L. J. 1: 1931 P. C. 9: 35 C.W.N. 145: 130 I.C. 609: 54 C.L.J. 175: 33 Bom. I.R. 168: 1931 M.W.N. 137 :8 Rang. 645 *P. C.*

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS—*contd.*

Part VI.—Three years—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
[1]63.—For money payable for interest upon money due from the defendant to the plaintiff.	[2][Three years]	When the interest becomes due.
[1]64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	[2][Three years]	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
[3][64A.—Under Order XXXVII of the Code of Civil Procedure, 1908.	[Three years]	When the debt becomes payable]

[1]*See* foot-note 1 under article 52, *supra.*

[2]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

[3]Article 64A ins. by the Civil Procedure and Limitation (Amdt.) Ordinance, 1961 (9 of 1961), s. 3.

Art. 64

Art. 64—Accounts started—Claim need not be mutual.

Although the account is not of mutual claims but, on the one side, of sums advanced and interest payable and on the other side, of repayments made, it can be an "account stated". In either case there is a contract for good consideration to pay the balance stated as due; it is not material that some of the items brought into the account were statute-barred. *Bulakhidas Marwari v Ganpatrao and others* AIR (33) 1946 Nagpur 112.

Art. 64—Suit for adjusted account—3 years, when the accounts are stated.

In an account stated there must be cross items of account which have been mutually settled giving rise to an agreement that balance only is payable. 1934 P. C. 147 : 36 Bom. L. R. 723 : 38 C. W. N. 961 : 150 I. C. 6 P. C.

Principles underlying the expression "account stated",—there should be cross items but no reciprocal demand is necessary. 56A, 376 : 36 Bom. L. R. 723 : 59 C. L. J. 535 : 38 C.W.N. 961 : 1934 M. W. N. 786 : 1934 P. C. 147, *P. C.*

Where an account has been settled it is immaterial that some of the items are statute barred. 1934 P. C. 147 : 36 Bom. L. R. 723 : 38 C.W.N. 961 : 150 I. C. 6 P. C.

If all the items are time barred no suit is maintainable. 1942 Nag. 92 : 201 I.C. 550.

An account stated may take the form of acknowledgment of debt, 38 C.W.N. 813 : 59 C.L.J. 494 : 1934 M. W. N. 702 : 1934 P. C. 144 *P. C.*

Suit on adjusted account comes under this Art. 21 C. W. N. 591, 63 I. C. 280.

To apply this Art. there must be definite sum entered in the account book, 1923 Lah. 645, and signed by the defendant 10 C. 214 *F.B.*, if does n ot apply to money due on a balance. 19 C. L. J. 263, 23 Bom. L. R. 1186.

In every case it is not necessary that there must always be a reciprocity of demands. 1923 Cal. 578.

The expression "account stated" has a technical Meaning. 1931 All. 375.

Where on settlement of an account in respect of a debt on a promissory note a certain amount is found due on calculation of interest at a reduced rate and an endorsement to the effect is made on the back of the promissory note signed by the debtor, it amounts to an account stated between the parties and a suit for recovery of it comes under this Art. and it is not a suit on the promissory note and cause of action arises on the date of settlement of account. 1936 Cal. 470.

Arts. 65-66

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation	Time from which period begins to run.
	Part VI.—Three years—contd.	
65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	**[1][Three years]**	**When the time specified arrives or the contingency happens.**

Art. 65—Suit for compensation for breach of a promise to do anything at a specified time or on the happening of a contingency. 3 years, when the time arrives or the contingency happens.

Subsequent agreement between the parties as to the amount of damages before the date fixed for delivery does not show that there was a novation of contract and does nor change the commencement of limitation period. 1927 Lah. 122: 99 I.C. 591.

Other cases under this Art. 3 A. 712, 18 A. 160: 16 A.W.N. 15; 3 A.L.J. 233, 9 I.C. 482, 4 C.L.R. 34.

Description of suit.	Period of limitation.	Time from which period begins to run.
[2]66.—On a single bond, where a day is specified for payment'	**[1][Three years]**	**The day so specified.**

Art. 66—On a single bond where the day is specified for payment,—3 years, from the day so specified.

Suit on a bond fixing a date for payment and giving an option to the creditor to sue on default of punctual payment of interest falls under this Art. 1941 Oudh 210: 193 I.C. 481 F.B.

A suit on a personal covenant under a registered bond is governed by Art. 116 and not by Art. 66 and the period of limitation is 6 years. 52 M. 105: 1929 Mad 53 *F.B.*, 1935 Bom. 203: 156 I.C. 286.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

[2]*See* foot-note 1 under article 52, *supra*.

—Arts. 66-71

A suit by an assignee of administration bond is governed by this Art. 1941 P. C. 6 : 45 C.W.N. 429 : 43 Bom. L. R. 346 : 193 I. C, 225 P.C.

This Art. applies to a surety on a surity bond. 1943 Pat. 218 : 206 I.C. 126.

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run
	Part VI.—Three years—contd.	
[2]67—On a single bond, where no such day is specified.	[1][Three years]	The date of executing the bond.
[2]68.—On a bond subject to a condition.	[1][Three years]	When the condition is broken.

Art. 68.—Bond given by student sent abroad for studies—Breach of condition—Suit for reimbursement of paymentt made by Government—Limitation runs from date of breach of contract.

A student was sent abroad for studies on Govt. expense. He signed a bond whereby he would have to serve the state for five years after returning from abroad. He did not do and the Government sued him on the bond for return of the money spent on his education abroad.

Held : the cause of action has arisen to the plaintiff because of the fact that the condition in the bond is broken by one of the defendants. It is on this day that the debt became due to the plaintiff and in accordance with Article 68 in the Ist Schedule of the Limitation Act the period for limitation starts to run in such a case when the condition is broken. *Dr. Muhammad Rafiquddin and another v. Federation of Pakistan.* PLD 1960 Karachi 506 (D. B.)

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—contd.	
[2]69—On a bill of exchange or promissory note payable at a fixed time after date.	[1][Three years]	When the bill or note falls due.
[2]70.—On a bill of exchange payable at sight or after sight, but not at a fixed time.	[1][Three years]	When the bill is presented.
[2]71.—On a bill of exchange accepted payable at a particular place.	[1][Three years]	When the bill is presented at that place.

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

[2]*See* foot-note 1 under article 52, *supra*.

Arts. 72-74

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—contd.	
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	[1][Three years]	When the fixed time expires.
73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	[1][Three years]	The date of bill or note.

Art. 73 Promissory note is payable on demand.

A promissory note that is payable on demand or at sight is governed by Article 73 of the Limitation Act and time runs from the date of the execution of the instrument and under section 64 of the Negotiable Instrument Act where note is payable on demand no presentation is necessary *Rahia Khatun Vs. Ramkali Mahajan.* (1950) 2 DLR.

Court of Wards Act though a special Act does not prescribe special law of limitation—Article 73 of the Limitation Act applies to a case against a ward, and sec. 29(2) of the Act has no application to such a suit, such a case will be governed by Art. 73. *Manajm Coml of Wards Vs. Saidpur Comm, Baule.* (1953) 5 DLR 495.

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI—Three years—contd	
74.—On a promissory note or bond payable by instalments.	[1][Three years]	**The expiration of the first term of payment as to the part then payable; and for the other parts the expiration of the respective terms of payment.**

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Arts. 74-76

Art. 74, 75—Suit on instalment bond or promissory note—3 years from expiration of term or default or waiver.

In the case of instalment bond where on default of any one instalment the whole becomes payable at once, Art. 75 applies and the *terminus a quo* provided by the Art. is the date of default. 26 Punj. L.R. 328 : 6 Lah. 163 : 89 I.C. 294: 1925 Lah. 394, 53 C. 277 : 96 I.C. 594: 1926 Cal. 789.

Where the bond recites, "If we fail to pay the instalments we shall pay interest at 12 annas *p. c. p. m.* If we fail to pay one instalment you will be competent to realise all the instalments in a lump sum by filing a suit," it was in the option of the creditor to proceed to realise the full amount. 32 C.W.N. 275 : 1929 Cal. 399.

Suit for recovery of instalments due ignoring the default clause, Art. 75 does not apply. 1953 All. 761.

Option to waive default must be exercised within 3 years of default. 1949 Pat. 447 : 4 D. L. R. Pat. 66.

What constitutes waiver discussed. 32 C. W. N. 250 : 1929 Cal. 292, 1939 Pat. 433 F. B.

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—contd.	
75.—On a promissory note or bond payable by instalments, which provides that if default be made in payment of one or more instalments, the whole shall be due.	**[2][Three years]**	**When the default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is not such waiver.**
[1]76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	**[2][Three years]**	**The date of the delivery to the payee.**

---

[1] *See* foot-note 1 under article 52, *supra*.

[2] Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Arts. 77-83

THE FIRST SCHEDULE—*Contd.*

FIRST DIVISION: SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI—Three years contd.	
[2]77.—On a dishonoured foreign bill where protest has been made and notice given.	[1][Three years]	When the notice is given.
[2]78.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	[1][Three years]	The date of the refusal to accept.
[2]79.—By the acceptor of an accommodation-bill against the drawer.	[1][Three years[	When the acceptor pays the amount of the bill.
[2]80.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	[1][Three years]	When the bill, note or bond becomes payable.
81.—By a surety against the principal debtor.	[1][Three years]	When the surety pays the creditor.
82.—By a surety against a co-surety.	[1][Three years]	When the surety pays anything in excess of his own share.
83.—Upon any other contract to indemnify.	[1][Three years]	When the plaintiff is actually damnified.

Art. 83: A contract of indemnity.

Under a contract of indemnity, the promisee can claim only damages as distinguished from the debt for the non-payment of which the promisee has argeed to indemnify him. It is thus clear that the cause of action of indemnity bond for a claim against the promissor accrues to the promisee when the latter is damnified, when the demand was made and refused. *Probodh Ch. Barman Vs. M/s. Abdul Rahman Abdul Gani.* (1960) 12 DLR 459.

In the case of an indemnity bond the promissor would not be liable for damages from the date the indemnity bond was executed, for otherwise it will mean that the promisee in such cases can sue the promissor in anticipation that

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

[2]*See* foot-note 2 under article 52, *supra*.

Art. 83

the debtor will make default in payment of the debt. This is however never the object of the indemnity bond. The indemnity is intended to cover the loss suffered by the promisee. If a promisee files a suit before default, his suit will be thrown out as premature. *Ibid.*

The right to sue in the case of an indemnity bond will accrue only when default is made in regard to the payment of the amount due and not till then and the promisee will have three years thereafter within which he can sue the promissor for the amount due. *Ibid.*

Where the indemnity clause to be availed of, is contained in a registered instrument, the limitation is six years from the date of actual damnification 1956 PLR (Lah.) 1840.

Indemnity clause sought to be availed of—Limitation is six years from date of damnification.

Where the indemnity clause to be availed of, is contained in a registered instrument, the limitation is six years from the date of actual damnification reading Articles 83 and 116 of the Schedule to the Limitation Act together.

"To be mutual there must be trasactions on each side creating independent obligation on the others, and no mere transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations.

Where each of two parties has received and paid on the other's account I take the reason of that distinction to be that, in the case of proceedings at law, where each of two parties has received and paid on account of the other, what would be recovered would be the balance of the two accounts.

In this case the plaintiff paid Rs. 1,35,000 as a friend. That merely created a debt that was to be discharged. He was the debtor's commission agent also and his charges and expenses swelled that from the sale proceeds to the extent of the sale price. These transactions represent three phases but there is no reciprocality in them. These facts do not attract the application of Article 85 of the Limitation Act. *G. Ramond Vs. M.S. Haji Muhammad Ishaq Haji Dost Muhammad PLD* 1959 Karachi 707.

Art. 83—Suit upon contract to indemnify,—3 years, when the plaintiff. is actually damnified.

A suit for money embezzled by an employee against his surety is governed by this Art. 1949 Nag. 84.

Where a person is entrusted with money to pay to another and fails to pay or delays in payment a suit for damages against him falls under this Art. 95 I.C. 913: 24 A.L.J. 550: 1926 All. 605.

Where a party to a contract undertakes to pay money to a third person and no time is fixed, no cause of action arises until demand is made and ignored. 49 A. 603: 1927 All. 435, 34 A. 427 *Expl.* 24 A.L.J. 550 *fol.*, 1931 Pat. 271.

Arts. 83-85

Where the cause of action to recover damages on account of the covenant for indemnity in the sale deed arose only when the plaintiffs were dispossessed, the suit was governed by Art. 83 read with Art. 116. 31 Mad. 452, 65 B. 565.

A suit by commission agent to recover loss on the transactions entered into on behalf of his constituents is governed by Art. 83 and time begins to run when the plaintiff is actually damnified. 16 C.W.N. 1040, Bom. L.R. 1200: 1932 Bom. 25.

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation. *Part IV.—Three years*—contd.	Time from which period begins to run.
84.—By an advocate for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	**[1][Three years]**	**The date of the termination of the suit or business, or (where the advocate properly discontinues the suit or business) the date of such discontinuance.**

Art. 84—Suit by attorney or vakil for cost, 3 years from termination of suit, etc.

A compromise terminates the suit. 1947 Mad. 457.

In many proceedings such as administration suits etc., the so-called final decree is very far from being the termination of the suit. 1930 Cal. 651 : 52 C.L.J. 197 *F.B.*

Description of suit.	Period of limitation. *Part IV.—Three years*—contd.	Time from which period begins to run.
85.—For the balance due on a a mutual, open and current account, where there have been reciprocal demands between the parties,	**[1][Three years]**	**The close of the year in which the last item admitted or proved is entered in the account ; such year to be computed as in the account.**

Art. 85 : The Article is applicable in case of mutual, open current account in banking transaction *Reliance Bank Ltd. Vs. Profulla K. Banurjee* (1953) 5 DLR 69.

Transaction creating a basis for mutal demand-shifting balance.

The suit to which Article 85 of the Act applies is a suit "For the balance due on a mutual open and current account, where there have been reciprocal demands between the parties". The mere fact that two persons are concerned in an account does not bring the case within this Article.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Art. 85

This Article contemplates those where the transactions between the parties create a basis for reciprocal demands. There can be no talk of there having been any reciprocal demands where there is no basis for such a demand.

It is well-settled that a shifting balance is no sure criterion that the account is a mutual one. It is not the accidental shifting of balance but a real basis for such shifting in the transactions between the parties that is important.

(See under Article 57 in case of Subha Karam Vs. State Bank of Pak. in 14 DLR 193 above).

Mutual, open and current bank accounts—Mutual dealings between parties creating independent obligations on both sides, giving rise to occasions or possibilities of reciprocal demands—Article 85 applicable in such circumstances. *Nobadwip Chandra Podder Vs. S. D. Ahmed* (1969) 21 DLR 755.

Bank—Current account and overdraft account—Two accounts capable of being set off againt each other—Article 85 applicable.

Where the defendant opened a current account with the Bank and for the facilities of his rice business and other business he stipulated for overdraft in respect of the said current account it was contended that the two accounts were loan transactions and therefore Art 57 applied to them.

Held : the present case is one of mutual, open current account and each party could say that he had a separate account against the other, one being in respect of the current account and other being in respect of the overdraft account, that there was an independent obligation of each party arising from each account and that on the basis of the balance of each account the balance of the other could be set off.

Therefore Art. 85 applies to the case and limitation begins to run from the date of the last transaction in the account. *The Reliance Bank Ltd. v. Prafulla Kumar Banerjee and others.* PLD 1953 Dacca 220—PLR 1952. 342 (D.B.)

Suit for balance due on mutual, open and current account—3 years from the close of the account year.

'Open account' is one which is continuous or current, uninterrupted or unclosed by settlement or otherwise consisting of series of transactions. 6 C.L.J. 158, 62 I.C. 898, 1923 Lah. 347 : 73 I.C. 916, 100. IC. 815 : 28 Punj. L.R. 146, 1923 Lah. 347 *Rel. on.*

'Current account' is an open or running account between two or more parties or an account which contains items between the parties from which the balance due can be ascertained. 6 C.L.J. 158, 23 Bom. L.R. 540: 63 I.C. 950.

'Mutual accounts' are such as consist of reciprocity of dealings between the parties and do not embrace those having items on one side only, though made up of debits and credits. 6. C.L.J. 158, 4 Pat. L.T. 424: 72 I.C. 135, 17 M. 298, 4 Pat. L.T. 571; 74 I.C. 831, 7 P. 238, 1923 Lah. 636, 1927 Mad. 819, 227 I.C. 36.

To disclose a case of mutual, open and current account there must be reciprocal demands involving transaction on each side creating independent obligation on the other and not merely transactions which create obligation on one side,

Arts. 85-89

those on the other being merely complete or partial discharges of such obligations. 1936 Cal. 382, 1931 Cal. 359, 1927 Bom. 225, 47 B. 128, 3 Pat. L.T. 492, 32 A. 11 P. 13, 39 A. 33, 1926 Mad. 224, 1928 Pat. 221, 56 C. 575: 1929 Cal. 641, 1947 Pat. 273 : 227 I.C. 36.

In order to apply Art. 85 there should be cross-claims arising out of a course of dealings which in evidence are referable to an intention of set off. The phrase "reciprocal demands" does not import that either party has made an actual demand in fact. 52 C.L.J. 314 : 58 C. 649 : 1931 Cal. 359: 34 C.W.N. 1175.

In a suit under this Art. the real test is whether balance was shifting. 1940 All. 209: 190 I.C. 356.

Although a shifting balance is a test of mutuality, its absence is not a conclusive proof against mutuality. 7 Pat. 238 : 107 I.C. 533: 1918 Pat. 221, 1939 Lah. 536, 1939 Nag. 113, 1948 Pat. 18 : 26 P. 231, 1952 Cal. 92.

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three Years—Contd.	
86.— [2][(*a*) On a policy of insurance when the sum insured is payable after proof of the death has been given to or received by the insurers.	[1][Three years]	[2][(*a*) The date of the death of the deceased.
(*b*) On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers.]		(*b*) The date of the occurrence causing the loss.]
87.—By the assured to recover premia paid under a policy voidable at the election of the insurers.	[1][Three years]	When the insurers elect to avoid the policy.
88.—Against a factor for an account.	[1][Three years]	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.
89.—By a principal against his agent for moveable property received by the latter and not accounted for.	[1][Three years]	Ditto.

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

[2]Subs. for the original entry, by s. 122 of the Insurance Act, 1938 (4 of 1938), as amended by the Insurance (Amdt.) Act, 1941 (13 of 1941), s. 68.

Art. 89

Art. 89—General power of Attorney—Agent recovering debt—Suit for recovery from agent more than three years after recovery of debt by agent—Not barred by limitation.

Where a general power of attorney is executed in favour of the agent empowering him to manage all the business of the principal the agency does not terminate with the collection of a particular debt to the principal. Hence a suit brought by the principal in 1941 to recover the mortgage-debt collected by the agent in 1937 in the absence of demand for accounts and refusal is not barred. *Varlsai Ibrahim and others v. Kadir Ibrahim.* AIR (33) 1946 Madras 122, Distinguished, AIR 1916 Madras 281.

Suit for specific sum of money—May be brought against the agent also.

When it was urged that the demand for specific money was made and refused during the life time of the father, the cause of action arose on his death and limitation for purposes of a suit against the son began to run from the date of the death.

Held : the Limitation Act classifies suits according to their description and that of the description referred to in Article 89 may be brought against the legal representative of the agent as well as against the agent himself ; *Ashutosh Roy and others v. Arun Shankar Das Gupta and others.* PLD 1951 Dacca 1 Diss: 25 Allababad, 55—1902 AWN 191 (1) CWNS.

Art. 89—Suit for account—3 years from refusal to account or termination of agency.

To a suit to enforce a charge on immovable property, Art. 132 L. Act (12 years) applies, but in ordinary case Art. 89 will apply: 24 I.C. 18, 35 C. 298 : 12 C. W. N., 820 : 7 C. L. J. 279, 19 C.W.N. 1070 : 22 C. L. J. 552, 1941 Cal. 257: 44 C. W. N. 793.

In the absence of contract Art. 89 applies. 14 C. W. N. 121.

Contract to account every year. 20 C. W. N. 368.

Where the principal's interest was transferred and then re-transferred to the principal, a new agency was created on the date of re-transfer, 20 C.W.N. 355, 40 C. 108.

Cause of action arises from the date of termination of the agency and Art. 89 L. Act applies. 35 C. 298 : 12 C. W. N. 820 : 7 C.L.J. 279, 32 C. 719 : 1 C.L.J. 232 *contra.* Art. 115 applies, 1 C.L.J. 211, 11 C. L.J. 43, 14 C. W. N. 122 but the former cases have been accepted as good law in 20 C.W.N. 355.

Demand and refusal,—no response to the call implies refusal under Art. 89 L. Act. 19 C.W.N. 1070 : 43 C. 248 : 22 C.L.J. 552, and limitation runs from such refusal, 26 C.W.N. 61, (44 C I : 21 C. W. N. 97 *P. C.*, 30 C.L.J. 90) *Ref.*, but of subsequent period after dismissal, 26 C.W.N. 61, 31 M.L.J. 688, 41 M. 1 *Ref.*

Art. 89 L. A. is applicable to suit against *Tasilder* for accounts although there was an agreement to render account every year, such a suit can be brought within 3 years of the termination of the agency, unless there was

Art. 89

demand and refusal. Mere failure to render account does not constitute refusal while the *Tashilder* all along said that he could render accounts. 30 C. L. J. 90.

Neglect to comply with demand tantamounts to refusal. 11 C.L.J. 43.

The omission to render account when it is demanded may operate as a refusal but when the agent in answer to the demand promises to submit the account, his conduct cannot be deemed to amount to refusal. 35 C.L.J. 111 : 49 C. 250.

The question when an agency terminates whithin the meaning of the Article 89, is a question of fact, *above case*, and 30 C.L.J. 90.

Article 89 applies to a suit for accounts against an agent for money received by him and excludes articles 115 and 116 *above case*.

Suit for account against legal representative is governed by Art. 115 or 116 and not by Art. 89 16 C.W.N. 1042.

When an agent was to submit yearly accounts to his principal, a suit for account is governed by the Art. 43 C. 248 : 30 C.L.J. 90, 35 C. 293, 1931 Mad. 185: 54 M. 654.

When the suit is for money due on adjusted account Art. 89 does not apply even if the agent be in service. 21 C.W.N. 591.

A suit for recovery of money found due on an account and a suit for account are really one and the same thing. 16 C.W.N. 1042.

This Art. applies to a suit by principal against his agent for movable property received by the latter. 1928 Mad. 906, 60 C. 1347: 38 C.W.N. 211 1934 Cal. 238.

In the absence of evidence of demand and refusal limitation runs from the termination of agency. 44 C. 1: 21 C.W.N. 27 *P.C.*

A demand by one only does not start limitation as against him, so in the absence of joint demand limitation runs from the termination of agency. 2 Pat. 585: 4 Pat. L.T. 531: 1923 P. 464.

Non-compliance with the demand amounts to refusal and limitation is 3 years from that time. 26 C.W.N. 61, 48 C. 248, 44 C. 1 *P.C.*, 30 C.L.J. 90 *Ref.*

A failure to explain account papers amounts to refusal. 43 C. 248, 19 C.W.N. 1070, 11 C.L.J. 43, 26 C.W.N. 61, 44 C. 1. *P.C.*, 30 C.L.J. 90, 49 Cal. 250; 35 C.L.J. 111.

In a suit against agent after the death of the principal by his representative, limitation is 3 years under this Art. although the agent continued his service under the representative. 26 C.W.N 320, 1925 All. 682.

Even where the relation of principal and agent is created by an agreement in writing, a suit for accounts against the latter falls under Art. 89 and not Art. 115, 7 Pat. L.T. 111 : 1925 Pat. 494.

A suit by a member of a Hindu joint family against the manager of the joint property in respect of certain family outstandings collected and misappropriated

Arts. 89-90

by the latter is governed by Art. 89, 1930 P.C. 18 : 32 Bom. L.R. 499: 1930 M.W.N. 60 : 51 C.L.J. 136 *P.C.*

When after partition one brother recovers outstandings originally due to the joint family there is an implied contract of agency between him and others for rendering accounts and a suit by the latter is governed by this Art. 1929 Lah. 407, 24 A. 27 *P.C.*, *Rel.*, 24 C. 309, 1921 Bom. 384, 32 M. 191 *Discussed*, 45 M. 648 *F.B. Dist.*

Suit for share of profits by a co-owner againstanother is notgoverned by Art. 89. 1936 All. 706, 1940 Cal. 363.

Suit for accounts by one co-owner against another for share of income is governed either by Art 89 or Art. 120. 1943 Bom. 216 : 208 I.C. 340.

When the principal dies but the agent continues to hold service under the son of the principal, the old agency ceases with the death of the principal and a new agency is created under the son. 40 C.W.N. 245 : 62 C.L.J. 464, and when there are two or more principals and one dies the agency terminates only as regards him and continues as regards the survivors. 41 C.W.N. 27 : 1936 Cal. 650, which Art. will apply to such a case. 1935 Cal. 817, (1922 Cal. 53, 44 C. 1 *P.C.*, 9 C.L.J. 107) *Rel.* on, 1927 Mad. 157, *fol.*, 17 C.W N. 5 *not fol.*

THE FIRST SCHEDULE —*Contd*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation	Time from which period begins to run
	Part VI.—Three years—contd.	
90.—Other suits by principals against agents for neglect or misconduct.	**[1][Three years]**	**When the neglect or misconduct becomes known to the plaintiff.**

Art. 90: In a suit brought by the insurance company against its agents for neglect or misconduct the period of limitation is three years from the date when the neglect or misconduct becomes known to the insurance company. *Naeem Finance Limited Vs. Bashir Ahmed Rafique*, (1971) 23 DLR (SC) 81.

Negligence of agent—Suit by principal for compensation for loss occasioned by—Art. 91 and not Art. 115 would apply.

The plaintiff sued the bank for compensation for loss occasioned to him by the negligence of the bank while acting as his agent.

Held : the appropriate Article of the Limitation Act applicable to the facts of this case appears to be Article 90. It is a residuary Article for suits by principals against agent for negligence and misconduct, the terminus a quo being

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Arts. 90-91

when the neglect or misconduct becomes known to the principal. *Muhammad Akram v. Habib Bank Ltd.*, Karachi PLD 1960. Karachi 484—PLR 1960 2 W.P. 1100.

Other suits by principals against agents for neglect or misconduct, 3 years, when the neglect or misconduct becomes known.

This Art. is a residuary article with regard to suits between principal and agent. 1928 Mad. 906 : 109 I.C. 332, 1953 Mad. 694.

In a suit by principal against agent for recovering secret profit, limitation runs from the date on which the plaintiff comes to know. 1927 All. 436.

It must be ascertained on what date the fact of the defendant's withholding of the money from the plaintiff became known to him. 1931 Cal. 738: 58 Cal. 923.

"Misconduct" should not be construed as including everything that may in ordinary parlance be called misconduct. "Negligence" or "misconduct" refer to what is termed negligence or misconduct of agent in the conduct of the agency. 1928 Mad. 906: 109 I.C. 332.

Where a director of bank acted as an agent of the bank, a suit by the bank against the heir comes under this Art. 1936 Lah. 268.

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—contd.	
91.—To cancel or set aside an instrument not otherwise provided for.	**[1][Three years]**	**When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.**

Arts. 91 and 120: Applicability of Art. 91 as well as Art. 120—Cancellation of document under section 39 and declaration as to right to property under section 42 of the Specific Relief Act.

Plaintiff's suit is for cancellation of the document on the ground that it is vitiated by fraud—Such a suit is one under section 39 of the Specific Relief Act and is governed by Art. 91 of the Limitation Act which prescribes three years limitation.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Art. 91

Art. 120 of the Limitation Act which prescribes six years limitation has no application in such a suit—Its application to suit under section 42 of the Specific Relief Act relates to a ground that a declaration as regards right of property has been sought. *Mono Mohani Devi Vs. Sirajuddin Ahmad Bhuiya* (1969) 21 DLR 626.

Void gift requires no setting aside—Where the gift is invalid (not void, it needs setting aside and the suit for such a purpose is governed by Article 21 of the Limitation Act. *Shamshad Ali Shah Vs. Syed Hassan Shah* (1964) 16 DLR (SC) 330.

Limitation for suit in case of voidable transaction governed by Article 91—No suit need be filed for void transaction.

If the Court which is dealing with the question of limitation reaches the conclusion after considering the evidence that the transaction in dispute by its own force produced legal effects it would be necessary that the transaction be set aside and limitation will be governed by the Article applicable to the setting aside of the transaction.

There is no need for the person who is shown to be the executant of the forged document to sue for its cancellation or for setting it aside though he may be taking a risk in allowing the document stand for proof of forgery may become difficult as time passes. *Muhammad Akbar Shah Vs. Muhd. Yusuf Shah* (1964) 16 DLR (SC) 477.

Suit for cancellation of an invalid instrument—avoiding the effect of fraudulent insertion.

If a person seeks relief against an instrument executed by him on the ground that it is invalid he must first set aside the deed within the period of limitation laid down in the Article 91 of the Act. But where a person was not interested in setting aside the instrument but sought to avoid the fraudulent insertion of a certain land in the instrument Article 91 does not apply.

In order that Article 91 may apply, there must be an instrument which is required to be set aside. A void instrument has no existence in law and does not require to be set aside. If an instrument is void, this Article does not present the executant from pleading that it does not affect his right even though the time limited by the Article has expired. *Bader Uddin Vs. Amena Khatun* (1954) 6 DLR 592.

The Article does not apply to a case where the document is sought to be declared to be benami. *Nazir Ahmed Serang Vs. Bunoy B. Saha*(1956) 8 DLR 159.

The Article applies only to suits in which the documents sought to be set aside were intended to be operative against the plaintiff or his predecessor-in-title and would remain operative if not set aside. Ibid. (167).

Where the plaintiffs desire a relief which is inconsistent with the deed of sale, they must and should pray for setting aside the sale-deed because it was a voidable transaction and the letter and spirit of Article 91 of the Act require that such a suit should fall within the prohibition of the Article and the residuary

—Art. 91

Article 120 does not apply there.

Under Article 91 time begins to run when the facts entitling the plaintiff to have the instrument cancelled or set aside become known to the plaintiff.

When the document is void ab initio and does not require to be set aside and as suit is filed for cancellation of the document and for possession, Article 91 does not apply but the residuary Article 120 applied.

If the deed is voidable, it requires to be set aside and in such a case for possession a prayer to cancel the document is required to be joined and in that case Article 91 applies.

Article 91 will stand in the way of a plaintiff suing for the relief claimed by him against the tenor of instrument to which the plaintiff has been a party and which is binding on him till set aside by the Court. *Kanchan Mala vs. Ananta Kumar* (1954) 6 DLR 254.

Article 91 does not apply to suits relating to instruments which are bad ab initio and such instruments may be treated as non-existent by a party without running any risk. (1954) PLR (Lah.) 205.

The Article applies only in the case of voidable instrument ; if the instrument is void, it does not apply, (1956) PLR (Lah.) 803.

Applicability—instrument bad ab initio—Article does not apply.

Article 91 of the Limitation Act does not apply to suits relating to instruments which are bad ab initio and such instruments may be treated as non-existent by a party without running any risk. *Jiwana v. Mst. Sahbi* PLD 1954 Lahore 253—PLR Lahore 205 D.R.

Where a decree is amended, it is immaterial whether the amendment is of a clerical nature or of substantial character. It is not the function of an executing Court to question the correctness or the propriety of a decree, *Sh. Maula Baksh and* other *v. Muhammad Sadiq* PLD 1954 Lahore 263—PLR 1954 Lahore 359.

Where the gift was void ab initio. Article 91 of the Limitation Act had no application to the facts of the case as it was not necessary for the plaintiffs to get the deed of gift set aside, the suit was, therefore, not barred by limitation. *Shamshad Ali Shah. v. Hassan Shah* PLD 1960 Lahore 300—PLR 1961 (1) W.P. 240 (D.B.)

Deed of settlement by widow—Suit for avoiding the deed on ground of undue influence brought after three years—Suit barred by limitation.

A Hindu widow executed a deed of settlement under the undue influence of her deceased husband's brother in order to obtain settlement of dispute in regard to family property. The widow was fully aware of the true nature of the deed at the time of its execution. The widow subsequently brought a suit to set aside the deed on the ground of undue influence after three years from the date of the instrument—

Held : that the settlement deed was undoubtedly an instrument, the suit was governed by Art. 91 and the starting point of limitation was the date of the instrument itself because under the article time ran from the date of knowledge and not from the date of the removal of the undue influence. The suit was therefore barred by limitation. *Sm Buchibai w/o D. Gangadhar Rao v. Nagpur University* AIR (33) 1946 Nagpur 377 (D.B.) Re; AIR 1945 P.C. 45.

Lease—Suit to set aside—Barred by limitation—Defendant may urge undue influence as a defence to suit for possession by lease.

—Art. 91

The Indian Limitation Act is not applicable to the case of defendant, and the party in possession is not affected by it. It refers only to the remedy of the plaintiff and not even to his rights and even though the remedy may be barred the right may still exist.

Consequently, a defendant is not precluded from urging by way of defence that the lease was obtained by the plaintiff by undue influence and misrepresentation although a suit by him to have the instrument set aside or cancelled is time barred under Art. 91. *Sant Bux Singh v. Ali Raza Khan and others.* AIR (33) 1946 Oudh 129. Rel : AIR 1935 Bom. 326, 28 Bombay 639, 30 Bombay 395.

Purdanshin lady—Instrument read over but not explained to be—Limitation begins to run from the time when she learnt of the real nature of transaction.

When purdanashin lady—challenged a deed of partition between her on the one hand and the other members of her husband's family on the other hand, and it was contended that the deed was read over but not explained to the plaintiff at time of its execution by her father in law

A purdanashin woman of considerable business capacity was not bound by an agreement which was read but not explained to her before she signed it.

When the ground for setting aside the instrument is that the plaintiff did not appreciate its true nature and legal consequences, the limitation begins to run from the date when the plaintiff became aware of the true nature and legal consequences of the instrument.

The law has accorded to persons in the position of the respondent a high degree of protection in tneir dealing with persons with whom they contract. *Parikh Atmaram Moneklal v. Bai Hira alias Shanta.* PLD 1948 Privy Council 40.

Sale by minor vaid—Suit for possession—Art. 144 applicable—Arts. 120, and 91 not applicable.

The plaintiff brought a suit for possession on the ground that the sale was effected by a minor and was therefore void. The sale deed does not exist in the eye of law and accordingly the claim for possession has to be judged independently of the sale deed. Clearly the period of limitation in such a case would be governed by Art. 144 of the Limitation Act provided that there was dispossession of the plaintiffs in pursuance of the sale-deed which we have declared to be null and void. *Abdur Rahman v. Abdul Huq* PLD 1960 (W.P.) Karachi 625 1960 (1) KLR 545.

Sale, suit for setting aside—When Art. 91 would apply.

Under Article 91 time begins to run when the facts entitling the plaintiff to have the instrument cancelled or set aside become known to the plaintiff.

When the document is void ab initio and does not require to be set aside and as suit is filed for cancellation of the document and for possession, Article 91 does not apply but the residuary Atricle 120 applies.

If the deed is voidable, it requires to be set aside and in such a case for possession a prayer to cancel the document is required to be joined and in that case Article 91 applies.

Article 91 will stand in the way of a plaintiff suing for the relief claimed by him against the tenor of instrument to which the plaintiff has been a party and which is binding on him till set aside by the Court. *Kanchan Mala v. Anenta Kumar* 6 DLR 254 Ref : 20 A 183; 381 A 87; 671 A 416; 361 A 148 141 A 148; 271 A 216; 23 CWN 93; 61 1a 224; 721 A 168; 1938 All. 451 38 Mad. 321.

—Art. 91

Wills—Article 120 and not article 91 applicable.

Art. 91 had no application to wills; the appropriate Article in case of wills being Article 120. *Muhammad Yusaf Shah v. Muhammad Akbar Shah.* PLD 1957 (W.P.) Lahore 99—PLR 1957 (1) W.P. Lahored 552.

Suit to cancel or set side document—3 years from knowledge.

There is distinction between a suit for cancellation of document and a suit for declaring a document to be null and void. A suit of former nature is governed by this Art. and a suit of latter nature is governed by Art. 120. 50 A. 510: 1928 All. 1945 All. 367.

A suit by a creditor under sec. 53 T.P. Act for a declaration that a transfer by debtor is not binding on the creditors is governed by Art. 120, 1948 Bom. 265.

This Art. does not apply where the deed is challenged as void *ab initio.* 1950 Pat. 247: 5 D.L.R. Pat. 61, 1954 Md. 83.

This Art. does uot apply where the cancellation of document is not essential. 37 C.W.N. 1141: 57 C.L.J. 399: 1933 Cal. 812, 26 C.W.N, 479, 16 M. 138, 30 A. 375, 35 A 149, but where the cancellation of an instrument is the substantial relief sought, and the recovery of possession is only an incidental or auxiliary relief thereto, this Art. will apply. 6 C.W.N. 849: 25 A. 1: 8 Bom. L.R. 832 *P.C.*, 72 I.C. 748, so also where the cancellation of deed is absolutely necessary. 6. C.W.N. 863.

But Art. 91 does not apply to a suit for possession and partition after declaration that an instrument under which the defendant claims is void. 34 C.L.J. 563, 30 C. 433, 1939 All. 348 : 182 I.C. 801. Because a document which is a nullity need not be set aside in order to entitle the plaintiff to possession. Art. 142 governs the case. 26 C.W.N. 479, 30 C. 433, 37 C. 473, 12 C. 69, such is the case of *benami* deed. 35 C. 551: 35 I.A. 98 : 12 C.W.N. 562 : 7 C.L.J. 528: 10 Bom. L.R. 590 *P.C.*

Deed executed under undue influence must be set aside within 3 years from date of the deed and not from removal of undue influence. 1945 P.C. 54: 49 C.W.N. 303: 47 Bom. L.R. 274: 220 I.C. 28 P.C., 1946 Nag. 377.

A suit to set aside a partition deed executed during plaintiff's minority falls under this Art. 1943 All. 197 : 207 I.C. 99.

Where the deed is voidable a suit for possession without praying for cancellation is governed by Art. 91. 1937 Cal. 500: 172 I.C. 755.

A suit for cancellation of a will, will be governed by Art. 120 and not by Art. 91, 1926 Lah. 635: 96 I.C. 835, 23 C I. *fol.* 82 P.L.R. 1909 *Ref.*

This Art. applies only to a suit by party who is or whose predecessor was a party to the instrument. 1923 Rang. 82.

Though a suit to set aside an instrument may be barred to a person, he may question it by way of equitable defence. 30 M. 169: 17 M.L.J. 19, 30 M. 44.

Cancellation of an award comes under this Art. and a decree incorporating an award cannot be impeached without cancelling the award, 1927 Lah. 172: 9 Lah. L.J. 191: limitation runs from the date of award and not from the date of refusal by the court to file it. 5 Rang. 186 *P.C.*, 1925. P.C. 216: 89 I.C. 773 : 52 I.A. 265 *P.C.*

Arts. 91-95

Limitation runs from the discovery of the plaintiff of the true nature of the deed which he had signed 38 CWN 805: 59 CLJ 454: 36 Bom. LR 652: 1934 PC 130 PC 52 CWN 701: 1948 PC 850 Bom. LR 495 PC.

Onus of proof of the plaintiff's knowledge is on the defendant. 34 C.L.J. 563, *contra*. 1921 M.W.N. 722: 41 M.L.J. 474, 31 M.L.J. 352.

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation	Time from which period begins to run.
	Part VI.—Three years—contd.	
92.—To declare the forgery of an instrument issued or registered.	**[1][Three years]**	**When the issue or registration becomes known to the plaintiff.**
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	**[1][Three years]**	**The date of the attempt.**
94.—For property which the plaintiff has conveyed while insane.	**[1][Three years]**	**When the plaintiff is restored to sanity, and has knowledge of the conveyance.**
95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	**[1][Three years]**	**When the fraud becomes known to the party wronged.**

Art. 95: When a sale is sought to be set aside on the ground of fraud, Article 95 or Art. 102 applicable and not Article 12 (a). *Md. Mazharul Haq vs. Nagendra Lal* (1957) 9 DLR 456.

Official Liquidator's suit—limitation for it.

The Official Liquidator has to show that he has come within time. On the ground of fraud, he could have brought a suit for declaring the sale as being void. The limitation for such suit is three years under Article 95 of the Limitation Act and the time runs from the date when the fraud became known to the party wronged. *Mahaluxmi Bank Ltd. Vs. Md. Saheb Mia* (1968) 20 DLR 983.

---

[1]Subs. by the Repealing and Amending Act. 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Arts. 95-96

Arts. 95, 102, 12—Sale sought to be set aside on ground of fraud—Articles 95 or 102 applicable—Article 12 not applicable.

A suit to set aside a sale on the ground of fraud is governed by Article 95 of the Limitation Act, 1908 which provides a period of three years for a suit "to set aside a decree obtained by fraud or other relief on the ground of fraud", and not by Article 12 which provides for a period of one year for a suit to set aside, inter alia "a sale in execution of a decree of a civil court or a sale in pursuance of a decree or order of a Collector or other revenue officer." *Maulvi Md. Mazaharul Haq v. Nogendralal Dey.* Rel: 34 Cal. 241; 6 All 406; 5 Pat. 759.

Art. 95—To set aside decree obtained by fraud, 3 years, when the fraud becomes known.

The Art. does not apply to a suit by a person who was not a party to the decree, 1943 Bom. 283: 211 I.C. 230.

A suit to set aside a decree on ground of fraud falls under Art. 95 and the period of 3 years runs from the date when the plaintiff had notice of it. 85 IC 629. 1925 Cal. 819.

A suit for declaring that a certain decree and an auction sale of properties held in execution thereof are not binding on the plaintiff is in effect one to get them set aside on the ground of fraud and falls under Art. 95 and not Art. 120. 90 I.C. 866: 1926 Cal. 167, 34 C. 241: 5 C.L.J. 385, 26 C. 326 n.: 3 C.W.N. but an application to set aside a sale on the ground of fraud is governed by Art. 181, 26 C. 324: 3 C.W.N. 399. 5 C.L.J. 328, 2 C.W.N. 691.

A transaction tainted with fraud is voidable and not void. A decree obtained by fraud or collusion or any other unlawful means is a pronouncement of a Court of justice and it cannot be treated as a waste paper. 30 C.W.N. 59.

The defendent setting up limitation must show that the plaintiff had clear and definite knowledge of the facts constituting the fraud. 17 B. 341 *P.C.*, 31 M. 230.

Suit to set aside compromise decree where no fraud is alleged is governed by Art. 120, 36 C.W.N. 938: 164 I.C. 561.

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run
	Part VI.—Three years—contd.	
96.—For relief on the ground of mistake.	[1][Three years]	**When the mistake becomes known to the plaintiff.**

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923),. s. 2 and First Sch., for "Ditto".

Art. 96

Arts. 96, 52.—Electric supply bills charging less than the amount due—Suit for recovery of amount charged less—Art. 52 and not Art. 96 applicable.

The plaintiff sued the defendant for a certain sum of money on account of electric energy supplied to the defendant for a period of nearly five years, incorrect bills having been submitted throughout this period owing to a mistake having been made by the meter reader. It was contended on behalf of the plaintiff that Art. 96 and not Art. 52 applied to the case on the grounds that Art. 52 would not apply to a case where neither party knew how much of the commodity in question had been supplied, that no liability arose until a demand was made, and that electric energy was not 'goods'.

Held: (1) that in order that Art. 96 may apply the suit must be founded on a mistake, that is, the money or article claimed must be claimed as due in consequence of the mistake as where an excess amount is paid or some article is handed over by mistake there being no other cause of action, the claim not being maintainable execept on this footing. As in this case the suit was brought for the price of electric energy supplied, the liability to pay this price being in no way effected by mistake, the mistake only explaining the delay in making the claim. Art. 96 was ruled out of consideration.

(2) that in the case of electric energy the consumer is liable to pay according to the consumption shown by the meter and it is for the supplier to make demands accordingly. The plaintiff, therefore, could not be allowed to plead his own mistake or negligence in not making demands within the ordinary period of limitation.

(3) that electric energy should be held to be "movable property" and therefore "goods" within the meaning of Art. 52 and, therefore, under that article the decree should be confined to a period of three years prior to the institution of the suit. *Naini Tal Hotel v. Municipal Board.* AIR (33) 1943 Allahabad 502 Rel: AIR 1938 Lahore 338 AIR 1963 Sind. 32.

For relief on the ground of mistake, 3 years, when the mistake becomes known.

This sec. applies only to cases of mistake on the part of the plaintiff and it is limited in its application to cases of mistake committed in transactions more or less of contractual character. 31 C.W.N. 82: 101 I.C. 62: 1927 Cal. 117, 1943 Bom. 419: 214 I.C. 273.

Suit for refund of purchase money by auction purchaser on the ground that juhgment debtor had no interest is governed by this Art. 1941 Mad. 742: 200 I.C. 722.

Limitation for a suit for rectification of a deed on the ground of mutual mistake runs from the notice of mistake. 1940 Bom. 321: 192 I.C. 109.

A suit to recover excess of cess paid to landlord by mistake, 4 Pat. 448: 1925 Pat. 765, 12 C. 533, a suit for refund of excess price paid, 48 M. 925: 1925 Mad. 1255, a suit for rectification of a mistake in a lease, 48 I.C. 972, a suit to re-open a partition and to readjust the shares on ground of mistake, 1931 Mad. 707: a suit to rectify petition of adjustment of a decree, 40 C.W.N. 914: 1936 Cal. 400, 39 C.W.N. 966, come under this Art.

Arts. 97

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—contd.	
97.—For money paid upon an existing consideration which afterwards fails.	[1][Three years]	**The date of the failure.**

Art. 97: Provision of Article 97 applicable whether or not the sale is void or voidable.

The contention was raised that in the present case provision of Article 97 will not apply to it as the sale was void.

Held : .Both in void and voidable sales if the seller places the purchaser in possession of the property sold the right of the vendee to possession is secured until he is disturbed by the rightful owner. Therefore Article 97 will apply to such a sale. *Muhammad Ishaq Vs. Manzoor-ul-Hassan & Bros.* (1965) 17 DLR (WP) 45.

(See under Article 62 in case of Muhd. Ishaq Vs. Sh. Manzoor-ul-Hassan & Brothers, in 17 DLR (WP) 45 above.)

Applicable even where there is no enforceable contract but there is a promise constituting a consideration for another promise.

The word "contract" is not expressly mentioned in Article 97 of the Limitation Act. But one promise may, generally speaking, constitute consideration for another, even if no enforceable contract, stricto sensu, results from the mutual undertakings.

In the present case on the express request of the plaintiff the defendant, Government, who had taken over plaintiff's stock of liquor on the expiry of his licence, agreed to set off the sale proceeds of his stock against such arrears of licence fees as may be due from him. To such a case Article 97 will apply, and the time would begin to run from date when it was found that no arrears were in law due to be realised from the plaintiff. *Muhammad Akbar Khan Vs. Province of West Pakistan* (1961) 13 DLR (SC) 4.

Applicability—Applies to promise made in consideration of another, promise.

Transfer of property—Suit for return of consideration—When Arts. 62, 97 or 116 applies.

The provisions of Art. 62 might have been applied before the enactment of Sec. 55 T.P. Act, to cases where there was no covenant and the suit was merely on the allegation that the vendor had purported to transfer some property to which he had no title. That would have been on the analogy of the English law an action for money had and received. But since Sec. 55 has imported into all transfers, unless the parties agree to the contrary, a covenant warranting the title of the vendor, a suit to recover the consideration would be on the basis of

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Art. 97

that specific covenant and time would have established that there never had been any title. In the case, however, where there is an express covenant that covenant must be construed according to the intention of the parties and no general rule can be laid down about the date when the cause of action arises. Such suits, however, would be on the basis of a covenant and the provisions of Art. 97 would apply if there be no registered deed and the provisions of Art. 116 if there be a registered deed. *Babu Ram v. Amba Prasad* AIR (33) 1946 Allahabad 159.

Suit for money paid upon an existing consideration which afterwards fails, 3 years, from the date of failure.

Where the suit by the vendee to recover the property purchased by him failed, suit to recover the consideration money from the vendor would be governed by this Art. and the 3 years' period began to run from the date of the failure of the suit. 103 I.C. 385, 19 C. 123 *P.C.*

Where a contract for sale of land was entered into and the vendor failed to perform his part of the contract a suit by the vendee to recover the advance money is governed by this Art. 56 C. 455: 33 C.W.N. 115: 1929 Cal. 216, 45 A. 378: 21 A.L.J. 265: 1923 All 321, (25 A. 618, 31 A. 68), *Ref.*

In a suit by auction purchaser for portion of purchase-money drawn out by another decree-holder in rateable distribution on the ground of absence of saleable interest of the judgment debtor in the properties, the limitation period commences on the date on which the sale is set aside and not on the date on which the purchaser has lost possession. 30 *C.W.N.* 79: 1926 *Cal.* 297: 91 *I.C.* 768.

Where moneys were lent on mortgage executed on behalf of a Mohammedan minor and a mortgage decree was also passed and the properties sold "but in subsequent suit by the minor the mortgage was declared void and the sale was also set aside, in a suit for money brought against the persons who acted for the minor this Art. applied because the true date of failure of the consideration for the loan was the day on which the decree was passed setting aside the mortgage. 31 *C.W.N.* 830: 46 *C.L.J.* 344: 26 *L.W.* 429: 52 *M.L.J.* 579: 25 *A.L.J.* 918: 29 *Bom. L.R.* 863: 1927 *P.C.* 99: 4 *O.W.N.* 517 *P.C.*

Suit by purchaser from Hindu reversioner for refund of money for want of title comes under this Art. 45*A*. 179: 27 *C,W.N.* 949: 18 *P.L.W.* 383: 37 *C.L.J.* 346 *P.C,*

Where a sale is void *ab initio*. and possession is not given to the purchaser, a suit to recover the purchase money would be governed by Art. 62. Where the title is imperfect and possession is not handed over to the purchaser and it is subsequently discovered that the contract of sale became void, Art. 97 would apply to a suit to recover the purchase money. 55 *B.* 565: 134 *I.C.* 1157, (25 *Bom.* 593; 19 *Cal.* 123 (*P.C.*), 38 *Mad.* 887, 37 *Bom.* 538, 46 *Mad.* 40, 26 *All.* 519, *Ref.*

Where a sale is discovered to be void and the the purchaser is evicted a suit to recover purchase price is governed by Art. 97. 1945 *Lah.* 164: 221 *I.C.* 524.

Arts. 98-99

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—contd.	
98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust	**[1][Three years]**	**The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.**

Art. 98 : Misappropriation by the trustee,—the property misappropriated vest in his legal representative.—For the suit to recover the property, in whatever shape might it exist, section 10 applicable, and no question of limitation arises. In cases of suit for breach of trust not claiming specific property, Article 98 applies. *Swami Turiananda. Vs. Siris Kumar Sen.* (1953) 5 DLR 175 (176).

Description of suit.	Period of limitation	Time from which period begins to run.
	Part VI.—Three years—contd.	
99.—For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers.	**[1][Three years]**	**The date of the payment in excess of the plaintiff's own share.**

Art. 99. Contributions suit by a person paying more than his share, 3 years, the date of the payment in excess of share.

Limitation of suit for re-imbursement of money realised by coercive process from one is governed by Arts. 99 and 120. 26 *C. W.N.* 340

[1]Subs. by the Repealing and amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

—Arts. 100—102

Where one co-judgment debtor makes payment of the whole decretal amount which is accepted by the court, the "date of payment" from which the limitation runs in a contribution suit is the date of acceptance of the deposit by court, 49 *C.L.J.* 5:56 *C.* 192: 114 *I.C* 134 : 32 *C.W.N.* 1030 : 1928 *Cal.* 361, 25 *C.* 844. *P.C.*, 3 *C.L.R.* 480, 4 *C.* 529, 36 *I.C.* 392, *Dist.*, 3 *U.B.R.* 261 *Rel. on.*

A claim for contribution creates only a personal liability against the co-sharer. 14 *C.* 809 *F.B.* 15 *C.* 542, 22 *C.* 800. 25 *C.* 565, 2 *C.W.N.* 231 *n.*, 26 *B.* 437, 4 *Bom. L.R.* 90, 14 *A.* 273, *F.B.*, (26 *M.* 686 *F.B.*, 28 *M.* 493. 15 *M.L.J.* 219) *Dist.*

A suit for contribution in respect of liability attaching to immovable property is not governed by Art. 99. 1943 *Pat.* 305 : 211 *I.C*, 334.

A co mortgagor redeeming a mortgage becomes assignee of the original security and therefore the limitation for his suit for contribution is the same as that for a suit by a mortgagee on his mortgage. 25 C.W.N. 283 : 57 *I.C.* 868, 26 *A.* 407 *F.B.* 4 *C.L.J.* 79, 31 *A*, 166. 6 *A.L.J.* 67.

A co-sharer compelled to pay the whole of the revenue of a taluk acquires a charge on the shares of his co-sharers 14 *B.L.R.* 155, 22 *W.R.* 411 *contra.* 1928 *Pat.* 641.

The Art. does not apply to a case where not the whole but only a part of the money due under a joint decree was realised from the plff. 20 *M*, 23, 7 *M.L.J.* 44, 1 *P.L.R.* 149, 26 *A.* 407 *F.F.*

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—contd.	
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	[1][Three years]	**When the right to contribution accrues.**
101.—For a seaman's wages.	[1][Three years]	**The end of the voyage during which the wages are earned,**
102.—For wages not otherwise expressly provided for by this schedule.	[1][Three years]	**When the wages accrue due.**

Art. 102 : See under Article 95 above. *Md. Mazharul Hoq. Vs. Nagendra Lal Dey.* (1957) 9 DLR 456.

Art. 102. Suit for wages not otherwise provided, 3 years, when it accrues due.

Subs. by the Repealing and Amending Act, 1923 (11 of 1923),. 2 and First Sch., for "Ditto".

Arts. 102-103

This Art. applies where Art. 7 does not apply. 1936 *Lah.* 661 : 160 *I.C.* 1042. Wages of a salesman falls under this Art. 1935 *Rang.* 235 ; 157 *I.C.* 732.

A suit by a Govt. servant to recover arrears of pay is governed by this Art. 1947 *F.C.* 23 : 52 *C.W.N.F.C.* 2 : 49 *Bom. L.R.* 697.

Wages due to an employee become due on the final day of the month. 1935 *All.* 716 : 154 *I.C.* 713.

Suit by *Dwaris* of a temple holding a hereditory office for remuneration does not come under this Art. 5 *P.* 249 : 1926 *Pat.* 205.

Wages in Art. 102 is in general used for remuneration for mechanical or muscular labour, specially to that which is ordinarily paid at short intervals. 30 *A.* 81 : 36 *I.C.* 371 : 14 *A.L.J.* 873.

Deft.'s claim for arrears of pay may be deducted by way of set off in a suit by the plff. if it is not barred at the date of the written statement. 1936 *Cal.* 277.

THE FIRST SCHEDULE.—*Contd*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation	Time from which period begins to run
103. **By a Muslim for exigible dower (*mu'ajjal*).**	[1]**[Three years]**	**When the dower is demanded and refused or (where, during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.**

When there is registered deed of dower Art. 116 applies, otherwise Arts 103 and 104 apply. 27 *C.W.N.* 210; 37 *C.L.J.* 180. 44 *C* 759, 36 *C.L.J.* 379. 50 *C.* 253, the distinction between prompt and deferred dower is immaterial in this connection. 50 *C.* 253.

When the husband executes a mortgage bond for the amount of the dower, the dower debt becomes a mortgage debt, in a suit for which this Art. does not apply. 99 *I.C.* 553 : 1927 *All.* 268.

Divorce by husband by a talaknama offering to pay deferred dower in instalments—suit by wife after 3 years if barred. 1936 *Cal.* 627.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Arts. 103-106

Arts. 103, 104, Suit for dower, 3 years.

When a suit is brought by the heirs it is still a suit on a contract enforceable by them. 50 *C.* 253 : 36 *C.L.J.* 379 : 1923 *Cal.* 152,

When widow remains in possession of property in lieu of dower, cause of action accrues from the date of dispossession. 33A. 568, 10 *I.C.* 282, 8 *A.L.J.* 578. in case of deferred dower suit lies within 3 years from the date of communication of the talak by the husband to her. 1931 *Mad.* 647 : 133 *I.C.* 375.

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation	Time from which perid begins to run.
	Part VI.—Three years—contd.	
104.—By a Muslim for deferred dower (*mu'wajja!*).	[1][Three years]	When the marriage is dissolved by death or divorce
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	[1][Three years]	When the mortgagor re-enters on the mortgaged property.

Art. 105. Suit by mortgagor to recover surplus collection by mortgagee, 3 years.

Art. 105 applies to cases when the mortgagor sues for the recovery of the surplus collection only and not for redemption. 26 *C.W.N.* 123, 1922 *Cal.* 189, or for loss occasioned to the trees on the mortgaged property. 6 *C.L.J.* 53.

106,—For an account and a share of the profits of a dissolved partnership.	[1][Three years]	The date of the dissolution.

Art. 106—suit for an account and a share of the profits of a dissolved partnership 3 years, the date of dissolution.

This Art. does not apply to actions between a partner and his sub-partner. 1934 *Mad.* 12 : 148 *I.C.* 204.

Suit for dissolution of partnership and for accounts is governed by Art. 120. 1933 *Mad.* 353 : 144 *I.C.* 5 73.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923),, s. 2 and First Sch., for "Ditto".

Arts. 106-107

A suit for declaration that plff. retired from a partnership on a certain date that the partnership was dissolved at that time so far as he was concerned, and for accounts and share of profits found due to him on such accounts being taken, is governed by Art. 106, 22 *C.W.N.* 104, 43 *I.C.* 893:27 *C.L.J.* 403.

In a suit for account of a partnership, time begins to run from the date of dissolution of the partnership and where there has been a settlement, then from the date of the settlement. 16 *C.W.N.* 299 : 15 *C.L.J.* 204 : 13 *I.C.* 23, 1933 *P.C.* 120 : 37 *C.W.N.* 580 : 35 *Bom. L.R.* 745 : 142 *I.C.* 549 *P.C.*

A suit for an account by one partner against another after dissolution of the partnership is barred, if brought more than 3 years after dissolution, even though the instrument of partnership was registered. 22 *M.* 14, 14 *M.* 465, 18 *C.* 506.

Suit for partition of partnership property comes under this Art. 30 A. 279 : 5 *A.L.J.* 278.

A suit by the heir of a deceased partner for an account of the share of the profits of the partrership including the good-will and trade marks, is governed by this Art. 9 *C.W.N.* 537, 28 *M.* 344, 32 *M* 203, 6 *B.* 728, 20 *B.* 15.

Where a partnership is dissolved on death of a partner a suit against his sons for debts due from him must be instituetd within 3 years from death. 1936 *Lah.* 514 : 167 *I.C.* 759.

Irregular expulsion does not put an end to partnership. Hence a suit by a partner irregularly expelled, for account and profits, is not governed by this Art, but by Art. 120. 12 *C.W.N.* 455.

When dissolution may be inferred from circumstances. 36 *M.* 185:17 *C.W.N.* 1006: 11 *A.L.J.* 556 : 18 *C.L.J.* 13:14 *M.L.T.* 7 *P.C.*

Where a firm is not dissloved Art. 106 does not apply but only Art. 120, 25 *C.W.N.* 847: 66 *I.C.* 811.

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—contd.	
107.—By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on accoun t of the estate.	[1][Three years]	**The date of the payment.**

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923),. s. 2 and First Sch., for "Ditto".

Arts. 108-109

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—contd.	
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	[1][Three years]	**When the trees are cut down.**
109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	[1][Three years]	**When the profits are received**

Art. 109: See under Article 120. (1955) PLR (Lah.) 934.

The date of commencement of limitation according to Art. 113 of the Limitation Act is the date "when the plaintiff has notice that performance is refused." There can be no doubt that the date of commencement of limitation is the date on which the party seeking performance has notice that his right is denied. The causes of action arise from that date and the limitation also begins to run from the same date. *Habibullah Khan Vs. Qazi Md. Ishaq* (1966) 18 DLR (SC) 385.

Art. 109. Suit for mesne profits, 3 years,—when the profits are received.

Suit for profits rightfully received but wrongfully withheld is governed by Art. 120, 1941. *Nag.* 181 : 201 *I.C.* 220.

A court cannot award mesne profits for more than three years as provided in Art. 109. 19 *C.W.N.* 1167, 22 *C.W.N.* 263 : 27 *C.L.J.* 257, 68 *I.C.* 903 : 2 *P.L.T.* 648, 49 *A.* 565 : 1927 *All.* 446, 29 *C.W.N.* 973 : 43 *C.L.J.* 155, 1939 *P.C.* 178: 43 *C.W.N.* 897: 182 *I.C.* 548.

A co-sharer's suit for share of produce or profits is not governed by this Art. 1941 *Pat.* 90, 1933 *Lah.* 951.

The words "wrongfully received" include receipt of profits that cannot be legally substantiated. 26 *C.W.N.* 386: 1922 *Cal.* 225.

Art. 109 governs a suit by a usufructuary mortgagee for mesne profits against his mortgagor who is in wrongful possession of the mortgaged property. 15 *A.L.J.* 33 : 39 *I.C.* 663.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Art. 110

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	***Part VI.—Three years*—contd.**	
110.—For arrears of rent.	[1][Three years]	**When the arrears become due.**

Arts. 110, 115, 120—Landlord and tenant—Suit for recovery of compensation for use of land—Art. 120 applicable.

A suit to recover compensation for use and occupation from an ex-tenant who remains in possession the determination of the tenancy without the consent of the landlord is governed by the residuary Art, 120 of Limitation Act. Neither Art. 110 nor Art. 115 applies to such a suit. *Pratap Narain v. Ramdhan Das.* AIR (33) 1946 Allahabad 447.

Art. 110. Suit for arrears of rent, 3 years when the arrears become due.

Suit for rent under a registered lease is governed by Art. 116. 44 *C.* 759: 21 *C.W.N.* 577: 39 *I.C.* 156 *P.C.*

Suit for rent under a registered lease against an assignee of the tenant is governed by Art. 116. 54 *C.W.N.* 673.

Suit for rent against a tenant holding over is governed by this Art. 1949 *Mad.* 421.

Road cess is recoverable as rent. 21 *C.* 722, so also *dak cess.* 21 *C* 132, *choukidary* tax. 22 *C.* 680. Royalty, 44 *C.* 759:21 *C.W.N,* 577: 32 *M.L.J.* 357 *P.C., Jodi.* 1923 *M.W.N.* 524 : 1924 *Mad.* 73: 74 *I.C.* 968.

Arrears become due not always necessarily on the close of the period, but it may be at different times according to legislation, custom, contract or special circumstances. 8 *C.W.N.* 162: 27 *M,* 143: 6 *Bom. L.R.* 241 *P.C.,* 46 *M.* 579: 1922 *M.W.N.* 252: 1923 *Mad.* 461.

Limitation cannot run when the same person is the receiver and payer of rent 46 M. 579 1923 M.W.N. 252 1923 Mad. 461,

A suit for rent under B.T. Act is always governed by that Act. 17 *C.* 469, 19 *C.* 1 *F.B.,* 4 *C.L.J.* 553 so also a suit by assignee of rent. 4 *C.W.N.* 604, 1 *P.L.J.* 506:38 *I.C,* 102, 2 *I.C,* 989, 63 *I.C.* 424.

---

[1]Subs. by the Repealing and amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Arts. 111-113

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation, *Part VI.—Three years*—contd.	Time from which period begins to run.
111.—By a vendor of immoveable property for personal payment of unpaid purchase-money.	[1][Three years]	**The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.**
112.—For a call by a company registered under any Statute or Act.	[2][Three years]	**When the call is payable.**

Art. 112. For a call by a registered company 3 years, when the call is payable.

This Art. is not applicable to suits not brought by the company itself. 10 B. 493, 160 *P.L.R.* 1903, 1927 *Lah.* 543.

In case of mortgage of unpaid calls which are made payable on certain date liquidation of company does not alter the starting point of causes of action in a suit by mortgagee. 1932 *Cal*, 382: 54 *C.L.J.* 588: *I.R*, 1932 *Cal.* 290: 137 *I.C.* 380.

The call payable to the company and the liability to contribution on a winding up are distinct and different ; so the fact that the company could not realise the calls by lapse of time is no answer to the liquidator's claim. 1931 *Pat.* 44.

Cause of action for suit to recover the amount of unpaid calls arises on the date of forfeiture of share. 49 *B.* 715: 1925 *Bom.* 321.

Description of suit.	Period of limitation. *Part VI.—Three years*—contd.	Time from which period begins to run.
113. For specific performance of a contract.	[1][Three years]	**The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.**

[2]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Art. 113

Art. 113 : When an agreement provides that the land sold shall be reconveyed if the vendor desires to have it after a certain date limitation will run from the date on which the vendor desires to have recourse of the repurchase clause in the agreement. Ibid.

In a contract of sale when transferee paid the full consideration money and got possession of the disputed land, he is entitled to the protection of section 53A of the T.P. Act and Article 113 of the Limitation Act has no application to such a claim of the transferee. *Abdul Gani Khan Vs. Dino Bandhu Adhikari* (1962) 14 DLR 663.

Suit for specific performance of contract for reconveyance of the property sold—No time fixed for payment and reconveyance—Tender to be made within able time—In this case three years has been found reasonable time. *Arshad Ali Gharami Vs. Eakub Ali* (1961) 13 DLR 51.

Applicability—Contract of lease by K.M. Corporation.

Art. 113 applicable, section 255 of the Karachi Municipal Act does not apply to the enforcement of agreement of lease and for causes of action which are based on contracts entered into between the parties. Therefore this case is governed by Article 113 of the Limitation Act, which provides a period of three years for enforcing the specific performance of a contract and limitation runs from the date when any party has notice that performance is refused. *Karachi Municipal Corpn. Vs. Nawabuddin* PLD 1961 (W.P) Karachi 599.

Contract of sale of property—Refusal to get registered—Limitation governed by Art. 113.

A suit for specific performance of a contract of sale of property instituted after the Sub-Registrar had refused registration of the sale deed is not a suit under section 77 Registration Act. and the period of limitation for such a suit is 3 years under Article 113, Limitation Act inasmuch as the relief asked for was against the defendant directing him to have the sale deed registered and not a direction in terms of section 77 Registration Act that the deed be registered in the Registration office if presented within 30 days of the decree. *Pir Muhammad Khan Vs. Nadar Khan* PLD 1955 Peshawar 48.

Lease of land by registered deed—suit for possession—Art. 144 applies.

Where a contract for lease has been executed under which the lessee is entitled to be put in possession of the land leased but he is not put in possession, and he sues for possession under his lease, the suit is really one for specific performance of the contract and Article 113 would apply. But where the lease is a registered one Article 144 and not Article 113 of the Limitation Act would apply. The reason being that the rights acquired by the lessee are really rights which might be enforced by a suit for possession. *Mir Zaman Vs. Muhammad Qasim* PLD 1960 Azad J & K 32.

—Art. 113

Reconveyance of property—Agreement to reconvey if money paid within reasonable time—Tender within three years—Suit may be brought within three years after the tender.

The agreement to reconvey is a document which was enforceable by the plaintiff, that there being no time fixed for the tender, he had a right to tender the money within a reasonabie time, and if he had done so he is entitled to the benefit of the second part of Article 113 of Schedule 2 of the Limitation Act. In this case, as I have already said, the conveyance by which he sold the suit land was executed and registered on 9.12.39 Corespunding to Chaitra, 1363 B.S. it is only three years. This period of three years is not considered by me to be an undue delay and therefore unreasonable. He filed the suit a year thereafter, i.e. within one year from the date of tender when the defendants refused to reconvey and therefore he is within 3 years from date of refusal as contemplated by the second part of Article 113 and therefore his suit is within time. *Arshed Ali Vs. Eakub Ali* PLD 1961 Dacca 675.

Suit for a specific performance of contract, 3 years, the date fixed for performance or from notice of refusal.

Suit for the specific performance of contract of sale, 1922 *P.C.* 345, 6 *A.* 231: 4 *A.W.N.* 42, 2 *A.* 718, 23 *B.* 283,45 *M.* 645 *P.C.*, a contract to resell, 29 *I.C.* 898, 1934 Bom. 171:151 *I.C.* 156. a contract to execute a lease, 1920 *Pat.* 17, a contract to execute a Kabulyat, 7 *C.W.N.* 158, an agreement of partition, 61 *C. L.J.* 551, come under this Art. but a suit based on a lease is not a suit for specific performance. 35 *C.* 346:12 *C.W.N.* 459:7 *C.L.J.* 439, 34 *C.* 564 *Dissented.*

The words "date fixed" include a date which can be ascertained with reference to an event certain to happen. 1950 *Mad.* 820.

A suit for specific performance of contract is to be brought with in 3 years from the date when the performance is refused. 43 *C.* 790:23 *C.L.J.* 26 : 35 *I.C.* 305:20 *C.W.N.* 370, even when the right vests in ihird person. 41 *M.* 18.

When no time is fixed for performance, time begins to run when the performance is demanded by one party and refused by the other 39 *C.W.N.* 716: 17 *I.C.* 399;1912 *M.W.N.* 1004, 11 *I.C.* 25, 1945 *Cal.* 355: 49 *C.W.N.* 371.

Where a suit is premature because no demand was made prior to institution the plaint cannot be returned. The court will have to consider whether costs should be disallowed. 11 *I.C.* 25.

Failure of the purchaser to pay mortgage debt according to covenrnt with the vendor—suit by vendor for specific performance, 60 *C.* 761 : 1933 *Cal.* 641.

Arts. 114-115

THE FIRST SCHEDULE —*contd.*

FIRST DIVISION SUITS—*contd.*

Description of suit.	Period of limitation,	Time from which period begins to run.
	Part VI.—Three years.	
114.—For the rescission of a contract.	[1][Three years]	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
115.—For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	[1][Three years]	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases.

Art. 115 : Time shall run from the date of repudiation of contract. The repudiation of the contract was made on behalf of the Company only after the notice dated 27.12,55. in which 10 days' time was granted calling for the proposal for the fulfilment of the terms of the contract. Tne starting point of limitation in this present case would be from 6 1.56 which was 10 days from 27.12.55 and on that view of the matter it cannot be held that the suit is barred by limitation. ***Gladstone Wylie & Co. Ltd. Vs. A.B.M. Shayesta Khan.*** **(1976) 28 *DLR* 344.**

Time taken under section 80, C.P. Code is to be deducted in a suit filed under the Carriage of Goods by Sea Act.

The shipment being from a port in Pakistan to another port in Pakistan, the contract will be governed by the provisions of the Carriage of Goods by Sea Act, 1925, which is a local law within the meaning of section 29(2) of tbe Limitation Act and the plaintiff will be entitled to the period necessary for notice under section 80 of the Civil Procedure Code. *East West Steamship Co. Vs. Abdur Rahman* (1966) 18 DLR 599.

Where the liability of the ship owner does not arise under the bill of lading but apart from it, by implication, under the principles of the English Common

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

—Art. 115

Law, the special limitation of Article 111 of the 'Rules relating to bills of lading', set out in the Schedule to the Carriage of Goods by Sea Act does not apply but Article 115 governs the case and applies. *Abdur Rahman Abdul Gani vs. Mackinonn Mackenzie & Co.* (1958) 10 DLR 213.

When liability of a common carrier does not arise under the bill of lading, but apart from it (in the present case the common carrier has been held to be liable as a bailee), the special limitation prescribed by the Carriage of Goods by Sea Act does not apply, and in such a case the suit must be held to be governed by the general law of limitation to which Article 115 of the Limitation Act shall apply. *Abdur Rahman Abdul Gani Mackinonn Mackenzie & Co.* (1959) 11 DLR 329.

When goods shipped were all discharged duly and the goods remained stored in the godown of the defendants who failed to deliver them—Limitation for such a suit is three years under Article 115 of the Act. Rule 6 of the Article 111 of the Carriage of Goods by Sea Act has no application to such a case. *Abdur Rahman Abdul Gani vs. Karachi Stiam Navigation* (1959) 11 DLR 483.

Arts. 115 and 120: Arrear rents of a requisitioned property, payable by the Government—limitation of,

Claim against the Province of East Pakistan arose in the present case on account of house-rent of a premises requisitioned by the Government under the East Bengal (Emergency) Requisition of Property Act,

Held: Suit for recovery of arrears of rent against the Government does not fall within Article 115 which provides for realisation of dues on the basis of contractual obligation, So far as suit for realisation of rent against the Government is concerned there being no specific Article applicable to such a case it will be governed by the residuary Article 120 of the Act which provides six years, limitation from the time it becomes due. *Province of East Pakistan Vs. Rawshan Ara* (1970) 22 DLR 79.

Arts, 115, 110, 120: Landlord and tenant—Suit for recovery of compensation for use of land—Art. 120 applicable,

A suit to recover compensation for use and occupation from an ex-tenant who remains in possession after the determination of the tenancy without the consent of the landlord is governed by the residuary Art. 120 Limitation Act. Neither Art. 110 nor Art. 115 applies to such a suit *Pratap Narain Vs. Ramdhan Das* AIR 33 1946 Allahabad 447.

Tenant continuing in possession after period of lease—Suit for possession Art, 115 and not 39 applicable,

The action of a tenant who had remained on the property after the determination of the lease and the notice to quit did not constitute trespass upon the property in the required sense and Article 39 did not apply to a suit instituted against him for damages for use and occupation; that Article 115 has been consistently applied in the case of suits for compenastion when the claim for compensation is relatable to a contract, express, or implied, but not in writing and registered. *Cantonment Board Muree Vs. Muhammad Sharif* PLD 1961 (W.P) Lahore 378.

—Arts. 115-116

Suit for compensation for breach of contract, 3 years, when the contract is broken.

Suit for compensation based on compromise decree is governed by this Art. 1934 *Pat.* 7 : 148 *I.C.* 375.

Successive breaches refer to cases in which there is promise to pay periodically. 1941 *Pat.* 452 : 193 *I.C.* 172.

Suit for doctor's fee, 13 *W.R.* 96, 1931 *All.* 752, suit for repairing charge 9 *B.* 280 suit for purchase of stores, 14 *C.* 250, suit for marriage expenses, 3 *A.* 385, suit for account under an agreement to render account year by year, 1 *C.L.J.* 211, 11 *C.L.J.* 43, 14 *C.W.N.* 122, suit for malikana, 33 *C.* 998. 15 *C.L.J.* 684, suit against surety, 21 *C.W.N.* 479, suit for misdelivery of goods, 19 *I.C.* 477. suit for royalty, 2 *Pat.* 749, suit on hatchitta containing unqualified promise to pay, 1923 *Cal.* 578. suit by broker for commission, 37 *A.* 8, suit for unpaid calls, 52 *B.* 477 : 1928 *Bom.* 252 are governed by this Art.

THE FIRST SCHEDULE —*contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VII.—Six years.	
116.—For compensation for the breach of a contract in writing registered.	**[Six years]**	**When the period of limitation would begin to run against a suit brought on a similar contract not registered.**

Art. 116 : Limitation for a suit—breach of agreement for sale.

Where in an agreement no right is reserved to the hirer to return the machine during the hiring or before payment of the instalments, the agreement is an agreement for sale to which Art. 116 of the Limitation Act will apply. (1960) *Arabinda Poddar vs. Shaw Ram Das Agarwalla.* 12 DLR 229.

Where land not intended to be mortgaged was included in a mortgage deed merely to get registration of the deed before a particular registering officer who would otherwise be incompetent to register it, the registration of the deed was a

fraud on the registration law and did not affect the immovable properties comprised in the deed but the registration was good as regards the personal covenant to repay the mortgage money and enabled the mortgagee to sue for it within six years as provided by Article 116 of the Limitation Act. *Moulvi Khadim Rasul vs. United Bank of India.* (1953) 5 DLR 290.

A Muslim marriage registered under the Bengal Muhammedan Marriages and Divorces Registration Act is not a registration within the meaning of Article 116 of the Limitation Act. *Nuruddin Ahmed vs. Masuda Khanam.* (1957) 9 DLR 8.

Period commences from time when contract is broken. Contract for sale of occupancy rights without consent of landlord—Successful action by landlord to set aside sale—Purchaser is entitled to damages and can claim returns of purchase money 1930 PLR (Lah.) 983.

Arts. 116, 97, 62: Transfer of property—Suit for return of consideration—Title of transferee defective—When Article would be applicable.

The provisions of Art. 62 might have been applied before the enactment of S. 55, T.P. Act to cases weere there was no covenant and the suit was merely on the allegation that the vendor had purported to transfer some property to which he had no title. That would have been on the analogy of the English law an action for money had and received. But since s. 55 has imported into all transfers, unless the parties agree to the contrary, a covenant warranting the title of the vendor, a suit to recovery of the consideration would be on the basis of that specific covenant and time would begin to run from the date of the deed after it had been established that there never had been any title. In the case, however, where there is an express covenant that covenant must be construed according to the intention of the parties and no general rule can be laid down about the date when the cause of action arises. Such suits, however would be on the basis of a covenant and the provisions of Art. 97 would apply if there be no registered deed and the provisions of Art. 116 if there be a registered deed. *Babu Ram V. Amba Prasad* AIR (33) 1946 Allahabad 159.

Breach of Covenant indemnity.

Indemnity clause, for availing of—Limitation is six years from date of indemnification.

Where the indemnity clause to be availed of, is contained in a registered instrument, the limitation is six years from the date of actual damnification, reading Articles 83 and 116 of the Schedule to the Limitation Act together. *Muhammad Sharif Vs. Muhanunad Shafi* PLD 1956 (W.P) Lahore 675 PLR 1956 Lahore 1840.

Mortgage decree with stipulation for payment of interest—nehw personal decree for interest may be sought.

—Art. 116

If the stipulation for payment of interest in a mortgage-deed does not constitute an independent agreement, and is no more than a part of the principal, the mortgagee cannot get a personal decree for the recovery of the interest, even for the period of six years preceding the suit, in a case where his suit for the enforcement of the personal remedy in respect of the principal is barred by time at the time of the institution of the suit. There being one contract from which the liability for the principal and the interest arises the cause of action arising from the breach of contract is not divisible or severable and the time for the recovery of both principal and interest must be deemed to begin to run from the date when the breach takes place. If the covenant for payment of interest is an independent and separate agreement the breach of such covenant will give rise to a separate cause of action independently altogether of the cause of action arising on a breach of the covenant of payment of the principal. A suit instituted within six years of such breach will obviously be within time, in view of the language of Art. 116 Limitation Act, and cannot be held to be barred by limitation merely because an action for compensation for breach of another independent covenant has become time-barred. The mortgagee is entitled to a personal decree for the recovery of such interest even though he has no subsisting right to get a personal decree for the recovery of the principal. This is however, subject to the proviso that the mortgagee is not entitled to any relief in respect of interest falling due after the mortgagee debt itself has become irrecoverable, because in that event his suit for sale itself will be liable to dismissal as barred by time and no occasion will arise for him to apply for a personal decree under Or. 34, r. 6 Civil P.C. *Kidar Nath Vs. Saraj-ud-din* AIR (33) 1946 Lahore 97.

Personal covenant on registered mortgage—Suit for enforcement of—is governed by the article.

A suit for the enforcement of a personal covenant, exprees or implied, in a registered, mortgage-deed is governed by Art. 116, *Kidar Nath Vs. Saraj-ud-din* AIR (33) 1946 Lahore 97.

Simple money decree sought against mortgagor—Mortgage created by registered instrument—Art. 116 applicable.

A mortgage was created under a registered deed, a simple money suit was sought against the mortgagor.

The document (Ext. 66) being a registered document will come within the purview of Art. 116 of the Limitation Act and as the suit was filed within six years of its execution, the suit is well within time for simple money decree. *Muhammad Zakaria Vs. Mazahar Ali* PLD 1961 (W.P) Karachi 213.

Suit for compensation for breach of contract registered—6 years when the contract is broken.

A suit for specified sum of money on a registered bond comes under this Art. 15*C.L.J.* 17, 23 *C.* 645, 4 *C.L.J.* 510, 20 *C.W.N.* 401, 6 *B.* 75, 4 *A.* 255, 3 *M.* 359, 1940 *Pat.* 74 : 186 *I.C.* 850.

—Art. 116

A suit for breach of all covenants whether expressed or implied under a contract in writing and registered is governed by this Art. 27 *C.W.N.* 1025, the words express or implied contained in Art. 115 are also intended to be read into Art 116. 49 *B.* 596 ; 1925 *Bom.* 440, 1929 *All.* 293, 1927 *Pat.* 248, 1924 *Cal.* 148, 1937 *Nag.* 246.

A suit on a personal covenant in a registered mortgage bond is governed by Art. 116 and not by Art. 66. 35 *C.W.N.* 1030, 53 *C.L.J.* 520,34 *C.* 672 : 11 *C.W.N.* 674 ; 6 *C.L.J.* 119, 37 *C.W.N.* 633: 1933 *M.W.N.* 461 : 57 *C.L.J.* 308: 1933 *P.C.* 143 *P.C.*, 1928 *Mad.* 1124, 1946 *Lah.* 97, 1944 *Mad.* 65, 1940 *P.C.* 204 : 43 *Bom. L.R.* 465 : 191 *I.C.* 94 *P.C.*

When the mortgage property is not within the jurisdiction of the Registering officer, the deed will be treated as simple registered money-bond and this Art. applies. 29 *C.* 654 : 6 *C.W.N.* 856.

A suit under a registered dower deed comes under this Art. 26 *C.W.N.* 210.

Suit for account against agent under a registered instrument comes under this Art. 39 *A.* 355, 14, *C.W.N.* 122, 11 *C.L.J.* 43, 1 *C.L.J.* 211.

This Art. applies to instalment bond also. 11 C.W.N. 903, 18 C, 506. 30 A. 400 : 5 A.L.J. 416.

A suit for refund of the purchase money under an invalid sale is governed by this Art. and time runs from the date when the defect is discovered. 117 I.C. 654 : 1929 Pat. 388 : 8 Pat. 432, so also a suit for damages between vendor and vendee, 45 B. 955, 1927 Mad. 273, 38 M. 887, 1171, 35 M. 39, 1931 All. 419 : 1933 P.C. 143 : 37 C.W.N. 633 : 142 I.C. 788 P.C. 1949 All. 480. or between lessor and lessee. 35 C. 683, 58 C. 930 : 133, I,C. 179.

Suit for refund of a part of consideration money on the ground of failure to obtain possession of a part is governed by this Art. 1933 Mad. 126 : 140 I.C. 805.

Limitation for a suit for refund of consideration by vendee starts when he is dispossessed. 1944 All. 243,

Suit for purchase money left with purchaser to pay off mortgage debt is governed by this Art. 1950 Pat. 21.

A suit for rent against an assignee of lease created by a registered instrument is governed by this Art. 54 C.W.N. 673.

Suit for breach of duty under s. 108 T.P. Act, 1927 Pat. 248, or for rent, under a registered lease comes under this Art. 1942 Pat. 83, 53 C.L.J. 522 : 1931 Cal. 790. 44 C. 759, 19 C. 489, 27 C. 205 : 4 C. W. N. 76, 15 C. 221, 37 B. 650. 19 M. 52, but a suit for rent in respect of subject under the B. T. Act, is governed by the limitation provided in that Act and not by this Art. 19 C. 1, F. B., 4 C. L. J. 553, 11 C. W. N. 57 : 5 C. L. J. 19, 23 C. L. J. 111. But see 41 C. W. N. 1001.

—Arts. 116-118

Limitation runs from the date when the contract is broken or where there are successive breaches, from the date when the breach in respect of which the suit is instituted occurs or when the breach is continuing, from the date when it ceases. 15 C. L. J. 17.

The word "registered" in Art. 116, of the L. Act, refers only to the Registration Act, and does not include registered under the Indian Companies Act. 49 M. 468 : 1926 Mad. 616 F. B., 42 M. 33 *overruled. Contra.* 54 B. 226: 1930 Bom. 572, 1940 Bom. 97 : 187 I. C. 389 F. B.

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION : SUITS—*contd.*

Part VII.—Six years—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
117.—Upon a foreign judgment as defined in the Code of Civil Procedure, 1908 (V of 1908).	[1][Six years]	**The date of the judgment.**
118.—To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	[1][Six years]	**When the alleged adoption becomes known to the plaintiff,**

Art, 118. To obtain a declaration against an adoption, 6 years, when alleged adoption becomes known.

This Art. does not apply to a suit for possession although it involves a decision as to validity of defendant's adoption, 1939 Lah. 135: 183 I.C., 853.

This Art. governs a suit which is in effect and substance one for a declaration that a particular adoption is invalid. 46 C.L.J. 280 : 32 C.W.N. 153: 1927 P. C. 229: 29 Bom. L. R. 1383 : 106 I. C. 488 : 24 L. W. 449 *P.C.*

The omission to bring within the period prescribed by Art. 118 a suit for a declaration that an alleged adoption is invalid is no bar to a suit by the reversioner for possession of the property on the death of limited owner. 39

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

—Arts. 118-120

C. 418 : 9 A.L.J. 137 : 15 C. L. J. 172 : 16 C.W.N. 458 : 13 I.C. 344 P. C. 45 A. I. 1922 Bom. 233 F.B. 1925 All. 79.

This Art. applies to a suit to set aside adoption and to recover possession of property. 8 Pat. L.T. 34 : 1927 Pat. 145 : 6 Pat. 506.

This Art. is no bar to a suit by a reversioner on the allegation that the gift to the alleged adopted person does not affect his reversionary interest, as the plff. in such a suit can treat the adoption as a nullity and contest only the gift. 8 Lah. 48 : 96 I.C. 749 : 1926 Lah. 654, 48 B. 411 *P.C. fol. contra.* 1930 Lah, 438. So also this Art. does not bar a suit brought by a natural son for a declaration that the deft. is not a validly adopted son of his father and for an injunction restraining the deft. from interfering with the enjoyment of the property. 1926 Mad. 1123.

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION : SUITS—*contd.*

Part VII.—Six years.—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
119.—To obtain a declaration that an adoption is valid.	[1][Six years]	When the rights of the adopted son, as such, are interfered with.

Art. 119. To obtain a declaration that an adoption is valid, 6 years, when the rights of the adopted son are interfered with.

When the right of the adopted son is challenged or interfered with, suit under this Art should be brought. 43 B. 63, to establish interference something incompatible with the recognition of adoption must be proved. 58 I.C. 394 : 22 Bom. L.R. 974.

120.—Suit for which no period of limitation is provided elsewhere in this schedule.	[1][Six years]	When the right to sue accrues.

Art. 120 : Declaratory suit without a prayer for setting aside the order of an official compulsorily retiring the plaintiff from service is governed by Article 120 (not by Art. 14).

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

—Art. 120

Suit having been brought more than three years after the orders is barred by limitation under Art. 14 of the Act, the plaintiff sought for declaration that the order is illegal, void and without jurisdiction but did not pray for setting aside that order. Art. 14 of the Act is, therefore, not attracted. In purely declaratory suit like the present one, there does not appear any specific Art. in the limitation Act ; and as such, the residuary Art. 120 is applicable, The period of limitation under Art. 120 is six years from the date of the time of the accrual of the right to sue. *Province of East Pakistan Vs. A.K.M. Rezaul Karim* (1969) 21 DLR 492.

Applicable where declaration of title in immovable property is sought with any further relief.

Article 120 of the Limitation Act applies to declaratory suits not falling under any of the Articles 90, 92, 118, 119, 124 and 129 of the Act. which makes special provisions for certain classes of declaratory suits. Therefore, where the declaration of title is sought in respect of immovable property without any further relief, it will be governed by Article 120 which provides a period of six years from the date of the accrual of cause of action or right to sue. *Qutub-uddin Vs. Md. Siddique*, (1969) 21 PLD Lahore 418.

Plaintiff entitled to successive causes of action—Entitled to different period of limitation.

It is general principle of law that limitation applies only to the particular cause of action on which a suit is based and where such cause of action is not barred by limitation, the fact that the period of limitation has expired with reference to another suit of a similar nature does not affect the suit. Hence, where the plaintiff is entitled to successive causes of action in regard to the same matter, he will be entitled to an independent period of limitation in respect of each such cause of action. *Mst. Sarwor Jan Vs. Abdul Majid* (1965) 17 DLR (WP) 76.

Art. 120 : Limitation—Dismissal order against Government Servant—Starting point for suit against dismissal—Whether from the date of the first departmental authority or from the date on which appellate order was passed.

The appellant was dismissed by the order of the Collector of Land Customs on the 15th August, 1950. He filed an appeal against the order of the Collector of Land Customs before the Central Board of Revenue and the appeal was dismissed on the 7th May, 1952. On 25th June, 1958, he filed the suit out of which this appeal arises for the declaration that the order of his dismissal was void and inoperative.

The question here is where the State servant concerned must resort to a legal remedy in the Civil Courts as soon as the first departmental authority passes an order to his prejudice or he would wait till the matter is finalized after an appeal or revision to the higher authorities.

S. A. Rahman, J.—Starting point for limitation in the present case was the appellate order of the departmental authority which confirmed the original

—Art. 120

order of his dismissal and the suit having been brought within six years of that date, must be held to be within time.

Even if it be a ccepted that departmental proceedings cannot be assimilated to the position of judicial proceedings in Courts, it does not follow that the order passed by the original auihortty in such proceedings must necessarily and exclusively be regarded as the starting point for limitation under Article 120 of the Limitation Act.

Therefore the very first denial of a right should not oblige a person whose right had been invaded or on whose title a cloud had been cast, to go to Court at once.

The filing of an appeal does not by itself suspend the operation of the original order and that limitation when it has once started to run, can not be arrested in its course.

Kaikaus, J.—The order of the Collector was not a final order but it was open to the plaintiff to make it a final order by waiving his right of appeal. If he filed a suit at once the suit would not be premature because the plaintiff would say that he had waived his right of appeal, That however does not mean that the order itself was sufficient for a cause of action. It was the order coupled with the waiver that created a cause of action.

When the appeal was in fact filed the matter became sub judice. Once it becomes subjudice right to sue would arise only when it was decided. Also when it was decided only the order of the appellate tribunal existed, the original order having disappeared and merged in the appellate order which order would then be the basis of a suit. *F. A. Khan Vs. Government of Pakistan* (1964) 16 DLR (SC) 405.

Suit for account is governed by the residuary Article 120 and six years' rule will apply.

When accounting was unavoidable for determination of the parties' rights and liabilities under a contract, a suit for the recovery of the agent's dues under the contract would be a suit for accounts. A suit of this nature does not appear to be specifically governed by any definite Article of the Limitation Act. There is hardly any doubt that a suit for accounts is governed by six years' rule of limitation under Article 120. *Province of East Pakistan Vs. Ms. Abdul Halim Nezamuddin* (1967) 19 DLR 722.

Where plaintiffs desire a relief which is inconsistent with the deed of sale, they must and should pray for setting aside the sale-deed because it was a voidable transaction and the letter and spirit of Article 91 of the Act require that such a suit should fall within the prohibition of this Article and the residuary Article 120 does not apply there. *Kanchan Mala Bepari. Vs. Ananta K. Bepari.* (1954) 6 DLR 254,

Where the document is void ab initio and does not require to be set a side a suit is filed for cancellation of the document and for possession, Article 91 does not apply but residuary Article 120 applies. *Ibid.*

—Art. 120

The suit by the borrowers for refund of money realised in excess of the lawful dues of the money-lender on account, is a suit governed not by Article 62 but by Article 120 of the Limitation Act. *Ranavi Bhusan Chowdhury vs. Mohendra K. Saha* (1954) 6 DLR 156.

Suit by a Muhammadan heir against a co-heir for a share in the movable part of the estate of deceased Muhammadan—Governed by Art. 120 of the Act (1955) PLR (Lah.) 934.

Plaintiffs can be regarded as co-sharers only if their right has not been extinguished; but if the cause of action has already arisen to them and they have not instituted a suit within the six years allowed by Art. 120 then under section 28 of the Limitation Act, their right has become extinguished. (1955) PLR (Lah.) 215.

The right for enforcement of pre-emptive right accrued from the sale and the time under Art. 120 should run from the date of sale and not when the sale came to the knowledge of the pre-emptor unless the sale was concealed. PLR (1960) 1 (W.P.) 392.

[See also under Art. 62. 55 CON (DR 3) 54]

Arts. 120, 14: Order passed by public servant without jurisdiction.

Appllants were not brought on the record within the time prescribed by law—does not result in the abatement of the whole appeal and it can be proceeded with by the other four appellants. *Ghulam Muhammad Vs. Hafiz Ahmad* PLD 1960 (W.P) Lahore 1179—PLR 1961 (2) W.P. Lahore 113.

In the case where the orders of Government were void ab initio and it was not necessary to set them aside in order to grant relief to the plaintiff, Article 14 of the Limitation Act would not have any application but, in the second case, where the orders were valid, but in order to make them effective they had to be avoided, then whatever the language of the plaint, Article 14 would come into play and if brought more than one year after the impugned order was passed the suit would be barred by time. *Pb. Province Vs. Nisar Ahmad* PLD 1960 (W.P) Lahore 801—PLR 1961 (1) W.P. Lahore. 957.

Arts. 120, 91, 144 : Sale by minor—void suit for possession—Art. 144 applies and not Arts 91 and 120.

The plaintiff brought a suit for possession on the ground that the sale was effected by a minor and was therefore void. The sale-deed does not exist in the eye of law and accordingly the claim for possession has to be judged independently of the sale deed. Clearly the period of limitation in such a case would be governed by Art. 144 of the Limitation Act, provided that there was dispossession of the plaintiffs in pursuance of the sale-deed which we have declared to be null and void. *Abdur Rahman Vs. Abdul Hoq.* PLD 1960 (W.P) Karachi 625—PLR 1960(1) Karachi 545.

Wakf—Article does not apply to suits.

For declaration that the wakf was valid, time never runs in favour of a trustee so as to enable him to claim the trust property for himself. Ghulam

—Art. 120

Rasul never divested himself of the character of mutwali, and the same is true, after the death of Din Muhammad. In purporting to deal with wakf property as owners they were committing breaches of trust not setting up title adverse to trust. *Beli Ram & Bros. Vs. Muhammad Afzal* PLD 1949 Privy Council 8.

Arts. 120, 91: Wills—Art. 120 applies—Starting point for limitation.

Where the District Tribunal declared the petitioner a goonda, but failed to observe the requirements of section 263, Criminal P.C. as prescribed by section 10 of the Goondas Act, in that the Tribunal's order did not refer to any finding arrived at by them or the reasons for such finding, the High Court set aside the declaration under section 18 and directed the passing of proper orders according to law on the basis of the material before the Tribunal. *Pehlwan Shah Vs. The State* PLD 1957 (W.P) Lahore 104—PLR 1957 (1) Lahore 846 Ref ILR 23 Cal. 1 (PC) 134 PR 1908 : AIR 1926 Lahore 635. 82 PLR 1909 ILR 1932 Lahore 647.

Arts. 120, 110, 115 : Landlord and tenant—Suit for recovery of compensation for use of land—Art. 120 applicable.

A suit to recover compensation for use and occupation from an ex-tenant who remains in possession after the determination of the tenancy without the consent of the landlord is governed by the residuary Art. 120, Limitation Act. Neither Art. 110 nor Art. 115 applies to such a suit. *Pratap Narain Vs. Ramdhan Das* AIR (33) 1946 Allahabad 447.

Art. 120: Bengal Tenancy Act, S. 111 A—Suit for declaration of right under S. 111 A.—Not barred under Art. 120—Ancillary relief sought for correction of entry in record of rights beyond six years of its publication—Suit not barred.

Where a suit is brought by a person for the declaration of his rights as contemplated by the proviso of section 111 A of the Bengal Tenany Act, the suit is within time under Article 120 of Limitation Act, if brought within six years when his cause of action arose, that is to say, when any injury to his right is threatened; such suit is not barred because as ancillary to the relief as to the injury he asks for a declaration that the entry in records of rights is brought beyond six years from the date when the record was finally published. *Kumar Bhupendra Kishore Vs. Province of Bengal* PLD 1956 Dacca 58 PLR 1953 Dacca 320.

Mother in possession of land on the death of her son—Land mutated in her name—suit for declaration covered by Art. 120.

Where G, the mother of the deceased took possession of his land on his death as the parties were governed by Muslim Law. The plaintiff's brought a declaratory suit on the ground that they were governed by customary law and the mutation in the name of G was void. Moreover they claimed possession of land and prayed for declaration that a lien above by G were ineffective. Art. 120 governs those cases for which no period of limitation is provided elsewhere in the schedule, and the limitation for such suits is six years from the date the right to sue accrues. The earlier date when the right accrued to the plaintiffs to bring

—Art. 120

the declaratory suit was 21st of September 1941 when the mutation was for the first time sanctioned in the name of Mst. Ghulam Fatima after the death of her son. *Ahmad Yar Vs. Miran Baksh* PLD 1951 Baghdad-ul-Jadid 36.

Arts. 120, 91: Relief inconsistent with deed of sale—Art. 120 and Art. 91 applicable.

Where plaintiffs desire a relief which is inconsistent with the deed of sale, they must and should pray for setting aside the sale deed because it was a voidable transaction and the letter and spirit of Article 91 of the Act require that such a suit should fall within the prohibition of this Article and the residuary Article 120 does not apply there. *Kanchan Mala Vs. Ananta Kumar* 6 DLR 254 Ref. 209-A. 183, 334-A 87 PLR 1 Dacca 213 : 671-A 416.

Arts 120, 14: Order of posting by Government—Declaration that order was inoperative—Art. 120 and not Art. 14 applicable.

The plaintiff has not prayed for setting aside any order of any officer of the Government. His prayer is for a declaration that his posting as an Income-Tax Officer, Class II, Grade III, in the circumstances stated in the plaint, was illegal, inoperative and not binding on him. Apparently it does not come within this Article 14 of the Limitation Act. In such circumstances, the only Article applicable in the case is the residuary Article 120 of the Limitation Act which provides that for a suit for which no period of limitation is provided elsewhere in the schedule, period of limitation is six years when the right to sue accrued. *Pakistan Vs. Muhammad Abdul Kuddus* PLD 1961 Dacca 616.

Arts. 120, 14 : Railway employee—Suit to challenge illegal dismissal—Covered by the article.

Where a Railway employee sought to challenge an order of dismissal passed illegally against him, Article 14 of the Limitation Act is inapplicable to a case of this nature and both the Courts below erred in holding that the plaintiff's suit was barred by limitation. In fact the only Article of the Limitation Act which is applicable to such a suit is Article 120 which prescribes a period of six years for the institution of a suit. *Ibrahim Vs. Federation of Pakistan* PLD 1957 (W.P) Lahore 925—PLR 1958 (1) W. P. 823.

Arts. 120, 144 : Suit for possession by auction purchaser—Property sold for decree against manager of joint family property—Art. 144 and not Art. 120 applicable.

A suit for possession by an auction-purchaser of a particular joint family property described with boundaries in his sale certificate, sold in enforcement of a decree obtained by a creditor against the manager of the family, is governed not by Art. 120 but by Art. 144. *Vishanath Gopal Vs. Vishanath Narayan* AIR (33) 1946 Bombay.

Art. 120 : Pre-emption suit—Limitation runs from date of sale and not knowledge of sale.

—Art. 120

The sale and not the knowledge of the sale which is the foundation of the right. If the knowledge of the sale is held to be at the root of that right, then period of limitation for suits for pre-emption would be considerably prolonged, and the purchasers would remain under the sword of pre-emption for an indeterminate period. There may be perhaps some justification for pleading knowledge of the sale for the purpose of limitation under Article 120, if by any fraud on the part of vendor and vendee actual sale is concealed from the view of the people but not otherwise. *Jamil Khan Vs. Hamzullah* PLD 1959 (W.P) Peshawar 172—PLR 1960 (1) W. P. Peshawar 392 (1) W.P.

Arts. 120, 62 : Benami transaction—Benamidar selling property to third party—suit by real owner for recovery of sale price from benamidar—Art. 120 applicable.

A conveyed certain property to B. Benami. B. subsequently sold the property to one C. A brought a suit for recovery of the amount of consideration received by B :

Held : that the claim of A against B. was an equitable one, being a claim in respect of monies received and held by the benamidar, a person in the position of a trustee, for the benefit of the real owner and the suit was governed by Art. 62. *Koranamurthi Vs. Ramanath* AIR (33) 1946 Madras 248 : Ref: AIR 1931 P. C. 9 AIR 1918 P. C. 140 AIR 1941 Mad. 767 : Over : 21 Mad. 373 : 30 Mad. 298 : 1915 M. W. N. 215, AIR 1916 Mad; 524: 82 I.C. 495.

Art. 120 : Recovery of money given for joint purchase of business enterprise—Article 120 applicable.

Where the suit was for recovery of money paid by the plaintiff to defendant for being employed towards the purchase, jointly with the defendant, of a cinema and the negotiations for the deal proved abortive. *Osman Vs. Hasham* PLD 1959 (W.P) Karachi. 191.

Special limitation provided by Punjab Urban Rent Restriction Act—Art. 120 not applicable.

Where for the sums recoverable under the Punjab Urban Rent Restriction Act there is a special provision for Limitation. Neither Article 120 nor any other in the Limitation Act is applicable to a suit for recovery of such sums in view of the provisions of section 29 of that Act. The Punjab Urban Rent Restriction Act, is a special as well as a local law within the meaning of section 29 and the period of limitation provided therein must be applied to the exclustion of any in the first Schedule to the Limitation Act. *Krishna Lal Malhotra Vs. Muhammad Sadiq* PLD 1955 Lahore 288—PLR 1955 Lahore 451.

Muslim law, inheritance—Suit by co-heir for share in movable estate of the deceased—Article applicable.

A suit by a Muslim heir against his co-heir for his share in the movable part of the inheritance clearly falls outside the scope of Article 62 and is equally clearly governed by Article 120. *Sher Muhammad Jan Vs. Asafia Sultan.* PLD 1955 Lahore 593—PLR 1955 Lahore 934.

—Art. 120

Shamilat land—Co-sharer not instituting suit for share of, within six years of arising of cause of action—Right extinguished.

Where the right of the plaintiffs to a share in the shamilat was derived in 1890 when in a decision of a suit by the parties their right was derived, but they brought a suit on the ground that the decision therein affected only a part of the shamilat.

The plaintiffs can be regarded as co-sharers only if their right has not been extinguished ; but if the cause of action has already arisen to them and they have not instituted a suit within the six years allowed by Article 120, then under section 28 of the Limitation Act, their right has become extinguished. *Shahab-ud-Din Vs. Noor Ahmad.* PLD 1955 Lahore 234 : PLR 1955 Lahore 215.

Decree against one's interests—Limitation begins to run from knowledge of decree and not from date of decree.

Where a decree against the interest of a person was passed in 1913 and he came to know of it in 1935, 26 years after it became time barred.

There is nothing in Article 120, or in any of the sections of the Limitation Act, to warrant the proposition that for the purposes of Article 120, the right to sue can accrue even when the plaintiff is unaware of any infringement of his right or a threat to infringe it. Therefore the limitation will begin to run from the knowledge of the decree to the person concerned and not from the date of the passing of the decree. *Hakman Vs. Satto* PLD 1958 (W.P) Lahor 936—PLR 1959 (1) Lahore W.P. 956.

Insolvent, sale by, after appointment of official receiver—Suit to avoid the sale by official receiver—Limitation starts from the time when official receiver came to know of transfer.

In a suit by an official receiver for a declaration that a deed of transfer executed by the insolvent is not binding on the official receiver or the creditors under S. 53, T. P. Act, which is governed by the residuary Art, 120 Limitation Act, the starting point of limitation is the date of knowledge of the fraudulent nature of the transfer on the part of the plaintiff. As regards the nature and extent of such knowledge, the knowledge of the existence of a document transferring the property of the debtor is not enough. There should be knowledge of facts from which an inference can be drawn that the transfer is with an intent to defeat or delay the creditor. That knowledge can not, of course, be expected to comprise all the facts and circumstances which may, during the course of an elaborate trial, be brought out, but there must be knowledge of facts which would reasonably lead to a definite conclusion and not sueh as would merely raise a bare suspicion. Ultimately, the whole question resolves itself into a question of pure fact depending upon the circumstances and probabilities of each particular case. *Official Receiver Vs. Alagappa Chettiar.* AIR (33) 1946 Madras 236.

—Art. 120

Applicability—Wakf property—Defendant claiming adverse possession—Suit by community for declaration of title to property—Article does not apply.

The plaintiffs, representing the community applied to the Deputy Commissioner for sanction to sue the defendant under S. 92 Civil Procedure Code. The defendant claimed adverse title and the Deputy Commissioner ordered them to institute a suit of declaration regarding title to the properties in question. The plaintiffs then brought a suit for declaration that the properties in suit were wakf.

Held : that Art, 120 did not apply. This was a representative suit on behalf of a community under Or.I.R. 8, Civil P. C. for a declaration that properties in suit were wakf. It would not be said that the community as such was ever aware before the institution of such suit that its title was in jeopardy. It might be that some members thereof were aware that the assertion was to the knowledge of the entire community. The plaintiff got a fresh cause of action for the suit on the order of the Deputy Commissioner and were entitled to sue for a declaration as per terms of order. *Abdul Rahim Khan Vs. Fakir Mohd. Shah* AIR (33) 1946 Nagpur 401.

Shamilat land—Person in possession not bound to sue for declaration on an assertion of title by another party—Title jeopardized by other party—Proceeding must be taken within six years.

If the plaintiff is in possession or enjoyment of the property in suit, he is not obliged to sue for a declaration of title on the first or each succeeding denial of title by the defendant. He may look upon each denial with complacency or at his option, may institute suit to falsify the assertions of the other side, But when he finds that his rights are being actually jeopardized by the action or assertion of the defendant, then he must take proceedings within six years. *Muhammad Bakhsh Vs. Umar* PLD 1952 Lahore 307—PLR 1952 Lahore 302.

Art. 120 : Trust property—Suit for recovery from person taking as trustee but committing breach of trust—Art. 120 not applicable.

A suit to recover trust property from a person who has taken it with notice of the trust by a transaction with the trustee which was a breach of trust on his part and with notice that it was a breach of trust is governed by Art. 120 and time begins to run from the date when the plaintiff had knowledge of the transaction. *Official Receiver Vs. Kulandaivelan* AIR (33) 1946 Madras 519.

Art. 120. Suit for which no period is prescribed—6 years from right accruing.

Art. 120 and not Art. 10 applies to a suit for accounts against the *karta* of the joint family. 25 C.W.N. 356 : 32 C. L.J, 25, 44 C.W.N. 93.

A suit for accounts by a ward against his guardian is governed by this Art. 1943 Pat. 218 : 206 I.C. 126.

A suits for accounts against a receiver is governed by this Art. 1942 Cal. 483 : 46 C.W.N. 294.

—Art. 120

A suit for account by an agent against principal is governed by this Art. 1954 Nag. 300.

Art. 120 applies to a suit for contribution against person enjoying benefit of non-gratuitous act. 25 C.W.N. 813.

The court ought not to regard a case as coming under this Art. unless clearly satisfied that it does not come under any other Art. 32 C. 527 : I.C.L.J. 167, 26 C. 564, *F.B.*

A suit for declaration of right or status is governed by this Art. 21 C. 157 : 20 I.A. 155 *P. C.*, 36 A. 492, 20 A. 35 *F.B.*, 37 A. 94, 1 C.L.J. 93, 15 B. 422, 22 B. 430, 25 C.W.N. 847, 41 C.L.J. 31 : 1925 Cal. 518, 26 C.W.N. 206 : 33 C.L.J. 592, 11 C.W.N. 186, 1942 P.C. 47 : 47 C.W.N. 38 : 44 Bom. L.R. 868 : 201 I.C. 499. But when there is prayer for confirmation of possession or injunction this Art. does not apply. 23 C.L.J. 571. But where the suit is brought for declaration as to land being held rent free with prayer for confirmation of possession and for injunction and the latter prayers are found to be unnecessary the suit comes under this Art. 49 C.L.J. 281 : 1929 Cal. 417, and where the suit was for setting aside of a deed of gift and for declaration of title and under the averments made in the plaint the deed of gift was void *ob initio* Art. 120 was applicable and not Arts. 91 and 93, 26 C.W.N. 479.

A suit for declaration of nullity of marriage is governed by Art. 120. 1945 Cal. 484 : 49 C.W.N. 570.

A suit for declaration by a public servant that the order of dismissal is void is governed by this Art. 1943 Oudh 368 : 207 I.C. 178.

Where the substantial relief sought is the cancellation of documents or declaration of its validity, and recovery of land is only an auxiliary or incidental relief, the suit will be governed by Art. 91 or Art. 120 and not by Art. 14. 6 *C.W.N.* 849 4 *Bom. L.R.* 832 : 29 *I. A.* 203 : 25 *A.I.P.C.*

Where the relief sought is for possession and the cancellation of instrument is subsidiary, this Art. applies. 1935 *All.* 1018 : 158 *I.C.* 434.

A suit for construction of a will is governed by Art. 120, but the right to sue does not accrue from the death of the testator or the date of the probate. 37 *C.L.J.* 482.

An order refusing the mutation of name does not amount to dispossession and a suit for declaration of title is govesned by this Art. 11 *C.W.N.* 186: 4 *C.L.J.* 568, 45 *A.* 461, 24 *A.* 521, 27 *A.* 313, 42 *M.L.J.* 457 : 67 *I.C.* 600 (22 *C.L.J.* 283, 30 *M.* 383, 41 *C* 244) *Dist.* even if a prayer be made to set aside the order of the Revenue Officer. 10 *C.* 525.

Suit for declaration of title and correction of record. 40 *C.W.N.* 566, 1937 *Cal.* 745 : 40 *C.W.N.* 96.

A suit for a declaration that the plaintiff is entitled to certain share in certain movable property and for recovery of possession thereof from the defendant who wrongfully withholds the same, is governed by Art. 120 and not by Art, 49 or 62. 55 *C.L.J.* 420 : 36 *C.W.N.* 758.

—Art. 120

In a suit by co-sharer against another for profits Art. 120 applies. 29 *C.W.N.* 270 : 1925 : *P.C.* 93. 1941 *Pat.* 90 : 192 *I.C.* 456, or for possession and injunction . 1933 *Lah.* 705 *F.B.* and a suit by co-sharer landlord against another for recovery of rent collected by the latter comes under this Art 34 *C.L.J.* 508, 23 *C.* 799, so a suit of contribution by a mortgagor. 25 *C.W.N.* 283, but a suit against co-mortgagee for money received by him comes under Art. 62(3 years) 32 *C.* 527 : 1 *C.L.J.* 107, 23 *C.W.N.* 983, 30 *C.* 440, 20 *C.W.N.* 983, 30 *C.* 440. *As to similar case see Art.* 62.

A suit for accounts by one co-owner against another is governed by this Art. 1940 *Cal.* 363:189 *I.C.* 642. 1943 *Bom.* 216: 208 *I.C.* 340.

An administration suit by one heir against another regarding movable property is governed by this Art. 1940 *P.C.* 215: 45 *C.W.N.* 226.

Suit for contribution is generally governed by Art. 61 (3 years) but when the plaintiff has not voluntarily made the payment but the money was realised from him by sequestration and sale of his property, such suit is governed by this Art. 26 *C.* 241.

Suit for compensation by some joint tenants against some others who had the exclusive possession of joint land. 23 *C.* 799, suit for compensation money withdrawn by the deft. from the Collectorate repsesenting himself as the owner 5 *C.* 597, 3 *C.W.N.* 202 (Art. 62 is also applicable). suit to recover surplus sale-proceeds of a sale for arrears of revenue, 20 *C.* 51 *F.B.* overrulling 18 *C.* 234, suit for refund of money paid on decree afterwards reversed, 2 *C.L.R.* 354, 13 *M.* 437, suit by a purchaser of a decree to recover money of deceased Jt. Dr. in the hands of his agent, 13 *A.* 368. 16 *M.* 36, suit against trustee for possession of share and for account and recovery of profits. 1931 *P.C.* 9 : 1931 *M.W.N.* 137 : 35 *C.W.N.* 145 : 33 *Bom. L.R.* 168 : 54 *C.L.J.* 175 *P.C.*, 7 *A.* 25 and suit to recover compensation for land acquired by the Govt. under the L.A. Act, when the Collector refuses to award any compensation. 34 *C.* 466, 27 *M.* 585, are governed by this Art.

A suit for compensation for use and occupation is goverened by this Art, 41 C.W.N. 1090, 1939 Cal. 468: 43 C.W. N. 469, 1946 All. 447: 224 I C. 201,

A suit for damages for enticing plff's wife is governed by Art. 120. 1936 All 454: 163 I.C. 974.

A claim to an office and to property appurtenant thereto, 33 C.L.J. 151, 62 C.L.J. 153, a suit for an exclusive right to worship an idol, 4 C. 683, a suit to oust a shebait, 19 C. 776, 25 C. 354, of a person holding the office of Mutwali 31 C.W.N. 184: 44 C.L.J. 339:1927 Cal. 130, or against the interference of the right of worship. 12 Pat. 681 : 1933 M.W.N 882 : 58 C.L.J. 56:37 C.W.N. 1921 1933 P.C. 193 *P.C.*, a suit against a Municipality for declaration of right to establish a market, 4 A. 339 *F.B.*, suit against directors of mosque for compensation, 14 B. 401, a suit for emoluments of hereditary office, 9 M.L.J. 163, 93 I.C. 923 : 1926 Mad. 245, a suit against alienation by mutwali, 2 Pat. 391: 74 I.C. 403, a suit again the alienation by a temple trustee, 1928 Mad. 837, a suit by a defeated candidate to set aside the election of members of a Municipal Board, 35 A 308, come under this Arl.

—Art. 120

Suit for malikana comes under the Art. 50 C.L.J. 52 : 1929 P.C. 166 : 33 C.W.N. 809 : 31 Bom. L.R. 891 *P. C.*

This Art. applies to a suit by a shareholder of limited company for the amount of arrears of dividend. 49 M. 468 : 1926 M W.N, 450:91 I.C. 515, 1926 Mad. 615 *F.B.*, 54 B. 226, and to a claim by the Liquidator of a Company under s. 235 Companies Act and time begins to run from the date when the liquidator was appointed. 47 A. 669: 1925 All. 519, 1935 Lah. 335 : 156 I.C. 951.

Where in a current account transaction between banker and customer the former sued to realise certain amounts due, the suit was governed by Art. 120 and not by Arts. 57, 59, 60 or 85 of the Limitation Act. 1929 Cal. 714 : 33 C.W.N. 412:56 Cal. 556.

Suit against a deft: for the value of goods misappropriated by his brother who was agent of the plintiff on the ground that the defendant being joint with his brother had enjoyed the benefit thereof, is governed by this Art. 10 C. 860 *P.C.*

A suit to set aside a consent decree where fraud is not alleged or proved is governed by this Art. 39 C.W.N. 938:164 I. C. 561.

A suit by minor to declare a decree void against him which was passed owing to the gross negligence of his guardian is governed by this Art. and limitation commences from the date when the gross negligence becomes known to the minor. 1936 Mad. 804.

Suit for enforcing a charge against movable property pledged, is governed by this Art. 22 C, 21, 17 A. 284, 27 M. 528 *F.B.*

A suit for money lent on a usufructuary mortgage the cause of action being *the failure of the mortgagor to secure the mortgagee in possession*, falls either under Art. 116 or this Art. 21 M. 242.

Art. 120 applies to a suit by reversioners for the movables after the death of the widow, 49 C. 45 : 25 C. W. N. 585 : 33 C,L.J. 421, 44 M. 984, 32 C.W.N. 913 : 55 C. 903 : 1928 Cal. 670, 25 C.W,N, 585 : 33 C.L.J. 421, 44 M. 984, 30 M. 402, 14 B, 512, 16 M. 138, 22 A, 33 *F.B.*, 37 A. 195, 38 M 396, 37A 195, 20 C. 906, 23 B. 725, *P. C.*, and also to a suit by reversioner restraining the waste of movables by widow. 44 M. 984 : 66 I. C. 10, but a suit for fmmovable property is governed by Art. 141, 23 B. 725, *P.C.*, 32 C.W.N. 913.

Suit by a reversioner that the alienation is not binding on him is governed by this Art. 1941 Cal 41 : 45 C.W.N. 141.

Suit against a son governed by Mitakshara law to enforce father's debt on the ground of pious obligation is governed by this Art. 23 A. 206, 42 C. 1068, *F. B.*, 28 A. 508, 27 M. 243 *F.B.*, 16 M. 99.

In a suit by a Muhammedan daughter claiming share by inheritance from her father's estate, where it appears that she has ceased to be a member of the family by marriage, this Art. and not Art. 127 (12 years) will apply. 7 C.W.N. 155, 14 B. 70 *Diss.* (15 M. 186, 13 A. 212, 22 C. 954). 18 C. 642 *Apprd.* 32 I. C. 83 : 30 M.L.J. 104, and the brother is not trustee for the sister. 16 C. 161.

—Arts. 120–123

Where in a proceeding under s. 145 Cr. P. C. a Magistrate attaches the property in dispute, a suit for possession of property is in truth and substance one for declaration of title and this Art. applies. The position of Magistrate is that of a stake-holder. 49 C. 544 : 26 C.W.N. 432, 20 A. 120, 26 M. 410, 20 C. W. N. 481, 17 C. 814, 32 C. 856. 5 A. 1, 30 M 12, 29 C 518, 50 C. 475. But to apply this Art. an actual infringement of right by the order of the Magistrate is necessary. 30 C.W.N. 873 : 1926 Cal. 1022.

A suit for declaration of title against an order under s. 146 Cr. P. C. is governed by this Art. 26 M. 410, but the cause of action is recurring one. 22 C.L.J. 283.

THE FIRST SCHEDULE.—*Contd*

FIRST DIVISION: SUITS—*contd.*

Part VIII.—
Twelve years.

Description of suit.	Period of limitation.	Time from which period begins to run.
121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a patni taluq or other saleable tenure sold for arrears of rent.	**Twelve years**	**When the sale becomes final and conclusive.**
122.—Upon a judgment obtained in [1][Bangladesh] or a recognisance.	**[2][Twelve years]**	**The date of the judgment or recognisance.**
123.—For a legacy or for a share of a residue bequeathed by a testator. or for a distributive share of the property of an intestate.	**[2][Twelve years]**	**When the legacy or share becomes payable or deliverable.**

Art. 123 : Legacy to be paid by son of testator on attaining majority—Son dying before attaining majority—Starting point for limitation.

Where a testator by his will directs his son to pay a legacy to his daughter on attaining majority and the son dies before attaining majority, a suit claiming the legacy instituted more than twelve years after the date on which the son would have attained majority will be barred by limitation. *Sellamani Ammal Vs. Thillai Ammal* AIR (33) 1946 Privy Council 185.

---

[1]Substituted by Act 53 of 1974.

[2]Subs. by the Repealing and Amending Act. 1923 (11 of 1923) s. 2 and First Sch., for "Ditto".

—Arts. 123-124

Art. 123—Suit by heir for his share, 12 years when it becomes deliverable.

Art. 123 applies only to cases in which the property sought to be recovered is not only a legacy, but is also sought to be recovered as such from one who is bound by law to pay the legacy becanse he is either executor of the will or otherwise represents the estate of the testaror. 91 I. C. 725 : 1926 Cal. 480, 9 C. 79, 24 I. C. 45, 34 M. 511, 12 M. 487, 14 B. 236, 43 M. L. J. 480 : 1922 Mad. 457, so it does not apply to a suit by Muhammedan heir as none is charged by law with the distribution. 1929 Lah. 549, 1932 P. C. 81 : 54 All. 93 : 36 C. W. N 310 : 9 C.W.N. 399 : 34 Bom. L. R. 510 ; 59 I. A. 74 ; 62 M.L.J. 371 : 55 C.L.J. 470 : 136 I. C. 445 : 1932 A. L. J. 245 *P.C.*, 1940 P. C. 215 45 C.W.N. 226 ; 43 Bom. L. R. 388 ; 191 I. C. 113 P. C.

A suit for legacy is governed by this Art, 41 C, 271, 19 M. 425, 36 B. 111, 13 W. R. 354, 1986 All. 748, and it applies to a suit for accounts against an executor *de son tort*. 95 I. C 33 : 1926 Mad. 681, and snit for maintenance under a will, 35 C W.N. 307 ; 1931 Cal, 670.

Limitation starts when legacy is payable: 1946 P. C. 185 ; 51 C.W.N, 205 227 I. C. 12.

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION : SUITS —*contd.*

Part VIII.—Twelve years—contd.

Description of suit.	Period of limitation	Time from which period begins to run.
124.—For possession of an hereditary office.	[1][Twelve years]	**When the defendant takes possession of the office adversely to the plaintiff.** *Explanation.*—**An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.**

Art. 124—Suit for possession of hereditary office, 12 years, from adverse possession.

If the office is not hereditary the suit is governed by Art. 120. 1954 Nag. 212 ; 1954 N.L.J. 152.

The Art, applies to suit for appointment to the office of shebait if it be by succession and not by nomination. 1926 Mad. 1012, 19 C. 776, 25 C. 354, 28 I C. 956, 26 M. 113, 1941 All. 1 : 193 I. C. 697.

Adverse possession of the office of shebait extinguished the claim to pala, 1936 Cal. 291 ; 166 I. C. 8 32.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

—Arts. 124–125

A co-shebait's claims to office is barred under Art. 124 but his claim to a share of the endowed property is barred under under Art 144. 1944 P. C. 24 : 48 W. C. N. 304 ; 212 I. C. 525 P. C.

A transferee from a co-shebait of her pala can acquire title by adverse possession. 54 C.W.N. 960.

A suit for possession of a shebaiti right is governed by Art. 124. 1953 S.C. 125 : 1953 S.C.R. 503 : 1953 S.C.J. 208.

There is no distinction as regards limitations between a claim to an office and that to property of an endowment. 4 C.W.N. 329: M. 271 *P.C.*' 39 M. 456, 35 M. 92.

Right to office can be acquired by adverse possession. 21 M. 278, and even against co-managers by exclusive possession. 27 M. 192.

There can be no adverse possession so long as there is no lawful trustee. 28 I.C. 956, 10 I.C. 95, 18 I.C. 373

When the title to an office has been acquired by statutory operation whether under Art. 120, 124 or 144 the title of the true owner is not recovered by re-entry. 32 C.L.J. 151.

Suit for declaration by alleged *khadims* is governed by this Art. 24 C. 83.

Appropriation of offerings on each occasion gives rise to a recurring cause of action. 42 C. 244 *P.C.* 39 C. 887 *reversed.*

Right to religious office vested in several branches of family but actual exercise by one branch,—transfer of office to stranger who claims adverse possession,—possession of transfer cannot be tacked on to transferer's possession to sustain plea. 1930 Cal. 180: 50 C.L.J. 382.

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION : SUITS—*contd.*

Part VIII.—Twelve years—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
125.—Suit during the life of a Hindu or [2]Muslim female by a Hindu or Muslim who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage.	**[1][Twelve years]**	**The date of the alienation.**

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923) *s.* 2 and First Sch., for "Ditto".

[2]Subs. by Act 53 of 1974.

Arts. 125-126.

Art. 125—Suit by next reversioner against alienation by female, 12 years, from the date of alienation.

A suit for declaration after death of widow does not fall under this Art. 1935 Pat. 256 : 155 I.C. 244.

This Art. does not apply to cases where the alienation is void *ab initio :* 1947 Lah. 290 F.B.

This Art. does not apply where the alienee has not taken possession. 5 D.L.R. Simla 299.

The Art. does not apply to auction sales in execution of decree. 1952 Cal. 473.

Where property was sold in execution of decree on mortgage limitation starts from the date of mortgage and not from the date of sale. 1952 Cal. 473.

Only the next reversioner including a female reversioner is entitled to sue. 22 A. 23 *F B.*

A suit by remote reversioner is governed by Art. 123. 10 M.L.J. 220, 18 I.C. 710, 37 A 195, 22 A. 33 *F.B.*, 18 I.C. 710, 37 A. 195, 38 M: 396.

A remote reversioner can sue when the nearer one is found to have colluded with the widow. 28 M. 57, 6 A. 428, 32 C. 62. But it has been held in 37 A. 195 that the remote reversioner has the equal right.

The reversioner can only get a declaration and cannot set aside the alienation. 25 C. 179 *P.C.*

A compromise by widow, 22 C. 354, 1 I.C. 180, or submitting to redemption of mortgaged property by one having no such right. 1928 Lah. 932 amounts to alienation.

Purchase from female heir, suit for possession, limitation. 36 C.L.J. 92, and a suit by reversioner challenging validity of a gift, limitation. 1923 Lah. 58: 70 I.C. 838.

A similar interpretation must be given to the words "payble" and "deliverable" as used in Art. 123. 48 M. 312 : 29 C.W.N. 989: 3 Pat. L.R. 202: 87 I.C. 324: 1925 M.W.N. 41 *P.C.*

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION: SUITS—*contd.*

Part VIII.—Twelve years—contd.

Description of suit.	Period of limitation	Time from which period begins to run.
126.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	[1][Twelve years]	**When the alienee takes possession of the property.**

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923) s. 2 and First Sch., for "Ditto".

—Arts. 126-127

Art. 126—Suit to set aside father's alienation (Mitakshara), 12 years when the alienee takes possession.

A suit by grandson to set aside alienation by grand-father does not fall under this Art. 1940 Bom. 136 : 187 I.C. 663.

This Art. is based on the principle that possession of the alienee gives the son the knowledge of the father's alienation. If the alienee never gets possession no limitation can arise. 50 A 163 : 1927 All. 702, 41 M. 650.

When the father executes a mortgage and a sale is followed, the son can sue against the sale and time begins to run from the date of the delivery of possession to the alienee. 1928 Bom. 383.

A suit by the younger sons against the alienation by the father is maintainable if it is brought within 3 years after the seniormost of them attained majority. 51 M. 627 : 1928 Mad. 1055, (48 A. 152 *P.C.*, 50 M.L.J. 344 *P.C.*) *fol.*

A person cannot be said to be a minor until he is born and so the provisions of s. 6 of the L. Act do not apply to the case of a son who was begotten before but born subsequent to the alienation sought to be set aside. 1931 Mad. 456.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION: SUITS—*contd.*

Part VIII.—Twelve years—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
127.—By a person excluded from joint family property to enforce a right to share therein.	[1][Twelve years]	**When the exclusion becomes known to the plaintiff.**

Art. 127: Disinherited son's widow—If may sue for partition and possession of her husband's share after 12 years of his death.

M, a Kutchi Memon disinherited one K. of his two sons in 1907 and thereafter made a will leaving his entire property to S. his otherson, M. died in 1909 and K. in 1911, S. remained in exclusive possession of the property after Ms' death. K'swidow sued S. in 1939 for partition and possession of half share of Ms' estate in the hands of S.

Held: that since after the death of M his son, S. was in exclusive possession of the property and S's possession was, on the fact of the case, adverse to that of the widow's husband, the suit brought by K's widow for partition having been instituted after the lapse of 12 years was clearly out of time by reason of Article 127, Limitation Act. *Saran Vs. Abdul Rashid.* PLD 1950 Sind 131—PLD 1948 Sind 17.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923) s. 2 and First Sch., for "Ditto".

—Arts. 127-128

Art. 127—Suit by a person excluded from joint property, 12 years from knowledge of exclusion.

This Art. does not apply to a suit between a member of joint family and a stranger alienee. 1940 Bom. 136: 187 I.C. 663.

Where evidence negatives the existence of a joint family this Art. does not apply. 1950 F.C. 142: 1949 F, C. R. 715: 1950 S. C. J. 514.

Because the plff. was a minor it cannot be said he could have no knowledge of his exclusion. 1952 All. 105.

The word "excluded" implies previous inclusion. 5 C. 938, and the property must be joint at the time of exclusion. 45 M. 643 *F. B.*, 16 I. C. 882 and the plff. must be a member of the joint family. 18 C. 642, 11 C. 312, 14 C. 544, 11 C. 680, 9 M. 482 *P.C.*, 23 B. 137, 49 A. 763:102 I.C. 66 : 25 A.L.J. 413 : 1927 All. 454 1931 P.C 48: 33 Bom. L.R. 442: 35 C.W.N. 438: 53 C.L.J. 313 : I.R. 1931 P.C. 81: 130 I.C. 673: 14 N.L.J. 56 *P.C.*,

Mere exclusion from commensality is not sufficient. 16 C.W.N. 466, 30 M. 201, 20 M.L.J. 364, 37 B. 84, 29 I.C. 183, "exclusion" contemplated by this section is total exclusion. A coparcener is not absolutely excluded if he is in receipt of maintenance from the family property. 48 A. 529 : 44 C.L.J. 330, 1926 M.W.N. 716 : 1926 P.C. 100: 51 M.L.J. 836 *P.C.*

An intention to exclude is an essential element. It is therefore necessary for the Court to be satisfied there was an intention on the part of those in control and possession of the joint family property to exclude the person and that exclusion was to his knowledge. 33 C.W.N. 1006 : 1929 P.C. 231 : 57 M.L T. 287 : 50 C.L.J. 135 *P.C.*, 1948 Oudh 307.

This Art. does not apply to the case as regards the money and the profits received but it applies only to suit for share of the property of a joint family at the date of the suit. 45 M. 643 *F.B.*

—This Art. does not apply to a suit by Muhammedan for possession by right of inheritance of share *in the property of their deceased ancestor*. 22 C. 954, 13 A. 282 *F B.* 15 M. 57 *contra*. 14 B. 70.

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION: SUITS—*contd.*

Part VIII.—Twelve years—contd.

Description of suit.	Period of limitation	Time from which period begins to run.
128.—By a Hindu for arrears of maintenance.	[1][Twelve years]	**When the arrears are payable.**

[1]Subs. by the Repealing and Amending Act. 1923 (11 of 1923)s. 2 and First Sch., for "Ditto".

—Arts. 128-130

Art. 128—Suit by Hindu for arrears of maintenance, 12 years from when the arrears are payable.

"By a Hindu" must be taken to mean by a person claiming under the Hindu law. 23 C. 645, so when the plaintiff's claim is based upon a contract evidenced by compromise-decree the case is governed by Art. 115 (3 years) 26 I.C. 939.

When maintenance is charged upon immovable property a suit to recover the arrears of maintenance is governed by Art 132. 9 C. 945 *P.C.*

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION : SUITS—*contd.*

Part VIII.—Twelve years—contd.

Description of suit.	Period of limitation	Time from which period begins to run
129.—By a Hindu for a declaration of his right to maintenance.	**[1][Twelve years]**	**When the right is denied.**

Art. 129—Suit by a Hindu for declaration of right to maintenance, 12 years, from denial.

The burden of proving denial more than 12 years before suit is on defendant, where there is no denial there is no bar under Art. 129. 23 I.C. 831 : 1914 M.W.N. 374.

Description of suit.	Period of limitation.	Time from which period begins to run.
130. For the resumption or assessment or rent-free land.	**[1][Twelve years]**	**When the right to resume or assess the land first accrues.**

Art. 130—Suit for resumption or assessment of rent-free land. 12 years, when the right accrues.

This Art. can have no application unless and until the land is found to be rent-free. The right to levy assessment upon rent-free land is governed by Art. 130 and is consequently extinguished if no suit to enforce the right is instituted within the time allowed. 38 C.L.J. 807, 45 C. 694, 16 C. 949.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923) s. 2 and First Sch., for "Ditto".

—Arts 130-131

Right to assess rent of a rent-free land accrues when the tenant asserts a title adverse to the proprietory right of the landlord. 16 C.W.N. 305.

Suit for assessment of rent-free lands are governed by Art. 130 but a suit to establish a right to assessment of rent is governed by Art. 131 and limitation in the latter case does not run unless there has been a demand and refusal. Distinction shown. 43 C.L.J. 387 : 95 I.C. 622 : 1926 Cal. 883.

Suit for resumption by purchaser at revenue sale must be brought under Art. 121 and 130. 22 C. 244.

Suit for resumption of life jaigir must be brought within 12 years of the death of the grantee. 71 I.C. 929.

Suit by landlord for assessment of rent—starting point of limitation. 1936 Cal. 289. (40 C. 173; 49 I.A. 399 : 2 Pat. 38 *P.C.*), *Ref.* (22 C.L.J. 135, 10 M.I.A. 214 *P.C.*) *Dist.*

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS—*contd.*

Part VIII.—Twelve years—contd.

Description of suit.	Period of limitation	Time from which period begins to run.
131.—To establish a periodically recurring right.	[1][Twelve years]	**When the plaintiff is first refused the enjoyment of the right.**

Art. 131 : Right to get back possession in the case of a usufructuary mortgage is not a "recurring right" and hence Art. 131 of the Act will not apply in the case of an application under section 26 G.B.T. Act. *Suresh Ch. Bose vs. Sobhan Mridha.* (1955) 7 DLR 426.

Art. 131 or 144 : Article 131 or 144 is applicable in the case of a benami document. *Nazir Ahmed Serang vs. Benoy Bh. Saha.* (1956) 8 DLR 159.

Arts. 131, 181 : Application under B.T. Act S. 26G—Article 181 and not Art. 131 applicable.

An application under section 26G of the Bengal Tenancy Act would be governed by Article 181 and not by Article 131 of the Limitation Act. *Yusuf Ali Vs. Lokman.* PLD 1960 Dacca 225.

Art. 131 : Jagir—Art. 131 applies only when suit is against government.

Article 131 of the Limitation Act in jagir matters will be applicable only to those cases where the claim is made against the Government. *Pirdinoshah Vs. Ishaq Ali Shah* PLD 1960 (W.P.) Karachi 385—PLR 1959 (1) W.P. 1302.

Art. 131—To establish a periodically recurring right, 12 years, from refusal.

A suit to establish a periodically recurring right. 10 C. 697: 13 M.L.J. 267, and also a right to recover the arrears under such right falls under this Art. 38 M. 916, 1936 Mad. 704, *contra.* 34 A. 246, 1931 Bom. 189: 131 I.C. 465.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

—Arts. 131-132

A claim to enhance rent is a recurring cause of action and is governed by this Art. 2 P.L.J. 124, 72 I.C. 781, 43 C.L.J. 387: 95: I.C. 622: 1926 Cal. 883, but where the right is not based on contract but a statute, this Art does no apply., 72 I.C. 781.

Right to receive certain sum as *dusturat*. 19 C.L.J. 118, right to recover additional rent for additional area. 6 C.W.N. 360, right to *pala* or turn of worship, 8 C. 807, right to receive burial fees. 24 W.R. 385, right to receive monthly allowance, 7 M. 341. 5 B. 68, are periodically recurring rights.

A suit to recover an annuity under a will is governed by Art. 131. 1947 Pat. 47: 229 I.C. 348.

Under Art. 131 there must be a demand and refusal. 95 I.C. 851: 1926 Bom. 345: 43 C.L.J. 387: 1926 Cal. 883.

The defendant is to prove that the plaintiff had made the demand and the defendant had refused more than twelve years before. 19 C.L.J. 118, 54 C.W.N. 973.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION SUITS—*contd.*

Part VIII.—Twelve years—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
132.—To enforce payment of money charged upon immoveable property. **[1][*Explanation*.—For the purposes of this article—** **(*a*) the allowance and fees respectively called *malikana* and *haqqs*, and** **(*b*) the value of any agricultural or other produce the right to receive which is secured by a charge upon immoveable property, [2][and** **(*c*) advances secured by mortgage by deposit of title deed.]** **shall be deemed to be money charged upon immoveable property.]**	**[1][Twelve years]**	**When the money sued for becomes due.**

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923) s. 2 and First Sch., for "Ditto".

[2]Subs. by the Indian Limitation (Amdt.) Act. 1927 (1 of 1927) s. 4(1), for the original *Explanation*.

[3]Ins. by the Transfer of Property (Amdt.) Supplementary Act, 1929 (21 of 1929), s. 9.

—Art. 132

Art. 132—Suit to enforce payment of money charged upon immoveable property—12 years from due date.

This Art. does not apply to a simple suit for money. 1938 Mad. 47: 176 I.C. 247.

A suit for accounts by the principal against agent who has hypothecated his immovable property as security is governed by this Art. 43 C. 248: 35 C. 298 *Fol.*, 14 C.W.N. 122, *Dist.*, but where the principal transfers his property the agreement between him and the agent comes to an end, if the principal gets the property by re-transfer, a new agency is created. 20 C.W.N. 356.

A suit to recover the value of paddy charged upon immovable property, by sale of the latter is governed by this Art. 25 C.W.N. 57: 48 C. 625: 32 C.L.J. 278 *F.B.*, 64 I.C. 210, 310.

When maintenance is charged upon immovable property a suit to recover it comes under this Art. 39 C.W.N. 725, 9 C. 945 *P.C.* So also a suit for annuity. 16 A. 189, 28 A. 743.

A suit for unpaid purchase money which is a charge on the property sold in the hands of the vendee by the vendor, is governed by this Art. 18 B. 48, 22 B. 846. 21 A.554, 28 M. 305, 30 A. 172, 107 I.C. 679, 1943 Mad. 28: 205 I.C. 293.

Payment of revenue by the plaintiff for the defendant does not create any charge. 14 C. 809 *F.B.* 15 C. 542 14 A. 273, 6 B. 437. *contra*, 26 M. 686 *F.B.* 28 M. 493.

When mortgaged property is sold for arrears of revenue, free from all encumbrances, the mortgagee is entitled to a charge on the surplus sale proceeds which is enforceable under this Art., the limitation running from the due date. 3 C.L.J. 52, 31 C.745, 27 C. 180; such is the case, when the money is in the hands of creditors of the mortgagor who have taken away the money from the Collectorate, 5 C.W.N. 356, or when the second mortgagee seeks to enforce his lien on the surplus sale-proceeds in the hands of the third mortgagee. 33 C. 92: 9 C.W.N. 989.

A suit on a simple mortgage bond comes under this Art. 11 C.W.N. 1005, 30 M. 426, 9 Bom. L.R. 1104, 4 A.L.J. 625 *P.C.*

This Art. applies to a mortgage bond payable by instalment. 1939 Pat. 433: 183 I.C. 523 F.B.

Where on the default in payment of an instalment the mortgagee demanded the entire amount but accepted from mortgagor the overdue instalment, time does not run until fresh default is made. 1944 Mad. 172: (1944) 1 M.L.J. 49.

Where the mortgage bond provided stipulation for payment of principal amount and interest on different dates, *held*, that the provision as to the payment of interest was inserted in the mortgage deed exclusively for the benefit of the mortgagee and gave him an option either to enforce his security at once on default in the payment of the interest or to wait for the full term of the mortgage, but it was not competent to the mortgagor to take advantage of his own default and claim a right to redeem before the expiry of the stipulated term. 63 M.L.J.

—Art. 132

187 : 1932 P.C. 207, 34 Bom. L.R. 1600 : 1932 A.L.J. 913 : 56 C.L.J. 237 : 1932 M.W.N. 912 : 36 C.W.N. 1017 *P.C.*

Where a mortgage bond empowers the mortgagee to sue on default of payment of interest, the money does not become dus when default is made. 1932 P.C. 207 : 36 C.W.N. 1017 : 34 Bom. L.R. 1600 : 138 I.C. 779 P.C., 1947 All. 7 : 230 I.C. 76.

A puisne mortgagee cannot redeem prior mortgage beyond the period fixed by this Art. 1925 Mad. 150, 92 I.C. 118.

Where a prior mortgagee gets a mortgage decree withot making the subsequent mortgagee a party and purchases the property and the subsequent mortgagee gets a mortgage decree without making the prior mortgagee a party and purchases the property, a suit by subsequent mortgagee to enforce his right against the prior mortgagee purchaser falls under this Article and, limitation runs from the due date of his own mortgage, 14 C.W.N. 439, 91 I.C. 719, 1926 Cal, 560.

Limitation for a suit by subrogee is the same as that by the original mortgagee and not the date of payment 1937 Nag. 402 : 174 I.C. 7.

A subsequent mortgagee paying off a prior mortgage does not acquire a fresh charge save and except that of the prior mortgagee, 3 Pat. L.T. 533 : 68 I.C. 707.

Where a puisne mortgagee defendant pays off the decretal amount of the prior mortgagee and sues the mortgagor for the recovery of the amount, limitation runs from the date when the payment is made. 8 N.L.J. 232, 84 I.C. 301, 1925 Mad. 76 : 47 M.L.J. 602, 50 A. 569 : 109 L.C. 38 : 1928 All. 241 : 26 A.L.J. 298.

A suit on a mortgage bond executed by the father of the Mitakshara family to discharge an antecedent debt not for immoral purpose, is enforceable against the sons under this Art. 2 C.W.N. 603, 34 C 184, 17 C.W.N. 1022, 35 A. 302, 29A 544.

An equitable mortgage can be enforced as aa ordinary mortgage, by sale of the mortgaged property. 24 C. 348.

Where according to the stipulation in the mortgage deed the mortgagor does not deliver possession of mortgaged property to the mortgagee a suit to recover money is governed by this Article 95 I.C. 100 : 1926 All. 551.

A mortgage which is invalid, not being duly attested, does not become a charge. 32 C. 729 : 9 C.W.N. 967, 31 M. 337.

A suit to enforce a charge on movable property is governed by Art. 120, 22 C. 21, but where the debt Is not effectively charged on immovable property Art. 132 does not apply 20 C 79 *P.C.*

A mortgage does, whereas a charge does not, involve a transfer of an interest in specific im novable property. A mortgagee can follow the mortgaged property in the hands of a transferee from the mortgagor, whereas a charge can be enforced against a transferee only if it is shown that he has taken with notice of the charge. 33 C. 985 : 4 C.L.J. 219, 13 A. 38, *Ref.*, 35 C. 837 : 12 C W.N. 819 : 7 C.L.J. 492.

—Arts. 133-134

Suit for contribution by co-mortgagor can be filed within 12 years of date on which the mortgage was paid. 1931 Cal. 251 : 58 Cal. 1167 : 53 C.L.J. 154: 35 C.W.N. 409 : *F.B.*, 28 A 482 *P.C.*, 1932 All. 250.

A trustee of a mosque advancing money to meet the expenses of the mosque does not acquire any charge upon trust property ; his suit to recover money is governed by Art 120. 37 C. 229.

The shebait of a temple made certain payments under s. 170 B.T. Act and sued for the enforcement of a statutory mortgage under s. 171, on the basis of accounts showing the payments made *Held*, that Art. 132 of the Limitation Act would apply because the claim was to enforce a charge on property and the suit was not barred. 134 I.C. 75 : 1931 Cal. 493 : 35 C.W.N. 678 : I.R. 1931 Cal. 779.

[1][* * * * *]

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION : SUITS—*contd.*

Part VIII.—Twelve years.—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
134.—To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration.	[2][Twelve years]	[3][**When the transfer becomes known to the plaintiff.**]

Art. 134—Suit for possession of immovable property transferred by trustee or mortgagee for valuable consideration, 12 years, when the transfer becomes known to the plaintiff.

The Art. does not apply to Hindu or Muhammedan religious endowment. 1937 Lah. 9 : 169 I.C. 732.

---

[1]Article 133 omitted by the Indian Limitation (Amdt.) Act, 1929 (1 of 1929), s. 3.

[2]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

[3]Subs. by Act 1 of 1929, s. 3, for "the date of the transfer".

—Art. 134

The Art. does not apply where possession is not taken by transferee. 1933 Mad. 533 : 144 I.C. 541.

The Art. does not apply where the trustee has a beneficial interest. 1933 Mad. 533 : 144 I.C. 541.

This section does not apply to purchases in court sales. 1954 Mad. 650: (1954) 2 M.L.J. 12.

Art. 134 applies when the seller and the purchaser honestly believe that the absolute interest of the owner was transferred. 32 L.W. 63 : 1926 M.*W*.N. 152: 93 I.C, 276: 1926 Mad. 311, but contrary view is that Art. 134 is not restricted to the purchaser in good faith, it applies to an alienee for value even when he takes the property with full knowledge that the alienor is acting in excess of his power. 95 I.C. 699, 127 P.R. 1908 *F.B., fol.*, 2 C.L.J. 546, 32 M.L.J. 85, 33 C. 511. The words "in good faith" which was to be found in the Act of 1871 have been subsequently omitted, 2 C.L.J. 546 and it is not without significance.

Art. 134 applies both to transferees from trustees as from mortgagees provided the transfer is for valuable consideration and of absolute title. The question of *bona-fides* on the part of the transferee is not material, 1931 Cal. 113 34 C.W.N. 961 : 58 Cal. 234, 1951 All. 167 F. B.

In case of conflict as to the applicability of Arts. 134 and 141; Art. 134 will apply. 44 M. 951, 110 I. C. 894 : 1928 Mad. 614.

Where this Art. applies and where Art. 148 applies. 1951 All. 167 F.B.

The first part of the Art. refers to a case where the transfer by the trustee is accompanied by possession. The second half provides only for a case where the defendant's vendor purports to transfer all ownership when in fact he has only a mortgagee's right. 50 C. 49 : 36 C.L.J. 35, 21 M. 151, 25 M. 99.

This Art. does not apply to a suit for recovery of temple property improperly alienated by trustee. 49 M. 543 : 1926 Mad. 769.

A suit for recovery of possession of lands improperly alienated by the *Dharmakarta* of a temple is governed by Art. 144 and not by Art. 134, as he is not a 'trustee' within the meaning of that Article. 44 M. 831 ; 1932 Mad. 328.

Permanent lease of endowed property by the head of the *mutt*—suit by successor—limitation. Art. 134 or 144 applies. 26 C.W.N. 537 : 30 M.L.T. 66 : 24 Bom. L.R. 629 *P.C.*, 12 Pat. 251 ; 35 Bom. L.R. 530 ; 37 C.W.N. 541. 57 C.L.J. 229 ; 1933 A.L.J. 327 ; 1933 P.C. 75 *P.C.*

Art. 134 does not apply to a wakf. 50 C. 529 ; 38 C.L.J. 242 : 28 C.W.N. 121; 44 M.L.J. 624 25 Bom. L.R. 670 P.C.

This Art. does not apply to cases of forced sales in execution of decrees, 71 C. 570, 32 M.L.J. 35, 1917 M.W.N. 5. 25 M. 99 *F.B.* 11 C. 121 *P.C.*, 1947 Cal. 461; 52 C.W.N. 443. (1952) 2 M.L.J. 77; 1952 M.W.N. 514.

The grant of permanent lease or putni lease of property belonging to an idol by the *shebait* is a transfer for valuable consideration whether any pre-

—Arts. 134–134A

mium was paid or not, rent being the valuable consideration. 32 M.L.J. 24, 43 C. 34 : 19 C.W.N. 108.

This Art. does not apply where the transferee does not profess or intend to take an absolute interest. 2 C.L.J. 546, 37 A. 660, 29 A. 471, *F. B.*, 24 M. 471, 12 B. 140, 6 M. L.J. 260, 9 M.L J. 93, 18 B. 387, 9 A. 97.

Transferee for valuable consideration is used in contradistinction to a mere volunteer. 2 C. L. J. 546, 22 B. 225, 26 M.L.J. 537 : 24 I. C. 369.

Suit by *poojari* of a temple for setting aside alienation by his predecessor is not governed by this Art. 48 M.L.J. 144 : 86 I.C. 231 : 1925 Mad. 822, 49 M.L.J. 640, 15 C.W.N. 417 *P. C.*

In case of absolute dedication the *shebait* is a trustee within this Art. 2 C.L.J. 546.

This Art. contemplates a transfer by a mortgagee of a larger interest than that given by the mortgage or at any rate an interest unencumbered by a mortgage. 33 C.W.N. 761 : 1929 P.C. 158 : 27 A.L.J. 566 *P.C*, 1951 All. 433, 1954 Mad. 650 : (1954) 2 M.L.J. 12.

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION : SUITS—*contd.*

Part VIII.—Twelve years.—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
[1][134A—To set aside a transfer of immoveable property comprised in a Hindu, [2]Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Twelve years	When the transfer becomes known to the plaintiff.

Arts. 134-A, 134C, 144 : Endowed property—Alienation by manager—When alienee's adverse possession begins.

When an endowed property is alienated by a manager, the possession of the alienee becomes adverse as soon as he is without any title to the property.

---

[1]Articles 134A, 134B and 134C, ins. by the Indian Limitation (Amdt.) Act 1929 (1 of 1929), s. 3.

[2]Subs. by Act 53 of 1974.

Art. 134 A

If the transfer is void ab initio, the possession of the transferee is adverse from the very date of the transfer. If it is not void but is only voidable at the instance of the succeeding manager, possession cannot be adverse until the office of the alienating mohant ceases.

The alienation is void ab initio when the manager acts in negation to the trust. In the first place if the alienation is not merely of certain items of the endowed property, but of the endowment as a whole, the possession of the transferee is unlawful from the very beginning and limitation would run from the date of transfer. In the second place, even if the subject-matter of transfer is only particular item or items of endowed property the question whether the transaction is void or voidable would depend upon the fact whether the shebait or the manager or in his own individual capacity as the secular owner of the property. A Shebait or manager has the right to alienate portions of endowed property for purposes of legal necessity. He may exceed his powers but if the transfer of the deity's property is by the shebait or manager as such, the transferee would at least acquire an interest which would be valid during the lifetime of the transferring mohant, but if the manager transfers the property belonging to the deity as his own property asserting his own personal interest in the same, his act itself is adverse to the trust. The transferee in such cases would acquire no title to the property and his possession would be unlawful from the beginning. The same principal applies to involuntary transfers as well.

A sale of the endowed property in execution of a mortgage decree is governed by the same principle. If the mortgage is executed by the manager qua the manager on behalf of the deity the mortgage is not void altogether, and the purchaser at a mortgage sale would, at least acquire an interest which will endure during the life-time of the manager. If the manager asserts his own individual ownership in the property in denial of the rights of the deity and purports to act not as Shebait but as proprietor of the endowed property the mortgager would not acquire any interest by such transaction. The purchaser at the mortgage sale would be a trespasser out and out and his possession would be adverse from the date of purchase. *Hemanta Kumari Vs. Iswar Sridhar Jiu* AIR (33) 1946 Calcutta 473.

Arts. 134-A to 134, C. 144 : Endowed property—Mortgage by shebait as a private owner and not as shebait—Property purchased on mortgage decree—Suit for possession by shebait on the ground that it was debutter property—Art. 144 applicable.

The former shebait of a deity mortgaged the property belonging to the deity in 1905 not in his capacity as shebait but as secular owner of the property which he purported to hold in miskar right. The mortgagee obtained decree on the mortgage and purchased the property himself in execution in 1908 and obtained possession. The decree was not against the shebait qua shebait but against him in his own personal capacity. The shebait died in 1932 and in 1934 the present shebait brought a suit for recovery of possession on declaration of title of the deity. The suit was decreed and possession was obtained. One

—Arts. 134A-134B

H preferred a claim under Or. 21, r. 100, Civil P. C. which was allowed. Thereupon the shebait brought a suit under Or. 21, r 103, Civil P. C., for recovery of possession of the property on the allegation that it was a part of the debuttor endowment belonging to the deity and H did not acquire any title to it by reason of his purchase at the sale held in execution of a decree obtained by a third party against the representatives of the mortgagee.

Held : that the purchase by the mortgagee in execution of his mortgage decree was void altogether and the possession of the purchaser was adverse from the date of the sale. Articles 134-A to 134-C which were introduced by the amending Act of 1929 had no application to the facts of the case. The suit was governed by Art. 144 and was barred by limitation. *Hemanta Kumari Vs. Iswar Sridhar Jiu* AIR (33) 1946 Calcutta 473.

Art. 134A—Suit to set aside a transfer of immovable property of an endowment by a manager thereof for valuable consideration—12 years, when the transfer becomes known to the plaintiff.

A suit by a Hindu idol against a transferee from a former *mahani* for restraining him from disturbing the plaintiff's possession is governed by this Art. 1938 Lah. 752 : 178 I. C. 806.

Limitation starts from plaintiff's knowledge. 1951 Orissa 255 : 6 D.L.R. Cut. 45.

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION : SUITS—*contd.*

Part VIII.—Twelve years—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
134B.—By the manager of a Hindu, [1]Muslim or Buddhist religious or charitable endowment to recover possession of immoveable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.	**Twelve years**	**The death, resignation or removal of the transferor.**

Art. 134B: Suit for setting aside invalid alienation.

The limitation for setting aside an invalid alienation of trust property by a shebait is 12 years from the alienating shebait. The right to bring such suit does not revive on the death or removal of each succeeding shebait. 8 PLR (Dac.) 147.

---

[1]Subs by Act 53 of 1974.

—Art. 134B-134C

Art. 134B : In a suit to recover possession of debuttor property or any immovable property comprised in a religious or charitable endowment-Ed. sold in execution of a decree against the Mahanth, the article of the Act that is applicable on the question of limitation is Art. 144 and not 134B. The words "transferred by a previous manager for valuable consideration" in Art. 134-B cannot be construed to cover an execution sale under Court's process nor the word "transferor" be extended to the judgment-debtor whose land is sold. *Mahant Sudaram Das Vs. Mahanta Ram Kripal Dos.* (1951) 3 DLR 393.

Art. 134B—Suit to recover possession of endowed property which has been transferred by a previous manager—12 years, from death, resignation or removal of transferor.

This Art. bars the right of *shebait* as well as of deity to recover possession of *debuttor* property after 12 years from death or removal of the alienating *shebait*. 1944 Cal. 211 : 48 C.W.N. 172.

Limitation for a suit by the succeeding *shebait* starts from the death, resignation or removal of the alienating *shebait* even where there was interval of time between death of previous *shebait* and appointment of the plaintiff. 1941 Mad. 449 : 199 I.C. 225.

Transfer includes a lease. 1937 Cal. 305 : 41 C.W.N. 693 : 172 I.C. 315.

This Art. does not apply to transfer by execution sale. 1950 P.C. 44 : 52 Bom. L.R. 493 : 54 C.W.N. 213 : 1950 A.L.J. 108 : (1950) 1 M.L.J. 242 P.C.

The Art. would apply where the *mutawalli* sold the wakf property as his own. 1949 E. P. 233.

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION : SUITS —*contd.*

Description of suit.	*Part VIII.—Twelve years*—contd. Period of limitation	Time from which period begins to run.
134C—By the manager of a Hindu, [1]Muslim or Buddhist religious or charitable endowment to recover possession of moveable property comprised in the endowment which has been sold by a previous manager for a valuable consideration.	**Twelve years**	**The death, resignation or removal of the seller.**

[1]Subs. by Act 53 of 1974.

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS—*contd.*

Part VIII.—Twelve years—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
135.—Suit instituted in a Court [1][other than [2][the High Court Division]] by a mortgagee for possession of immoveable property mortgaged.	**[3][Twelve years]**	**When the mortgagor's right to possession determines.**

Art. 135—Suit by mortgagee for possession of mortgaged property, 12 years, when the mortgagor's right to possession determines.

A mortgagee by conditional sale when wrongfully dispossessed may sue for possession though his claim for foreclosure may be barred, 27 C. 185. But where the mortgagee is not entitled to possession this Art. does not apply. 20 C. 269.

Description of suit.	Period of limitation.	Time from which period begins to run.
136.—By a purchaser at a private sale for possession of immoveable property sold when the vendor was out of possesioa at the date of the sale.	**[3][Twelve years]**	**When the vendor is first entitled to possession.**

Art. 136. Suit for possession by purchaser at private sale when the vender was out of possession, 12 years, when the vendor is first entitled to possession.

Limitation runs against the purchaser in the same way as against the vendor. 15 *B.* 261.

The word "purchaser" does not include the purchaser from the auction-purchaser. 31 *C.* 681 *F.B.*

Where there are successive vendors who have all been out of possession this Art refers to the first of the series. 24 *I.C.* 216.

Suit by purchaser from reversioner must be brought under this Art. within 12 years form the date of the death of the widow. 8 *C.W.N.* 535, 9 *I.C.* 495.

In a suit by a purchaser from a member of a joint Hindu family who is alleged to have been out of possession at the date of sale Art. 136 applies and not Art. 127. 9 *I.C.* 495.

---

[1]Subs. by the Central Laws (Statute Reforms) Ordinance 1960, (XXI of 1960), s. 3 and 2nd Sch. for "not established by Royal Charter" (with effect from the 14th October, 1955).

[2]Subs. by Act 53 of 1974.

[3]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch. for "Ditto".

THE FIRST SCHEDULE.—*Contd*

FIRST DIVISION: SUITS—*contd.*

Part VIII.—Twelve years—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	[1][Twelve years]	**When the judgment-debtor is first entitled to possession.**

Art. 137: When the judgment-debtor was not in possession of the land in suit at the date of the sale but some other person was the auction purchaser may bring a suit for possession under Article 137 within 12 years from the date when the judgment-debtor becomes first entitled to possession.

Where the auction purchaser in execution of a mortgage decree was given not actual but symbolical possession and brought suit for recovery of possession, neither Art. 137 nor Art. 142 applied as against the defendant who was not a party to the mortgage suit or to the proceedings in execution of the decree. The only Article on which the defendant could rely was Art. 144. *Syed Abul Fazal vs. Nirode Bala Deb Ray.* (1956) 8 DLR 181.

Art. 137. Suit by auction-purchaser when the Jt. Dr. was out of possession, 12 years, when the Jt. Dr. is first entitled to possession.

The Art. is not limited to purchases in execution of mortgage decrees. 1939 *Mad.* 456 : 182 *I.C.* 999, 1950 *Cal.* 92.

When the Jt. Dr. is in possession at the date of the sale Art. 137 does not apply. 26 *C.W.N.* 364.

If the Jt. Dr. recovers possession after auction sale a suit against him is governed by Art. 144. 5 *I.C.* 273.

This Art. does not apply to a suit for possession by a purchaser at a sale in execution of a mortgage decree. 1923 *Mad.* 160.

Limitation in suit for possession by an auction purchaser against usufructuary mortgagee pending attachment is 12 years from the date when the Jt. Dr. was entitled to possession. 1926 *Mad.* 966: 97 *I.C.* 718 : 51 *M.L.J.* 143.

Description of suit.	Period of limitation.	Time from which period begins to run.
138. Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was in possession at the date of the sale.	[1][Twelve years]	**The date when the sale becomes absolute.**

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch. for "Ditto".

—Art. 138

Art. 138: A separate suit, whether by a decree-holder auction—purchaser, or stranger auction-purchaser for recovery of possession is not barred by sec. 47 C.P. Code, if it is brought within 12 years, as provided by Art. 138 of the Act from the date of the confirmation of sale *Abdul Alim Vs. Shambhu Nath pal* (1953) 5 DLR 163.

Art. 138 of the Limitation Act refers to cases where no possession, symbolical or actual, is obtained through Court and where an auction—purchaser obtains such possession but is disturbed subsequently by the debtor or his heirs Art. 138 does not come in *Nani Gopal Chakrabatty Vs. Ram Kumar Bhar* (1958) 6 DLR 539.

Possession obtained through Court but subsequently disturbed—Art. 138 does not apply—Article applies only when possession is not obtained through Court.

Art. 138 of the Limitation Act refers to cases where no possession symbolical or actual, is obtained through Court and where an auction purchaser obtains such possession but is disturbed subsequently by the debter or his heirs Art. 138 does not come in. *Nani Gopal Vs. Ram Kumar* 6 DLR 539 Foll : ILR 5 Cal. 584 (F.B.) 22 CWN. P.C. 330 ; 48 C.W.N. 15 : 53 C.W.N. 899, ILR. 46 Bom. 710; Dis; ILR 36 Bom. 373 (F.B.) ILR 43 All. 1520 (F.B.) 5. Cal. 331.

Art. 138. Suit by auction-purchaser when the Jt. Dr. is in possession, 12 years, when the sale becomes absolute.

A suit by the auction purchaser against a person who has not acquired a title from the Jt. Dr. is not governed by Art. 138. 36 *C.L.J.* 140 : 27 C.W.N. 259.

A suit by an auction purchaser after obtaining formal delivery of possession is governed by Art. 144. 1946 *Pat.* 202 : 24 *P.* 717, 1950 *Assam* 50.

Art. 138, evidently refers to a case where the purchaser has not obtained delivery of possession. 26 *C.W.N.* 364, 21 *C.* 715, 9 *C.W.N.* 292. Symbolical possession is equivalent to actual possession against the Jt. Dr. 5. *C.* 584 *F.B.*

This Art. only applies to a suit in which the auction purchaser is the plaintiff and the Jt. Dr. or some one through him is the defendant. 35 *A* 432.

This Art. applies also to a purchaser from auction purchaser. 31 *C.* 681 *F.B.* 23 *C.* 49 *overruled*, 15 *M.* 331, 18 *M.* 244, 23 *B.* 246.

This Act. does not cover the case of a decree-holder-auction-purchaser. 50 *M.* 403 : 1927 *Mad.* 288 *Contra.* this Art. makes no distinction between a decree-holder purchaser and 3rd person purchaser 1931 *Pat.* 241 *F.B.*, 1944 *Lah.* 402 : 217 *I.C.* 147 F.B.

This Art. does not override the provision of sec. 47 *C.P.C.* ; they should be read together. 31 *A* 82 *F.B.*

Art. 139

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION : SUITS—*contd.*

Part VIII.—Twelve years.—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
139.—By a landlord to recover possession from a tenant.	[1][Twelve years]	**When the tenancy is determined.**

Art. 139 : The incident of the tenancy which is lacking in the case of a tenant-at—will is that a tenant-at-will is not entitled to any ejectment notice as in the case of other tenants and the landlord may file ejectment suit straight way without serving any notice of ejectment on him. If a suit has to be filed against him, Art. 139 of the Act will not apply but Art. 144 will apply and this latter Art. also applies to a suit against a trespasser. *Ray Mohan chowdhury Vs. Tejendra Lal Ray* (1954) 6 DLR 577.

Art. 139: Art. 139, Sch. 11.:

If the lessee holds over after the expiry of the term of lease and if no subsequent arrangement is arrived at between the lessor and the lessee creating a new tenancy, time begins to run under Article 139 of the Limitation Act against the lessor from the date of expiry of the term of lease. *Sarat Chandra Biswas Vs. Moazam Sardar,* (1970) 22 DLR 102.

Art, 139: Article applies to a suit by the landlord to recover possession of the land from tenant after the period of lease is over.

A suit by a landlord against his ex-tenant, based upon title, to recover a possession of the demised land on the termination of the tenancy is governed by Article 139. The period of limitation under that Article is 12 years from the date of termination of the tenancy. *Abdur Rahman Chowdhury Vs. Sree Sree Shambhu Nath* (1967) 19 DLR 705.

Art. 139. Suit by landlord to recover possession from tenant, 12 years from determination of tenancy.

A suit by landlord against an ex-tenant for recovery of possession is governed by this Art. and not by Art. 144. 1949 *Bom.* 137; 51 *Bom. L.R.* 34 *F.B.*

A tenant cannot claim adverse possession without giving up possession. 14 *C.L.J.* 453, and no limitation so long as the tenancy continues. 29 *C.L.J.* 1, 10 *C.W.N.* 343, 13 *C.* 101, 9 *C.* 367, 39 *C.W.N.* 552 : 61 *C.L.J.* 147 : 68 *M.L.J.* 552 : 37 Bom. *L.R.* 390 : 1935 *P.C.*, 59 *P.C.*

Non-payment of rent is not adverse possession 16 *CWN* 202, 17 *C.W.N.* 627, 7 *C.L.J.* 202, 18 *C.W.N.* 52 *n.*, 16, *C.L.J.* 202, 7 *B.* 34, 40, 9 *B.* 419, 2

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923) s. 2 and First Sch., for "Ditto".

—Arts. 139-140

A. 517, 3 *M.* 11, 4 *C.* 661, but when the tenant pays rent to a third person the latter's possession becomes adverse. 1 *C.W.N.* 246.

When a tenant holds over after the expiry of a lease, such holding over is wrongful and time begins to run under this Art. 22 *B.* 893, 24 *B.* 504, 31 *A.* 318, 514, 7 *C.L.J.* 615, 31 *A.* 318, 514, 7 *C.L.J.* 615, 31 *M.* 163, 31 *A.* 514 : 6 *A.L.J.* 584, 19 *M.L.J.* 732. 1925 *Pat.* 560, 1925 *All.* 698, 1925 *Pat.* 216, 105 *I.C.* 859 : 29 *Bom L.R.* 1332, 1927 *All.* 821, 26 *C.W.N.* 722 *P.C.*, 20 *A.L.J.* 696, 44 *A.* 583.

Where the tenant holds over without payment of rent or without assent of land-lord, a suit for possession after 12 years of termination of tenancy is barred. 1940 *Lah.* 410 : 191 *I. C.* 289.

Possession of trespasser during the currency of a lease is not adverse to the zeminder. 13 *C.* 101, 10 *C.* 577, 9 *C.* 367 10 *C.* 343, 29 *A.* 493, 20 *C.W.N.* 773, 85 *I.C.* 550 : 1925 *All.* 698, but where the land is leased in *putni or durputni* and he remains dispossessed by stranger for 12 years, his suit against the trespasser will be barred though brought within 12 years from the voluntary relinquishment by his tenant. 26 *C.* 460.

A suit against the representative of a tenant after the termination of the tenancy to recover the property leased is governed by Art. 139 and not by Art. 144. 1925 *Mad.* 446, 1941 *All.* 306 : 195 *I. C.* 515.

The defendant can raise the plea of tenancy and limitation at the same time 7 *C.W.N.* 294 7 *B.* 96.

Burden of proof of tenancy lies on the landlord when it is denined by the defendant 29 *A.* 40.

Where the plaintiff's predecessor instituted a suit for possession and mesne profits in which decree was passed restraining eviction of the defendant, if he paid fair rent and the defendant did not comply with the terms, there was no relationship of landlord and tenant and Art. 139 did not apply to a suit in ejectment of defendant by the plaintiff. 49 *C.L.J.* 327 : 27 *A.L.J.* 246 : 114 I.C. 561 : 56 *M.L.J.* 562 : 1929 *P.C.* 99 : 10 *Pat. L.T.* 301, *P.C.*

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION : [SUITS—*contd.*

Part VIII.—Twelve years.—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
140.—By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immoveable property.	[1][Twelve years]	**When his estate falls into possession.**

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923) s. 2 and First Sch., for "Ditto".

—Art. 140

Art. 140. Suit by a reversioner, 12 years, when the estate falls into possession.

The Art. would apply where life estate was created by will. 1945 *P.C.* 113 49 *C.W.N.* 485 : 220 I.C. 458 P.C.

Art. 140 contemplates a suit by a remainderman or reversioner for possession of immovable property when his estate falls into possession 34 *C L.J.* 129, there may be several life-tenants, and time runs from the death of last life-tenant. 40 *C.W.N.* 115 : 62 *C.L.J.* 49 : 1935 *Cal.* 702.

If the cause of action has arisen during the life time of the last full owner, the subsequent interposition of a life-estate or a widow's estate would not stop the running of time and Art. 140 or 141 would not apply. 40 *C.W.N.* 115 : 62 *C.L.J.* 49 : 1935 *Cal.* 702, but when the plaintiff brings his case under Arts. 140 and 141 it is for the defendant to prove that he dispossessed the full owner, same case.

Whether a person claiming only an equity of redemption comes within the meaning of remainderman. 32 *C.W.N.* 761 ; 27 *A.L.J.* 566 : 1929 *P.C.* 158 *P.C.*

In a suit for possession by son's wife on the death of the limited owner (here the mother-in-law) Art. 140 applies and not Art. 142 or 144 as the cause of action arises on the death of the limited owner. 34 *C.L.J.* 141, 34 *C.L.J.* 129.

Where a grant of immovable property is made to a person for life, the period of limitation for a suit by the grantor's heir, the grantee being dead, is 12 years from the date of grant, 11 *C.* 121 *P.C.*

A suit by a devisee under a will must be brought within 12 years from the date of the testator's death. 14 *C.* 801 *P.C.* The estate falls into possession immediately on the date of the testator's death although the property should be in the possession of the manager until the devisee attains a certain age, 17 *C.* 272,

Where a will appoints a Hindu female as executrix and gives life estate, cause of action accrues on the death of her husband. 83 *I.C.* 812 : 1924 *Pat.* 721.

A person relying on possessory title cannot invoke the aid of this Art. 1925 *Pat.* 68 : 93 *I. C.* 454.

As between a remainderman and a transferee from a mortgagee no question of adverse possession can arise until after 12 years from the date when the estate falls into possession. 47 *A.* 803 : 23 *A.L J.* 691 : 1925 *All.* 707.

Art. 141

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	*Part VIII.—Twelve years.*—contd. Period of limitation.	Time from which period begins to run.
141.—Like suit by a Hindu or [1][Muslim] entitled to the possession of immoveable property on the death of a Hindu or [2][Muslim] female.	**[1][Twelve years]**	**When the female dies.**

Art. 141 : Suit by a reversioner for title and possession of immovable property owned and possessed by a Hindu widow is governed by Article 141 and not 144 and 12 years are to run from the death of the widow.

Where a widow has entered into possession as Hindu widow and has either voluntarily parted with possession or been is possession against her consent, a suit by the reversioner brought for possession after death is governed by Art. 141 and not by Art. 144.

In the absence of a decree against a Hindu widow or other similar act during the life time of the widow depriving her of title and ownership in the suit property the reversioner is entitled to bring a suit for title and possession of immovable property and in such a suit Article 141 and not Article 144 of the Limitation Act applies and reversionary heir is entitled to bring such suit within the period of 12 years from the date of death of the widow. *Shamser Ali Mondal Vs. Abdul Karim Mondal.* (1968) 20 DLR 593.

Art. 141—Hindu—Meaning of.

The word 'Hindu' in Art. 141 must be taken to mean not only a person who is ethnologically a Hindu but also a person who has the legal status of a Hindu and is governed in the matter of inheritance by the Hindu law. *Chattar Singh, Vs. Roshan Singh.* AIR (33) 1946 Nagpur 277.

Art. 141—Hindu widow, adverse possession against—Does not operate against reversioners.

Where there has been no decree against the widow or other act in the law in the widow's life time depriving the reversionery heir of the right to possession on the widow's death, the heir is entitled, after the widow's death to rely upon article 141 for the purpose of the determination of the question whether the title is barred by lapse of time. *Suklal Lashkar. Vs. Surendra Mohan Saha* PLD 1958 Dacca 174—9 DLR 658.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923)s. 2 and First Sch., for "Ditto".

[2]Subs. by Act 52 of 1974.

—Art. 141

Art. 141. Suit by reversioner on the death of female, 12 years.

The Art. does not apply to a suit by a purchaser from a reversioner. 1950 *Cal* 506.

A suit by Hindu reversioner to recover immovable property the period is 12 years from the death of the female. 25 *C.W.N.* 585, 33 *C.L.J.* 421, 3 *C.W.N.* 621, 44 *M.* 951, 68 *I.C.* 177, 2 *Lah. L.J.* 573 : 68 *I.C.* 299, 34 *C.* 329 *P.C.*, 33 *C.* 257, 31 *B.* 1, 14 *C.* 323, 1928 *All.* 561 *F.B.*, 1929 *P.C.* 166 *P.C.*

There is no difference between surrender to a daughter and surrender to the nearest male reversioner. Where, therefore, a widow made a surrender of her estate In 1884 in favour of her daughter who died in 1894 before the widow, the right of the next reversioner to sue arises on the daughter's death and is barred by Art. 141 if brought more than 12 years thereafter, though within 12 years from the death of the widow. 57 *M.* 749: 38 *C.W.N.* 697 : 59 *C.L.J.* 354: 36 *Bom. L.R.* 563 : 1934 *A.L.J.* 433 : 11 *O.W.N.* 596 : 1934 *P.C.* 105 *P.C.*

Limitation runs from the date of the death of the surviving daughter of a widow 1923 *Mad.* 168 : 69 *I.C.* 389.

This Art. does not apply to a case in which the reversioner comes after successive female heirs. 23 *C.* 460, 11 *C.* 791, 19 A. 357.

Intervention of another woman does not suspend the period of limitation. 33*A.* 31: 6 *A.L.J.* 723. *Contra.* 23 *W.R.* 125 : 27 *A.* 494, 18 *B.* 216.

The argument that this Art. applies only to a suit brought by the first Hindu reversioner entitled to possession on the death of the first female heir is not supportable. 1928 *All.* 561: 26 *A.L.J.* 1049 *F.B.*

It applies to female reversioner also. 22 *C.* 85 *p.* 89, but not when the female succeeds by survivorship. 18 *C.W.N.* 904, 27 *I.C.* 83.

This Art. does not apply if the female had not been in possession as heir. 9 *C.L.J.* 236, 29 *C.* 664 *P.C.*

A suit by reversioner for the possession of the properties of a widow sold in execution of decree against her husband is governed by this Art. 48 *C.L.J.* 368: 114 *I C.* 139 : 1929 *Cal.* 93.

Time begins to run against the reversioner under this Art. from the date of remarriage of a widow under the H.W.R. Act. as she incurs civil death thereby. 29 *I.C.* 312.

When the widow disappears s. 108 Evi. Act does not help the plaintiff. who is to prove affirmatively that suit has been brought within 12 years from her death. 40 B. 239.

Once limitation begins to run it does not stop except in cases specially provided for by the L. Act. 40 *C.W.N.* 115 : 62 *C.L.J.* 49 : 1935 *Cal.* 702, 44 *M.L.J.* 87 : 72 *I.C.* 446 : 1923 *Bom.* 364. 12 *M.I.A.* 244 *M.* 815, 35 *C.* 209, 43 *C.* 660 *Dist.*

When possession has once begun to be adverse against a male owner, it will not cease to be so by reason of subsequent interpretation of female heir.

—Arts. 141-142

32 *C.* 165, 40 *C.W.N.* 115 : 62 *C.L.J.* 49 : 1935 *Cal.* 702, 1941 *Cal.* 632 : 197 *I.C.* 756, 1941 *Lah.* 271: 195 I.C. 712 : 1950 *Cal.* 506.

The fact that one of the reversioners happened to be a minor or that another entered into a compromise after litigation will not save limitation because once time has begun to run no subsequent disability stops it. 25 *A.L.J.* 861 : 50 *A.* 152 : 107 *I.C.* 45 : 1927 *All.* 818.

A widow may make a valid alienation of her life estate without legal necessity and the possession of the alienee will not be adverse to the reversioner. 23 *C.* 60, 6 *C.L J.* 490, 10 *C.L.R.* 337, 8 *C* 442, 13 *W.R.* 52, *fol.*, 1925 *Oudh.* 164.

The statute of limitation can never begin to run against a reversioner in consequence of dispossession of the limited owner. The only case where adverse possession will run against the reversioner is where it is the result of a decree which is binding against the reversioner. 50 *C.L.J.* 260, 33 *C.W.N.* 809 *P.C.*, 1930 *Pat.* 573, 1953 *S.C.* 125 : 1953 *S.C.J.* 208 : 1953 *S.C.R.* 503.

Omission to sue by a limited owner does not debar the reversioner to sue in the absence of a decree binding on him. 1943 *Nag.* 193: 206 *I.C.* 335.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION: SUITS—*contd.*

Part VIII.—Twelve years—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
142.—For possession of immoveable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	[1][Twelve years]	**The date of the dispossession or discontinuance.**

Art. 142: Dispossession.

Where the plaintiffs have set up a case of possession followed by dispossession they must prove their possession within twelve years of the suit. *Ahmed Miaji Vs. Hakub Ali Munshi.* (1960) 12 DLR 708.

When a tenant takes possession of lands outside his tenancy, claiming tenancy right Art. 142 will apply. *Amjed Ali Khan Vs. Raj Kumar Das* (1954) 6 DLR 215.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

—Art. 142

Possession under a mistaken or invalid title is as effective as that of a trespasser and, if sufficient in length of time and continuity gives the holder a good title.

Under Article 142 time begins to run against the rightful owner from the date of discontinuance of possession or dispossession as the case may be, and under sec. 28 of the Act the right is extinguished, if no suit for recovery is instituted by him within the statutory period. The mere fact that the plaintiff did not specifically claim title by adverse possession is no reason to disentitle him to the decree which he is otherwise entitled to. *Sadak Ali Vs. Suruj Ali.* (1955) 7 DLR 94.

Arts. 142 and 149: Defendant's possession under a claim of title—Plaintiff "Province" must prove title as well as possession within 60 years. (1951) PLR (Lah.) 768.

Arts. 142 and 144: Difference between Art. 142 and Art. 144.

The difference between Art. 142 and 144 of the Limitation Act is one of onus. In neither case limitation starts, unless some one is in adverse possession. In all cases where the date when limitation starts is known to the plaintiff, that is, cases where he alleges to have been dispossessed or to have discontinued possession from a specified date the onus is on him to show that he was in possession within 12 years from the date of institution of the suit. Such a case will be governed by Art. 142. There is no escape from the latter Article where the plaintiff himself sets up story of possession and dispossession or discontinuance of possession. All other cases of adverse possession beyond this limit come under residuary Art. 144

When the plaintiff's case is that defendant was in possession of the suit land, Article of limitation applicable is Art. 144.

The plaintiff's case is that the defendant was found to be in possession as a tenant, who subsequently asserted hostile title and claimed adverse possession. Accordiog to the plaint, it was a case precisely under Artiele 144 and not under Article 142, *Khondkar Mohiuddin Vs. Syed Moin Ahmed.* (1976) 28 DLR (AD) 85.

Under Art. 142 the onus is no doubt on the plaintiff to prove his possession within the statutory period. But a true owner can prove the factum of his possession. If plaintiff can show that he is the true owner and nobody else is in possession of it, then he is in possession of it.

When a tenant takes possession of lands outside his tenancy claiming tenancy right Article 142 will apply. *Amjed Ali Khan Vs. Raj Kumar Das* (1954) 6 DLR 215.

Onus on the plaintiff to prove possession within 12 years prior to the filing of the suit.—Act of adverse possession must be overt.

Under Article 142 it is the duty of the plaintiff first to prove to the satisfaction of the Court that he was in possession of the suit premises within 12 years prior to the filing of the suit and if he fails to do so he cannot get decree for declaration of title and recovery of possession from a person whose

—Art. 142

status upon the evidence is found not to be that of either a tenant or a licensee or a person in possession under the title of the true owner.

Until the plaintiff proves his possession within 12 years, there is no onus on the defendant to prove his adverse possession. *Syed Moin Ahmed Vs. Khondkar Mohiuddin* (1967) 19 DLR 912.

When plaintiff was dispossessed from or discontinued possession.

A suit for recovery of possession on the allegation that the plaintiff was dispossessed or discontinued possession is govered by Article 142 of the Limitation Act. Accordingly, the plaintiff of such suit is to prove that the dispossession or discontinuance of possession took place within 12 years before the suit. *Arabjan Bibi Vs. Abdul Kadio* (1967) 19 DLR 745.

Adverse possession—Successive trespassers can tack on.

Successive trespassers can tack on, if there be no break in the continuity of their possession.

A continuous adverse possession for the statutory period, though by a succession of persons not claiming under one another, does bar the true owner, *Munshi Dudhu Mia Vs. Rahimuddin* (1964) 16 DLR 56.

Case of possession followed by dispossession—onus of proof on the plaintiff.

Article 142 of the Limitation Act applies when a plaintiff sets up a case of possession followed by dispossession. In such a case, the onus is on the plaintiff to prove that he was in possession within 12 years from the date of the institution of the suit. If the plaintiff fails to prove this, defendant is not required to set up his possession. Article 142 makes no reference to the defendant or to his possession. *Ibid.*

Possession and dispossession onus of proof—

Where plaintiffs plead possession and dispossession, the onus is npon them to prove such possession and dispossession and the case will be controlled by Article 142 of the Limitation Act. *Rahman Ali Vs. Hasib Ali Chowdhury* (1972) 24 DLR 210.

Hindu widow—Cannot prescribe by adverse possession.

Where a widow governed by Hindu law has entered on the estate as a qualified heir she cannot subsequently prescribe by adverse possession an absolute title to it. *Raja Chatter Singh Vs. Diwan Roshan Singh* AIR (33) 1946 Nagpur 577.

Arts. 142, 144: Applicability—Difference between dispossessed person suing for possession—S. 142 applies—Dispossession not alleged—S. 144 applies.

Article 142 of the Limitation Act deals with a case when a plaintiff while in possession of his property has been dispossessed or has discontinued the possession. Article 144 of the Limitation Act is a residuary article and applies only to suit for possession of immovable property to which no other article is

Art. 142

applicable. The very wording of Article 142 clearly shows that this article would be applicable to suits for possession if the property had been dipossessed. Such a suit must be brought within 12 years of the date of dispossession. Therefore the plaintiff who sues for recovery of possession of the land alleging that while in possession of such property he was dispossessed, Article 142 of the Limitation Act clearly applies. The burden of proving the date of the dispossession would be on plaintiff, who in order to succeed must show that the dispossession was not prior to 12 years before the suit was filed. Article 144 of the Limitation Act would only apply to suits for possession where no other article is applicable. A plaintiff who was never in possession but has acquired a title which entitled him to possession and brings a suit for possession then the limitation would be governed by Article 144 of the Limitation Act. In short, the main difference between Article 142 and Article 144 of Limitation Act is that when a plaintiff is suing for possession on the ground of dispossession the onus lies on him to prove that the date of his dispossession was within 12 years of the suit while if the suit is not for possession based upon dispossession but is a suit for possession of immovable property not especially provided for in any other article of the Act then on proof of title of the plaintiff's suit cannot be dismissed until the defendant further proves his adverse possession as against the plaintiff for more than 12 years. *Muhammad Hussain Vs. Fateh Muhammad* PLD 1953 Baghdadul-Jadid 10.

It is not in every case in which the plaintiff is out of possession and is seeking by means of a suit that Article 142 of the Limitation Act 1908, becomes applicable, nor has the plaintiff to prove in every case that he was in possession within 12 years prior to the institution of the suit. The existence of the two Articles viz. Article 142 and Article 144 dealing with substantially the same matter though applying in slightly different circumstances ought not to present much difficulty because in actual practice where an owner of property claims possession his suit would be defeated only if it is shown that he has been excluded by the possession of another person not necessarily the same for the statutory priod.

Article 142 clearly speaks of dispossession or discontinuance of possession. The dispossession refers to actual physical dispossession. Such a dispossession involves collision and expulsion. As for discontinuance of possession it seems clear that the expression has not been used in the sense of mere abandonment. An abandonment simpliciter does not disentitle the owner because constructive possession must, in spite of a mere abandonment or nonuser, remain with the owner. On such abandonment therefore there must be intrusion by another. Unless there is such intrusion there is no one against whom the owner has to defend his title. There has therefore to be an abandonment without animus revertendi followed by somebody else obtaining actual possession.

In order to establish such a discontinuance of possession it must be shown that owner has withdrawn with the intention of abandoning the property and that the gap has been filled by another person who has come in to occupy in

—Art. 142

consequence of such withdrawal. As to the application of Article 144 the law is well settled. A person in possession can claim title on the basis of adverse possession only if his possessions contains the essential elements which constitute adverse possession. The decisions are unanimous that such a possession must be actual, visible, exclusive, hostile and continuous during the statutory period in order to constitute a bar. A mere trespass does not constitute adverse possession whatever may be its duration. The party who gets into possession must assert his right to the land and use it in a manner such as the nature of the land permits as if he was the owner thereof and doing this openly to the exclusion of everyone else particularly the true owner. And even when these elements are established the right of the person who claims by adverse possession must be limited particularly in the case of an open waste land to that portion only which is in his actual possession, of which he has a foot hold and which he occupies in fact constructive possession is an incident of ownership and result from title. The benefit of this principle cannot be extended to the case of a person who defends his right on the sole ground of his own wrong, namely the act of trespass. Possession follows in the wake of title. This is for the simple reason that there cannot be two conflicting possessions, one in the owner and the other in the trespasser. *Sher Muhammad Vs. Amoo.* PLD 1960 (W.P.) Karachi 428—PLR 1960 (1) Karachi 248.

Arts. 142, 144—Applicability—Application of either section depends on allegation in plaint.

The question whether a suit is governed by Article 142 or Article 144 of the Schedule to the Limitation Act depends on the nature of the allegations in the plaint. There is no express plea taken in the plaint that the plaintiffs had been dispossessed by the defendant. Article 144 was more apt in the circumstances of this case. *Ibrahim Vs. Fazal Dad* PLD 1957 (W.P.) Lahore 43—PLR 1957 (1) W.P Lahore 287.

Art. 142, 144—Substance and facts found by Court decides if the Article is applicable.

In deciding as to whether a particular case attracts the provisions of Art. 142 or Art, 144, the Courts have to interpret the Articles as they stand. It is not the form of allegations of the plaintiff which determines the nature of the suit, but it is the substance and the actual facts found by the Court which decides whether the suit is one which comes within the purview of Art. 142 or Art. 144. So far as Art. 142 is concerned, it is not necessary that the suit should be one in which the plaintiff should allege that he has been in possession and dispossessed. *Badri Khatik Vs. Narain Singh* AIR (33) 1946 Patna 184.

Both parties claiming possession through same person—The possession of transferors should also be taken into account.

Where the claim of title to land is derived by the plaintiff as well as the defendant from the same heirs of the original owner of the land, not only the possession of the transferees but also the possession of the transferors had to be taken into account for the purpose of calculating period of Limitation Act.

—Art. 142

1908. The possession of the predecessor-in-interest in such circumstances when the plaintiff claiming possession has himself acquired title within a period of 12 years preceding the suit is a relevant factor. Where there is no dispute that the predecessors-in-interest of both the plaintiff and the defendant were in possession before they purported to transfer their interests to these persons and that was well within a period of 12 years no question of the suit being barred by limitation could arise in such a case. *Faizul Haque Vs. Noor Meah* PLD 1960 Dacca 835.

Adverse possession—Suit to challenge—Plaintiff should prove title to property and possession within 12 years.

Where the suit was to challenge adverse possession and fell under Art. 142, the plaintiffs had not only to prove their title to property at the time of the institution of the suit, but they had also to prove that they were in possession of this property within twelve years before the institution of the suit. *Abdul Hamid Khan Vs. Inayat Khan* PLD 1958 (W.P.) Lahore 99 PLR 1958—(2) P.W. Lahore 180.

Suit for recovery of possession—Case for possession and dispossession not made out—Adverse possession for more than 12 years by defendant—Suit barred by limitation.

Plaintiff filed a suit for possession of a certain house in 1940, It was alleged in the plaint that the defendants had been in the occupation of the house as plaintiff's tenants and that they had not paid rent since June 1939. It was further alleged that in a previous suit for possession the defendants had falsely alleged that they and the plaintiff were the owners of the house and that they were never tenants of the plaintiff. The trial Court found that the plaintiff had succeeded in proving his title to the house. There was also a finding that the defendants had been in un-interrupted possession of the house since 1918 and that the plaintiff's allegation that the defendants had never paid rent to him was false. The Court also found on evidence that the defendants were not tenants of the plaintiff as the house was never let out to the defendants by the plaintiff or by his father.

Held : that as a matter of fact the allegations made in the plaint did amount to an allegation that the plaintiff had been dispossessed: In view of the pleadings and the findings arrived at Art. 142 was applicable to the case. That being so the suit was barred by limitation and the question of the defendant's adverse possession did not arise *Sangam Lal Vs. Ganga Din and other.* A.I.R. (33) 1946 Allahabad 389 (D. B).

Arts. 142, 144—Independent trespassers—Taking of adverse possession not permitted.

The decision of the question as to whether the last trespasser can tack on the possession of the previous trespassers. turns on the question whether they are independent trespassers or not. Under Article 144 of the Limitation Act, limitation begins to run when the possession of the defendant becomes adverse. By section

—Art. 142

2, sub-section (4) of the said Act defendant includes any person from or through whom a defendant derives his liability to be sued. To decide whether the trespasser can add the possession of the previous trespasser the test is whether he claims from or through him. If he does, then he can add ; if he does not, he cannot add to his possession the possession of the previous trespassers. *Karamat Ali Majhi Vs. Halima Khatun.* PLD 1953 Dacca 243—PLR 1952 Dacca 378.

One trespasser cannot add to his own possession the previous independent possession of another trespasser. The adverse possession of previous trespasser can be tacked on to the adverse possession of the subsequent trespasser only when the latter derives his liability to be sued from or through the former.

Where, therefore, the adverse possession of a widow is succeeded by adverse possession of another person who is not shown to be her adopted son, the adverse possession of the widow cannot be tacked on to the adverse possession of such person as he has not derived his liability to be sued through the widow and must, therefore, be deemed to be an independent trespasser. *Pandappa Vs. Shivalingappa.* AIR (33) 1946 Bombay 193.

Arts. 142, 144—Starting point of limitation when cause of action arose—Two trespassers—Question is whether tacking is allowed or not.

Whether it is Article 144 or Article 142 of the Limitation Act, limitation does not begin to run until the causes of action arises and in both the cases the question is the same, namely, when the causes of action arose, i.e. when the defendant entered. There are no two principles for the determination of this question—One for Article 144 and another for 142. In both the cases its determination depends on one and the same further question, and that question, is whether the defendant is an independent trespasser or has derived his liability to be sued from or through some other person. *Keramat Ali Majhi Vs. Halima Khatun.* PLD 1953 Dacca 243—PLR 1952 Dacca 378.

Art. 142. Suit for possession of immovable property when the plff. has been dispossessed—12 years from dispossession.

When a suit is governed by Art. 142 or 144 depends not on the form of allegations in the plaint but on the actual facts found by the Court. 1946 *Pat.* 185 : 222 *I.C.* 378, 1953 *Pat.* 267.

When the plff. alleges that he had been formerly in possession and has been dispossessed by the defendant the suit comes under this Art. otherwise the suit falls under Art. 144, 1934 *All.* 993 *F.B.*, 39*B.* 335, 31 *I.C.* 15, 87 *I.C.* 1023 : 1925 *Nag.* 370. 96 *I.C.* 568 (*C*), 44 *C.L.J.* 121 : 97 *I.C.* 1003 : 1926 *Cal.* 1166, 50*A.* 89 : 1928 *All.* 799 : under this Art. the plff. must prove possession within 12 years but under Art. 144 he can rest contended with the proof of the title. 26 *C.W.N.* 724, 26 *C.* 473, *P.C.*, 20 *C.* 560 *P.C.*, 9 *C.* 744 *F.B.*, 10 *C,W.N.* 630 *P.C.*, 14 *B.* 458, 14 *A.* 193, 12 *C.W.N.* 273, 17*C.* 137 *P.C.*, 80 *I.C.* 687, 20 *C.W.N.* 481, 22 *C.L.J.* 283, 32 *C.W.N.* 277 - 1929 *Cal.* 297.

—Art. 142

Art. 142. Suit for possession of immovable property when the plaintiff has been dispossessed—12 years from dispossession—contd.

Plaintiff cannot rely upon the presumption of continuity of things from record of rights. 1947 *Pat.* 475.

But the allegation in the plaint does not conclude the matter because the question of onus is to be determined upon the allegations of the plaintiff and the defendant. If the defendant admits that he has dispossessed the defendant then this Article applies, 1934 Pat. 593, onus proof discussed. 1934 *All.* 993 *F.B.*, 38 *C.W.N.* 1126, 1933 *All.* 775 : 55 *A.* 209.

A suit for possession of immovable property from which the plaintiff has been dispossessed or has discontinued possession is governed by Art. 142 and does raise an issue of adverse possession but adverse possession for over 12 years, if made out by the defendant, may imply dispossession of the plaintiff. 1931 *M.W.N.* 121 : 33 *L.W.* 162 : 35 *C.W.N.* 265 : 53 *C.L.J.* 81 and 487 : 60 *M.L.J.* 183 : *A.I.R.* 1931 *P.C.* 186 : 130 *I.C.* 315 : 1931 *A.L.J.* 537 : *I.R.* 1931 *P.C.* 59 : 58 *I.A.* 29 : 10 *Pat.* 407 : 12 *Pat. L.T.* 251 : 33 *Bom. L.R.* 425 : 15 *R.D.* 194 *P.C.*

A suit by an adopted son after the death of the widow for possession alleging previous possession and dispossession is governed by this Art. 60 *C.L.J.* 391 : 1935 *Cal.* 228, even if it is necessary to decide in the suit whether the adoption was valid. 58 *B.* 280 : 1934 *Bom.* 110.

This Art. refers to dispossession or discontinuance of possession. *Dispossession* implies the coming in a person and his driving out another person. Discontinuance of possession implies the going out of the person in possession being followed into possession by another. 50 *C.* 49 : 36 *C.L.J.* 35, 87 *I.C.* 386 : 1925 Mad. 834, 39 *M.* 617, 1922 *P.C.* 181 *P.C.*, 1939 *All.* 257, 1942 *Cal.* 180 : 46 *C.W.N.* 561.

Art. 144 is wider in scope than this Art. the latter refers to suit for immovable property only while the former includes also interest therein. 14 *C.L.J.* 572

Under this art. the plaintiff must prove title and possession and under Art. 144 he must prove his title and the defendant is to prove adverse possession for 12 years. 6 *Pat. L.J.* 478 : 2 *Pat. L.T.* 481 : 62 *I.C.* 1, 26 *C.W.N.* 724, 66 *I.C.* 914 (*C*), 1923 *Cal.* 286, 1934 *All.* 993 *F.B.*, 1951 *All.* 624.

In a suit under Art. 142 the onus is on plaintiff but in a suit falling under Art. 144 the onus is on defendant 1951 *Pat.* 201.

Dispossession under a decree under section 9 Sp, R. Act., comes within this Art. 9 *C.W.N.* 1061, 6 *C.L.J.* 472, 2 *C.L.J.* 1, 33 *C.* 821 : 10 *C.W.N.* 1081.

In an ejectment suit the plaintiff must prove possession within 12 years. 16 *C.* 473 *P.C.*, 10 *C.W.N.* 630, 19 *C.W.N.* 18*p.* 23, 1928 *Pat.* 653, 1940 *Cal.* 65.

Onus is on plaintiff to prove possession within 12 years of the suit. 1941 *Cal.* 193 : 44 *C.W.N.* 935, 1941 *Cal.* 632 : 197 *I.C.* 756.

—Art. 142

Possession goes with title and also it is evidence of title. 13 *C.L.J.* 625, 15 *C.L J.* I. 20 *C.* 834 *P.C.* 2 *Pat. L.T.* 481: 6 *Pat. L.J.* 478, 24 *Bom. L.R.* 373: 66 *I.C.* 764. But a person who has been dispossessed and sues for possession must establish title by evidence. 3 *C.W.N.* 158, 21 C. 244, 17 *C.W.N.* 324.

When plaintiff may rely on presumption of possession 1948 *Mad.* 420 : 3 *D.L.R. Mad.* 7.

When evidence of possession is conflicting the presumption is that possession follows title. 27 *C.W.N.* 305. 36 *C.L.J.* 396, 66 *I.C.* 764 (*B*)., 8 *C.W.N.* 876, 12*C.* 38; so also when the evidence of possession is strong on both sides. 27 *C.* 25, 6 *Pat. L.J.* 478: 2 *Pat. L.T.* 481: 62 *I.C.* 1.

The mere fact that land was not capable of actual continuous physical possession does not necessarily make it waste land so as to attract the application of the principle that "possession follows title". 58 *C.L.J.* 478: 1934 *Cal.* 294.

Possession through tenants is sufficient but the plaintiff must prove realisation of rent from tenant within 12 years. 48 *C. L.J.* 364: 1928 *Cal.* 765.

Dispossession or discontinuance of possession mentioned in the Art. does not apply to case where the property is submerged by the act of God or otherwise not capable of actual possession. 2 *Pat. L.T.* 59, 9 *C.W.N.* 111, 6 *C.* 725, 19 *C.* 660 *P.C.*, 42 *C.* 858: 21 *C.W.N.* 642 *P.C.*, 1 *C.W.N.* 277, 5 *Pat. L.J.* 724: 2 *Pat. L.T.* 55, 88 *I.C.* 567: 1925 *Cal.* 1230, 33 *C.W.N.* 1160.

The case of *chur, jungle,* vacant and submerged land is peculiar, the true owner must be held to be in constructive possession thereof 9 *C.W.N.* 111, 36 *C.L.J.* 140, 69 *I.C.* 427, 88 *I.C.* 567: 1925 *Cal.* 1230, 31 *C.W.N.* 806: 105 *IC.* 3679: 1928 *Cal.* 118, 33 *C.W.R.* 1016: 1929 *P.C.* 225 *P.C.*, 53 *C.L.J.* 411: 1931 *Cal.* 501, 1934 *Pat.* 339.

There can be no discontinuance of possession by reason of the mere submergence of the land. 1930 *P.C.* 198: 59 *M.L.J.* 208: 34 *C.W.N.* 772: 32 *Bom. L.R.* 1157: 126 *I.C.* 81: 52 *C.L.J.* 132 *P.C.*

When land becomes submerged it is constructively in the possession of lawful owner. Consequently when a land at intervals of 4 or 5 years becomes submerged the trespasser's possession cannot be continuous and he cannot acquire title by adverse possession 1923 *All.* 75, 36 *C.L.J.* 140, 1925 *Cal.* 1230, 44 *C.L.J.* 121 : 1926, 1166.

In case of uncultivated lands possession is presumed to be with the landlord and actual possession need not be proved. 1929 *Lah.* 596, 1916 *P.C.* 21 *P.C.*, *fol.*, 53 *C.L.J.* 411: 1931 *Cal.* 501.

As long as reliable evidence of acts of ownership is forthcoming there is no difference between the proof of possession in the case of jungle or uncultivated lands and that in the case of cultivated lands 5 *C.L.R.* 481, 483, quoted in 27 *C.W.N.* 340 *p.* 342. But where according to both parties definite acts of ownership were exercised over the land which though not cultivated was not incapable of possession, the court must decide the case upon that evidence adduced without resorting to any presumption based on title. 27 *C.W.N.* 340.

—Art. 142

Independent trespassers not claiming under one another cannot tack on their possession for the purpose of Art. 142, 36 *C.L.J.* 140: 27 *C.W.N.* 259, but purchaser from trespasser can, 1 *Rang.* 176: 75 *I.C.* 31, 69 *I.C.* 427.

If independent trespassers have been in continuous possession for more than 12 years, plaintiff's suit falling under Art. 142 is barred. 1939 *Lah.* 217 : 184 *I.C.* 179, 1949 *Mad.* 673.

If there be any interval between the possession of trespassers presumption will be that the plaintiff (true owner) was in possession during the interval but if the possessions of the trespassers be continuous plaintiff's suit will be barred by limitation even though it is brought within 12 years from the date of the last trespasser's defendant's possession. 9 *C.W.N.* 111, 45 *M.* 370 but possession of one trespasser cannot be added to that of the other to complete title by adverse possession, 2 *C.W.R.* 315 and adverse possession must be of the defendant himself, 17 *C.W.N.* 748.

Suit by landlord against tenant for possession of lands encroached by the latter for his own benefit comes under this Art. 40 *C.L.J.* 160: 1925 *Cal.* 193, 17 *C.L.J.* 277: 17 *C.W.N.* 386, 2 *C.L.J.* 125, 8 *C.L.J.* 557, 870, 22 *C.L.J.* 129, 39 C. 458, 19 *C.W.N.* 634, 1944 *Pat.* 109: 212 *I.C.* 273.

Adverse possession of the limited interest is good only to the extent of that interest and not of the entire interest. 2 *C.L.J.* 105, 35 *C.* 470.

There can be no constructive possession of a trespasser. 1925 *Cal.* 270, 25 *C.L.J.* 487 *P.C.*

When trespasser is in possession for more than 12 years but pays rent as the *marfatdar* of the tenant no limitation runs. 17 *C.W.N.* 459, 2 *C.L.J.* 125, 8 *C L.J.* 557 *Dist.*

When property is attached under s. 146, Cr. P.C. possession remains with the true owner and he is not dispossessed by the attachment. 22 *C.L.J.* 283, 20 *C.W.N.* 481. 26 *M.* 410, 38 *M.* 32 *Dist*, but if after attachment the Magistrate puts defendant in possession then the plaintiff's suit is governed by this Art. or Art. 144. 16 *C.W.N.* 1070.

When the Magistrate attaches property in a proceeding under s. 145 Cr. P.C. suit against it is governed by Art. 120 and not by this Art. 49. *C.* 544: 26 *C.W.N.* 432.

Admissions falling within sec. 19 by the defendant gives a fresh start for limitation. 1933 *Cal.* 414 : 144 *I.C.* 177.

A person who has been in adverse possession of a revenue-paying estate sold for arrears of revenue, is a defaulter and his interest passes by the sale, the purchaser can sue him for recovery of possession within 12 years from the date of symbolical possession. 44 *C.* 412: 21 *C.W.N.* 537.

—Arts. 142-144

As against the judgment debtor delivery of symbolical possession is enough to interrupt his adverse possession. 36 *C.L.J.* 140: 27 *C.W.N.* 259.

A suit by succeeding *mutawalli* to recover possession of wakf property wrongfully alienated is governed by Art. 142 of the Limitation Act. 451 *C.L.J.* 547: 34 *C.W.N.* 498.

Where a minor after attaining majority sued to set aside a void lease, Art. 142 and not Art. 44 or Art. 91 applied. 1930 *Cal.* 748 : 34 *C.W.N.* 642.

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION : SUITS—*contd.*

Part VIII.—Twelve years—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	**[1][Twelve years]**	**When the forfeiture is incurred or the condition is broken.**

Art. 143—Like suit in case of forfeiture or breach of condition—12 years therefrom.

This Art. is in general term and is not applicable in suit between landlord and tenant. When a particular Art. is intended to be made applicable to suits between landlord and tenant it is so expressly stated in the L. Act. 1935 Cal. 779.

A suit by the lessor to eject the lessee on breach of condition, 11 C.W.N. 661, on alienation in violation of covenant, 24 C.W.N, 1064 is governed by this Art. But a suit for possession on the ground of forfeiture or repudiation of the title of the plaintiff is governed by Art. 144 and not this Art. 18 C.L.J. 533.

The starting point of limitation is the forfeiture itself and not the knowledge of the lessor. 1922 Mad. 29.

What constitutes forfeiture. 1935 Cal. 779, 1928 Cal. 714, 30 M. 316, 1920 Mad. 812, 4 A. 493, 8 C. 224 *P.C. fol.*, 1930 Cal. 165 *Dist.*

Description of suit.	Period of limitation	Time from which period begins to run.
144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	**[1][Twelve years]**	**When the possession of the defendant becomes adverse to the plaintiff.**

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

—Art. 144

Defendant's present claim of holding the property in adverse possession when negatived by his own plaint filed earlier averring his peaceful possession cannot be given effect to.

The defendant having failed to assert clearly and positively any hostile title in the plaint of the said suit and having, on the other hand, admitted the title of the rightful owner, the said admission in the plaint can be used as evidence militating against his present claim of adverse possession, *Khondkar Mohiuddin Vs. Syed Moin Ahmed*, (1976) 28 DLR (AD). 85

Suit dismissed as plaintiff failed to establish possession within 12 years of the institution of the suit,

The plaintiff having failed to establish his possession in the suit land within 12 years from the institution of the suit he is not entitled to get any relief, the suit being barred by limitation. This conclusion is in accordance with law. *Rajan Miah, Vs. Abdur Rashid.* (1982) 34 DLR (AD). 275

Plaintiff claims the suit land on the basis of his patta of 1954. Defendant is in possession of the land for less than 12 years. Plaintiff can succeed if he can prove title and ownership of his predecessor for 12 years.

The position is, defendant's claim both as regards title and adverse possession has failed. Nevertheless for the plaintiff to succeed he has to make out a title in his favour. If the plaintiff can show possessory title of his predecessors for the prescriptive period, he can still succeed in showing the acquisition of title in his favour. *Lal Meah, Vs, Hoji Md. Ibrahim Meah.* (1976) 28 DLR (AD). 61

Art. 144: It is a residuary article.

Article 144 is a residury Article relating to suit for possession and is applicable only when there is no other Article specially providing for the case. *Abdut Rahman Chowdhury Vs. Sree Sree Shambhu Nath* (1967) 19 DLR 705.

Adverse possession—Limited interest such as claiming the right of being a tenant can be acquired by a tenant defeating landlord's claim for recovery of land. *Ibid.*

Stranger purchaser from a co-sharer—Adverse possession by such purchaser as against other co-sharer when can be successfully asserted.

A brother sold certain property to a stranger claiming the property as his own whereas the property belonged to him as well as his two minor brothers. The purchaser remained in possession of the property openly, exclusively and in assertion of his own title on mutation of his name and payment of rent due thereon. The minors took no step to assert their title thereto for long 21 years even after they had attained their majority. It was thereafter, that an assertion of their right to the said property was made on the basis that the purchaser was in the position of co-sharer after his purchase from their brother co-sharer and as such they are entitled to recover their share from the purchaser and the question of limitation just as between co-sharers did not arise in this case so as to

—Art. 144

defeat their right to the property on the ground of adverse possession for more than 12 years.

This contention was accepted by the two courts below but was reversed on appeal by the High Court and the same affirmed by the Supreme Court which—

Held : As a general proposition, the possession of one co-sharer is in law the possession of all co-sharers. In other words, when the parties are co-sharers, the possession by one of them is regarded in law as possession for and on behalf of all of them.

But this does not mean that a co-sharer can never possess adversely to the other co-sharers and acquire title by adverse possession. To enable one of the co-shares to acquire title by adverse possession as against the other co-sharers, his possession must be of such an actual, open, notorious, exclusive and hostile charactet as to amount to an ouster or exclusion of the other co-sharers. Moreover, such possession must be for a continuous period of at least 12 years in assertion of a hostile title to the knowledge of the co-sharers against whom title by adverse possession is claimed. Such knowledge may be proved directly or inferentially.

It is not necessary that the adverse character of the possession should be actually brought home to the knowledge of the true owner. It is sufficient that the possession be overt and without any attempt at concealment so that the persons against whom time is running ought, if he exercises due vigilance, to be aware of what is happening. *Ezat Baksha Sarkar Vs. Abdul Kadir Bhuiya* (1969) 21 DLR (SC) 444.

Symbolical possession given.

Where the auction purchaser in execution of a mortgage decree was given not actual but symbolical possession and brought suit for recovery of possession, neither Article 137 nor 142 applies as against the defendant who was not a party to the mortgage suit or to the proceedings in execution of the decree. The only Article on which the defendant could rely was Article 144 which threw on him the onus of showing that he had been in possession of the property adversely to the plaintiffs for twelve years before the suit. *Sayed Abul Fazal Vs. Nirode Bala Deb Roy* (1956) 8 DLR 181.

In a suit to recover possession of debuttor property (or any immovable property comprised in a religious or charitable endowment Ed.) sold in execution of a decree against the Mahanth, the Article that is applicable, on the question of bar of limitation, is Article 144 and not 134B. The words "transferred by a previous manager for valuable consideration" in Article 134B can noi be construed to cover an execution sale under court's process nor the word "transferor" be extended to the judgment-debtor whose land is sold. *Mahant Sudaram Das Vs. Mahanta Ram Kripal Das* (1951) 3 DLR (PC) 393.

Adverse possession of undivided share.

Article 144 of the Limitation Act extends to the conception of adverse possession to include an interest in immovable property aswell as the property itself, inasmuch as, there could be adverse possession of an undivided share.

—Art. 144

A instituted a suit in 1919 against the predecessor-in-interest of B for declaration of his title and recovery of possession averring dispossession of his predecessor after the latter's purchase. The property involved in the suit was 4 as, share of rent of a 14 as undivided property. The suit was decreed and A's sole right to the disputed share was declared ; and he was to have possession of his share without the necessity of claiming an actual partition of the undivided property. In 1920 A was formally put in possession of the property, since when upto the date of B's present suit in 1933 to get back the property, A had been in actual possession of the property by collecting his own share of rents out of the undivided property.

Held : B's suit was barred by limitation under Article 144 as A had been in adverse possession for over 12 years. Ibid

Where land devoted to charitable purposes is sold under execution decree against the trustee of the charity, the ensuing possession of the purchaser is adverse from the date of the sale and not from the death. resignation or removal of the trustee. Ibid

Suit for ejectment against tenant-at-will—Art 144 appelies. (1954) 6 DLR 577 Right of redemption.

The only method by which the right of redemption can be extinguished is either by foreclosure or sale, as the case may be, by the lapse of the statutory period or by release in favour of the mortgagee. A mortgagee cannot by a mere assertion of hostile title, take the case out of Art. 148 and bring it within Art. 144, of the Limitation Act. To change the character of his possession as mortgagee to that of an independent owner or trespasser, he must first get rid of the right of redemption of the mortgagor. *Mesar Ali Matbar Vs, Jabber Ali* (1955) 7 DLR 103.

Char—till becomes fit.

A rightful owner who is presumed to be in possession till a char becomes fit for enjoyment, is not dispossessed by his not taking possession as soon as it becomes so fit till another person occupies it and begins to till, and such a case would come within Art. 144 and the person claiming adverse possession must prove adverse possession for 12 years or over before suit. 54 CWN (2 DR) 265.

Twelve years adverse possession by defendant—

The twelve years adverse possession required by Art. 144 must be 12 years adverse possession by the defendant or by some one through whom he claims. If the possession of two or more parties in succession holding in privity with each other last for 12 years, the bar is complete. 6 PLR (Dac.) 441.

Successive possession.

The possession of a succession of independent occupiers who are all wrongdoers as againt the true owner, does not bar the latter. In other words, the possession relied on as a bar must be continuous in itself ; a claimant cannot tack together successive occupation, however peaceable, which are not connected as

Art. 144

of right. If successive privity exists between the successive occupants of the property the last occupant may avail himself of the occupancy of his predecessors. *Ibid.*

The successive possession of several distinct occupants of land between whom no privity exists cannot be united to make up the period required to perfect title by possession. All that is necessary to privity between successive occupants of property and in regards thereto is that one receives his possession from the other by act of such other or by operation of law. If a succession privity exists between them the last occupant may avail himself of the occupancy of his predecessor. 6 PLR (Dac.) 441.

Article 137 of 144 is applicable in the case of a benami document. *Nazir Ahmad Sirang Vs. Benoy Bh. Saha* (1956) 8 DLR 159 (160).

Possession of distinct trespassers cannot be taeked on

Periods of possession of series of independent trespassers cannot be added together and utilised by the last possessor to make up the statutory total period of adverse possession.

In order to constitute adverse possession, possession of distinct trespassers can not be tacked on, as they cannot be deemed to claim through each other

Under Art. 144 of the Act, limitation begins to run when the possession of the defendant becomes adverse—To decide whether the trespasser can add the possession of the previous trespasser the test is whether he claims from or through him. If he does, then he can add, if he does not, he cannot add to his possession the possession of the previous trespassers.

Whether it is Art. 144 or 142 limitation does not begin to run until the cause of action arises, and in both the cases the question is the same, namely, when the cause of action arises, i.e., when the defendant entered. There are no two principles for the determination of the question ; one for Art. 144 and another for 142. In both the cases the question is whether the defendant is an independant trespasser or has derived his liability to be sued from or through some other person.

The question of limitation cannot be decided in all cases on the averment made in the plaint only, it has to be decided on the averment made in the entire pleadings including the written statement of the defendants. 2 PLR (Dac). 378.

Applicability—Applies only to suit for possession by owner of property against person holding adversely to him.

Article 144 is applicable only to a possessory suit by the owner of the property claimed against a person holding adversely to him without title. *Muhammad Yusaf Shah Vs. Muhammad Akbar Shah* PLD 1957 (W.P.) Lahore 99—PLR 1957 (1) W.P. 552.

—Art. 144

Arts. 144, 120, 91—Sale by minor—Void—Suit for possession—Art. 144 applies and not Arts. 120 and 91.

The plaintiff brought a suit for possession on the ground that the sale was affected bv a minor and was therefore void. The sale-deed does not exist in the eye of law and accordingly the claim for possession has to be judged independently of the sale-deed. Clearly the period of limitation in such a case would be governed by Art. 144 of the Limitation Act, provided that there was dispossession of the plaintiffs in pursuance of the sale-deed which we have declared to be null and void. *Abdur Rahman Vs. Abdul Haq* PLD 1960 (WP) Karachi 625—1960 (1) KLR 545.

Adverse possession—Possessor becoming co-sharer at a later date—Adverse possession not interrupted.

Possession originally adverse and continuously asserted as such under a hostile title is not interrupted by the mere fact that the adverse possessor becomes a co-sharer with the heirs of owner. *Aboobucker Vs. Sahib-khatoon.* PLD 1950 Sind 152.

Adverse possession—Commences only when possession is obtained by the party concerned.

The commencement of adverse possession. in favour of a person, implies that the person is in actual possession, at the time, with a notorious hostile claim of exclusive title to repel which, the true owner would then be in a position to maintain an action. It would follow that whatever may be the animus or intention of a person wanting to acquire title by adverse possession his adverse possession cannot commence until he obtains actual possession with the requisite animus. *P. Laxmi Reddy Vs. L. Laxmi Reddy.* PLD 1957 Supreme Court (Ind.) 251.

Adverse possession—Strict proof of the time from which possession began necessary—No presumption of possession when no proof forthcoming.

Where a suit for possession was filed by the owner on 1st June 1953, and the defendant claimed title by adverse possession. A co-sharer has a right to possession of every inch of the land as against the rest of the world and when he sues for possession against a trespasser, the trespasser has to be ejected. Joint possession can be decreed only against a person who is himself a co-sharer or represents a co-sharer's interest. A decree for joint possession against a trespasser looks like an inconsistency in itrelf. *Fazal Hussain Vs. Noor Khan* PLD 1957 (W.P) Lahore 45—PLR 1957 (1) W. P. Lahore 287.

Arts. 144, 134-A to 134-C—Endowed property—Alienation by manager—When alienee's adverse possession begins.

When an endowed property is alienated by a manager the possession of the alienee becomes adverse as soon as he is without any title to the property. If the transfer is void ab initio, the possession of the transferee is adverse from the very date of the transfer. If it is not void but is only voidable at the instance

—Art. 144

of the succeeding manager possession cannot be adverse until the office of the alienating mohant ceases,

The alienation is void ab initio when the manager acts in negation of the trust. In the first place, if the alienation is not merely of certain items of the endowed property, but of the endowment as a whole, the possession of the transferee is unlawful from the very beginning and the limitation would run from the date of transfer. In the second place, even if the subject matter of transfer is only particular item or items of endowed property, the question whether the transaction is void or voidable would depend upon the fact whether the shebait or the manager purported to transfer the same in his capacity as manager or in his own individual capacity as the secular owner of the property. A shebait or the manager has the right to alienate portions of endowed property for purposes of legal necessity. He may exceed his powers but if the transfer of the deity's property is by the shebait or manager as such, the transferee would at least acquire an interest which would be valid during the life time of the transferring mohant, but if the manager transfers the property belonging to the deity as his own property asserting his own personal interest in the same his act itself is adverse to the trust. The transferencc in such cases would acquire no title to the property, and his possession would be unlawful from the beginning. The same principle applies to involuntary transfers as well.

A sale of the endowed property in execution of a mortgage decree is governed by the same principle. If the mortgage is executed by the manager qua the manager on behalf of the deity the mortgage is not void altogether and the purchaser at a mortgage sale would, at least acquire an interest which will endure during the life time of the manager. If the manager asserts his own individual ownership in the property in denial of the rights of the deity and purports to act not as shebait but as proprietor of the endowed property the mortgagee would not acquire any interest by such transaction. The purchaser at the mortgage sale would be a trespasser out and out and his possession would be adverse from the date of his purchase. *Hemania Kumari Vs. Iswar Sridhar Jiu* AIR (33) 1946 Calcutta 473.

Wakf property—Trustee cannot claim adverse possession.

It is not disputed that in law a title by adverse possession can be established against wakf property, but it is clear that a trustee for a Charity entering into possession of property belonging to the Charity cannot, whilst remaining a trustee, change the character of his possession, and assert that he is in possession as a beneficial owner. *Muhammad Fateh Nasib Vs, Swarup Chand Hukum Chanda Firm* PLD 1947 Privy Council 239.

A stranger to the trust could have encroached on the trust estate and would in course of time have acquired a title by adverse possession, but a Mutwali cannot take up such a position. *Muhammad Shah Vs. Fasih-ud-Din Ansari* PLD 1957 S. C. (Ind.) 111.

—Art. 144

Arts. 144, 142 : Suit for possession by auction purchaser—Property sold for decree against manager of joint family property—Art. 144 and not Art. 120 applicable.

A suit for possession by an auction-purcharer of a particular joint family properly described with boundaries in his sale certificate, sold in enforcement of a decree obtained by a creditor against the manager of the family, is governed not by Art. 120 but by Art. 144. *Vishnu Gopal Vs. Vishranath Narayan* AIR (33) 1946 Bom. 192.

Entry in R. S. Khatian—Not sufficient to prove adverse possession.

Even if the plaintiff as a co-sharer could not get her name recorded in the relevant R. S. Khatian, that by itself, in my view, cannot support the plea of complete ouster for establishing case of adverse possession alleged by the defendants. Mere entry in the relevant R. S. Khatian cannot give rise to a presumption that possession as evidenced thereby was adverse in character as against the co-sharer concerned. *Bacha Mia Vs. Sabura Khatoon.* PLD 1959 Dacca 655.

Arts. 144, 149 : Possession by defendant under claim of title—Plaintiff "Province" must prove title and possession within sixty years.

The "province" brought a suit for possession of land which the defendant held as his own. On the revenue records the possession of the defendants has lasted for at least ten years before, the suit, and the period may be much longer as the defendant witnesses in each case have stated and it has been possession under a claim of title. Obviously not only it is necessary, for the plaintiff province was in possession at some time within sixty years prior to the institution of the suit. *West Punjab Province Vs. Siraj Din* PLD 1951 Lahore 459 PLR 1951 Lahore 768.

Co-heirs of a Muslim holding as tenants in common—Declaration for title by one of them—Limitation stars from assertion of adverse title.

The co-heirs of a Muslim dying intestate take the property as tenants-in-common, and none of them can be regarded as a person who is by law charged with any duty of distributing the estate. Consequently it would according to the nature of the property whether it is movable or immovable, apply to the suit brought by one heir against the other for declaration of his title to or partition of the property. Applying Article 144 of the Limitation Act, the time does not run from the date of the death of the last owner but from the date when the possession of the defendant becomes adverse to the plaintiff. *Ayaz Vs. Makai* PLD 1952 Peshawar 70.

Co-heir claiming adverse possession against other co-heirs—Ouster of other co-heirs must be proved—Onus on co-heir claiming adverse possession.

In order to establish adverse possession of one co-heir as against another it is not enough to show that one of them is in sole possession and enjoyment of the profits of the properties, Ouster of the nonpossessing co-heir by the co-heir in possession, who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs.

—Art. 144

When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co-heir, not in possession, merely by any secret hostile animus on his own part in derogation of the other co-heir's title. It is a rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster. *P. Laxmi Reddy Vs. L, Laxmi Reddy*. PLD 1957 Supreme Court (Ind.) 251.

Heirs under custom taking possession—Muslim law heirs not in possession—Adverse possession—Muslim law heirs cannot claim possession after twelve years of possession by other party.

The customary law heirs of ths deceased were in possession of the estate when on W.F.P. muslim personal Law (Shariat) Application Act, came into force in 1935. The law being retrospective in nature Muslim Law heirs of the deceased were entitled to a share of the property but they did not ask for possession within twelve years. Then they asked for it.

Held : the customary law heirs were in possession as owners in their own right, and not as co-heirs with the plaintiff who were to all intents and purposes hostile to the plaintiffs. Their possession cannot be deemed to be the possession of co-owners or co-heirs with the plaintiffs, because their entry into possession in 1928 was not as co-heir or co-owners but was an entry in their own right. In their possession there is an element of ouster as well, ouster is constituted when possession is open and hostile in one's own right as full owner, and when these elements are within the knowledge of the party claiming rights to the property. The character of their possession cannot be altered by the charge made by the Muslim Personal Law (Shariat) Application Act of 1935. The claim which the heirs of a deceased person have to prefer after the enactment of the Act of 1935 will be entertained only if the law of limitation offers no impediment. If it does, the claim will be rejected if preferred after twelve years of the death of the deceased whose estate is sought to be inherited *Sahib Jan Vs. Wali Dad* PLD 1961 (W. P.) Peshawar 9.

Arts. 144, 142—Co-sharer claiming adverse possession against other co-sharers —When adverse possession takes place—Suit for possession by co-sharer governed by Art. 144.

Ordinarily, the possession of one co-sharer is possession on behalf of all. The possession of the co-sharers in possession cannot be held to be adverse to the other co-sharers, who are out of possession, unless there is a clear disclaimer of title of the absentee co-sharer made by the co-sharers in possession or there is an overt act amounting to ouster of the absentee co-sharers by the co-sharers in possession.

Mere entry of names in the revenue registers or mere non-enjoyment of the produce of the land does not amount to ouster and is not sufficient to prove adverse possession. The co-owner in possession must make a disclaimer of the right of the other by an open and unequivocal assertion of a hostile title. *Jummi Vs Shamsuddin* PLR 1960 Azad J & K. 70.

—Art. 144

Co-sharer claiming adverse possession—When time would being to run against him—Female co-sharer—Name not entered in Record of Rights—No ouster presumed—Time does not run against.

Among the Muslims, the women being pardanashin ladies do not go out and assert their right to the property left by their deceased father and ordinarily the property in the Record of Rights or in the Municipal Records is mutated in the name of the male heirs of the deceased. Therefore, this fact alone cannot lead to the conclusion that there was any ouster of the female co-sharers whose names are not found in the Record of Rights, as between co-sharers possession of one and non receipts of profits by the others do not set limitation running against the co-sharer not in possession. In law the possession of one co-sharer is always considered to be possession on behalf of all the co-sharers unless there is an ouster of the other co-sharer in respect of the joint property. In the absence of ouster a co-sharer cannot be considered to be in adverse possession as against his other co-sharer in such property. Ouster means denial of the right of the claimant to his or her knowledge actual or presumed. *Wazir Begum Vs. Noor Jehan.* PLD 1961 (W.P.) Karachi 165.

Arts. 144, 120, 91—Sale by minor—Void—Suit for possession—Art. 144 applies and not Arts. 120 and 91.

The plaintiff brought a suit for possession on the ground that the sale was affected by a minor and was therefore void.

There was no need for filing a suit for the cancellation or setting aside of the sale deed in question, and in effect the suit of the plaintiff was not one for such cancellation or setting aside of the instrument in question. *Abdul Rehman Vs. Abdul Haq.* PLD 1960 Kar. 625—1960 (1) KLR 545.

Landlord and tenant—Plaintiff proving relationship—Defendant must prove ouster of plaintiff to prove relationship of landlord and tenant.

Where in a suit for ejectment the Court finds that the defendant's occupation is not independent of the plaintiff, that is to say, not on his own independent title but as a tenant under the plaintiff it is necessary for the defendant, in order to succeed, to establish ouster, that is, assertion of hostile title as against the plaintiff and claiming title on his own account and after such assertion to the knowledge of the plaintiff, his remaining in possession for the statutory period of 12 years or more. *Kishan Prasad Vs. Hardwar Singh and others.* AIR (33) 1946 Patna 184.

Mines and minerals—Essentials for adverse possession of—What constitutes possession of mines and minerals.

In order that possession of mineral rights be adequate in publicity the defendant must prove that there was that to be seen on the surface which the plaintiff or his predecessor being reasonably vigilant ought to have seen and so seeing would have been put on his guard although he did not have any title to the surface.

—Art. 144

As a general rule where title is founded on adverse possession the title will be limited to the area of which actual possession has been enjoyed. In the case of mines there is no presumption in law that possession of a part of a seam infers possession of the whole seam much less of all the seams in the mineral field in which part of a seam has been worked. Possession is a question of fact and the extent of possession is an inference of fact *Haridas Majumdar and others Vs. Sir Bejoy Prosad Singha Ray and another.* PLD (33) 1946 Calcutta 121.

Arts. 144, 134-A to 134-C—Endowed property—Mortgage by shebait as private owner—Property sold—Mortgage decree—Suit by shebait for possession as alienation was void property being debuttor property—Art. 144 applicable.

The former shebait of a deity mortgaged the property belonging to the deity in 1905 not in his capacity as shebait but as secular owner of the property which he purported to hold in niskar right. The mortgagee obtained decree on the mortgage and purchased the property himself in execution in 1908 and obtained possession. The decree was not against the shebait qua shebait but against him in his own personal capacity. The shebait died in 1932 and in 1934 the present shebait brought a suit for recovery of possession on declaration of title of the deity. The suit was decreed and possession was obtained. One H preferred a claim under O. 21, r 100 - C.P.C. which was allowed. Thereupon the shebait brought a suit under O. 21, r. 103 C P.C. for recovery of possession of the property on the allegation that it was a part of the debuttor endowment belonging to the deity and H did not acquire any title to it by reason of his purchase at the sale held in execution of a decree obtained by a third party against the representatives of the mortgagee.

Held : that the purchase by the mortgagee in execution of his mortgage-decree was void altogether and the possession of the purchaser was adverse from the date of the sale. Articles 134-A to 134-C which were introduced by the amending Act of 1929 has no application to the facts of the case. The suit was governed by Art. 144 and was barred by limitation. *Sm. Hemanta Kumari Bose Vs. Sree Iswar Sridhar Jiu* AIR (33) 1946 Calcutta 473.

Partition—Party may ask for possession within three years—Person in possession—party to partition.

Time for adverse possession begins to run from date on which petition became effective under S. 122 of the Punjab Land Revenue Act.

A person to whom a share is allotted in partition can, within three years from the date on which the partition is to take effect, apply to the Revenue Officer for the possession of the share allotted to him under the instrument of partition is a decree of the Court.

But if he fails to apply for possession under that section within that period he can bring a suit against the person in possession in a Civil Court for the recovery of his share, if the person sued was a party to the partition proceedings In that case he has to come to Civil Court within 12 years from the date in which the partition according to the instruments is to take effect. That is the date on which he becomes entitled to the possession of the land and limitation against him runs from that date. He does not acquire title to posses-

sion under the proposal for the allotment of share. He becomes entitled to it after the instrument of partition is framed and time for its taking effect is indicated in it. *Ajun Khan Vs. Abdul Raziq.* PLD 1960 (W.P.) Peshawar 90.

Suit for possession of immovable property or any interest therein—12 years from adverse claim.

Art. 144 is wider in scope than Art. 142, the latter refers to suit for immovable property only, while the former include also interest therein. 14 C.L.J. 572, 1950 P. C. 44 : 52 Bom. L. R. 493 : 54 C.W.N. 213 P. C.

The space above the land is itself immovable property. There can be adverse possession of space above land by constructing three-storied veranda projecting over the land of the plaintiff. for more than 12 years. 1934 All. 1054.

This Article is a residuary Article and is applicable only when the suit does not come under any other Article. It must be applied when the plaintiff alleges his dispossession or when it is found as a fact that he was dispossessed by the defendant. 1934 All. 993 *F. B.*, 1938 Bom. 210 : 175 I.C. 93.

Where Art. 144 applies no deduction of time under s. 16 L. Act can be allowed either in law or under the general principles. of equity. 26 C.W.N. 364,

Possession under an invalid transfer is adverse. 1952 Pat. 46 : 30 P. 964, 1953 Pat. 335.

Slight act of possession by true owner gives a fresh start. 109 I.C. 296; 1928 Cal. 563.

Art. 144 is applicable only to a possessory suit by the owner of the properties brought against a person holding adversely to him without title. 61 M. L.J. 78 : 1931 A. L. J. 783 : 1931 P. C. 196 : 35 C.W.N. 953 : 10 Pat. 851 : 33 Bom. L.R. 1390 *P.C.*

In an action for ejectment plaintiff can succeed only on the strength of his title and not on the weakness of defendant's title. 1942 P. C. 64 : 47 C.W.N. 46 : 45 Bom. L. R. 275 : 203 I. C. 1 P.C.

Under this Article unlike under Art. 142, plaintiff can rest content with proof of title only, the defendant is to prove adverse possession. 56 A. 111 : 38 C.W.N. 400 : 36 Bom. L. R. 408 : 59 C.L.J. 157 : 1934 P. C. 77 *P.C.*, 16 C. 473, *P. C.*, 17 C. 137 *P.C.*, 20 C. 560 *P.C.*, 9 C. 744 *F.B.*, 10 C.W.N. 630 *P.C.*, 02 C.W.N. 273, 141. 458, 12A. 193, 2 Pat. L.T. 481, 62 I.C. 1, 97 I.C. 135.

An overt act of adverse possession may be nullified by subsequent admission of title of the owner. 1928 Lah. 317 : 106 I.C. 814.

A Hindu limited owner entering into possession as such may acquire absolute title by adverse possession. 1946 Bom. 193.

A Hindu limited owner cannot acquire by adverse possession an absolute title, 1946 Nag. 277 : I.L.R. 1946 Nag. 159.

When on the supposed death of her husband the wife entered on her widow's estate it is not adverse to the husband. 1947 P.C. 19 : 51 C.W N. 98 : 49 Bom. L.R. 246 : 227 I.C. 177 P.C.

—Art. 144

Where the possession of the defendant is originally permissive but subsequently becomes adverse this Article will apply. 21 M. 153, 1928 Cal. 582, 6 C. 311.

Possession to be adverse must be adequate in continuity, in publicity and in extent, it need not be brought to the knowledge of the owner, but where the assertion of right is secret and not open the possession cannot be held adverse. 62 C. 921, 56A. 111 : 38 C.W.N. 400 : 59 C.L.J. 157 : 1934 A.L.J. 466 : 1934 P.C. 77 *P.C.*

In a suit by the successor to recover trust property from the purchaser in execution sale, time runs from the date of such sale and possession and Art. 134 or 144 applies. 40 C.L.J. 20 *P.C.*, 38 C. 526 : 14 C.L.J. 238 *P.C.* 44 M. 431 *P.C.*, *Dist.* 43 C.L.J. 394 : 30 C.W.N. 740 : 1926 Cal. 913, 1926 Pat. 239, 44 M. 751 *P. C.*, 1950 P. C. 44 : 54 C.W.N. 213 : 52 Bom. L.R. 493 P.C.

There can be adverse possession against an idol's property by a non-shebait. 48 A. 348 : 1926 All. 392, 60 C. 54 : 1933 Cal. 295, but there can be no adverse possession against an idol by shebait. 60 C. 54 : 1933 Cal. 295.

An unauthorised permanent lease by the *Dharmacarta* of a temple is valid during the tenure of his office so also during the tenure of his successors, consequently the possession of the lessee does not become adverse till anything happens which takes the case out of the operation of this principle. 59 M, 809; 63 C.L.J. 491 : 40 C.W.N. 901 : 1936 M. W. N. 733 : 17 Pat. L.T. 480 : 1936 P. C. 183 *P.C.*, 1935 P.C. 44 *P.C.*

Prior to the amendment of the L. Act by Act 1 of 1929 a suit by a *mahant* to recover *muth* property transferred by the preceding *mahant* was governed by Art. 144, limitation running from the death of the *mahant*. 57 A. 159 : 1935 M.W.N. 162 : 39 C.W.N. 433 : 61 C.L.J. 122 : 1935 P.C. 44 *P.C.*, 62 C.L.J. 153, 57 C.L.J. 229 : 37 C.W.N. 541 : 1933 A.L.J. 327 : 1933 P.C. 75 *P.C.*

The rule that where a trustee takes possession of any property under a trust not valid, his possession is as much adverse to the lawful title as the possession of any trespasser does not apply to the case of a *mutwalli* as he has no legal estate in the property. 55 C. 448 : 1928 Cal. 130 : 32 C.W.N. 2 3.

Where wakf property was alienated adverse possession commenced from the date of sale and the suit to recover possession was governed by Art. 144 of the Limitation Act. 34 C.W.N. 498 : 1930 Cal. 673 : 51 C.L.J. 547.

The proprietor of a piece of land over which the members of the public exercise a right of easement does not lose his right to the land as proprietor on account of the occasional user by the public for the purpose of exercising the right of easement. In the case of land covered with water the possession of parties will really be determined by the question of title. 43 C.L.J. 180 : 94 I.C. 5.

Possession of a fiduciary relation will be attributed to the consent express or implied of the righful owner. 1950 All. 316.

—Art. 144

A trustee cannot hold adversely to the trust. 1947 Lah. 117 : 231 I.C. 421, (1952) 1 M. L.J. 487 : 1952 M.W.N. 282.

In a suit for ejectment by purchaser from Govt. against a person who pleads adverse possession for over 12 years a portion of which was against the Govt. Art. 144 (12 years) and not Art. 149 (60 years) will apply. 28 C.W.N. 66, 1926 Mad. 1155.

A mortgagee cannot deny the title of the mortgagor and set up adverse possession. 33 C.W.N. 963, 1923 All. 613 : 74 I.C. 830, 97 I.C. 348 : 1926 Pat. 512, 1926 Lah. 549.

But there may be cases where a mortgagee can by a clear and unequivocal overt act bring the statute of limitation into operation. 1926 Lah. 549 27 Punj. L.R. 235 : 93 I. C. 934. 109 I. C. 795.

A simple mortgagee is not affected by the adverse possession of a trespasser against his mortgagor which commences after the mortgage, nor does the act of his obtaining a decree for sale affect the position. 1923 Mad. 160, (44 C. 425, 39 M. 811, *F.B.*) *fol.*

Lessees of different shares under different co-owners in a zemindary are not themselves co-owners ; when they assert hostile title to the true owner, adverse possession commences from the date when the owner has knowledge of the same and he cannot institute a partition suit on the footing that he has been in joint possession. 60 C. 1212 : 37 C.W.N. 835.

Co-sharer's claim in ancestral or joint property is barred after 12 years when it has been recovered by another co-sharer from a trespasser. 3 Lah. L.J. 441, or when it has been purchased by a co-sharer from a stranger who acquired title by adverse possession. 60 C. 1406 1934 Cal. 356.

Co-sharers, ouster of, essentials of knowledge on the part of person ousted is necessary, constructive notice may be sufficient. 1930 Cal. 466: 34 C.W.N. 246 (1923) 2 M.L J. 241.

Mere exclusive possession by a co-sharer of joint land and the receipt of rents and profits are not sufficient to constitute an ouster. On this point there is no distinction between exclusive possession by a co-sharer and possession by a stranger transferee of such a co-sharer. 51 C.L J. 424: 125 I.C. 739.

The possession of one tenant-in-common is deemed to be possession of all the tenants until some act of ouster is brought to the notice of the others. 1942 Nag. 75: 201 I.C. 325.

A suit brought by a Muhammedan against his co-heir to recover his share of the deceased father's immovable property is not governed by Art. 123 but by Article, 144 and time commences to run against the plaintiff only when the possession of the defendant became adverse. Possession held by the mother on behalf of both her sons cannot be deemed to be adverse to either of them. 62 M.L.J. 371 : 1932 P.C. 81 : 55 C.L.J. 470: 54 All. 93: 36 C.W.N. 310 35 L.W. 464: 9 O W.N. 399: 34 Bom. L.R. 510: 136 I.C. 454: 1932 A.L.J. 245: I.R, 1932 P.C. 118: 59 I.A. 74 *P.C.*

--Art. 144

Where the defendants set up a third party but they never claimed any higher right than that of a tenant and the third party's rights were found against the plaintiff's claim to recover possession from the defendants was governed by Art. 144 of the Limitation Act. 1930 Cal 579: 127 I C. 763: 57 C. 371.

When the right of co-trustee to his right of management is denied the suit is governed by this Art. 105 I C. 194: 1927 Mad. 948: 39 M.L T. 214.

Lease by some co-owner does not necessarily constitute the lessee's possession adverse to other co-owners. 33 C.W.N. 277: 1929 Cal. 297.

Limitation against auction purchaser who has obtained symbolical possession against defendant starts from such taking of possession. 1948 Pat. 416, 1950 Cal. 92: 53 C.W.N. 899, 1953 Pat. 110.

The persons alleging adverse possesson must prove it, 35 C.L.J. 192 and under this Art. the onus of proving adverse possession is on the defendent. 36 C.L.J. 472: 1923 Cal. 82: 6 P.L.J. 478, 41 A. 660, 1923 All. 399: 71 I.C. 265: 68 I.C. 230.

Adverse possession to be a bar to a suit for possession must be adequate in continuity, in publicity and extent. 44 M. 883: 41 M.L.J. 650 *P.C.*, 1923 Cal. 82, 56 A. 111: 38 C.W.N. 400: 1934 P.C. 77 *P.C.*

Right of the owners is lost by adverse possession and it is not revived by re-entry. 32 C.L.J. 151: 18 C.W.N. 904.

A more substantial user than mere throwing of rubbish and house-sweeping on the land is required to constitute adverse possession. 96 I.C. 452: 1926 P.H.C C. 246.

Tying up cattle and storing heaps of dung on a vacant land does not constitute adverse possession. 8 Lah. L.J. 535; 27 Punj. L.R. 762, 16 B. 338.

Where adverse possession had commenced during the life-time of the last male owner, *held*, that the interposition of a life-estate will not interrupt the adverse possession. 1930 Cal. 474: 34 C.W.N. 409. 40 C.W.N. 115: 62 C.L.J. 49: 1935 Cal. 702, 1941 Cal. 632: 197 I.C. 756, 1941 Lah. 271: 195 I.C. 712.

Art. 144 applies to a suit by a divided member to recover possession of property which has continued undivided after the division of the members of the family, because such property is no longer "joint family property." 33 Bom. L.R. 442: 27 N.L.R. 131: 58 I.A. 160: 35 C.W.N. 438: 60 M.L.J. 386: 1931 P.C. 48: 53 C.L.J. 313: 130 I.C. 673: 33 L.W. 439: 14 N.L.J. 56: I.R. 1931 P.C. 81 *P.C.*

A suit for partition of joint family property which was excluded from previous partition by fraud of some members is governed by this Article. 1934 Bom. 419: 214 I.C. 273.

A suit by Hindu widow to recover possession of her deceased husband's estate is governed by Art. 144: 60 M.L.J. 619: I.R. 1931 P.C. 150: 1931 P.C. 84: 33 Bom. L.R. 904: 1931 M.W.N. 561: 53 C.L.J. 292: 8 O.W.N. 700: 35 C.W.N. 465: 33 L.W. 477: 12 Pat. L.T. 563: 131 I.C. 758 *P.C.*

Jalkar right is immovable property, acquisition of right by adverse possession. 35 C.W.N. 1256.

—Arts. 144-145

Possession during attachment under s. 145 cl. (4) Cr. P.C. must be taken to be the possession of the party whom the Magistrate finally declares to be entitled to possession. 30 C.W.N. 541: 95 I.C. 117: 1926 Cal. 782.

The possession of the receiver is the possession of the person found to be true owner and consequently his possession cannot be tacked on to that of trespasser. 1937 Mad. 61, 1928 Pat. 260.

Possession of independent trespassers cannot be tacked to complete the statutory period, but the mortgagor can avail himself of and tack on his own adverse possession, the possession of his mortgagee. 61 C. 262: 59 C.L.J. 56: 36 Bom. L.R. 249: 1934 A.L.J. 153: 1934 P.C. 23 *P.C.*

Adverse possession of a part of the seam does not raise a presumption of possession of the whole seam or all the seams. 1946 Cal. 123: 49 C.W.N. 810.

Possession of a part may sometimes operate as possession of the whole. 62 C.L.J. 234: 164 I.C. 452.

Effect of submergence before and acquisition of title by adverse possession, 1941 Cal. 193: 44 C.W.N. 935: 195 I.C. 412.

In order that submergence might interfere with continuous adverse possession it must be such as prevented normal use and occupation by the trespasser. 1941 Pat. 422: 195 I.C. 746.

In order that possession of one trespasser may be tacked with that of the previous trespasser the former should derive his liability to be sued from the latter. 1946 Bom. 193.

THE FIRST SCHEDULE.—*Contd.*

FIRST DIVISION : SUITS—*contd.*

Part IX.—Thirty years

Description of suit.	Period of limitation.	Time from which period begins to run.
145.—Against a depository or pawnee to recover moveable property deposited or pawned.	**Thirty years**	**The date of the deposit or pawn.**

Art. 145—Suit against depository or pawnee—30 years from the deposit or pawn.

When one man's property is handed by that person to another the latter becomes the depository, unless there is something in the terms of that handing over. 61 C. 119: 58 C.L.J. 502: 1934 Cal. 87. G.P. notes belonging to two

—Arts. 145-146

brothers given as security for the service of one and allowed to remain as such even after partition of other joint family properties, suit by heirs against heirs comes under the Art. *same case*.

Recovery of cash security deposit is governed by this Art. 1954 Mad. 101.

This Art. applies even though the property is not recoverable in *specie*. 20 C,W.N. 232, 6 C.L.J, 535,

All actions for the recovery of movable properties come within Art. 145 and no exception is made where demand and refusal make the continuance of possession unlawful, 26 C.W.N. 772, 1928 Rang. 309: 6 R. 547, and limitation runs from the date of deposit and not from the date of demand and refusal, 20 C.W.N. 232; 23 C.L.J. 145, 33 M. 56.

Suit against the heirs of original depository is governed by Art. 145. 26 C.W.N. 772, 33 M. 56, 60, *Ref.* 61 C. 1169 : 58 C.L.J. 502 : 1934 Cal. 37.

Movable properties under this Article include money, 6 C.L.J. 535, *contra*. 37 M. 175, 1944 All. 241, and also includes Govt. securities, 7 C.W.N. 476, 326, 519, 8 C.W.N. 500 and gold deposited with the goldsmith for making ornaments. 23 C.L.J. 145 : 20 C.W.N. 232, 107 I.C. 473 : 1929 Cal. 193.

Deposit of jewellery, depositee being permitted to use same. It did not take the transaction out of the category of deposit as that expression is used in Art. 145. and Art. 120 has no application. 1930 Lah. 913.

Unauthorised conversion of jewellery by pledgee to his own use, suit by pledgor to recover goods or their value—Art. 145 or 116 applies. 1930 Mad. 364 : 122 I.C. 37.

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION : SUITS—*contd.*

Part IX.—Thirty years.—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
146.—Before the [3][High Court Division] in the exercise of its ordinary, original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	**[1][Thirty years]**	**When any part of the principal or interest was last paid on account of the mortgage-debt.**

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch. for "Ditto"

[3]Subs. by Act VIII of 1973, as amended by Act LIII of 1974, for "a High Court" (with effect from the 26th March, 1971)

—Arts. 146-147

Art. 146—Suit before a court established by Royal Charter by a mortgagee to recover possession—30 years, when any part of the debt was paid.

When no part of the principal or interest has been paid this Article will not apply. 4 C. 283.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION: SUITS—*contd.*

Part IX.—Thirtty years—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
146A.—By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	[1][Thirty years]	**The date of the dispossession or discontinuance.**

Art. 146A—Suit by local authority for the possession of any road or street—30 years, from the date of dispossession.

To apply this Art. the local authority need not be the owner of the street or road. 25 M. 635.

The word "road" is not limited to the portion of the land actually used by the passerby but includes such adjacent portion as might be necessary to make a public thoroughfare. 32 C.W.N. 396:1928 Cal. 485:113 I.C. 24.

Suit for possession by Union Board against a trespasser from before the establishment of the Board is governed by Art. 144. 1942 Cal. 151: 45 C. W. N. 802:200 I.C. 386.

Part X—Sixiy years

Description of suit.	Period of limitation.	Time from which period begins to run.
147—**By a mortgagee for foreclosure or sale.**	**Sixty years.**	**When the money secured by the mortgagee becomes due.**

---

[1]Sub. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Firt Sch., for "Ditto".

—Arts. 147-148

Art. 147—Suit by a mortgagee for foreclosure or sale—60 years, from when the money becomes due.

This Article applies to one class of mortgage in which alone a suit can be and always is brought for "foreclosure or sale", *viz.* to English mortgage. 11 C.W.N. 1005: 30 M. 426: 4 A.L.J. 625: 9 Bom. L.R. 1104: 6 C.L.J 255, *P.C.*, 95 I.C. 100: 1926 All. 551. 48 A. 302 : 24 A.L.J. 295: 94 I.C. 849: 1926 All. 493.

A suit on English mortgage executed prior to 1.4.30 if governed by this Article 1942 Cal. 153: 46 C.W.N. 33.

This Article applies also to a suit on an equitable mortgage by deposit of title deed the mortgagee of which has the right to sue for "foreclosure or sale". 14 B. 269.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION: SUITS—*contd.*

Part X.—Sixty years—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	[1][Sixty years]	When the right to redeem or to recover possession accrues: [2][* * * *]

—Art. 148

For redemption of mortgaged property the period for institution of a suit is 60 years when the right to redeem accrues.

Article 148 of the Limitation Act provides that against a mortgagee to redeem or to recover possession of immoveable property mortgaged the period of limitation is 60 years from the date when the right to redeem or to recover possession accrues. *Afser Molla Vs. Abdul Aziz.* (1977) 29 DLR. 416

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923) s. 2 and First Sch. for "Ditto".

[2]Omitted by Act VIII of 1973, as amended by Act LIII of 1974.

—Art. 148

Art. 148—Suit for redemption.—60 years, when right to redeem accrues.

Plaintiff must prove that the mortgage was within 60 years. 1950 All. 88; 5 D.L.R. All. 97, 1950 E. P. 157.

A claim for recovery of surplus profits received by the mortgagee is a relief which forms a part of the suit for redemption itself and comes under this Article 26 C.W.N. 123 : 64 I. C. 75.

Where the puisne mortgagee has already obtained a decree for sale on his mortgage without making a prior mortgagee a party, he is entitled to redeem the prior mortgage in a subsequent suit which is governed by Art. 148 of the Limitation Act and not by Art. 132. 1929 Cal. 609 : 119 I. C. 135 : 33 C.W.N. 1067 : 50 C.L.J. 152 *F.B.* 14 C.W.N, 439 *Expld.*

A suit by co-mortgagor against redeeming mortgagor, is a suit for redemption and Art. 148 applies. 1933 All. 228, 1922 All. 410, 1943 Bom. 191 : 208 I.C. 285. *contra.*, such a suit is not for redemption but is for possession and Art. 144 applies, 1923 Pat. 98, such redeeming mortgagor is simply a chargee-holder. 1923 Lah. 311 : 71 I. C. 847, 69 I.C. 1004.

Limitation for redemption by a mortgagor against a co-mortgagor who has redeemed the mortgage starts from the due date of mortgage. 1941 Pat. 147 : 189 I.C. 855, 1943 Bom. 191 : 208 I. C. 285.

A suit for redemption by a puisne mortgagee against a prior mortgagee who has obtained possession in execution of a decree on his mortgage without impleading the puisne mortgagee is governed by this Art. 1937 Nag. 205 : 172 I.C. 289, 1953 Bom. 405.

A second mortgagee in a suit for redemption does not sesk to recover his dues, so Art. 132 does not apply but his suit comes under this Ariicle. 5 Pat. 513 94 I.C. 284 : 1926 Pat. 337, (14 C.W.N. 439, 1925 Mad. 150) *not fol.*, (9 C. W. N. 728, 2 Lah. L.J. 419, 1923 All. 271) *fol.*

Where a mortgage deed provided for redemption after 10 years and gave possession to the mortgagee and the usufruct was to be enjoyed in a particular manner and more than 60 years after the expiry of the date fixed for redemption the mortgagor sued for redemption, the suit was barred. 1925 Cal. 862 : 86 I.C. 353.

An acknowledgment made by one of the heirs of the mortgagee who has divided the mortgage property among themselves without the consent of the mortgagor is binding on him or his heir. 32 Bom. L.R. 1096 : 1930 Bom. 466 *F.B.*

—Art. 149

THE FIRST SCHEDULE.—*contd.*

FIRST DIVISION : SUITS— *contd.*

Part X.—Sixty years.—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
149.— [1][Any suit by or on behalf of the [2][Government] [4][except a suit before the [5][Appellate Division] in the exercise of its original jurisdiction].	[3][sixty years]	When the period of limitation would begin to run under this Act against a like suit by private person.

Art. 149 : Period of limitation for a suit by Government is 60 years.

The period of limitation for any suit instituted by the Central or any Provincial Government for the recovery of money advanced is 60 years under Article 149 of Limitation Act. *Prov. of. E. Bengal vs. Bakergonj Central Co-operative*. (1960) 12 DLR 219.

Burden of proof—Party applying for restoration must prove that he made the application within thirty days of his knowledge of it.

Article 149 applies only to suits brought by or on behalf of the Government and has no application to suits brought by assignees and other persons deriving or claiming through or under the Government. It cannot be said that when Crown has once ceded property to an individual or corporation, it does or can cede at the same time any right or privilege inherent in the Sovereign Power. *Governor General in Council Vs. Awadhoot*. AIR (33) 1946 Nagpur 228.

Loan advanced by government in course of its duties—Art. 149 applicable in proceedings for its recovery.

The Government had not engaged itself in a commercial undertaking, trade or business, but it was doing an act incidental to its function. We, therefore

---

[1]The Original words "Any suit by or on behalf of the Secretary of State for India in Council," have successively been amended by A.O , 1937, and A.O., 1949, to read as above.

[3]Subs. by Act 53 of 1974.

[3]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "*D*itto".

[4]Ins. by the Indian Limitation (Amdt) Act. 1937 (14 of 1937) s. 2.

[5]The words "Appellate Division" were substituted for the words "Supreme Court" by Act VIII of 1973, as amended by Act LIII of 1974.

—Art. 149

think that the Government is entitled to get the benefit of Article 149 of the Limitation Act. In other words. Article 159 or 60 of the Limitation Act is not applicable to this case. In our opinion, Article 149 applies to the suit, and as such, the claim is not barred by limitation. *Province of East Bengal Vs. Bakarganj Central Co-op. Sale & Supply Ltd.* PLD 1960 Dacca 604—12 PLR 219.

Any suit by or on behalf of the Secretary of State.—60 years, as in the case of suit by private person.

A suit for possession by the Secretary of State under s. 9 Specific R. Act or otherwise is governed by Art. 149 and not by Art. 3, 87 I.C. 1002, 1925 Sind 275.

When land emerged out of sea belonged to Crown and plaintiff claims adverse possession he has to prove possession for 60 years, 39 M. 617 : 20 C. W.N. 1311 : 14 A. L.J. 1114 : 25 C.L.J. 69 : 35 I.C. 902 *P.C.*

All unoccupied sites are Govt. property unless an individual can establish his own right to such property. 45 B. 789.

Suit by Govt. against Municipal Councillors of embezzlement of Municipal money is governed by this Art 40 B. 166.

Title by prescription can be acquired against the Govt. only by the adverse possession for 60 years. 1925 Lah. 437.

Fishary right may be acquired in navigable river by 60 year's possession. 61 C. 262 ; 59 C.L.J. 56 : 36 Bom. L.R. 749 : 38 C.W.N. 285 : 1934 P. C. 23 *P.C.*

There is no special discrimination in favour of Govt. apart from longer period. It is not necessary that adverse possession should be actually brought to the knowledge of the Govt. It is sufficient if the possession is overt and without any attempt at concealment. *Same case.*

A suit by a Municipal Committee for possession of land belonging to Govt. is not governed by this Art. 1948 Lah. 153 F.B.

A suit by assignee from Govt. is not governed by this Art, 1946 Nag. 228: 223 I.C. 486.

In a suit by purchaser or guarantee from Govt. if the defendant pleads adverse possession the plaintiff cannot claim the position of Govt. and limitation is 12 years. 28 C.W.N. 66, 1926 Mad. 1155.

Arts. 150-152

THE FIRST SCHEDULE.—*contd.*

SECOND DIVISION : APPEALS

Description of Appeal	Period of limitation	Time from which period begins to run.
150.—Under the Code of Criminal Procedure, 1898, (V of 1898) from a sentence of death passed by a Court of Session [1][or by [2]the High Court Division] in the exercise of its original Criminal Jurisdiction.	Seven days	The date of the sentence.
[3][* * *]		
151.—From a decree or order of [2][the High Court Division] in the exercise of its original jurisdiction.	Twenty days.	The date of the decree or order.

Art. 151: Time—Time for preferring an appeal against a judgment of the original jurisdiction of the High Court is 20 days, appeal filed after that time stands barred by time.

An appeal from a judgment passed by the High Court in exercise of it original civil jurisdiction whether ordinary or extraordinary, as with a right of appeal under the Letters Patent, is governed by Article 151 of the Limitation Act.

The period of appeal against judgments given in writ jurisdiction is twenty days under Article 151 of the Limitation Act, and, according to section 3 of the said Act, an appeal which is barred by time shall have to be dismissed. *Aon Muhammad Vs. Rehabilitation Commr.* (1966) 18 DLR (WP) 99.

Description of suit.	Period of limitation.	Time from which period begins to run.
152.—Under the Code of Civil Procedure, 1908, (V of 1908) to the Court of a District Judge.	Thirty days..	The date of the decree or order appealed from.

---

[1]Added by the Criminal Procedure (Amdt.) Act 1943 (XXVI of 1943), s. 8.

[2]Subs, by Act 53 of 1974.

[3]Article 150A which was inserted by the Criminal Law Amdt. Act, 1923 (12 of 1923). s. 42 has been omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act, 1949 (2 of 1950), s. 2 and Sch.

—Arts. 152-156

Art. 152: Limitation, for preferring appeals. etc.—Time mentioned in relevant Article is not the time within which appeals etc. will have to be filed. *Barada Prasanna Vs. Kabbad Mia* (1961) 13 DLR 765

Appeal,—Limitation for filing of it.—There is no right of appeal once the 30 days prescribed by Art. 152 has expired. *Falan Ch. Saha vs. Monomohan Saha.* (1956) 8 DLR 597

Appeal to the Court of a Dt. Judge, 30 days, from the date of decree or order.

Date of original decree is the starting point and not the date of amended decree, though the appellate court may extend the time under sec. 5 L. Act. 40 C.W.N. 83: 165. C. 53

"parties" in Art. 158 cannot be confined to parties personally but includes pleaders and other persons specially authorised by the parties to take notice. 1930 All. 711: 1930 A.L.J. 995.

Date of decree is date of judgment. 1949 Assam 23.

THE FIRST SCHEDULE.—*contd.*

SECOND DIVISION: APPEALS—*contd.*

Description of appeal.	Period of limitation.	Time from which period begins to run.
153.—Under the same Code to [2][the High Court Division] from an order of a Subordinate Court refusing leave to appeal to [2][the Appellate Division].	[1][Thirty days] 30	**The date of the order.**
154.—Under the Code of Criminal Procedure, 1898, (V of 1898) to any Court other than the High Court Division.	[1][Thirty days].. 30	**The date of the sentence or order appealed from.**
155.—Under the same Code to [2][the High Court Division,] except in the cases provided for by article 150 and article 157.	**Sixty days...** 60	**The date of the sentence or order appealed from.**
156.—Under the Code of Civil Procedure, 1908, (V of 190) to [2][the High Court Divison] except in the cases provided for by article 151 and article 153.	**Ninety days...** 90	**The date of the decree or order appealed from.**

[1]Subs. by the Reapealing and Amending Act. 1923 (11 of 1923) s. 2 and First Sch. for Ditto.

[2]Subs. by Act. 53 of 1974.

—Art. 156

Art. 156 : It would not be correct to say that under Article 152 of the Limitation Act the right to appeal subsists only during a period beginning from the date of the decree and ending with 30 days from that date.

It is, therefore, clear that under Article 152 of the Act the right to appeal is not limited to the period prescribed in the schedule to the Limitation Act. *Barada Prasanna Vs. Kobbad Mia* (1961) 13 DLR 765

There is no period of limiation for an appeal under section 81 of the Representation of People Act, 1957. Article 156 of the Limitation Act is not applicable to such an appeal. *Jamalus Sattar Vs. Badrul Huq Khan* (1964) 16 DLR 593.

In computing time for the purpose of limitation, the starting point is the date on which the decree is signed and not the date on which the judgment is signed. Time taken in getting copies of the judgment and the decree must also be excluded and this also be computed from the date on which the decree is signed. *Government of West Pakistan Vs. Niaz Muhammad* (1967) 19 DLR (SC) 236.

Amendment in decree—Appeal based on reduction of amount by amended decree—Time runs from date of amendment in decree.

Where an appellant does not contest the correctness of the original decree except insofar as attacks the reduction of the decree by an amendment, time for filing an appeal should properly run from the date of the amended decree and not the date of the original decree. *Wardsworth and Rujawannar, JJ. Vs. Surneedi Sathiraju* AIR (33) 1946 Madras 291. Rel: AIR 1945 Mad. 62, Ref: 22 Mad. 36. Exp. 24 Mad. 646.

Decree signed after judgment—Period between signing of decree and judgment—Not to be excluded from period of limitation for appeal.

The date of the decree is to bear the date of the judgment and as such the date of the decree, which furnishes the starting point of limitation for an appeal under Article 156 of Schedule 1 to the Limitation Act, is to be the date of the judgment. It must be emphasized that the words used in Article 156 of the Limitation Act are "the date of the decree" and not the date of the signing of the decree. In fact, the latter expression would have been inconsistent with Order XX, rule 7 of the Civil Procedure Code. If the legislature had intended to allow the time spent in the preparation of the decree, nothing would have been easier than to express that intention by using the words "date of signing of the decree" instead of "date of the decree". The statute of limitation being a statute of repose extinguishing remedies requires awareness and vigilance in the pursuit of the actions on the part of the litigants and must, therefore, have a merit of certainty, The date of the decree synchronising with the date of judgment as the starting point of limitation has a feature of certainty in point of time being known to everyone the moment the judgment is pronounced. The preparation of the decree, on the other hand, is a ministerial act depending on the rules which vary from Court to Court and the date of the signing of the decree is, staff is able

—Arts. 156-158

to prepare it for signatures of the Judge and when does the latter sign it of which ordinarily the litigant public has no notice. *East & West Steamship Company Vs. Queensland Insurance Co. Ltd.* PLD 1960 (P.W.) Karachi 840—60 *KLR* (1). WP. 993.

THE FIRST SCHEDULE.—*Contd.*

SECOND DIVISION : APPEALS—*contd.*

Description of Appeal.	Period of limitation	Time from which period begins to run.
157.—Under the Code of Criminal Procedure, 1898, (V of 1898) from an order of acquittal.	Six months..	The date of the order appealed from.

THIRD DIVISION : APPLICATIONS

Description of application.	Period of limitation.	Time from which period begins to run.
[1][**158.—Under the Arbitration Act, 1940. (X of 1940) tn set aside an award or to get an award remitted for reconsideration.**	Thirty days.	The date of service of the notice of filing of the award.]

Art. 158 : Application to set aside award—Limitation question.

An award made beyond four months of the date of entering upon the reference by the arbitrators is void. In such a case an objector can put forward objection to the award beyond the period of limitation as provided by Article 158 of the Limitation Act. *M/s. Badri Narayan Vs. Pak Jute Balers* (1965) 17 DLR 354.

Award void on the face of it—

Where an award is illegal and void for want of jurisdiction apparent on the face of it, it is not necessary that the parties should file objection to the award, within time prescribed under Article 158. *M/s. R, Sim & Co. vs. M/s. Pak Industries.* (1956) 8 DLR 305.

---

[1]Subs. (from the 1st July, 1940) by the Arbitration Act, 1940 (10 of 1940), s. 49 (2) and Fourth Sch., for Art. 158 which was previously amended by the Repealing and Amending Act, 1919 (18 of 1919), s. 2 and First Sch.

Arts. 158-160

Misconduct—which renders the award void and illegal—Award—where void and without jurisdiction—Court to take judicial notice of it, even though no objection was filed within time provided by Art. 158. *Hashmet Ali Jamadar vs. Asmat Ali Jamadar* (1954) 6 DLR 478.

Application to set aside an award—30 days, when the award is submitted.

The period of limitation for filing objections to an award is to be reckoned from the date of notice of filing. 19 A.L.J. 404, 1948 E.P. 11, 149 All, 234 ; 4 D.L.R. All. 118.

Where a party enters appearance without service of notice he must file objection within 30 days from such appearance. 1952 Cal. 226, 56 C.W.N. 223.

The court cannot pass a decree in term of the award within 10 days. 1922 Mad. 179 ; 71 I. C. 266, 9 M.L.T. 391, 1912 M.W.N. 1232.

When special case is stated limitation runs after the court expresses opinion. 48 B. 663 ; 84 I.C. 378 ; 1925 Bom 22.

THE FIRST SCHEDULE.—*contd.*

THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
159.—For leave to appear and defend a suit under summary procedure referred to in section 128 (2) (*f*) [1][or under Order XXXVII] of the [2][Code of Civil Procedure, 1908 (V of 1908)].	[3][Ten days]	When the summons is served.
160.—For an order under the same Code, to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing.	Fifteen days	When the application for review is rejected.

[1]Ins. by the Indian Limitation (Amdt.) Act, 1925 (30 of 1925), s. 3.

[2]Subs. by Act 10 of 1940, Fourth Sch , for "same Code" (from 1st July, 1940).

[3]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

Arts. 161-162

THE FIRST SCHEDULE.—*Contd*

THIRD DIVISION: APPLICATIONS—*contd*.

Description of application.	Period of limitation.	Time from which period begins to run.
161.—For a review of judgment by a [1]* Court of Small Causes [2]* * * or by Court invested with the jurisdiction of a [1]*Court of Small Causes when exercising that jurisdiction.	[3][Fifteen days]	**The date of the decree or order.**

Arts. 161, 162, 173—Review—Limitation prescribed for review not allowed after that Articles 161, 162 and 173 of the Limitation Act prescribe periods of the review of judgment by the Court of Small Causes and the High Court.

This has been done with a view to secure finality of litigation. If this bar of time is not placed on the power of review it would mean that a judgment can never become final. Every order the effect of which is to vitiate the previous judgment is entirely foreign to the jurisdiction in review especially when no time limit is placed on that power. *R. C. Karachi Vs. S. A. Majid* PLD 1956 Cust W.P. 34.

Description of application.	Period of limitation.	Time from which period begins to run.
162.—For a review of judgment by [4][the High Court Division] in the exercise of its original jurisdiction.	**Twenty days.**	**The date of the decree or order.**

---

[1]The word "Provincial" omitted by the Berar Laws Act, 1941 (4 of 1941), s. 2 and Third Sch. (with effect from the 1st August, 1941).

[2]The parentheses and words "other than a Presidency Small Cause Court" which were ins. *ibid.* (with effect from the 1st August, 1941), have been omitted by the Federal Laws (Revision and Declaration) Act, 1951 (26 of 1951), s. 3 and Second Sch.

[3]Sub. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and 1st Sch., for "Ditto".

[4]Subs. by Act. 53 of 1974.

—Arts. 162-164

Arts. 162, 161, 173—Review—Limitation prescribed for review—Review not allowed after that.

Articles 161, 162 and 173 of the Limitation Act prescribe periods for the review of the judgment by the court of small causes and the High Court.

This has been done with a view to secure finality of litigation. If this bar of time is not placed on the power of review it would mean that a judgment can never be final. Every order the effect of which is to vitiate the previous judgment is entirely foreign to the jurisdiction in review especially when no time limit is placed on that power. *R. C. Karachi Vs. S. M. Majid.* PLD 1956 Cust. W.P. 34.

[1] [* * *]

THE FIRST SCHEDULE —*contd.*

THIRD DIVISION : APPLICATIONS – *contd.*

Description of application	Period of limitation.	Time from which period begins to run
163.—By a plaintiff, for an order to set aside a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs.	**Thirty days...**	**The date of the dismissal.**

Artt, 163—Application to set aside a dismissal for default of appearance etc.,—30 days, from the date of the dismissal.

The period of 30 days cannot be extended by adding the time for obtaining copy of the order. 93 I.C. 1023.

In an application under O. 9, r, 9, the Court cannot grant an extension of time. 1931 Cal. 319: 52 C.L.J. 23.

Description of application.	Period of limitation.	Time from which period begins to run.
164.—By a defendant, for an order to set aside a decree passed *ex parte*.	**[2][Thirty days]...**	**The date of the decree or, where the summons was not duly served, when the applicant has knowledge of the decree.**

[1]Article 162A as ins. by the Limitation (Amdt.) Ordinance, 1962 (43 of 1962), s, 5, has been omitted by the Limitation (Amdt.) Act, 1965, (11 of 1965) s, 2.

[2]Subs. by the Repealing and Amending Act. 1923 (11 of 1923), s 2 and Firt Sch., for 'Ditto".

—Art. 164

Art. 164 : Article 164 applicable whether summons was in fact duly served or not.

The Article expressly covers the case whether the summons was in fact duly served or not ; if not served. the 30 days limitation will run from the date when the applicant had knowledge of the decree *Distt. Board of Tippra vs. Sarafat Ali* (1951) 3 DLR 317 (325 rt. h. col.)

"Summons" refer to summons issued for first appearance of defendant in court—Defendant absent on an intermediate date must apply within 30 days of date of ex parte decree for setting aside the same (1952) PLR (Lah). 514.

30 days to be counted from the date of decree or knowledge. 'Knowledge' means knowledge of decree that has been passed.

Article 164 of Limitation Act provides a period of 30 days filing an application for setting aside ex-parte decree. This 30 days is to be counted from the date of the decree or where the summons was not duly served, when the applicant has knowledge of the decree. 'Knowledge' is something more than mere knowledge that a decree has been passed in some Court. It is knowledge that a particular decree has been passed against him in a particular Court in favour of a particular person for a particular sum (or in respect of particular property) and not merely the knowledge that a decree had been passed by some Court against him. *Mst. Johara Begum Vs. Rafiqul Kader,* (1973) 25 DLR 91.

Limitation—Extension of :

From a reading of article 164 it would appear that if summons on a party is not served as by law required then only limitation will run from the date of knowledge ; otherwise it runs from the date of the decree. *M/s. A. K. Agencies Vs. Mst. Hasina Noor,* (1973) 25 DLR 250.

Condonation of delay—When appeal preferred by the Government—No unusual concession can be claimed by the Govt.

It is often being argued that the machinery of the Government requires certain time to deal with matters and as such the delay in the case of the Government should not be construed with so strictness as in other cases, but I do not find any reason to accept such submission firstly, because there is no provision whereby such concession can be given to the Government and secondly, the Government maintain staff with experience for conducting law cases. *Province of East Pakistan Vs. Md. Habibur Rahman* (1973) 25 DLR 254.

When summons served upon the defendant his application for restoration of ex-parte decree must be filed within 30 days from the date of ex-parte decree.

When summons have been duly served upon the defendants and they also entered appearance but on their failure to attend the court an ex-parte decree was passed the defendants application to set aside the ex-parte decree if not filed within 30 days of the ex-parte decree, will be treated as time barred under Article 164 of the Limitation Act. *Netai Sikari Vs. Sashi Bhusan Bisnas* (1961) 13 DLR 225.

—Art. 164

Arts. 164 & 181: High Court can set aside an order made without jurisdiction, even suo motu—generally Article 181 and not Article 164 applicable—Supreme Court can exercise the powers of the High Court. *Muhammad Swaleh Vs. Messrs. United Grain & Fodder Agencies* (1964) 16 DLR (SC) 155.

Applicability—Applies only to cases where there is a decree.

Article 164 can only apply to cases where one has a decree; or it is impossible to reckon 30 days from a non existent point of time. *Noor Muhammad Vs. R.C. Karachi* PLD 1958 (W.P.) Karachi 467.

Burden of proof—Party applying for restoration must prove that he made the application within thirty days of his knowledge of it.

The burden of proving the fact that the application for setting aside the decree is made with 30 days of the applicant's knowledge of the decree is on him. *Ghulam Fatima Vs. Bilkis Jan.* AIR (33) 1946 Peshawar 7.

Decretal amount or security furnished at the time of application for setting aside ex parte decree—Sufficient compliance of s. 17 of Provincial Small Causes Courts Act.

If the decretal amount or the security is furnished though not at the time when the application under Order IX. rule 13 Civil P.C. is made for setting aside the ex parte decree but within the limitation prescribed under Article 164 of the Limitatin Act it would be sufficient compliance of the proviso to section 17 of the Provincial Small Cause Courts Act. *Abdul Sattar Vs. Dour Muhammad PLD* 1958 (W.P.) Karachi 141.

Exparte decree—Summons served on opposite party—Time would run from the date of decree.

In an application for setting aside an exparte decree. The summons having been duly served on the opposite party the limitation would start running from the date of the decree, 12th January 1954. *Abdul Sattar Vs Dour Muhammad* PLD 1958 (W.P.) Karachi 141.

Ex parte decree—Party not appearing on dates after the first for lack of summons—Decree not set aside.

Where the defendant appealed on the first hearing but on the next hearing the Court was on leave therefore he did not appear subsequently because no summons were served on him. An exparte decree was passed which was sought to be set aside after 30 days of its passing.

Held : once a party receives intimation of an action it is for him to pursue it and to keep himself in touch with the proceedings either personally or through his counsel. *Kamal Din Vs. Muhammad Bashir.* PLD 1952 Lahore 456; PLR 1952 Lahore 514.

Summons—Means only first summons served on the party.

—Arts. 164-165

The term "summon" has been used in the Code of Civil Procedure only in relation to the first appearance ot the defendant. *Kamal Din Vs. Muhammad Bashir.* PLD 1952 Lahore 456—PLR 1952 Lahore 514.

Art. 164—Application by defendant to set aside exparte decree,—30 days from the date of decree or its knowledge.

when summons is duly served limitation starts from date of decree. 1953 Pat. 399.

As the provisions of Or. 9, r 13 C.P.C. does not apply to proceedings on the Original Side of the H. C. so an application to set aside an *exparte* decree filed there is not governed by this Art. 32 C.W.N. 411 *:* 1928 Cal. 864, *contra.*, 46 C.W.N. 280, 87 C.L.J. 169.

Knowledge of the particular decree against particular person in particular court of particular amount is necessary 47 B. 485, 92 I.C 295, 99 I.C. 621, 1927 Mad. 381, 38 C, 394, 13 C.L.J. 221.

There is no distinction between non-appearance at the first hearing or at an adjourned hearing. 23 C. 738 FB, 31 C 269 overruled. 2 CWN 695, 31 M. 505, 20 B. 380.

S. 5 does not apply to such an application. 1922 Lah. 266 *:* 66 I. C. 270, and no time can be extended under s. 151 C.P.C. 1922 Pat. 61 *:* 65 I.C. 341, 43 M. 94 *F.B.*, 1934 Nag. 43 *:* 144 I. C. 394.

The word "duly" is not equivalent to personally. 102 I.C. 243. 1927 Mad. 507 *:* 52 M.L.J. 477. 1928 M. 655.

Substituted service if due service and how far effective. 1931 All. 727 *:* 1931 A.L.J. 1049 *F.B.*, 1932 Mad. 472 : 138 I. C. 146, 1954 Mad. 195.

If the substituted service is effective limitation runs from the date of decree but if it is not effective limitation runs from the date of defendant's knowledge of the decree. 1954 Mad. 475.

THE FIRST SCHEDULE—*contd.*

THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
165.—Under the Code of Civil Procedure, 1908, (V of 1908) by a person dispossessed of immoveable property and disputing the right of the decree-holder	**[1][Thirty days]**	**The date of the dispossession.**

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

—Arts. 165-166

THE FIRST SCHEDULE—*contd.*

THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
or purchaser at a sale in execution of a decree to be put into possession.		

Art. 165—Application for possession against D. Hr. or auction purchaser,—30 days from the date of dispossession.

The proper Article to apply to application under Or. 21, r. 101 C.P.C. in this Article. 58 C. 55 : 1931 Cal. 385.

Description of application.	Period of limitation	Time from which period begins to run.
166.—Under the same Code to set aside a sale in execution of a decree [1][,including any such application by a Judgment-debtor].	[2][Thirty days]	The date of the sale.

Art. 166 : An application under section 173, B. T. Act by the judgment-debtors will attract Article 166. *Juran Ch. Mandal vs. Sushila Debi.* (1955) 7 DLR 382.

Article 166 applies also to an application by a judgment-debtor where judgment-debtor himself applies for setting aside the sale under section 47, C.P.C. But evidently, if the execution sale was a nullity, namely, made without jurisdiction or is void ab initio, Art. 166 has no application and Art. 181 would come in. *Jnanendra Sundari Nandi vs. Narayan Ch. Sarder.* (1955) 7 DLR 627.

An application under sec. 173 of the Bengal Tenancy Act by the judgment debtor will attract the operation of Art. 166 Limitation Act. *Juran Ch. Mandal vs. Sushila Debi.* (1955) 7 DLR 382.

Application to set aside sale in execution,—30 days, from the date of sale.

The present Article is comprehensive enough to cover all applications under C. P.C. for setting aside sales on any ground. 18 C.W.N. 1266, 27 M.L.J. 605

[1]Subs. by the Indian Limitation (Amdt.) Act. 1927 (1 of 1927), s. 4(2).

[2]Subs. by the Repealing and Amending Act. 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

—Arts. 166-167

45 B. 174, 2 Pat. L.T. 402, 1948 Nag. 52 : 231 I.C. 6. either under sec. 47 or Or. 21. r. 90 C.P.C. 1922 Mad. 95, 1922 Mad. 417, 1922 Pat. 209, 45 M.L.J. 829, *Contra*, when the application is under s. 47, Art. 181 applies. 1934 All 314.

Application to set aside sale on the ground of exemption under sec. 60 C.P. Code is governed by this Article 1942 Lah. 153 : 203 I.C. 166 F.B., 1943 Pat. 75 : 204 I.C. 601.

Application to set aside sale on the ground that properties should have been sold in a certain order in which they were not sold comes under this Art. 1928 Mad. 140 : 106 I. C. 242.

In an application to set aside an auction sale, if no fraud in conducting the sale is made out, the question of the date of knowledge of the judgment-debtor is irrelevant. 36 C.W.N. 242: 1932 Cal. 627 : 140 I.C. 730.

Though an application by a judgment-debtor for setting aside sale on the ground of non-service of notice either under Or. 21, r. 22 or under Or. 21, r. 66 falls under s. 47, still it is governed by Art, 166 of the Limitation Act, 1931 All, 145.

Where a purchaser has actual notice of the application to set aside a sale the absence of formal notice is no bar to the maintainability of the application. 60 C. 1106: 1933 Cal. 886.

This Article does not apply where the execution sale is a nullity. 26 M.L.J. 267: 23 I.C. 251, 38 M. 1076, 1931 Lah. 586, 1941 Pat. 566: 199 I.C. 169, 1948 Nag, 52: 231 I.C. 6.

A minor applicant is not entitled to the benefit of s. 6 L. Act. 15 C.W.N. 845.

THE FIRST SCHEDULE.—*contd.*

THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree.	[1][Thirty days]	**The date of the resistance or obstruction.**

Art. 167—Application complaining resistance or obstruction to delivery of possession, —30 days, from resistance or obstruction.

The period is to be counted from the obstruction or resistance complained of. 1938 Cal. 352: 42 C.W.N. 478.

---

[1]Subs. by the Repealing and amending Act, 1923 (11 of 1923), s. 2 and First Sch. for "Ditto".

—Arts. 167-169

Failure to complain of resistance does not take away the right to apply under Or. 21, r. 95 C.P.C. to which Art. 181 applies. 1941 Nag. 322: 198 I.C. 284.

THE FIRST SCHEDULE.—*contd.*

THIRD DIVISION: APPLICATIONS—*contd.*

Description of application.	Period of limitation	Time from which period begins to run.
168.—For the re-admission of an appeal dismissed for want of prosecution.	**[1][Thirty days]**	**The date of the dismissal.**

Art. 168—Applicability—Applies only to cases of re-admission of appeal for want of prosecution.

Art. 168 relates only to the re-admission of an appeal dismissed for want of prosecution. *Fazil Khan Vs. Muhammad Azim.* PLD 194 Balchistan 21.

Re-admission of appeal dismissed for want of prosecution, —30 days from the date of dismissal.

Both dismissal on the date of hearing and before come under this Article 1930 Rang. 228 *F.B.*, and dismissal under Or. 41, r. 10(2) comes under the Art. 1931 M.W.N. 1124.

This Article does not apply to an application under sec. 151 C.P.C. 1949 Pat. 112: 27 P. 745.

Description of application.	Period of limitation.	Time from which period begins to run.
169.—For the re-hearing of an appeal heard *ex-parte*.	**[1][Thirty days]**	**The date of the decree in appeal, or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree.**

Arts. 169, 181—Ex-parte order—Application for rehearing is governed by Art. 181 and not Art. 169.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch., for "Ditto".

—Arts. 169–173

Held: that as the wording of Article 169 shows that it can apply only where one has a decree, the proper Article to apply, in the case of an application for re-hearing of an appeal, decided ex-parte from an order refusing an interim injunction is the residuary Article 181 and not Article 169, and an application for re-hearing presented within 3 years of the ex-parte order is in time. *Noor Muhammad Vs. R. C. Karachi.* PLD 1959 (W.P.) Karachi 19—PLR 1959 (1) W.P. Karachi 1085.

THE FIRST SCHEDULE.—*contd.*

THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
170.—For leave to appeal as a pauper.	[1][Thirty days]	The date of the decree appealed from.
171.—Under the Code of Civil Procedure, 1908, (V of 1908) for an order to set aside an abatement.	Sixty days...	The date of the abatement.
172.—Under the same Code by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal.	[1][Sixty days]...	The date of the order of dismissal.
173.—For a review of judgment except in the cases provided for by article 161 and article 162.	Ninety days...	The date of the decree or order.

Arts. 173, 161 162: Review—Limitation prescribed—Review not permissible after the period.

Article 161, 162, 173 of the Limitation Act prescribe periods for the review of judgment by the Court of Small Causes and the High Court. This has been done with a view to secure finality of litigation. If this bar of time is not placed on the power of review it would mean that a judgment can never become final. Every order the effect of which is to vitiate the previous judgment is entirely foreign to the jurisdiction in review especially when no time limit is placed on that power. *R. C. Karachi Vs. S. M. Majid* PLD 1956 *Cust.* W.P. 34.

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch,. for "Ditto".

—Arts. 173-176

Art. 173—Application for review of judgment—90 days, from the date of decree or order.

90 days time is allowed for review from the date of his knowledge, but the contention that where the knowledge is acquired after 90 days there is no period prescribed by this Act or Art. 181 at most applies, is wrong. 1929 All. 545 but see 1919 All. 485.

THE FIRST SCHEDULE —*Contd.*

THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
174.—For the issue of a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.	[1][Ninety days]	**When the payment or adjustment is made.**

Art. 174 : Tender of an amount under decree by money order to the decree holder not valid. Payment out of court must be certified within 90 days under Art. 174 of the Act. *Ashutosh Roy Chowdhury. vs. Gunamani* (1953) 5 DLR 223.

Description of application.	Period of limitation.	Time from which period begins to run.
175.—For payment of the amount of a decree by instalments.	**Six months.**	**The date of the decree.**
176.—Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.	[2][Ninety days]	**The date of the death of the deceased plaintiff or appellant**

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), for "Ditto."

[2]Subs by the Indian Limitation and Code of Civil Procedure (Amdt.) Act. 1920 (26 of 1920),. 2, for "Ditto".

—Arts. 176-177

Arts. 176 and 177 : On question of abatement (of suit or appeal) the provisions of C. P. Code and Limitation Act will apply regarding failure to bring the legal representatives of the deceased party on record within time. *Maula Baksh Vs. Muhammad Ishaq*, (1971) 23 DLR (Lahore) 12.

Application by legal representative of deceased plaintiff or applicant,—90 days, from death.

When on the death of a sole plaintiff before trial the court dismisses the suit for default of appearances, the order is unsustainable and the legal representative can apply within the time prescribed by the Art. to be made a party. 17 C.W.N. 829 : 18 C.L.J. 9 : 35 A. 331 : 11 A.L.J. 625 : 1923 M.W.N. 566: 19 I.C. 526 *P.C.*

Ordinary period of limitation can be extended where the applicant is the legal representative of the deceased plaintiff living in a different province and had no knowledge of the death. 1929 All. 634.

THE FIRST SCHEDULE—*contd.*

THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation	Time from which period begins to run.
177.—Under the same Code to have the legal representative of a deceased defendant or of a deceased respondent made a party,	[1][Ninety days]	**The date of death of the deceased defendant or respondent.**

Art. 177—Government—Not to be given special concession in the extension of period of limitation.

Where, during the course of the arguments it was suggested that it is well known that the governmental machinery moves slowly and consequently the Government is entitled to special consideration in such matters. We would like to make it perfectly clear that no such indulgence can be shown merely because the party concerned is the State or the Provincial Government. *Punjab Province Vs. Sultan Khan* PLD 1959 (W.P.) Lahore 500.

---

[1]Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and First Sch. for "Ditto"

Art. 178

THE FIRST SCHEDULE.—*contd.*

THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
[1][178.—Under the Arbitration Act, 1940, (X of 1940) for the filing in Court of an award.	Ninety days	The date of service of the notice of making of the award].

Arts. 178, 181—Award, filing of in Court—Which of the articles would apply —Circumstances explained.

If a party to the arbitration agreement does not make a request to the arbitrator or umpire for filing the award in Court it can directly come to the Court and request it to order the arbitrator or the umpire to file the award or a signed copy thereof in Court. Such an application will be governed by Article 178 of the Limitation Act if notice of the award has been given to the applicant, as provided by sub-section (1) of section 14. But if no notice is given then the only Article which would be attracted would be the residuary Article 181 of the Limitation Act, which provides a period of three years from the date when the right to apply accrues. The right to apply accrues to a party immediately when an award is made and he receives the knowledge thereof. *Muhammad Shafi Vs. Md. Sabir.* PLD 1960 (W.P.) Lahore 591—PLR 1960 (2) W.P. 1332.

Art. 178—Filing of award,—90 days from service of notice.

Filing of an award by arbitrator does not come under this Article. 1945 Bom. 417, 1951 Nag. 32, 1952 All. 856.

The Article applies when parties file an application under sec. 14 of the Arbitration Act. 1948 Pat. 171.

The time for an application to file an award begins on the date the award is delivered to the parties and not the date of signature by the arbitrators. 48 I.C. 711, 9 C. 575, 21 W.R. 248, and ss. 5 and 12 do not save limitation. 38 A. 85: 31 I.C. 899: 13 A.L.J. 1115.

---

[1]Subs. by the Arbitration Act, 1940 (10 of 1940), Fourth Sch., for the original Art. 178 (with effect from the 1st July, 1940).

Arts. 179-180

THE FIRST SCHEDULE.—*contd.*

THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
179.—By a person desiring to appeal under the [1][Code of Civil Procedure, 1908, (V of 1908)] to [2][the Appellate Division] for leave to appeal.	**[3][Ninety days]**	**The date of the decree appealed from.**

Art. 179. S. 5—Application for leave to appeal to P.C.—Time taken in review of judgment may be excluded.

In computing the period of limitation for an application for leave to appeal to the Privy Council time taken up for review of the judgment sought to be appealed against was allowed to be excluded under S. 5.

But the time taken up in obtaining a copy of the review order was not allowed to be excluded as a copy of that order would not have been reasonably required for drawing up either the petition for leave or the grounds of appeal. *Dwarka Das Vs. Gajanan Jagannath.* AIR (33) 1946 Calcutta 10 Rel: AIR 1917 P.C. 156.

Application for leave to appeal to S.C.—6 months from the date of decree

Time required to obtain the copies of the decree and judgment cannot be excluded. 15 *M.* 169, 19 *B.* 301, 3 *A.L.J.* 165: 28 A. 391, 1 *A.* 644, *contra.* 1922 *Pat.* 193, and minority does not extend time, 18 *M.* 184.

An application for leave to appeal to the Privy Council in a case under the Income-tax Act is governed by Article 179 and the date of the judgment is the starting point of limitation. 36 *C.W.N.* 127: 1932 *Cal.* 587: 59 Cal. 251.

Description of application.	Period of limitation.	Time from which period begins to run.
180.—By a purchaser of immoveable property at a sale in execution of a decree for delivery of possession.	**Three years...**	**When the sale becomes absolute.**

[1]Subs. by the Arbitration Act, 1940 (10 of 1940), Fourth Sch., for "same Code" (with effect from the 1st July, 1940).

[2]Subs. by Act. 53 of 1974.

[3]Subs. by the Indian Limitation and Code of Civil Procedure (Amdt.) Act, 1920 (26 of 1920), s. 2, for "Ditto".

—Art. 180

Article 180: Decree-holder purchased property in money execution—First application for delivery of possession dismissed for non-prosecution—Second application beyond 3 years from date of confirmation of sale is barred by limitation. *Umesh Ch. Modak vs. Jatindra K. Modak.* (1955) 7 DLR 171.

By a purchaser in execution of a decree for delivery of possession,—3 years when the sale becomes absolute.

The Article applies to an application for possession by a D. Hr. purchaser, 58 *M.* 893 : 1935 *Mad.* 803 *F.B.*, 1954 *Mad.* 831: (1954) 2 *M.L.J.* 89

An application for delivery of possession is to be made within 3 years of the date of the confirmation of the sale and not from the date of the issue of the sale certificate. 54 *C.L.J.* 241.

When by reason of decree of a competent court delivery of possession is suspended, the D. Hr. is entitled, on the reversal of such order by a court of appeal, to avail of a fresh cause of action which arises by reason thereof. 62 *C.* 66: 1935 *Cal.* 333.

Where an application for possession was dismissed not for party's fault, a subsequent application may be regarded as continuation of the previous one. 1942 *Mad.* 718: 205 *I.C.* 468.

Application for possession in time cannot be dismissed even if the sale certificate is obtained and filed after period of limitation. 1953 *Nag.* 215.

Where an application to set aside a sale made after the statutory period after the confirmation of sale was partly admitted and partly disallowed, on application for delivery of possession by the D. Hr. time is to be computed from the date when the application under Or. 21. r. 90 was disallowed and not from the date of the confirmation in the first instance. 43 *M.* 185 : 26 *M.L.T.* 459: 54 *I.C.* 66: 38 *M.L.J.* 1 *F.B.*

Where there was an appeal from the order of the Judge disallowing an application to set aside sale, the sale will not become absolute within this Article until the disposal of appeal though the Subordinate Judge may have confirmed the sale. 61 *C.* 945: 38 *C.W.N.* 901 : *C.L.J.* 547 : 1934 *P.C.* 134 *P.C.* 43 *M.* 185 *F.B.*, *Ref* 56 *C.* 608 *overruled*, 1932 *Cal.* 75 *Reversed*, 1933 *Cal.* 311 : 59 *C.L.J.*, 520 Approved, but in a suit by a D. Hr. for restitution of the amount withdrawn by the auction purchaser, time runs from the confirmation of sale and not from disposal of appeal. 1933 *Cal.* 422.

Art. 181

THE FIRST SCHEDULE—*contd*

THIRD DIVISON : APPLICATIONS—*contd.*

Description of application.	Period of limitation	Time from which period begins to run.
181.—Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908. (V of 1908)	[1](Three years)	When the right to apply accrues.

Appeal against the award of the arbitrator as to the amount of compensation—Time-limit for preferring such appeal is governed by the E. B. Emergency Requisition of Property Rules, 1948—When such appeal is filed out of time as provided in the Emergency Requisition of Property Rules, the plea that since the Town Improvement Act does not provide any period of limitation, the time for preferring appeal will be governed by Article 181 of the Limitation Act is without basis.

Since it was conceded that the appeal was governed by the East Bengal Emergency Requisition of Property Rules, 1948, the contention that in the absence of any period of limitation provided in the Town Improvement Act, 1953, the period of limitation as provided in Article 181 of the Limitation Act was applicable is without any basis. ***Bangladesh Vs. Moslem Mia.*** (1979) 31 DLR. (AD) 45

In restitution matters as no limitation has been provided for its institution in the Limitation Act, Article 181 is therefore attracted.

Application for restitution is an application for which no limitation has been specifically provided for in the law and as such it attracts the residuary provision of Article 181.

A restitution application is not governed by Art. 182 but is governed by Art. 181 of the Limitation Act.

"Right to apply" under section 181 accrues with effect from the date of the final decree of the appellate court. ***Shamuj Ali Vs. Kamalarma Bibi.*** (1981) 33 DLR (AD). 101

Revisional application and limitation—No time limit has been specifically provided in the Limitation Act for moving an application in revision and therefore article 181 of the Act will be invoked—High Court's power in such matter u/s. 115 C.P. Code.

---

[1]Subs. by the Repealing and Amending Act. 1923 (11 of 1923) s. 2 and First Sch. for Ditto.

—Art. 181

It is now well settled that the Limitation Act does not provide for any period of limitation for an application in revision. This has been clearly laid down by the Supreme Court of Pakistan in the case of Muhammad Swaleh and another Vs. Messers. United Grain and Fodder Agencies reported in 16 DLR (SC) 155. *Mrs. Nadira Rahman Vs. Sayed Amir Hossain.* (1983) 35 DLR. 277

A suit within the meaning of section 2(22), Bengal Money Lenders Act, was pending as long as there was a right to obtain a personal decree which was not barred under Article 181, Limitation Act. *Joychand Lal Babu Vs. Kamalaksha Chowdhury.* (1949) 1 DLR 46.

Application under section 62G.B.T. Act must be filed within 3 years if 15 years had elapsed before the date when the section 26G come into force. *Suresh ch. Bose Vs. Sobhan Mirdha.* (1955) 7 DLR 426.

Under section 26G of the Bengal Tenancy Act which was introduced by the amending Act of 1938, a mortgagor is entitled to apply for the return of the mortgaged lands on the expiry of the period of 15 years. If this period of 15 years had already elapsed when section 26G was enacted, then under Article 181 of the Limitation Act, the mortgagor will have to apply within three years from the date on which the section came into force; his application for recovery of possession after 3 years under section 26G cannot be entertained being time-barred. *Ibid.*

If the execution sale was a nullity, namely, made without jurisdiction or is void ab initio Article 166 has no application and Article 181 would come in. *Jnanendr Sundari Nandi Vs. Narayan ch. Sardar.* (1955) 7 DLR 627.

An application under section 26 G of the Bengali Tenancy Act would be governed by Article 181 and not by Article 131 of the Limitation Act.

Article 131 applies only in a case of establishing a periodically recurring right. *Yousuf Ali Mandal Vs. Lokman Sarkar.* (1959) 11 DLR 533.

Where no notice of transfer under section 33 of the Sylhet Tenancy Act has been served on the landlord, the latter will have 3 years under Article 181 of the Limitation Act to make an application for pre-emption from the date of registration of the instrument of transfer and in a proper case the applicant will be entitled to the benefit of section 18 of the Limitation Act also. if a case of fraud is established. *Chandra Kr. Bhattacharyya Vs. Siraj Mia.* (1951) 3 DLR 358.

Limitation for pre-emption—Where no notice of transfer has been served on a co-sharer-tenant—provisions of clause (a) of sub-section (4) of section 26F in a proceeding for pre-emption not attracted—Residuary Article 181 of the

—Art. 181 :

Limitation Act of three years limitation is applicable. *Hiralal Mondal Vs. Shamsur Rahman Sheikh,* (1969) 21 DLR 239.

Decree-holder has option to apply for drawing final decree for sale on default of any one of the instalments granted under the re-opened decree under section 36 of the Bengal Money Lenders Act.

It is not obligatory to apply for final decree within three years form the first default to save limitation. *Bahauddin Ahmed Vs. Kashemada Kinkar Roy* (1964) 16 DLR 686.

Art. 181 and 182 : The criterion in determining whether Article 181 or 182 of the Limitation Act applies to a particular application for execution is to as certain whether any one of the several points of time specified in column 3 of Article 182 is applicable to it, and if none of them is applicable then Article 181 of the Limitation Act must apply. *Mymensingh Co-operative Town Bank vs. Rajendra Ch. Roy.* (1960) 12 DLR 730.

Arts. 181, 169 : Applicability—Art. 169 applies only when there is a decree and not to an exparte order—Art. 181 applicable to application for hearing in case of such order.

Held : that as the wording of Art. 169 shows that it can apply only where one has a decree, the proper Article to apply, in the case of an application for re-hearing of an appeal, decided ex-parte (from an order refusing an interim injunction) is the residuary Art. 181 and not Art. 169, and an application for re-hearing presented within 3 years of the exparte order is in time. *Noor Muhammad Vs. R. C. Karachi,* PLD 1959 (W.P.) Karachi 19—PLR 1959 (1) (W.P.) Karachi 1085.

Arts. 181, 131—Application under B. T. Act. s.26G—Art. 181 applicable.

An application under section 26 G of the Bengal Tenanoy Act, 1885 is governed by Article 181 and not by Art. 131 of the Limitation Act, 1908 which applies only in a case of establishing a periodically recurring right. *Yusuf Ali Vs. Lokman.* PLD 1960 Dacca 225.

Art. 181—Application under C.P.C.s. 151—Art. 181, applicable—Application may be made within three years.

Section 151 of the Code of Civil Procedure does not make any mention of the time within which the Court may exercise its powers under that section, the other two sections say that the powers mentioned therein may be exercised at any time, with regard to any application under section 151. Article 181 of the Limitation Act would be applicable because that Article provides that if no period of limitation had been prescribed in any of the other Articles with regard to any applications they could be made within three years of the date on which occasion to make them arises. *Sher Muhammad Vs. Khuda Bux.* PLD 1961 (W.P.) Lahore 579.

—Art. 181

Award, Filing of

Arts, 181. 178—Award, filing of in Court—Which Article would apply—Circumstances described.

If a party to the arbitration agreement does not make a request to the arbitrator or umpire for filing the award in Court it can directly come to the Court and request it to order the arbitrator or the umpire to file the award or a signed copy thereof in court. Such an application will be governed by Article 178 of the Limitation Act if notice of the award has been given to the applicant, as provided by sub-section (1) of section 14. But if no notice is given, then the only Article which would be attracted would be the residuary Article 181 of the Limitation Act, which provides a period of three years from the date when the right to apply accrues. The right to apply accrues to a party immediately when an award is made and he receives the knowledge thereof. *Muhammad Shafi Vs. Muhammad Sabir* PLD 1960 (W.P.) Lahore 591—PLR 1960 (2) Lahore W. P. 1332.

Execution of Decree.

Art. 181—Applicability—Possession taken under wrong decree—Art. 181 not applicable.

An application by a party for correction of mistake in a decree wrongly including a plot of land in it and for restoration of possession of the same to the applicant which had been taken in execution of such decree cannot be treated under s. 47 Civil P. C. as it does not relate to execution discharge or satisfaction of the decree and no question of limitation arises in the case and therefore Art. 181 has no application. *Samal Singh Vs. Jhunkoo Singh* AIR (33) 1946 Oudh. 210.

Maintenance decree—Application for variation from cash to grain basis—period spent in prosecuting application for variation is not excluded.

A decree for maintenance payable in cash was passed in 1922. The decree was being executed until filing of a suit in 1935 for variation of the maintenance into grain basis from cash. The trial Court decreed the claim partly on 9th July 1937. On appeal the suit was dismissed on 12 August 1940. During the pendency of the suit the decree-holder sought to execute maintenance decree, but it was dismissed on 13th August 1937 as not pressed. A fresh application was filed in 1941 claiming dues from 10th January 1935 to 10th January 1941.

Held: (1) that the suit for variation of the maintenance decree was no legal impediment in the way of execution. Hence the period of the suit could not be excluded. *Ambujammal Vs. Singarammal* AIR (33) 1946 Madras 67.

Arts. 181, 182—Permanent injunction, decree for—Not immediately executable—Execution governed by Art. 181.

Where a decree prohibits the defendant from obstructing a village path it is a decree granting permanent injunction and is not capable of execution on the date it is passed or in other words, until an obstruction is caused there is

—Art. 181

nothing to execute. In such circumstances its execution may not be necessary till after 12 years of the date of its passing. As soon as any obstruction is caused and the Court's order in that behalf is breached a cause of action for enforcement of the decree arises. In such cases Art. 181, Limitation Act applies and not Art. 182 and the decree-holder's right to apply accrues only when the obstruction is caused. Such a decree is beyond the reach of the bar provided in s. 48, Civil P. C. *Shyam Sunder Vs. Ramdas Singh*, AIR (33) 1946 Patna 392.

Instalment decree.

Art. 181—Instalment decree with condition that in case of default of three instalments entire unpaid amount shall be payable in lump sum—When limitation runs for application for final decree for entire amount.

Article 181 applies to application for final decree. The expression "when the right to apply accrues" in the article means "when the right to apply first accrues". It may be that in a particular case the plaintiff may not make an application on the first occasion that he became entitled to make one, but that would not prevent the limitation running against him, which depends, upon the time of accrual of the right to make an application. The limitation does not depend upon the forbearance on the part of the plaintiff to exercise his right but upon the date of the accrual of that and, therefore, it cannot remain suspended by reason of any omission or forbearance on the part of the plaintiff.

Where, therefore, a preliminary mortgage decree for sale provides that the decretal amount shall be paid in instalment and in case of non-payment of any three instalments "the entire unpaid amount shall be payable in a lump sum" and there is a default in payment of three instalments no option having been conferred on the plaintiff under the terms of the decree the limitation under Article 181 for an application for preparation of a final decree runs from the date when the plaintiff becomes first entitled to make the application i.e. the date fixed for payment of the third instalment. *Bhagwati Vs. Sant*, AIR (33) 1945 Allahabad 360.

Revival of Appeal.

Article 181—Restoration of appeal dismissed for default—Article applicable —Period of limitation.

Article 181 of the Limitation Act is applicable, for it has been held that applications to restore an application to set aside an ex parte decree which has been dismissed in default come within the purview of the Article. In the light of these circumstances, the period of limitation is therefore three years and the application itself therefore not time barred. *Fazil Khan Vs. Muhammad Azim*, PLD 1954 Baluchistan 18.

Starting Point of Limitation.

Art. 181—Restitution, Suit for—When time would begin to run.

—Art. 181

One M brought a suit for possession of land against the defendant and obtained a decree on 31st Agust 1939. She obtained possession of the land in execution on 27th November 1939. The defendant appealed to the District Judge, who set aside the decree of the trial court and remanded the case for retrial on 15th February 1940. The trial Court, after the remand, dismissed the suit on 28th March 1940, M's appeal to the District Judge was dismissed on 9th July 1940 and her second appeal to the High Court was dismissed on 27th May 1941. The defendant applied for restitution and the delivery of possession of the land back to him on 19th January 1944.

Held: that immediately on the passing of the order by the District Judge on 15th February 1940 setting aside the decree passed in M's favour the defendant became entitled to restitution. In any case the right accrued to the defendant on 28th March 1940, when the suit was dismissed by the trial Court and the decree previously passed in M's favour ceased to exist. The application was therefore time-barred. *Kishan Singh Vs. Harnam Kaur*. AIR (33) 1946 Lahore 416.

Article. 181. Application for which no period is provided,—3 years, when the right accrues.

Article. 181 is not confined to applications under C.P.C. 1952 *Cal.* 689: 88 *C.L.J.* 183.

Article. 181 applies only to applications made under C.P. Code. 1942 *Cal.* 390 : 46 *C.W.N.* 326, 1933 *P.C.* 63: 37 *C.W.N.* 379.

Application contemplated in Article 181 is *ejusdem generis* with the specified applications. 1933 *All.* 789 *F.B.*

An application for final decree under Or. 34. r. 5 C.P.C. is governed by Article 181 and time runs from the date of payment fixed in the decree. 87 *I.C.* 746: 1925 *Cal.* 1930 85 *I.C.* 272: 1925 *Mad.* 334, 26 *C.W.N.* 858: 1922 *M.W.N.* 338: 49 *C.* 203, 24 *Bom. L.R.* 659 *P.C.*. 25 *Bom. L.R.* 459: 73 *I.C.* 187, 43 *A.* 320, 40 *A.* 553. 40 *A.* 203, 39 *A.* 641, 38 *A.* 21, 178.

Where an instalment mortgage decree provides that on default of any three instalments the entire amount shall be payable the plaintiff must apply within 3 years of the third default. 1946 *All.* 360.

When appeal is preferred against a preliminary mortgage decree, right to apply for final decree accrues on the date of appellate order. 24 *A.L.J.* 765, 44 *C.L.J.* 63: 7 *Pat. L.T.* 575: 1926 *M.W.N.* 591: 31 *C.W.N.* 58: 1926 *P.C.* 93: 51 *M.L.J.* 781: 6 *Pat.* 24, 28 *Bom. L.R.* 1953 *P.C.* 50-*B.* 730 : 98 *I C.* 243: 1927 *Bom.* 32, 37 *C.L.J.* 452. 39 *A.* 641, 40 *A.* 203, 40 *M.* 714, 1 *Pat.* 444 :3 *Pat L.T.* 329: 66 *I.C.* 790, 74 *I.C.* 372, 89 *I.C.* 214: 23 *A.L.J.* 867: 1925 *All.* 691, 1939 *Lah.* 73 : 181 *I.C.* 119, 1947 *All.* 83: 227 *I.C.* 57, but if the appeal is dismissed for non-prosecution that does not extend time. 3 *Pat. L.T.* 565: 66 *I.C.* 97.

—Art. 181

A mortgagee-decree-holder must apply for final decree within 3 years against the non-appealing defendants against whom separate amount has been decreed. 43 *A*. 320.

Where the right to apply for final decree is suspended by any order of the court, the application is not barred by limitation even if made after 3 years from the date of preliminary decree. 25 *C.W.N.* 376: 33 *C.L.J.* 260, 20 *A.L.J.* 580: 68 *I.C.* 175, *contra*. 18 *N.L.R.* 58: 68 *I C.* 919.

There is no limitation for making an application for a final decree in a suit for partition and accounts. 1948 *Cal.* 363: 53 *C.W.N.* 582.

Death of next friend after preliminary decree, application by minor after attaining majority, s. 6 L. Act does not apply, but under Or. 34, r. 10 the suit remained in abeyance and the application was maintainable. 37 *C.W.N.* 184: 1933 Cal. 508.

An application for a personal decree under Or. 34, r. 6 C.P.C. is governed by Article 181. 52 *C.* 828: 29 *C.W.N.* 678: 1925 *Cal.* 834 *F.B.*, 58 *C.* 741 : 52 *C.L.J.* 531 : 35 *C.W.N.* 231 : 1931 *Cal.* 166, 32 *C.W.N.* 971, 42 *M.* 52, 60 *C.* 19: 1933 *Cal* 251, 53 *C.W.N.* 631.

When a sale is set aside an order is made for the refund of the purchase money to the auction-purchaser, in an application by the mortgagee for a personal decree under Or. 34, r. 6 C.P.C. limitation commences under this Article from the date on which the purchase money is refunded. 49 *A*. 506: 100 *I.C.* 775 : 1927 *All.* 395: 25 *A.L.J.* 485.

Where some of the legal representatives have been brought on record within time, a subsequent application for bringing others on record is governed by this Article 1945 *Nag*. 53.

Application by legal representatives of D.H. to continue the execution proceedings is not governed by this Article. 1942 *Cal.* 390: 46 *C.W.N.* 326.

An application to be added as a plaintiff in place of a deceased plaintiff in a suit under Or. 1, r. 8 C.P. Code is governed by this Article. 1931 *Mad* 590: 132 *I.C.* 289.

An application for mesne profits by way of restitution under sec. 151 C.P.C. is governed by Article 181. 1933 *Lah.* 876 : 144 *I.C.* 553, 1948 Cal. 37: 51 *C.W.N.* 302.

When execution petition is stayed by injunction or prohibitory order a subsequent application is a revival. 39 *C.W.N.* 1030, 35 *C.W.N.* 540: 58 *C.* 1113: 134 *I.C.* 939, 34 *C.W.N.* 102: 1930 *Cal.* 329, 42 *A*. 564, 37 *C.* 796, 23 *C.* 437, 24 *C.* 397, 1924 *Mad.* 210, 6*A*. 23, 32 *C.L.J.* 328, 3 *P.L.J.* 103, 49 *A*. 276: 1927 *All.* 16 *F.B.*, 1940 *All*, 151: 187 *I.C.* 313, 1948 *Nag*. 284: 2 *D L.R.* 460. so also in case of suspended execution. 20 *C.W.N.* 686, 26 *M.* 780, 30 C. 407 : 36 *M.* 553 but not so when the execution case is not suspended even if a claim is preferred. 1926 *M.W.N.* 317.

—Art. 181

There is essential difference between an application for the execution of a decree and an application to revive a previous application for execution. S. 15 applies to the former and not to the latter class. 49 *A.* 276 : 100 *I.C.* 692: 1927 *All.* 16 *F B.*, 39 *C.W.N.* 1030.

An application for execution of a decree for injunction falls under this Article. 1935 *Lah.* 702 : 160 *I.C.* 777, 1946, *Pat.* 392 : 224 *I. C.* 37.

Limitation for execution of an instalment decree with a default clause starts with the default, unless the D.Hr. waived or condoned it. 1950 *Bom.* 188 : 5 *D.L.R. Bom.* 106 *F.B.*

An application under Or. 21, r. 91, to set aside a sale of a tenure which has already been sold for arrears of rent is governed by this Article. 14 *C.W.N.* 1096.

An application for restitution under sec. 144 C.P. Code falls under this Article. 1941 *All.* 28 : 193: *I.C.* 387, 1940 *Cal.* 260: 44 *C.W.*N. 438, 1947 *Nag.* 239.

An application under *S.*47 *C.P.C.* is governed by this Article. 1927 *Cal*, 57: 97 *I.C.* 697, 1934 *All.* 314, 1949 *E.P.* 213 : 4 *D.L.R. Simla* 156.

An application for restitution under s. 144 C.P. Code is governed by this Article. 35 *C.W.N.* 1294, 1934 *All.* 626 *F.B.*, 21 *C.W.N.* 564 : 24 *C.L.J.* 451, 38 *A.* 339, 42 *M.* 753 *F.B.* 8 *Bur. L.T.* 165, 30 *I.C.* 680, 5 *Lah L.J.* 389, 46 *B.* 1031, 16 *I.C.* 238, 54 *I.C.* 664, 46 *I.C.* 328, 1926 *Lah.* 685, 44 *I.C.* 301, *contra.* Article 182 applies, 45 *B.*, 1137 : 19 *Bom. L.R.* 632, 1917 *M.W.N.* 643, 1934 *Pat.* 246 *F.B.*, 1952 Trav. Co., 406.

An application under s. 26 J. B.T. Act is governed by this Article. 38 *C.W.N.* 50

When a decree reversing that of the trial Court is affirmed in second appeal limitation for restitution runs from first appellate decree which gives the party right of restitution. 32 *C.W.N.* 971, 1928 *Cal.* 646 *Sp. B.* 1932 *All.* 609.

An application to set aside a sale held without jurisdiction falls under this Article. 1954 *Pat.* 429.

When an execution sale is a nullity because property sold is in excess of property mortgaged, an application to have it set aside under s. 47, C.P.C. is governed by Article 181. 1931 *Lah.* 1934 *All.* 314.

A certificate by the decree holder of a payment made to him under Or. 21, r 2(1) is not an application under this Article. 33 C. *W.N.* 267 : 27 *A.L.J.* 33 : 31 *Bom. L.R.* 389 : 1929 *P.C.* 19 : 114 *I.C.* 581 *P.C.*

Art. 182

THE FIRST SCHEDULE.—*contd.*

THIRD DIVISION : APPLICATIONS—*contd.*

Description of application	Period of limitation.	Time from which period begins to run.
182.—[1][For the execution of decree or order of any Civil Court other than,— (1) applications to which section 48 of the Code of Civil Procedure, 1908 (V of 1908) applies; and (2) applications provided for by Article 183],	Three years ; or, where a certified copy of the decree or order has been registered, six years.	1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the appellate Court, or the withdrawal of the appeal, or 3. (where there has been a review of judgment) the date of the decision passed on the review, or 4. (where the decree has been amended) the date of amendment, or 5. (where the application next hereinafter mentioned has been made) the date of [2][the final order passed on an application made] in accordance with law to the proper Court for execution or to take some step in aid of execution of the decree or order, or [3][6. (in respect of any amount recovered by execution of the decree or order, which the decree-holder has been directed to refund by a decree passed in a suit for such refund) the date of such last mentioned decree or, in the case of an appeal therefrom, the date of the final decree of the Appellate Court or of the withdrawal of the appeal], or 7. (where the application is to enforce any payment

[1]Subs. by the Limitation (Amdt.) Ordinance, 1962 (43 of 1962), s. 5, for the words "For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908".

[2]Subs. by the Indian Limitation (Second Amdt). Act, 1927 (9 of 1927), s. 2, for "applying".

[3]Subs. *ibid.*, for the original clause 6.

—Art. 182

THE FIRST SCHEDULE.—*contd.*

THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
		which the decree or order directs to be made at a certain date) such date.
		Explanation 1.—Where the decree or order has been passed severally in favour of more persons than
For the execution of a decree or order of any Civil Court other than,—	Three years ; or, where a certified copy of the decree	one, distinguishing portions of the subject-matter as payable or deliverable to
(1) applications to which sec. 48 of the Code of Civil Procedure, 1908, applies ; and	or order has been registered, six years. —*contd.*	each, the application mentioned in clause 5 of this article shall take effect in favour only of such of the
(2) applications provided for by Article 183.—*contd.*		said persons or their representatives as it may be made
		by. But where the decree or order has been passed jointly in favour of more
		persons than one, such application, if made by any one or more of them, or
		by his or their representatives, shall take effect in favour of them all.
		Where the decree or order has been passed severally
		against more persons than one, distinguishing portions of the subject-matter as
		payable or deliverable by each, the application shall take effect against only
		such of the said persons or their representatives as it may be made against. But,
		where the decree or order has been passed jointly against more persons than
		one, the application, if made against any one or more of them or against
		his or their representatives, shall take effect against them all.
		Explanation II.—"Proper-Court" means the Court whose duty it is to execute the decree or order.

—Art. 182

(read with article 45 and section 35 of the Stamp Act).

Limitation for execution of a decree starts from the date the decree is drawn up and signed by the Judge.

In the instant case the final decree was passed on 30.11.54 but the decree was drawn and signed on 22.5,65. The decree could not be drawn and signed earlier as the required stamp-paper was not put in. A decree in a partition suit is an instrument of partition which is chargeable with stamp duty under article 45 of the Stamp Act, 1898, and unless it is duly stamped the decree is nat admissible in evidence as provided in section 35 of the Stemp Act, ***Aminullah Bhuiyan Vs, Abdul Hafiz.*** (1981) 33 DLR (AD), 282.

Art. 182(5) : Execution case started beyond 3 years from the date of decree was dismissed for decree-holder's default, as on the date fixed for hearing objection under Order 21, rule 22 Civil Procedure Code decree-holder took no step and his pleader declined to proceed—Another execution case started within 3 years from the date of the dismissal of the earlier execution case—Held : Earlier execution case was to be held impliedly barred by limitation and consequently the second execution case was barred by limitation (on the principle of constructive res judicata.) *Kabiruddin Ahmed Vs. Official Liquidator* (1969) 21 DLR 63.

An execution application without an inventory of the movables and dismissed for default is nevertheless a step in-aid for the purpose of saving limitation.

Held : A list of property is to be given as required under rule 12 of Order XXI C.P, Code only when the movable property is not in possession of the Judgment-debtor. Here the respondent did not seek execution of the decree by sale of movable property in the possession of someone other than the Judgment-debtor. It was therefore absolutely unnecessary for the decree-holder to annex an inventory of the movable property.

If the movables to be attached were in the possession of the judgment-debtor there is no rule which requires decree-holder to specify those movables.

Further held : The first application for execution was submitted on 27.7.1963 and the present execution case has been instituted within two years from that date. Decree-holder was therefore, entitled under clause (5) of Article 182 to institute such a case within three years from 18.9.63. the date of dismissal of execution case. Therefore the 2nd execution case of 1965 is clearly within time. *Farid Ahmed Chowdhury Vs. Tripura Modern Bank Ltd.* (1969) 21 DLR 316.

Execution application though against a wrong person is yet a step in aid of execution.

An application for execution made under the influence of a bonafide mistake against a wrong person though that application could not be acted upon, still it was an application in aid of the execution within the meaning of Article 182(5) of the Limitation Act.

—Art. 182

This also is supported by the provision of Order 21, rule 11 of the Code of Civil Procedure which gives this scope for amendment of the application. In the present case the application was filed against the 4 judgment debtors ; only one of whom is alleged to have died on the date of filing the application. Therefore, the application was perfectly legal so far as the other 3 judgment-debtors are concerned. So far as the alleged deceased judgment-debtor is concerned the application must be regarded as merely a stepin aid of execution of the decree against the said deceased judgment-debtor. *Momena Khatun Vs. Anu Meah* (1967) 19 DLR 386.

Execution case once started, it ceases to be on the death of the judgment-debtors (a mutwalli in this case) or it ceases to be on the date on which the the execution case was dismissed.

Upon the death of the mutwalli all his heirs were brought on record in time which included the next mutwalli—Amendment petition to treat the mutwalli on record made out of time—Proceedings not time barred. *Chandra Mohan Chowdhury Vs. Abbasuddin Chowdhury* (1962) 14 DLR 649.

Filing second application for execution of a decree within three years from the date of the order of dismissal for default of the first execution case is not barred by limitation.

Decree holder's application for execution was made in August, 1956 and that being more than one year after the date of the decree a notice under Order 21, rule 22 C.P.C. was served on the judgment debtor and the latter having raised objection thereto a miscellaneous case was started but this miscellaneous case was dismissed for default in February, 1958 and eventually the execution case itself was dismissed for non-prosecution in the same month of 1958.

Thereafter the decree-holder started another execution case in February, 1960 and met with the defence that his execution case was barred by limitation, it being more than 3 years from August, 1956.

Held : In view of the provision of Art. 182(5), the order dismissing the execution case passed in February, 1958 was a final order so far as the earlier execution case was concerned and therefore the second application for execution made within 3 years from the date of final order was not barred by limitation and maintainable in law. *Munshi Moizuddin Ahmed Vs. Mustafa Hossain* (1962) 14 DLR 828.

The application for delivery of possession under Order 21, rule 95 of the Code by the decree-holder auction-purchaser cannot be considered as continuation of the execution of the decree and consequently to a case like this Article 180 and not Article 182 will apply.

In the case the application having been filed more than three years from the date of the confirmation of the sale, it was obviously barred by limitation. Nor can, in any view of matter, the said application be taken as a continuation of the previous application made on the 7th December, 1945, for the order dismis-

—Art. 182

sing the previous application for non-prosecution is judicial determination and not a mechanical disposal for statistical purpose for which there is no provision in law. *Umesh Ch. Modak vs. Jatindra K. Modak* (5 DLR 163 affirmed) (1955) 7 DLR 171 (179).

Limitation for execution of a decree in a partition suit, will run from the date on which the order for drawing up a final decree was passed. *Abdus Salam vs. Achia Khatun* (1956) 8 DLR 40.

Although section 130 of the Bengal Co-operative Societies Act does not say that the award shall be treated or deemed as a decree of the civil court for all purposes, it is clear that in case the award is made under section 87 or under section 88 of the Bengal Co-operative Societies Act, and is sought to be enforced through a civil court it shall be enforced in the same way as the civil court enforces its own decree and consequently for purposes of limitation, Article 182 of the Limitation Act read with section 48 of the Civil Procedure Code will govern the case, that is to say, it may be executed within the period of 12 years from the date of the decree, provided steps in-aid of the execution are taken at intervals of not more than three years from the date of the decree and the decree is kept alive. *Khitish Ch. Jhon vs. Mymensingh Co-operative Town Bank* (1954) 6 DLR 617.

Applicable to cases there where there has been an appeal—Appeal dismissed for want of prosecution—Article 182 does no apply and only section 48, C.P. Code is applicable in such case—Article applies when decision is on merits. (1954) PLR (Lah.) 522.

Art. 182 cl. (2) : Where there has been an appeal.

The language used in Article 182(2) is sufficiently wide to include an appeal the rusult of which may affect the decree which is sought to be executed in such a way as to render the execution proceedings in connection with such decree infructuous. An appeal, against an order refusing to set aside an ex parte decree on an application under Order 9, Rule 13 of the Code of Civil Procedure, is also an appeal in substance though not in form against the decree itself.

It is significant that Article 182 of Limitation Act makes no provision for fresh limitation from an order rejecting an application by the trial Court under Order 9. rule 13 of the Code of Civil Procedure. If it had been intended that an appeal from an order rejecting an application would have kept the decree open, it would have been provided also that an applieation to the trial Court to set aside an ex parte decree would keep the decree open. 1 PLR (Dac.) 215.

Art. 182 cl. (4) : Where a decree is amended it is immaterial whether the amendment is of a clerical nature or of substantial character—The amendment of the decree would give a fresh starting point for limitation. 1954 PLR (Lah.) 359.

Art. 182 (3): Review whether granted (or rejected is a decision in accordance with the Article.

—Art. 182

The word 'review' in clause (3) of Article 182 of the Limitation Act not only means where a review has been allowed, that is, what the judgment whose review has been sought, has been modified or altered on review of that judgment but also means where review has been rejected and therefore whether a review has been granted or refused it will be a decision and time would run from the date of such decision under clause (3) Article 182 even when such application for review has been rejected. *Mymensingh Co-operative Town Bank vs. Rajindra Ch. Roy* (1960) 12 DLR 730.

Art. 182(2)(3): Execution case will be within time if it is filed within three years from the date when the review (or revision) application is rejected. *Ibid.*

Applicability—Applies only where there is an appeal.

Article 182 provides for cases "where there has been an appeal" even if an appeal had been dismissed for want of prosecution, time would, on account of the wording of Article 182, run from the date of the decision of the appeal. *Ghulam Jilani Vs. Muhammad Abdullah.* PLD 1954 Lahore 388 ; PLR 1954 Lahore 522.

(5)—Execution, application for—Time runs from final order on application.

Unde Art. 182 clause (5) Limitation Act, time runs from the date of the final order passed on an application made in accordance with law to the proper Court for execution, or to take some step-in-aid of execution of the decree or order,

Under Order XXI, rule 16 Civil Procedure Code, when, the interest of decree-holder is transferred under operation of law the transferee has to apply for execution of the decree to the Court which passed it. It is, therefore, clear that a transferee of a decree must apply in execution to the Court which passed the decree though the decree may have been sent for execution to another Court. A court to which a decree is transferred for execution is not the proper Court within the meaning of Article 182 clause (5) Limitation Act. I am, therefore, of opinion that the execution application of 7th April 1941, made by a person who has not been brought on record as the legal representative of the decree-holder, and which application was not made to the proper Court, could not be considered as step-in-aid of execution. *Nihalmal Haryal Mal Vs. Lachmibai* PLD 1950 Sind 167.

Applicability—Essential for application of section stated.

In order that Cl. (5) of Article 182 may apply there must be three things: first, an application made in accordance with law; secondly, the application must be made to the proper court and thirdly it must be either for execution or to take some step-in-aid of execution. The words "to take some step-in-aid of execution" cannot be read independently of the word application.

Article, 182—Expl. (l) Joint or separate decree—Test.—Joint decree passed against more than one person—Article 182 (Explanation) applicable.

No hard and fast rules for deciding whether a particular composite decree is one decree or comprises separate decree can be laid down. A decree is a

—Art. 182

joint decree within the meaning of Article 182 Explanation I, if any one of the reliefs given in the decree is against the defendants jointly even though some other reliefs may be given against the defendants separately, so that if in respect of the joint relief an application for execution is made against one or all of them it will save limitation in regard to all the defendants even in respect of the reliefs which have been decreed against them separately. A combination of different decree-holders and judgment-debtors, in respect of the joint and separate reliefs, will not transform the decree into two distinct and separate decrees if the facts taken as a whole justify the conclusion that the decree is one decree.

The plaintiffs and defendant B and other defendants were parties to a final partition decree passed in 1932. Under the terms of the decree, the parties were to get possession of their respective lots, keeping joint Beels, Gopats, Khals and Nalas. There was a further direction in the decree that the cosharers mentioned in list Kha which included the plaintiffs and other defendants should get the compensation money mentioned therein from the cosharers mentioned in list Ka including B to the extent indicated in list Kha in lieu of additional land allotted to them. On 15th January 1937 the plaintiffs decree holders, applied for execution of the decree making parties all the defendants judgment-debtors, including B and asked that possession should be given of the lands in accordance with the decree. They also sought to realise the sum of Rs. 2552 to which, they were entitled according to list Kha, from certain specified defendants judgment-debtors of list Ka, but they did not ask for any such relief against B. The execution case was disposed of on 19th May 1939 after confirmation of possession of the lands delivered to the parties on 20th April 1939.

Held: that ordinarily the decree in a partition suit was one decree and there was nothing in the form of the decree in question to indicate, prima facie, any departure form the ordinary rule. Separate reliefs were of course allowed but that fact would not by itself transform the decree into two decrees nor could the fact, that the combination of the decree-holders and judgment-debtors entitled to reliefs under the two portions of the decree were different transform the decree into two decrees. The decree, therefore, was a decree passed jointly against more persons than one within the meaning of Article 182. Explanation I. The application for execution dated 15th January 1937 against all the co-sharers by delivery of possession of the lands which were allotted severally and of the land which was kept jointly was sufficient to save from bar of limitation the relief for award to the plaintiffs decree-holders of compensation money payable *Muhammad Ishak Vs. Karunamoy Choudhury.* AIR (33) 1946 Calcutta 266.

Scope—Starting point different under S. 48 C.P.C.—Article 182 would not apply.

Held : we cannot say that because there is a difference with respect to the starting point between Article 182 and Section 48, we should apply the language used in Article 182 to Section 48 also. *Ghulam Jilani Vs. Muhammad Abdullah.* PLD 1954 Lahore. 388—PLR 1954 Lahore 522.

Suit under Or. 21, r. 63—Art. 182 not applicable.

—Art. 182

The word "application" in Art. 182 does not include a suit filed under Or. 21, r. 63 Hence a plaint or suit filed under Or. 21, r. 63 cannot be treated as an application within the meaning of Artcle 182. *Sadaksharappa Vs. Karlingawa.* AIR (33) 1946 Bombay 187. Foll: 17 Cal. 268: AIR 1942 Mad. 5; AIR 1938 Nag. 534 Diss: AIR 1930 Oudh 468; AIR 1936 Oudh 248 Dist. AIR 1939 Pat. 138; AIR 1928, Mad. 1201.

Clause 2.

Article. 182(2)– "Final decree or order of the appellate court"—Meaning of—Order made in proceedings under Or. 9 r. 8. C.P.C.—Not included in the expression.

The words "the final decree or order of the appellate Court" in Article 182 (2), Limitation Act, mean the final decree or order passed on appeal from the decree which is sought to be executed and do not include the final decree or order that may be passed on appeal from an order made in a proceeding under Or. 9, r. 13, Civil P.C. to have the decree which is sought to be executed set aside. Hence an appeal from an order rejecting an application to set aside an ex parte decree under Or. 9, r. 13 Civil P.C. does not extend the period of limitation for execution of the decree under Article 182, (2) *Haris Chandra. Vs. Dines Chandra.* AIR (33) 1946 Calcutta 375.

Clause 5.—Application In Accordance With Law.

Article 182: "In accordance with law"—when application is—Tests stated.

No hard and fast rule can be laid down to decide whether an application for execution is 'in accordance with law' within the meaning of Article 182 (5) Limitation Act. The point has to be determined with reference to facts and circumstances of each case. Defects in the application which are of a minor nature do not make the application not in accordance with law. It is also not always necessary for the decree holder to quote the section on which he relies and under which relief can be granted. The test in such a case is "Could the Court proceed with the case notwithstanding the defect ?" and if it could, then the application can be considered to be one in accordance with law.

Where a decree holder filed in the Court passing the decree an application for execution by attachment of property which did not lie in the territorial jurisdiction of the Court, giving all the necessary particulars required by clause (j) of Or. 21, r. 11(2) Civil P.C., but without an express prayer for transfer of the decree to the court in whose jurisdiction the property lay it was held that sub-Cl. (V) of Cl. (j) is a general one and if what is require by sub-Cl. (V) is not ex-pressly stated, it would onl amount to an irregularity and not an illegality affecting the merits of the application. Moreover, this was a case in which the Court could, on the particulars furnished, proceed to do what was necessary for the decree holder and, therefore, the application was in accordance with law; *Kaumal Meghraj Vs. Govind Prasad and another* AIR (33) 1946 Nagpur 365.

—Art. 182

Order 21, r. 11, Civil P.C. is mandatory. An application for execution, which does not contain the specified particulars mentioned in that rule one of which is the number of the suit, therefore, is not in accordance with law. *Vemulapali Satyanarayana Vs. Vatrapu Kajireddi and others.* AIR (33) 1946 Madras 61.

Clause 5—Final Order.

Article. 182(5): Final Order—Proceedings in execution closed for statistical purposes—Not final order—Former application may be revived—Fresh application not necessary.

Where an execution petition is ordered by the Court to be closed for statistical purposes, such order is not a final order and a fresh application filed as the result of the former petition having been closed for statistical purposes is not regarded in law as being a fresh application but an application to revive or continue the former application. *Vadlamanneti Damodrara Rao Vs. The Official Receiver, Kishna and another.* AIR (33) 1946 Madras 170. (D.B.) Rel: AIR 1950 Mad. 568; AIR 1945 Mad. 236.

Clause 5—Proper Court.

Article. 182 (5)—Proper Court—Suit under Or. 21. r. 63 filed in Court—Court not proper Court.

The Court in which a suit under Or. 21, r. 63 is filed cannot be deemed to be the proper Court within the meaning of Article 182, because the circumstance that a suit of this nature happens to be filed in the Court in which the execution proceedings are going on must be purely accidental and cannot, therefore, be held to amount to compliance with the requirement of law. *Sadaksharappa Kabbur and other Vs. Karlingawa Karadi and others* AIR (33) 1946 Bombay 187.

Clause 5—Step-in-Aid.

Article. 182 (5)—Step-in-aid—Application by decree holder for execution application to be sent to another court is step-in-aid.

An application by a decree-holder to have his decree sent to another Court for execution is a step-in-aid within the meaning of Article 182 of the Limitation Act. *Firm Attar Din-Muzaffar Din Vs. Abdul Aziz and another.* PLD 1954 Peshawar 104.

Step-in-aid—Appeal against decree of lower court accepting objection of judgment-debtor that particular property was not open to execution—Not a step-in-aid.

In execution of a decree the judgment debtor's objection that the property was not liable to attachment was rejected but was upheld on appeal by the judgment- debtor. Instead of proceeding against other property of the judgment debtor the decree holder filed a second appeal from the order which was

—Art. 182

ultimately dismissed on 24.3.1961. In consequence his application for execution was dismissed for default in prosecution on 9.2.1940. The decree holder thereupon filed a fresh execution application on 18.2.1943.

Held : that the mere filing of the appeal by the decree holder was not by itself a step-in-aid of execution and therefore the application was barred by limitation. Even if it be assumed that the filing of the appeal was a step-in-aid it could not possibly be said that any step-in-aid of execution was taken by the decree holder when the appeal was dismissed. *Chandrabali Kalar Vs. Baidyanath Banerjee and another.* AIR (33) 1946 Patna 471.

Art. 182—Suit under Or. 21, r. 63—Art. 182 not applicable.

The application in Art. 182 does not include a suit filed under Or. 21, r. 63. Hence a plaint or suit filed under Or. 21, r. 63. cannot be treated as an application within the meaning of Art. 182. *Sadaksharappa Kabbur and others Vs. Karlingawa Karadi and others.* AIR (33) 1946 Bombay 187. Follow 17 Cal. 268; AIR 1942 Mad. 57, AIR 1938, Nag. 534 : Diss : AIR 1930 Oudh 468. AIR 1936 Oudh 248, Dist : AIR 1939 Pat. 138, AIR 1928 Mad. 1201.

Art. 182 (7)—"Certain date"—Meaning of.

A provision which declares that an amount shall become payable on a certain date, does not "direct its payment" on that date. *Ranglal Agarwalla and others Vs. Shyamlal Tamuli and others.* AIR (33) 1946 Calcutta 500 (F.B.)

"Directs its payment"—Meaning.

A provision which declares that an amount shall become payable on a certain date does not direct its payment on that date. *Ranglal Agarwalla and others Vs. Shyamlal Tamuli and others.* AIR (33) 1946 Calcutta 500 (F.B.)

Instalment decree containing default clause—Execution application relating to instalments—Art. 182 (7) applicable.

For the purposes of limitation, an application must be taken as it is and an application for execution relating to instalments whether it is maintainable or not cannot be treated as one made on the footing of a default clause. The maintainability of such an application depends upon the construction of the particular decree concerned. But so far as the recovery of instalments as such is concerned, the application for that purpose clearly comes under Article 182(7) and there is no room whatever for the application, for the purpose clearly comes under Article 182 (7) and not Article. 181 in such case. *Ranglal Agarwalla and others Vs. Shyamlal Tamuli and others* AIR (33) 1946 Calcutta 500.

Where, therefore, a decree directs payment of the decretal amount by instalments on particular dates and provides that in case the defendant fails to pay any instalment at the stipulated period the entire decretal amount would be due, then after a default has occurred an application for execution relating

—Art. 182

to subsequent instalments, as such is maintainable and any application, made more than three years after the first default, but relating only to instalments which fell due within three years of the date of the application, is within time and is governed by Art. 182, (7) Limitation Act. *Ranglal Agarwalla and others Vs. Shyamlal Tamuli and others.* AIR (33) 1946 Calcutta 500. Ref: AIR 1932 P.C. 207 ; AIR 1926 P.C. 85 ; Mad. 163 (P. C.).

Starting Point of Limitation.

Art. 182 (4)—Amendment of decree—Date of amendment furnishes fresh starting point for limitation.

Where a decree is amended it is immaterial whether the amendment is of a clerical nature or of substantial character. It is not the function of an executing Court to question the correctness or the propriety of a decree.

Therefore, the amendment of the decree would give a fresh starting point for limitation. *Maula Bakhsh Vs. Muhammad Sadiq.* PLD 1954 Lahore 263—PLR 1954 Lahore 359.

Partition—Some properties left joint—One joint holder starting execution proceedings against joint judgment-debtor—Proceedings enure for the benefit of other joint holders.

Where a partition decree has allotted certain properties in severally to each of the parties but has left a portion as joint, the decree is one which is passed jointly in favour of several decree holders and jointly against several judgment debtors within the meaning of Expln. 1 to Art. 182 and if one of the joint decree-holders starts execution within three years of the final decree, this execution case enures to the benefit of other decree-holder as well in view of the Explanation so as to give fresh start of Limitation. *Sarju Prasad Vs. Balldeo Prasad.* AIR (33) 1946 Patna 371. Rel: AIR 1940 Pat. 147 AIR 1932 Cal. 869.

Art. 182. Execution of decree or order of civil court not provided for by Art. 183 or s. 48 C.P.C.—3 years, when registered 6 years, from,—

(1) Date of decree or order,
(2) Date of appellate decision or withdrawal of appeal,
(3) Date of decision in review,
(4) Date of amendment,
(5) Date of final order on application made in accordance with law to the proper Court for execution or to take some step in aid of execution.
(6) Date of decree for refund or appellate decision or withdrawal of appeal.
(7) Date of payment fixed by the decree.

Cl. (1) Date of decree or order.

Time begins to run from the date of final decree. 23 *C.L.J.* 573, 21 *C.* 818, 18 *C.W.N.* 422 *Dist.* 25 *C.* 594, *F.B.*, 23 *M.* 60, 34 *C.*, 874 : 7 *C.L.J.* 305, 18 *C.W.N.* 186.

Limitation runs from the date of judgment and not from the date of signing of decree. 24 *P.* 421.

—Art. 182

In a partition suit limitation runs from date of decree and not from the date of drawing up of final decree on stamp paper. 1943 *Mad.* 650 : 212 *I.C.* 619.

An application for enforcement of an award under Co-operative Societies Act is governed by this Article 1947 *Lah.* 269.

Limitation runs from date of final decree for mesne profits and not the drawing up of decree upon payment of court-fees. 1950 *Pat.* 524 : 29 *P.* 600.

When the original decree is incapable of execution time runs from the date when a proper decree capable of execution is drawn up. 34 *C L.J.* 397, 17 *A.* 39, 25 *C.W.N.* 337 : 33 *C.L.J.* 109 : 40 *M.L.J.* 1 : 23 *Bom. L.R.* 721 *P.C.*

Where a decree was by mistake of the Court dated 16th February, 1929 instead of 11th February and the decree-holder being misled thereby, applied for execution on the 15th February, 1932, *held*, applying the maxim *actus curiae neminem gravabit* that the decree ought to be regarded as having been passed on the 16th February, 1929, 56 *C.L.J* 185.

A mortgage decree was passed against several defendants but *ex-parte* against one defendant, on whose application the decree was set aside as against him and a fresh decree passed, *held* an application for order absolute against all defendants was governed by Article 182 but the starting point of limitation was the date of the later decree. 33*A.* 264 : 15 *C.W.N.* 370 : 13 *Bom. L.R.* 467 : 9 *I.C.* 975 : 2 *M.W.N.* 177 *P.C.*

Where a portion only of the amount decreed is left to be ascertained in future, limitation for execution of the whole decree runs from the date of ascertainment. 36 *M.* 104 : 10 *I C.* 552 : 1911 *M.W.N.* 93.

The parties cannot by agreement change the period of limitation. 39 *C.W N.* 1036, but agreement of set off of cross-decree may alter the starting point. 1934 Bom. 307.

Art. 182. Cl. (2) Date of appellate decision or withdrawal of appeal.

Appeal includes a revision. 1937 *Mad.* 385 : 168 *I.C.* 561 *F.B.*, 1947 *All.* 390 : 1947 *A.L.J.* 79. 1954 *Trav.-Co.* 97.

'Appeal' includes an appeal to the Privy Council and 'appellate court' includes the Judicial Committee of the Privy Council. 7 *C.* 620 : 9 *C.L.R.* 402, 2*A.* 763 4 *A.* 137.

Art. 182 does not say that the decree or order must be passed in an appeal which was a competent appeal, it may be an appeal dismissed as having been filled out of time. 16 *Cal.* 250, *Fol.* 1931 *Pat.* 422 : 12 *Pat. L.T.* 701 : 134 *I.C.* 425.

The starting point of limitation for an application for execution of the decree is the date of the dismissal of the appeal by the High Court and not the date of dismissal by the Privy Council for non-prosecution. 36 *A* 284, 36 *A.* 250, 49 *C.* 203 *Rel. on* 2 *P.L.T.* 28, *not fol.*, 1931 *Pat.* 251 : 11 *Pat.* 477.

—Art. 182

There is no warrant for reading into the words "where there has been an appeal" any qualification either as to the character of the appeal or as to the parties to it. So, an application for execution presented within three years from the date of the decree of the appellate Court but more than three years from the date of the decree of the trial Court is in time even though the appeal was irregular in form and was dismissed on that ground. 1932 *P.C.* 165 : 55 *C.L.J.* 528 : 59 *All.* 283 : 9 *O.W.N.* 861 : 36 *C.W.N.* 803 *P.C.* M.W.N. 817, 34 Bom. L.R. 1065, 65 M.L.J. 229.

An application to set aside an *ex-parte* decree does not keep the decree open because an appellate decree is a decree on appeal from decree sought to be executed and is not to be regarded as an appeal from the *ex-parte* decree itself. 54 *C.* 1052 : 1927 *Cal.* 904 : 21 *C.* 387, 3 *P.L.J.* 119, 16 *B.* 123 *Fol.*, 8 *C* 248 *Dist.* But see 1927 *Pat.* 215, 1928 *Pat.* 581.

Limitation does not start from the final decree passed on appeal from an order under Order 9, r. 13. 1946 Cal. 375 : 50 C.W.N. 667, 1950 *All.* 327, 1951 *Pat.* 1.

The clause, has no applications to appeal other than, appeals against the decree itself. 1939 Mad. 892, 187, I.C. 591, 1948 Bom. 337, 50 Bom. L.R. 221, 1951 Mad. 962 F.B.

The clause does not cover an appeal from an order which is passed in a collateral proceeding or which has no direct bearing or immediate connection with the dec- ree under execution. 1950 *S.C.* 6 : 1950 *S.C.R.* 25 ; 1950 *S.C.J.* 171 ; 5 *D.L.R*, *S.C.* 10, 1953 Trav.-Co. 220 *F.B.*, 1954 *Cal.* 169: 93 *C.L.J.* 255.

Even if appeal is preferred against a portion of the decree the decree of the appellate court supersedes the decree of the first court and there is then only one decree to be executed and time runs from the decree of the appellate court. 53 *C.* 901 : 31 *C.W.N.* 262 : 1927 *Cal.* 89 97 *I.C.* 838, 25 *C.* 594 *F.B.*, *fol.*, 2 *C.L.R.* 471, 14 *C.* 26, 19 *C.W.N.* 287, 20 *C.W.N.* 686, *Dists from.* 19 *C.* 750, 22 *B.* 500, 26 *M.* 91 *F.B.*, 23 C. 876, 17 *A.* 103, 2 *P.* 712: 1924 *Pat.* 160, 15 *C.W.N.* 370: 13 *C.L.J.* 351 : 33 *A.* 264 *P.C.*

In case of joint decree, time begins to run from the disposal of appeal when some appeal and some do not. 20 C W.N. 178, 19 C.W.N. 287, 15 C.W.N. 370, *P.C.* 18 C.W.N. 740 *P.C.* 36 A. 350. 25 C. 594 *F.B.*, 13. *A.* 1 ..,*FB* 1925 *Pat.* 585, 33 *B* 39, 23 *M.* 60, 22 *B.* 500the court is to see whether the original decree was joint or several, and whether appeal by some against it imperilled the whole decree or not. 19 *C.W.N.* 287.

When an appeal is preferred against an order of dismissal against one of two defendants and it is confirmed, time for execution of the decree against another defendant runs from the date of the appellate decree. 47 *C.* 813 : 60 *I.C.* 915.

The word "appeal" in Art. 182 (2) does not mean *bona-fide* appeal. Limitation runs from the date of dismissal of an appeal dismissed for non-payment of court fees 74 *I.C.* 679. 1924 Cal. 349.

—Art. 182

An appeal against order of review being incompetent in law cannot save limitation. 1923 *Cal.* 288.

The second clause of Art. 182 does not cover an appeal from an order refusing to set aside a decree. 131 I.C. 263 : 1931 31. *Cal.* 332 : 52 *C.L.J.* 594 ; 35 *C.W.N.* 155. I.R. 1931 *Cal.* 439.

An order directing the return of the memo. of appeal for presenting to the proper court is not a "final order" nor is the court an "Appellate Court" and time for execution of the decree does not run from the date of such order. 43 *M.* 835 : 1920 *M.W.N.* 587 : 60 *I.C.* 267 : 39 *M.L.J.* 431.

Order rejecting appeal for non-payment of court-fees does not give a fresh start for limitation. 1938 Cal. 533 : 42 *C.W.N.* 698, 1951 *All* 79 *F.B.*

But if the appeal was registered but subsequently rejected for insufficient court-fees, limitation starts from date of the order. 1938 *Pat.* 79 : 173 *I.C.* 615.

Limitation runs from dismissal of appeal for want of prosecution. 1950 *A.L.J.* 565.

When appeal is dismissed for default, time runs from the date of original decree. 24 *C.L.J.* 523, 30 *M.L.T.* 96 : 26 *C.W.N.* 858 : 49 C. 203 : 24 *Bom. L.R.* 659 *P.C.*

An order of the Registrar of the Privy Council dismissing an appeal for want of prosecution does not come within this clause. 36 *A.* 284 : 18 *C.W.N.* 740 : 19 *C.L.J.* 574 : 16 *Bom. L.R.* 360 : 23 *I.C.* 644 *P.C.*, also an order of the Privy Council dimissing an appeal for want of prosecution does not extend the period. 36 *A.* 350 *P.C.*, 34 *A.* 154 *Reversed.*

Time runs from the order of the appellate court even where that order is not capable of execution. 6 *Pat. L.J.* 27 : 2 *Pat. L.T.* 28 : 59 *I.C.* 896, 16 *I.C.* 370(*C*).

Order made by appellate court having the effect of finally disposing of the appeal gives new starting point. 1930 *P.C.* 68: 60 *C.* 662 *P.C.*

So long as there is any question sub judice in appeal, execution period is suspended. 60 C. 1: 1932 *P.C.* 165 : 36 *C.W.N.* 803 *P.C.*

An order of the appellate court holding that the appeal had abated and refusing to set aside the abatement is a final order within Art. 182 (2),. 60 *C.* 662 : 37 *C.W.N.* 412 : 57 *C.L.J.* 130: 35 *Bom. L.R.* 337: 1933 *A.L.J.* 239: 1933 *P.C.* 68 *P.C.*

When appeal abates the time is not extended. 20 *A.* 124, but it is extended in case of compromise. 4 *Pat.* 844 : 1925 *Pat.* 585, 33 *B.* 844, 22 *C.L.J.* 333 : 20 *C.W.N.* 178 : 31 *I.C.* 426.

Limitation starts from the order of abatement of appeal. 1947 *All.* 390 : 1947 *A.L.J.* 79, 1953 Trav.-Co. 545 *F.B.*

An order declaring the abatement of appeal is not a decree or order within this clause, limitation runs from subsequent final order disposing of the appeal. 1927 *Cal.* 760, 46 *C.L.J.* 111 : 32 *C.W.N.* 387. 1941 *Mad.* 671 : 196 *I.C.* 94.

—Art. 182

But where appeal abates by operation of law for non-substitution of any of the parties there is no order of the appellate court. 5 *Pat L.J.* 731, but see. 1925 *Pat.* 585.

Where an appeal was filed against a decree for costs and the sum withdrawn, an application for execution of the decree for costs made more than 3 years from the date of the decree but within 3 years from the date of order permitting withdrawal will not be time-barred. 94 *I.C.* 390 : 24 *A.L.J.* 544.

The case of an appeal from an amended decree is not different from the case of an appeal from any other decree and the appeal in the former case will equally postpone the date from which limitation runs for execution purposes. 1929 Cal. 676: 50 C.L.J. 12: 33 C.W.N. 958.

Clause. (3) Date of decision in review.

Application under Or. 9, r. 13 C.P.C. is not review. 1950 *Mad.* 552.

Where there has been a review time runs from the date of review notwithstanding that the person against whom time is reckoned was not party to the review proceeding. 1933 *Mad.* 276.

The clause will apply even if the new decree is the same as the old decree. 1942, All. 338 : 202 *I.C.* 726.

Further time is to be allowed only when the application for review is heard and fresh decision pronounced. 44 *I.C.* 575 : 3 *Pat. L.J.* 119, 1936 *Bom.* 162. even in the appellate court. 1936 *Bom.* 162.

Where the decree is modified in revision by the H.C. limitation runs from the date of the order passed by the H.C. in revision. 22 *C.W.N.* 158 : 44 *I.C.* 141 : 36 *M.* 135 : 12 *I.C.* 38 : 1911 *M.W.N.* 198.

But the date of rejection of a review petition does not give a fresh starting point for the execution. 153 *P.W.R.* 1913 : 20 *I.C.* 563, 1942 *All.* 338 : 202 *I.C.* 726, 1941 *Pat* 213, 1952 Trav-Co. 406.

Clause. (4) Date of amendment.

If the decree is incapable of execution time runs from amendment. 18 *C.W.N.* 266 : 21 *I.C.* 615, 34 *C.L.J.* 397 : 64 *I.C.* 622, 17 *A.* 39, 5 *A.L.J.* 403.

The clause applies where the amendment was formal or was unnecessary. 1941 *Lah.* 131 : 195 *I.C.* 250.

The amendment must be of some substance as affecting the rights of the parties and not merely of a trifling nature. 1938 *Pat.* 57 : 174 *I.C.* 418, 27 *P.* 513.

Amendment gives a fresh start even if it is formal. 1948 *Bom.* 49.

Time runs from the date of amendment and it is not for the Court of execution to inquire whether the amendment was properly made, whether the original decree was capable of execution or whether for any other reason the Court was wrong in making the order for amendment of the decree. 1929 *Cal.* 650.

—Art. 182

Date of amendment of a decree is the date of passing the order of amendment and not the date of actual amendment. 36 *I.C.* 583 : 3 *Pat. L.W.* 447, 1926 *Mad.* 747 : 49 *M.* 807.

A verbal application for amendment of the petition for execution which was already in proper form cannot be considered to be a step-in-aid of execution. 1930 *Cal.* 304.

When a new decree is passed on the basis of an arbitration time runs from the date of the decree. 16. *C.W.N.* 34 : 11 *I.C.* 457.

Where the amendment was made more than 3 years after the decree, application for execution may be made within 3 years of the date of amendment. 1941 *Lah.* 131 : 195 *I.C.* 250, 1948 *Pat.* 158 : 2 *D.L.R.* 647, 1950 *All.* 655: 1950 *A.L.J* 676, 1951 *All.* 245 : 6 *D.L.R. All.* 88 *F.B.*

A decree which is capable of execution but is not executed within 3 years becomes dead and cannot be revived by amendment, 56 *M.* 458 : 1933 *Mad.* 315.

An amendment of a decree does not give a new date for starting a period of limitation, if the application for execution is beyond the period of 12 years allowed by s.48. 1932 All. 351 : 54 All. 622, 42 B. 309 *Ref.* 60 *I.C.* 318 *Diss from.*

Cl. (5) Date of final order on application made in accordance with law to the proper court for execution or to take some step in aid of execution.

"*the date of final order*".

Under Art. 182 (5) of the Limitation Act as amended, the three years' time is not to be reckoned from the date of the filing of the previous application but from the date when the final order on such application is passed. 34 C.W.N. 733, 38 C.W.N. 229 : 59 C.L.J. 103 : 1934 A.L.J. 110 : 36 Bom. L.R. 237 : 1934 P.C. 14 *P.C.*

Transfer of decree to another court for execution is final order. 1949 All. 751 : 1949 A.L.J. 309.

Final order is not necessarily the last order in point of time. 1939 Mad. 841 : 189 I. C. 411.

Intimation by transferee court of non-execution of decree is not final order. 1947 Pat. 388 ; 25 P. 790.

Meaning of final order. 41 C.W.N. 310 ; 1937 Cal. 16, 1937 Mad. 385 *F.B.*, 1943 Mad. 297 ; 208 I.C. 361.

Recording of payment by Court under Or. 21, r. 2 (1), C.P. Code is not final order. 1932 Oudh 148 : I.R. 1932 Oudh 264 ; 9 O.W.N. 209 ; 137 I.C. 768 *F.B.*

An order of return of the execution petition does not save limitation. 1936 Mad. 613.

An order striking off case when "final order". 1936 All. 820 F. B. 1944 Mad. 24, 210 I.C. 606.

—Art. 182

Where the record is consigned to the record room, the execution proceeding is pending and can be revived. 1945 All. 172 : 222 I.C. 123.

Execution petition struck off or lodged or recorded or closed. 1951 Mad. 711 : 6 D.L.R. Mad. 190.

Art. 182—Cl. (5) "Application made in accordance with law".

Application made in accordance with law saves limitation under Art. 182 Cl. (5) L. Act. 31 C L.J. 389, 1943 P.C. 98 : 47 C.W.N. 715 ; 46 Bom. L.R. 306 : 208 I.C. 102 *P.C.*,

It is sufficient to show that the application was made in accordance with law to the proper court for execution or to take some steps but is not necessary to show that such application is *bona-fide* and not merely to keep the decree alive. 38 C.W.N. 229 : 1934 P.C. 14 ; 59 C.L.J. 103 ; 1934 M.W.N. 33 ; 26 Bom. L.R. 237 *P.C.*, 1929 All. 625 *F.B.*

The words "in accordance with law" does not mean in accordance with C.P.C. 1947 Pat. 199 ; 231 I.C. 17.

The application need not be in writing, an oral application is sufficient. 38 M. 695, 20 B. 179, 22 B. 722, 3 A. 139.

The expression "in accordance with law" means that the application though defective in some particulars is such that the execution can proceed. 53 C. 66 30 C.W.N. 918 ; 1926 Cal. 1077, 1934 Bom. 307, 1937 Oudh 233 ; 167 I.C. 34, 1946 Nag. 365.

An execution application by one of the joint D.Hs. without recourse to Or. 21, r. 15 saves limitation. 1943 Pat. 188 : 207 I.C. 250.

Application for execution filed after period of limitation in not one in accordance with law. 1937 Sind 121 ; 170 I.C. 189.

An application for execution without description of property sought to be attached is not one in accordance with law. 1944 Pat. 214 : 218 I.C. 265.

An application for execution which does not contain the correct number of suit is not one in accordance with law. 1946 Mad. 61.

An application for execution which is not verified is not one in accordance with law. 1945 Mad. 97.

An application which does not contain particulars as to the amount of the decree and cost is not in accordance with law. 65 I.C. 120 23 C. 217, 18 C.L.J. 538, the application should not be materially defective. 2 C.W.N. 556; 25 C. 594, *F.B.*

An application could not be said not to be not in accordance with law when (1) the dates of previous execution petition (2) execution costs (3) date and place of verification were not noted and (4) copy of the decree was not filed, as those were not material defects. 1928 Mad. 440, 142, 1926 Cal, 1146 *Rel.*

An application for execution without indicating the mode in which the Dr. Hr. wanted the assistance of the court to execute the decree is not one accor-

ding to law and is not a step. 41 C.L.J. 607: 1925 Cal. 1135: 93 I.C. 364, 1944 Pat. 214: 218 I.C. 265.

Application for a relief not competent is not an "application in accordance with law." 1931 Pat. 274, 1943 Bom. 353: 210 I.C. 376, 1947 All. 352: 229 I.C. 47, 1951 All. 380: 6 D.L.R. All. 27.

An application for execution by sale of properties outsides court's jurisdiction is not one in accordance with law. 1945 Pat. 71: 219 I.C. 491.

An unstamped or insufficiently stamped execution petition is not necessarily invalid: if action be taken on it, it saves limitation. 1928 Mad. 142, 6 M. 181.

Application made in a court which had originally no jurisdiction but subsequently acquired jurisdiction does not save limitation. 60 C. 1176: 58 C.L.J. 192: 37 C.W.N. 1167: 1933. Cal. 906.

Amended petition filed after expiry of time allowed by court and accepted, is a step in aid of execution, although no order of enlargement of time is made upon the petition relating thereto. 20 C.W.N. 615, 13 C.L.J. 78, *Dis.* 14. C.W.N. 481, 1940 Mad. 215: 189 I.C. 882.

Where an application which was returned for correction but was never refiled, the application cannot be deemed to be pending. 1942 Mad. 307: 206 I.C. 122.

Where an application was not amended according to the court's order it cannot be said that the application was never properly presented in accordance with law. 2 Pat 809: 74 I.C. 174, 25 C. 594 *F.B.*, 1925, Lah 535, 4 L.W. 103, 1928 Mad. 440: 112 I.C. 36.

Where an application for execution was returned by the court for rectifying the errors but the errors were not corrected and the application was ultimately dismissed, it was a bogus application and would not save limitation. 1926 All. 876, 1926 Pat. 533.

But an application which has been returned for amendment but not represented is sufficient to save limitation. 1933 Mad. 568, *contra* 1940 Mad. 281: 189 I.C. 185, 1949 Mad. 363.

An execution petition after the institution of insolvency proceedings without the leave of the Insolvency Court is not an application in accordance with law and is contrary to sec. 28 (2) Pr. Insolvency Act. 59 M. 759: 1936 Mad. 284.

Application for execution praying for issue of notice under Or. 21, r. 22 C.P.C. is not one in accordance with law. 1947 Bom. 430.

An application for execution without a copy of the decree is one in accordance with law. 1938 Mad. 144: 175 I.C. 827, 1950 Mad. 261: 5 D.L.R. Mad. 60.

Application for execution by attachment and sale of moveables without list of moveables when in accordance with law. 1950 Cal. 493; 54 CWN. 815, 4 DLR All. 208.

—Art. 182

Application for execution which was dismissed for want of a succession certificate is one in accordance with law, 1953 Mad. 855.

The date of application is the date when it is made, 1 C.W.N. 160, 13 C.L.J. 26, 30 C. 761: 8 C.W.N. 251, 22A. 558, 22B. 722.

If the D. Hr. himself resides within the local limits of the jurisdiction of the court, an application by a person holding a general power of attorney is not in accordance with law. 23 A. 499, 26 A. 19.

Application for execution by a guardian of the D. Hr. who is described as a minor but is found to be major at the time, is not in accordance with law. 28 M. 396.

An application of execution in which by *bona-fide* mistake the minor Jt. Dr. was described under the guardianship of a dead person is a step. 4 Pat. L.T. 54: 72 I.C. 1003 (17 M. 76, 35 C. 1047) *Fol.*, 31 A. 572 *P.C. Dist.*

An application against Jt. Dr. alone saves limitation against Jt. Dr. and his surety. 20 A.L.J. 726: 1922 All. 481, 60 I.C. 265, 1951 Nag. 440.

If an application is barred by time but proceedings in execution are taken without objection, it provides new starting point. 45 B. 453: 22 Bom. L.R. 389.

Article. 182—Cl. (5) "Step in aid of execution".

A suit under Or. 21, r. 63 is not a step in aid of execution. 1946 Bom. 187: 47 Bom. L.R. 848, 1947 Sind 48: 227 I.C. 17.

To constitute a step-in-aid of execution an application must pray for some relief which can be granted by the court. 35 C.L.J. 82: 1922 Cal. 44.

A *bona-fide* execution petition against wrong Jt. Dr. or wrong representative or wrong guardian will save limitation. 1926 Mad. 321, 20 C. 388, 12 B. 427, 33 M. 6, 1921, Bom 425, 1931. Lah. 636, 119 I.C. 596, 1935 Mad. 161.

A *bona-fide* application for execution is a step-in-aid although it was made against a dead judgment-debtor. 1932 Pat. 222: 13 Pat. L.T. 318, 11 Pat. 546, 4 P.L.T. 54 *fol*, 1935 Mad. 161, *Contra* 1944 Nag. 145: 217 I.C. 295.

An application for substitution of legal representatives of the deceased D.H. is a step-in-aid of execution. 1944 Nag 80. 212 I.C. 592.

An application to substitute some names in the decree is a step in aid of execution. 50 A. 621: 1928 All. 299, 85 I.C. 657, 26 Punj. L.R. 740: 90 I.C. 1050, 35 C.L.J. 82, against surety also. 1926 Cal. 267.

An application by decree holder during execution proceedings for time to ascertain the address of the Jt. Dr. is a step. 50 I.C. 278.

An application made against a wrong person under a *bona-fide* mistake that the person was the legal representative of the deceased Jt. Dr, is a step-in-aid of execution. 1926 P.H.C.C. 342: 99 I.C. 501: 1927 Pat. 92: 8 Pat. L.T. 217, 1931 Bom. 425: 134 I.C. 699.

Application for transfer of decree from one Court to another is a step-in-aid. 1935 Cal. 640, 1934 Pat. 662, 1939 All. 57, 1939 Cal. 399, 1939 Lah. 110. Even

—Art. 182

if it is made in ignorance of the death of the Jt. Dr. 1934 Bom. 266, 35 C. 1047 *fol.* 1934 All. 463.

Application by D.H. for sending for the decree from transferee court and sending it again to that court is not a step-in-aid of execution. 1942 Nag. 63: 200 I.C. 56.

Where a decree is transferred for execution to another court an application to the parent court to retransfer the decree to a third court is a step in aid of execution. 1935 Lah. 465 *F.B.*, 110 I.C. 829, 1928 Mad. 493, 1916 P.C. 16 *P.C.*, 37 M. 231 *Expl.*, 1926 Bom. 217 *Ref.* but for the issue of notice to the Jt. Dr. is no step. 26 C.W.N. 292: 63 I.C. 116, 2 Pat. 247: 74 I.C. 608, 1939 Mad. 195: 180 I.C. 674.

An application for issue of notice under Or. 21, r. 22 C.P.C. is a step in aid of execution. 1938 Mad. 553: 178 I.C. 525, 1950 Cal. 493: 54 C.W.N. 815.

An application by assignee of decree is a step-in-aid. 1947 Bom. 113: 48 Bom. L.R. 583.

When a decree was not shown to have been transferred under ss. 38 and 39 and Or. 21 r. 6 to another court at time when an execution petition was filed in that court, such application was not a step-in aid of execution. 55 C. 608: 32 C.W.N. 192: 1927 Cal. 952: 47 C.L.J. 38: 104 I.C. 668, 1945, Pat. 129: 218 I.C. 352.

Application by D. Hr. auction purchaser to be put in possession is a 'step-in-aid of execution.' (*per Newbold, J.*); *it is not so (per Cuming J.)* 23 C.W.N. 926: 30 C.L.J. 135, see also 41 A 479: 50 I.C. 143, 1923 Pat 22.

The execution of the attached decree on the application of the attaching decree-holder is a step-in-aid of execution of the decree in execution. 1931 Lah. 705: 132 I.C. 667, but an order of attachment of the decree sought to be executed cannot be treated as a step-in-aid of the original decree. 60 C. 1357: 1934 Cal. 234.

Application for summons to witnesses to resist claimant's objection is a step. 19 A.L.J. 843, 1927 Lah. 653, 1922 All. 432, 22 C.W.N. 1027, 1927 Mad. 288, 21 C.W.N. 868, 5 A. 344, 1925 Pat. 459, 26 C.L.J. 115, 28 I.C. 540.

Filing of an *hazira* in the application under Or. 21, r. 90 or in an application under Or. 21, r. 2, was held to be a step in aid of execution. 1928 Pat 612, 1930 Cal. 304.

Filing of an affidavit of service of notice on the Jt. Dr. is a step. 47 C.L.J. 367 : 1928 Cal. 302, 21. C.W.N. 423.

But when the court ordered to file written process and affidavit of service of notice and the D. Hr. filed affidavit only it did not amount to a step. 108 I.C. 430 : 1938 Pat. 145.

An affidavit filed subsequent to the petition for leave to bid is not a step-in-aid of execution. 1927 M.W.N. 792 : 41 M. 251, Foll., 1931 M.W.M. 413.

Payment of process-fee for an attachment of property in execution of a decree is not a step. 1925 All. 646.

—Art 182

An application for reconstruction of a decree destroyed by fire is not a step. 1934 Bom. 113, (23 B. 644, 30 A. 179, 40 A. 209) *Ref.* 46 B. 269 *Dist.*

The question whether an application is or is not a step-in-aid of execution depends upon the c rcumstances of the case. In this case application for adjournment was held not a step-in-aid of execution. 27 C.W.N. 505 : 37 C.L.J. 292 : 1923 Cal. 572.

A mere adjournment has been held not to be step-in-aid of execution but an application for adjournment to obtain further evidence has been held to be step-in-aid. 1923 Bom. 213, 27 C. 285.

An application to the court to do an act in aid of execution though (here for time to adduce evidence) refused is a step. 14 C.W.N. 486 : 5 I.C. 147.

Deposit of *nilami fees* is, 9 C. 644, and deposit of process fee is, 23 C 374, but unaccompanied by any petition is not. 30 A. 179, 228, 722.

Payment of nazir-fee is not, 17 C.L.J. 422, (9 C. 644, 28 M. 399), *Dist.*, (9 C. 730, 23 C. 146), *Ref.*

The despatch by money order of the subsistence allowance for the judgement-debtor in jail to the jail superintendent who, under Or. 21, r. 39(4) is the proper officer to whom the payment should be made is "an application to take a step-in aid of execution". 1932 M.W.N. 1198:63 M.L.J. 792:140 I.C. 498.

Oral application of D. Hr's pleader. for the settlement of the term of the proclamation is, 1917 Pat. 54, 3A. 139, 38 M. 655, *appl.* or for a fresh proclamation is, 10 C. 851, or for sale is, 17 C. 53, 15 B. 405.

An application to the court to receive railway charges for taking the Jt. Dr. to the civil prison and subsistence-money for his maintenance while in prison, is a step. 1922 Mad 30.

On an execution court finding that the original records of the case were necessary for disposing of the case the decree-holder applied for the records being sent for, it was a step in aid of execution. 47 A 667 : 88 I.C. 271 : 1925 All. 394 : 23 A.L.J. 422.

Application by D. Hr. for permission to bid is not. 24 C.L.J. 462, (13 A. 211, 22A. 399, 21 B. 331) *Diss.* (9 C. 730, 23 C. 690) *fol.* But an application for leave to bid, and for set off of the decretal amount is 1930 Mad. 588: 53 M. 390, 12 C.W.N. 621, 21 B. 331, 13 A. 211, 22 A. 399, 24 C.W.N. 621, 30 C. 761 : 8 C.W.N. 251, 10 C.W.N. 209, it cannot be an inflexible rule that the application for leave to bid must in every case amount to a step-in-aid of execution. it depends upon the circumstances of each case, 3 C.L.J. 240, 1931 Lah. 81 : 32 Punj. L.R. 84 : *F.B.*

An application for confirmation of sale is not an application to take some step. 8 Pat. 249 : 72 I.C. 938.

A prayer for superfluous relief in a petition of execution is a step in aid of execution and the time spent in prosecuting it is to be deducted. 75 I.C. 312 (Pat.) 25 C. 594, 2 C.W.N. 556 : I.7 I.C. 210 : 37 B 42 : 14 Bom. L.R. 861, 31

—Art. 182

M. 68 : 3 M.L.T. 254 : 17 M.L.J. 596 *fol.* 67 I.C. 538 : 3 P.L.T. 422 : 1922 Pat. 229 : 1 Pat. 651. *Dist.*

An application for extension of time to pay the amount allowed as compensation which was made a condition to the delivery of possession to the plaintiff is not a step in aid within the meaning of Art. 182, 1930 Mad. 995, (45 M. 202, 38 M. 695), *Dist.* from ; 41 M. 251 ; 53 M.L.J. 766, *Ref. to* ; 36 B. 638, 37 B. 317, 29 A. 301 38 A 690, 47 A. 667, *Dist.*

An application for the revival of the previous proceedings for execution is a step in aid. 64 I.C. 727 (c), 27 C. 285 *Ref.*

Application to correct mistake of court as regards the inclusion of interest granted by the dercee is a step in aid of execution. 114 I.C. 55 1929 Lah. 103, (55 I.A. 159 : 52 M.L.J. 565) *Dist.* 155 P.R. 1912 *Ref.*

An appeal against an order dismissing an application for execution is a step in aid of execution. 1945 P.C. 176: 47 Bom. L.R. 956 : 49 C.W.N. 776 P.C.

An application praying for the disallowance of objection of Jt. Dr. and for confirmation of sale. 21 C. 23, 5 A 576.

An application by a D. Hr. for the payment to him of money which has been paid into court on his accuont in execution of the decree is an application to the court to take a step in-aid of execution of the decree. 89 I.C. 228 : 1925 Bom. 443, Contra 1938 Lah. 138. 1938 Lah. 678 : 178 I.C. 995.

The decree-holder's certification is not in itself a step-in-aid of execution nor affords a fresh starting point of limitation. Such a certification is not an application to the Court. In order to save limitation the payment must come within the provisions of s. 20 of the Limitation Act. 56 I.A. 30. Rel. on. 54 C.L.J. 201: 134 I.C. 922 : A.I.R. 1931 Cal. 719 : I.R. 1931 Cal. 922 : 35 C.W.N. 1192 *F.B.*, 1932 Oudh 264 *F.B.*, 1943 Pat. 7: 204 I.C. 318, 1941 Oudh 93 : 191 I.C. 557, 1952 Trav-co. 365.

In a partition case, execution petition by defendant gives a fresh starting in favour of plaintiff. 70 I.C. 296, 1922 Mad. 327, 1922 Mad. 456.

If in a decree for partition, reservation is made of strip of land to serve as a common road, application by one party to be put in possession is effective in favour of others. A.I.R. 1932 Cal. 869:56 C.L.J. 10:36 C.W.N. 772 : 139 I.C. 786.

Application by D.H. to get the debtor adjudged insolvent is not a step in aid. 1949 Bom. 379 : 4 D.L.R. Bom. 110.

Expl. 1—Separate rights and liabilities.

When single suit for rent for three separate tenancies is passed in a composite decree, execution of one of such decrees cannot save others from being barred, 22 C.W.N. 192.

The explanation does not apply to a surety for payment of the decree. 1937 Oudh 351:168 I.C. 600.

—Art. 182

An application for execution against a surety cannot operate to keep alive the decree against the principal debtor unless it was a common liability, 23 B. 978, 85 I.C. 657 : 1926 Cal. 267.

But an application for execution against principal debtor saves limitation against surety. 1935 Mad. 188.

An application for execution against minors keeps the decree alive against the major J. Dr. 31 A. 309.

Execution in respect of reliefs given against defendants jointly will save limitation in respect to reliefs granted against them severally. 1946 Cal. 266 : 50 C.W.N. 155.

Where in one matter a decree is jointly passed against all the defendants and with respect to another matter severally against different defendats the first portion of the explanation applies to decrees passed severally and the second portion to the decree passed jointly. 48 A. 377.94 I.C. 961:24 A.L.J. 465: 1926 All. 440.

Decree in partition suit execution by defendant gives fresh starting point in favour of plaintiff 1922 Mad. 456, 1922 Mad. 327, 1946 Pat. 371:25 P. 95:226 I.C. 399, 1946 Cal. 266:50 C.W.N. 155.

Expl. 2—Proper "Court."

Proper court to which an application for substitution of legal representative of deceased Jt. Dr. should be made is court which passed the decree. 1945 Oudh 298.

After transfer of decree an execution application made to the transferor court is not made to a proper court. 1939 Cal. 741:43 C.W.N. 185, 1939 Pat. 289, 1947 Pat. 388, Contra, 1941 Mad. 858, 1935 Lah. 465, 1952 Pat. 213 F.B.

'Proper court' in the clause, in case a decree is transferred is the court to which the decree is transferred. 39 M. 640: 21 C.W.N. 165 *P.C.*, 1946 Pat. 301: 228 I.C. 195.

An application for execution made to a court having no jurisdiction to entertain it is not an application in accordance with law and cannot save limitation. 93 I. C. 292 : 1926 All. 345.

Art. 182—When the execution proceeding is suspended limitation does not run.

Limitation does not run when the execution proceeding is suspended, 1923 All. 600, 27 A 337, 26 C.W.N. 338:35 C.L.J. 84:68 I.C. 207, 1923 All. 471, 74 I.C. 279 (c).

When a D. Hr. is obstructed by violence or fraud of the Jt. Hr. and litigation is necessary to avoid that, the execution is suspended during such litigation. But the mere pendency of an appeal from a decision which has removed the obstacles cannot extend the period 20 C.W.N. 286, (30 C. 407, 37 C. 790.15 C.W.N. 337:12 C.L.J. 328) *Relied on* 38 M. 419.

—Art. 182

Continuation of the previous application, what is.

When an application for execution is suspended by injunction from the court or delayed by a bar imposed at the instance of the Jt. Dr. a fresh application may be considered to be a continuous one. 18 C.W.N. 539 : 20 I. C. 244, 27 A. 334. *P.C.*, 13 I.C. 149 (C), 14 C.L.J. 610:26 C.W.N. 338 : 35 C.L.J. 84: 87 *I.C.* 561:1925 Cal. 1185, 1929 Pat. 129, 4 Pat. L.T. 295 : 71 I. C. 332, 35 C.L.J. 135, 1923 All. 471, 74 I.C. 279(C), 1926 Pat. 143, 37 C.W.N. 583 : 1933 Cal. 816.

An application for the execution can be considered as a continuation of the previous application only when it is similar in scope and character. 4 Pat. L.T. 295:71 I.C. 332, 1923 All. 471, 26 C.W.N. 338:35 C.L.J. 84, and not when it asks for different relief. 27 C.W.N. 505:37 C.L.J. 292, 54 A. 573:1932 All. 273, *F.B.*

Filing of supplementary list of property may be a continuation of the original application. 47 I.C. 911 (C), 22 C.W.N. 540:27 C.L.J. 398, 55 I.C. 16, 34 B. 142.

Where an application for execution has been dismissed for default a subsequent application cannot be construed as one in continuation of the previous application, 22 C.W.N. 766:45 I.C. 712, but where the execution proceeding is struck off for no fault of the D. Hr. the court can revive the proceedings. 1926 All. 331:24 A.L.J. 437:94 I.C. 613.

Where without any fault or delay on the part of the Dr. Hr. the court consigns an application for execution to the record room, a further application is in continuation. 1922 All. 433.

Cl. 7. date of payment fixed by the decree.

In instalment decree if it be provided that in default of one instalment the whole shall become payable, limitation begins to run from first default, unless it is waived. 1926 Cal. 212, 5 C. 97, 7 C. 56, 15 C. 502, 20 C. 74, 38 A. 204, 7 W.R. 21 *F.B.*, 5 A. 596, 7 A. 327, 2 A. 443, 5 A. 289, 2 B. 356, 9 C. 857, 14 C. 352, 21 C. 542, 39 A. 230, 38 I.C. 634, 29 I.C. 274 : 13 A.L.J. 668, 21 C.W.N. 835 : 37 I.C. 916, 13 C.L.J. 243, 1919 Pat. 46 : 48 I.C. 728, but see 1928 All. 629 *F.B.* and 1935 Oudh 465 *F.B.*, 1945 Pat. 182 ; 221 I. C. 219.

A provision in the instalment decree that in the event of a default the entire amount shall become due does not exclude an option in the D. H. to take advantage of it or not. 1946 Cal 500 ; 50 C.W.N. 735 : 226 I.C. 343 F.B.

In the case of instalment decrees, default in payment of one instalment can be waived and time begins to run from the date of actual default. 86 I.C. 1051 ; 1925 Cal. 1012.

Where the D.H. successfully exercises the option he cannot be allowed to go back upon his election. 1941 Oudh 93, 1942 Mad. 679 ; 203 I.C. 478.

—Arts. 182-183

Where the decree directed payment of annuity and in default delivery of property each instalement as it became due was a claim originating under the decree from the date when such claim arose. 46 C.L.J. 123 ; 29 Bom. L. R. 1014 ; 32 C.W.N. 1 ; 101 I.C. 736 ; 53 M.L.J. 22 ; 1927 M.W.N. 442 *P.C.*

THE FIRST SCHEDULE—*contd.*

THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
183.—To enforce a judgment, decree or order of [1][the High Court Division] in the exercise of its ordinary original civil jurisdiction, or an order of the [1][Appellate Division].	**Twelve years...**	**When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the rights :** **Provided that when the judgment, decree or order has been revived, or more part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment or the latest of such revivors, payments or acknowledgments, as the case may be.**

[1]Subs. by Act. 53 of 1974.

—Art. 183

Art. 183 : Decree—What constitutes revivor of.

To constitute a revivor of a decree there must be a determination by a Court that the decree is still capable of execution and the decree-holder is entitled to enforce it. Such a revivor can be effected by an order for execution, provided the order made is a valid order. *Kirtilal Jivabhai Vs. Chunilal Manilal* AIR (33) 1946 Bombay 27.

Enforcing judgment decree, order of Court established by Royal Charter, 12 years.

The words "capable of releasing the right" exclude persons who are legally incapacitated, such as infants and lunatics ; therefore the words of Art. 183 are not governed by Ss. 6, 7 and 8. 1930 Pat. 141 : 123 I.C. 411.

Decree against father is executable against sons within 12 years of the date of decree. 1932 Pat. 261 : 13 Pat. L. T. 719, 28 M. 466, *not fol.*

An application for an order absolute for sale made by the H. C. must be made within 12 years. 47 C. 746 ; 60 I.C. 880.

The expression "step in aid of execution" as used in Art. 182 is not co-extensive in meaning with the term "Revivor" in Art. 183, 41 C.L.J. 159 : 87 I.C. 61 ; 1925 Cal. 668.

A notice under Or. 21 r. 16 C.P.C. does not operate as a revivor to extend the period of limitation under Art. 183. 39 C.L.J. 590, 43 C. 903 ; 23 C.L.J. 645 ; 40 I.C. 618, 40 M. 1127 ; 32 I.C. 1003, 38 M. 1102.

An application for the transmission of a decree from the H. C. to the lower court is not by itself a revival of the decree as it is a ministerial act only. 54 C. 500 ; 45 C.L.J. 507 ; 31 C.W.N. 589 ; 52 M.L.J. 565 ; 29 Bom. L.R. 850 : 101 I.C. 24 : 1927 P.C. 73 *P.C.*, 43 C. 903 *F.B. Approved,* 1923 Cal. 213 *Affirmed.*

Where the limits of the jurisdiction of the old Court were altered and an application was made in that Court, the decree should be forwarded to the proper Court but it will have the effect of saving limitation. 1931 Cal. 312 : 58 C. 832 ; 52 C.L.J. 569 : 35 C.W.N. 77.

An application to enforce a decree of the Privy Council must be made within 12 years of the accrual of the right to enforce and the date of revivor. 1 Pat. L.J. 385, 20 C.W.N. 1051, 36, I.C. 633.

An application for personal decree under Or. 34 r. 6 C. P. C. is not an application for enforcing a judgment or decree within Art. 183 and hence Art. 183 does not apply to such an application. 52 C. 228 : 29 C.W.N. 678 ; 89 I.C. 1 : 1925 Cal. 834 *F.B.*

Limitation against puisne mortgagee runs from the time he could execute the decree, execution by prior mortgagee does not amount to a revivor of his right. 1925 Cal. 213.

An application for restitution in pursuance of a Privy Council decree is in substance an application to enforce a decree of the *P.C.* and is governed by Art. 183 ; the words "to execute" in Art. 183 are wider than the words to exe-

—Art. 183

cute in Art. 182, and should be interpreted as equivalent to "give effect to". 44 A. 555, 50 A. 767 ; 1928 All. 293.

The provisions of Art. 183 regarding acknowledgment as well as payments are self-contained and are to be read independently of Ss. 19 and 20 of the Limitation Act, 1931. Pat. 218.

What constitutes revivor. 1946 Bom. 27 ; 47 Bom. L.R. 728, 5 D.L.R. Pat. 15.

A decision in a suit by a judgment debtor to declare that he was not bound by the decree does not operate as revivor of the decree. 55 C. 578; 32 C.W.N. 336 ; 1928 Cal. 686 : 110 I.C. 404.

A tabular statement under Or. 21 r. 11 C.P.C. filed before the Master amounted to an application to the court within this Art. read in conjunction with s. 3 and saved limitation. 55 C. 1341:1929 Cal. 193 115: I.C. 83.

Nature of the writ of *Scire facias* discussed, 1929 M.W.N. 78: 36 M.L.J. 555:1929 Mad. 252.

Miscellaneous cases.

Application of the Act.

When there are two periods, one longer and the other shorter and applicable to special circumstance, the longer period is applicable unless the special circumstance exists. 14 C.L.J. 598.

Parties cannot contract out of the law of limitation, so as a rent decree cannot be made to be payable by instalment, if such a decree is passed by way of compromise, time will run from the date of decree and not default. 17 C.W.N 518, but see 39 M. 129 *F.B.*

Exception to the Limitation Act must be clearly stated. 17 C.W.N. 667, 16 C. W. N. 1015.

Objection of limitation.

When there has been adjudication on the point, the question of limitation cannot arise. 17 C.W.N. 113, 11 C.L.J. 91, 11 B. 537, 12 C.L.J. 312, 8 C. 51 *P.C.*

Where Jt. Dr. having an opportunity does not avail of that to challenge the decree he cannot subsequently take the objection. 37 C.W.N. 752: 1933 Cal. 855, 25 C.W.N. 581 *P.C.* 8 *C.*, 51 *P.C.*, 12 C.L.J. 312, 6A. 269 *P.C.* 7 A. 102, *P.C.* 2 Pat. 759 : 74 I. C. 130, but when no notice under section 248 (old) is served personally upon the Jt. Dr. he can take objection. 13 C.L.J. 26 or, where the question whether execution of a decree is barred is not decided because the parties do not appear, there is no bar to the adjudication at a latter stage. 14 C.W.N. 114 (8 C. 51, 8 I. A. 123, *P. C.*, 6 A. 269:11 I. A. 37, *P.C.*, 7, A. 102: 11 I.A. 181 *P.C.*) *explained* and *Ref.* 15 A. 84 *appr.* 6 C. 203, *not fol.*. (28 C, 122: 10 C.W.N. 209 3 C.L.J. 240). *Fol.* 15 A, 198 *Ref.*

—Art. 183

Service of notice only is not adjudication if there is not subsequent order 15 C.W.N. 661, 35 C. 1069, 8 C.L.J. 193, 21 C W.N. 945.

Although a Jt. Dr. does not contest notice yet he can put in objection at the time of attachment. 23 C.L.J. 641.

Where after the service of notice under Or. 21 r. 22 the Jt. Dr. does not appear but the execution petition is dismissed there being no adjudication, the Jt. Dr. can subsequently raise the plea of limitation. 112 I.C. 265 : 1928 Pat. 47 : 9 Pat. L.T. 805: 7 Pat. 465.

Onus when time is narrow.

When the limitation period is very narrow, burden of proof is on the plaintiff 10 C.W.N. 630 : 16 M.L.J. 272 *P.C.*

Defendant is to prove knowledge of plaintiff.

When time begins to run from the knowledge of something the burden of proof of the knowledge of the plaintiff, is on the defendant. 13 C.L.J. 221 at. p. 227.

Set-off of time barred decree.

Time-barred decree cannot be executed by way of set-off. 21 C.W.N. 1147.

———

THE SECOND SCHEDULE.—[TERRITORIES REFERRED TO IN SECTION 31.] Rep. by the Repealing and Amending Act, 1930 (VIII of 1930), s 3 and Second Schedule.

———

THE THIRD SCHEDULE.—[ENACTMENTS REPEALED.] Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), s. 3 and Second Schedule.

———————

These are all amendments to the Limitation Act and in place of putting them at the bottom of different pages where they occur in the book, they are all put here together only upto s. 20 and thereafter at the bottom of relevant pages as they occur.

Amendments

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 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.

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, Ext., dated the 1st June, 1951.

2. The word "Indian" omitted by A. O., 1949.

3. Subs. by Act 53 of 1974.

3A. Omitted, *ibid.*

4. Ins. by the Limitation (Amdt.) Ordinance, 1962 (43 of 1962), s. 2.

5. Subs. by the Indian Limitation (Amdt.) Act, 1922 (10 of 1922), s. 2, for "by any enactment or rule".

6. Subs. by Act 53 of 1974.

7. A section 5A 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. 1, p. 258.

8. 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).

9. Ins. by Ord. 43 of 1962, s. 3.

10. Added by the Limitation (Amdt.) Ordinance, 1962 (43 of 1962,) s. 3.

11. 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).

12. Ins. by Ord. 43 of 1962, s. 3.

13. *See* foot-note 11 above.

14. Ins. by the Indian Limitation (Amdt.) Act, 1929 (1 of 1929), 2.

15. Subs. by Act 53 of 1974.

16. Subs. *ibid.*

17. Subs. *ibid.*

18. The words "or the Crown Representative" omitted by A. O., 1949.

19. Subs. by the Indian Limitation (Amdt.) Act, 1942 (16 of 1942), s. 2, for the original sub-section (1).

20. Subs. by the Indian Limitation (Amdt.) Act, 1927 (1 of 1927), s. 2, for the original proviso.

Index

	Page
Accessory falls with principal.	—152
Account books, entries in.	...104
Acknowledgment	...81
Acknowledgement before limitation expires.	—93
Acknowledgement by Sarbarakar or Manager of Estate.	...103
Acknowledgement by a mortgagee.	—92
Acknowledgement by Court of Wards.	—103
Acknowledgment by Hindn Widow.	—102
Acknowledgement by Mortgagor.	...101,102
Acknowledgment by Official assignee.	...103
Acknowledgment by Surety.	...102
Acknowledgement by Telegram.	...100
Acknowledgement contained in petitions to Courts.	...100
Acknowledgement contained in will, conveyance etc.	...92-95
Acknowledgment contained in submission to arbitration.	—100
Acknowledgment coupled with Claim to—set off.	...88
Acknowledgement deduced from a series of letters.	...97
Acknowledgment in a conveyance.	—101
Acknowledgment in deposition or affidavit.	...99
Acknowledgment in will.	—99
Acknowledgment in mutation proceedings.	—92
Acknowledgment in Plaiut, written statement etc.	—99
Acknowledgment in resolution.	—101
Acknowledgment in respect of Tort.	—98
Acknowledgment made beyond time.	...97
Acknowledgement made after expiry of ordinary period.	—97
Acknowledgment, material alterations in.	...98
Acknowledgment may be in writing.	...99
Acknowledgment must be made and signed.	...95,96,97
Acknowledgment must be addressed to somebody.	—101
Acknowledgement must relate to the particular debt or liability.	...93
Acknowledgment of merely part of debt.	...84
Acknowledgment of debt implies a promise to pay.	...103
Acknowledgment of debt.	—80
Acknowledgment to third person is sufficient.	—108
Acknowledgment of barred debt.	..108
Acknowledgment of title by trespasser.	—109
Acknowledgment of payment by one of several joint cotractors.	—126
Acknowledgment of debt by defacto guardian.	—126
Acknowledgment only extends period but does not confer title.	—109

	Page
Acknowledgment simply renews debt.	...83
Acknowledgments—successive.	...98
Acknowledgment—sufficient.	...93,103
Acknowledgment to or by a stranger.	...101
Acquisition of ownership by possession.	—138
Acquistion of right to easement.	...140,147
Active and designed fraud.	...74
Adding new cause of action after time—amendment.	—129
Addition of parties.	...128
Administration suit.	—260
Admission of debt.	...84,88
Adverse interruption essential.	—144
Adverse possession.	...302
Advertisement or notice to creditors.	— 88
Adverse possession—Suit to challenge.	—292
Adverse possession of undivided share.	...299
Advocate.	— 19
Advocate or vakil—Acknowledgment by.	—102
Advocate, negligent advice by.	—20
Affixing of initials.	— 105
Affixing Rubber Stamp.	— 105
Against carrier for compensation for non-delivery.	—186
Agent of person under disability.	..125,126
Agent—suit by or against.	...132
Alienation after conception.	...32
Alienation by mother's mother	—31
Amending Act of 1927-Retrospective effect.	— 110
Amendment.	...129,130
Amendment of decree.	—29
Appeal.	—43,44,46,47,57
Appeal against the award of the arbitrators.	—338
Appeal against acquittal.	—17
Appeal competent.	...23
Appeal heard ex-parte.	—17,46
Appeal to P.C.	—47
Appeal by the Government filed out of time.	—13
Appeal to the Court of Dist. Judge.	—320
Appeals—Letters Patent.	...158
Appellant or respondent—adding of, after time.	— 129
Applicability.	...1,53,20
Applicability and Scope.	...2,57,80,109
Applicability (Claim for damage)—Good faith and honest intention necessary.	—161
Applicant.	—3
Application for pre-emption.	...54
Application made under Or 9, r. 13—See. 5. of L. Act now applicable.	—11

	Page
Application to set aside an award. ...	...323
Application to set aside a dismissal for default of appearance etc.	...325
Application by deft. to set aside exparte decree ...	...328
Application for possession against D. Hr. or auction purchaser.	...329
Application to set aside sale in execution. ...	...329
Application complaining resistauae or obstruction to delivery of possession. ...	...330
Application for review of judgment. ...	...333
Application by legal representative of deceased plttf. or applicant.	...334
Application for leave to appeal to S.C. ...	...336
Application for copies. ...	..47
Arbitration—acknowledgment contained in submission to...	...100
Authority to pay. ...	...122
As of right. ...	...148
"As of right" ...	...142
Attached property—Damaged while in custody of sureties.	...180,196
Arrear rents of a requisitioned property. ...	...244
Appellant a pardanshin lady. ..	...29
Admission of appeal and objection thereto. ...	..29
Assignee pendente lite. ...	...131
Attachment of decree of one Court by another Court. ..	...67
Attachment, magistrate's ...	...153
Auction purchaser—when must apply for delivery of possession.	...151
Balance sheet : Acknowledgement in ...	...100
Barred debts ...	...152
Barred decree for possession ...	...152
Barring of declaratory suit does not extinguish title ...	...153
Benami transaction. ...	...256
Before the expiration of prescribed period. ...	...124
Bill of exchange. ...	...3
Bill of Lading. ...	...156
Bond. ...	...3
Bonafide claim. ...	...65
Bonafide mistake. ...	...20,28
Bonafide mistake by even a senior counsel. ...	...55
Bond given by student sent abroad for studies. ...	...212
Book entries not sufficient. ...	...116
Breaches of contract—successive. ...	...135
Breach of covenant indemnity. ...	...246
Breach of trust. ...	...39
Burden of proof. ...	...120
By a Hindu governed by the Law of the Mitakshara. ...	...265
By a person excluded from joint family. ...	...266
By a Hindu for arrears of maintenance. ...	...268
By a purchaser in execution of a decree for delivery of possession.	...337

	Page
Cancellation of the document. —	...223,224
Carelessness is no excuse. —	...28
Causes of action should be the same. —	...63
Certification of payment, valid. ...	—119
Changing capacity in which party sues or is sued—amendment.	...130
Changing grounds of liability—amendment. —	—130
Char—till becomes fit. —	...300
Civil Procedure Code. ...	—159
Co-heirs of a Muslem holding as tenants. —	—304
Co-heir claiming adverse possession against other co-heirs.	—.304
Companies Act. —	...159
Compromise by widow. ...	...265
Computation of period of limitation. ...	—42
Compensation for demolition. ...	...161
Compensation for injury caused by an injunction wrongfully obtained.	—.191
Computation of time mentioned in instruments. —	—138
Concealment. —	...73
Concealment, silence or passiveness is not fraud. —	—75
Conditional acknowledgment how far effective. —	...106
Conditional and unconditional acknowledgment. ...	—85
Condonation of delay. —	—12
Condonation of dealy by additional custodian. ...	—25
Confidential document—acknowledgment in. —	—99
Continuing breaches and wrongs. ...	—135,136
Continuing breach of trust. —	—136
Continuing cause of action. —	—135
Continuing nuisance and trespass. —	...135
Continuing wrongs. —	...135
Continuous enjoyment. —	—143
Continuous running of time. ...	...37
Contract for sale of movable property. —	—198
Contract of indemnity. ...	—215
Contract of sale of property. —	...241
Contribution suit by a person paying more than his share.	—233
Copying agency. —	—47
Correcting miadescription—amendment. —	—129
Co-sharer's suit for share of produce. ...	—238
Court. —	—9
Court of Wards : Acknowledgment by. ...	...103
Court of Wards—Trustee for the minor. —	...41
Custom cannot override statute. ...	—142
Customary right of way. —	...149
Damages for negligence by Govt. Officer. ...	—189
Date fixed. —	...242
Dead men—suit against. ...	—131
Debtor's willingness to account. ...	—89

	Page
Declaratory Suit.	—250,251
Decree against one's interest.	...257
Decisions differing.	...65
Defacto Guardian.	...126
Defendant.	...3
Defendant made plaintiff and vice versa.	—131
Defendant was in possession, when it is plaintiff's case.	...288
Defendant's present claim of holding property in adverse possession.	—298
Defendant absent, exclusion of time.	—53
Defect of jurisdiction.	...60
Definitions.	—3
Delay of every day.	—18
Delay caused by latches.	...44
Delay in filing security bond.	—11
Delay in application.	—23
Demand and refusal.	—220
Deposition or affidavit—acknowledgment in.	...99
Deed of settlement by widow.	..225
Deed executed under influence.	...227
Dismissal of suits, etc. instituted, etc. after period of limitation.	...4
Dismissal of suits if time barred.	...8
Discretion of Court.	—18
Discretion.	...18
Disability of one of several plaintiffs as applicants.	...34
Disability of joint members.	—35
Disinherited son's widow.	—266
Dispossession.	...287
Divorce Act.	—159
Document, concealment of	...77
Dominant and servient tenements united.	...144
Due diligence.	...65
Easement.	...3
Easements Act—application of.	...142
Easements acquired independently of S. 26.	—144
Easements against government.	—145
Easement and adverse possession.	—141
Effect of acknowledgment in writing.	...105
Effect of acknowledgment.	—108
Effect of payment on account of debt or of interest as legacy.	...109
Effect of receipt of product of mortgaged land.	—109
Effect of payment of interest or principal.	—122
Effect of substituting or adding new plaintiff or defendant.	...127
Effect of fraud.	—69,71,77
Effect of acknowledgement in writing.	...79
Effect of substitution and addition of party.	—127
Electric Supply Bills charging less that amount due.	—230

Page

Endowed Property. 275,276,302,307
Endorsement at the back of mortgage. 82
Endorsement as to payments. 123
Enjoyment must be in character of an easement. 143
Enjoyment of open space over another's land. 146
Enjoyment is required and not actual user. 142
Enjoyment within two years of suit. 142
Entries in account books. 104
Exclusion in favour of reversioner or servient tenement. 149
Exclusion of time in legal proceedings. 42,51
Exclusion of time can not be counted when appeal is time barred. ...45
Exclusion of time of defendant's absence from Bangladesh territories. 53
Exclusion of time of proceeding bonafide in Court without jurisdiction. 54, 62, 63, 64
Exclusion of time during which proceedings are suspended. ...66, 67
Exclusion of time during which proceedings to set aside execution sale are pending. 68

Execution proceedings. 119
Executor—suit by. 132
Executor's acknowledgment. 102
Exparte order—for settiug aside. 55
Exparte admission. 29
Exparte decree. 24
Expression of hope. 85
Expiry of limitation. 82
Extension of period in certain cases. 11
Extension of period in appeal or application. 25
Extent of light acquired by user. 145
Extinguishment of right to property. 150,154
Extinguishment of right—retrospective. 152

Failure of the purchaser to pay mortgage debt. 242
Filing of award. 335
Fluctuating or accidental interruptions. 144
For compensation for the breach of any Contract. 243
For legacy or for a share. 262
For possession of an hereditary office. 263
For specific performance of a contract. 240
Foreign country. 4
For relief on the ground of mistake. ... 229, 230
For setting aside an ex-parte order. 55
For a call by a registered company. 240
Fraud, if proved. 70
Fraud or jest—acknowledgment under. 98
Fraud, against whom to be proved. 71

	Page
Fraud in sale.	...73
Fraud—against whom must be proved, final order.	...194
Fraudulent payment.	...121
General	...1
General Power of Attorney.	...220
General provisions of the Limitation Act—Applicability of	...158
Good faith.	...4
Good faith and due diligence.	...59
Goods not delivered by Railway.	...184
Goods partly delivered.	...184
Goods lost by carrier.	...182
Government filing an appeal out of time.	...13
Gross undervaluation of property.	...73
Guardian—meaning of.	...192
Handwriting.	114, 115
High Court closed for vacation.	...61
High Court entertained the appeal after condoning the delay of 52 days	...13
Hindu—meaning of.	...285
Hindu widow.	153. 194
Hindu widow—acknowledgement by	...102
Hindu family.	...130
Hindu widow, adverse possession against.	...285
Hindu widow—cannot prescribe by adverse possession.	...289
Illness of pleader.	...29
Immemorial user.	...146
Inclusion in favour of reversioner of servient tenement.	...150
Independent trespassers.	...292
In obtaining information about copy of judgment	...12
Insolvency Act.	...158
Insolvency schedule—acknowledgment in	...100
Insolvent, Sale by.	...257
Insolvent, Suit by.	...132
Insufficient acknowledgment.	...93, 103
Intentional admission—acknowledgment implies.	...84
Interruption.	143, 144, 148
Invalid promissory note—evidence of acknowledgment.	...100
Irreconcilable decisions on acknowledgments.	...83
Irregular expulsion.	...237
Joint claim.	...129
Joint right of action.	...129
Judgment pronounced in parties and their counsel's absence.	...15
Knowledge of fraud.	...74,76,77
Laches and acquiescence.	...77