FIRST SCHEDULE-(continued).

ACT IX OF 1871.

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Number and year.	Subject or title.	Extent of repeal.
Act No. XX of 1847.	Copyright Act	In section sixteen, the words 'actions, suits, bills.'
Act No. XII of 1855.	An Act to enable executors, administrators or repre- sentatives to sue and be sued for certain wrongs.	In section one, the words "and pro- vided such action shall be brought within one year after the death of such person," and the words "and so as such action shall be commenced within two years after the committing of the wrong."
Act No. XIII of 1855.	Compensation for loss occa- sioned by death caused by actionable wrong.	In section two, the words "and that every such action shall be brought within twelve calen- dar months after the death of such deceased person."
Act No. XXV of 1857.	Forfeiture for mutiny	Section nine.
Act No. VIII of 1859.	The Code of Civil Procedure.	In section one hun- dred and nineteen, the words "within a reasonable time not exceeding thirty days after any pro- cess for enforcing the judgment has
		the judgment has been executed," and the words "within thirty days from the date of the judg- ment." In section two hundred and thirty, the words "within one month

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Number and year.	Subject or title.	Extent of repeal.
		from the date of such dispossession." The last twelve words of section two hundred and forty-six. In sec- tion two hundred and fifty-six, the words "At any time within thirty days from the date of the sale." In section two hundred and sixty - nine, th e words "if made within one month
		from the date of such existence or ob- struction, or of such dispossession, as the case may be." In section three hun-
		dred and twenty- four, the second sentence. In section three hundred and twenty-seven, the words "within six months from the
		date of the award." In section three hundred and thirty - three, from and including the words "within the period" down to the
		end of the section. In section three hun- dred and forty- seven, the words "within thirty days from the date of
		the dismissal." In section three hun- dred and seventy- three, the words

Extent of repeal. Number and year. Subject or title. "within the period prescribed for the presentation of a memorandum of appeal." So much of section threehundred and seventy-seven as has not been repealed. The whole Act, ex-Act No. XIV of An Act to provide for the cept so much of limitation of suits. 1859. section fifteen as does not relate to the limitation of suits. So much of section Act No. IX of Workmen and employers .. two as relates to 1860. the limitation of suits. So much of section Act No. XXXI Arms Act forty-nine as relates of 1860. to the limitation of suits. Act No. V of Mofussil Police So much of section *** forty-two as relates 1861. to the limitation of suits. Civil Procedure Code Section twelve. Act No. XXIII Amendment. of 1861. Section four hun-Criminal Procedure Code ... Act No. XXV of dred and fifteen. 1861. Civil Courts in British Section twenty-four. Act No. I of Burma. 1863. Act No. VI of Consolidated Customs Act So much of sectiontwo hundred and 1863. fourteen as relates to the limitation of suits.

FIRST SCHEDULE-(continued).

ACT IX OF 1871.





FIRST SCHEDULE-(continued).

ACT IX OF 1871.

Number and year.	Subject or title.	Extent or repeal.
Act No. XXIII of 1863.	Claims to waste lands	So much of section five as relates to the limitation of suits.
Act No. VII of 1865.	Government Forests Act	So much of section sixteen as relates to the limitation of suits.
Act No. XX of 1866.	Registration Act	Section fifty-one.
Act No. XIV of 1868.	Contagious Diseases Act	So much of section twenty - five as re- lates to the limita- tion of suits.
Act No. XX of 1869.	Volunteers	So much of section twenty - six as re- lates to the limita- tion of suits.
Act No. X of 1870.	Land Acquisition	So much of section fifty-eight as relates to the limitation of suits.
Act No. IV of 1871.	Coroners	In section forty-two, the words 'after the expiration of three months from such fact or failure, nor.'
Bombay Regula- tion V of 1827.	A Regulation defining the limitations as to time within which civil actions may be prosecuted, and containing rules of judi- cation respecting written acknowledgments of debts executed without receipt of a full consideration ; also regarding interest, the ten- dering payment of debts, and the disposal of proper- ty mortgaged or pledged.	Chapter one.

SECOND SCHEDULE. (See section 4.)

FIRST DIVISION : SUITS.

ACT IX OF 1871.

Description of suit.	Period of limitation.	Time when period begins to run.
	Part 1. Thirty days.	
I.—To contest an award of the Board of Revenue un der Act No XXIII of 1863 (to provide for the adjudication of claims to waste lands).	Thirty days Part II Ninety days.	When notice of the award is delivered to the plaintiff.
2For doing, or for omit-	Ninety days	When the act or
ting to do, an act in pur- suance of any enactment in force for the time being in		omission took place.
British India.	Part III. Six months.	
3.—Under Act No. XIV of 1859 (to provide for the limitation of suits), section fifteen, to recover possession of immoveable property.	Six months	When the disposses- sion occurs.
4.—Under Act No. IX of 1860 (to provide for the speedy determination of certain disputes between workmen engaged in Rail- way and other public works and their employers), sec- tion one.	Ditto	When the wages, hire, or price of work claimed accrued due.
5.—Under Act No. Vof 1866 (to provide a summary procedure on bills of ex- change, and to amend, in certain respects, the com- mercial law of British India).	Ditto	When the bill on promissory note becomes due and payable.

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SECOND SCHEDULE-(continued). ACT IX OF FIRST DIVISION : SUITS-continued. 1871. Time when period Period Description of suit. of limitation. begins to run. Part IV. One year. When the penalty or 6 .--- Upon a Statute, Act, One year forfeiture is incurred. Regulation, or Bye-law, for a penalty or forfeiture. When the wages sued 7.-For the wages of a do-Ditto for accrue due. mestic servant, artisan or labourer not provided for by this schedule, No. 4. When the food or 8.-For the price of food or Ditto ... drink is delivered. drink sold by the keeper of a hotel, tavern or lodging house. When the lodging 9.-For the price of lodging. Ditto ... ends. When the purchaser 10 .- To enforce a right of Ditto takes actual posses pre-emption, whether the sion under the sale right is founded on law, or sought to be imgeneral usage, or on special peached. contract. The date of the in-11 .- For damages for infring-Ditto ... fringement. ing copy-right or any other exclusive privilege. The date of the 12 .- By executors, adminis-Ditto death of the person trators or representatives wronged. under Act No. XII of 1855 (to enable executors, administrators or representatives to sue and be sued for certain wrongs). The date of the death Ditto -13 .- By executors, adminis-... of the person killed. trators or representatives under Act No. XIII of 1855 (to provide compensations to families for loss occasioned by the death of a person caused by actionable wrong).

ACT IX SECOND SCHEDULE-(continued). OF' FIRST DIVISION : SUITS-continued. 1871. Time when period Period Description of suit. begins to run. of limitation. Part IV. One year. When the sale is con-14 .- To set aside any of the One year firmed, or would following sales :--otherwise have become final and con-(a) sale in execution of a clusive had no such decree of a Civil Court ; suit been brought. (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 táluq sold for current arrears of rent. Explanation .- In this clause 'patni ' includes any intermediate tenure saleable for current arrears of rent. The date of the final 15 .--- To alter or set aside a Ditto ... decision or order in decision or order of a Civil the case by a Court Court in any proceeding competent to deterother than a suit. mine it finally. The date of the act. 16 .- To set aside any act of Ditto an officer of Government in his official capacity, not herein otherwise expressly provided for. When the attach-17 .- Against Government to Ditto 1 ment, lease or transset aside any attachment, fer is made. lease or transfer of immoveable property by the Revenue Authorities for of Government arrears

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ст IX оғ 1871.		CHEDULE-	
	Description of suit.	Period of limitation.	Time when period begins to run,
		Part 1V. One year.	
	18.—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 re- coverable as such arrears.	One year	When the payment is made.
	19.—Against Government for compensation for land ac- quired for public purposes.	Ditto	The date of deter- mining the amount of the compensa- tion.
	20.—Like suit for compensa- tion when the acquisition is not completed.	Ditto	The date of the re- fusal to complete.
i	21.—For false imprisonment.	Ditto	When the imprison- ment ends.
	22For any other injury to the person.	Ditto	When the injury is committed.
	23For a malicious prose- cution.	Ditto	When the plaintiff is acquitted.
	24.—For libel	Ditto	When the libel is published.
	25.—For slander	Ditto	When the words are spoken.
	26For taking or damaging moveable property.	Ditto	When the taking or damage occurs.
	27.—For loss of service occa- sioned by the seduction of the plaintifi's servant or daughter,	Ditto	When the loss occurs.

SECOND SCHEDULE-(continued).

FIRST DIVIS	ion : Suits-co	ntin	med.
Description of suit.	Period of limitation.		Time when period begins to run.
	Part IV. One year.		
28.—For inducing a person to break a contract with the plaintiff.	One year	•••	The date of the breach.
29.—For an illegal, irregular or excessive distress.	Ditto	•••	The date of the dis- tress.
30.—For wrongful seizure of moveable property under legal process.	Ditto		The date of the seiz- ure.
regai process.	Part V.		
51For obstructing a way or a watercourse.	Two years. Two years	••••	The date of the obs- truction.
82For diverting a water- course.	Ditto	•	The date of the diversion.
83.—For wrongfully detain- ing title-deeds.	Ditto	•••	When the title to the property comprised in the deeds is ad- judged to the plain- tiff, or the detainer's possession otherwise becomes unlawful.
34.—For wrongfully detain- ing any other moveable property.	Ditto	•••	When the detainer's possession becomes unlawful.
35.—For specific recovery of moveable property in cases not provided for by this schedule, numbers 48 and 49.	Ditto		When the property is demanded and refused.
36.—Against a carrier for losing or injuring goods.	Ditto	•••	When the loss or injury occurs.
37.—Against a carrier for delay in delivering goods.	Ditto	•••	When the goods ought to be deli- vered.

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SECOND SCHEDULE-(continued). FIRST DIVISION : SUITS-continued.

Description of suit.	Period of limitation.		Time when period begins to run.
	Part V. Two years.		
38.—Against one who, hav- ing a right to use property for specific purposes, per- verts it to other purposes.	Two years	**	The time of the per- version.
39.—Under Act No. XII of 1855 (to enable executors, administrators or repre- sentatives to sue and be sued for certain wrongs) against an executor, ad- ministrator or other repre- sentative.	Ditto	•••	When the wrong complained of is done.
40.—For compensation for any wrong, malfeasance, nonfeasance, or misfea- sance, independent of con- tract and not herein specially provided for.	Ditto		When the wrong is done or the default happens.
41.—For the recovery of a wife.	Ditto	•••	When possession is demanded and re- fused.
42.—For the restitution of conjugal rights.	Ditto *		When restitution is demanded and re- fused.
	Part VI. Three years		
43.—For trespass upon im- moveable property.	Three years	•	When the trespass takes place.
44To contest an award under any of the following Regulations of the Bengal Code :- VII of 1822, IX of 1825, and IX of 1833.	Ditto	••••	The date of the final award or order in the case.

Description of suit.	Period of limitation.		Time when period begins to run.	
	Part VI. Three year			
5.—By a party bound by such award to recover any property comprised there- in.	Three years		The date of the final award or order in the case.	
6.—By any person bound by an order respecting the possession of property made under Act No. XVI of 1838, section one, clause two, or Act No. XXV of 1861, chapter twenty-two, or Bombay Act No. V of 1864, or by any one claiming under such person, to recover the property comprised in such order.	Ditto.		The date of the final order in the case.	
7.—For lost moveable pro- perty not dishonestly mis- appropriated or converted.	Ditto	•••	When the property is demanded and re- fused.	
8.—For moveable property acquired by theft, extor- tion, cheating, or dishonest misappropriation or con- version.	Ditto		Ditto.	
9.—For the hire of animals, vehicles, boats or house- hold furniture.	Ditto	•••	When the hire be- comes payable.	
50.—For the balance of money advanced in pay- ment of goods to be deli- vered.	Ditto		When the goods ought to be deli- vered.	
1.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Ditto		The date of the deli- very of the goods.	

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SECOND SCHEDULE-(continued). FIRST DIVISION : SUITS-continued.

Description of suit.	Period of limitati		Time when period begins to run.
	Part V. Three yea	50 E-580 VI /U/ 10	
52.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Three years	• •••	The expiry of the period of credit.
53.—For the price of goods sold and delivered to be paid for by a bill of ex- change, no such bill being given.	Ditto	•••	When the period of the proposed bill elapses.
54.—For the price of trees or growing crops sold by the plaintiff to the defend- ant where no fixed period of credit is agreed upon.	Ditto	•••	The date of the sale.
55.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Ditto		When the work is done.
56.—For money payable for money lent.	Ditto	•••	When the loan is made.
57.—Like suit when the lender has given a cheque for the money.	Ditto		When the cheque is paid.
58.—For money lent under an agreement that it shall be payable on demand.	Ditto	10 	When the demand is made.
59.—For money payable to the plaintiff for money paid for the defendant.	Ditto		When the money is paid.
60.—For money payable by the defendant to the plain- tifl for money received by the defendant for the plain- tifl's use.	Ditto	• • • • •	When the money is received.

SECOND SCHEDULE-(continued).

FIRST DIVISION : SUITS-continued, Time when period Period Description of suit. of limitation. begins to run. Part VI. Three years. When the interest 61.-For money payable for interest upon money due Three years becomes due. from the defendant to the plaintiff. When the accounts 62.-For money payable to the plaintiff for money Ditto ... are stated, unless where the debt is found to be due from the made payable at a defendant to the plaintiff future time and then on accounts stated between when that time arthem. rives. At the time specified Ditto 63 .- Upon a promise to do - 6.4 or upon the continanything at a specified gency happening. time, or upon the happening of a specified contingency. When the account is Ditto <u>9</u>.1/(64 .- Against a factor for an demanded, or where account. no such demand is made, when the agency terminates. The day so specified. Ditto 65 .- On a single bond where a day is specified for payment. The date of executing Ditto 66 .- On a single bond where the bond. no such day is specified. When the condition Ditto 67.-On a bond subject to a . . . is broken. condition. When the bill or note Ditto 68 .- On a bill of exchange falls due. or promissory note payable at a fixed time after date. When the bill is pre-Ditto 2.8 69.-On a bill of exchange sented. payable at or after sight.

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SECOND SCHEDULE - (continued).

FIRST DIVISION : SUITS-continued.

Description of suit.	Period of limitation.	Time when period begins to run.
	Part VI. Three years	•
70.—On a bill of exchange accepted payable at a par- ticular place.	Three years	When the bill is pre- sented at that place
71.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Ditto	When the fixed tim expires.
72.—On a bill of exchange or promissory note payable on demand and not accom- panied by any writing res- training or postponing the right to sue.	Ditto	When the demand i made.
73.—By the endorsee of a bill or promissory note against the endorser.	Ditto .	The date of the endorsement.
74.—On a promissory note or bond payable by instal- ments	Ditto .	The expiration of the first term of pay ment, as to the part then payable; and for the other parts the expiration of the respective terms of payment.
75.—On a promissory note or bond payable by instal- ments, which provides that, if default be made in pay- ment of one instalment, the whole shall be due.	Ditto .	The time of the firs default, unless where the payee or obliged waives the benefit o the provision, and then when fresh de- fault is made.
76.—On a promissory note given by the maker to a third person to be deliver- ed to the payee after a cer- tain event should happen.	Ditto .	The time of the deli- very to the payee.

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SECOND SCHEDULE-(continued). ACT IX FIRST DIVISION : SUITS-continued. Period Time when period Description of suit. of limitation. begins to run. Part VI. Three years. When the notice is Three years 77 .--- On a dishonoured foreign bill where protest has been given. made and notice given. 78 .- By the payee against the Ditto The date of the refu-120 sal to accept. drawer of a bill of exchange which has been dishonoured by non-acceptance. Ditto. 79.-Like suit when the bill Ditto 1.5 has been dishonoured by non-acceptance and afterwards by non-payment. 80 .- Suit on a bill of ex-When the bill or note Ditto change or promissory note becomes payable. not herein expressly provided for. Ditto When the acceptor 81.-By the acceptor of an ... pays the amount. accommodation bill against the drawer. When the surety pays 82 .- By a surety against the Ditto the creditor. principal debtor. 83 .- By a surety against co-Ditto When the plaintiff 20.1 pays anything in exsurety. cess of his own share. When the plaintiff is 84.--- Upon any other contract Ditto actually damnified. to indemnify. The termination of 85.---By an attorney or vakil Ditto for his costs of a suit or a the suit or business, or (where the atparticular business, there being no express agreement torney or vakil proas to the time when such perly discontinues the suit or business) costs are to be paid. the date of such discontinuance.

SECOND SCHEDULE-(continued). FIRST DIVISION : SUITS-continued.

Description of suit.	Period of limitatio	n,	Time when period begins to run.
	Part VI Three yea		
86.—For compensation for damage caused by an in- junction wrongfully ob- tained.	Three years	••••	Wben the injunction ceases.
87.—For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Ditto		The time of the last item admitted or proved in the ac- count.
88.—On a policy of insurance when the sum assured is payable after proof of the death or loss has been given to or received by the in- surers.	Ditto	•••	When proof of the death or loss is given or received, to or by the insurers, whether by or from the plaintiff, or any other person.
89.—By the assured to re- cover premia paid under a policy voidable at the election of the insurers.	Ditto		When the insurers elect to avoid the policy.
90.—By a principal against his agent for moveable pro- perty received by the latter and not accounted for.	Ditto		When the account is demanded and re- fused.
91.—Other suits by princi- pals against agents for neg- lect or misconduct.	Ditto		When the neglect or misconduct occurs.
92.—To cancel or set aside an instrument not otherwise provided for.	Ditto		When the instrument is executed.
93.—To declare the forgery of an instrument issued, or registered, or attempted to be enforced.	Ditto	•••	The date of the issue, registration, or at- tempt.

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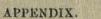
SECOND SCHEDULE-(continued). FIRST DIVISION : SUITS-continued.

Description of suit.	Period of limitation.		Time when period begins to run.
	Part VI Three year		
94.—For property which the plaintiff has conveyed while insane.	Three years		When the plaintiff is restored to sanity and has knowledge of the conveyance.
95.—For relief on the ground of fraud.	Ditto	••••	When the fraud be- comes known to the party wronged.
96To set aside a decree obtained by fraud.	Ditto		Ditto.
97For relief on the ground of mistake in fact.	Ditto -	•••	When the mistake becomes known to the plaintiff.
98.—For money paid upon an existing consideration which afterwards fails.	Ditto		The date of the failure.
99.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Ditto		The date of the trustee's death, or, if the loss has not then been occasioned, the date of the loss.
100.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers.	Ditto	:	The date of the plain- tiff's advance in excess of his own share.
101.—By a co-trustee to en- force against the estate of a deceased trustee a claim for contribution.	Ditto		When the right to contribution accrues.
02For a seaman's wages.	Ditto		The end of the voyage during which the wages are earned.

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SECOND SCHEDULE-(continued). FIRST DIVISION : SUITS-continued.

Description of suit.	Period of limitation.	Time when period begins to run.	
	Part VI. Three years.		
103.— By a Muhammadan for exigible dower (mu'ajjal).	Three years	When the dower is demanded and re- fused, or (where during the conti- nuance of the mar- riage no such de- mand has been made) when the marriage is dissolv- ed by death or di- vorce.	
104. – By a Muhammadan for deferred dower (<i>mu'wajjal</i>).	Ditto	When the marriage is dissolved by death or divorce.	
105.—By a mortgagor after the mortgage has been satis- fied, to recover surplus collections received by the mortgagee.	Ditto	The date of the re- ceipt.	
106.—For an account and a share of the profits of a dissolved partnership.	Ditto	The date of the dis- solution.	
107By a Hindú manager of a joint estate for con- tribution in respect of a payment made by him on account of the estate.	Ditto	The date of the pay- ment.	
108 - By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Ditto	When the trees are cut down.	

SECOND SCHEDULE-(continued).

SECOND SCHEDULE-(continued). FIRST DIVISION: SUITS-continued.			оғ 1871,
Description of suit.	Period of limitation.	Time when period begins to run.	
	Part VI. Three years.		
109.—For the profits of im- moveable property belong- ing to the plaintiff wrong- fully received by the de- fendant.	Three years	When the profits are received, or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, the date of the decree of the Appellate Court.	
110For arrears of rent	Ditto	When the arrears be- come due.	
111.—By a vendor of im- moveable property to en- force his lien for unpaid purchase-money.	Ditto	The time fixed for completing the sale, or (where the title is accepted after the time fixed for com- pletion) the date of the acceptance.	
112.—For a call by a com- pany registered under any Statute or Act.	Ditto	When the call is made.	
113.—For specific perform- ance of a contract.	Ditto	When the plaintiff has notice that his right is denied.	
114.—For the rescission of a contract.	Ditto	When the contract is executed by the plaintiff.	
115.—For the breach of any contract, express or im- plied, not in writing regis- tered, and not herein spe- cially provided for.	Ditto	When the contract is broken, or (where there are successive breaches) when the breach sued for oc- eurs, or (where the breach is continu- ing) when it ceases.	

SECOND SCHEDULE-(continued). FIRST DIVISION: SUITS-continued.

Description of suit.	Period of limitation.	Time when period begins to run.
	Part VII. Six years.	
116.—Upon a judgment ob- tained in a foreign country.	Six years .	The date of the judg- ment.
117.—On a promise or con- tract in writing registered.	Ditto .	When the period of limitation would begin to run against a suit brought on a similar promise or contract not regis- tered.
118.—Suit for which no period of limitation is pro- vided elsewhere in this schedule.	Ditto .	When the right to sue accrues.
	Fart VIII. Twelve years.	
119. — By an auction-pur- chaser or any one claiming under him to avoid incum- brances or under-tenures in an entire estate sold for arrears of Government revenue, the estate being, by virtue of such sale, freed from incumbrances and under-tenures.	Twelve years	. When the sale be- comes final and con- clusive.
120.—To avoid incumbrances of under-tenures in a patni taluq or other saleable tenures sold for arrears of rent, the taluq or tenure being, by virtue of such sale, freed from incum- brances and under-tenures.	Ditto	When the sale be- comes final and con- clusive.
21Upon a judgment ob- tained in British India, or a recognizance.	Ditto	The date of the judg- ment or recogni- zance.

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SECOND SCHEDULE-(continued).

FIRST DIVISION : SUITS-continued.

Description of suit.	Period	Time when period
Distribution of sum	of limitation.	begins to run.
	Part VIII. Twelve years.	
22.—For a legacy or for a distributive share of the moveable property of a tes- tator or intestate.	Twelve years	When the legacy or share becomes pay- able or deliverable.
23.—For possession of an hereditary office.	Ditto	When the defendant, or some person through whom he claims, took posses- sion of the office adversely to the plaintiff.
		Explanation An he- reditary office is pos- sessed when the pro- fits thereof are nsually received, or (if there are no pro- fits) when the duties thereof are usually performed.
24.—Suit, during the life of a Hindú widow by a Hindú entitled to the possession of land on her death, to have an alienation made by the widow declared to be void except for her life.	Ditto	The date of the alie- nation.
25.—By a Hindú governed by the law of the Miták- shará toset aside his father's alienation of ancestral pro- perty.		The date of the alienation.
26Like suit by a Hindú governed by the law of the Dáyabhága.		When the father dies

APPENDIX,

SECOND SCHEDULE-(continued). FIRST DIVISION : SUITS-continued.

Description of suit.	Period of limitation,	Time when period begins to run.
	Part VIII. Twelve years.	
127By a Hindú excluded from joint family property to enforce a right to share therein.	Twelve years	When the plaintiff claims and is refused his share.
128.— By a Hindú for main- tenance.	Ditto	When the mainten- ance sued for is claimed and refused.
129.—To establish or set aside an adoption.	Ditto	The date of the adop- tion, or (at the option of the plaintiff) the date of the death of the adoptive father.
130For the resumption or assessment of rent - free land.	Ditto	When the right to re- sume or assess the land first accrued. Provided that no such suit shall be main- tained where the land forms part of a permanently-set- tled estate, and has been held rent-free from the time of the Permanent Settle- ment.
131.—To establish a periodi- cally recurring right.	Ditto	When the plaintiff is first refused the en- joyment of the right.
132.—For money charged upon immoveable property.	Ditto	When the money sued for becomes due.
Explanation The allowance and fees called málikána and haqqs shall, for the purpose of this clause, be deemed to be money charg- ed upon immoveable pro- perty.		

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OF 1871. Period Time when period Description of suit. of limitation. begins to run. Part VIII. Twelve years. 133 .- To recover moveable The date of the par-Twelve years property conveyed in trust. chase. deposited or pawned and afterwards bought from the trustee, depositary or pawnee, in good faith and for value. The date of the pur-134 .--- To recover possession Ditto of immoveable property chase. conveyed in trust or mortgaged and afterwards purchased from the trustee or mortgagee in good faith and for value. 135 .- Suit instituted in a When the mortgagee Ditto Court, not established by is first entitled to Royal Charter by a mortpossession. gagee for possession of immoveable property mortgaged. 136 .- By a purchaser at a When the vendor is Ditto .. first entitled to posprivate sale for possession of immoveable property session. sold, when the vendor was out of possession at the date of the sale. 137 .- Like suit by a pur-Ditto When the execution-... chaser at a sale in execudebtor is first entitled to possession. tion of a decree, when the execution-debtor was out of possession at the date of the sale. The date of the sale. 138.-By a purchaser of land Ditto at a sale in execution of a decree for possession of the

purchased land, when he never has had possession.

S E C O N D S C H E D U L E - (continued).

FIRST DIVISION ; SUITS-continued.

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ACT TX OF 1871.

SECOND SCHEDULE-(continued). FIRST DIVISION: SUITS-continued.

Description of suit.	Period of limitation.	Time when period begins to run.
	Part VIII. Twelve years.	
139.—Like suit when the purchaser had possession, but was afterwards dis- possessed.	Twelve years	The date of the dis- possession.
140.—By a landlord to re- cover possession from a tenant.	Ditto	When the tenancy is determined.
141By a remainderman, a reversioner (other than a landlord), or a devisee, for possession of immoveable property.	Ditto	When his estate falls into possession.
142.—Like suit by a Hindú entitled to the possession of immov+able property on the death of a Hindú widow.	Ditto	When the widow dies.
143.—For possession of im- moveable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the pos- session.	Ditto	The date of the dis- possession or dis- continuance.
144.—Like snit, when the plaintiff has become enti- tled by reason of any for- feiture or breach of con- dition.	Ditto "	When the forfeiture was incurred or the condition broken.
145.—For possession of im- moveable property or any interest therein not hereby otherwise specially pro- vided for.	Ditto	When the possession of the defendant, or of some person through whom he claims, became ad- verse to the plaintiff

SECOND SCHEDULE-(continued). FIRST DIVISION : SUITS-continued.

ACT IX OF 1871.

Description of suit.	Period of limitation.	Time when period begins to run.
	Part VIII. Twelve years.	
146.—For a declaration of right to an easement.	Twelve years	When the easement ceased to be enjoyed by the plaintiff, or the persons on whose behalf he sues.
	Part IX. Thirty years.	
147.—Against a depositary or pawnee to recover moveable property deposit- ed or pawned.	Thirty years	The date of the de- posit or pawn, unless where an acknow- ledgment of the title of the depositor or pawnor, or of his right of redemption, has before the expir- ation of the pres- cribed period been made in writing, signed by the depo- sitary, or pawnee, or some person claim- ing under him, and, in such case, the date of the acknow- ledgment.
	Part X. Sixty years.	
148.—Against a mortgagee to recover possession of im- moveable property mort- gaged.	Sixty years	The date of the mort- gage, unless where an acknowledgmen of the title of the mortgagor or of hi- right of redemption has, before the ex- piration of the pres- cribed period, been



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Аст IX ог 1871.

SECOND SCHEDULE-(continued). FIRST DIVISION: SUITS-continued.

APPENDIX.

Description of suit.	Period of limitation.	Time when period begins to run.
	Part X. Sixty years.	
		made in writin signed by the mori gagee or some per son claiming under him, and, in suc case, the date of the acknowledgment. Provided that a claims to redeem arising under instru- ments of mortgag of immoveable pro- perty situate in Bri- tish Burma, which have been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that Pro- vince immediately
149.—Before a Court estab- lished by Royal Charter in the exercise of its ordi- nary original civil juris- diction by a mortgagee to recover from the mortga- gor the possession of im- moveable property mort- gaged.	Sixty years	When any part of the principal or in- terest was last paid on account of the mortgage-debt.
50.—Any suit in the name of the Secretary of State for India in Council.	Ditto	When the right to sue accrued.

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SECOND DIVISION : APPEALS.			
Description of appeal.	Period of limitation.	Time when period begins to run.	
151.—Under the Code of Civil Procedure to the Court of a District Judge.	Thirty days	The date of the decree appealed against.	
152.—Under the Code of Criminal Procedure to any Court other than the High Court.	Ditto	The date of the sen- tence or order ap- pealed against.	
153.—Under the same Code to the High Court.	Sixty days	Ditto.	
154.—Under the Code of Civil Procedure to the High Court.	Ninety days	The date of the decree appealed against.	

SECOND SCHEDULE-(continued).

THIRD DIVISION : APPLICATIONS.

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Description of application.	Period of limitation.	Time when period begins to run.
155.—Under the Code of Civil Procedure to set aside an award.		When the award is submitted to the Court, and notice of the submission has been given to the persons and in man- ner prescribed by the High Court.
156.—By a plaintiff for an order to set aside a judg- ment by default.	Thirty days	The date of the judg- ment.
157.—By a defendant for an order to set aside a judg- ment ex parle.	Ditto	The date of executing any process for en- forcing the judg- ment.
158.—Under the Code of Civil Procedure, by a person dis- possessed of immoveable property, and disputing the right of the decree-holder to be put-into possession.	Ditto	The date of the dis- possession.

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SECOND SCHEDULE-(continued).

THIRD DIVISION : APPLICATIONS-continued.

Description of application.	Period of limitation,		Time when period begins to run.
159.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale.	Thirty days	4.1.4	The date of the sale,
160.—Complaining of resist- ance or obstruction to delivery of possession of immoveable property sold in execution of a decree, or of dispossession in the delivery of possession to the purchaser of such pro- perty.	Ditto		The date of the re- sistance, obstruction, or dispossession.
161.—For re-admission of an appeal dismissed for want of prosecution.	Ditto	•••	The date of the dis- missal.
162.—For leave to appeal as a pauper.	Ninety days	•••	The date of the decree appealed against.
163To a High Court for the admission of a special appeal.	Ditto	1.	Ditto.
164.—For a review of judg- ment.	Ditto	•••	The date of the decree.
165.—Under the Code of Civil Procedure, section three-bundred-and-twenty- seven, that an award be filed in Court.	Six months	***	The date of the award.
166.—For the execution of a decision (other than a decree or order passed in a regular suit or an appeal) of a Civil Court or of a Revenue Court.	One year	•••	The date of the deci- sion or of taking some proceeding to enforce or keep in force the decision.

SECOND SCHEDULE-(continued). THIRD DIVISION: APPLICATIONS-continued.

Description of application.	Period of limitation.	Time when period begins to run.
167.—For the execution of a decree or order of any Civil Court not provided for by No. 169.	Three years	The date of the decree or order, or (where there has been an appeal) the date of the final decree or order of the Appellate (Jourt, or (where there has been a review of judgment) the date of the decision pass- ed on the review, or (where the appli- cation next herein- after mentioned has been made) the date of applying to the Court to enforce, or keep in force, the decree or order, or (where the notice n e x t hereinafter made has been issu- ed) the date of issu- ing a notice under the Code of Civil Procedure, section two - hundred - and sixteen, or (where the appli- cation is to enforce payment of an in- stalment which the decree directs to be paid at a specified date) the date so specified.
168.—For the execution of any such decree or order of which a certified copy has been registered under		The date of the decree or order, or (where there has been an appeal) the

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3871.	SECOND SCHEDULE-(continued). THIRD DIVISION: APPLICATIONS-continued.			
	Description of application.	Period of limitation.	Time when period begins to ran.	
			or (where there has been a review of judgment) the date of the decision pass- ed on the review.	
	169.—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction.	Twelve years	When a present right to enforce the judg- ment, decree or order accrued to some person capable of releasing the right: Provided that when the judgment, de- cree or order has been revived, or some part of the principal money se- cured 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 com- puted from the date of such revivor, pay- ment or acknow- ledgment, or the latest of such reviv- ors, payments or acknowledgments, as the case may be.	

ACT No. XV of 1877.

As amended by Acts No. XII of 1879, No. VIII of 1880, and No. V of 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Act No. XV of 1877 received the assent of the Governor General on the 19th of July, 1877; Act No. XII of 1879 received the assent of the Governor General on the 29th of July, 1879; Act No. VIII of 1880 received the assent of the Governor General on the 12th March, 1880; and Act No. V of 1881 received the assent of the Governor General on the 21st of January, 1881.)

An Act for the Limitation of Suits, and for other purposes. Title.

Act XIV of 1859, which provided periods of limitation in the case of *applications* for execution of decrees and orders, as well as periods for the limitation of *suits* in the ordinary acceptation of the word, was described merely as "an Act to provide for the limitation of suits." (See Hurro v. Shoorodhonce, 9 W. R., 402, 404.) In Act XV, suit does not include an appeal or an application. (See sec. 3; p. 277, note \tilde{o} , supra.) The words "and for other purposes" refer to the limitation of appeals and applications, and to the rules relating to prescription in secs. 26 to 23.

WHEREAS it is expedient to amend the law relating to the limit- Preamble.

Preamble. ation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows :--

Act XIV of 1859 and Act IX of 1871 recited the expediency of amending and *consolidating* the law of limitation. The work of consolidation having been effected by those Acts, the main object of Act XV is to *amend* the law of limitation.

"Certain applications to Courts."—Not applications to arbitrators and heads of offices, nor all applications to Courts. (See pp. 231 and 232, supra.) Rules for the acquisition of an absolute and indefeasible right to easements, by quasi-possession or enjoyment, are here described as "rules for acquiring by possession the ownership of easements." (See secs. 26 and 27, and Lecture XII.)

No express rules have been labi down by the Act "for *acquiring* by *possession* the ownership of other property."

ACT XV OF 1877.

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But the preamble evidently refers to the rule in sec. 28, under which the right to property is *extinguished* by the *absence of possession*, and *virtually* conveyed to the party in possession. The Legislature, here, clearly shews what it understands to be the *effect* of the extinguishment of right under sec. 28. (See pp. 4, 5, 336, and 337, *supra*.)

"Easements and other property."—An easement, however, is rather a fringe to property than property itself. (See Lecture XII.) In sec. 28, the word "property" is used in its ordinary sense, and does not include "easements."

PART I.

PRELIMINARY.

1. This Act may be called "The Indian Limitation Act, 1877 :"

It extends to the whole of British India; but nothing

Extent of Act.

contained in sections two and three or in Parts II and III applies-

(a) to suits under the Indian Divorce Act, or

(b) to suits under Madras Regulation VI of 1831;

Commencement.

and it shall come into force on the first day of October, 1877.

"Whole of British India."-Compare sec. 1 of Act XIV of 1882, and sec. 24, Act XIV of 1859. Act XV of 1877 applies to the non-regulation or scheduled districts. (See p. 230, *supra*.)

"Suits under the Indian Divorce Act."-See pp. 193, 231, supra.

The Indian Divorce Act (IV of 1869) relates to persons professing the *Christian* religion. It also applies to marriages contracted under Act III of 1872. Unreasonable delay in presenting or prosecuting a petition for dissolution of marriage is, under the Divorce Act, a ground for disallowing the petition.

Suits by Mahomedans or Hindus for a decree for nullity of marriage or for restitution of conjugal rights are governed by Act XV of 1877.

Madras Regulation VI of 1831 is a Regulation to prevent the misappropriation of emoluments annexed by the State to hereditary village and other officers in the Revenue and Police Departments, and to maintain the due efficiency of those offices. Claims to such offices or to any of the emoluments annexed thereto are cognizable by the Revenue authorities. (See 4 Mad., 70.)

As to the commencement of the Act, see p. 229, supra.

Applications, in suits or execution-proceedings *pending* on the 1st October 1877, are governed by the old law. (See *Jogomohun* v. Luchmesshur, I. L. R., 10 Calc., 748, and pp. 201, 209, and 210, supra.)

Аст XV ог 1877.

Sec. 1. Short title.

2. On and from that day, the Acts mentioned in the first Act⁻XV schedule hereto annexed shall be re-1877.

pealed to the extent therein specified.

[On the effect of repeal of Acts, see Lecture VII, and p. 237, note (6), supra.]

But all references to the Indian Limitation Act, 1871, shall

References to Act IX of 1871.

Saving of titles already acquired. Saving of Act IX of 1872, s. 25. be read as if made to this Act; and nothing herein or in that Act contained shall be deemed to affect any title acquired, or to revive any right to sue or under any enactment thereby repealed;

barred, under that Act or under any enactment thereby repealed ; and nothing herein contained shall be deemed to affect the Indian Contract Act, section 25.

"Any title acquired."—A right to sue, not barred by Act IX of 1871, is not a title acquired under that Act (Thakarya v. Sheo, I. L. R., 2 All., 872). Title to property indirectly acquired under sec. 29 of Act IX of 1871, or under Act XIV of 1859, is "title acquired." See Zulfikar v. Manna, I. L. R., 3 All., 48.

"Any right to sue barred."-A right to institute a suit or to apply for execution of a decree is a right to sue. "Suit" is defined by sec. 3. But to "sue" is nowhere defined. "Right to sue" includes the right to make an application invoking the aid of the Court for the purpose of satisfying a demand (Nursing v. Harihar, I. L. R., 5 Cale., 897). A right to sue, which accrued when Act IX of 1871 was in force, but which was not barred on the 1st October 1877, is governed by the provisions of Act XV of 1877. (See p. 229, supra.) Applications for execution of decrees in suits instituted before the 1st April 1873, when they are applications in a proceeding commenced before the 1st October 1877, and pending on that date, are governed by Act XIV of 1859. Applications for execution of decrees in suits instituted on or after the 1st April 1873, and before the 1st of October 1877, when such applications are made in a proceeding pending on the 1st October 1877, are governed by Act IX of 1871. New applications made on or after 1st October 1877, although the suits from which such applications arise may have been previously instituted, are governed by Act XV of 1877. (See Mungul Pershad v. Grija Kant, I. L. R., 8 Calc., 51, P. C.; Juggamohun v. Luchmessur, I. L. R., 10 Calc., 748. See also I. L. R., 1 Mad., 52; I. L. R., 7 Bomb., 459; and pp. 209, 210, supra.)

Titles fully acquired, and rights to sue completely barred, are saved from the retrospective operation of Act XV. (See pp. 200, 205, 206 and 229, supra.)

Saving of sec. 25 of the Contract Act. A written acknowledgment of a debt in order to be effectual under sec. 19, must be signed *before* the expiry of the prescribed period of limitation. Notwithstand-

Sec. 2.

ACT XV ing this provision, a written promise to pay a debt, signed after the expiry of such period, is valid under sec. 25, cl. 3, of the Contract Act. OF 1877. (See Raghoji v. Abdool, I. L. R., 1 Bomb., 590; Chatur v. Tulsi, I. L. R., 2 Bomb., 230; and p. 276, supra.) This is declaratory of the old law on the subject (Heeralal v. Dhunput, I. L. R., 4 Calc., 500).

Sec. 2, para, 8.

> Suits for which period prescribed by this Act is shorter than that prescribed by Act IX of 1871.

Notwithstanding anything herein contained, any suit mentioned in No. 146 of the second schedule hereto annexed may be brought within five years next after the said first day of October 1877, unless where the period prescribed for such suit by the said

Indian Limitation Act, 1871, shall have expired before the completion of the said five years ; and any other suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the said Indian Limitation Act, 1871, may be brought within two years next after the said first day of October 1877, unless where the period prescribed for such suit by the same Act shall have expired before the completion of the said two years.

Temporary suspension of the Act, as regards suits for which the period of limitation prescribed by Act IX of 1871 was reduced-

The Act was passed on the 19th July 1877, but it did not come into operation for two months and twelve days from that date. In respect of suits mentioned in No. 146 (for which the period of limitation was reduced by thirty years), the Act came into operation on the 1st October 1882, and as regards other suits for which the period was reduced, the Act came into operation on the 1st October 1879. So far as these exceptional suits are concerned, the Act did not come into force on the 1st of October 1877. (See p. 229, supra.)

The expression "the period of limitation prescribed " occurs in sec. 2 and sec. 4. These words refer to the entries in columns 2 and 3 of sched. ii, taken in connection with each other, and not to the entry in column 2 only. So that, even if the period of limitation in a particular case is the same under either the Act of 1871 or the Act of 1877, if the starting point of limitation was later under the former Act, "the period of limitation prescribed" by the latter Act must be considered shorter than that prescribed by the former Act (Rup v. Mohai, I. L. R., 3 All., 415). Suits on bonds, promissory notes and bills payable on demand have, in effect, a shorter period allowed by the Act of 1877. (See Omrittolall v. Howell, 2 C. L. R., 426; also I. L. R., 2 Mad., 113 and 397; and I. L. R., 4 Bomb., 87.) Suits by persons excluded from joint family property to enforce a right to share therein under art. 127 also have, practically, a shorter period allowed by the Act (Narain v. Lokenath, I. L. R., 7 Calc., 461).

Interpretation-clause,

3. In this Act, unless there be some- Act XV thing repugnant in the subject or context 1877.

[See pp. 178 and 203, supra.]

'plaintiff' includes also any person from or through whom a plaintiff derives his right to sue; 'applicant' includes also any person from or through whom an applicant derives his right to apply; and 'defendant' includes also any person from or through whom a defendant derives his liability to be sued :

["Person from or through whom a plaintiff derives his right to sue."

The plaintiff may be the heir, successor, executor, administrator, legatee, devisee or assignee of such person. An execution-purchaser (generally) takes subject to all equities affecting the judgment-debtor, and will be bound by constructive notice in the same way as an ordinary purchaser (*Ramlochun* v. *Ramnarain*, 1 C. L. R., 296). But there is a nice distinction between their rights (*Dindyal* v. *Jugdeep*, 1 C. L. R., 49, 56), and for purposes of limitation, the title of a *bond fide* purchaser in execution of a decree against the mortgagor, cannot be put on the same footing as the title of the mortgagor, or of a person claiming under a voluntary alienation from the mortgagor, *Anundo Moyee* v. *Dhonindro*, 16 W. R., P. C., 19, 20.]

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

[See Lecture XII, pp. 346, 347, supra.]

' bill of exchange' includes also a hundí and a cheque :

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

[Single bonds, and bonds subject to a condition, are mentioned in arts. 66, 67, and 68. The word " bond " occurs in arts. 74, 75, and 80. (See *Ball* v. *Stowell*, I. L. R., 2 All., 322.) A *tamasuk* is either a single bond or a promissory note. See notes to art. 66.]

'promissory note' means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:

* This definition is repealed in the territories to which the Indian Easements Act, 1882, extends. Vide sec. 3, Act V of 1882.

Sec. 2.

' trustee' does not include a benámídár, a mortgagee remaining ACT XV OF in possession after the mortgage has been satisfied, or a wrong-1877. doer in possession without title :

> TA benami transaction does not create the relation of trustee and cestui que truss between the benamidar and the real owner (Umasundari v. Dwarhanath, 11 W. R., 73; 2 B. L. R., 284). As to mortgagees, see Baboolall v. Jamal, 9 W. R., 187; Brown, 305. A wrong-doer who enters on an infant's estate, in England, is, in some respects, considered as holding as a guardian or trustee, but he is not a trustee within the meaning of the Law of Limitation. See Darby and Bosanquet, 183, 184.7

' suit' does not include an appeal or an application :

[For the meaning of the word "suit" under the old law, see 9 W. R., 402; I. L. R., 2 Calc., 336; J. L. R., 1 All., 97; and pp. 187, 277 (note), supra.]

'registered' means duly registered in British India under the law for the registration of documents in force at the time and place of executing the document, or signing the decree or order, referred to in the context :

' foreign country' means any country other than British India;

[The Settlement of Prince of Wales' Island, Singapore and Malacca ; Chandernagore, Pondicherry, and Goa ; Ceylon ; Cashmere, Cooch Behar, &c., &c., are foreign countries. Adeu is included in British India. See pp. 202, 230, supra.]

and nothing shall be deemed to be done in 'good faith' which is not done with due care and attention.

[The definition of this term, according to the Penal Code, is exactly the same. Absence of actual mala fides is not necessarily "good faith." The expression occurs in secs. 14 and 18. It occurred in sec. 10 and arts. 133 and 134 of Act IX of 1871, but has been omitted in the corresponding provisions of this Act.]

PART II.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

4.

Dismissal of suits, &c., instituted. &c., after period of limitation.

Subject to the provisions contained in sections 5 to 25 (inclusive), every suit instituted, appeal presented, and application made, after the period of limitation prescribed therefor

by the second schedule hereto annexed, shall be dismissed, although Acr XV limitation has not been set up as a defence.

Every suit, &c., must be brought within the time specified in the 2nd schedule, *unless* there is something in the provisions of secs. 5 to 25 of the Act which absolves the plaintiff, &c., from that necessity. The onus is on the plaintiff to prove these exceptional circumstances. See Mahomed v. Eakoob, 24 W. R., 181 and 182; and p. 132, supra.

The section applies to cases provided for in the 2nd schedule of this Act (9 C. L. R., 265, 269).

Depositing money or giving security, after the time prescribed by any law, is not governed by sec. 4. For an instance, see Burjore v. Bhagara, I. I. R., 10 Calc., 557.

"Subject to the provisions."—Not subject to all the provisions, but such provisions as are applicable and pertinent to the particular case. (See Jawahir v. Narain, I. L. R., 1 All., 644, 646; Bance v. Haran, 24 W. R., 405, 406.)

"Shall be dismissed, although limitation has not been set up as a defence." See pp. 91, 98-101, and 233, supra.

This penalty must be enforced even if the defendant is willing to confess judgment. (See Deb Narain v. Ishan, 13 C. L. R., 153, 155.) The point of limitation is one which, whether it be taken by the defendant or not, the Court is bound to entertain, Ramey v. Broughton, I. L. R., 10 Calc., 652, 658. Instead of dismissing the suit, the Court may allow the plaintiff to withdraw his suit in order that he may proceed against the defendant in a foreign Court, where the law of limitation may not be the same as that of British India (I. L. R., 6 Bomb., 103, 107). The Munsiff dismisses a suit as barred by limitation ; the Judge. on appeal, sets aside the Munsiff's decision and remands the suit for re-investigation on the merits. The Munsiff then gives the plaintiff a decree in full; the Judge, on appeal, disallows a part of the claim ; the plaintiff appeals to the High Court. The defendant prefers a cross-objection to the Judge's finding of fact as to the part decreed. The High Court is bound to consider the question of limitation, although it is not open to the respondents to take this objection of themselves (Ambala v. Naduvakat, I. L. R., 6 Mad., 325). Compare the cases cited at p. 97, supra, and see I. L. R., 8 Bomb., 535.

If the question of limitation has been decided (directly or indirectly) between the parties, it cannot be raised again in a subsequent stage of the same case. See p. 98, *supra*; 11 C. L. R., 113 (where proceedings had been allowed); 11 C. L. R., 145 (where proceedings had been disallowed).

Judgment-debtor cannot raise the plea of limitation in respect of execution-proceedings under which his property has *already* been sold and purchased by a third party (I. L. R., 6 Mad., 237. Of. I. L. R., 10 Calc., 220).

Where the defendant successfully pleads limitation, the suit must be

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ACT XV dismissed with costs, even if the plea is used for the purpose of refusing to perform admitted obligations. (Banning, 233; L. R., 17 Eq., 75.) Where, however, the defendant does not plead limitation at the first stage of the case, the Court may refuse to award costs to him, (See I. L. R., 6 Mad., 178; and p. 101, supra.)

Sec. 4, Expl.

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

"Ordinary cases."-Not pauper suits, nor claims made before the official liquidator, nor as regards new plaintiffs or defendants substituted or added after the institution. See p. 233, supra.

"When the plaint is presented to the proper officer."-The suit is instituted, whether the defendant has been served with a summons or not-As to the effect of non-service of summons, see sec. 99a, Civil Procedure Code; sce also I. L. R., 3 Calc., 312; I. L. R., 5 Calc., 126, for the old law on the subject. Delay in the appointment of a guardian ad litem for a minor defendant does not affect the date of institution. I. L. R., 4 All., 37.

"Presented."-Where the plaint was really presented on the 29th July, it would not matter if the endorsement on the plaint stated that it was presented on the 31st July, or that it was not accepted until the later date. Young v. MacCorkindale, 19 W. R., 159.

The date of institution is the date of the first presentation of the plaint (I. L. R., 4 All., 37). If the plaint is returned for insufficiency of stamp or for any amendment, and then it is presented again within the time allowed or within a reasonable time, the date of the first presentation is the date of institution. The same remark applies to appeals. See I. L. R., 2 All., 832, 875; I. L. R., 1 All., 260; 23 W. R., 447.

It has been held by the Punjab Chief Court, that an appeal is not presented within the meaning of the first para. of sec. 4 if it is not accompanied by the copies of decree and judgment required by sec. 541 of the (livil Procedure Code. (See Rivaz, 16.)

"Proper officer."-Under sec. 48, Civil Procedure Code, the plaint must be presented to the Court or such officer as it appoints in this behalf. (See 6 Bomb., 254.) A plaint may not be presented at the private resi-. dence of the Judge or officer. See 7 N. W. P., 5; contra, Suth. S. C. Ct. Ref., 36.

"Application for leave to sue as a pauper."-See sec. 410, Civil Procedure Code. Limitation depends on the date of the application, and not on the day when the application is granted and registered. Marshall, 174. This rule applies even where the applicant, pending an enquiry into his pauperism, pays the court-fees and gets his application numbered and

registered as a plaint, provided his original application was a bond fide ACT XV OF one. Skinner v. Orde, I. L. R., 2 All., 241, P. C. Cf. I. L. R., 5 Calc., 807, 1877. and I. L. R., 2 Calc., 389.

"Official liquidator."-An official liquidator is appointed by the Court for the purpose of conducting proceedings in winding up a company and assisting the Court therein. See Act X of 1866, which has been repealed and re-enacted by Act VI of 1882.

The rule enacted by the explanation is modified by sec. 22, so far as concerns new plaintiffs or defendants, substituted or added after the institution of the suit. See p. 233, supra.

Illustrations.

(a.) A suit is instituted after the prescribed period of limitation, Sec. 4, Limitation is not set up as a defence, and judgment is given for the tions. plaintiff. The defendant appeals. The Appellate Court must dismiss the suit.

(b.) An appeal presented after the prescribed period is admitted and registered. The Appeal shall, nevertheless, be dismissed.

This overrules the decision of Sir Barnes Peacock in Bharrut v. Issurchunder, 8 W. R., 141. This illustration has been acted upon in Ramey v. Broughton, I. L. R., 10 Calc., 652, 659.]

5. If the period of limitation prescribed for any suit, appeal or Sec. 5,

application expires on a day when the para 1. Proviso where Court Court is closed, the snit, appeal or is closed when period application may be instituted, presented expires.

or made on the day that the Court re-opens :

Period of limitation prescribed .--- These words occur in para. 1, as well as in para. 2. In Degumber v. Kalinath (I. L. R., 7 Calc., 654; (S. C.) 9 C. L. B., 265), a Division Bench of the Calcutta High Court observed that, in para. 2, these words must be read with sec. 4 of the Act, and that they referred to the period prescribed by the second schedule annexed to the Limitation Act, and not to any period prescribed by any other Act. (See also Luvar v. Luvar, I. L. R., 5 Bomb., 688, as to the meaning of the expression "prescribed period" in Part III, Act IX of 1871.) The same reasoning is applicable to para. 1. But the current of decisions is opposed to this view. The first paragraph, it has been held, applies to suits for which periods of limitation are specially prescribed by the Registration Act and the Bengal Rent Act (see p. 214, supra); and the principle of the rule laid down in this paragraph has been applied to cases of depositing money within a time prescribed by other laws. See I. L. R., 2 Calo., 272; I. L. R., 5 Calo., 906; I. L. R., 3 All., 850; and p. 182 (note), supra.

A Division Bench of the Allahabad High Court has applied this prin-

Illustra-

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APPENDIX.

ACT XV ciple to the filing of cross-objections under sec. 561 of the Civil Pro-OF cedure Code (Baghelin v. Mathura. I. L. R., 4 All., 430). 1877. (When the Court is cloud?) If the Court is not to enough on the day

"When the Court is closed." If the Court is not re-opened on the day that it should be re-opened after a vacation, the Court is "closed" withing the meaning of sec. 5 (Bishan v. Ahmad, I. L. R., 1 All., 263). It has been held by the Madras High Court (Innes, J., dissenting), that the Court may be open within the meaning of this section, even during the annual vacation, and on public holidays, if the offices of the Court are open for the presentation of pleadings and other papers (Nachiyappa v. Ayyasami, I. L. R., 5 Mad., 189).

Sec. 5, para. 2.

This paragraph corresponds to sees. 333 and 377 of Act VIII of 1859, and applies only to appeals and applications for reviews of judgments. It does not apply to the filing of a notice of cross-objections under sec. 561 of the Civil Procedure Code (Kally v. Mangola, I. L. R., 9 Calc., 631); nor to an application for *leave* to appeal *in formâ pauperis* (Lakshmi v. Ananta, I. L. R., 2 Mad., 230); nor to applications under arts. 171 and 171b (In re Ram Shunker, 3 C. L. R., 440, 442; Benode v. Sharat, 10 C. L. R., 449, 451); nor perhaps to an application for leave to appeal to Her Majesty in Council (see Jowshir v. Narain, I. L. R., 1 All., 644). This paragraph does not apply to suits. The Court has no power, even for what it considers a sufficient cause of delay, to entertain a suit instituted after the time allowed by law.

"Sufficient cause, &c." A similar expression is used in the last paragraph of sec. 368 of Act XIV of 1882. (See Benode v. Sharat, 10 C. L. R., 449, 453.) The Court has no discretion in the matter until a sufficient cause in point of law has been laid before the Court. Even a mistake on the part of the plaintiff's attorney, specially where no application is made at the earliest opportunity after the discovery of the mistake, is not sufficient (The Corporation of Calcutta v. Anderson, I. L. R., 10 Calc., 445). An allegation of a mere miscalculation of time is not ordinarily sufficient (Zaibulnessa v. Kulsum, I. L. R., 1 All., 250). A mere plea of the appellant's illness is not sufficient cause for not filing an appeal in the District Court until more than fifty days had expired from the date of the decision (Mazoom v. Panchoo, 1 W. R., Misc., 23). The illness of the Mookhtear may be sufficient (9 Moore, 26). The fact that a Full Bench decision or a Privy Council Ruling has altered the view of the law which prevailed at the time of the decision of the original suit, is not a sufficient cause for delay (Makhan v. Manchand,

5 Bomb., 107; Madho v. Rukman, I. L. R., 2 All., 287; see also 9 W. R., ACT XV 181, F. B.; 18 W. R., 317; 19 W. R., 189). 1877.

The fact that the respondent was prevented from urging his crossobjections owing to the appellant's withdrawing his appeal, is not a sufficient ground for admitting a substantive cross-appeal after the ordinary time (Surbhai v. Raghoonathji, 10 Bomb., 397).

Where a *decree* was first appealed against as an *order*, and such appeal being dismissed, a fresh appeal in the form of an appeal from a *decree* was preferred after the prescribed period, the appeal was admitted by the Allahabad High Court (Rivaz, p. 25).

The necessity of the Local Government communicating with the legal adviser of the Government of India and of the Secretary of State, and the fact that a necessary telegraphic communication was delayed on the road for ten days, were considered sufficient causes for the delay of twelve days on the part of the Secretary of State to prefer an appeal to the High Court from a decree of the Recorder of Moulmein (13 W. R., 245).

An application for review, if made within a reasonable time, and prosecuted with due diligence, is a sufficient cause for the applicant not presenting his appeal within the prescribed period, if he prefers his appeal as speedily as may be after the termination of proceedings consequent on the application for review (Kuller v. Jewan, 22 W. R., 79); but the mere pendency of an appeal is not a sufficient cause for delay in applying for a review; nor is ignorance of the effect of a judgment a justification for such delay (Gulam v. Sayad, I. L. R., 8 Bomb, 260, and the cases eited therein). See I. L. R., 7 Mad., 584.

The pendency of an application for revision under sec. 622 of the Civil Procedure Code, or of an appeal in a wrong Court under the circumstances contemplated in sec. 14, may be a sufficient cause of delay (Bulwant v. Gumani, I. L. R., 5 All., 591; Banee v. Haran, 24 W. R., 405, 406).

An ex parte order admitting an appeal may be set aside at the hearing if no sufficient cause for the delay can be shewn (Secretary of State v. Mootooswamy, 13 W. R., 245; Dubay v. Ganeshi, I. L. R., 1 All., 34; Ramey v. Broughton, I. L. R., 10 Calc., 652, 659). But if the appeal after its admission is transferred to an inferior Court (such as the Subordinate Judge's Court) for trial, such inferior Court cannot interfere with the order of admission (Jhotee v. Omesh, I. L. R., 5 Calc., 1). The High Court, however, on second appeal, may set aside the order (Chunder v. Boshoon, I. L. R., 8 Cale., 251). Exercising an improper and unwarrantable discretion in admitting an appeal may amount to such an irregularity in law as to constitute a ground of special or second appeal (I. L. R., 8 Calc., 251). An order admitting a review after the prescribed period, without any sufficient cause, may also be set aside on appeal (Luchman v. Tirbani, 14 B. L. R., 373, P. C.) But where the District Court, after proper inquiry and due consideration, has exercised his discretion in a reasonable manner, the High Court will not interfere with the conclusion arrived at, even though it would itself have



arrived at a different conclusion (Rauchodji v. Lallu, I. L. R., 6 Bomb., 304). ACT XV The High Court would interfere where the Court below had exercised no discretion at all, or had no legal evidence before it on which it could 1877. act, or where it had obviously exercised its discretion in a perverse and improper manner (ibid., p. 308. See also ex parte Retso, decided by the Appeal Court in England on the 25th of January 1883).

See Table of Exceptions and pp. 182 (note), 245, 246, supra.

Sec. 6.

When, by any special or local law now or hereafter in force 6. in British India, a period of limitation is Special and local laws specially prescribed for any suit, appeal or of limitation. application, nothing herein contained shall

affect or alter the period so prescribed.

Sec. 3 of Act XIV of 1859 partially corresponded to this section.

See pp. 214-216, and 230, 232, supra. As to the law under sec. 6 of Act IX of 1871, see Timal v. Ablokh, I. L. R., 1 All., 254; and p. 218, supra. As to this section, see I. L. R., 8 Bomb., 529.

It has been held that the general provisions and exceptions contained in Parts II and III of Act XV of 1877 are applicable to suits. appeals or applications for which periods of limitation are specially prescribed by special or local laws. (See Khetter v. Dinabashy, I. L. R., 10 Calc., 265; and pp. 214-216, supra.) The provisions of secs. 5, 12, 14 and 19, which do not refer to the second schedule of Act XV of 1877, have actually been applied to cases for which periods of limitation are prescribed by laws other than the Limitation Act itself. But the provisions of secs. 4 and 7, which expressly refer to the second schedule of the Limitation Act, cannot, it is apprehended, be extended to cases for which special periods of limitation are prescribed by any enactment other than the second schedule of Act XV of 1877.

It may be mentioned here that the expression "prescribed period" in Part III of Act IX of 1871 was interpreted to mean "period prescribed by Act IX of 1871" (Luvar v. Luvar, I. L. R., 5 Bomb., 688).

For the special periods of limitation prescribed by the Bengal Rent Act, see Appendix, post.

For the thirty days' limitation to suits for obtaining orders for the registration of documents under sec. 77, Act III of 1877, see I. L. R., 10 Cale., 265.

For the two months' limitation under cl. 5, sec. 17 of the Putnee Regulation VIII of 1819, see Surnomoyee v. Land Mortgage Bank, S C. L. R., 341. For the three months' limitation under sec. 87, Act III of 1864, B.C., corresponding to sec. 374 of the Bengal Municipal Consolidation Act of 1876, see Chunder v. Obhoy, I. L. R., 6 Calc., 8, F. B.

Sec. 14 of Act XIX of 1841 prescribes a period of six months for an application to the Judge for the protection of property against wrongful possession in cases of succession. For other instances of special periods of limitation, see Agnew's Index to the Statutes, Acts, and Regulations.

OF

If a person entitled to institute a suit or make an applica- ACT XV 7.

Legal disability.

tion be, at the time from which the period of limitation is to be reckoned, a minor, or

1877.

OF

insane, or an idiot, he may institute the suit or make the appli- Sec. 7. cation within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

When he is, at the time from which the period of limitation is to be reckoned, affected by two such dis-Double and succesabilities, or when, before his disability has sive disabilities. ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

When his disability continues up to his death, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

When such representative is at the date of the death affected by any such disability, the rules con-Disability of repretained in the first two paragraphs of this sentative. section shall apply.

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

This section corresponds to sees. 11 and 12 of Act XIV of 1859. See Lecture IX.

The section apparently applies to all applications mentioned in the schedule. It would, however, be productive of the greatest inconvenience to apply its provisions to applications for reviews of judgments and other applications made in the course of suits or proceedings. But the policy of the law is not to discourage such exceptions (L. R., 17 Eq., 74; and Banning, 81), and the Court is bound to give full effect to the language of the exception (Mahomed v. Clara, 2 N. W. P., 173).

The section has been applied to applications for execution. A plaintiff who has obtained a decree during his minority has the option either of applying through his guardian to execute the decree during his minority, or to wait until the expiration of his minority before executing his decree. His disability does not cease, because he, through his guardian,

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ACT XV makes two or more applications for execution, however long the interval between them, provided they are all made during his minority (Mon-1877. mohun v. Gunga, I. L. R., 9 Cale., 181). See also Jagjivan v. Hasan, I. L. R., 7 Bomb., 179; Anantharama Ayyar v. Karuppanan, I. L. R., 4 Mad.,

119; and pp. 257, 260, 261, supra.

It is apprehended that, as sec. 7 of Act IX of 1871 did not apply to *applications*, a minor who obtained a decree before the 1st October 1874, in a suit instituted after the 1st April 1873, was bound to make his first application for execution within the three years allowed by art. 167 of that Act. His second application, if made after 1st October 1877, would be governed by the provisions of Act XV. See pp. 210, 229, *supra*.

As to the execution of decrees obtained by minors in suits instituted when Act XIV of 1859 was in force, see Jugmohun v. Luchmeshur, I. L. R., 10 Calc., 748.

If a minor who has obtained a decree does make an application for execution, and such application is granted under sec. 230 of the Civil Procedure Code, his subsequent applications must, it is apprehended, be governed by the twelve years' rule laid down in that section.

It is laid down, as a general rule, that infancy is a *personal* privilege, of which no one can take advantage but the infant himself (Behari v. Beni, 1. L. R., 3 All., 408, 412). See also pp. 261, 266, supra.

Illustrations.

Sec. 7, Illustrations.

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

[The plaintiff here gets an *extension* of four years. See art. 50, sched. ii, which prescribes a period of three years.]

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

[See art. 123. The plaintiff here gets altogether a period of fourteen instead of twelve years, to bring his suit.]

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

[This is an instance of a double and successive disability. The second disability *supervenes* before the first disability has ceased. It is a case of *successive* disability in the *same* person.]

(d.) A right to sue accrues to X during his minority. X dies

before attaining majority and is succeeded by Y, his minor son. Time ACT XV runs against Y from the date of his attaining majority. 1877.

[This is a case of successive disability in different persons, the minority of the legal representative at the time of the death of his minor predecessor.]

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

[Here the plaintiff gets no extension of time by reason of the proviso in the last pars. of sec. 7. But he is not obliged to sue before the expiry of the twelve years allowed to him by the ordinary law. See art. 124, and p. 266, supra.]

(f.) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a snit. This section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

[See art. 139, which prescribes a period of twelve years. If A's representative in interest, upon whom the representation devolves on A's death, is at that time himself under disability, the principle of illustration (d) will apply.]

8. When one of several joint creditors or claimants is under Sec. 8. any such disability, and when a discharge Disability of one joint can be given without the concurrence of creditor. such person, time will run against them all : but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others.

Illustrations.

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

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

See pp. 268, 269, supra.

of time.

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

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OR

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

The concluding portion of sec. 11, Act XIV of 1859, partially corresponded to this section. See pp. 235--240, supra.

Where time has begun to run owing to the right to sue having accrued to a person not labouring under any legal disability, the subsequent disability of his son or other representative is not a ground of exemption from the operation of the ordinary rule (Mohabut v. Ali, 12 W. E., 1; Siddheshur v. Sham, 23 W. R., 285).

A disability or inability to sue, even at the time when the right to sue accrues, is not a ground of exemption, unless it is a disability or inability within the meaning of sec. 5, sec. 7, the proviso to sec. 9, sec. 13, sec. 15, sec. 17, or sec. 18. See pp. 237-239, supra.

Sec. 10.

10. Notwithstanding anything hereinbefore contained, no suit Suits against express against a person in whom property has

trustees and their representatives. become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, shall be barred by any length of time.

Section 2 of Act XIV of 1859 corresponded to this section.

See pp. 158—160, and 232, supra. Sec. 3, and arts. 98 and 100, 133 and 134. A "trust," according to Act II of 1882, is an obligation annexed to the ownership of property, and arising out of a confidence reposed in, and accepted by, the owner (*i.e.*, the trustee), or declared and accepted by him, for the benefit of another (*i.e.*, the beneficiary or *cestui que trust*), or of another and the owner. A person legally appointed to succeed a discharged trustee is also a trustee.

A quasi-trust, or an obligation in the nature of a trust, is not a trust properly so called. A resulting trust, or a constructive trust, is only a quasi-trust. A precatory trust, according to Spence, is an express trust, and so long as the purpose of the trust is specified, or necessarily implied from the words used by the author of the trust, it is a trust within the meaning of sec. 10.

Implied trusts, or trusts which the law would infer merely from the existence of particular facts or fiduciary relations, are not "trusts" within the meaning of this section (Kherodemoney v. Doorgamoney, I. L. R., 4 Calo., 455).

An executor, a partner, an agent, a director of a company or a legal adviser has a *fiduciary* character, but none of these persons is *necessarily* a *trustee* in the strict sense of the word. (See I. L. R., 4 Calc., 455, 469.)

A deposit or a bailment does not create such a trust (Banning, 187). As an executor takes the estate subject to the claim of creditors, a charge of debts generally in a will upon the testator's estate does not make the executor a trustee within the meaning of sec. 10; but when particular property is given upon trust to pay a particular debt or debts, the executor has a new duty imposed upon him, and he is a trustee within the meaning of the section so far as the particular property and the particular debts are concerned (Anundo Moyee v. Grish Chunder, I. L. R., 7 Calc., 772; Greender v. Mackintosh, I. L. R., 4 Calc., 897). So, where an agent is entrusted with funds for the purpose of being employed in a *particular* manner in purchase of land or stock, it has been held in England that there is an express trust to which the Statute of Limitation does not apply.

In order to make a person an express trustee, it must appear either from express words or clearly from the facts that the author of the trust has intrusted the property to the trustee for the discharge of a *particular* obligation. (See Barkat v. Daulat, I. L. R., 4 All., 187, 189.)

"Property has become vested." Trust-property includes trust-money. (See Thackersey v. Hurbhum, I. L. R., 8 Bomb., 432.)

Where porperty is *held in possession* by a trustee, it has become "vested" in him, although the ownership has not legally devolved upon him (*per* Markby, J., in Kherodemoney's case, I. L. R., 4 Calc., 455, 468). But, according to the Indian Trusts Act, 1882, the trustee is the legal owner of the trust-property.

For a specific purpose. A purpose *specified* by the author of the trust (I. L. R., 4 Calc., 470). Some *defined* or *particular* purpose or object (I. L. R., 4 Calc., 923). A trust for a specific purpose in sec. 10 does not perhaps correspond *exactly* to an express trust in the English Act. (See I. L. R., 4 Calc., 470.)

Legal representatives or assigns. See p. 264 (note), supra, and Azimmunnessa v. C. Dale, 6 Mad., 455. A legatee of the trustee is bound in the same way as the trustee himself.

Assigns for valuable consideration. If the assign for valuable consideration purchases the property in good faith, and without notice of the trust, he has no necessity to rely on any law of limitation. (See Darby and Bosanquet, 343; I. L. R., 1 Bomb., 269; and sec. 64 of Act II of 1882.)

If the assign is morely a purchaser for a valuable consideration, arts. 133 and 134 protect him after the lapse of twelve years. But if the assign is a *valuateer* with or without notice, time does not run in his favor, in the same way as it does not run in favor of the trustee or his legal representative. As to the old law on this subject, see p. 188, supra.

"For the purpose of following in his or their hands such property." This means "for the purpose of recovering the property for the trusts in question." When property is used for some purpose other than the proper purpose of the trusts in question, it may be recovered, without any bar of time, from the hands of the trustee, his legal representatives 521

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or assigns (not being assigns for valuable consideration). If the plain-ACT XV OF 1877.

tiff sues only for his own personal right to manage, or in some way to control the management of the trusts, sec. 10 does not apply. Where the defendant admits that he is a trustee, and says that he is applying the property to the trusts in question, and there is no evidence to shew that he is not so applying the property, sec. 10 has no application (Balwant v. Puran, I. L. R., 6 All., 1, P. C.) A claim to vindicate the personal right of a trustee to the possession of property against another person claiming such right in the same character is not governed by sec. 10 (Karim Shah v. Nattan, I. L. R., 7 Mad., 417). Compare Sreenath Bese v. Radhanath Bose, 12 C. L. R., 371, in which misconduct on the part of the trustee was proved. Where the trusts under a will or deed are invalid, or become inoperative, any person claiming adversely to the trust, or on failure of the trust, cannot claim the benefit of sec. 10 as against the trustee appointed by such will or deed. A suit by such a person is not a suit to enforce the trusts (I. L. R., 4 Calc., 455; I. L. R., S Calc., 798, 801; and 12 C. L. R., 374). In England, the Statute of Limitation does not apply to a suit for an account brought by a cestui que trust against his trustee under an express trust, although in certain cases, where the relation of trustee and cestui que trust is admitted to be no longer subsisting, and in a few other cases, the Court will refuse relief on the ground of laches and acquiescence. The 36 and 37 Vict. c. 66, sec. 25, cl. 2, enacts, that " no claim of a cestui que trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitation." (See I. L. R., 5 Calc., 913 and 914.)

In Saroda v. Brojonath, I. L. R., 5 Calc., 910, it was held that where the object of the suit is not to recover any property in specie, but only to have an account of the trustee's stewardship, the plaintiff cannot have the benefit of sec. 10. The correctness of this decision has been in a manner questioned in Hurro v. Tarini, I. L. R., 8 Calc., 766. It was held in this last case that a suit against trustees to charge certain property with trusts created in respect of such property, and for an account, was governed by sec. 10. Under sec. 2, Act XIV of 1859, no suit whatever, by a cestui que trust against a trustee in his lifetime, was barred by limitation. I. L. R., 8 Calc., 788; follows Saroda's case.

In Act XV of 1877, there is no express provision for a suit against a trustee for the loss occasioned by a breach of trust; but it has been recently held by Scott, J., that where trust-money has become vested in the trustee for a specific purpose, and the loss of such money has been caused by the trustee's misconduct and improper dealing with it, a suit by the cestui que trust against the trustee for a refund of the money, although it has passed out of the hands of the trustee, is a suit for the purpose of following the trust-property within the meaning of sec. 10 (Thackersey v. Hurbhoom, I. L. R., 8 Bomb., 432, 469).

"Following such property." Recovering the property originally intrusted to the trustee, or the property into which it has been converted,

provided it is capable of being traced in the hands of the trustee, or his is representatives not being assigns for valuable consideration. (See sec. 63 of the Indian Trusts Act.)

Although sec. 10 speaks of suits against trustees and their representatives, and does not say that the suits to which it refers must be instituted by any particular person, it has been held that the section only applies where a trustee is sued by a cestui que trust (Kherodemoney v. Doorgamoney, 2 C. L. R., 112; same case on appeal, I. L. R., \pm Calc., ± 55).

11. Suits instituted in British India on contracts entered Sec. 11. Suits on foreign contracts. into in a foreign country are subject to the rules prescribed by this Act.

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

See pp. 43-48, and 230, supra.

A suit instituted in a foreign country on a contract entered into in British India is governed by the limitation law of such foreign country. A bond signed and sealed in British India. if sued upon in England, is governed by the twenty years' rule under the 3 and 4 Will. IV, c. 42 (5 C. P. D., 429).

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

[The provisions of secs. 5, 7, 8, and 9 are intimately connected with the rules in Part III. For the probable reason of those provisions being placed in Part II, see pp. 238 (note) and 245, supra.]

12. In computing the period of limitation prescribed for Sec. 12.

Exclusion of day on which right to sue accrues. any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

[See pp. 234, 235, supra.

See p. 203 as to how a number of months or years is calculated.]

In computing the period of limitation prescribed for an appeal,

Exclusion in case of appeals and certain applications. an application for leave to appeal as a pauper, and an application for a review of judgment, the day on which the judg-

ment complained of was pronounced, and the time requisite for

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Acr XV obtaining a copy of the decree, sentence or order appealed against or sought to be reviewed, shall be excluded.

Sec. 333 of Act VIII of 1859 partially corresponded to this paragraph.

This paragraph does not mention an application for the admission of an appeal to Her Majesty in Council under sec. 177. Time requisite for obtaining a copy, &c., shall be excluded. If the delay in obtaining a copy is due to the appellant or applicant himself, he cannot claim the benefit of this provision (Ramey v. Broughton, I. L. R., 10 Cale., 652, 661). The application for a copy must be made before the expiry of the prescribed period (20, 30, 60, or 90 days).

See I. L. R., 10 Cale., 655.

Under Circular No. 31 of 30th August 1879, of the Calcutta High Court, the whole of the court-fee and also the fees for the preparation of the copy and the materials for it must be supplied before the applicant is entitled to any exclusion of time.

The time between the date on which the copy is ready for delivery, and the date on which the applicant chooses to take delivery of it, is not a portion of the time requisite for obtaining a copy (Gopal v. Brojo, 9 C. L. R., 293).

In computing the time requisite for obtaining a copy, the day on which the requisite fees and papers have been filed, and the day on which a proper officer of the Court certifies that the copy is ready for delivery, must each be counted, and the whole time between these two dates, both inclusive, are to be excluded in the computation of the period of limitation. (See W. R., Gap No., p. 645; 13 W. R., 245; 9 C. L. R., 293.)

Sec. 12. para. 8.

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

Where a decree is appealed against. It has been held that these words, though ambiguous, include the filing of an application for leave to appeal to Her Majesty (I. L. R., 1 All., 644). But as para. 2 does not mention such an application, it is apprehended that this para. does not apply to appeals to the Privy Council. Stuart, C. J., has, on other grounds, held, that the paragraph does not apply to such appeals (ibid). It has also been held by a Full Bench of the Allahabad High Court, that the paragraph does not apply to appeals under the Letters Patent (Fazul v. Phul, I. L. R., 2 All., 192). These Letters Patent appeals are governed by the rules of the Court. (See 12 W, R., 458.)

This paragraph overrules Juggunnath v. Shewruttun, 24 W. R., 105, F. B., and allows exclusion of the time requisite for obtaining a copy of the judgment, as well as of the time requisite for obtaining a copy of the decree.

Sec. 12, para. 4. In computing the period of limitation prescribed for an

application to set aside an award, the time requisite for obtaining ACT XV a copy of the award shall be excluded.

See art. 158 ; see also sec. 522, Civil Procedure Code.

13. In computing the period of limitation prescribed for any Sec. 13.

Exclusion of time of defendant's absence from British India. suit, the time during which the defendant has been absent from British India shall be excluded.

Sec. 13, Act XIV of 1859, corresponded to this section.

See pp. 237 and 246, supra, and I. L. R., 8 Bomb., 561.

This section does not apply to applications (Ashan v. Gungaram, I. L. R., 3 All., 185).

Plaintiff's absence from British India, or defendant's imprisonment in British India, is not a ground of exclusion. (See 10 W. R., 253.) As to whether sec. 9 modifies the provisions of this section, see Naranji v. Mugniram, I. L. R., 6 Bomb., 103; Beake v. Davis, J. L. R., 4 All., 530, and p. 237 (note 5), supra. The section applies whether, during the absence. service of summons on the defendant can be made or not. But the section does not prevent the plaintiff from suing the defendant if he can. The language of the section applies even to cases in which the defendant is represented by an agent in this country by whom suits for and against him may be conducted here. But see Harrington v. Gonesh. I. L. B., 10 Calc., 440, where, on an ex parte hearing, a Division Beuch of the High Court refused to give effect to the plain meaning of the section. (See pp. 247, 248, supra.) There is no express provision in this section as to what should be done in the case of the absence of some of several defendants. Sec. 8 expressly provides for the disability of some of several plaintiffs, and sec. 21, for acknowledgments and payments made by some of several defendants, but no such proviso is attached to sec. 13. According to the grammatical meaning of the section, the absence of some only of several defendants, even if they are joint-debtors, will not suspend the running of time. (See Perry v. Jackson, Darby and Bosanquet, p. 38; and Angell, para. 204, note.) And if the plaintiff waits for the return of the absent defendants, he will often find himself altogether barred by limitation. (See Hemendro v. Rajendro, I. L. R., 3 Calc., 353, 360.)

Mere entry within British jurisdiction for a temporary purpose, for instance, by touching in a vessel at Bombay, may not be a sufficient termination of the absence from British India. (See Banning, 87.) But if the defendant has returned to British India, the plaintiff's *ignorance* of the fact does not suspend the running of time against him.

14. In computing the period of limitation prescribed for any Sec. 14, Exclusion of time of suit, the time during which the plaintiff para. 1. proceeding bond fide has been prosecuting with due diligence another civil proceeding, whether in a

ACT XV Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Sec. 14, Act XIV of 1859, corresponded to this para.

See pp. 245 and 247, supra, and the table of exceptions.

The plaintiff. The section will not apply if the former proceeding was not prosecuted by the plaintiff or by some person under whom he elaims (Rajah Borodakant v. Sookmoy, 1 W. R., 29).

"Prosecuting with due diligence another civil proceeding." "Prosecuted in good faith." The term "prosecuting" is in general applicable to a proceeding by a person as plaintiff. But the term has been applied to a person who as defendant in a former suit had been unsuccessfully urging a claim of set-off. (See Moharajah Jugutender v. Din Dyal, 1 W. R., 310.) But such a person cannot claim the benefit of this section unless the set-off was disallowed for some defect of jurisdiction or some other defect of a like nature (Hafizunnissa v. Bhyrab, 13 C. L. R., 214). Where the plaintiffs supposed that they had a right, in the first suit against them, to claim a particular sum by way of set-off, and in this they turned out to be wrong in point of law, it was held that they were not entitled to the benefit of this section (ibid). Resisting an appeal presented by the defendant on the ground of want of jurisdiction is prosecuting a suit within the meaning of this section. See Expl. 2. So also resisting an appeal on the merits, when the Court of its own motion dismisses the suit for defect of jurisdiction.

A plaintiff is engaged in prosecuting a civil proceeding with due diligence, whilst he is considering whether or no he shall appeal against the decision of the first Court. If he appeals at any time within the prescribed period, he may claim a deduction of the whole period which elapses between the decision of the first Coart and the disposal of the appeal (Rajkisto v. Beerchunder, 6 W. R., 308).

Whether a suit was prosecuted in good faith and with due diligence, must, in almost every case, be more or less a question of degree, and the same course of action which, on the part of a plaintiff in a Presidency-town within reach of skilled advice, would indicate bad faith or want of diligence, might be consistent with both good faith and diligence in a mofussil community unfamiliar with the refinements of the law, and practically inoys consilie on such matters (Sheth Kahandas v. Dahiabhai, I. L. R., 3 Bomb., 182, 184). Prosecuting an appeal or other proceeding which is expressly prohibited by law is not prosecuting a civil proceeding in good faith (Ram Dass v. Watson, W. R., Gap No., 371).

Prosecuting a suit until it appeared that the defendant died some time before the filing of the plaint, does not necessarily shew want of good

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faith and due diligence. The plaintiff may satisfy the Court that, in ACT XV not ascertaining whether the party against whom he was proceeding was dead, he was not wanting in due care and caution (Mohun Chunder v. Azeem Gazee, 12 W. R., 45).

Fraudulently undervaluing a suit and instituting it in the Munsiff's Court, who throws it out for want of jurisdiction, is not prosecuting a suit in good faith.

"Another civil proceeding." A suit, an appeal, or an application to a Civil Court is a civil proceeding. A proceeding to recover mesne profits in the execution department, and a subsequent suit for mesne profits, are both civil proceedings. A proceeding before the Magistrate is not a civil proceeding.

"Whether in a Court of first instance or in a Court of appeal." An arbitrator or a conciliator is not a Court. (See Monohor v. Gebiapa, I. L. R., 6 Bomb., 31.) But the time intervening between the application to a conciliator under the Dekkhan Agriculturists' Relief Act, 1879, and the grant of a certificate by him, must be excluded under sec. 48 of that Act, in computing the period of limitation of suits by such agriculturist (Durgaram r. Shripati, I. L. R., 8 Bomb., 411).

Appeal includes special as well as regular appeal. The whole time in which a plaintiff has been fruitlessly engaged in prosecuting a suit bona fide, and with due diligence, for the same cause of action, in which he fails in consequence of a final determination in the suit, whether upon appeal or otherwise, that the Court in which the suit was brought had no jurisdiction, is to be deducted (Lukhinarain v. Khettro, 24 W. R., 407 (note), P. C.)

"Against the defendant." A former proceeding against a person other than the defendant, or any person from or through whom the defendant derives his liability to be sued, is not sufficient (Musst. Munna v. Laliee, 1 W. R., 121). A former proceeding against one of the defendants in the subsequent suit is not sufficient, specially where the former proceeding was nonsuited for nonjoinder of the parties who are made defendants in the subsequent suit. In such a case the plaintiff's claim against none of the defendants will be saved by sec. 14 (Nilmadhub v. Kristo Dass. 5 W. R., 281).

A proceeding bena fide commenced against a debtor who is dead at the time may be a good proceeding under this section against the legal representatives of the debtor; but a proceeding against a person erroneously supposed to be the legal representative of the debtor is not a good proceeding (12 W. R., 45; 10 Bomb., 224).

"Same cause of action." The claim or demand which the plaintiff seeks to enforce, if recoverable, is a "cause of action" (Hurro Chunder v. Shoorodhonee, 9 W. R., 402, 406).

The cause of action must be the same in both the proceedings. Where the plaintiff brought two suits, one against one branch of the family, and the other against another branch, to recover a share of that portion of the property which was in the possession of each, and these suits

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were rejected on the ground of their having been improperly brought, it was held that, in bringing a consolidated suit for a *general partition* against all the sharers, the plaintiff was not entitled to deduct the time occupied in prosecuting his former suits (Jotaram v. Bai Ganga, 8 Bomb., 228). A claim of a proprietary right is not the *same* as a claim of a mere leasehold right. (See Parakut v. Edapally, 2 Mad., 226.)

"In a Court which from defect of *jurisdiction* or other cause of a *like* nature is unable to *entertain* it." The term "Court" has not been defined to mean a Court having authority in British India or established by the Government of India in British India. It may possibly include a *foreign* Court. (See Parry v. Appesami, I. L. R., 2 Mad., 407.)

In sec. 14, Act XIV of 1859, the words "of a like nature" were not used; but the interpretation put upon the words "other cause" was, that the other cause must be of a like nature with "defect of jurisdiction." (For this principle of interpretation, see p. 176, note, supra; and I. L. R., 8 Bomb., 398, 401.) For the words "unable to entertain it" in Act XV, Act XIV had " unable to decide upon it" and Act IX had "unable to try it." In Hurro v. Shoorodhonee, 9 W. R., 403, Peacook, C. J., was of opinion, that there was no difference between "not having power by law" to decide upon a question, and " being unable for want of jurisdiction to decide upon it," and that at all events "not having power or authority by law" was a cause of a like nature with defect of jurisdiction. But the majority of the Court were of opinion that it was one thing to say that a Court had not the power to make, or could not properly make, a particular order in a suit, and quite another thing to say that the Court had not jurisdiction to entertain the suit, or the particular application which it ought not to grant. Where a proceeding in the execution department for recovery of mesne profits had been finally dismissed, because the Appellate Judge thought that the Lower Court had no power to import into a decree what it did not expressly declare, it was held by the majority of the Court that the proceeding had not been dismissed for defect of jurisdiction or other cause of a like nature.

But where a Court had not really judicial cognizance of the suit until a preliminary condition (such as the filing of a certificate from the Collector under a special Act) had been satisfied, it was held that there was a defect of *jurisdiction* within the meaning of the section (Putali v. Tulja, I. L. R., 3 Bomb., 223, 227).

It was held by Sir Barnes Peacock, C. J., that a Court had no *jurisdiction* to decide suit brought against a party who had died before the institution of the suit (12 W. R., 45).

There is no defect of *jurisdiction*, or a like defect, where a suit is dismissed for the plaintiff's omission to give the boundaries of the land sued for (Chunder v. Bissessuree, 6 W. R., 184); or where a suit is dismissed because it is brought by an agent in his own name (Rajendro v. Bulaky, I. L. R., 7 Calc., 367); or where a claim to set off is disallowed because it is against the law relating to pleas of set-off (13 C. L. R.,

214); or where a Court refuses to entertain a suit for misjoinder of ACT XV plaintiffs (Ram v. Gobind, I. L. R., 2 All., 417; but see Deopershad v. Pertab Koeree, 13 C. L. R., 218, as to misjoinder of causes of action and misjoinder of parties).

A suit dismissed for non-service of summons under secs. 97 and 99a of the Civil Procedure Code, or dismissed under sec. 98, because neither party appears on the day of hearing, or withdrawn under sec. 373, is not a suit which the Court is unable to entertain from defect of jurisdiction or other cause of a like nature. (See 6 W. R., 184 ; Pirjade v. Pirjade. I. L. R., 6 Bomb., 681.) According to Sir B. Peacock, any neglect of the plaintiff either in stating his case or prosecuting his suit is not a defect of jurisdiction or other cause of a like nature (6 W. R., 184, 185). And according to Jackson, J., the inability of the Court must be either some unavoidable circumstance over which no one has any control, or something incidental to the Court itself and unconnected with the acts of the parties (6 W. R., 184, 186).

It does not matter whether the final decision throwing out a suit for want of jurisdiction is legally right or wrong. If the former suit has actually been dismissed on the ground of want of jurisdiction, the plaintiff may claim a deduction in the computation of the period of limitation (9 W. R., at p. 410). The plaintiff is entitled to the benefit of the section even if he institutes the second suit before the first is actually dismissed for want of jurisdiction (6 Mad., 45).

In computing the period of limitation prescribed for a suit, Sec. 14,

proceedings in which have been stayed Like exclusion in case by order under the Code of Civil Proof order under Civil Procedure Code, s. 20. cedure, section 20, the interval between the institution of the suit and the date of so staying proceedings, and the time requisite for going from the Court in which proceedings are stayed to the Court in which the suit is re-instituted, shall be excluded.

[This applies where proceedings in a suit are stayed by reason of the defendant, or all the defendants, not residing within the jurisdiction of the Court. See Table of Exceptions.]

In computing the period of limitation prescribed for any Sec. 14, application, the time during which the para. 3. Like exclusion in case of application. applicant has been making another application for the same relief shall be excluded, where the last-mentioned application is made in good faith to a Court which from defect of jurisdiction, or other cause of a like nature, is unable to grant it.

Para, 1 allows a deduction in the computation of the period of limit-

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para, 2.

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