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ation of a *suit*, supposing there has been a previous *suit* or *application* relating to the same matter.

This para. allows a similar deduction in the computation of the period of limitation of an *application*, supposing there has been a previous *application* relating to the same matter. Under this paragraph the time during which a decree-holder has been prosecuting with due diligence an application for execution of his decree before a Court which he in good faith believed to be the Court having jurisdiction, should be excluded in computing the period of limitation. (See Rajah Promothonath *v.* Watson & Co., 24 W. R., 303, a ruling in accordance with which the law has now been amended.) Application to the *proper* Court, under art. 179, gives a *fresh start*. A *bonâ fide* application to a wrong Court entitles the decree-holder to a *deduction* in the computation of the period of limitation.

Sec. 14, Expl.

Explanation 1.—In excluding the time during which a former suit or application was pending or being made, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation 2.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section.

Sec. 15.

Exclusion of time during which commencement of suit is stayed by injunction or order.

15. In computing the period of limitation prescribed for any suit, the institution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn shall be excluded.

See the Table of Exceptions.

The section does not apply to *applications* for execution, even where the execution has been stayed by an injunction. But this difficulty is evaded by considering the application of the decree-holder, *after* the removal of the injunction, as only an application for the *continuation* of the former proceedings (Kalyanbhai *v.* Ghanesham, I. L. R., 5 Bomb., 29; Kazi Lutful *v.* Shumbhudin, 10 C. L. R., 143).

See the provisions of sec. 325*a* of the Civil Procedure Code.

Sec. 16.

Exclusion of time during which judgment-debtor is attempting to set aside execution-sale.

16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a proceeding to set aside the sale shall be excluded.

See the Table of Exceptions, and Gopal *v.* Raj Chunder, 2 W. R., Misc., 9.

Here, the former proceeding is prosecuted by the judgment-debtor, not by the decree-holder or the plaintiff, and the cause of action in the two proceedings is *not the same*. The conditions of good faith, due diligence, and defect of jurisdiction are also *not* necessary.

Sec. 17.

Effect of death before right to sue accrues.

17. When a person who would, if he were living, have a right to institute a suit or make an application dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

When a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

Nothing in the former part of this section applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

See the Table, and p. 238 (note), *supra*.

A perfect cause of action cannot exist unless there is a person in existence capable of *suing*, and until there is somebody who may be *sued*. If such a cause of action has already accrued, and time has once begun to run, no subsequent disability or inability to sue stops it. (Sec. 9.)

But where the right to sue has not accrued to a creditor and time has not commenced to run against him, the fact of there being an interval between his death and the existence of a legal representative *capable* of suing, will have the effect of preventing the running of time against the estate of the deceased creditor. If the cause of action accrues *during* such interval, the legal representative of the creditor will have the full period of limitation from the date of his becoming such legal representative. So, in the case of the death of the debtor before the accrual of the cause of action, time will not run against the creditor until there is a legal representative of the debtor. The principle of this rule applies to all cases except suits for pre-emption and suits for the possession of immoveable property or hereditary offices. The application of the rule to such cases would tend to create insecurity of title. As to who are legal representatives, see p. 264 (note), *supra*. It should be here remarked that an executor may sue before he has proved the will, and

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he may *be sued* after he has proved the will, or after he has acted as executor before proving. An administrator can sue or be sued only from the date of the letters of administration. (See Darby and Bosanquet, pp. 31-33; Banning, pp. 229, 232.)

An administrator suing under art. 86 on a policy effected on the life of an intestate person (governed by the Indian Succession Act) illustrates the first paragraph of this section.

A suit for an account under art. 89 against the administrator of an agent, whose agency terminated on his death, illustrates the second paragraph of this section. (See Lawless *v.* Calcutta Landing and Shipping Co., I. L. R., 7 Calc., 627.)

If such cause of action accrues to a minor or insane representative, he is entitled to the benefit of sec. 7 as well of sec. 17.

Sec. 18.

Effect of fraud.

18. When any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application

(*a*) against the person guilty of the fraud or accessory thereto, or

(*b*) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

Sec. 9, Act XIV of 1859, corresponded to this section.

See Table and pp. 146, 164, 238, 245, and 247, *supra*.

N. B.—For the words "adverse possession as against such purchaser commences," in the last two lines of p. 164, read "the adverse possession of such purchaser is deemed to commence."

The law of limitation in this country being express, *dishonesty in obtaining possession* will not prevent the possessor from availing himself of the provisions of that law (*per* Sir Barnes Peacock, C.J., in Kowar Poresh *v.* Watson, 5 W. R., 283). The plaintiff's ignorance of his right to sue does not also prevent time from running against him, unless such ignorance has been brought about by the fraud of the defendant (Arrool *v.* Lalla Gopinath, 8 W. R., 23). In order to constitute fraud, "it is not sufficient that there should be merely a tortious act unknown to the injured party, or enjoyment of property without title while the rightful

owner *is* ignorant of his claims; there must be some abuse of a confidential position, some intentional imposition, or some deliberate concealment of facts" (21 Beav., 621; Darby and Bosanquet, 193). In the case of immoveable property, a concealed fraud does not mean the case of a party entering wrongfully into possession, but means a case of *designed* fraud, by which a party, knowing to whom the right belongs, conceals the circumstances giving that right, and by means of such concealment enables himself to enter and hold (Petre *v.* Petre, 1 Drew, 393; Brown, 505).

Sec. 18 applies to three classes of cases, *viz.*:—

1. Where the cause of action or the *right* to sue is concealed from the plaintiff by the fraud of the defendant.

2. Where the *title* on which the right to sue is founded is so concealed.

3. Where any *document* necessary to establish such right is so concealed.

As regards the first two classes of cases, the date of the statutable cause of action is the date when the fraud *first* becomes *known* to the plaintiff (or the person from or through whom he derives his right to sue).

In the third class of cases, the date of the statutable cause of action is the date when the plaintiff (or the person from or through whom he derives his right to sue) *first* has the *means* of producing the document or compelling its production.

Where the original cause of action is fraud, or where there is fraud in the *inception* of a grant, art. 95 will give the plaintiff a similar extension of time.

Sec. 18 does not apply unless there has been fraudulent *concealment* by the defendant of the plaintiff's right to sue, of his title, or of some necessary document.

If a wrong or tortious act is done by the defendant, and he fraudulently takes steps to conceal the wrong from the plaintiff, limitation does not run against the plaintiff until he discovers the wrong.

If the vendor and vendee of immoveable property *intentionally and actively conceal* the fact of sale from the plaintiff in order to deprive him of his right of pre-emption, time will not run against the plaintiff until he discovers the fraud practised upon him. (See Rivaz, 50.)

A plaintiff who is ousted from his estate under color of a fictitious revenue-sale in pursuance of a fraudulent contract, the fraud being so contrived as to make the plaintiff believe that he had no right of action at all, the fraud would entitle him to claim the benefit of this section. See Dwarkanath *v.* Rajah Ajodhyaram, I. L. R., 2 Calc., p. 8 (note). Withholding copies of defamatory official reports with the *direct* purpose of throwing the plaintiff over the period of limitation *may* be fraudulent concealment (1 Ind. Jur., N. S., 192).

If the defendant, by reason of the relation in which he stands to the plaintiff, or otherwise, is *bound* to give him certain information, the *with-*

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holding of such information, though not an *active* concealment, may amount to fraudulent concealment. (See Brown, 505, 506; sec. 17, Indian Contract Act.)

An agent receiving money for his principal, and concealing the fact from him, is guilty of fraud; and this section applies to a suit by the principal for the recovery of such money (Hossein *v.* Syud Tussudduck, 21 W. R., 245).

Fraudulently concealing a will from a legatee is a fraudulent concealment of his title and of a document *necessary* to establish his right to the legacy to which he is entitled under the will. But a document which is merely *useful* in evidence, is not a necessary document within the meaning of the section (Lakminarasu *v.* Aukinid, 7 Mad., 23; see also Robert *v.* Lombard, 1 Ind. Jur., N. S., 192).

A fraud committed by a third person does not extend the time against the defendant, unless he is accessory to the fraud, or unless he stands in the shoes of such third person. (See Ramdoyal *v.* Ajoddhea, I. L. R., 2 Calc., 1; Gopal *v.* Pesim, 1 B. L. R., 76.)

A person claiming in good faith, and for a valuable consideration, from the person guilty of the fraud or accessory thereto, does not stand in his shoes. In a suit against such a *bonâ fide* purchaser the plaintiff cannot compute the prescribed period from the date when the fraud is discovered, or even from the date of the purchase. In such a case, time runs against the plaintiff, and in favor of the defendant, from the date of the original cause of action. (See p. 164, *supra*.) The adverse possession of such a purchaser is deemed to commence from the time when the plaintiff is deprived of his property by the vendor's fraud, so that the purchaser is at once protected on making his purchase if the prescribed time has expired previously to his purchase. (See Banning, 221.) A donee or legatee of the perpetrator of the fraud, or even a purchaser for value if the purchase is not made in *good faith*, is not entitled to this protection.

In the first two classes of cases limitation runs from the date when the fraud first *became known*, not from the time when, with reasonable diligence, it *might have been* first known or discovered. In this respect, the Indian law differs from sec. 26 of 3 and 4 Will. IV, c. 27. (Compare Sir James Colvile's first Bill for the limitation of suits with his amended Bill of 1859.) But although want of diligence on the part of the plaintiff does not necessarily deprive him of his privilege under sec. 18, the Court *may*, from the existence of the *means of knowledge* of the fraud, find as a *fact*, that the plaintiff had *actual* knowledge of it. (See 8 C. L. R., 184; and p. 226, *supra*.)

In the case of concealed documents, it is expressly enacted that time is to run (not from the date of the discovery of the document but) from the date when the plaintiff first had the *means* of producing it or compelling its production.

The plaintiff must give clear proof of the fraud alleged by him (Brown, 503, 504; I. L. R., 3 Mad., 384, 397, P. C.) In a case where the

plaintiff alleged that a grant which he wanted to set aside had been fraudulently concealed from him, the Privy Council held that he should have stated what was the occasion of the discovery of the fraud or the circumstances which led to it; and that as the plaintiff had been guilty of extraordinary inaction, he should have given an explanation of his conduct. (Venkateswara *v.* Shekhari, I. L. R., 3 Mad., 384, 399, P. C.)

Sec. 19.

Effect of acknowledgment in writing.

19. If, before the expiration of the period prescribed for a suit or application, in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.

When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received.

Explanation 1.—For the purposes of this section an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation 2.—In this section 'signed' means signed either personally or by an agent duly authorized in this behalf.

Sec. 4, Act XIV of 1859, corresponded to this section.

See Lecture X, p. 238, *supra*, and I. L. R., 9 Calc., 730.

It has been held in England that the following words written by the debtor contain a *sufficient* acknowledgment: "I beg of you to send in your account" (Quincey *v.* Sharpe, 1 Ex. Div., 72).

Where the debtor draws a *hundi* in favor of his creditor, in consideration of the debt due by him, and the *hundi* being dishonored by the drawee, the creditor sues the debtor for the original debt, the debtor's acknowledgment of liability under the *hundi* is, on a reasonable construction of sec. 19, a sufficient acknowledgment of liability for the *original debt* (Raman *v.* Vairavan, I. L. R., 7 Mad., 392).

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Sec. 20.

20. When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

Effect of payment of interest as such.

or when part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

Effect of part-payment of principal.

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made :

Provided that, in the case of part-payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same.

Where mortgaged land is in the possession of the mortgagee, the receipt of the produce of such land shall be deemed to be a payment for the purpose of this section.

Effect of receipt of produce of mortgaged land.

See Lecture XI.

Following the *ratio decidendi* in Ramhit *v.* Satgur, I. L. R., 3 All., 247, F. B., it has been held by the Allahabad High Court, that part-payments of *judgment-debts* fall within the terms of sec. 20 (Janki *v.* Ghulam, I. L. R., 5 All., 201. See also p. 315, note 4, *supra*).

All that is required by sec. 20 is, that the fact of a *part-payment* should appear in the handwriting of the person making the same. It is not necessary that the appropriation of the payment to principal should appear in writing. That may be made to appear otherwise. The endorsement of payment on a bond need not shew that the payment is made as a part-payment of the principal of the debt (Jada Aukamma *v.* Nadimpalle Rama, I. L. R., 6 Mad., 281).

Sec. 21.

21. Nothing in sections 19 and 20 renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed, or of a payment made by, or by the agent of, any other or others of them.

One of several joint contractors, &c., not chargeable by reason of acknowledgment or payment made by another of them.

The concluding portion of sec. 4, Act XIV of 1859, corresponded to this section.

See pp. 301, 302, and 314, *supra*.

The plaintiff may, notwithstanding this section, shew that the joint

contractor, partner, executor, or mortgagee, who signed the acknowledgment or made the payment, was acting as the duly authorized agent of the *other* parties.

It has been held in England that, as long as a partnership continues, each partner is an agent for the purpose of making an acknowledgment under the Statute of Limitations. But after a partnership is dissolved, one of the late firm cannot, by his act or admission, involve his co-partner in any new liability, and a payment made by a continuing partner will not revive a debt to the detriment of the retiring partner (Watson *v.* Woodman, L. R., 20 Eq., 721, 730; Banning, 80, 208). It should, however, be observed that the provisions of the English law on this subject (9 Geo. IV, c. 14, sec. 1; and 19 & 20 Vict., c. 97, sec. 14) do not expressly refer to *partner*, as the Indian law (sec. 21) does. In Khoodeeram *v.* Kishunchand, 25 W. R., 145, a Division Bench of the Calcutta High Court held, that the corresponding provisions of Act IX of 1871 (sec. 20, expl. 2) did not apply to cases where one partner, by the ordinary rules of partnership, was able to bind his co-partner. Every partner of a firm, which is of a *mercantile* character, is deemed to be duly authorized to borrow money and draw and accept bills in the name of the firm. (See sec. 251, Indian Contract Act, and 10 Bomb., 322.) The members of a carrying company, or a mining company, or of a firm of attorneys, have no such *implied* authority (*ibid*).

Sec. 22.

Effect of substituting or adding new plaintiff or defendant.

22. When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Proviso where original plaintiff dies.

Provided that, when a plaintiff dies, and the suit is continued by his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted by the deceased plaintiff:

Proviso where original defendant dies.

Provided also, that when a defendant dies, and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

See p. 233, *supra*.

This section speaks of suits, plaintiffs, and defendants. It does not say anything about appeals, appellants, and respondents. Sec. 32 of the Code of Civil Procedure, which provides for adding parties in the Court of *first* instance, contains an express reference to this section; but sec. 559 of the Code, which provides for the addition of respondents, contains no such reference. If sec. 22 of Act XV of 1877 were appli-

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cable to sec. 559 of the Code, it would be in the power of the appellant to exclude the discretion of the Court by filing his appeal on the last day allowed by the Limitation Act for that purpose (Manickya *v.* Boroda, I. L. R., 9 Calc., 355, 362). Under Acts VIII and XIV of 1859 also, the Appellate Court had a similar discretion in the matter of adding a fresh respondent to the record (Showdamonee *v.* Ram Roodro, 8 W. R., 367). In a case where the liability of the two defendants was joint, and the plaintiff, by an oversight, appealed against the first defendant only, and the second defendant was made a respondent *after* the time allowed for appealing against him, it was held that sec. 22 did not bar the appeal, even so far as it affected the second defendant (The Court of Wards *v.* Gaya Persad, I. L. R., 2 All., 107, 109). But in a case where the plaintiff sued two defendants jointly and severally for certain monies, and obtained a decree against the first defendant only, and the first defendant having appealed against the plaintiff, the Judge made the second defendant a party to the appeal, after the time for appealing against him had expired, it was held by the Allahabad High Court, that sec. 582 of the Code of 1877, read with sec. 32 of the same Code, made sec. 22 of the Limitation Act applicable to the case (Ranjit *v.* Sheo Persad, I. L. R., 2 All., 487). The Judges, however, made no reference in this case to sec. 559 of the Code. Besides, it is now evident from (the amended) sec. 582 of the Code, 1882, that the terms "plaintiff" and "defendant" in sec. 32 of the Code do not include "appellant" and "respondent."

In a case where a principal and a surety were originally sued, and the plaintiff appealed against the surety only, it was held that the discretionary power of directing a person to be made a respondent conferred on the Appellate Court by sec. 559 of the Code was not limited by sec. 22 of the Limitation Act (Manickya *v.* Boroda, I. L. R., 9 Calc., 355).

But where a defendant, having an unappealed decree in his favor, is *not interested in the result of the plaintiff's appeal* against a co-defendant, sec. 559 of the Code does not empower the Court to add him as a respondent to the appeal (Atmaram *v.* Balkishen, I. L. R., 5 All., 266).

In another case (The Corporation *v.* Anderson, I. L. R., 10 Calc., 445) where, on the suggestion of the original defendant that another person was liable, the Court made him a defendant, but the suit being decreed against the original defendant, that defendant appealed against the plaintiff without making his co-defendant a respondent, it was held, that the plaintiff could not, after the period for appealing from the decree had elapsed, be allowed to *appeal* against the added defendant, unless he satisfied the Court under sec. 5 that he had sufficient cause for not prosecuting his appeal within that period. The question, whether the second defendant could be added as a respondent to the original appeal was not considered, probably because, in the appeal against the plaintiff by the original defendant, the liability of that defendant could not be shifted to his co-defendant.

If the substitution or addition of parties to the record, in the Court of first instance, takes place after a new law of limitation has come into operation, the suit as regards the original parties will be governed by the old law, and as regards the new parties by the new law. (See Abdul *v.* Manji, I. L. R., 1 Bomb., 295.)

Where some only of several joint promisees sue to enforce a *joint contract*, and the other promisees are made co-plaintiffs after the expiry of the period of limitation, the *whole* suit must be dismissed, provided the defendant has objected to the nonjoinder in proper time (Ramsebuck *v.* Ramlal, I. L. R., 6 Calc., 815 ; Kalidas *v.* Nathu, I. L. R., 7 Bomb., 217 ; Oomasundari *v.* Ramji, 9 C. L. R., 13 ; I. L. R., 7 Calc., 242).

In such cases of nonjoinder, amendment is practically useless in British India, if it is made *after* the period of limitation (I. L. R., 6 Calc., 823).

Where the plaintiff sued A to enforce a right of pre-emption, and thereby to invalidate a sale made to A and B *jointly* ; and B was made a defendant after the expiry of the prescribed period, the Allahabad High Court dismissed the *whole* suit (Habibullah *v.* Achaibar, I. L. R., 4 All., 145).

But where certain property was in the possession of several *tort-feasors*, and plaintiff at first sued to recover from one only, and made the other defendants after the limitation period had expired, it was held that the suit was barred as against the added defendants only (Obhoy *v.* Kritartha, I. L. R., 7 Calc., 284).

Where a plaintiff brought a suit as *assignee* of a mortgage, and was subsequently allowed to amend his plaint and sue as *attorney* of the original mortgagee, it was held that there was no substitution of a new plaintiff (Ganapati *v.* Adarji, I. L. R., 3 Bomb., 312).

The substitution of the name of the President of a Committee for that of their Secretary, neither of the officers being *personally* liable, is not a substitution within the meaning of this section (Mauni *v.* Crooke, I. L. R., 2 All., 296).

Where the defendant entered into a contract of loan with the *kurta* of a Hindoo family, and the *kurta* sued to enforce the contract, it was held that, that the addition as parties of other members of the family interested in the loan after the prescribed period had expired, did not prevent the Court from giving the *kurta* a decree for the *whole* amount (Radha Churn *v.* Mohesh Chunder, 3 Shome's Reports, p. 99). This decision would not be opposed to the ruling in Ramsebuck's case, if it was found as a fact that the contract was really made between the defendant and the *kurta* only, for in that case the joinder of the other members was only a *misjoinder*. (See I. L. R., 6 Calc., 824.)

Paras. 2 and 3 of this section speak only of the *legal representative* of a party at his death ; but it has been held that the principle of the proviso applies to the *assignees* of the original parties. When the plaintiff, after instituting his suit, assigns his interest, it is perhaps not necessary for the assignee to become a party at all ; but if he does so, he only con-

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tinues the suit, *not in substitution*, but in *conjunction* with, and as the representative in interest of, the original plaintiff (Suput *v.* Imrit, I. L. R., 5 Calc., 720).

The principle of the proviso was, under the old law, applied to a case in which the person originally named as defendant was dead at the time of the institution of the suit, and his heirs were made parties after the expiry of the prescribed period (Sreekishen *v.* Ramkristo, 10 W. R., 317). But where the plaintiff, erroneously believing that A was the legal representative of a deceased debtor, brought his suit in time against him, and after the expiry of the period of limitation, made the true representatives parties to the suit, it was held that the suit was barred (Kuvasji *v.* Barjoiji, 10 Bomb., 224).

Sec. 23.

Continuing breaches and wrongs.

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

See pp. 218, 219, 222, and 241, *supra*.

This section differs from secs. 23 and 24 of Act IX of 1871. Where the obligation created by a contract is of a *recurring* kind, and admits of a series of "successive breaches," this section does not apply, but sec. 23 of Act IX *did apply* to such cases (Bhojraj *v.* Gulshan, I. L. R., 4 All., 493. Art. 115 provides for some of these cases). Sec. 24 of Act IX referred to continuing nuisances only, and the term "nuisance" was defined to mean "anything done to the hurt or annoyance of another's *immoveable* property, and not amounting to a trespass." Sec. 23 of Act XV applies to any "continuing wrong independent of contract."

This section is not confined to suits for compensation only.

A continuing breach of contract. The section contemplates cases in which the obligation created by the contract is *ex necessitate* of a continuing nature. As for instance, a covenant by a tenant to keep the demised building in repair (I. L. R., 4 All., 493, 496).

If a person, having made a gift of his property to another, conveys the same to a third person, his covenant for title, so far as it relates to his *present right* to convey, is broken at the date of the conveyance; and sec. 23 does *not* give the covenantee a continuing cause of action; but a covenant for "quiet possession" admits of a continuing breach. A covenant for "further assurance" is broken by a refusal of the covenantor to execute, or procure to be executed, a proper further assurance when tendered to him on the part of the covenantee (Raju *v.* Krishna, I. L. R., 2 Bomb., 273, 292).

Where an amicable partition of joint property is made between A and B, but C having a claim over the property allotted to B, it was agreed that A should pay a certain amount to C, A's failure to pay the amount

to C and thus to make B's title perfect, was held to be a continuing breach of contract (Imdad *v.* Nijabat, I. L. R., 6 All., 457).

The question as to the more or less continuous nature of covenants for title and for further assurance, was considered by Kelly, C.B., in Spoor *v.* Green (L. R., 9 Exch., 99). According to the Chief Baron, a covenant for title and a covenant for further assurance are continuing covenants, and the breaches of them continuing breaches. The covenantee is not bound to sue until the ultimate damage has been sustained. The Statute of Limitation is wholly inapplicable to breaches of the covenant for title, except where the right of action is upon an eviction of the *whole* property conveyed, so that there is no land with which the covenant may run, and nothing left upon which the covenant can operate. (See Banning, 176, 183.)

The relation of husband and wife (so far as it is the result of a contract) furnishes another illustration of a *continuing* obligation, and so long as the wife withholds herself from her husband, there is a continuing breach of contract. (See the ruling of a Full Bench of the Punjab Chief Court, cited in Rivaz's Limitation Act, p. 102.)

A continuing wrong independent of contract. A "tort" is a wrong independent of contract. (Broom's Commentaries.) The term "tort" is used to signify such wrongs as are in their nature distinguishable from breaches of contracts. Torts are often considered as of three kinds, *viz.*, *nonfeasance*, or the *omission* of some act which a man is *bound to do*; *misfeasance*, being the *improper performance* of some act which he *may lawfully do*; or *malfeasance*, being the *commission* of some act which is *unlawful*. (Stephen's Blackstone.)

The flowing of water from defendant's premises into the plaintiff's land, when the defendant has not acquired any easement over such land, is a *continuing* wrong. (See Ramphul *v.* Misreelall, 24 W. R., 97.) Obstructions to or diversions of watercourses are also *continuing* wrongs (Rajrup *v.* Abdul, I. L. R., 6 Calc., 394, P. C. See also I. L. R., 1 Mad., 335; and I. L. R., 6 Bomb., 20). As long as a *nuisance* remains in force, the person affected by it has a continuing cause of action, and may recover damages on account of it, or sue for an injunction for its removal. A *trespass* on immoveable property continues to be a trespass until the occupation of the trespasser comes to an end (Narasinma *v.* Ragupathi, I. L. R., 6 Mad., 176, 178).

False imprisonment is a continuing wrong, which is specially provided for by art. 19. (See p. 241, *supra*.)

Sec. 24.

Suit for compensation for act not actionable without special damage.

24. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Illustrations.

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

(*b.*) A speaks and publishes of B slanderous words not actionable in themselves without special damage caused thereby. C in consequence refuses to employ B as his clerk. The period of limitation in the case of a suit by B against A for compensation for the slander does not commence till the refusal.

See pp. 221, 222, 241, 242, *supra*, and the notes to arts. 2 and 25.

In Illustration (*a*), the original *act* itself is no wrong, and only becomes so by reason of the consequential damages. Cases of damage to neighbours caused by the escape of water artificially collected on one's own land, or by any other act in violation of the maxim *sic utere tuo ut alienam non-lædas* (see 22 W. R., 278, P.C.; and I. L. R., 3 Calc., 776) fall within this principle.

In Illustration (*b*) the original act itself does not give the plaintiff a *legal* cause of action. The violation of some duty towards the public, productive of *special* damage to the plaintiff, is governed by the same rule. The breach of such a duty does not give any individual a cause of action until he has suffered some special damage. (See Banning, 271.) The same principle will also apply to negligent acts of the master causing damage to the servant, and to the unskilful conduct of professional men causing damage to those who employ them. In all these cases no cause of action arises until the damage is suffered. (See Collett on Torts, secs. 18 and 21.)

Sec. 25.

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Computation of time mentioned in instruments.

Illustrations.

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

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

See pp. 203, 233, and 234, *supra*.

Where a bond, by its terms, stated that the money advanced should be repaid on the 30th Pous 1283, B. S.; and it so happened that, in the

year 1283, the month of Pous consisted only of 29 days (the 29th Pous corresponding to the 12th January 1877), it was held that the money became repayable on the 13th of January 1877, and that a suit brought on the 13th January 1880 was in time (Almas Banee *v.* Mahomed Ruja, I. L. R., 6 Calc., 239).

Section 25 lays down an *absolute* rule. There is no saving of cases in which it appears on the face of the instrument that *lunar* months and *lunar* years were intended by the parties. The period within which a debt is repayable *must* be computed according to the Gregorian calendar (Rungo *v.* Babaji, I. L. R., 6 Bomb., 83).

Periods of *limitation* in acts to which the General Clauses Act apply, as well as those to which they do not apply, are reckoned according to the English or Gregorian calendar, unless a contrary intention is expressed (Saroda *v.* Pahali, I. L. R., 10 Calc., 913).

PART IV.*

ACQUISITION OF OWNERSHIP BY POSSESSION.

Sec. 26.

Acquisition of right to easements.

26. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years,

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

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

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

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* Secs. 26 and 27 of Part IV are repealed in the territories to which the Indian Easements Act, 1882, extends. All references in any Act or Regulation to the said sections or to secs. 27 and 28 of Act No. IX of 1871 shall, in such territories, be read as made to sections fifteen and sixteen of Act V of 1881. *Vide* sec. 3 of the Indian Easements Act (V of 1881).

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

Illustrations.

(*a.*) A suit is brought in 1881 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption, from 1st January 1860 to 1st January 1880. The plaintiff is entitled to judgment.

(*b.*) In a like suit also brought in 1881 the plaintiff merely proves that he enjoyed the right in manner aforesaid from 1858 to 1878. The suit shall be dismissed, as no exercise of the right by actual user has been proved to have taken place within two years next before the institution of the suit.

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

See Lecture XII, pp. 409, 414—429, *supra*.

Light or air. In Sturges *v.* Bridgeman (11 Chan. Div., 852), and in other English cases, it has been held that, under the 2 and 3 Will. IV, c. 71, there cannot be an easement of wind, or of air *in motion*.

In Bagram *v.* Khetternath (3 B. L. R., O. C., 18, 46), Peacock, C. J., was of opinion, that a right to enjoy the south breeze could not be acquired except by an express grant; and that, in the case of a right to air, the obstruction to be actionable must amount to a nuisance. In Barrow *v.* Archer (2 Hyde, 125), it was held that a right to the free and uninterrupted passage of a current of wind could not be claimed by reason of mere long enjoyment, and that no more air could be so claimed than what was sufficient for sanitary purposes. In Act V of 1882, the Legislature does not follow these rulings, on the ground that they are unsuited to a country like India. The Act allows a suit for the obstruction of the free passage of air, where it interferes materially with the plaintiff's physical *comfort*, although it is not injurious to his *health*. (See Statement of Objects and Reasons, *Gazette of India*, 30th November 1880.) It should be observed that sec. 3 of 2 and 3 Will. IV, c. 71, speaks only of the "access and use of light," and that sec. 26 of Act XV

of 1877 places the right to light and the right to air (as regards their acquisition by prescription) in the *same* category. Sec. 27 of Act IX of 1871 also applied the same rule to both the rights.

The windows of a new building must be in a sufficiently finished state at the date from which the twenty years are to be computed. (See Elliott *v.* Bhoobun, 6 B. L. R., 85; and 12 B. L. R., 406, P. C. Cf. Pranjevandoss *v.* Moyaran, 1 Bom., 148.) As the acquiescence of the servient owner is not necessary to the acquisition of a right under the *Act*, the ruling in Elliott's case that there may be interruption *without* an *actual* obstruction does not apply to such acquisition.

Way. A right of way is a right to go from one place to another, and ought to be circumscribed to a place certain, and not in one place to-day and another to-morrow, and therefore the *termini a quo* and *ad quem* should appear (Gale, 357, note; 4 W. R., 49).

In English or Indian law there is no positive division of rights of way into distinct classes, and it cannot be said that a superior class of rights *necessarily* includes an inferior class. (See Gale, 352, 355, note.) The following are some of the various kinds of rights of way to be met with in the books:—

A *general* right of way,—*i.e.*, a way usable for *all* purposes, *e. g.*, a way for marriage and funeral processions, as well as for other purposes. (See Lokenath *v.* Monmohun, 20 W. R., 293.) A way for agricultural purposes only. A right of way for carriages, but not for carts. A right of way for horses, and not for carriages. A right of way for the carriage of coals only. A right of way for the carriage of all other articles except coals. A footway or prime way. A drift way or pack way for cattle. A way for boats. A way to Church. A way to market. A right to use the way only when certain gates are open or between particular hours, or at certain seasons of the year. (See 10 W. R., 363.)

The extent of a right of way acquired by prescription is measured by the accustomed user. As to whether the evidence of the actual user in any particular case may prove a general right for all purposes, see pp. 439, 440, *supra*. The question whether a user of one kind is evidence of a right also for a more limited purpose, must be determined with reference to the particular facts of each case; and if the actual amount of inconvenience suffered by the servient owner is not in any way increased by the exercise of such inferior right, the presumption is that such a right has been acquired. (See Gale, 352, 353; Goddard, 247, 248.) A right of way *per se* does not give a right to carry burdens on the head, for such a right would impose a *more onerous* obligation on the servient owner, who, if he wanted to build, must leave a higher space than he would otherwise be obliged to do. (See Gale, 356, note.)

Where a right of way for a particular purpose (*e. g.*, for carrying away the plaintiff's nightsoil) is proved, the Court is not bound to confine the right to the precise *number of times* in the year that it has been exercised; but may give the evidence of user a more liberal construction, and hold

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that the right may be exercised for such purpose at all convenient times in the year, or as often as is necessary (Gopal Chunder *v.* Jodoolall, I. L. R., 9 Calc., 778).

It is a mistake to suppose that the same rights *usque ad cœlum* attach to an easement on land which attaches to the land itself. The erection of a portico or verandah, even when it encroaches on part of the space devoted to the way, is not actionable, unless it interferes with the reasonable enjoyment of the easement (Toolseymoney *v.* Jogesh, 1 C. L. R., 425; Clifford *v.* Hoare, L. R., 9 C.P., 362).

A right of way may be established notwithstanding the fact that the path passes over *waste* land (Shaikh Mahomed *v.* Shaik Sefatoollah, 22 W. R., 340; but see some remarks of Loch, J., in 14 W. R., 199).

Watercourse. This word designates both the channel and the moving *water* as it flows in the channel. In the English Prescription Act the word is used with reference to the moving water. (Goddard, 122, 123.) It has been held in England, that a claim of right to pollute or adulterate the water of a natural stream is a claim of a watercourse. (Gale, 169.) A right to pour water over the land of another person or a right to divert water from flowing down to particular land is also a right to a watercourse. (Goddard, 123.) The right to discharge rain-water by eaves or by drain or gutter (stillicidium or flumen) is a right to a watercourse. (Gale, 273.)

Water in a tank is not a watercourse; but there may be an easement to use such water. There may also be a prescriptive easement to throw stones or other refuge in a tank, provided the right does not tend to the total destruction of the servient heritage. In Carlyon *v.* Lovering, cited in Gale's work, p. 485 (note), such a right in the case of a stream was recognized. The placitum in Sreedhur *v.* Adoyto, 20 W. R., 237, that there can be no prescriptive right to injure another, though such injury has the warrant of very ancient user, can hardly be correct. (See Gale, 484, note.)

Sec. 27.

Exclusion in favour of reversioner of servient tenement.

27. Provided that, when any land or water upon, over, or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Illustration.

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

See pp. 429, 430, *supra*.

The corresponding section of Act IX of 1871 expressly excepted the right to light and air from its operation. This section omits the exception. It applies to *all* easements which have been enjoyed or derived upon, over, or from any land or water.

Extinguishment of right to property.

28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. Sec. 28.

See Lecture.

THE FIRST SCHEDULE.

(*See section* 2.)

Number and year of Acts.	Title.	Extent of repeal.
X of 1865 ...	The Indian Succession Act.	In section 321, the words "within two years after the death of the testator, or one year after the legacy has been paid."
IX of 1871 ...	The Indian Limitation Act, 1871.	The whole.
X of 1877 ...	The Code of Civil Procedure.	Section 599, and in section 601 the words "within thirty days from the date of the order."

ACT XV OF 1877.

ARTS. 1, 2.

THE SECOND SCHEDULE.

(*See section* 4.)

FIRST DIVISION: SUITS.

Part I.—Thirty days.

Description of suit.	Period of limitation.	Time from which period begins to run.
1.—To contest an award of the Board of Revenue under Act No. XXIII of 1863 (*to provide for the adjudication of claims to waste lands*).	Thirty days ...	When notice of the award is delivered to the plaintiff.

No. 1. (No. 1, Sched. II, Act IX of 1871.) The suit under this article is instituted (in a Court *specially* constituted under Act XXIII of 1863) by the claimant, or objector, on receipt of notice of the Board's adverse award. The Collector notifies such award to the special Court, and the Court gives notice to the claimant or objector. This article does not apply to suits *by Government* to try claims to waste lands where such claims have been *admitted* by the Revenue Authorities. See secs. 5 & 7 of Act XXIII of 1863, and Taranath Dutt *v.* The Collector of Sylhet and others, 5 W. R., Waste Land Court's Reference, p. 1, where it was held that the Court could not extend the period of limitation by any order of its own. The exceptions recognized by Act XV may, of course, extend that period.

Part II.—Ninety days.

2.—For compensation for doing, or for omitting to do, an act alleged to be in pursuance of any enactment in force for the time being in British India.	Ninety days ...	When the act or omission takes place.

No. 2. (No. 2, Act IX.) Local or special Acts may lay down a longer or shorter period of limitation for such suits for compensation. This article, like several other articles in this schedule, applies to suits for *compensation*, not to suits for *recovery of land* or declaration of title. See Foot *v.* Mayor of Margate, 11 Q. B. D., 299; Chunder *v.* Obhoy, I. L. R., 6 Calc., 8, F. B.; Birj *v.* The Collector, I. L. R., 4 All., 102.

It does not also apply to suits to recover the *price* of goods supplied to a public servant. See Mayandi *v.* McQuahar, I. L. R., 2 Mad., 124.

A suit for a refund of money illegally levied may be treated as a suit for compensation. See Ranchhod *v.* The Municipality, I. L. R., 8 Bomb., 421; see also I. L. R., 2 Mad., 124, 125. Compensation for an act without color of, and contrary to, the law, if done *bonâ fide*, cannot be sued for *after* the period allowed. See Gooroodas *v.* The Collector, 5 W. R., 137; see also I. L. R., 8 Bomb., 421. If the act complained of (such as excavating a road) does not give rise to a cause of action until some special damage results therefrom (such as the falling of plaintiff's wall), the period will, under sec. 24, be computed from the time when the injury results. See Roberts *v.* Reid, 16 East, 215; Goddard, 331.

SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*) ACT XV OF 1877. ARTS. 3—6.

Part III.—Six months.

Description of suit.	Period of limitation.	Time from which period begins to run.
3.—Under the specific Relief Act, 1877, section 9, to recover possession of immoveable property.	Six months ...	When the dispossession occurs.

No. 3. (Sec. 15, Act XIV of 1859; and No. 3, Act IX of 1871.) See pp. 330, 331, *supra*.

As to what amounts to possession or dispossession, see Lecture VI, *supra*. Carrying off the produce of land in the occupation of a tenant does not necessarily amount to dispossession (Seetal *v.* Judoo, 25 W. R., 180).

A landlord ejecting a *tenant*, of his own authority, after the expiry of the term of the lease, may be sued under this article (Jonardun *v.* Haradhon, 9 W. R., 513, F. B.) But an owner of land returning upon his own property cannot be so sued by an *agent*, who had been put into possession on behalf of such owner (Madhub *v.* Sham, I. L. R., 3 Calc., 243; see pp. 137, 151, 152, *supra*). *Partial* dispossession of a house, well, &c., is dispossession within the meaning of this article (Sabapathi *v.* Subraya, I. L. R., 3 Mad., 251). The occupation of a casual trespasser is not possession. If such a trespasser is immediately ejected, he cannot sue under this article. (7 Bomb., 82.)

4.—Under Act No. IX of 1860 (*to provide for the speedy determination of certain disputes between workmen engaged in railway and other public works and their employers*), section one.	Six months ...	When the wages, hire or price of work claimed accrue or accrues due.

No. 4. (No. 4, Act IX.) Magistrates empowered to decide such disputes have jurisdiction in case the amount in dispute does not exceed the sum of two hundred rupees. The special provisions of Act IX of 1860 have been extended to Nadya and the 24-Perganuahs. This article does not apply to suits for wages, &c., in districts to which the Act has not been extended by Government.

5.—Under the Code of Civil Procedure, Chap. XXXIX (*Of summary procedure on negotiable instruments*).	Six months ...	When the instrument sued upon becomes due and payable.

No. 5. (No. 5, Act IX.) See secs. 532—537 of Act XIV of 1882. *Regular* suits on negotiable instruments are provided for by arts. 69 to 80.

Part IV.—One year.

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

No. 6. (No. 6, Act IX; and sec. 1, cl. 2, Act XIV.) This, like every other article, applies only when there are no periods specially prescribed

SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*)

Part IV.—One year.

by any special or local law. Penalties and forfeitures are incurred *chiefly* for offences against the Revenue laws, which, "generally speaking, are not recoverable in the Civil Courts, but are adjudicable by the Revenue Authorities, or in the criminal department." (See the Special Report of the Indian Law Commissioners, dated 26th February 1842.)

As to the forfeiture of goods bought and sold by inland traders in salt, &c., see 33 Geo. III., c. 52, sec. 137.

A suit for a penalty or forfeiture by, or on behalf of, the Secretary of State for India in Council, if not provided for by any special law, is governed by art. 149. The bye-laws passed by the Municipal Commissioners of a place under the authority of some legislative enactment have the force of law.

Description of suit.	Period of limitation.	Time from which period begins to run.
7.—For the wages of a household servant, artisan or labourer not provided for by this schedule, No. 4.	One year ...	When the wages accrue due.

No. 7. (No. 7, Act IX; sec. 1, cl. 2, Act XIV.) A mookhtear, a manager of a company, or a *taksildar* is not a household servant. (See Nitto Gopal *v.* Mackintosh, 6 W. R., 11; *In re* Ganges Steam Navigation Company, 2 Ind. Jur., N. S., 181; Oroon *v.* Ramanath, 10 W. R., 260. But cf. 5 W. R., S. C., 3.) The word 'servant' in this Act applies to a servant *ejusdum generis* as "labourer or artisan.' Servants in husbandry are labourers. But a man who cultivates another's land in consideration of the occupation of such land and of a portion of the produce thereof is not a labourer employed on wages (Audi *v.* Venkata, 2 Mad., 387). An *artist*, such as a portrait-painter, is not an artisan (see 2 Mad., 6). Even an *artificer*, such as a silversmith or saddler, is not an artisan. One who gives instructions in fencing and wrestling for a monthly fee is not a household servant or an artisan (8 Mad., 87). There is an idea of vulgarity attached to the term *artisan*. Suits for wages not falling under this article will generally be governed by art. 102. See also arts. 4 and 101. The date of dismissal of a servant is *not* the starting point of limitation (Kali Churn *v.* Mahomed, 6 W. R., S. C., 33). In the absence of a special contract, the wages of a servant on a fixed *monthly* salary accrue due at the end of each month (*ibid*). This article applies only to suits for wages *against the employer* (Siv Ram *v.* Turnbull, 4 Mad., 43).

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

No. 8. (No. 8, Act IX; sec. 1, cl. 2, Act XIV.) A tavern is a house usually licensed to sell liquors in small quantities.

9.—For the price of lodging.	One year ...	When the price becomes payable.

No. 9. (No. 9, Act IX; sec. 1, cl. 2, Act XIV.) In the absence of contract or special custom, weekly, monthly or yearly payments fall due at the end of each week, month or year. Cf. art. 110.

SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*) ACT XV OF 1877.

Part IV.—One year. ART. 10.

Description of suit.	Period of limitation.	Time from which period begins to run.
10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	One year ...	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold; or where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.

No. 10. (No. 10, Act IX; sec. 1, cl. 1, Act XIV.) This article does not apply to a suit to enforce a preferential right of becoming the mortgagee or lessee of property. A suit to enforce a right of pre-mortgage is governed by art. 120 (Nath *v.* Ram, I. L. R., 4 All., 218, F. B.; Alu *v.* Sukhan, I. L. R., 3 All., 600, 630, F. B.) It has been held by a Full Bench of the Allahabad High Court, that the *sale* referred to in art. 10 must be an *absolute* one, having immediate effect and operation either by physical possession or by the creation of a title under an instrument duly registered (I. L. R., 4 All., 218). A pre-emptor objecting to a conditional sale that has become absolute would therefore have a limitation of six years under art. 120 (*ibid*). A right of pre-emption, founded on the Mahomedan law, does not attach to a lease, whether permanent or temporary (Babooram *v.* Nursing, 25 W. R., 43); nor to a conditional sale until it is completed or rendered absolute, (Gurudyal *v.* Teknarain, 2 W. R., 215; Buksha *v.* Tofer, 20 W. R., 216); nor to property sold in *execution*, except as laid down in sec. 310 of the Civil Procedure Code (Abdul *v.* Khellat, 10 W. R., 165).

There can be no *physical* possession of an *intangible* thing, such as a right to a reversion, or a right of redemption of property in the usufructuary possession of a mortgagee. (See the judgment of Stuart, C. J., in Jogeshur *v.* Jawahir, I. L. R., 1 All., 311, and the Transfer of Property Act; and compare sec. 1, cl. 1, of Act XIV of 1859, and art. 10, sched. ii of Act IX of 1871.) If *constructive* possession were in general sufficient, it would be impossible for intending claimants to know of the existence of rights inimical to their own (Beebee Fatima *v.* Gossain Gobind, 2 W. R., 5).

If a mortgagee *in possession* purchases the property, limitation runs from the date of the purchase (I. L. R., 2 All., 409). A conditional sale becoming absolute does not necessarily transfer the *possession* to the mortgagee. (See I. L. R., 4 All., 291.)

Taking visible and tangible possession of property, or materially enjoying the rents and profits thereof, is taking physical possession. What is often called *possession* in this country is *not actual or khas possession*, but the receipt of the rents and profits (Mullick *v.* Muleka, I. L. R., 10 Calc., 1112, 1124). It has been held by the Allahabad High Court that an undivided share of a puttidari estate under the management of the lumberdar is not susceptible of physical possession (Unkar *v.* Narain, I. L. R., 4 All., 24, F. B.)

Physical possession of the *whole* of the property sold must be taken before limitation commences to run under the first portion of this

Part IV.—One year.

article. (See Bhole *v.* Imam, I. L. R., 4 All., 179; Jaikaran *v.* Gunga, I. L. R., 3 All., 175.)

There is nothing to prevent the pre-emptor from bringing his action immediately after the sale, and *before* the transfer of possession or the registration of the *kabala*. (See Lekranee *v.* Jankee, W. R., Gap No., 285.) Custom or contract may give a person a right of pre-mortgage or pre-lease. (See Ashik *v.* Mathura, I. L. R., 5 All., 187.) But such rights are not rights of *pre-emption*.

The date of endorsing the certificate of registration is the date of registration. (Sec. 60, Act III of 1877.) Every sale of intangible real property (which is incapable of physical possession) must, under sec. 54 of the Transfer of Property Act, be made by a registered instrument.

Description of suit.	Period of limitation.	Time from which period begins to run.
11.—By a person against whom an order is passed under section 280, 281, 282 or 335 of the Code of Civil Procedure, to establish his right to, or to the present possession of, the property comprised in the order.	One year ...	The date of the order.

No. 11. (Secs. 246 and 259, Act VIII of 1859.) *Reddendo singula singulis*, the words in the first column may be read thus: "By a person against whom an order is passed under secs. 280, 281, 282 of the Code of Civil Procedure, to establish his *right* to the property comprised in the order, or by a person against whom an order is passed under sec. 335 of the Code of Civil Procedure to establish his *right to the present possession* of the property comprised in the order." Reading the article thus, its language will exactly correspond to the provisions of sec. 283 and the second para. of sec. 335 of the Code of Civil Procedure. As to the difference between a suit to establish a right to present possession, and a suit to establish a right generally, see Rangoo *v.* Rikhivandas, 11 Bomb., 174.

Secs. 280, 281, 282 of the Code correspond to sec. 246 of Act VIII of 1859; and sec. 335 of the Code, to sec. 269 of Act VIII of 1859. Under Act VIII of 1859 the one year's limitation applied to suits of this class. Act IX of 1871 repealed this limitation-clause and did not re-enact it. The editor of the Indian Statute Book (Mr. Stokes) was of opinion that the general limitation of six years under art. 118, Act IX, applied to such suits. The Bombay High Court was of opinion that one year's limitation under art. 15 of that Act applied. The Calcutta High Court held that, in the case of claims to land, the twelve years' limitation applied. (See the cases quoted below.) Even now an order passed under sec. 246 or sec. 269 of Act VIII of 1859 is not governed by this article. (See p. 186, *supra*; and I. L. R., 9 Calc., 43, 163 and 230, and 12 C. L. R., 550.) The limitation prescribed for an ordinary suit to establish any right to property (six years or twelve years, as the case may be) applies to suits by persons against whom such an order has been passed. (See 1 Shome, 26; 2 Shome, 160; I. L. R., 4 Calc., 610; I. L. R., 9 Calc., 164, 230, and the cases cited therein.) The Bombay High Court, however, have held (see I. L. R., 4 Bomb., 21, 23, and 611) that, under Act IX of 1871, art. 15 (corresponding to art. 13 of this Act) applied to such a suit in respect of an order under sec. 246 of Act VIII of 1859.

SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*) ACT XV OF 1877.

Part IV.—One year. ART. 11.

This article applies even if the suit is for recovery of possession, or for confirmation of possession, of the property in respect of which an adverse order under sec. 281 has been made in the execution department (Shiboo *v.* Mudden, I. L. R., 7 Calc., 608; Brijo *v.* Ram, 21 W. R., 133). This article does not apply, unless the order is passed after making an investigation as prescribed by the Civil Procedure Code. (See Juggobundhoo *v.* Sachya, 16 W. R., 22; Venkapa *v.* Chenbarapa, I. L. R., 4 Bomb., 21; Rashbehary *v.* Buddun, 12 C. L. R., 550.) If the claim case is withdrawn or struck off for default, the article does not apply. (Kallu *v.* Brown, I. L. R., 3 All., 504; Bhika *v.* Sakarlal, I. L. R., 5 Bomb., 440. But cf. 21 W. R., 409, and 24 W. R., 411.) Where the Court disallows a claim by reason of the claimant not having given evidence in support of his claim, the order is an order to which the article applies (Sreemunto *v.* Syud Tajooddeen, 21 W. R., 409; Tripoora *v.* Ijjuthunessa, 24 W. R., 411). A mere refusal to postpone the sale of property attached in execution, without an investigation into the claim preferred, is not an order to which the article applies (Sah Mukkun *v.* Sah Koondun, 15 B. L. R., 228, P. C.; 24 W. R., 75). If no investigation is made on the ground that the claim is designedly or unnecessarily delayed, the article does not apply (Syed Mahomed *v.* Kanhya, 2 W. R., 263; I. L. R., 4 Bomb., 21; and p. 185, *supra*). The article does not also apply where no claim has been preferred in the execution department. (See Lalchand *v.* Sukharam, 3 Bomb., 139; Babu Pertab *v.* Babu Brojolall, 7 W. R., 253, F. B.) Where the claim to property attached is neither admitted nor rejected, but intimation of it is given at the time of sale, the article does not apply (Baboo Jodoonath *v.* Radhamonee, 7. W. R., 256, F. B.)

The person against whom an order is made under secs. 280, 281 or 282 is either the decree-holder or the claimant (Mannu *v.* Harsukh, I. L. R., 3 All., 233; Bhyrub *v.* Meer Abdool, 8 W. R., 93). The judgment-debtor is not bound by the order except where he is actually made a party to the proceeding (Imbichi *v.* Kakkemat, I. L. R., 1 Mad., 391). A party suing in his own character is not bound by an order against him in a representative character (Kalimohun *v.* Anundomoni, 9 C. L. R., 18). The date of the order is the date on which it is signed, not that on which it is *verbally* made (Bapu *v.* Laksman, 10 Bomb., 19).

Orders passed under secs. 280, 281, 282 of the Civil Procedure Code are *conclusive* on all the parties unless overruled by regular suit under this article. (See p. 103, note (10), *supra*; and I. L. R., 2 All., 455). But a purchase by the claimant of the judgment-debtor's property during attachment, though void and insufficient to entitle him to obtain an order of release, may be validated by the subsequent payment of the judgment-debt and consequent withdrawal of the attachment (Umesh *v.* Raj Bullabh, I. L. R., 8 Calc., 279). The claim in such a case is *not* considered as "disallowed *under* sec. 281."

Sec. 332 of the Civil Procedure Code allows a party against whom an order is passed under that section to bring a regular suit to establish his right to the present possession of property, but such a suit is not governed by this article. Even art. 13 does not apply to such a suit. (See I. L. R., 8 Mad., 82.) This article or any other article cannot save a suit brought within the time prescribed by it, from any bar arising out of any *other* provision of the law. Thus, if a person who has been out of possession of property for more than twelve years, puts in a claim under sec. 278 of the Civil Procedure Code, and his claim being rejected under sec. 281, he brings a suit to establish his right within one year of the order of

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ART. 12.

rejection, although the suit is not barred by art. 11, the plaintiff's right must be considered to have been extinguished by twelve years' dispossession. So again, if the property attached in execution is not released under sec 281, Civil Procedure Code, but sold by order of the Court, the unsuccessful claimant must bring his suit within one year from the date of the order under sec. 281, and the subsequent sale will not give him a fresh start. (See Settiappan *v.* Sarat, 3 Mad., 220.) Even if the suit is instituted within one year of the sale under art. 12, it will be barred under art. 11, unless it is brought within one year of the rejection of the claim.

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

No. 12. (No. 14, Act IX; sec. 1, cl. 3, Act XIV.) This article does not apply where the suit is not *substantially* a suit to *set aside a sale* (of one of the kinds mentioned in the article). Thus, a suit to recover property by setting aside a *certificate of sale*, which wrongly included rights and interests which had not been really sold, is not governed by this article (Baboo Pertaub *v.* Baboo Brojolall, 7 W. R., 253, F. B.) A suit to recover what has been taken in *excess* of what has been really sold is not a suit to *set aside* the sale (Musst. Shureefatunnessa *v.* Lachmi, 7 N. W. P., 288). Where the rights and interests of a judgment-debtor have been sold in execution, a *third* person suing to recover the property on the ground that the property or a share of it belongs to him, need not, and can not properly, claim to *set aside* the sale (Suryanna *v.* Durgi, I. L. R., 7 Mad., 259; Nothu *v.* Badridas, I. L. R., 5 All., 614; Tonoo *v.* Moheshur, 24 W. R., 302; Kripanath *v.* Nitokalee, 8 W. R., 358). A plaintiff suing in his own character is not bound by this article to sue to set aside a sale of property in execution against himself in a *representative* character (Kalimohun *v.* Anundmoni, 9 C. L. R., 18). Where the property *itself* (and not merely the interest of a particular person) has been sold, the sale must be set aside under this article before the property can be recovered, although the plaintiff was no party to the proceeding under which the sale took place (I. L. R., 7 Mad., 258).

SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*) ACT XV OF 1877.

Part IV.—One year.

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The confirmation of a sale under the Civil Procedure Code binds the parties to the suit and the purchaser, and no regular suit lies to set aside such a sale on the ground of *irregularity* in publishing or conducting the sale. (Sec. 312.) But a sale in execution of a decree which is barred by limitation at the date of sale, may be set aside, if the *decree-holder* himself purchases at the sale. Such a case occurs when the judgment-debtor's plea that execution is barred by limitation is held to be a good plea on an appeal decided after the sale (Mina Kumari *v.* Juggat, I. L. R., 10 Calc., 220). The subsequent reversal of the decree, in execution of which property is sold, does not give the judgment-debtor a fresh start from the date of such reversal. If his suit to set aside the sale is maintainable, it must be brought within one year as provided in this article (Parshadi *v.* Mahomed, I. L. R., 5 All., 573).

Bonâ fide purchasers for valuable consideration and without notice are not in every case protected from having the sale set aside in a regular suit. Each case is to be decided upon its own merits in accordance with the principles of justice, equity, and good conscience (Abdool *v.* Nawab Raj, 9 W. R., 196, F. B.) The subsequent reversal of the decree *per se* does not render the sale invalid as against such a purchaser (Jan Ali, 10 W. R., 154.) As to *unconscionable* sales, see I. L. R., 11 Calc., 136, P. C.

Where the decree and the proceedings resulting therefrom are vitiated by fraud, a suit to set aside the sale, it has been held, is governed by art. 95 (Natha *v.* Natha, I. L. R., 6 All., 406). But cf. I. L. R., 3 Calc., 504; and I. L. R., 6 All., 75. In some cases the application of art. 12 in conjunction with sec. 18 will be sufficient to protect the plaintiff against a person who is guilty of the fraud. (See I. L. R., 2 Calc., 1, 8.) This article does not apply to an execution-sale held by a Court *without jurisdiction* (Sriman *v.* Yamuna, I. L. R., 5 Mad., 54; I. L. R., 7 Mad., 258), for such a sale is not merely voidable but void *ab initio*.

Where one of two judgment-debtors purchased the decree in the *name* of another person, and such purchase had the legal effect of satisfying the judgment-debt, a suit by the other judgment-debtor to recover his property which had been sold in execution at the instance of the benamidar, was held to be *substantially* a suit to set aside the sale. The sale was not *ipso facto void* by reason of the judgment-debt having been satisfied, but was only voidable at the instance of the plaintiff (Abul *v.* Abdool, I. L. R., 2 Calc., 98). Sec. 33 of Act XI of 1859 provides that the Civil Courts *shall not annul* a revenue-sale except upon the ground of its having been made contrary to the provisions of that Act, and then only under certain conditions. But it has been held that, where nothing was due from the plaintiff which could legally be recovered from him as an arrear of revenue, the sale of his property by the Collector was totally *without jurisdiction*, and could be set aside by the Civil Court, although there was no irregularity in publishing and conducting the sale, and no appeal to the Commissioner against it (Byjinath *v.* Lalla, 10 W. R., F. B., 66). Such a sale is no legal sale, and is absolutely void (12 W. R., 276, 311; 13 W. R., 381).

In order that this article may apply, the revenue-sale must be a *real* sale for arrears, and not merely a device—part of the machinery as it were—to effect a *fraud*. In such a case the sale may, as between the plaintiff and the parties to the fraud, be considered as a private sale (Nawab Sidhee *v.* Ojoodhyaram, 5 W. R., P. C., 83, 88). The plaintiff suing for relief on the ground of such fraud may maintain a suit, if not to set aside the sale, to have the property *reconveyed* to him. (See Bhoobun *v.* Ram Soonder, I. L. R., 3 Calc., 300; Amiroonnissa *v.* The Secretary of

Part IV.—One year.

ART. 13. State, I. L. R., 10 Calc., 63.) Art. 95 may apply to a suit of this description. (See I. L. R., 3 Calc., 300.) In some cases the twelve years' rule has been applied. (See I. L. R., 3 Calc., 504; and I. L. R., 6 All., 15.)

Cl. (*b*).—The order mentioned in this clause means an order of the nature of a decree, or one made by the Revenue Officer in his *judicial* capacity (Sakharam *v.* The Collector, 8 Bomb., F. B., 219). A sale of land by a non-judicial order of the Collector is not governed by the one year's limitation under this article (*ibid*).

Cl. (*c*).—For "demands recoverable as arrears of revenue," see Act VII of 1868, B. C., and sec. 5, Act XI of 1859.

Cl. (*d*).—A sale of a putni or other intermediate tenure for arrears (of rent) other than those of the *current* year is not governed by this article.

As to when a revenue-sale becomes final and conclusive, see sec. 27, Act XI of 1859, as modified by secs. 2 and 4 of Act VII of 1868, B. C.; and I. L. R., 8 Calc., 329. As to when it is *necessary* to *set aside* a sale, see the notes under arts. 12, 13, and 91.

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

No. 13. (No. 15, Act IX; sec. 1, cl. 5, Act XIV.) Where the simple question raised is whether the Civil Court's summary decision or order under any particular law was rightly given or made, and the suit is *merely* to set aside the decision or order, such suit, if maintainable, must be governed by this article. (See Loknarain *v.* Ranee Myna, 7 W. R., 199, F. B.) Where the Court has no jurisdiction, its decision or order will bind no one, and it will not be necessary to sue to set it aside (Wooma *v.* Ram Buksh, 16 W. R., 11, 13). A suit which is *virtually and substantially* a suit to set aside a summary decision or order (a decision or order in a miscellaneous proceeding) is also governed by this article, even if the plaint does not *in terms* seek to set aside such decision or order. The test is, whether the summary decision or order could be set up as a bar or impediment to the maintenance of the suit. If it could, then it might be said that the suit is brought in reality, though not in words, to set aside the summary decision or order (Durgaram *v.* Nundocoomar, 1 Shome, 26, citing Loknarain's case in 7 W. R., 199, F. B.) But where the law expressly provides that, notwithstanding the summary order, a suit may be brought to establish the right, it is not necessary to *set aside* the order (*ibid*). Secs. 283, 332 and 335 of the Civil Procedure Code, sec. 9 of the Specific Relief Act, and sec. 17 of Act XIX of 1841 expressly allow such suits to be brought. Suits in respect of orders referred to in secs. 283 and 335 of the Procedure Code are, however, governed by another special article, No. 11. But a suit to establish right after an adverse order under sec. 9 of the Specific Relief Act (see p. 331, *supra*) or Act XIX of 1841 (7 W. R., 199, F. B.) is not governed by any *special* rule of limitation, and may be brought within the *ordinary period*. It has also been held, that an order under Act XXVII of 1860 is no bar to a suit upon *title* though brought after the one year allowed by this article (Kalee *v.* Srimati Kylasmoni, 8 W. R., 126). In a suit to recover property which has been improperly sold by the

guardian of an infant under an order of the Civil Court (*vide* sec. 18, Act XL of 1858), it is not necessary to *set aside* such order (Sikher *v.* Dulputty, I. L. R., 5 Calc., 363). It was suggested by Sir B. Peacock, C. J., and held by Norman, J., that a suit to recover money that has been erroneously paid away to a rival decree-holder under sec. 270 of Act VIII of 1859 should be treated as a suit to recover the money by *setting aside* the order of the Court in the execution department (Gogaram *v.* Kartik, 9 W. R., 514; Wooma *v.* Rambuksh, 16 W. R., 11). But sec. 295 of Act XIV of 1882 expressly enacts that if the assets realized in execution be paid by the Court to a person not entitled to receive the same, any person so *entitled* may *sue* such person to compel him to refund the assets. The order of the Court is carried into effect once for all, but is no impediment to a regular suit for the refund; and for the reasons stated by Markby, J., in 1 Shome, 26, it may be fairly contended that it is not necessary to *set aside* such orders. It should be observed, however, that the Bombay High Court considered an order under sec. 246 of Act VIII of 1859 as a *final* bar of the disputed right, and that it was *necessary* to set aside such order. (See I. L. R., 4 Bomb., 611.) The same remarks might apply to orders under sec. 332, Act XIV of 1882, but there is this difference that, orders under that section are *declared* to be *final*, unless contested in a regular suit. Where a Judge or a Collector does not entertain an application, or *refuses* to pass an order on the ground that he has no jurisdiction, this article cannot apply (Musst. Momudannessa *v.* Mahomed Ali, 1 W. R., 40; Kristodass *v.* Ramkant, I. L. R., 6 Calc., 142). An order *passed without jurisdiction* need not be *set aside* (Debi Persad *v.* Jafar Ali, I. L. R., 3 All., 40; see also Ram Kissen *v.* Bhowani, I. L. R., 1 All., 333, 336, F. B.) Where a Court having jurisdiction has passed an order against which the law allows no appeal, limitation will run from the date of such order and not from the date of the order passed on appeal (Olumonissa *v.* Buldeo, 7 W. R., 151). An order in an *execution*-proceeding is an order in a *suit* (I. L. R., 8 Mad., 82).

Description of suit.	Period of limitation.	Time from which period begins to run.
14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	One year ...	The date of the act or order.

No. 14. (No. 16, Act IX.) See notes to preceding article. It has been held that the Civil Court has no power to *set aside* an order passed under the Land Registration Act, VII of 1876, B. C. Besides, sec. 89 of that Act expressly allows a regular suit for possession of, or for a declaration of right to, immoveable property, notwithstanding any orders under the Act. Such a suit is, therefore, not governed by this article (Luchmon *v.* Kanchun, I. L. R., 10 Calc., 525). When the suit is not merely or necessarily a suit to *set aside* an official act of the Collector, but one to recover immoveable property, this article does not apply (Krishnamma *v.* Acharyya, I. L. R., 2 Mad., 306). Under Act XIV of 1859 a suit merely to set aside an official act was not expressly provided for, but was governed by the six years' limitation under sec. 1, cl. 16 (Kebul Ram *v.* The Government, 5 W. R., 47).

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SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*)

Part IV.—One year.

ARTS.	Description of suit.	Period of limitation.	Time from which period begins to run.
15—17.	15.—Against Government to set aside any attachment, lease or transfer of immoveable property by the revenue authorities for arrears of Government revenue.	One year ...	When the attachment, lease or transfer is made.

No. 15. (No. 17, Act IX; sec. 1, cl. 4, Act XIV.) When a Ghatwal becomes a defaulter, it is in the power of Government to make over his tenure to another person on the condition of making good the arrear due; or to transfer it or to dispose of it in some other form. (Sec 5, Reg. XXIX of 1814.) A suit to set aside such a transfer is governed by this article (Chittro *v.* The Assistant Commissioner of the Sonthal Pergunahs, 14 W. R., 203).

Under the North-Western Provinces Land Revenue Act, XIX of 1873, secs. 150 and 154, the defaulter's patti or mahal may be attached and taken under direct management. A share or *patti* of a *mahal* may also be transferred for a limited time to a solvent co-sharer in the *mahal*, on condition of his paying the arrear due from the *patti*. (Sec. 157).

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

No. 16. (No. 18, Act IX; sec. 1, cl. 4, Act XIV.) When proceedings are taken under Chap. V of the North-Western Provinces Land Revenue Act, the defaulter may pay the amount of arrears claimed, *under protest*, to the officer taking such proceedings, and upon such payment the proceedings (arrest, distress, attachment, &c.) shall be stayed, and such defaulter may sue the Government in the Civil Court for the amount so paid. (Sec. 189, Act XIX of 1873.) As to whether an unsuccessful appeal to the higher Revenue Authorities against an order for the payment of revenue at a higher rate, and the subsequent payment of the alleged excess without any *actual* protest, make the payment a "payment under protest," see Kebalram *v.* The Government, 5 W. R., 47. If money has been paid under protest for several years, only one year's amount can be recovered under this clause. (5 W. R., 47; 11 Bomb., 1.)

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

No. 17. (No. 19, Act IX.) This article does not, evidently, apply to suits against a person who may have received from Government the whole or any part of the compensation awarded under Act X

of 1870. (See sec. 40 of the Act.) It has been held that art. 120 applies to such a suit (Roy Nind *v.* Mir Abu, 5 C. L. R., 45).

The Government is *not* considered as a *depositary* of the money till such time as it is made over to the owner of the land. (11 W. R., 1.) The suit against Government must be brought within one year.

Description of suit.	Period of limitation.	Time from which period begins to run.
18.—Like suit for compensation when the acquisition is not completed.	One year ...	The date of the refusal to complete.

No. 18. (No. 20, Act IX.) When the Government declines to complete the acquisition, the Collector is bound to determine the amount of compensation due for the damage (if any) done to the land (by the clearing, digging or marking it out) and to pay such amount to the preson injured. (See sec. 54, Act X of 1870.)

19.—For compensation for false imprisonment.	One year ...	When the imprisonment ends.

No. 19. (No. 21, Act IX.) See p. 241 (note), *supra*. "False imprisonment."—Unlawful detention of the person, *i.e.*, without sufficient authority. The illegal execution of a lawful warrant or process may amount to false imprisonment. The article applies to suits for *compensation*—not for removal of the injury.

20.—By executors, administrators or representatives under Act No. XII of 1855 (*to enable executors, administrators or representatives to sue and be sued for certain wrongs*).	One year ...	The date of the death of the person wronged.

No. 20. (No. 12, Act IX.) This article applies to certain suits *by* executors, &c. No. 33 applies to similar suits *against* executors, &c. Act XII of 1855 enabled executors, &c., to sue and be sued for damages for certain torts which, according to the law then in force, did *not survive* to, or against, such executors, &c. A suit for the value of an elephant wrongly sold by a deceased person, or for recovery of money due by a deceased agent, against the representative of the deceased, is not governed by Act XII of 1855 (Sreemutty Chundermoni *v.* Santomoni, 1 W. R., 251; Nujuf *v.* Patterson, 2 N., W. P., 103).

A suit *by* executors, &c., of the *person wronged*, under Act XII of 1855, lies only when such wrong has caused *pecuniary loss* to the estate of such person; but a suit *against* executors, &c., of a deceased *wrong-doer* lies, though no pecuniary loss was occasioned by it to the plaintiff (Gokul Chunder *v.* Musst. Burreck, 2 Hay, 325). Causes of action for defamation, assault or other personal injuries not causing the death of the party do not survive to and against executors, &c. A cause of action to sue for restitution of conjugal rights or for a divorce does not also survive to executors, &c. (See sec. 268, Act X of 1865, and sec. 89, Act V of 1881.)

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SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*)

Part IV.—One year.

ARTS.	Description of suit.	Period of limitation.	Time from which period begins to run.
21—25.	21.—By executors, administrators or representatives under Act No. XIII of 1855 (*to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong*).	One year ...	The date of the death of the person killed.

No. 21. (No. 13, Act IX.) No action or suit was formerly maintainable against a person who, by his wrongful act, neglect or default, caused the *death* of another person. Act XIII of 1855 renders the wrong-doer answerable in damages for the injury so caused by him.

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

No. 22. (No. 22, Act IX; sec. 1, cl. 2, Act XIV.) Injuries to personal liberty, to reputation, and to life, are separately provided for. This article relates to immediate or consequential injuries affecting a man's limbs or body or health. Injuries caused by the unskilfulness of a physician or surgeon may come under this article.

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

No. 23. (No. 23, Act IX.) The prosecution must terminate in *favor* of the plaintiff (Bhyrub *v.* Mohendro, 13 W. R., 118), as in an acquittal, a discharge, or a withdrawal of the charge. A malicious and illegal arrest in a *civil* case does not fall under this article. Art. 19 may apply to such a case.

Where there has been no prosecution, and the complaint made is the only act done, the date of the complaint is that of the wrong (Muduirapa *v.* Fakirapa, I. L. R., 7 Bomb., 427, 430).

	24.—For compensation for libel.	One year ...	When the libel is published.

No. 24. (No. 24, Act IX; sec. 1, cl. 2, Act XIV.) Limitation runs from the time when the libel is published, not when the plaintiff becomes aware of it (Robert and Charriol *v.* Lombard, 1 Ind. Jur., N. S. 192). Limitation does not run from the time when the libel is *first* published. Proof of the sale of one copy of the libel within one year of the suit will negative the plea of limitation (Duke of Brunswick *v.* Harmer, 14 Q. B., 185, cited in Darby and Bosanquet, p. 29). A libel is some writing, picture or the like, containing defamatory matter.

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

SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*) ACT XV OF 1877.

Part IV.—One year.

ARTS. 25—28.

No. 25. (No. 25, Act IX; sec. 1, cl. 2, Act XIV.) This probably includes "slander of *title*."

To call a tradesman a bankrupt, a physician a quack, or a lawyer a knave, or to say of a Magistrate that he is partial and corrupt, is sufficient to give a cause of action *without* special damage. Impeaching a man of some punishable crime, or charging him with having a disease tending to exclude him from society, is also actionable *per se*. (See Stephen's Commentaries, Vol. III.)

If the words are not actionable in themselves, time runs from the date when the special damage complained of results. It is apprehended that the plaintiff cannot bring a subsequent action for subsequent damage. (See Lamb *v.* Walker, 3 Q. B. D., 389, 395.) This is not a case of a continuing wrong under sec. 23. It comes under sec. 24. (See p. 222, *supra*.)

Description of suit.	Period of limitation.	Time from which period begins to run.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	One year ...	When the loss occurs.

No. 26. (No. 27, Act IX.) The English theory on which the remedy for such a wrong as that of seduction of a young woman is based is a theory which has no place in the law of this country. The action is founded upon the loss of *service* of the daughter, in which service the parent is supposed by a *fiction* to have a legal right or interest (Rar Lal *v.* Tula Ram, I. L. R., 4 All., 97). The action is *in substance* brought to repair the outrage done to parental feeling. (Stephen's Commentaries, Vol. III.) A master standing *in loco parentis* may, according to English law, maintain a similar action for debauching his servant. (*Ibid.*)

27.—For compensation for inducing a person to break a contract with the plaintiff.	One year ...	The date of the breach.

No. 27. (No. 28, Act IX.) The inveigling or hiring the plaintiff's servant which induces a breach of contract comes under this article. Inducing ryots under contract with the plaintiff to cultivate indigo to break that contract falls under this article. Under Act XIV of 1859, the six years' rule applied to such cases (Meer Mahomed *v.* Forbes, 8 W. R., 257).

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

No. 28. (No. 29, Act IX.) Distress is a taking without legal process of a personal chattel for the redressing an injury, the performance of a duty, or the satisfaction of a demand. Distresses may be made on cattle damage-feasant, and also for rents, rates, taxes, &c.—Wharton.

The distraint of crops for rents, and suits in respect of such distraint in Bengal are *specially* provided for in Act VIII of 1869, B. C. (See secs. 97—100.) This article does not govern suits for the *re-delivery* (replevin) of goods taken unlawfully in distress.

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SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*)

Part IV.—One year.

ARTS.	Description of suit.	Period of limitation.	Time from which period begins to run.
29—32.	29. For compensation for wrongful seizure of moveable property under legal process.	One year ...	The date of the seizure.

No. 29. (No. 30, Act IX.) Limitation commences to run from the date of the *seizure* of moveable property, and not from the date of the *release* from attachment, &c. (Ram Sing *v.* Bhadro, 24 W. R., 298. See p. 222, *supra*).

It has been held that *money* is "moveable property," and that a suit to recover money wrongly taken in execution, with or without damages in the shape of interest, is a suit for *compensation* within the meaning of this article (Jaggevan *v.* Gulam, I. L. R., 8 Bomb., 17). When injury is caused by an *injunction* wrongfully obtained, art. 42 applies.

Part V.—Two years.

30.—Against a carrier for compensation for losing or injuring goods.	Two years ...	When the loss or injury occurs.
31.—Against a carrier for compensation for delay in delivering goods.	Ditto ...	When the goods ought to be delivered.

Nos. 30 & 31. (Nos. 36 & 37, Act IX.) These articles apply to private carriers as well as to common carriers, whether by land or by water. It has been held that where the liability of the carrier arises out of a *contract* respecting the delivery of goods, a suit for compensation against him is governed by art. 115, and that these articles apply where there is no such contract, and loss or injury to goods arises from a tort—*e. g.*, from alleged negligence or want of proper care on the part of the carrier (The B. I. S. N. Co. *v.* Hajee Mahomed, I. L. R., 3 Mad., 107; Kalu Ram *v.* The M. R. Co., I. L. R., 3 Mad., 240).

From the mere fact of non-delivery of the goods on a certain date, it cannot be inferred that the *loss* of the goods occurred on that date. If the carrier claims the benefit of this article, *he* ought to prove the date of the loss, supposing the plaintiff has given *primâ facie* evidence that his suit is not barred by limitation (Mohon Sing *v.* H. Conder, I. L. R., 7 Bomb., 478).

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

No. 32. (No. 38, Act IX.) The words "*first* becomes known" occur in this article; and the words "*first* became known," in sec. 18; the words "*first* become known," in art. 114; the words "*first* learns," in art. 48; and the words "becomes known," in arts. 90, 91, 92, 95 and 96. See p. 225, *supra*.

This article also applies to actions of *tort* only, and not to suits in respect of perversion, when such perversion amounts to a breach of a *covenant* subject to which a tenant holds the demised premises (Kedar Nath *v.* Khetter Paul, I. L. R., 6 Calc., 34).

SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*)

ACT XV OF 1877.

Part V.—Two years.

ARTS. 33—36.

Description of suit.	Period of limitation.	Time from which period begins to run.
33.—Under Act No. XII of 1855 (*to enable executors, administrators or representatives to sue and to be sued for certain wrongs*) against an executor, administrator or other representative.	Two years ...	When the wrong complained of is done.

No. 33. (No. 39, Act IX.) See notes to art. 20.

34.—For the recovery of a wife.	Two years ...	When possession is demanded and refused.
35.—For the restitution of conjugal rights.	Ditto ..	When restitution is demanded and is refused by the husband or wife, being of full age and sound mind.

Nos. 34 and 35. (Nos. 41 and 42, Act IX.) When a third person detains the wife, a suit for *recovery* of the wife lies against such person. A decree in a suit for restitution of conjugal rights is executed under sec. 260 of the Civil Procedure Code. A decree in a suit for the recovery of a wife is executed under sec. 259 of the Code. It has been held by a Full Bench of the Punjab Chief Court that, so long as the relation of husband and wife subsists, a suit against the wife for the restitution of conjugal rights is not barred under this article (*vide* sec. 23), and that a suit for the recovery of a wife may be brought within two years of *any* demand and refusal. See Rivaz, 2nd Ed., p. 102. Limitation runs from date of "demand and refusal," not from date of "the *first* demand and refusal." Time does not run from the refusal of a minor or insane wife. The refusal from which limitation runs must be an *absolute* refusal. Suits for restitution of conjugal rights under the Indian Divorce Act are not governed by this article. (See sec. 1, and the notes under it.)

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

No. 36. (No. 40, Act IX.) Suits for compensation for *torts* not *specially* provided for in this schedule are governed by this general article. Nos. 65, 115, and 116 are the general articles for suits for compensation for breaches of contracts; No. 49 is the general article for suits for specific moveable property; No. 80 for suits on bills, notes and bonds. No. 144 for the possession of *immoveable* property; and No. 120 for all *other* suits. No. 149 applies to all suits *by Government*. For an explanation of the

SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*)

Part V.—Two years.

ARTS. 37, 38.

terms malfeasance, misfeasance, and non-feasance, see the notes under sec. 23.

Where on a complaint of theft of grain against the plaintiff, the Magistrate, of his own motion, attached the grain and referred the parties to a suit in the Civil Court to establish their right, and the complainant's suit was dismissed by the Civil Court, and the grain restored to the plaintiff in a damaged state, it was held that plaintiff's suit for damages for wrongful detention of his grain was at best governed by art. 36, and that limitation commenced to run at the latest from the date of attachment (Mudvirapa *v.* Fakirapa, I. L. R., 7 Bomb., 427).

A suit for the value of standing crops carried away by the landlord on the strength of an ejectment-decree subsequently reversed has been held to be a suit for mesne profits under art. 109 (Shurnomoyee *v.* Patarri, I. L. R., 4 Calc., 625). An ordinary suit for compensation for wrongfully carrying away standing crops has been held to be governed by art. 36 (Pandah *v.* Jeunudi, I. L. R., 4 Calc., 665). Justice Field, however, in an unreported case, held, that as such carrying away is preceded by a trespass on immoveable property, it may be treated as matter in aggravation of the trespass, and as such governed by art. 39. Whatever injury a trespasser causes to the property while he is trespassing, or which results immediately from his acts, is matter in aggravation of the trespass, and as such is proper for the consideration of the Court when estimating the damages to be awarded for the trespass. (Phear on Rights of Water, p. 100. See also Form of suit for trespass, sched. iv, Act XIV of 1882; and Naasimma *v.* Ragupathi, I. L. R., 6 Mad., 176.) As to the time when the cause of action for a tort generally arises, see p. 221, *supra*.

Part VI.—Three years.

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

Nos. 37 & 38. (Nos. 31 & 32, Act IX.) Suits for *injunctions* for the removal of obstructions, &c., are not governed by these articles.

Where the obstructions are in the nature of continuing nuisances, the cause of action is renewed *de die in diem* so long as the obstruction is allowed to continue. (See sec. 23, and Rajrup Koer *v.* Abul Hossein, I. L. R., 6 Calc., 394, 404.) If there was any distinction under Act XIV of 1859 as to suits for *removal* of continuing obstructions and suits for *damages* for such obstructions (see 5 Mad., 6, 24; and 3 Mad., 111, 113), such distinction does not exist under the present law. Sec. 23 applies to *both* classes of suits. Even as regards a claim for damages only, a continuing obstruction gives rise to a fresh cause of action as fresh damage results from it. (3 Mad., 111, 113.)

Obstructions and disturbances of *other* easements,—*e. g.*, of the right to light or air,—are not specially provided for. Art. 36 will apply to suits for *compensation* in *such* cases. An obstruction to the migration of fish to and fro in plaintiff's *jalkur* is not an obstruction to a watercourse. (See Moharanee Surnomyee *v.* Degumbary, 2 Shome, 93.) Independently

Part VI—Three years.

of any question of *limitation* properly so called, no *right* to an easement can be *established* under sec. 26, if its enjoyment was *interrupted* two years before the institution of the suit. If the plaintiff cannot establish an *immemorial* right, or a right created by *grant*, &c., he must sue within *two* years of the *interruption*. See pp. 410—414, 428, *supra*.

Description of suit.	Period of limitation.	Time from which period begins to run.
39.—For compensation for trespass upon immoveable property.	Three years ...	The date of the trespass.

No. 39. (No. 43, Act IX.) See the notes under art. 36.

A trespass upon land is committed by entry on the same without lawful authority, and is in English law called trespass *quare clausam fregit* as distinguished from trespass to another's goods or person. A man is answerable not only for his own trespass, but for that of his *cattle* also. (Stephen's Commentaries, Vol. III.) An act committed *beyond the bounds* of the property affected by it may be a nuisance, but is not a trespass. (Phear. 101.) The trespass continues so long as the unlawful entry lasts (I. L. R., 6 Mad., 171, 178). Suits to *recover* immoveable property from a trespasser are governed by art. 142 (I. L. R., 6 Bomb., 580).

Fishing in plaintiff's tank or lake without his permission is an act of trespass only, when the plaintiff himself is not prevented from fishing there (Lukhimoni *v.* Koruna, 3 C. L. R., 509). But the acts of the defendant in taking fish from the tank or lake cannot be considered as successive acts of trespass, if they appear to have been exercised continuously under a claim of right. They must be considered as a dispossession by the defendant of the plaintiff's right *pro tanto* (Parbutty *v.* Mudho, I. L. R., 3 Calc., 276).

A trespass when it amounts to an *ouster* of the possessor of the property, cannot be treated as a "continuing wrong" under sec. 23.

40.—For compensation for infringing copyright or any other exclusive privilege.	Three years ...	The date of the infringement.

No. 40. (No. 11, Act IX; sec. 1, cl. 2, Act XIV.) A "patent right" in respect of a new manufacture is an exclusive privilege like "copyright." An exclusive right of *ferry* is also an exclusive privilege, but not of a like nature with "copyright." A suit in respect of a right of ferry is therefore not governed by this article. (See Rules of construction.)

The taking of an *account* of profits made by the defendant is only a mode of *compensating* an inventor for the infringement of his privilege. A suit for such an *account* is governed by this article (Kinmond *v.* Jackson, I. L. R., 3 Calc., 17).

41.—To restrain waste ...	Three years ...	When the waste begins.

No. 41. Suits for *compensation* for waste are governed by the general provisions of art. 36. Illustrations (*m*) and (*n*) under sec. 54 of Act I of 1877 give instances of suits to *restrain* waste by Hindu widows and undivided coparceners.

Waste is any considerable spoil or destruction in houses, woods, gardens, trees, lands, &c., by a lessee, a life-tenant, a mortgagor or

SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*)

Part VI.—Three years.

mortgagee in possession, a co-sharer, &c. The conversion of arable lands into *bhiti* lands, and *vice versâ*, may amount to waste. (Stephen, Vol. III; Wharton.)

According to the English law, *waste* is an injury to *real* property. For an instance of waste of personal property, see Hurry *v.* Apoorna, 6 Moore's I. A., 433.

Description of suit.	Period of limitation.	Time from which period begins to run.
42. For compensation for injury caused by an injunction wrongfully obtained.	Three years ...	When the injunction ceases.

No. 42. (No. 86, Act IX.) An award of damages under sec. 497, Act XIV of 1882, for an *ad-interim* injunction wrongfully obtained, bars any suit for compensation in respect of the issue of such injunction.

43.—Under the Indian Succession Act, 1865, Section 320 or 321, *or under the Probate and Administration Act*, 1881, *section* 139 *or* 140,* to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Three years ...	The date of the payment of distribution.

No. 43. A creditor or other claimant against the estate of a deceased person may follow the assets or any part of them in the hands of the persons who may have received the same from the executor or administrator.

44.—By a ward who has attained majority, to set aside a sale by his guardian.	Three years ...	When the ward attains majority.

No. 44. See I. L. R., 4 Calc., 523, and pp. 255, 256, *supra*.

A "sale" does not include a mortgage or lease, but art. 91, read with sec. 7, will apply to suits to set aside *instruments* of mortgage or lease, executed by the guardian of a ward. (See Ramansar *v.* Raghubar, I. L. R., 5 All., 490.)

Where the sale is *ab initio* void, as where a guardian or manager appointed under Act XL of 1858 sells his ward's immoveable property without an order of the District Judge previously obtained, it is not necessary to set aside the sale. A suit for recovery of the property against the purchaser in such a case will be governed by the twelve years' rule of limitation. As to suits *for recovery of property generally*, see notes under art. 91, and I. L. R., 5 All., 490.

45.—To contest an award under any of the following Regulations of the Bengal Code:— VII of 1822, IX of 1825, and IX of 1833.	Three years ...	The date of the final award or order in the case.

* *Vide* Act V of 1881, sec. 156.

Part VI.—Three years.

No. 45. (No. 44, Act IX; sec. 1, cl. 6, Act XIV.) No. 45 applies to suits by *any person*, whether bound by the award or not. No. 46, to suits by a *party bound* by the award. It was held by the late Sudder Court at Calcutta, that as an auction-purchaser at a revenue-sale was not the legal representative of the former proprietor in the property sold, the rule of limitation fixed in Act XIII of 1848 (to which this article corresponds) did not apply to a claim preferred by such a purchaser to contest the award of the Revenue Officers, though such award was binding on the former proprietor. The framers of Act XIV of 1859 (see sec. 1, cl. 6) introduced words to shew that the law was to be regarded as binding on all parties whenever and under whatever title they might have acquired the property affected by the award of the Revenue Officers. (See the Report of the Select Committee on the Limitation Bill, dated 8th January 1859.) This change in the wording of the law was not considered in Pureeag *v.* Shib Ram, 3 W. R., 165, as that case was decided under the old law. But in Mohima *v.* Rajcoomar (10 W. R., 22), Sir Barnes Peacock, C.J., points out that, now, a person is not entitled to ask the Court to rectify or set aside an award in a suit commenced more than three years after the date of the award, whether he is legally bound by the award or not.

The Regulations referred to in this and the following article relate to the settlement of lands, &c., and empower the Revenue Authorities to take judicial cognizance of certain claims and disputes respecting lands, &c.

A *thakbust*-survey-award relating to boundaries, in Bengal, is treated as an award under Reg. IX of 1825. (See Rajah Sahib Pershad *v.* Rajendro Kishore, 12 W. R., P. C., 6, 18.) An award under these Regulations is an *adjudication* of some *dispute* after the parties have had notice of the proceedings. (See 3 W. R., 7, and 11 W. R., 389; Thompson, p. 115.) It must be a judicial act of the Revenue Officer (I. L. R., 3 All., 738).

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

No. 46. (No. 45, Act IX; sec. 1, cl. 6, Act XIV.) See the notes to art. 45. In a suit by A against B, A is not bound by an award obtained by A and B against C (Komul *v.* Bissonath, W. R., Spl. No., p. 128, F. B.) This article applies only to suits by the *parties* to the award (Kanto *v.* Asad Ali, 5 C. L. R., 452). A purchaser at a revenue-sale, not being the legal representative of any of the parties to the award, is not *bound* by the award. A suit by a person in possession to have his title confirmed is not a suit to *recover* property within the meaning of this article. A person who remains in possession for three years after the making of the revenue award is not barred by this article from maintaining a suit to *confirm* his title. As the award does not determine the title of the parties, it is not necessary to set aside the award in such a case (Mohima *v.* Rajcoomar, 10 W. R., 22, 24). Even if the plaintiff is actually dispossessed two years *after* the award, he is bound to sue within three years of the award. The ruling in Mozuffer Ali's case (10 W. R., 71) is opposed to the wording of the law. (Thomson, p. 114.)

A temporary settlement of lands by the Collector, where there has been no award *against* the plaintiff, is no bar to his claim for a perma-

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SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*)

Part VI.—Three years.

ART. 47.

nent settlement. If the *right* of the *malik* is anyhow recognized by the Collector, the possession of the person with whom a temporary settlement is made is not adverse to the *malik* (Kristo *v.* Kashee, 17 W. R., 144; Bisseshuree *v.* Kalee, 18 W. R., 198; Kristo *v.* Shama, 22 W. R., 520; see also I. L. R., 10 Calc., 697, 709).

Where the law *allows* an appeal to the superior Revenue Officers, the period of limitation runs from the date of the final order in the case. The fact that the appeal was summarily dismissed or that the merits of the case were not entered into, does not make the order the less a final order (Krishna *v.* Mahomed, 10 W. R., 51). But where A and B are similarly affected by an award, and A only appeals, B cannot compute the period of limitation under this article from the date of the order on A's appeal. The three years are to be computed from the date when the award becomes final, so far as the plaintiff is concerned (Tulsiram *v.* Mahomed, 10 W. R., 48).

A suit which is within time under this article may, nevertheless, be barred by art. 142 or 144. (See 8 W. R., 209; 10 W. R., 249.)

Description of suit.	Period of limitation.	Time from which period begins to run.
47.—By any person bound by an order respecting the possession of property made under the Code of Criminal Procedure, Chapter XL, or the Bombay Mámlatdars Courts Act, or by any one claiming under such person, to recover the property comprised in such order.	Three years ...	The date of the final order in the case.

No. 47. (No. 46, Act IX; sec. 1, cl. 7, Act XIV.) Orders passed under Chap. XII of the Criminal Procedure Code of 1882 are, by virtue of sec. 3 of the Code, governed by this article. (See p. 186, *supra*.)

A person who was no party to the proceeding before the Magistrate, and who does not claim under any party to such proceeding, is not bound to sue within three years under this article. The dictum in Lekhraj Roy's case (14 W. R., 395) that the zemindar is bound by an order passed against his ijaradar can hardly be supported.

Orders under sec. 530, Act X of 1872, or sec. 145, Act X of 1882, are governed by this article. An order under sec. 147 of Act X of 1882 relating to easements is probably not governed by this article. Orders under secs. 532 and 534 of Act X of 1872, specially those under the latter section, would seem to be included in "orders respecting the possession of property under Chap. XL of Act X of 1872."

Where the Magistrate is unable to satisfy himself as to which party is in possession, or where he decides that neither party is in possession, and he *attaches* the property under sec. 531 of Act X of 1872, or sec. 146, Act X of 1882, his order is not "an order respecting the *possession* of property" (Akilandun *v.* Periasami, I. L. R., 1 Mad., 309).

The article can only apply where the possession of the defendant was confirmed by the Magistrate. It does not apply in favor of a party who subsequently succeeds, by a regular suit, in ousting the person whose

possession was so confirmed (Aukhil *v.* Mirza, 6 C. L. R., 93; see pp. 104 and 332, *supra*, as to possession *notwithstanding* the order).

A suit by a party bound by an order of the *mamlatdar*, for a *partition* of the whole property, a share in which was in dispute before the mamlatdar, is not a suit to *recover* the property within the meaning of this article. (See I. L. R., 5 Bomb., 25 and 27.) There is nothing in this article to restrict it to immoveable property only. (See I. L. R., 6 Calc., 709.) The order of the Sessions Judge refusing to move the High Court to interfere with the Magistrate's order cannot be treated as the *final order* in the case. (See Kangali *v.* Zomarudonissa, I. L. R., 6 Calc., 709.)

A *verbal* order alleged to have been passed by the Magistrate is not an order within the meaning of this clause (Mahomed *v.* Gunga, 2 Agra, 26). As to mamlatdars, see Bombay Act V of 1864. By an express provision of that Act, the decision of the mamlatdar is not conclusive as to the point of actual possession in any subsequent suit. But the decision of a Magistrate under the Code of Criminal Procedure is conclusive as to the possession (Lillu *v.* Annaji, I. L. R., 5 Bomb., 387).

Description of suit.	Period of limitation.	Time from which period begins to run.
48.—For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Three years ...	When the person having the right to the possession of the property first learns in whose possession it is.
49.—For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Ditto ...	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.

Nos. 48 & 49. (Nos. 48, 47, 35, 34, 33, 26 of Act IX; sec. 1, cl. 2, Act XIV.)

"Moveable property" inculdes *money* (see arts. 29 and 89; I. L. R., 8 Bomb., 17), but "*specific* moveable property" can hardly include *money*. A Division Bench of the Allahabad High Court has, however, held that a suit to recover a sum of *money* entrusted to the defendant for a specified purpose and misappropriated by him, is a suit to which art. 48 applies (Rameshar *v.* Mota Bhikh, I. L. R., 5 All., 341). See notes to art. 51 as to the distinction between *money* and other chattels. Where moveable property belonging to Z has been wrongfully converted by A, and such property has been sold by A's brother on A's account, and the sale-proceeds are subsequently held by A's brother on account of A's widow, there is no *dishonest misappropriation or conversion* on the part of A's *brother*, although he is responsible to Z for the money in his hands (Gurudas *v.* Ramnarain, I. L. R., 10 Calc., 860, P. C.)

Standing crops are not moveable property (I. L. R., 4 Calc., 665), but when such crops are cut, they may be treated as moveable property. As to when the possession of moveable property agreed to be sold and partly paid for becomes unlawful on the part of the vendor, see sec. 78, Act IX of 1872. Where the agreement is made for the sale of *immoveable*

and moveable property, sec. 85, Act IX of 1872, applies. The possession of the vendor or of his subsequent transferree in such a case becomes unlawful from the date of a decree for specific performance of the agreement (Dhondiba *v.* Ramchandra, I. L. R., 5 Bomb., 554). In a suit for wrongfully detaining title-deeds, time runs from the date when the title to the property comprised in the deeds is adjudged to the plaintiff, or the detainer's possession otherwise becomes unlawful. (See No. 33, Act IX of 1871.) Actions of trover come under art. 48, and actions of detinue under art. 49. (See I. L. R., 7 Bomb., 429.) Art. 49 is the most *general* article applicable to suits for moveable property. Arts. 123, 126 and 127, which allow a period of twelve years, apply to certain suits in respect of moveable or immoveable property. Art. 133 prescribes a period of twelve years for suits for the recovery of moveable property *sold* by a trustee, depositary or pawnee. Art. 145 allows a period of thirty years for the recovery of moveable property from the depositary or pawnee himself.

Description of suit.	Period of limitation.	Time from which period begins to run.
50.—For the hire of animals, vehicles, boats or household furniture.	Three years ...	When the hire becomes payable.

No. 50. (No. 49, Act IX; sec. 1, cl. 8, Act XIV.) Art. 50 refers to the hire of certain things for use (*locatio rei*). Art. 56 refers to the hire of labour and services. Art. 50 and many of the following articles in Part VI treat of actions *ex-contractu*. Where a contract is *registered*, a suit for compensation for its breach is governed by art. 116, and not by any other article.

51.—For the balance of money advanced in payment of goods to be delivered.	Three years ...	When the goods ought to be delivered.

No. 51. (No. 50, Act IX.) Balance—That which expresses the difference between the debtor and creditor sides of an account.—Wharton.

Money—It seems to be thought that "money" only means coin in gold, silver or copper. But in law "money" means and includes not only coin, but also generally any paper, obligation or security that is immediately and certainly convertible into cash, so that nothing can interfere with or prevent such conversion. (*Per* Stuart, C.J., in I. L. R., 3 All., 788, 793.) "Money" includes any currency usually and lawfully employed in buying and selling as the equivalent of money, as bank-notes and the like.—Webster. "Money" is the name given to the commodity adopted to serve as the *marchandise bennale*, or universal equivalent of all other commodities, and for which individuals readily exchange their surplus products or services.—Brande. Even provincial notes, if received as money, are money, but stocks are not money. (Rosco's Digest, 543.) For the protection of commerce, "money" cannot be pursued into the hands of a *bonâ fide* holder to whom it has passed in circulation, but this rule does not apply to other chattels. (See Lewin on Trusts, 7th Ed., p. 763.)

If there is no express stipulation as to the time of delivery, and the time cannot be ascertained by reference to any usage of the trade, or to the course of dealing between the parties, a *reasonable* time from the date of the advance of the money should be allowed (Boiddonath *v.* Lalunnissa, 7 W. R., 164).

SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*)

Part VI.—Three years.

Description of suit.	Period of limitation.	Time from which period begins to run.
52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Three years ...	The date of the delivery of the goods.

No. 52. (No. 51, Act IX.) Arts. 52 and 53 are based on the ruling in Satcowry *v.* Kristo Bangal, 11 W. R., 529. Under art. 52 the date of the delivery of each article is the date of the cause of action for its price. Where all the items of an account are on one side, as, for instance, in a tradesman's bill, the fact that some items are within the period of limitation does not take the earlier items out of the operation of the statute. (Banning, 200; 11 W. R., 529; and notes to art. 85.) As to what constitutes *delivery*, see secs. 90—92 of the Contract Act.

53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Three years ...	When the period of credit expires.

No. 53. (No. 52, Act IX.) See notes to art. 52.

54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Three years ...	When the period of the proposed bill elapses.

No. 54. (No. 53, Act IX.)

When the contract was for six months' credit, the payment then to be made by a bill at two months, it was held that an action for the price would not lie at the expiration of six months, and that the time began to run from the expiration of (6 + 2 =) 8 months. It was observed that the only action that would lie *before* the expiration of the period of the proposed bill was an action, not for the *price*, but for breach of contract in not giving the bill (Help *v.* Winterbottom, 2 B. and Ad., 431; Darby and Bosanquet, p. 19).

55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Three years ...	The date of the sale.

No. 55. (No. 54, Act IX.)

Suits for the price of goods, trees and growing crops are provided for in arts. 52 to 55. There is no such article for the price of *land* or of *immoveable* property *other* than trees or growing crops.

56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Three years ...	When the work is done.

No. 56. (No. 55, Act IX.)

SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*)

Part VI.—Three years.

ARTS. 57—59.

A suit for the price of work done by an *attorney* or *vakeel* is *specially* provided for. (See art. 84, and W. R., Gap No., 18.) Where a duty requires a *continuation* of services, the *completion* of the duty is the cause of action. (Angell, 148.) The work must have been done at the *request* of the defendant.

Description of suit.	Period of limitation.	Time from which period begins to run.
57.—For money payable for money lent.	Three years ...	When the loan is made.

No. 57. (No. 56, Act IX; sec. 1, cl. 9, Act XIV.) A suit for *money lent* in the ordinary sense of that expression, is for a loan repayable *at once*, or what is the same thing in point of law, repayable *on demand*. Where there is a written or verbal agreement *fixing* a certain date for the repayment of the money, limitation runs from the specified date of payment. Where such agreement is *verbal*, art. 115 applies (Rameshwar *v.* Ramchand, I. L. R., 10 Calc., 1033). Where it is written, art. 66 or some other article will apply.

58.—Like suit when the lender has given a cheque for the money.	Three years ...	When the cheque is paid.

No. 58. (No. 57, Act IX.)

A cheque is a bill of exchange generally drawn on a banker and payable on demand.

If a loan is made by means of a cheque given by the lender, a cause of action does not arise against the debtor till the cheque is cashed, even if the debtor makes use of the cheque and receives credit for it from his own banker before the cheque is actually paid (Garden *v.* Bruce, L. R., 3 C. P., 300; Banning, 25).

59.—For money lent under an agreement that it shall be payable on demand.	Three years ..	When the loan is made.

No. 59. (No. 58, Act IX.)

See pp. 72, 220, & 221, *supra*, and compare Nos. 72 and 73. "Where a man promises to pay a sum of money, &c., on demand, which it is his duty to pay whether a demand be made or not, then the money becomes payable at once, and no demand is necessary before suing him for it; as, for instance, in the case of money lent, and money due for goods sold or for work done. But where a promise is made in consideration of some *collateral* thing being done on demand, there the demand must be made before the promise can be enforced, as in the case of a promise to pay Rs. 100 to B, if A should go to Dacca on demand, or if A should pay Rs. 200 to C upon demand." *Per* Garth, C. J., in Ramchunder *v.* Juggut Monmohinee, I. L. R., 4 Calc., 283, 294.

Where a person is bound by an agreement to buy his coparcener's share, on his refusing to sell his own share on demand to such coparcener, the demand is a *condition precedent* to enforcing the agreement (Verasami *v.* Ramsami, I. L. R., 3 Mad., 87). A promise that the money shall be "payable within six years on demand" is not governed by arts. 59 or art. 73 (Sanjini *v.* Kama, I. L. R., 6 Mad., 290).

Where the money is "payable three months *after demand*," a demand is necessary (Brown *v.* Rutherford, 14 Ch. D, 687; see also art. 72).

Sums paid to the credit of a customer with his banker, though usually called *deposits*, are in truth *loans* to the banker, as money paid to a banker becomes at once part of his general assets, and he is merely a debtor for the amount (Foley *v.* Hill, 2 H. L. Cas., 28; Banning, 14: see also Hinguh *v.* Debee, 24 W. R., 42). Money lodged with another person, whether a banker or not, under an agreement that it shall be repayable with interest on demand, although called a deposit, is in point of law a loan. Unless the recipient of the money is invested with the character of a *trustee*, the transaction is a loan, and not a deposit (Ram Sokh *v.* Brohmomoyee, 6 C. L. R., 470). The case of money deposited in a sealed bag, or which may otherwise be ear-marked and recovered *in specie*, is different. (Banning, 15.) Such a case falls under art. 145.

Description of suit.	Period of limitation.	Time from which period begins to run.
60.—For money deposited under an agreement that it shall be payable on demand.	Three years ...	When the demand is made.

No. 60. A *loan* repayable *on demand* is payable *at once*, but a *deposit* of money repayable *on demand*, or a bill or note payable at a fixed time *after demand*, is not so payable. Art. 60 refers to cases where money is lodged with another under an express *trust*, or under circumstances from which a *trust* can be implied. (See the notes to the preceding article, 6 C. L. R., 470; and 12 C. L. R., p. 168.)

As to the *onus* of proof of *the demand*, see p. 113, *supra*. If the *first* demand has been a complete and unqualified demand, the period of limitation begins to run from the time of such first demand. (See Madhavbhi *v.* Fattesing, 10 Bomb., 487.)

61.—For money payable to the plaintiff for money paid for the defendant.	Three years ...	When the money is paid.

No. 61. (No 59, Act IX.) Compare arts. 81, 82, 99, 100 and 107.

An action for money paid at the request, express or implied, and to the use, of the defendant, is governed by this article. The language of this article is applicable to suits for money paid to the use of the defendant even when the money has been paid *without* any request on his part. Whether, or under what circumstances, such suits are *maintainable* is a different question.

Before we apply art. 61 to a particular case, we must see if art. 81, 82, 99, 100, or 107 does not apply to it.

Where one of two brothers, borrowing money in his own name, applies it in payment of a joint debt, and borrows again to pay off the first loan, and then repays the second loan from his private funds, a suit for contribution against the other brother must be brought within the period prescribed, from the date of the application of the money in payment of the joint debt, and not from the date of the payment of the first or second loan. (See Ramkisto Roy *v.* Muddun Gopal Roy, 12 W. R., 194; see also Sunkur *v.* Gourv, I. L. R., 5 Calc., 321.) Where the suit is brought by the manager of a joint estate of an undivided family in respect of a payment made by him on account of the estate, the same

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rule applies under art. 107. Other suits for contribution are provided for by arts. 99 and 100. Arts. 81 and 82 apply to *special* cases of "money payable to the plaintiff for money paid for the defendant."

Description of suit.	Period of limitation.	Time from which period begins to run.
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Three years ..	When the money is received.

No. 62. (No. 60, Act IX.)

Compare arts. 87 and 97. With special reference to the form of action "for money had and received by the defendant to the plaintiff's use" in the Courts of Law in England, Sir Barnes Peacock, C. J., delivering the judgment of the Full Bench, said:—"Nothing was more likely to mislead or to confuse than converting a suit brought in the Mofussil Courts to the forms adopted according to the English procedure." (Gogaram *v.* Kartick, 9 W. R., 514, 516, F. B.) But Act IX of 1871, No. 60, as well as the present article in the Act of 1877, appears to point to the well-known English action in that form, and it has been held by Markby and Prinsep, JJ., that this article should be read in connection with the English law so as to include cases of *constructive* receipts for the plaintiff's use (Raghumoni *v.* Nilmoni, I. L. R., 2 Calc., 393). But Mitter and Tottenham, JJ. (in Nundo Lall *v.* Meer Aboo, I. L. R., 5 Calc., 597), appear to have construed the language of this article more literally; Stuart, C.J., and Spankie, J. (in Ramkishen *v.* Bhawoni, I. L. R., 1 All., 333), seem to prefer the stricter interpretation; and their Lordships of the Privy Council (in Gurudas *v.* Ramnarain, I. L. R., 10 Calc., 860, 864) appear to hold, that if the money when received is not received for the plaintiff's use, a mere equitable claim to follow the money in the hands of the defendant is not governed by this article. Where the head of an office draws from the treasury a sum of money to pay the establishment, but fails to pay a clerk under him, a suit for the pay of such clerk against the head of the office is a suit for money *actually* had and received by the defendant for the use of the clerk (Abhya *v.* Haro, 4 B. L. R., App., 68).

In England, in the ordinary action for money had and received by the defendant for the use of the plaintiff, money is commonly recoverable against a perfect stranger, and is continually resorted to to obtain the plaintiff's money wrongfully withheld. For instance, the action is maintainable to recover from a party who has wrongfully received the known and accustomed fees of an office belonging to another; and where the defendant has wrongfully obtained the plaintiff's money from a third party, as by a false pretence, it may be recovered in this form of action. It has been held that this form of action lies to recover money paid under a void authority. (*Per* Levinge, J., in Hurrish Chunder *v.* Azimooddeen, Sutherland's Special Number, pp. 181, 183.) And Lord Mansfield (in Moses *v.* Macfarlane, 2 Bar., 1005) held, that this equitable action lies for money paid by mistake, or upon a consideration, which happens to fail, or for money got through imposition or extortion or oppression, or an undue advantage taken of the party's situation contrary to laws made for the protection of persons under those circumstances. This form of action lies if it is *contra aequum et bonum* that the defendant

should retain the money against the plaintiff. (See Smith's Leading Cases, Vol. II, 8th Edn., p. 429.)

Art. 62 has been read in connection with the English law and considered to be applicable in the following cases.

1. Where the plaintiff sued for money overpaid by him to the defendant upon the supposition that it was due, that is, for recovery of money paid by mistake (Radhanath *v.* Bamachurn, 25 W. R., 415). But may not art. 96 apply to such a case? (See I. L. R., 6 Mad., 344.)

2. Where A deposited money in the Collectorate in the name of the plaintiff, and the defendants, without the knowledge or consent of the plaintiff, fraudulently took out the money from the Collectorate (Raghumoni *v.* Nilmoni, I. L. R., 2 Calc., 393).

3. Where the plaintiff's decree had been sold in execution, and purchased by the defendant, who realized certain monies under that decree, and the sale in execution being set aside, plaintiff sued for the money realized by the defendant (Bhowanikuar *v.* Rikhiram, I. L. R., 2 All., 354; see also 2 C. L. R., 165).

4. Where money realized in execution against a judgment-debtor was, under an erroneous order of the Court, made over to one of two decree-holders, and the other sued for the money by establishment of his prior right to the same (Ramkishen *v.* Bhowani, I. L. R., 1 All., 333. F. B.)

5. Where the money in question was deposited by the plaintiff with the defendant, pending negotiations for a new lease, and the arrangement was, that, if the new lease was granted, the money deposited should be treated as part of the security to be given for the due performance of the lease, but that, if no new lease were granted, the money should be returned, and the negotiations falling through, the plaintiff sued for the recovery of the money. [The money in this case did not become "money received by the defendant for the plaintiff's use" until the failure of the negotiations (Johuri *v.* Thakoor, I. L. R., 5 Calc., 830). It may be observed that art. 97 provides *specially* for suits for "money paid upon an existing consideration which afterwards fails."]

6. Where the plaintiff claimed, as one of the two heirs of B, a moiety of monies which at the time of B's death were deposited with a banker, and which the defendant, the other heir of B, had received from such banker (Kundun Lal *v.* Bansidhar, I. L. R., 3 All., 170).

7. Where the plaintiff sued for his share of an allowance attached to an hereditary office, against another sharer or alleged sharer, who had improperly received the plaintiff's share of the allowance (Harmukh *v.* Hurisukh, I. L. R., 7 Bomb., 191; Desai *v.* Desai, I. L. R., 8 Bomb., 426).

On the other hand, it has been held that the article does *not* apply to the following cases:—

1. Where the sale-proceeds of a certain property were retained by the vendor, and the plaintiff claimed a portion of the same as a zemindaree-due under a custom obtaining in the mahal (Kirath *v.* Ganesh, I. L. R., 2 All., 358).

2. Where compensation-money for lands taken up by Government had been lying in the Collectorate, and the defendant took out the money as the mokruridar of the lands, and the plaintiff, after setting aside the mokruri lease, which had been improperly granted by his deceased aunt, sued to recover the money so received by the defendant (Nundo Lall *v.* Meer Aboo, I. L. R., 5 Calc., 597).

3. Where the defendant, as an agent of A, sold goods entrusted to him by A (who died after the plaintiff had obtained a decree against him for their conversion); and where the defendant, as agent of the representative

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of A. retained the proceeds, which the plaintiff had an equitable right to follow in the defendant's hands (Gurudas *v.* Ramnarain, I. L. R., 10 Calc., 860, P. C.; see also I. L. R., 7 All., 25).

The date of the actual receipt of the money is not necessarily the date on which "the money is received for the plaintiff's use. (See Johurilal's case cited above, 16 W. R., P. C., 20; and p. 105 (note), *supra.*)

But as to the construction of the words in the third column, "when the money is received," compare I. L. R., 10 Calc., 860, 864, P. C.; and Kalichurn *v.* Jogesh, 2 C. L. R., 354, 355. If when the money is received it is *not* received *for the plaintiff's use*, it would be safer to apply art. 120 (*ibid*).

"Money" in this article does not include stocks. (See notes to art. 51.)

Description of suit.	Period of limitation.	Time from which period begins to run.
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Three years ...	When the interest becomes due.

No 63. (No. 61, Act IX; sec. 1, cl. 9, Act XIV.)

Interest is money paid or allowed for the loan or use of some other sum of money. (See pp. 317 and 318, *supra.*)

The principal amount may be recovered, though recovery of the interest for more than three years is barred by limitation (see 7 Ch. Div., 120); but no interest can be recovered if the suit for the principal amount is barred by limitation (see p. 343, *supra*, and Hajee Syud Mahomed *v.* Mussamut Ashruffoonnissa, I. L. R., 5 Calc., 759, 765). The cause of action under this article is a recurring one, and so long as the principal sum is not barred by limitation, successive actions for amounts of interest successively becoming due may be brought. A suit for a *balance* of money payable for interest is governed by this article (Mokundi *v.* Balkishen, I. L. R., 3 All., 328).

With respect to arrears of interest on mortgages or other incumbrances, we have no provision corresponding to sec. 42 of the Statute 3 and 4, Will. IV, c. 27. It has accordingly been held that where both principal and interest are charged upon immoveable property, the period of limitation applicable to the recovery of the principal is applicable to the recovery of the interest. (See Gunput *v.* Adarji, I. L. R., 3 Bomb., 312, 332; Davani *v.* Ratna, I. L. R., 6 Mad., 417; Baldeo *v.* Gokul, I. L. R., 1 All., 603, 605.) See notes under arts. 132 & 147.

64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Three years ...	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.

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ART. 64.

No. 64. (No. 62, Act IX.) Cf. art. 85.

An "account stated," as opposed to an *open* account, is an adjustment which is *assented* to by *both* the parties. (See I. L. R., 6 Calc., 447, 451.) An account *closed* by the death of one of the parties, or otherwise, is not an account *stated*. (Angell, § 150.)

Under Act IX of 1871, the period of limitation in suits on accounts stated ran from the time "when the accounts were stated." *Any verbal* or unsigned statement of accounts (see 1 Shome, 37; 2 C. L. R., 346; I. L. R., 2 All., 872) might, therefore, have enabled the creditor to *evade* the law relating to *written* acknowledgments of debts (see Hirada *v.* Gadiji, 6 Mad., 197, 201), unless the term "accounts stated" was restricted to an adjustment of *cross*-demands between the parties. But as in *common talk*, an admission of any debt due from the defendant to the plaintiff is treated as "an account stated," the Indian Legislature, in 1877, amended the provisions of Act IX of 1871, and enacted that an account stated must be *in writing signed by the defendant or his agent*, in order that art. 64 might apply to it.

This article, as it stands, does not apply even to a *real* account stated unless it is in writing signed by the defendant or his agent. In a real account stated, a number of *cross*-demands are set off one against another, and a balance is struck in favor of one of the parties. In such a case, the law implies a *new* promise by the other party to pay the balance in consideration (not merely of past debts, but) of the *extinguishment* of the old debts on each side (see pp. 280-81, *supra*). Even when such a statement is *verbal*, or *not signed* by the defendant or his agent, the new promise is a new cause of action independently of sec. 19 or art. 64, and may be enforced within the period of three years under art. 115. It may be here observed that in a *real* account stated, it is not necessary that the statement should be made *within* the period of limitation prescribed for the recovery of the several cross-items (see 9 Bomb., 429). If what is, in common talk, called an account stated, is an account stated within the meaning of art. 64, it is even now possible to evade the provisions of sec. 19, unless this article is read along with that section, so as to make the article inapplicable except where, at the time of making the statement, all the several items of the account were unaffected by limitation. Art. 62 of Act IX of 1871 was read in this way by Jackson and Tottenham, JJ. (See Syud Mahomed Ali *v.* Mirza Dilwar Hossein, 2 Shome, 135.) But as art. 64 itself does not prescribe any time within which an account must be stated, and as the provision of sec. 19, that an acknowledgment to be valid must be made before the debt is barred, may, therefore, be evaded in many cases by suing in the form of a *so-called* account stated, it has been held by the Bombay High Court that this article does not, at all, apply to a *so-called* account stated where no *cross*-demands are set off against each other. (See Nahanibai *v.* Venkatidas, I. L. R., 7 Bomb., 414.) In Calcutta, however (see Dukhi Sahu *v.* Mahomed Bikhu, I. L. R., 10 Calc., 284, F. B.), all the Judges of the Full Bench *assumed* that art. 64 applied to accounts stated, even when there were no *cross*-demands, and the majority only held that the article did not apply if such statement of account was not "in writing signed by the defendant." The Allahabad High Court also took a similar view of the matter in Zulfikar *v.* Munnalal, I. L. R., 3 All., 148, F. B.

The law on this subject may be summarized as follows:—Art. 64 or sec. 19 does not apply to a *so-called* account stated when such statement *is oral*, or written but *not signed*. Such statement cannot, therefore, be of any use in saving from the operation of limitation a suit for the

SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*)

Part VI.—Three years.

ART. 65.

balance, or for any of the items of the adjusted accounts. (See I. L. R., 2 All., 872, 874; I. L. R., 10 Calc., 284, 293.) A so-called account stated, if written and signed *under all the conditions* mentioned in sec. 19, renews the period of limitation as provided in that section. It has not yet been finally decided by all the High Courts, whether a *so-called* account stated, written and signed by the defendant, after some of the items of the account had been barred by limitation, would or would not save the *barred* items. Neither sec. 19, nor, according to the Bombay High Court, art. 64, applies to such a case.

A *real* account stated, *signed* by the defendant or his agent, is governed by art. 64, whether, at the date of the statement, some of the items adjusted were barred by limitation or not.

A *real* account stated, if *oral*, or *not* in writing *signed* by the defendant or his agent, is nevertheless a valid new contract for the payment of the balance, and though not governed by art. 64, is governed by art. 115. Supposing some of the items of the cross-demands are barred debts, the verbal or unsigned statement of accounts would, it is apprehended, nevertheless give a new starting point of limitation. But in the case of a *so-called* account stated, even if it be conceded that here also the law raises the implication of a new contract in consideration of a past debt, such contract will be void under sec. 25 of the Contract Act, if the debt itself is *barred* by limitation and the statement does not amount to a *promise in writing* signed by the defendant or his agent. (See I. L. R., 6 Bomb., 683.)

The words in the first column of art. 64 must be read with those in the 3rd column, and notwithstanding the ruling in the case of Sheikh Akbar *v.* Shekh Khan (I. L. R., 7 Calc., 256), accounts stated *verbally* are not governed by art. 64. (See I. L. R., 10 Calc., 284, 287.)

The simultaneous agreement, spoken of in the 3rd column as giving a start later than the date of the accounts stated, must also be in writing signed by the defendant or his agent. (See Dagdusa *v.* Shamad, I. L. R., 8 Bomb., 542.)

As to what are cross-demands, see the notes to art. 85.

Description of suit.	Period of limitation.	Time from which period begins to run.
65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Three years ...	When the time specified arrives or the contingency happens.

No. 65. (No. 63, Act IX.)

This is a *general* article for the recovery of either liquidated sums, or unascertained damages, for the breach of a promise *to do* anything at a *specified* time, or upon the happening of a *specified* contingency. Where the promise is not to do anything but to *abstain* from doing something, or where no fixed time or event is *specified* for the performance of the contract, art. 115 or some other article will apply.

If the promise is contained in a duly *registered* agreement, art. 116 will apply (Kishenlall *v.* Kinlock, I. L. R., 3 All., 712). A suit to recover money deposited under an unregistered agreement that it shall be payable on the happening of a specified *contingency* does not fall within art. 60 but is governed by art. 115 or 65 or 62. (See I. L. R., 5 Calc., 830.)

Part VI.—Three years.

For the meaning of the word *compensation* in actions *ex-contractu*, as used in this schedule, see the notes to art. 116.

Where A, as surety of B, promises "if B does not pay eventually (*shesh parjanta*), I will," limitation does not run in favour of A until the creditor *demands* compensation from A on B's failure to pay (Bishumber *v.* Hungshesher, 4 C. L. R., 34). A case like this does not fall within art. 83, unless the date of A's *refusal* to pay is the date when the plaintiff is "actually damnified." A debtor's promise to pay, when he shall have the means to do so, may be enforced within three years from the date of his acquiring means to pay. If a person who has promised to do anything at a futu specified time declares beforehand that he will not do it, this article es not prohibit a suit being brought against him before the time specifi arrives. (See 1 Mad., 162.)

Description of suit.	Period of limitation.	Time from which period begins to run.
66.—On a single bond where a day is specified for payment.	Three years ...	The day so specified.

No. 66. A single bond is a written engagement for the payment of money *without a penalty*. (I. L. R., 4 All., 3, 6.) There are no alternative conditions in a single bond. (Thompson.) Instalment-bonds are provided for in arts. 74 and 75. An ordinary *tamasuk*, it is apprehended, is a *single bond*, as well as a *promissory note* as defined in sec. 3. But as "promissory notes" and "bills of exchange" are spoken of together, as distinct from "bonds," in arts. 69, 72, 73, 80, &c., it may be doubted if a *tamasuk*, which is not negotiable, is a "promissory note" within the meaning of those articles. A bond which besides creating a money obligation gives the creditor, on default, the right of treating the transaction as a conditional sale of certain properties, is not a single bond (Lachman *v.* Kesri, I. L. R., 4 All., 3).

Where the debt is payable "*within* two years from the date of the bond," the time at which it *must* be repaid *is specified* within the meaning of this article. (See Ball *v.* Stowell, I. L. R., 2 All., 322, 331; Narain *v.* Gouri, I. L. R., 5 Calc., 21.)

A bond payable at a *specified date*, with a condition that on default of payment of *interest* at stated periods the creditor might immediately realize the whole amount due, is, according to some of the Judges, governed by this article (I. L. R., 5 Calc., 21; I. L. R., 2 All., 322). But see art. 80.

If the day specified is the 30th Pous of a particular year, and it turns out that Pous of that year contains only 29 days, limitation runs not from the 29th Pous, but from the day following (Almas *v.* Mahomed Raja, I. L. R., 6 Calc., 239).

A suit on a *registered* bond is governed by art. 116.

67.—On a single bond where no such day is specified.	Three years ...	The date of executing the bond.

No. 67. (No. 66, Act IX.) See the notes to art. 66.

The starting point of limitation in this case is fixed on the same principle as in art. 57.

It has been held that a bond *payable on demand* does not specify the date of payment and is governed by this article (Rupkishore *v.* Mohni, I. L. R., 3 All., 415). Art. 80 will, at all events, apply to such a case.

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Part VI.—Three years.

ARTS.	Description of suit.	Period of limitation.	Time from which period begins to run.
68—72.	68.—On a bond subject to a condition.	Three years ...	When the condition is broken.

No. 68. (No. 67, Act IX.)

This article should be read with sec. 3, which lays down that *bond* "*includes* any instrument whereby a person obliges himself to pay money to another on condition that the obligation shall be void, if a specified act is performed or is not performed, as the case may be." There is some difference of opinion as to the meaning of these words. (See I. L. R., 2 All., 654, F. B., and I. L. R., 8 Calc., 54.) A covenant with a penal clause is *not* a bond conditioned for the performance of a covenant. (I. L. R., 8 Calc., 54.) A bond containing a penalty is called an "obligation" in English law. (Wharton.) It should be remembered, that sec. 3 does not give an *exhaustive* definition of "bonds."

In the case of a post-obit bond, the condition of the bond is not broken until the death occurs, upon which the money becomes payable. In an action for the penalty against a subordinate officer on his bond to account at the end of his service, limitation does not run until the service ends.

	69.—On a bill of exchange or promissory note payable at a fixed time after date.	Three years ...	When the bill or note falls due.

No. 69. (No. 68, Act IX.)

A promissory note is not *necessarily* negotiable. It may or may not be made payable to order or to the bearer; but it is *rarely* made payable only to a particular person named therein. (See sec. 3, and Wharton's Law Lexicon.)

For the rules regarding the date of maturity of negotiable instruments, see secs. 22—25, Act XXVI of 1881.

This article supposes that the bill has been accepted by the drawee, for if the bill has been dishonored by non-acceptance, art. 78 applies.

	70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Three years ...	When the bill is presented.

No. 70. (No. 69, Act IX.)

A bill payable "at a fixed time after sight" is governed by art. 72. As to presentment for payment, see secs. 62—76, Act XXVI of 1881. The expressions "after date" and "after sight" are not synonymous.

	71.—On a bill of exchange accepted payable at a particular place.	Three years ...	When the bill is presented at that place.

No. 71. (No. 70, Act IX.)

	72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Three years ...	When the fixed time expires.

SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*) ACT XV OF 1877.

Part VI.—Three years.

ARTS. 72—74.

No. 72. (No. 71, Act IX.)

The entries in the 3rd column of arts. 69, 70, 72, 73, 76, 77, 79, 81, 82, and 83 appear to be based on the English cases referred to by Messrs. Darby and Bosanquet at pp. 19 to 23 of their work on Limitation.

In a suit on a promissory note payable one year *after demand*, time does not commence to run until after the expiry of one year from the date when *demand* is made. (See Thorpe *v.* Booth; Banning, 27; pp. 113, 221, *supra.*) As to the construction of the words "payable after six months whenever the payee shall demand the money," under Act XIV of 1859, see Jeannissa *v.* Manikji, 7 Bomb., 36.

Description of suit.	Period of limitation.	Time from which period begins to run.
73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Three years ...	The date of the bill or note.

No. 73. (No. 72, Act IX.)

The starting point of limitation in this case is fixed on the same principle as in art. 59. See notes to art. 59. "Payable at any time within six years on demand" is not equivalent to "payable on demand." A promissory note so payable is *virtually* a note payable on demand, accompanied by a writing restraining the right to sue, inasmuch as the *terms* of the note restrain the suit unless demand is made *within* six years. It has been held in one case that this special form of note is not provided for by art. 73, and that it falls within art. 120 (Sanjini *v.* Kama, I. L. R., 6 Mad., 290). It was not suggested in this case that art. 80 (the general article for bills, notes and bonds) might apply.

Under this article the contemporaneous agreement restraining or postponing the right to sue must be in *writing*. (Compare 3 Bomb., O. C. J., 153.)

A new contract may be *substituted* for that contained in a promissory note payable on demand, and a suit on the basis of such a contract will not be barred simply because three years have elapsed from the date of the note. (See Natha *v.* Janardhan, I. L. R., 1 Bomb., 503.)

As to the former state of the law relating to bills and notes payable on demand, see pp. 220 & 221, *supra.*

74.—On a promissory note or bond payable by instalments.	Three years ...	The expiration of the first term of payment, as to the part then payable; and for the other parts the expiration of the respective terms of payment.

No. 74. (No. 74, Act IX.)

This article furnishes an instance of a contract where there are *successive* breaches. (See p. 218, *supra.*) Successive breaches of a contract to pay an annuity, and of *other* contracts written or verbal are provided for by art. 115.

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SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*)

Part VI.—Three years.

ART.	Description of suit.	Period of limitation.	Time from which period begins to run.
75.	On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one instalment, the whole shall be due.	Three years ...	When the first default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.

No. 75. (No. 75, Act IX.)

A *verbal* agreement for the payment of money by instalments with a similar condition as to the whole amount becoming due (not being a promissory *note* or *bond*) is not governed by this article (Koylas *v.* Boykoonto, I. L. R., 3 Calc., 619). It may also be said that this article does not apply if the whole amount becomes due on default in payment of *two* or more successive instalments. See art. 80.

It has been held, that a condition that on default of payment of one instalment of *interest* the principal amount shall become due, does not fall within this article (Ball *v.* Stowell, I. L. R., 2 All., 322; Narain *v.* Gouri, I. L. R., 5 Calc., 21). But the same or nearly the same result will be arrived at by the application of art. 65, art. 115, or art. 80 to such cases. The only difference will be as to the effect of a *waiver* of the benefit of the condition.

If we do not take into consideration the express provision of art. 75 (Act IX and Act XV), waiver not amounting to a fresh agreement between the parties cannot affect the running of time when once it has commenced to run. (See Gumma *v.* Bhiku, I. L. R., 1 Bomb., 125; Ahmad *v.* Hafiza, I. L. R., 3 All., 514; Raghu *v.* Dipchand, I. L. R., 4 Bomb., 66, 68.) Before Act IX of 1871 came into operation, it was held that if the suit was not upon any such fresh agreement, but upon the original bond itself, proof of payment and acceptance of an instalment subsequently to the default could not help the plaintiff in any way. (7 W. R., 21, F. B.) Mere abstinence from suing for the whole amount due does not amount to *waiver* within the meaning of this article (Sethu *v.* Nayana, I. L. R., 7 Mad., 577; Gopala *v.* Paramma, I. L. R., 7 Mad., 583). A subsequent acceptance of the instalment in arrear may operate as a waiver, but merely allowing the default to pass unnoticed does not (Chenibash *v.* Kadum, I. L. R., 5 Calc., 97). Acceptance of payments made in reduction of the *whole* debt, and not on account of the particular instalment due, cannot, of course, amount to a *waiver* (Mumford *v.* Peal, I. L. R., 2 All., 857. See also the note to Gumma *v.* Bhiku, I. L. R., 1 Bomb., 125). But such payment may give a new start if sec. 20 be applicable.

In Mumford *v.* Peal, the Allahabad High Court say that to prove *waiver* even under art. 75, it is necessary to prove that the creditor has entered into some fresh parol arrangement, condoning the breach and creating new relations with the party in default. (I. L. R., 2 All., 857.)

Where the bond or note gives the creditor the *option* either of suing for the whole debt on the occurrence of the first default, or of waiting till the expiry of the term of the bond or note, it has been held that art. 75 does not apply (Koylas *v.* Boikunto, I. L. R., 3 Calc., 619; Narain

v. Gouri, I. L. R., 5 Calc., 21). But even in such a case it is necessary for the creditor to show that he has *exercised* his right of election in order that limitation may not be computed from the date of the first default. (See Ravalmal *v.* Dhondiba, 11 Bomb., 155, and I. L. R., 2 Bomb., p. 326.) Where the language of the bond showed that it was the intention of the parties that, in case of default made in payment of one instalment, the whole amount should become due, only *if* demand for such amount were made, it was held that time did not commence to run against the creditor until he made a demand for payment of the entire sum. (Hanmantram *v.* Bowles, I. L. R., 8 Bomb., 561.)

The provisions of art. 75 do not apply to *applications* for the execution of *decrees* under which money is payable by instalments. There is no provision for waiver in cl. 6, art. 179, and acceptance of payments made subsequently to default would not affect the question of limitation (Dulsook *v.* Chugon, I. L. R., 2 Bomb., 356; Shib *v.* Kolka, I. L. R., 2 All., 443; Ugranath *v.* Laganmani, I. L. R., 4 All., 83). There are several cases, however, in which it has been held that the right or privilege to execute the *whole* decree on the 1st default, *may be waived* so as to enable the decree-holder to sue out execution for subsequent *instalments* within three years of *their* falling due (Asmutullah *v.* Kally Churn, I. L. R., 7 Calc., 56, 60; Nilmadhub *v.* Ramsodoy, I. L. R., 9 Calc., 857; Karakavalasa *v.* Karanom, I. L. R., 3 Mad., 257; Kanchan *v.* Sheoprosad, I. L. R., 2 All., 291).

Description of suit.	Period of limitation.	Time from which period begins to run.
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Three years ...	The date of the delivery to the payee.

No. 76. (No. 76, Act IX.)

This article is apparently based on the decision in Savage *v.* Aldrin, where a note payable on demand was deposited with a banker for delivery to the payee on his producing another note cancelled, and it was held that the payee had no ground of action till the note was delivered, and that therefore limitation ran only from that time. (Darby and Bosanquet, 20.) Art. 76, however, does *not* say that the note must be one *payable on demand*.

77.—On a dishonoured foreign bill where protest has been made and notice given.	Three years ..	When the notice is given.

No. 77. (No. 77, Act IX.)

As to inland and foreign bills, see secs. 11 and 12, Act XXVI of 1881. As to dishonor, notice and protest, see secs. 91, 99,—*ibid.*

Time runs when notice of dishonor is given, not when the bill falls due. (Darby and Bosanquet, 23.)

78.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Three years ...	The date of the refusal to accept.

SECOND SCHEDULE—FIRST DIVISION: SUITS—(*contd.*)

Part VI.—Three years.

No. 78. (No. 78, Act IX.)

According to English cases, time runs when *notice* of non-acceptance is given. Here it runs from the date of *refusal to accept*—not from the date of *non-payment* on the due date. Compare art. 79 of Act IX, the provisions of which have *not* been re-enacted.

Description of suit.	Period of limitation.	Time from which period begins to run.
79.—By the acceptor of an accommodation-bill against the drawer.	Three years ...	When the acceptor pays the amount of the bill.

No. 79. (No. 81, Act IX.)

The drawer is impliedly bound to *indemnify* the accommodation acceptor, and such acceptor is not actually damnified until he actually pays the bill. See No. 83.

80.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	Three years ...	When the bill, note, or bond becomes payable.

No. 80. (No. 80, Act IX.)

This is a *general* article. See notes to arts. 66, 73, and 75. A suit by the endorsee of a bill or promissory note against the endorser will probably be governed by this article. See art. 73, Act IX, the provisions of which have *not* been re-enacted.

In suits against Government, on Government promissory notes, limitation runs from the date on which the note becomes payable after notice given in the Gazette in accordance with the terms of the loan. (See Financial Notification No. 59, dated the 11th January 1882.)

81.—By a surety against the principal debtor.	Three years ...	When the surety pays the creditor.

No. 81. (No. 82 of Act IX.) See arts. 61 and 83.

When a surety has paid a *co-surety* who has paid the creditor, a suit by such a surety against the principal debtor is not governed by this article, (See Rivaz, p. 123.) A suit by the creditor against the surety is governed by art. 65, or art. 83.

82.—By a surety against a co-surety.	Three years ...	When the surety pays anything in excess of his own share.

No. 82. (No. 83 of Act IX.) Compare art. 61.

This article deals with a particular class of suits for contribution. See also arts. 99 and 100 and the notes to art. 83.

The right to contribution is, generally, a *personal* right, and the remedy is a *personal* remedy. (See *In re* Leslie *v.* French, 23 Ch. D., 552, 563.)

83.—Upon any other contract to indemnify.	Three years ...	When the plaintiff is actually damnified.