Part VI.—Three years.

No. 83. (No. 84 of Act IX.)

If a man request another to become surety for him, and that other becomes surety and is obliged to pay, the principal debtor is bound by an *implied contract* to indemnify the surety, and to re-pay him any amount which, as such surety, he is obliged to pay. But a suit for *contribution* by a surety against a co-surety is *not* founded upon any *contract*. The obligation to contribute arises from what Austin calls a *quasi*-contract (Rambux *v.* Modhoosoodun, 7 W. R., 377, F. B.) For the views of the High Courts of Madras, Bombay and Allahabad, on this subject, see 5 Mad., 200; I. L. R., 4 Bomb., 214; I. L. R., 3 All., 66.

A contract to indemnify the plaintiff against any misbehaviour of a third person is governed by this article, if not by art. 65. Where the misbehaviour consists of an act of embezzlement, the date of the embezzlement is the date when the plaintiff is actually damnified (Shapurji *v.* The Superintendent, 12 Bomb., 238). Insurance is a contract of indemnity, but art. 86 *specially* provides for suits on policies of insurance.

Description of suit.	Period of limitation.	Time from which period begins to run.
84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Three years ...	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.

No. 84. (No. 85 of Act IX.) Compare art. 56.

A suit by a *mookhtear* for his costs is probably governed by art. 56.

Where there is an *express* agreement as to the time of payment, this article does not apply. Where the business or suit is *improperly* discontinued, an attorney (or vakil) has no cause of action. (See Nicholls *v.* Wilson, 11 M. and W., 106; Thompson's Act IX of 1871.)

The date of the decree or final order is the date of the termination of the suit. If the word "suit" in this article does not include appeals and applications, the word "business" must include work done in respect of applications and appeals. It has been held that until the costs are taxed and inserted in the decree, and the decree is issued, the suit or appeal does not *terminate* within the meaning of this article (Narayan *v.* A. Champion, I. L. R., 7 Mad., 1). But it has been also laid down that "the termination of a suit is when judgment is given in the Court in which the action is commenced" (Balkrishna *v.* Govind, I. L. R., 7 Bomb., 518). The suit does not necessarily *terminate* when the parties themselves settle their disputes out of Court (I. L. R., 1 Bomb., 505). An *application* against a suitor, in respect of costs due to his attorney, where such application is allowable, is not governed by this article (I. L. R., 1 Bomb., 253).

A suit for costs of drawing a conveyance, &c., falls within this article.

ACT XV OF 1877.

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

Part VI.—Three years.

ART.	Description of suit.	Period of limitation.	Time from which period begins to run.
85.	For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Three years	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.

No. 85. (No. 87, Act IX; sec. 8, Act XIV.)

Under Act XIV, this provision was confined to mutual accounts between merchants and traders, but the term "merchants and traders" was not construed very strictly. (Sec. 2 Ind. Jur., N. S., 241.) Under Act IX, limitation commenced to run from the *date of the last item* admitted or proved in the account. This article applies to mutual accounts between *any* two persons, and limitation runs (as under Act XIV) from the *close of the year* in which the last item admitted or proved is entered.

An account is a detailed statement of a series of receipts (credits) and disbursements (debits). An account is *open* where the balance is not struck, or though struck is not accepted or acknowledged to be correct by all the parties. An account is *current* when it has been going on as a *continuous* account between the parties. A running or continued account between two or more parties is an account current. Accounts are current until they are stopped, *i. e.*, so long as there is continuity in the dealings between the plaintiff and the defendant.

If there are such dealings between the plaintiff and the defendant in the course of business that sometimes the balance is in favor of one party and sometimes of the other, the dealings are *mutual* within the meaning of the law. (*Per* Sir B. Peacock, C.J., in Ghaseeram *v.* Monohor, 2 Ind. Jur., N. S., 241.) In Normul *v.* Pookermul, decided on the 19th August 1879 and reported in the *Englishman* of the 26th of that month, Justice Wilson held that there should be on each side matters which, if there were no running account, would form a cause of action. Money lent on one side, and money paid on account on the other, with the balance *always* in favour of the first, do not constitute reciprocal demands.

A continuous account between principal and agent with debits and credits on each side of it and containing several items which bring down the mutual dealings to a date which is within the prescribed period of limitation, falls within this article. (See Watson *v.* Aga Mehdee, L. R., 1 Ind. App., 346.) Items in such an account, even if dated more than three years before the institution of the suit, are not barred by limitation. (*Ibid.*) In Kushals *v.* Behari (I. L. R., 3 All., 523) the Allahabad High Court expressed an opinion that art. 85 would apply to ordinary banking accounts. In Naraindas *v.* Vissandas (I. L. R., 6 Bomb., 134) Sarjent, J., following the decision of Peacock, C. J., and Norman, J. (in 2 Ind. Jur., N. S.), held that an account of mutual dealings in *hundis*, where the defendant used to draw hundis on the plaintiff, and in order to keep him in funds used to remit hundis drawn in favour of the plaintiff on other firms, was a mutual account within the meaning of this article.

The following is a brief summary of the views of Pontifex, J., on the subject of mutual accounts and reciprocal demands:

If the balance was sometimes in favor of the defendant, but *generally*

in favour of the plaintiff (banker), the account between them is not a *mutual* one. If during nearly the whole of the time one of the parties could not say to the other "I have an account against you," the accounts between them could not be *mutual*. Even if such accounts could be called mutual, they could *only* be mutual down to the date when the defendant made his last payment to the plaintiff (banker). From the date when the balance was for the last time in favour of the defendant, it could not be said that there were *reciprocal demands* between the parties, and further that "the last item admitted or proved" in the article meant such item on the *defendant's* side of the account. (See H. Mahomed *v.* M. Ashrufoonnissa, I. L. R., 5 Calc., 759.)

In England, "where there have been mutual accounts, the statute is retarded by every fresh item, provided such item is within six years of previous items. And it seems to make *no difference* on *which side* the items are which are within the six years." (Banning, 201; see also Angell, § 147.) It has been held by Sarjent, J. (I. L. R., 6 Bomb., 134, 138), that where there is nothing to show a *change* in the nature of the dealings between the parties, the account (being a continuous one) would be a mutual account down to the date of the last advance made by the *plaintiff* (banker), although, latterly, the balance has been uniformly in his favour.

Mutual accounts are made up of matters of *set-off*. There must be a mutual credit founded on a subsisting debt on the other side, or an express or an implied agreement for a set-off of mutual debts. (Angell, § 149.) Where the dealings on either side are so independent of each other that neither party in giving credit to the other relies on the debt which he has against him, there are no *mutual* dealings. (Shephard, 56.) In the Privy Council case cited above, there was an actual agreement between the principal and the agent that the former should be bound to pay the *balance* on an adjustment of accounts.

The year as computed in the account is not necessarily the English year or the Bengali or the Fusli year, but may be something different. If the accounts are made to the particular date on which the books are closed, the parties are allowed three years from the end of such *conventional* year. If the books are regularly made up year by year to the 30th June, limitation runs from the 30th June. The *close* of such year is the starting point of limitation, because that is the time when the balance will, in the ordinary course of business, be struck. (See Srinath Das *v.* Park Pittar, 5 B. L. R., 550.)

Description of suit.	Period of limitation.	Time from which period begins to run.
86.—On a policy of insurance when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	Three years ...	When proof of the death or loss is given or received to or by the insurers, whether by or from the plaintiff, or any other person.

No. 86. (No. 88 of Act IX). This article does not apply when custom allows a certain *time of grace*. (See Norotomdas *v.* Dayabhai, 6 Bomb., 34.)

ACT XV OF 1877.

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

Part VI.—Three years.

ARTS.	Description of suit.	Period of limitation.	Time from which period begins to run.
87—89.	87.—By the assured to recover premia paid under a policy voidable at the election of the insurers.	Three years ...	When the insurers elect to avoid the policy.

No. 87. (No. 89 of Act IX.) The premia already paid become recoverable on failure of the consideration, *i.e.*, when the insurers elect to *avoid* the policy.

	88.—Against a factor for an account.	Three years ...	When the account is during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates.

No. 88. (No. 64 of Act IX.)

A factor is an *agent* employed to sell goods or merchandise consigned or delivered to him, by or for his principal, for a compensation commonly called factorage or commission. A factor may buy and sell in his own name, and has a special property in, and a lien on, the goods. During the continuance of the agency, the right to sue accrues on demand and refusal. But if the agent dies, the action against his representatives must be brought within three years of his death, provided no demand had been made during his life. (See Lawless *v.* Calcutta Landing Co., I. L. R., 7 Calc., 627, 632.)

A suit for an *account* in its legal sense is not confined to a suit for a statement of what has been done with monies, &c. To *account* for monies is to *pay* any balance which might be found to be due upon taking the accounts (Kally Kissen *v.* Juggut Tara, 11 W. R., 76). For the ordinary form of prayer for an account, see Shoshi *v.* Guru, I. L. R., 7 Calc., 89, 91.

The termination of an agency like any other fact may be *inferred* or *presumed* from collateral facts. (6 C. L. R., 101, 106, P. C.)

	89.—By a principal against his agent for moveable property received by the latter and not accounted for.	Three years ...	Same as in preceding article.

No. 89. (No. 90, Act IX.)

The suit under this article is not necessarily for *specific* moveable property. It may be for *money* received by the agent during his agency. The agent may receive money from the principal for general purposes, or with directions to apply it to a particular purpose, or he may receive money from a third person for the principal, and in either case he is legally bound to account for such money when required to do so by the principal. A suit for an account (in its legal sense) against an agent is virtually a suit for property received and not accounted for. Moveable property in the possession of a relative as *manager* may be treated as property received by an agent. The agency, in such a case, may be

considered to terminate when the manager sets up a title in himself (Kally *v.* Dukhea, I. L. R., 5 Calc., 692, 698). Where the agent, on the demand of the principal, promises to render accounts on a future date, but does not, limitation will, it has been held, run from that date, as that is the date when he virtually *refuses* to render accounts (Hori *v.* The Administrator-General, 3 C. L. R., 446). It may be doubted, however, if an *absolute* refusal by the agent is not necessary to set time running against the principal.

Where money is advanced by the principal to his agent, the latter receives the money subject to an obligation to *account* for the money. No cause of action accrues to the principal at the date of the *advance*. (11 W. R., 76.)

A suit against an agent employed in the management of land or collection of rents, for money received or accounts kept in the course of such employment, or for papers in his possession, is (except in cases of fraud) governed by the one year's rule under sec. 30, Act VIII of 1869, B. C., and sec. 24, Act X of 1859. (See I. L. R., 4 Calc., 550; 3 C. L. R., 258, 440, 444; 8 C. L. R., 285.) If such an agent delivers an account showing himself to be indebted, a fresh cause of action arises upon the admission by the settlement of account. An action for the balance on the account will be governed by the *general* law of limitation. Art. 64 or some other article will apply. (See 2 Hay, 509; 20 W. R., 309; 22 W. R., 338.) Suits against agents are *not specially* provided for in the Bengal Tenancy Act, 1885.

Description of suit.	Period of limitation.	Time from which period begins to run.
90.—Other suits by principals against agents for neglect or misconduct.	Three years	When the neglect or misconduct becomes known to the plaintiff.

No. 90. (No. 89, Act IX.)

This article governs a suit for damages against an agent in respect of the loss arising from his misconduct in neglecting to sue for debts due to his principal, or in so negligently selling his principal's property that the proceeds cannot be realized. (See Baboo Lall *v.* Vaughan, 2 Agra, 306.)

91.—To cancel or set aside an instrument not otherwise provided for.	Three years	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.

No. 91. (No. 92, Act IX.)

Art. 44 provides for a suit by a ward, who has attained majority, to set aside a sale (whether by an *instrument* of conveyance or otherwise) by his guardian. Arts. 92 and 93 govern a suit to set aside an instrument which is impugned as a forgery. Art. 114 applies to a suit for the *recission* of a contract. Art. 125 governs a suit to have an alienation of land by a Hindu or Muhammadan female having a qualified estate in it declared to be *void* except for her life or until her remarriage. Art. 126 provides for a suit by a Hindu governed by the *Mitakshara* to set aside his father's alienation of ancestral property.

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

Part VI.—Three years.

ART. 91.

There can be no doubt that this article applies where the *only* relief asked for is the setting aside of an instrument not otherwise provided for. But there has been some difference of opinion as to whether the article applies in cases where the plaintiff sues for *possession* of property "by setting aside a spurious or invalid instrument." (See Hazari Lal *v.* Jadaun, I. L. R., 5 All., 76.) It was held by Straight, J., in that case that "art. 91 is intended to apply to suits of the kind mentioned in sec. 39 of the Specific Relief Act, and to cases where a plaintiff seeks to have cancelled or set aside some instrument he has been induced by misrepresentation, concealment of facts, or other means of a like kind to enter into, or where the cancelment or setting aside of an instrument is the *only* relief asked." This opinion has been acted upon in several cases by the Allahabad Court. (See Uma *v.* Kalka, I. L. R., 6 All., 75, and the cases cited therein.) Where the object of the suit is *not* so much to have the instrument *itself delivered up and cancelled*, as to have it declared ineffectual in respect of the plaintiff's right in the property in suit, the article does not apply. (See Sobha *v.* Sahodra, I. L. R., 5 All., 322.) Where the main and substantial relief sought is the recovery of possession of immoveable property, the case is governed by the law of limitation applicable to such suits, and is not affected by the incidental question being raised whether the claim to possession can be defeated by the existence of an instrument in favor of the defendant. (See I. L. R., 5 All., 75, 77; 6 C. L. R., 12, 15, P. C.; 2 C. L. R., 10; I. L. R., 5 Calc., 363; I. L. R., 3 Mad., 215.) The declaration of the invalidity of the defendant's pretensions is no more than an *incidental* step in the assertion of the plaintiff's title and right to possession (Ikram Sing *v.* Intiram Ali, I. L. R., 6 All., 260). The prayer for the invalidation of the instrument may, in such a case, be treated as *surplusage* (I. L. R., 1 All., 409). Similarly, it has been said that a suit to *establish the right* of the plaintiff, after an adverse order under sec. 332 of the Code of Civil Procedure, can hardly be described with propriety as "a suit to set aside an order" within the meaning of art. 13 (Ayyasami *v.* Samiya, I. L. R., 8 Mad., 82).

If a person not having any title to an estate sells or mortgages it, the owner of the land is not bound to bring an action directly the deed is executed. He might very reasonably say—"Why should I be obliged to incur the costs and harassment of a suit when the property remains in my possession? It will be time enough for me to interfere when my possession is interfered with." He would not be *bound* to bring a suit to *set aside* the deed. Besides, the right to set aside the deed is a distinct right from the right to recover possession. (See Raja Ram *v.* Luchman, 8 W. R., 15, 22, F. B.) A deed made between plaintiff's ryot and an indigo-planter cannot, in the slightest degree, affect the rights of the plaintiff, and where the plaintiff was *no party* to it, it was held by Jackson and White, JJ., that he was *not entitled* to sue to set it aside. (See Babu Luchmee Prosad *v.* Sulhab Roy, 1 Shome, 43.) But whether entitled or not, he is, at all events, not *bound* to sue. (See Sikher *v.* Dulputty, I. L. R., 5 Calc., 363, 370, 378.)

In Bhawani *v.* Bisheshar (I. L. R., 3 All., 846), Straight and Duthoit, JJ., applied the provisions of art. 91 to a suit for possession of land by *cancelment* of a lease executed by a Hindu widow, who, it was alleged, had no proprietary title to the land. It was held, that art. 91 governed suits by *third* parties to have an instrument cancelled or set aside. In a later case (Ikram *v.* Intizam, I. L. R., 6 All., 260),

it was said, that "the relief sought for by the plaintiffs," in the former case, "was impossible of attainment without getting rid of the lease given by the former proprietor." It is, however, rather difficult to reconcile the decision in Bhawani *v.* Bisheshar with the other rulings which have been already cited. If an instrument is *ab initio* void as against the plaintiff, by reason of its not having been executed by the plaintiff or by any person under whom he claims, or if the executant had no legal authority or competency to execute it, the plaintiff may treat it as a piece of waste paper. The existence of such an instrument can, in no way, obstruct the plaintiff's rights, and it is *unnecessary* for him to have that set aside, which has neither force nor effect. (See I. L. R., 5 All., 76, 77.) Where a conveyance is executed by a guardian without authority, or where the guardian exceeds his authority in executing it, it is not incumbent on the ward to sue to set it aside. He may sue to *recover the property*, and ask the Court merely to prevent the purchaser from setting up the conveyance as an answer to the suit. (See I. L. R., 5 Calc., 363, 370, 385.)

But where the instrument impugned is voidable at the *option* of the plaintiff, he must sue to set it aside within the prescribed time.

In a suit under art. 91, the date of the execution of the instrument is not the date from which limitation runs. The plaintiff must be *entitled* to have the instrument cancelled or set aside, and the facts which so entitle him must be *known* to him. Time does not commence to run until the plaintiff, having knowledge of such facts, a cause of action has accrued to him, and he is in a position to maintain a suit. A judgment-creditor has no *locus standi* in any Court to sue to set aside a benami or collusive deed of sale executed by the judgment-debtor, until he (the creditor) has reason to believe that the decree cannot be otherwise satisfied (Tawangar *v.* Kura Mal, I. L. R., 3 All., 394). The title to impeach an instrument does not accrue until it becomes operative in law. A gift by a Mahomedan, not accompanied by possession, is inoperative, and limitation under this article does not run until possession is taken by the donee (Meda Bibi *v.* Imaman Bibi, I. L. R., 6 All., 207, F. B.)

Description of suit.	Period of limitation.	Time from which period begins to run.
92.—To declare the forgery of an instrument issued or registered.	Three years ...	When the issue or registration becomes known to the plaintiff.

No. 92. (No. 93, Act IX.) See notes to arts. 91 and 93.

Suits under this and the following article are, like suits under arts. 118 and 119, merely *declaratory* suits. A suit for *possession* of property, or even for declaration of *right to property*, is not governed by arts. 92 and 93, although the defendant relies upon an instrument, which the plaintiff impugns as a forgery.

Even if the plaintiff *incidentally* asks the Court to set aside the instrument, the three years' limitation will not apply (Trilochun *v.* Nobokishore, 2 C. L. R., 10; Nistarinee *v.* Anundmoyee, 2 C. L. R., 561).

Under Act IX, the date of the issue or registration was the starting point of limitation. Under the present Act, limitation does not run until the issue or registration becomes *known* to the plaintiff.

ACT XV OF 1877.

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

Part VI.—Three years.

ARTS.	Description of suit.	Period of limitation.	Time from which period begins to run.
93—95.	93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Three years ...	The date of the attempt.

No. 93. (No. 93, Act IX.) See notes to No. 92.

If the suit is merely for a declaration of the forgery of an instrument, which was to the plaintiff's knowledge registered, and which was also attempted to be enforced against the plaintiff more than three years ago, it will be barred by limitation *both* under this and the preceding article. (See Fakharuddin *v.* The Official Trustee, 10 C. L. R., 176, 180, P. C.; I. L. R., 8 Calc., 178.) Under this article, it is necessary that the defendant should have attempted to enforce the instrument *against the plaintiff*.

It is not necessary that the person who is to profit by the instrument should seek to obtain the *entire* fruits of it. It is quite enough if he seeks to place himself in an advantageous position, which, but for the instrument, he could not occupy. Limitation runs from the *first* attempt. (Fakharooddeen *v.* Pogose, I. L. R., 4 Calc., 209.)

	94.—For property which the plaintiff has conveyed while insane.	Three years ...	When the plaintiff is restored to sanity, and has knowledge of the conveyance.

No. 94. (No. 94, Act IX.) The suit under this article is not a suit merely to *set aside* a conveyance, but for the *property* conveyed. Compare art. 44.

	95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Three years ...	When the fraud becomes known to the party wronged.

No. 95. (Nos. 95 and 96, Act IX; sec. 10, Act XIV.) See the notes to art. 12.

The *knowledge* of fraud predicated by the terms of art. 95 is not mere suspicion, but such definite knowledge as enables the person defrauded to seek his remedy in Court (Natha Sing *v.* Jodha Sing, I. L. R., 6 All., 406).

Where the right to sue, or the title upon which it is founded, or any document necessary to establish such right, has been *fraudulently concealed* by the defendant, sec. 18 applies. In the absence of *such fraudulent concealment*, the latter part of art. 95 provides a period of limitation *in extension* of the period which would, under some other article, apply to a suit, and not a period *less* than what, under ordinary circumstances, is allowed for bringing a suit of the same nature. (Opender *v.* Gudadhur, 25 W. R., 476).

It certainly could not have been intended that, whereas in an ordinary case, the plaintiff would be allowed twelve years to bring a suit for possession, the period of limitation should be cut down to three years, because, in addition to wrongful possession on the part of the defendant, there had been a gross and carefully concocted fraud. (Chunder *v.*

Tirthanund, I. L. R., 3 Calc., 504; see also I. L. R., 6 All., 75, 77.) The latter part of this article, it has been said, has reference to cases where a party has been fraudulently induced to enter into some transaction, execute some deed or do some act, and desires to be relieved from the consequences of those acts. (*Ibid.*) But, in a suit to set aside a public sale brought about by fraud, a Division Bench of the Allahabad High Court said: "Fraud vitiates all things, and prevents the application of any other rule of limitation than that specially provided for relief from its consequences in art. 95." (Natha Sing *v.* Jodha Sing, I. L. R., 6 All., 406.) It has been held by a Division Bench of the Madras High Court that where the Collector orders compensation-money to be given to the defendant through fraud on his part, a suit for the payment of the money to the party entitled is governed by art. 95. (Venkata *v.* Krishna Sami, I. L. R., 6 Mad., 344.) A suit for breach of contract to indemnify against the fraud of a third party is not governed by this article. (Shapurji *v.* The Superintendent, 12 Bomb., 238.)

A suit to obtain possession by setting aside a decree obtained by fraud was, under Act XIV, held to be governed by the six years' rule of limitation. (Mussamut Jhisoman *v.* Babu Roop Narain, 6 W. R., 165.)

If a suit is *primâ facie* within the time allowed by this article, it is for the defendant to prove the contrary. If the defendant alleges that knowledge of the fraud was acquired by the plaintiff at a period earlier than that alleged by the plaintiff, the defendant must prove his own allegation. (I. L. R., 6 All., 407.)

Description of suit.	Period of limitation.	Time from which period begins to run.
96.—For relief on the ground of mistake.	Three years ...	When the mistake becomes known to the plaintiff.

No. 96. (No. 97, Act IX.) According to a Division Bench of the Madras High Court (see I. L. R., 6 Mad., 344), the *mistake* spoken of in this article is not confined to the mistake of private *parties*, so that, money awarded to the defendant by the *Collector's* mistake may be sued for under this article.

Article 97 of Act IX referred to "mistake in *fact*." This article applies to *both* mistakes in *fact* and in *law*. There are cases in the Courts of Common Law in which it has been held that money paid under a mistake of law cannot be recovered. In equity, the line between mistakes in law and mistakes in fact has not been so clearly and sharply drawn, and there are many cases to be found in which equity, upon a mere mistake of the law, without the admixture of other circumstances, has given relief to a party who has dealt with his property under the influence of such a mistake. (Daniel *v.* Sinclair, 6 App. Cas., 181, 190.)

97.—For money paid upon an existing consideration which afterwards fails.	Three years ...	The date of the failure.

No. 97. (No. 98, Act IX.) According to English law, this is a case of money had and received for the plaintiff's use. (See notes to arts. 62 and 87.)

ACT XV OF 1877.

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

Part VI.—Three years.

ARTS.	Description of suit.	Period of limitation.	Time from which period begins to run.
98, 99.	98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Three years ...	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.

No. 98. (No. 99, Act IX; sec. 2, Act XIV.) The *breach* of trust is committed by the trustee *before* his death, but the *suit* under this article is brought *after* his death. (See notes to sec. 10.)

The suit under this article is not for the recovery of the trust-property, but for compensation for loss. There is no express provision for suits during the *lifetime* of the trustee for such loss. Compare sec. 2, Act XIV of 1859, and see p. 522, *supra*. As to the liability for breach of trust, see sec. 23, Act II of 1882.

	99.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers.	Three years ...	The date of the plaintiff's advance in excess of his own share.

No. 99. (No. 100, Act IX.) Under Act XIV of 1859, the six years rule applied to suits for contribution. (2 W. R., 266; 3 W. R., 134.)

Money realized by the sale of plaintiff's property in execution of a joint decree against the plaintiff and the defendant is, *perhaps*, not money *paid* within the meaning of this article. (See Fuckoruddin *v.* Mohima, I. L. R., 4 Calc., 529.) But it is hardly possible that the Legislature intended that the plaintiff suing for contribution, in such a case, should have a longer period. The language of the article does not apply where one of the joint-debtors or co-sharers has paid *something in excess* of his share, but not the *whole* of the amount due. *Query.*—If art. 61 is not applicable to such a case.

The date when the money is *actually* paid to the decree-holder, not the date when it is offered, or ordered to be paid, is the date from which limitation runs. (Radha *v.* Rupchunder, 3 C. L. R., 480.) The payment must be *in excess* of the plaintiff's share before limitation runs under this article. (Suput *v.* Imrit, 6 C. L. R., 62.)

A suit for contribution by a *sharer* in a joint estate, where the amount of revenue paid in excess is *sought* to be made a *charge* on the share for which it was paid, is governed by art. 132, and not by this article. (Deo Nundun *v.* Deshputty, 8 C. L. R., 210, note.) A suit for the recovery of money paid by an *under-tenant* or a *mortgagee*, to protect the estate from sale for arrears of revenue, is also not governed by this article. (Ram Dutt *v.* Hurkh, I. L. R., 6 Calc., 549.) Art. 61 may apply to such a suit. But if it is sought to enforce a charge upon the land, art. 132 will apply. (See notes to art. 132.)

As to whether there is any *lien* or *charge* for the amount of monies in respect of which a right to contribution arises, see the notes to art. 132, and 23 Ch. D., 552, and 8 W. R., P. C., 17.

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

ACT XV OF 1877.

ARTS. 100—103.

Part VI.—Three years.

Suits for contribution against the estate of deceased co-trustees are governed by art. 100. Suits for contribution against co-sureties are governed by art. 82. Suits for contribution by the manager of a joint estate come under art. 107. Other suits for contribution (*e. g.*, by a sharer in a joint *undertenure*) may fall within the terms of art. 61.

Description of suit.	Period of limitation.	Time from which period begins to run.
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Three years ...	When the right to contribution accrues.

No. 100. (No. 101, Act IX; sec. 2, Act XIV.) This article does not apply where the trustee who is liable to contribute is not dead. As contribution between co-trustees, see sec. 27, Act II of 1882.

101.—For a seaman's wages	Three years ...	The end of the voyage during which the wages are earned.

No. 101. (No. 102, Act IX.) Compare art. 7. Seamen, as opposed to watermen, are persons engaged in navigating ships, &c., upon the high seas. To obviate disputes between master and seamen, to secure obedience to orders, and to interest the seamen in the voyage, their earnings are made to depend on the *termination* of the voyage. (Wharton.)

102.—For wages not otherwise expressly provided for by this schedule.	Three years ...	When the wages accrue due.

No. 102. Arts. 4, 7, and 101 expressly provide for suits for wages in three special classes of cases.

103.—By a Muhammadan for exigible dower (*mu'ajjal*).	Three years ...	When the dower is demanded and refused, or (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.

No. 103. (No. 103, Act IX.) There is nothing in this article which prevents a Muhammadan wife from suing for exigible dower *without* a previous demand. (See Ameeroonnissa *v.* Mooradoonnissa, 6 Moo. I. A., 211.) Prompt or exigible dower is a debt always due and demandable, and payable on demand. But the principle of arts. 59 and 73 are not applicable to suits for exigible dower. The wife is not *bound* to sue immediately, or make any demand during the lifetime of her husband. Prompt or exigible dower *may* be, but need not necessarily be, exacted immediately, and limitation in respect of it does not run against the

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

Part VI.—Three years.

wife so long as the marriage exists, except where the wife demands such dower and is refused. (See Mussamut Mulluka *v.* Mussamut Jumula, L. R., Sup. Vol., I. A., 135; 11 B. L. R., 375.) A clear and unambiguous demand and refusal sets time] running against the wife, even during the continuance of the marriage. A previous *unsuccessful* application by the wife to sue her husband *in formâ pauperis* for her dower (though such application was opposed by the husband, who denied his liability to pay the dower), does not amount to a *demand* within the meaning of this rule. (Ranee Khajoorconissa *v.* Ranee Ryusoonissa, 15 B. L. R., 306, P. C.; 24 W. R., 163.) See notes to art. 104.

Description of suit.	Period of limitation.	Time from which period begins to run.
104.—By a Muhammadan for deferred dower (*mu'wajjal*).	Three years ...	When the marriage is dissolved by death or divorce.

No. 104. (No. 104, Act IX.) Where it is not expressed whether the payment of the dower is to be prompt or deferred, the whole is due on demand. Where the dower is merely described as *muwajjal*, or deferred, and there is no express stipulation as to the time before which it shall not be demandable, the question whether it must be presumed to be payable on the dissolution of the marriage by the death of *either* the husband or the wife, or whether it becomes demandable only on the death of the *husband*, is one which cannot be said to be free from doubt. (Mirza Bedar *v.* Mirza Khurrun, 19 W. R., 315, P. C.) In the absence of any contract as to the time of payment, limitation, under this article, runs from the dissolution of the marriage by divorce, or by the death of *either* the husband or the wife.

If dower is payable under a duly registered *kabinnamah*, art. 116 will apply. (See Amani *v.* Mir Moher Ali, 2 B. L. R., 306.)

105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Three years ...	When the mortgagor re-enters on the mortgaged property.

No. 105. (No. 105, Act IX.) A mortgagee remaining in possession after the mortgage has been satisfied is not a trustee (sec. 3). Under Act XV of 1877, a suit to recover, as against such a person, whatever may be found due upon a balance of accounts from the commencement of the mortgage, is not barred, if it is instituted within three years of the date *when the mortgagor gets back the possession of the mortgaged property*. Compare Baboo Lall *v.* Jamal Ali, 9 W. R., 187, F. B.

106.—For an account and share of the profits of a dissolved partnership.	Three years ...	The date of the dissolution.

No. 106. (No. 106, Act IX.) The nature of a suit under this article, and of an application under sec. 265 of the Contract Act, was discussed by Straight, J., in Harrison *v.* The Delhi and London Bank. (I. L. R., 4 All., 437.) Where the plaintiff prays, that the accounts of a

partnership may be taken, that a liquidator may be appointed to wind up the affairs of the partnership, and that (after realization of the assets and satisfaction of the liabilities of the same) the partners may severally be decreed in a certain proportion each of what remains, the suit has a *wider* scope, and is not governed by this article, but by art. 120. (I. L. R., 4 All., 437.) In the *absence* of any contract to the contrary, partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner; and if, from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members. (Sec. 253, Act IX of 1872.) The *winding up* of a partnership is the taking by the Court into its own hands the settlement of the partnership concerns. A suit for *dissolution* of a partnership is cognizable by the ordinary Civil Courts. (I. L. R., 7 All., 227, F. B.) It is proposed to make suits, under sec. 265 of the Contract Act, cognizable by Munsiffs and Subordinate Judges. (See Bill No. III of 1885.)

This article does not apply until the partnership has been *dissolved*. Indeed, "so long as a partnership continues *existing*, and each partner is in the exercise of his rights and the enjoyment of his property, the statute Law of Limitation has no application at all between the partners." (Banning, 204.) A member of a subsisting partnership cannot sue his co-partners for profits which had accrued up to a particular time, but must sue for a general account. (Doyaram *v.* Sookhanum, 16 W R., 141; see also 21 W. R., 300.) A suit on an *adjusted* partnership account is a suit on "an account stated," and is not governed by this article. (See Nobin *v.* Suroop, 6 W. R., 328.)

A suit for an account, such as is mentioned in this article, was formerly governed by the six years' rule under sec. 1, cl. 16, Act XIV of 1859. (Kalee Kristo *v.* Haran, 19 W. R., 277.)

This article has no bearing upon the question how far the account should be carried back. The time from which the account is to begin will, in a general account of partnership dealings and transactions, be the commencement of the partnership, unless some account has since that time been settled by the partners, in which case the last settled account will be the point of departure. (Lindley on Partnership, Ed. of 1873, p. 1033.)

Where a partnership is dissolved by the death of one of the partners, and the representative of the deceased partner does not bring a suit against the surviving partner to take the partnership accounts within the period allowed by this article, he may still sue to recover a share in a sum subsequently realized by the surviving partner in respect of partnership transactions. But, in such a suit, the defendant may deduct the amount, if any, which may be found due to him on taking the partnership accounts, although a substantive suit for an account is barred by this article. (Merwanji *v.* Rustomji, I. L. R., 6 Bomb., 628.) A suit for a share of partnership assets subsequently received by the surviving partner will be governed by art. 120, if not by art. 62.

Description of suit.	Period of limitation.	Time from which period begins to run.
107.—By the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate.	Three years ...	The date of the payment.

ACT XV OF 1877. — ARTS. 108—110.

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

Part VI.—Three years.

No. 107. (No. 107, Act IX.) See the notes to art. 61, and I. L. R., 5 Calc., 321.

Description of suit.	Period of limitation.	Time from which period begins to run.
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Three years ...	When the trees are cut down.

No. 108. (No. 108, Act IX.) The date of the expiry of the lease does not affect the question of limitation, nor does the lessor's ignorance of the breach of covenant. The cutting down the trees is the cause of action. (Indoobhooshun *v.* Kenny, 3 W. R., S. C. C. Ref., 9; p. 218, *supra*.)

109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	Three years ...	When the profits are received, or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, when he recovers possession.

No. 109. (No. 109, Act IX.) A suit for the mesne profits of immoveable property is governed by this article. Under Act XIV of 1859, the period of limitation for suing for such profits was six years. (Ranee Surnomoyee *v.* Onnoda Gobind, W. R., Sp. No., p. 163, F. B.)

A *separate* cause of action in respect of the wrongful receipt by a defendant of the rents and profits of land belonging to the plaintiff, accrues immediately upon the *receipt* by the defendant of *each* several sum. (W. R., Sp. No., p. 163, F. B.) In a case under Act XIV of 1859 it was held, that where the amount of mesne profits could not be ascertained until the end of the year, the cause of action did not arise until the end of that year. (Byjnath *v.* Badhoo, 10 W. R., 486.) Mesne profits received three years next before the filing of the plaint cannot be recovered under the first portion of this article. (Kishnanund *v.* Kunwar Partab, I. L. R., 10 Calc., 785, P. C.)

Taking and carrying away standing crops from land, under a decree which is subsequently reversed, is wrongfully receiving the profits of immoveable property. (Shurnomoyee *v.* Pattari, I. L. R., 4 Calc., 625.)

In the second class of suits provided for in this article (see I. L. R., 7 All., 170, F. B.), time does not run from the date of the decree of the Appellate Court, but from the date when possession is recovered under such decree. In this class of cases, mesne profits for *any* number of years may be claimed, provided the suit is brought within three years of the recovery of possession.

110.—For arrears of rent	Three years ...	When the arrears become due.

No. 110. (No. 110, Act IX; cl. 8, sec. 1, Act XIV.) Article 9 allows a period of one year only for the price of *lodging*.

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

Part VI.—Three years.

ART. 111.

This article does not apply to suits for arrears of rent of agricultural land and of undertenures under Act VIII of 1869, B. C. Compare sec. 29 Act VIII of 1869, B. C., and see 2 W. R., Act X, p. 21, F. B. The Bengal Tenancy Act, 1885, expressly provides that suits and applications for which periods of limitation are thereby provided, shall *not* be affected by secs. 7, 8 and 9 of Act XV of 1877.

Under this article, time runs from the date when the arrear becomes due—not necessarily from the end of the year. Arrears of rent which fell due within three years next before the institution of the suit may be recovered. The liability to pay rent *recurs* after fixed intervals, so that a portion of the arrears may be barred by limitation while the other portion is within time. (See p. 329, *supra*.) But if the landlord's title to the land is *extinguished*, he cannot sue for even the last three years' rents. (*Ibid*; see also Chundrabali *v.* Lukhee, 5 W. R., P. C., 1.) The rent becomes due at the last moment of the time which is allowed to the tenant for payment. If it is not paid within the time, it becomes an arrear, and continues an arrear until it is paid. Rent in arrear becomes due on the last day of the week, month or year in which it is payable. (See Kashi Kant *v.* Rohini Kant, I. L. R., 6 Calc., 325.) If the claim for arrears of rent is satisfied, but such satisfaction is nullified by a decree between the parties, the rent "becomes due" again, and a suit for such rent may be brought within three years of such nullification. (See p. 187, *supra*.) The fact that the landlord did not know who his tenant was, or the fact that he could not realize the rent from the recorded possessor of the tenure, does not give him a longer period against the real tenant. (See Ram Runjun *v.* Ram Lall, 5 C. L. R., 62.) Where the suit is for compensation for the *use and occupation* of land, this article does not apply. (Debnath *v.* Gudadhur, 18 W. R., 132.) As to when an arrear of rent, the amount of which is not ascertained, becomes due within the meaning of Act X of 1859, see Doyamoyee *v.* Bholanath, 6 W. R., Act X, p. 77, F. B.

Description of suit.	Period of limitation.	Time from which period begins to run.
111.—By a vendor of immoveable property to enforce his lien for unpaid purchase-money.	Three years ...	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.

No. 111. (No. 111, Act IX.) This article, as regards the starting point of limitation, is based on Toft *v.* Stephenson. (See Darby and Bosanquet, 122, 139.) In neither of the two cases mentioned in the 3rd column, is the vendor entitled to receive the purchase-money *before* the title is accepted. The purchase-money is secured by the vendor's lien on the land sold. Even when the vendee has been in *possession* of the property as such, the vendor has an equitable lien on the property for the unpaid purchase-money. (Trimalarav *v.* Municipal Commissioners, I. L. R., 3 Bomb., 172.) A *creditor* of an unpaid vendor can *not* claim a *lien* upon the property sold, for any unpaid portion of the purchase-money. (Huriram *v.* Dinapal, 11 C. L. R., 339.)

ACT XV OF 1877.

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

Part VI.—Three years.

ARTS. 112, 113.

Compare the provisions of art. 132. According to the *English* law of limitation, there is *no* difference between the lien of a vendor for his purchase-money, and money otherwise charged upon, or payable out of, any land. (See Darby and Bosanquet, 118.) It seems that if the vendor *waives* his lien, his suit for the recovery of the purchase-money against the vendee *personally* is governed by art. 120.

Description of suit.	Period of limitation.	Time from which period begins to run.
112.—For a call by a company registered under any Statute or Act.	Three years ...	When the call is payable.

No. 112. (No. 112, Act IX.) Time (under Act XV) does not run from the date when the call is *made*, but from the date when the call is *payable*. This article refers to suits by a registered company against a member of the company to recover the amount of calls made on the shares taken by him.

113.—For specific performance of a contract.	Three years ...	The date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.

No. 113. (No. 113, Act IX.) Even a suit for the specific performance of a *registered* contract is not governed by the six years' rule. The doctrine of specific performance was not recognized by the Roman law. No system of jurisprudence except that administered by the Courts of Equity in England, and her past or present colonies and possessions, has ever attempted to enforce the *actual performance* of contracts *in their very terms*. (Fry on Specific Performance. 2nd Ed., p. 3.)

According to the English law, and sec. 22 of the Indian Specific Relief Act, the jurisdiction of the Court to decree specific performance is *discretionary*, and the Court is *not bound* to grant such relief merely because it is lawful to do so. There may be circumstances under which a *delay* of nearly three years or a lesser delay may be fatal to a suit for the specific performance of a contract. (See Mokund Lall *v.* Chotay Lall, I. L. R., 10 Calc., 1061 ; and p. 81, *supra*.)

For cases of specific performance where *no* date is *fixed* for the performance, see Ahmed *v.* Adjun, I. L. R., 2 Calc., 323 ; The New Beerbhoom Coal Co. *v.* Buloram, I. L. R., 5 Calc., 175 ; Virasami *v.* Ramasami, I. L. R., 3 Mad., 87. Where a person executes a *conveyance* of land not in his possession, and the deed of conveyance does not contain any specific agreement to put the vendee in possession, a suit by the vendee for possession against the (vendor after he has recovered possession) is not a suit for the specific performance of a contract, but is governed by art. 136 or art. 144. (Sheo Persad *v.* Udai, I. L. R., 2 All., 718.)

Where there has been only a *contract* for the sale of land, a suit to have a conveyance executed and completed, and for possession of the property, is essentially a suit for specific performance of contract, and

the article applicable to such a suit is art. 113. The right to possession springs out of the contract of sale, and the relief by giving possession in such a case is comprised in the relief by specific performance. Besides, if a suit cannot be maintained for specific performance of a contract, it cannot be maintained for possession of the property agreed to be sold under such a contract. (Muhiuddin *v.* Majlis, I. L. R., 6 All., 231.)

Where the plaintiff's suit for possession of land was not founded on contract only, but on a title to the land acknowledged and defined by a deed of compromise which was only part of the evidence of the plaintiff to prove his case, it was held by the Privy Council, that the suit was one for the recovery of immoveable property, and was not barred although nine years had elapsed from the date of the compromise, and the defendant had been in possession of the property notwithstanding his agreement to divide it with the plaintiff. (Rani Mewa Kuar *v.* Rani Hulas, 13 B. L. R., 313, P. C.) A suit for recovery of possession of land, based on a previous compromise between the parties, is not a suit for specific performance of contract, but a suit for immoveable property, and is governed by art. 144. If the deed of compromise contains an express or implied agreement to surrender possession of the land, the possession of the defendants can only be adverse to the plaintiff from and after the date of the compromise by reason of their having refused to carry out that promise. (Mr. C. G. D. Betts *v.* Mahomed, 25 W. R., 521.)

It has been held by a Division Bench of the Allahabad High Court, that a suit for money, based on an *award* of arbitrators which directs its payment by the defendant to the plaintiff, is virtually a suit to have the award specifically enforced, and that art. 113 is applicable to such a suit. (Sukho Bibi *v.* Ram Sukh, I. L. R., 5 All., 263.) The correctness of this ruling may be questioned,—1st, because sec. 30 of the Specific Relief Act, 1877, does *not*, as regards the question of limitation, place *awards* on the same footing as *contracts*; and 2ndly, because the Court, in such a suit, orders the money to be paid as *compensation* for not satisfying the award. Even in the case of a *contract*, it is *not* strictly accurate to say, that "pecuniary damages upon a contract for payment of money are, from the nature of the thing, a *specific performance*." (See Fry on Specific Performance, 2nd Ed., p. 6, and notes to art. 116.)

Description of suit.	Period of limitation.	Time from which period begins to run.
114.—For the rescission of a contract.	Three years ...	When the facts entitling the plaintiff to have the contract rescinded first become known to him.

No. 114. (No. 114, Act IX.) This article refers to the rescission of contracts as between promisors and promisees, and *not* to suits by *third* parties to have an instrument cancelled or set aside. (Bhawani *v.* Bisheswar, I. L. R., 3 All., 846, 848, see notes to art. 91.) On the subject of rescission of contracts, see secs. 35 to 38 of Act I of 1877. These sections do not distinguish contracts from actual transfers. Suits for the *rectification* of instruments are not *specially* provided for by this schedule.

ACT XV OF 1877.

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

Part VI.—Three years.

ARTS.	Description of suit.	Period of limitation.	Time from which period begins to run.
115, 116.	115.—For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	Three years ...	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.

No. 115. (No. 115. Act IX; cls. 9 and 10, sec. 1, Act XIV.)

This is a *general* article for suits for compensation on unregistered contracts, whether express or implied, or on contracts which, though registered, are not *duly* registered in *British India* under the law in force at the time and place of execution. (See sec. 3.)

An obligation which the law raises upon a state of circumstances independently of an express or implied contract between the parties to be affected by it, is not a contract, but only a *quasi*-contract. (See p. 223, *supra*; and secs. 68 to 72 of the Contract Act.)

A suit for loss and damage to goods, based on breach of *contract* to deliver, is governed by this article. See notes to art. 36, and I. L. R., 3 Mad., 76 & 107.

An obligation to pay money or do any other act founded on an ancient *custom* (relating to remarriages of widows, &c.), if it may be treated as an *implied incident* of a *contract* (of marriage, &c.), is governed by this article. (See the judgment of Spankie, J., in Madda *v.* Sheo, I. L. R., 3 All., 385.)

A suit against a *del credere* agent for the price of goods sold by him, and not paid for by the purchasers, is governed by this article, if not by art. 65. (See Okoor Persaud *v.* Foolkoomaree, 16 W. R., P. C., 35.)

A agrees to take steps to reinstate B in a certain property, in case B should be ousted from it. The agreement is *broken*, if A neglects to take steps to reinstate B within a *reasonable time* (say six months) from the date of the ouster. (See Dorab Ally *v.* Abdool Azeez, I. L. R., 6 Calc., 356, 367.)

As to "continuing breaches," see pp. 219 & 540, *supra*. As to "successive breaches," see notes to art. 75, and p. 218, *supra*. For the meaning of the term "compensation," see notes to art. 116.

Part VII.—Six years.

	116.—For compensation for the breach of a contract in writing registered.	Six years ...	When the period of limitation would begin to run against a suit brought on a similar contract not registered.

No. 116. (No. 117, Act IX.) See notes to art. 115.

This article does not apply to suits for *specific performance* of registered contracts, but to suits for *compensation* for the breach of *such* contracts.

An instrument may be registered in respect of *some* of the parties to it. In such a case a suit against the *others* is not governed by this

ART. 116.

article. A suit by the endorsee against the endorser of a registered promissory note is not governed by this article if the endorsement has not been registered. (See 4 Mad., 366.)

Where the contract is *duly registered*, a suit for *compensation* for its breach must be governed by this article, although suits of exactly the same character are provided for in some other article. The words "not otherwise provided for," which occur in art. 115, are not to be found in this article. The period is to commence when limitation would begin to run against a suit brought on a similar contract not registered. These terms are large enough to cover contracts for payment of *rent*, as well as other contracts when in writing registered. (Vythilinga *v.* Thetchana-murti, I. L. R., 3 Mad., 77.) A suit by a vendee for a proportionate refund of price, based on a stipulation in a *registered* conveyance that if the lands sold be deficient in quantity the vendor shall be responsible for the value of the deficiency, is governed by this article, and not by any other article. (Kishen *v.* Kinlock, I. L. R., 3 All., 712.) So a suit to recover *money* due on a *registered* bond or promissory note is governed by this article, and not by arts. 66, 67, or the following articles. (Nobocoomar *v.* Siru, I. L. R., 6 Calc., 94; Husain *v.* Hafiz, I. L. R., 3 All., 600, F. B.; Magaluri *v.* Narayan, I. L. R., 3 Mad., 359; Ganesh *v.* Madhab, I. L. R., 6 Bomb., 75; Khunni *v.* Nasirooddin, I. L. R., 4 All., 255; Kalut *v.* Lala, 11 C. L. R., 361.)

In *ordinary* legal parlance, a suit to recover *money* due upon a bond, or otherwise, is a suit for a debt or sum certain, whilst a suit for *compensation* for breach of contract is a suit for unliquidated damages. (I. L. R., 6 Calc., 95; I. L. R., 5 Calc., 830, 832.) But there can be no doubt that, in the case of a breach of a contract for the payment of money, the amount agreed to be paid is only the *measure* of *damages*. If the contract be not performed, the Court will order the obligor to pay the amount as *satisfaction* for the *nonperformance* of the promise, and not *in performance* of the contract. It is true that, in Johnson *v.* Bland, Lord Mansfield said: "Pecuniary damages upon a contract for payment of money are from the nature of the thing a specific performance." But this remark is not *strictly* accurate. (Fry on Specific Performance, 2nd Ed., p. 6.) In ordinary parlance in the case of money, it is said that a plaintiff sues for "the money," or "the same money" that was taken from him, not, as in the case of other things, for compensation. But, *in fact*, he does not sue for *the same* money or desire to recover *the same* money. He seeks an *equal* sum which, on account of its equivalence, is *called* the same sum, and thence again the same money. The plaintiff cannot insist on a restoration of such and such rupees; he can insist only on being paid their exact *value* in *other* rupees. This is *essentially compensation*. (Jagjivan *v.* Gulam, I. L. R., 8 Bomb., 17.) If payment of a bond or promissory note is refused, or is not forthcoming, then there is a breach, and the suit against the defaulting obligor or promisor, is not to make him do something *in furtherance of* the contract, for the time for its performance is passed, but is, in reality, one for *damages* for the breach of it, the measure of which will be the amount of the debt with interest. (I. L. R., 3 All., 609, 610. See also I. L. R., 6 Calc., 94, 95; I. L. R., 4 All., 256.)

"Compensation" is the general term used in the Indian Contract Act (sec. 73) to denote the payment which a party is entitled to claim on account of loss or damage arising from breach of contract (I. L. R., 3 Mad., 77), and the suit is none the less a suit for *compensation*, because it is brought for the specific sum due on a bond. (I. L. R., 6 Bomb., 76.)

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

Part VII.—Six years.

ARTS.	Description of suit.	Period of limitation.	Time from which period begins to run.
117—119.			
117.	Upon a foreign judgment as defined in the Code of Civil Procedure.	Six years	... The date of the judgment.

No. 117. (No. 116, Act IX.) Compare No. 122.

"Foreign judgment" means the judgment of a Court situate beyond the limits of British India, *and* not having authority in British India, nor established by the Governor-General in Council. (Sec. 3, Act XIV of 1882.) All Courts, even in England, except the Privy Council, are foreign Courts, and their judgments are foreign judgments.

According to the Madras High Court, a suit lies on all foreign judgments, including judgments of Courts of Native States. (Sama *v.* Annamalai, I. L. R., 7 Mad., 164.) But, according to the Bombay High Court, judgments of Courts of Native States cannot be sued upon in British India. (Himmatlal *v.* Shivajirav, I. L. R., 8 Bomb., 593.)

118.	To obtain a declaration that an alleged adoption is invalid, or never in fact took place.	Six years	... When the alleged adoption becomes known to the plaintiff.

No. 118. (No. 129, Act IX.)

Article 129 of Act IX was defective in many respects. Articles 118 and 119 have considerably improved the law on the subject.

A Hindu widow adopts a son under the alleged authority of her deceased husband. Twenty years after the death of the husband, and fourteen years after the date of the adoption, the husband's sister gives birth to a son. Under art. 118, a suit to set aside the adoption by the sister's son, so many years after the death of the adoptive father and the date of the adoption, will not be barred, provided it is brought within six years of the time when the alleged adoption becomes *known* to the plaintiff. It was otherwise under Act IX. (Siddhesshur *v.* Sham, 23 W. R., 285.)

The death of the adoptive *mother* will give the plaintiff a fresh right to sue for *possession* of the property left by her husband. (See Rajendro *v.* Jogendro, 15 W. R., P. C., 41; Srinath *v.* Mahes, 12 W. R., 14, F. B.)

It was held, even under Act IX, that though art. 129 might bar a suit brought *only* for the purpose of *setting aside* an adoption, it did not interfere with the right which, but for it, a plaintiff had of bringing a suit to *recover possession* of real property within twelve years from the time when the right accrued. (Raj Bahadoor *v.* Achambit, 6 C. L. R., 12, P. C.; Purno *v.* Hemokant, 6 C. L. R., 46.) A suit under *this* article is merely a *declaratory* suit, and a plaintiff who neglects to bring such a suit is not thereby prevented from suing for any further relief when he becomes entitled to such relief afterwards.

119.	To obtain a declaration that an adoption is valid.	Six years	... When the rights of the adopted son as such are interfered with.

No. 119. (No. 129, Act IX.)

For an instance of a *declaratory* suit of this description under the old law, see Kalovakom *v.* Padapa, I. L. R., 1 Bomb., 248.

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

Part VII.—Six years.

Description of suit.	Period of limitation.	Time from which period begins to run.	ART. 120.
120.—Suit for which no period of limitation is provided elsewhere in this schedule.	Six years ...	When the right to sue accrues.	

No. 120. (No. 118, Act IX; cl. 16, sec. 1, Act XIV.)

Many of the suits which fell under cl. 16 of sec. 1, Act XIV of 1859, were *specially* provided for by Act IX, and a *few* others which were not mentioned in Act IX have been *specially* provided for by Act XV. (See pp. 68 and 72, *supra*.) Thus suits for the wrongful removal and appropriation of moveable property,—suits for contribution,—suits for the restitution of conjugal rights,—suits by a partner for an account after dissolution of the partnership,—suits for money had and received to the plaintiff's use,—suits to set aside decrees obtained by fraud,—suits to set aside official acts of Government Officers,—suits to set aside instruments, &c., &c., were governed by the six years' rule under cl. 16, sec. 1, Act XIV; but shorter periods were provided for them by Act IX. So, again, suits to restrain waste, which were nowhere mentioned in Act IX, are now specially provided for by art. 41, Act XV.

Article 120 is of exceptional application, and before applying it, the Court must be satisfied that no other provision of the Limitation Act can be applicable. (Kundun Lal *v.* Banse Dhar, I. L. R., 3 All., 170, 172.)

Articles 36, 49, 61, 62, 115, 116, and 144 may cover many cases which, at first sight, appear not to have been specially provided for.

Suits for perpetual *injunctions* and suits for the *rectification* of instruments have not been specially provided for; but the doctrine of *laches* is applicable to suits for such relief, and the Court will, in the exercise of the *discretion* which it has, decline (in the absence of special circumstances) to make a decree, even if a much lesser time than six years has elapsed. (See pp. 79, 83, *supra*.)

Declaratory suits in respect of forged instruments, adoptions, alienations by Hindu and Muhammudan females, and a Hindu's right to maintenance, are expressly provided for by arts. 92, 93, 118, 119, 125, and 129. But other suits, in which the declaration sought is of a right in property, have not been specially provided for. As regards specific moveable property, it may be observed that a suit for such property is generally governed by the three years' rule under arts. 48 and 49; and that as regards immoveable property or any interest therein, a suit for *possession* is generally governed by the twelve years' rule under art. 144. In a case tried under Act XIV of 1859, Couch, C. J., and Ainslie, J., were *inclined* to hold that the twelve years' clause applied to suits for *declaration of title* to land. (Musst. Doolhun *v.* Lall Beharee, 19 W. R., 32.) In another case, decided under the same Act, Melvill, J., held that the six years' clause applied to such a suit, while Nanabhai Haridas, J., was distinctly of opinion that such a case was governed by the twelve years' rule. (Moru Bin *v.* Gopal Bin, I. L. R., 2 Bomb., 120.) In a very recent case under Act XV of 1877, Mitter and MacLean, JJ., treated this question as still open. (Luchmon *v.* Kamchun, I. L. R., 10 Calc., 525, 527.)

As to suits for *declaration* of right to the *malikana* of alluvial accretions temporarily settled by Government with the defendant, see Gopinath *v.* Bhugwat, I. L. R., 10 Calc., 697.

When the plaintiff is in *full and complete possession* of immoveable property, and seeks the declaration only with a view to establish a right

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

Part VII.—Six years.

ART. 120.

to the possession of title-deeds or to clear away some cloud upon the title, the suit is hardly a suit for the *recovery* of immoveable property or of any interest therein. (See Azimunnissa *v.* C. Dale, 6 Mad., 455, 476.)

If a person, who is admittedly in possession of land as a tenant, wishes to establish his proprietary right to the same and to be *maintained in proprietary possession* thereof, he would, it has been held, be entitled to the period of limitation prescribed for a "suit for *possession*" of land. (Dobiprasad *v.* Jafar Ali, I. L. R., 3 All., 40.) For the converse case of a suit to establish the right to receive rent from the party in possession, see I. L. R., 5 Calc., 949. It should be remembered that in a suit for a declaratory decree, the Court may refuse to make the declaration asked for, even if the suit is brought within the period of limitation. (See 19 W. R., 22; 23 W. R., 42; and p. 81, *supra*.)

It has been held that a suit for an account against a person who was trustee and guardian during the plaintiff's minority is governed by art. 120. (Sarada *v.* Brojo, I. L. R., 5 Calc., 910. But see Hurro *v.* Tarini, I. L. R., 8 Calc., 766.)

It has been also held that the account itself should not be carried back further than six years immediately preceding the institution of a suit for an account against the trustee. (Hemangini *v.* Nobinchand, I. L. R., 8 Calc., 788, 807.) In a suit against a coparcener and manager of the joint estate for an account of the *whole* period of his management, the accounts taken by the Judge were limited to the six years immediately preceding the institution of the suit in 1874. On appeal, their Lordships of the Privy Council, passingly remarked, that the accounts were so limited "apparently, by force of the Statute of Limitations." (Orde *v.* Skinner, 7 C. L. R., 295, 300, P. C.) As to partnership accounts, see notes to art. 106.

A landlord got a decree for rent at an enhanced rate, which was affirmed by the High Court, but was ultimately reversed by the Privy Council. Between the date of the first decree and its ultimate reversal by the Privy Council, the same landlord, on the basis of the original decree, obtained a number of decrees in analogous cases against the same defendant, the amount of which he realized in execution. The tenant, on the strength of the Privy Council decision, sued for a refund of the excess above the usual rent paid under execution of the several decrees for rent, and it was held that a suit of this description could hardly have been in the contemplation of the Legislature at the time when the Limitation Act was passed, that there was some difficulty in treating the suit as one for money had and received, and that the safer course was to apply the six years' rule to such a case. (Kalichurn *v.* Jogesh, 2 C. L. R., 354.)

It has been held that a suit for compensation for *use and occupation* is governed by the six years' rule. (See 18 W. R., 132, cited under art. 110.) But it may be doubted if such a suit is not a suit for some reasonable compensation for the breach of an *implied* contract falling under art. 115. (See Ali *v.* Appadu, I. L. R., 7 Mad., 304, 305.)

Where the plaintiff claims a *puja* or a right to the worship of an idol for a few days or months of every year, his suit to establish such right is governed by art. 131; but where he claims an *exclusive* right of worship, his suit is governed by art. 120. (Eshan *v.* Monmohini, I. L. R., 4 Calc., 683; Gopeekishen *v.* Thakoordass, I. L. R., 8 Calc., 807.)

A suit by the creditors of a deceased person to follow his lands, or the assets of his estate, in the hands of a mortgagee or a purchaser from the heir or devisee, when maintainable, is governed by this article. (Greender *v.* Mackintosh, I. L. R., 4 Calc., 897, 930.)

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

Part VII.—Six years.

ART. 120.

A suit to compel a tenant of land to remove trees planted by him in contravention of custom or contract, is governed by art. 120. (Gunesh *v.* Gundom, I. L. R., 9 Calc., 147.)

A suit under Act XV of 1877, to establish right to property, by a person against whom an order under sec. 246, Act VIII of 1859, was passed, is governed by this article. (Bissessur *v.* Murali, I. L. R., 9 Calc., 163.) In this case it was not *necessary* to consider whether the twelve years' rule did not apply to an unsuccessful claimant's suit for *immoveable* property. Cf. I. L. R., 8 Mad., 134.

A suit for *haqqi-chaharam*, based on *custom*, must be brought within six years under this article (Kirath *v.* Ganesh, I. L. R., 2 All., 235.)

A suit against a Municipal Committee, for a declaration of plaintiff's right to establish a market on his land, and for a perpetual injunction restraining the committee from interfering with his so doing, comes under this article. (Birjmohun *v.* The Municipal Committee of Allahabad, I. L. R., 4 All., 102.)

A suit to enforce a right of pre-emption in respect of a conditional sale that has become absolute is governed by this article. So also a suit to enforce a right of pre-mortgage. (Nath Prasad *v.* Ram Paltan, I. L. R., 4 All., 218. F. B.; Rasik *v.* Gojraj, I. L. R., 4 All., 414.) This rule is more specially applicable where the property sold is incapable of physical possession. (*Ibid*, see also Ashik *v.* Mathara, I. L. R., 5 All., 187.) A declaratory suit by one pre-emptor against another, for the determination of the question as to which of the two has the better right to pre-empt the property sold by its owner to a third person, is governed by art. 120. (Durga *v.* Haidar, I. L. R., 7 All., 167.)

Where debt lies on a *statute*, an action for the debt is governed by art. 120. (President of Municipal Commission *v.* Srikakulopu, I. L. R., 4 Mad., 124. In this case the suit was for recovery of a tax which had not been paid by the defendant.)

Suits arising out of certain relations *resembling* those created by contract, under secs. 68 to 72 of the Indian Contract Act, 1872, will, generally speaking, be governed by art. 120. But arts. 48, 61, 62, and 96 may apply to *some* of these suits.

In Sanjini *v.* Kama (I. L. R., 6 Mad., 290), a Division Bench of the Madras High Court held, that a suit upon a promissory note "payable at any time within six years upon demand" was governed by art. 120. But it does not appear that the provisions of art. 80 were brought to the notice of the Court.

A suit for maintenance by a person *other* than a Hindu not being governed by arts. 128 and 129, falls within this article if it cannot come under art. 115, 116, or 132.

As to the applicability of art. 120, see also I. L. R., 4 Calc., 529, cited under art. 99, which relates to *certain* suits for contribution; I. L. R., 5 Calc., 597; I. L. R., 1 All., 333, and I. L. R., 10 Calc., 860, P. C., cited under art. 62, and referring to certain cases of "money had and received" by the defendant; I. L. R., 6 Calc., 34, cited under art. 32, and relating to damage to real property in contravention of a covenant; and I. L. R., 4 All., 437, cited under art. 106. As to suits for the price of land against the buyer, see the notes to art. 111. A suit to remove the manager of a temple, to deprive him of his control over the temple properties, and for a declaration that the plaintiff is entitled to appoint another manager in the place of the defendant is governed by this article, if not by art. 124 or 144. (Balwant *v.* Puran, 13 C. L. R., 39, P. C.)

ACT XV OF 1877.

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

Part VIII.—Twelve years.

ARTS.	Description of suit.	Period of limitation.	Time from which period begins to run.
121, 122.	121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a *patni taluq* or other saleable tenure sold for arrears of rent.	Twelve years ...	When the sale becomes final and conclusive.

No. 121. (Nos. 119 and 120, Act IX; sec. 7 and sec. 1, cl. 12, Act XIV.) The same principle applies to sales for arrears of rent as to sales for arrears of revenue; and undertenures or other incumbrances are only *voidable* at the *option* of the purchaser. It is, however, not necessary, for the purpose of avoiding an undertenure or other incumbrance, that the purchaser should give any notice or do any act before bringing his suit, provided the suit is brought within the time prescribed by this article. (Titu Bibee *v.* Mohesh Chunder, 12 C. L. R., 304; I. L. R., 9 Calc., 683, F. B.) Justice and sound policy require that the option of avoidance should be exercised "within a reasonable time," but this object is in some measure secured by the Limitation Act. (See Raja Suttosurrun *v.* Mohesh Chunder, 11 W. R., P. C., 10.) Section 167 of the Bengal Tenancy Act, 1885, makes some additional provisions in furtherance of the same object.

As to the privilege of auction-purchasers at such sales, and their exemption from the effect of laches on the part of the old proprietor, see Goluck *v.* Hurro, 8 W. R., 62; Moonshee Buzlool *v.* Prandhan, 8 W. R., 22; Kooldeep *v.* The Government, 11 B. L. R., 71, P. C.; Narain Chunder *v.* Taylor, 2 Shome, 78; Woomesh *v.* Rajnarain, 10 W. R., 15.

The assignee or transferree of the auction-purchaser is entitled to exercise the rights of the purchaser. (Koylas *v.* Jubur, 22 W. R., 29; Koylas Bashinee *v.* Goluckmoni, 10 C. L. R., 41.)

Encroachments on the talook or estate by neighbouring zemindars may be treated by the auction-purchaser as *incumbrances*. (8 W. R., 62; 10 W. R., 15.)

An *easement* created by the tenant is an *encumbrance* within the meaning of the Bengal Tenancy Act, 1885. (See sec. 161.)

	122.—Upon a judgment obtained in British India, or a recognizance.	Twelve years ...	The date of the judgment or recognizance.

No. 122. (No. 121, Act IX; cl. 11, sec. 1, Act XIV.) There has been some difference of opinion as to whether a *suit* would lie on an unsatisfied *judgment* of a Court governed by the Civil Procedure Code. (See Sander *v.* Shaik Jomir, 9 W. R., 399; Attormoney *v.* Hurry Doss, I. L. R., 7 Calc., 74; Moonshi Golam *v.* Curreembux, I. L. R., 5 Calc., 294; Bhavani Shanker *v.* Pursodri, I. L. R., 6 Bomb., 292.) Most of the cases on the subject are reviewed in Merwanji *v.* Nowroji, I. L. R., 8 Bomb., 1, where it has been held that no such suit would lie in our Courts.

The Limitation Act is not intended to define or create causes of action. (I. L. R., 3 Bomb., 207, 209.)

Section 94 of the Presidency Small Cause Court Act, 1882, expressly enacts that no suit shall lie on any decree of such Court.

Recognizance-bonds are usually taken from complainants, witnesses, accused persons, and their sureties, under the Criminal Procedure Code. The *criminal* Courts cannot levy the amount forfeited by the sale of *immoveable* property.

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

ACT XV OF 1877.

Part VIII.—Twelve years.

ARTS. 123, 124.

Description of suit.	Period of limitation.	Time from which period begins to run.
123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	Twelve years ...	When the legacy or share becomes payable or deliverable.

No. 123. (No. 122, Act IX; cl. 11, sec. 1, Act XIV.) This article applies to moveable as well as to immoveable property, to bequests under wills, as well as to shares in cases of intestacy. Article 140 governs a suit by a devisee for possession of *immoveable* property against *any person* who may be in possession of the same. The defendant, in a suit under art. 123, is the executor, administrator, or other *representative* of the estate of the deceased; and the plaintiff claims the property *as a legacy or a distributive share*. A suit by a *purchaser* from the legatee, against a person *unlawfully in possession* of the property, is not governed by this article. (Issur Chunder *v.* Juggut Chunder, I. L. R., 9 Calc., 79.) The word 'share' is not intended to exclude the *whole* residue. (Kherode *v.* Durgamony, 2 C. L. R., 112, 118.) A part of the residue not disposed of by will, as well as a share of the residue bequeathed by the testator, is governed by this article. (Hemangini *v.* Nobinchand, I. L. R., 8 Calc., 788, 805; Tripura Sundari *v.* Debendro Nath, I. L. R., 2 Calc., 45, 54.) The applicability of this article has been also considered in I. L. R., 5 Calc., 692.

The assent of the executor is necessary to complete a legatee's title to his legacy. An executor is not *bound* to pay or deliver any legacy until the expiration of one year from the testator's death. (See secs. 292, 297, Act X of 1865; and secs. 112 and 117, Act V of 1881.) Where, under the terms of the will, a legacy is payable on the happening of a contingency, time does not run until the contingency happens. (Prosunno *v.* Gyan, 13 W. R., 354.)

The question when a legacy or share becomes payable or deliverable, is referred to at p. 799, I. L. R., 8 Calc., but the High Court does not decide the question. For the English law on the subject, see Darby and Bosanquet, pp. 128—133. Time usually runs from the end of one year after the testator's death. But inasmuch as the executor's year is allowed only for convenience and does not prevent vesting, it may possibly be *otherwise* where there are clearly assets at once. (Banning, 209 and 210.)

124.—For possession of an hereditary office.	Twelve years ...	When the defendant takes possession of the office adversely to the plaintiff. *Explanation.*—An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.

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

Part VIII.—Twelve years.

ART. 125. No. 124. (No. 123, Act IX.) The possession of the office of *Dharmo-karta* of a Pagoda by a female, married and estranged from the family of the founder, may be adverse to the surviving male members of the family, and may, after twelve years, extinguish their right to the office. (Chenna Kesavaraya *v.* Vaidelinga, I. L. R., 1 Mad., 343.)

An hereditary office, according to Hindu law, is immoveable property. Where such office could be held by Hindus *only*, it was, in the *absence* of a definition of immoveable property, in Act XIV of 1859, treated as such by the Courts. (See Venkata *v.* Surayya, I. L. R., 2 Mad., 283; and pp. 177, 202, *supra*.) A suit for the recovery of an hereditary office, which could be held by Hindus *as well as* by other persons, was governed by the six years' rule under Act XIV. (I. L. R., 2 Mad., 283; but cf. I. L. R., 5 Bomb., 70.) Since Act IX of 1871 came into operation, the twelve years' rule applies to suits for possession of *all* hereditary offices.

The right to the lands or other emoluments attached to an hereditary office, being a secondary claim in a suit for the possession of the office, is affected by the same bar which affects the claim for the office. (Zammiraru *v.* Pantina, 6 Mad., 301.)

It is a general principle that a person filling an office cannot *aliena* the emoluments of the office to the prejudice of his successors. The alienation of lands attached to an hereditary office by the present holder of the office may be questioned by his successor within twelve years from the date when the succession to the office devolves on him. (Muppidi Rapaya *v.* Ramana, I. L. R., 7 Mad., 85; compare Babaji *v.* Nana, I. L. R., 1 Bomb., 535.) But a decree of a competent Court in a suit against the present *sebait* of an idol, in respect of the idol's property, is binding on succeeding *sebaits*. (Prosunno Koomaree *v.* Golabchand, 23 W. R., 253. P. C.) As regards succeeding *mutwullees*, see 17 W. R., 430.

Where the plaintiff sues to enforce his own personal right to manage an endowment, dedicated to religious purposes, there being no question whether or not the property is being applied to such purposes by the manager in possession, sec. 10 is inapplicable. The possession of the defendant being adverse, the suit might fall within art. 124 or art. 144. (Balwant *v.* Puran, I. L. R., 6 All., 1, P. C.)

Description of suit.	Period of limitation.	Time from which period begins to run.
125.—Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her remarriage.	Twelve years ...	The date of the alienation.

No. 125. (No. 124, Act IX.) As to the exceptional nature of declaratory suits of this kind, see Ishri Dutt *v.* Hansbatti, I. L. R., 10 Calc., 324. In the Punjab, Muhammadan widows succeed to their husbands' lands

when there are no descendants in the male line, for life, or till they marry again.

As to the effect of the remarriage of Hindoo widows, see sec. 2, Act XV of 1856.

Article 125 does not apply to suits by persons other than the *immediate* reversioner. The suit under this article must be brought by the presumptive heir, who would be entitled, *if* the female *died* at the date of instituting the suit. (See I. L. R., 10 Calc., 324, 334, P. C.) The next reversionary heir cannot *set aside* the deed of alienation, because it is *partly* valid ; nor can he affect the *possession*, which the female has a right to keep or to give up to another. (*Ibid.* p. 332 ; compare Jowla *v.* Dharum, 10 Moore I. A., 511.) The cause of action for a declaration that the alienation is void *pro tanto* is not revived in favour of reversioners who are born after the expiry of twelve years from the date of alienation. (Pershad *v.* Chedeelall, 15 W. R., 1.) On the *death* of the female, a separate cause of action for immediate *possession* of the property accrues to the reversioner. (See art. 141, and Prosunno *v.* Afzolonnessa, I. L. R., 4 Calc., 523.)

Description of suit.	Period of limitation.	Time from which period begins to run.
126.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Twelve years ...	When the alienee takes possession of the property.

No. 126. (No. 125, Act IX.) Limitation runs not from the date of the alienation, but from the time when *possession* is taken by the alienee. (See Raja Ram *v.* Luchman, 8 W. R., 15, F. B. ; Munbasi *v.* Nowrutton, 8 C. L. R., 428.)

127.—By a person excluded from joint family property to enforce a right to share therein.	Twelve years ...	When the exclusion becomes known to the plaintiff.

No. 127. (No. 127, Act IX ; cl. 13, sec. 1, Act XIV.) Under Act XV of 1877, time does *not* run from the *death* of the persons from whom the property alleged to be joint is said to have descended, nor from the date of the last *payment* to the plaintiff by the possessor or manager of such property, nor from the date when the plaintiff claims and is *refused* his share.

For the law under Act XIV of 1859, see Gossain Dass *v.* Serookoomaree, 19 W. R., 192 ; Govindan Pillai *v.* Chidambara, 3 Mad., 99 ; Lakshman Dada *v.* Ramchundra Dada, I. L. R., 5 Bomb., 48, P. C. ; Hansji *v.* Valabb, I. L. R., 7 Bomb., 297. Under Act IX of 1871, time did not run against the plaintiff until he had claimed and been refused his share ; consequently, if a plaintiff had been excluded for fifty years, and he then claimed his share and was refused, he would have had twelve years from the time of such refusal to bring his suit ; or, in other words, he would have had sixty-two years from the time of his exclusion ; and if he never claimed or was refused, the period within which he might bring his suit was indefinite. (Kalikishore *v.* Dhununjoy, I. L. R., 3 Calc., 228 ; Hansji *v.* Valabb, I. L. R., 7 Bomb., 297.) The time allowed under

ARTS. 128, 129.

this article is *shorter* within the meaning of sec. 2. (See notes to that section.)

This article applies to Hindus as well as to Muhammadans. But the Hindu law presumption in favor of joint property does not apply to Muhammadans in Bengal, except where they have adopted the Hindu law of property. (Abdool *v.* Mahomed, I. L. R., 10 Calc., 562.)

The suit contemplated by art. 127 is a suit against alleged co-sharers and managers of joint property, where the question of "joint or not" is the main question between the parties. (See 15 W. R., P. C., 24; and p. 185, *supra*. Issuri Datt *v.* Ibrahim, I. L. R., 8 Calc., 653.)

The article presupposes the existence of joint family property, and that there has been an exclusion from participation in the enjoyment of it. The words "excluded" and "exclusion" imply previous inclusion. (Saroda *v.* Doyamoyee, I. L. R., 5 Calc., 938.)

If, at the time when the suit is brought, the plaintiff and defendant are not members of a joint Hindu family, the *plaintiff must prove* that the property in dispute is joint family property. It is not enough for him merely to *call* it joint family property, and to show that 13, 30, or 100 years ago he, or his ancestors, and the defendant, or his ancestors, were joint. If the defendant has been in *exclusive* possession for upwards of twelve years, he has a *primâ facie* right to the property. If the plaintiff wants to bring himself within art. 127, which places him in a more advantageous position than other claimants, he is bound to show that the share which he seeks to recover was, at some time, *joint property*. It is not sufficient to show that, at some prior period, the common ancestors of the parties were members of a *joint family*. (Obhoy Churn *v.* Gobind Chunder, I. L. R., 9 Calc., 237.) If it appears that the defendant has been in *exclusive* possession for twelve years to the *knowledge* of the plaintiff, the suit is barred by art. 127. Time does not run against the plaintiff until his exclusion from the property becomes *known* to him. (Hari *v.* Maruti, I. L. R., 6 Bomb., 741; Issuri Dutt *v.* Ibrahim, I. L. R., 8 Calc., 653.) The property in dispute, whether moveable or immoveable, must appear to have been joint family property at the date when the plaintiff was, to his knowledge, excluded from participation in it. Otherwise art. 127 is inapplicable. (See Thakur *v.* Partab, I. L. R., 6 All., 442, 443.)

The *exclusion* spoken of in this article is, probably, a *total exclusion* from the joint family property. (See I. L. R., 5 Bomb., 48, 60, P. C.; 14 B. L. R., 373, P. C.)

As to when the possession of a member of a joint family becomes adverse to the others, see p. 167, *supra*.

The mere fact that there has been no division of the property during six or seven generations does not deprive the members of an undivided family of the right to demand a partition. (Thakur Durria *v.* Thakur Davi, 13 B. L. R., 165, P. C.)

Description of suit.	Period of limitation.	Time from which period begins to run.
128.—By a Hindu for arrears of maintenance.	Twelve years ...	When the arrears are payable.
129.—By a Hindu for a declaration of his right to maintenance.	Ditto ...	When the right is denied.

Part VIII.—Twelve years.

Nos. 128 and 129. (No. 128, Act IX: cl. 13, sec. 1, Act XIV.) These articles do not apply to Muhammadans or Christians. (See notes to art. 120.) Where the maintenance claimed by a Hindu or *other* plaintiff is *charged* upon immoveable property, art. 132 applies. (See Ahmad Hossein *v.* Nihaluddin, I. L. R., 9 Calc., 945, P. C.)

Clause 13, sec. 1, Act XIV of 1859, applied only to cases where, by will or otherwise, the maintenance claimed was made a specific charge on the inheritance of any estate. (Narayanrao *v.* Ramabai, I. L. R., 3 Bomb., 415, 420, P. C.) Other cases were governed by the six years' rule. (Kalo Nilkantho *v.* Lakshmibai, I. L. R., 2 Bomb., 637.) By the Hindu common law, the right of a widow to maintenance is one accruing from time to time according to her wants and exigencies. A statute of limitation might do much harm if it should force widows to claim their strict rights and commence litigation which, but for the purpose of keeping alive their claim, would not be necessary or desirable. (I. L. R., 3 Bomb., 420, P. C.) Under Act IX of 1871, if it appeared that there had been a demand and refusal, the plaintiff could recover arrears of maintenance for twelve years only from the date of such *demand and refusal*. (Jivi *v.* Ramji, I. L. R., 3 Bomb., 207.)

Under Act XV of 1877, a Hindu's suit for arrears of maintenance must be brought within twelve years from the time when the *arrears are payable*. Unless maintenance has been actually withheld under circumstances amounting to refusal, no action lies for arrears. (I. L. R., 3 Bomb., 421, P. C.)

If a suit for the declaration of a *right* to maintenance is barred by art. 129, by reason of the defendant having *denied* the right more than twelve years before the institution of the suit, a suit for subsequent arrears may be barred on the principle of the decision in the case of Chhaganlall *v.* Bapubhai, I. L. R., 5 Bomb., 68. But as the right to maintenance is *not extinguished* by sec. 28, this question is not free from doubt. (See the remarks of the Privy Council in Maharana Futtehsanji *v.* Desai Kullianraoji, 21 W. R., 178, 182, P. C.)

"When the right is *denied*."—A denial made in *answer* to a demand is a *refusal*. Even if maintenance has not been demanded by the plaintiff, his right may be *denied* by the defendant, and limitation under art. 131 will run from the date of the denial. (See I. L. R., 7 Mad., 343.)

Description of suit.	Period of limitation.	Time from which period begins to run.
130.—For the resumption or assessment of rent-free land.	Twelve years ...	When the right to resume or assess the land first accrues.

No. 130. (No. 130, Act IX; cl. 14, sec. 1, Act XIV.) There is some difference of opinion as to whether the term 'rent-free' is equivalent to 'revenue-free.' Sir B. Peacock, C.J., Jackson and Macpherson, JJ., held, that a 'rent-free' tenure granted by the zemindar was not 'revenue-free' within the meaning of sec. 10, Reg. XIX of 1793, and that such a tenure could not be resumed or assessed by the heir of the grantor or a purchaser from him by private sale of the zemindary. (Mahomed *v.* Asadunnissa, 9 W. R., 1, F. B.) But in sec. 30, Act XVIII of 1873, and sec. 79, Act XIX of 1873, the Legislature uses the words "exempt from payment of *rent*" when it refers to the law of the old Regulations; and in Jaganath *v.* Prag Sing, Stuart, C.J., Pearson and Oldfield, JJ., held, that a 'rent-free' tenure, the revenue of which the

ART. 130. grantor took upon himself to pay, was void, and liable to resumption by the grantor's representatives, under sec. 10, Reg. XIX of 1793, and other Regulations and Acts. (I. L. R., 2 All., 365, F. B.)

In this article "rent-free land" means a *lakheraj* holding, whether created before or after the 1st December 1790. (See Nobin *v.* Janokee, 2 W. R., Act X, 33; Kristo *v.* Joy, 3 W. R., 33.)

For a review of the law relating to lakheraj tenures in the permanently-settled provinces, see Nobokristo *v.* Koylaschunder, 20 W. R., 459, P. C.; and Koylash Bashini *v.* Gocoolmoni, I. L. R., 8 Calc., 230.

For a summary of the rules of limitation applicable to suits for resumption or assessment under the Regulations and under Act XIV of 1859, see Thompson, 2nd Ed., pp. 205, 206; and 1 Hay, 26; 5 W. R., P. C., 1; 7 W. R., P. C., 21; 4 W. R., 53; Calc. Sud. Dew., 1855, p. 501, F. B.; 1861, Vol. I, p. 151.

Where no rent has ever been fixed on or paid for a tenure, and the holder has been in possession for more than twelve years after the right to assess accrued to the zemindar, he is entitled to hold rent-free. (Abhoy *v.* Kally, I. L. R., 5 Calc., 949; see p. 329, *supra*.) This rule does not apply to a suit for *assessment* of rent where a *declaratory* decree for resumption has been obtained against the defendant. (2 C. L. R., 569.)

Ancient lakheraj tenures within an estate cannot now be resumed or assessed except by an auction-purchaser of the estate at a revenue-sale. Suits by such a purchaser and his representatives are barred if more than twelve years have elapsed from the date of the sale becoming final and conclusive. (See art. 121.) By Act XIV of 1859 and Act IX of 1871, it was provided that, even as against an auction-purchaser at such a sale, the lakherajdar would be protected if he proved a rent-free holding from the time of the Permanent Settlement. This proviso is omitted in Act XV of 1877, probably because such a rent-free holding is not an "encumbrance imposed *after* the time of Settlement" within the meaning of sec. 37, Act XI of 1859, and is not therefore liable to be avoided by an auction-purchaser. Notwithstanding the repeal of sec. 3, cl. 3, Reg. II of 1805 by Act VIII of 1868 (see I. L. R., 9 Calc., 416), in Koylas Bashinee's case (I. L. R., 8 Calc., 230), a Division Bench of the Calcutta High Court held that sixty years' possession as lakheraj would bar the auction-purchaser's suit for resumption or assessment of lakhiraj tenures created after 1st December 1790. But tenures created by the old zemindar *after* the permanent settlement of the estate are, *without any restriction*, liable to be avoided, if only the suit is not barred by art. 121. In the permanently-settled districts, the right to resume or assess lakheraj land, not exceeding 100 bigahs, and held under an invalid grant of a date *preceding* the 1st December 1790, accrued to the original engager on the date of the Settlement.

As to lakheraj lands, whether exceeding 100 bigahs or not, held under a grant of a date *subsequent* to the 1st of December 1790, the right to resume or assess also accrued to the original proprietor on the date of the Settlement, if the lakheraj holding was in existence on that date. Before Acts X and XIV of 1859 came into operation, such suits were governed only by the sixty years' rule laid down in Reg. II of 1805.

The right to resume or assess lakheraj holdings, which have come into existence since the date of the Permanent Settlement, accrued to the original engager, or his representatives, on the dates on which the lakherajdars commenced to hold the lands as lakheraj. But an auction-purchaser of the estate at a revenue-sale always gets a new start. See Gungadhur *v.* Satcowrie, Calc. Sud. Dew. Rep. for 1859, p. 501, F. B.,

in which it was decided, that, even as regards lakheraj grants made before 1790, the auction-purchaser's suit was not barred by limitation if brought within twelve years of his purchase. By the Act of 1859, this ruling was so far modified that *no* suit for resumption or assessment could be maintained if the lakherajdar proved that the land had been held rent-free from the period of the Permanent Settlement.

The right of Government to assess invalid lakheraj tenures exceeding 100 bigahs, and held within the ambit of a permanently-settled estate, under grants of dates preceding the 1st of December 1790, has long since been extinguished by the sixty years' limitation.

If the zemindar is barred by limitation, a putnidar or durputnidar deriving his right to sue from the zemindar is also barred. (See 3 W. R., 33; 15 W. R., 436.) If the general right of Government to assess lakheraj land within the ambit of a khas mehal is extinguished by limitation at the date of the settlement of the khas mehal, the person with whom the settlement is made can have no right to assess such land.

Description of suit.	Period of limitation.	Time from which period begins to run.
131.—To establish a periodically recurring right.	Twelve years ...	When the plaintiff is first refused the enjoyment of the right.

No. 131. (No. 131, Act IX.)

The right to receive payments periodically, *e.g.*, annuities, dividends, interest, malikana (6 C. L. R., 133; I. L. R., 10 Calc., 697), maintenance or rent (p. 329, *supra*), is a periodically recurring right. So also the right to *palas*, or turns of worship (I. L. R., 4 Calc., 683; I. L. R., 8 Calc., 807), the right to recover burial fees whenever a corpse is brought for burial (24 W. R., 385), and the right to the enjoyment of a *watan* in rotation by different sharers (4 Bomb., 51) are periodically recurring rights. A suit for *arrears* of periodical payments should, however, be distinguished from a suit to *establish the right* to receive these payments. (See p. 329, *supra*.) A suit by a Hindu to establish his *right* to *maintenance* is *specially* provided for by art. 129.

A general *denial* of the right does *not* amount to a *refusal*. A refusal must be made in *answer* to a *demand* by or on behalf of the plaintiff. (Ramnad *v.* Dorasami, I. L. R., 7 Mad., 341, 343.)

132.—To enforce payment of money charged upon immoveable property.	Twelve years ...	When the money sued for becomes due.
Explanation.—The allowance and fees respectively called *mâlikanâ* and *haqqs* shall, for the purpose of this clause, be deemed to be money charged upon immoveable property.		

No. 132. (No. 132, Act IX.) See the notes under arts. 62, 63, 111, and 147.

Under Act XIV of 1859, a suit for *money* charged upon immoveable property by way of a simple mortgage was governed by the six years' or

ART. 132. the three years' rule, according as the covenant to pay was duly registered or not, provided the plaintiff claimed to recover the money merely as a debt, and did not seek to realize his lien. But a suit in which the relief sought was the recovery of the mortgage-money by a declaration of the lien and a sale of the mortgaged property, was dealt with under cl. 12, sec. 1, as a suit for the realization of an *interest in land*, and as governed by the twelve years' rule. Such a claim, specially where the defendant is a subsequent purchaser of the mortgaged land, is founded not upon the contract to pay the money, but upon the hypothecation of the land. (2 Mad., 51, 307; Surwan Hossein *v.* Sharoda Gholam Mahomed, 9 W. R., 170, F. B.; Pearee Mohun *v.* Gobind Chunder, 10 W. R., 56; Janeswar *v.* Mahabeer, 25 W. R., 85, P. C.; I. L. R., 1 Calc., 162.) The provisions of Acts IX and XV were evidently not intended to interfere with, but rather to give, legislative authority to that which previously rested on judicial decisions only. And most of the Courts in India took this view of the matter. (See Radho *v.* Musst. Roop, 7 N. W. P., 223; Raghubar *v.* Luchmin, I. L. R., 5 All., 461, 462; In the matter of T. Agabeg, 12 C. L. R., 165, 168; Pestonji *v.* Abdool, I. L. R., 5 Bomb., 463.) But Westropp, C. J., and Melville, J., on the 16th of July 1877 (see I. L. R., 6 Bomb., 720), held, that the words "suit for money charged upon immoveable property," in art. 132, Act IX, were wide enough to be applicable to the *personal* remedy on the contract to pay, *as well as* to the remedy against *the land*. It may be observed that this *literal* interpretation of the law is supported by two recent decisions in England on the construction of the words "suit to recover any sum of money secured by any mortgage" in sec. 8 of the English Real Property Limitation Act, 1874. (See Sutton *v.* Sutton, 22 Ch. Div., 511: Fearnside *v.* Flint, 22 Ch. Div., 579.) It was, probably, with a view to obviate this ambiguity (which is also referred to in Forsyth *v.* Bristowe, 8 Exch., 716) that the language of art. 132 was changed in 1877. Now, the words of the first column are "suit to *enforce* payment of money charged upon immoveable property." Sargent, J., in I. L. R., 5 Bomb., 463, Norris, J., in 12 C. L. R., 165, and Straight, J., in I. L. R., 5 All., 461, substantially held that, whatever might be the proper interpretation of art. 132, Act IX, the altered language of the law in Act XV was applicable *only* to the enforcement of the hypothecation against the *land*; and that as regards the remedy against the *person* of the mortgagor, the plaintiff had the same shorter period of limitation which was allowed for the recovery of ordinary debts. If the words of art. 132, Act XV of 1877, were, "suits to *enforce a charge* upon land" or "suits to enforce payment of money charged upon land, *so far as it is a charge*," the language of the law would have been *strictly* consistent with the *current* of decisions. But as the actual language of the law is *still* applicable to suits for purely money-decrees, in respect of debts charged upon immoveable property, it has been recently held by a Full Bench of the Bombay High Court (though with some hesitation), that this literal construction ought to be adopted, the more specially as it is in *favor* of the right to sue. According to this ruling, even a suit to obtain a mere money-decree for a debt secured by a simple mortgage is governed by the twelve years' rule, under art. 132, Act XV. (See Lallubhai *v.* Narain, I. L. R., 6 Bomb., 719; see also I. L. R., 6 Mad., 417.) In Raghubar *v.* Luchmin (I. L. R., 5 All., 461), Straight and Brodhurst, JJ., refer to this Bombay ruling, but say that the current of decisions being the other way, they are not prepared to depart from those decisions. And in Shiblal *v.* Ganga Persad, Oldfield, J., entirely dissented from the Bombay ruling. (See I. L. R., 6 All., 556.) But in Muhammad

Zaki *v.* Chatku (I. L. R., 7 All., 120), Straight, C.J., and Duthoit, J., follow and approve the view of the law taken by the Full Bench of the Bombay High Court.

The introduction of art. 147, in sched. ii of the Limitation Act, 1877, has created another difficulty in the interpretation of art 132. It is not likely that the Legislature, by enacting art. 147, intended to give a simple mortgagee an extended period of *sixty* years for the recovery of the mortgage-debt by the sale of the property mortgaged, when it was well known that from 1793 to 1877, a mortgagee had been allowed a period of *twelve* years only in such cases. In England, the Real Property Limitation Act, 1874, has *reduced* the period prescribed for such a suit from twenty to twelve years, and it is not at all probable that the Indian Legislature, while striving to make the Indian law agree with the English law (see Abstract of the Proceedings of the Council of the Governor-General of India on the 19th July 1877) should think of *raising* the period from twelve years to sixty years. A simple mortgagee, as such, cannot sue for *foreclosure;* a usufructuary mortgagee, as such, cannot sue for *foreclosure or sale;* and at the time when Act XV of 1877 was passed, a mortgagee by conditional sale could not, under the Bengal Regulations, institute a *suit* for foreclosure. At the time when the Act was passed, only an English mortgage authorized the mortgagee to sue for *foreclosure or sale* in the manner prescribed by Form 109, sched. iv, Act X of 1877. Article 147 of Act XV of 1877 was, probably, *intended* to apply to a mortgagee who was entitled to institute a suit for *foreclosure*, and who *might* obtain a decree for *sale* instead. In this view, a suit to realize the lien created by a simple mortgage is not a suit for *foreclosure or sale* within the meaning of art. 147. But as the words "suit for foreclosure *or* sale" may be read distributively, and a suit to realize a lien or charge created by a simple mortgage is virtually a suit for the *sale* of the mortgaged property, it has been held by a Full Bench of the Allahabad High Court, that a suit upon a bond for money, by which immoveable property is hypothecated as security for the debt, wherein the relief prayed is recovery of the amount with interest, by establishment of the right to enforce the hypothecation by auction-sale of the interest of the obligor in such property, is governed by art. 147. It has been also held by the same Court that art. 132 applies to a *charge* which does not amount to a *mortgage*. (Shib Lal *v.* Ganga Prasad, I. L. R., 6 All., 551, F. B.) It cannot, however, be denied that money lent on *mortgage* is, in *ordinary* legal phraseology, money *charged* upon immoveable property (I. L. R., 6 Bomb., 719, 724); and that no distinction between a *mortgage* and a *charge* had been drawn in any legislative enactment at the date of the passing of Act XV. Turner, C.J., and Innes, J., agree with the Bombay High Court in holding (with some hesitation) that a charge created by a simple mortgage is a charge within the meaning of art. 132. (Davani *v.* Ratna, I. L. R., 6 Mad., 417.)

Petheram, C.J., is of opinion that a *rehan* which does not expressly or impliedly *give the lender himself* any right to cause the property to be sold, creates only a *charge* on the property. Other Judges of the Allahabad High Court hold that an ordinary *rehan* is a simple *mortgage* within the meaning of Acts IV of 1882 and XV of 1877. (See I. L. R., 7 All., 258, F. B.)

The Bombay High Court, in the Full Bench case (I. L. R., 6 Bomb., 717, 723), observed that it might well be *doubted* whether art. 132 was intended to apply to *mortgages* at all, inasmuch as art. 147 had introduced a special provision not contained in previous Acts, for a suit by a mortgagee for foreclosure or sale.

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

Part VIII.—Twelve years.

ART. 132.

I am not aware of any decision of the Calcutta High Court in which art. 147 has been applied to any suit by a *simple* mortgagee, or art. 132 applied to a suit for a *mere* money-decree. In a suit by the mortgagee, on a mortgage-bond, to recover the balance of the mortgage-debt, in which the plaintiff prayed for a decree against the mortgaged property only, Rattigan, J., of the Punjab Chief Court, held, that art. 147 was applicable. Barkley, J., of the same Court, on the other hand, held, that art. 132, and not art. 147, governed the case, as the plaint was not in the form prescribed by the 4th schedule of the Civil Procedure Code, No. 109, and the prayer in the plaint could not be regarded as a prayer for the sale of the property and payment out of the proceeds, such as is provided for by the prescribed form, but rather that the sum due should be ascertained and declared a charge on the property. (Ram Nath *v.* Musst. Jio, Punj. Rec., No. 101 of 1880; Rivaz, p. 178.)

A suit to enforce a charge created by a mortgage-bond, against a party who holds the land under a title *distinct* from that of the mortgagor, is not governed by this article, but by art. 144. (See Karan Singh *v.* Bakar Ali Khan, I. L. R., 5 All., 1, P. C.) Article 132 does not also apply to cases falling within art. 111, nor to suits for money charged upon *moveable* property.

A *charge* created by operation of law, not amounting to a mortgage, is, without any difference of opinion, a charge within the meaning of art. 132. A person who has such an *interest* in an estate or a dependent talook (as a co-sharer, an undertenure-holder, or a mortgagee) as *entitles* him to pay the revenue due to the Government, or the rent due to the zemindar, and does actually pay it, is thereby entitled to a charge on the estate or talook, as against all persons interested therein, for the amount of the money so paid. (8 W. R., P. C., 17; 1 C. L. R., 152; 22 W. R., 411; I. L. R., 6 Calc., 549; 6 C. L. R., 28; 8 C. L. R., 210.) If the amount is sought to be *charged* on the land, it may be sued for within twelve years under art. 132. (See I. L. R., 6 Calc., 549; and the notes to art. 99.) Under the provisions of sec. 171 of the Bengal Tenancy Act, money so paid to prevent the sale of a tenure, is *deemed* a *mortgage*-debt.

In the generality of cases, the right to *contribution* is a *personal* right and the remedy is a *personal* one, and there is no *lien* for the amount of the monies in respect of which the right to contribution arises. This was determined by Lord Eldon after great consideration, in the case of part owners of a ship, in *ex parte* Young and *ex parte* Harrison, in which he overruled the previously expressed opinion to the contrary of Lord Hardwicke. (*In re* Leslie *v.* French, 23 Ch. D., 552, 563.)

A suit for *interest*, which has been made a *charge* upon immoveable property, is governed by this article. (See the cases noted under art. 63.) But where the *charge* amounts to a *mortgage* within the meaning of art. 147, sixty years' interest may be taken into account.

Malikana. A malikana right is, generally, the right to receive from the Government a sum of money, which represents the *malik's* share of the profits of an estate not permanently settled, when from his declining to pay the revenue assessed by the Government, or from any other cause, his estate is taken into the *khas* possession of Government, or transferred to some farmer or ijaradar. (See Mullick *v.* Muleka, I. L. R., 10 Calc., 1112, 1125. As to suits for *malikana*, see 21 W. R., 88; 22 W. R., 551; and I. L. R., 5 Calc., 921.)

Suits for *malikana* and *haks* are ordinarily suits for mere *money*-decrees (I. L. R., 6 Bomb., 719, 724), although, for the purposes of art. 132, the allowances and fees so called are *deemed* to be money *charged* upon immoveable property. According to Spankie, J., the *haqqs* referred

to in the explanation *are* fixed charges upon immoveable property, of which payment *could* be enforced by the sale of the property so charged, and *haqq-i-chaharam* (a zemindari due customarily payable on the sale of a house situated in the mehal) is not a *haqq* within the meaning of this article. (Kirath *v.* Ganesh, I. L. R., 2 All., 358, 361.)

As to *Palki haks & Tora Garas haks* in the Bombay Presidency, see 14 Moore I. A., 551; L. R., 1 I. A., 34; 21 W. R., 178.

Fees attached, as of right, to hereditary offices are often called *haks*.

This article applies to suits which are brought by a *hakdar* against the person *originally liable* for payment of the *hak*, and not to suits against persons who have actually realized the *hak*, which is payable to the plaintiff. A suit of the *latter* description is a suit for money had and received under art. 62. (Harmukhgouri *v.* Harisukprosad, I. L. R., 7 Bomb., 191; Morbhat *v.* Gangadhar, I. L. R., 8 Bomb., 234; Desai *v.* Desai, I. L. R., 8 Bomb., 426; Dulabh *v.* Bansi, I. L. R., 9 Bomb., 111.

Description of suit.	Period of limitation.	Time from which period begins to run.
133.—To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration.	Twelve years ...	The date of the purchase.
134.—To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards purchased from the trustee or mortgagee for a valuable consideration.	Ditto ...	Ditto.

Nos. 133 and 134. (Nos. 133 and 134, Act IX; sec. 5, Act XIV.)

These articles are now *expressly* made applicable to trusts created by *will*. (See p. 188, *supra*.) It is no longer necessary that the purchaser, in order that he may be protected by these articles, should be a purchaser in *good faith*. (See p. 188, *supra*, and the notes to sec. 10.) The purchase, however, must purport to be a purchase of the property as an *absolute* property, and not merely as property mortgaged, deposited, or entrusted. In the case of mortgaged property, for instance, it must not purport to be a mere *assignment of the mortgage*; and the *onus* is on the purchaser to show this. (See pp. 131, 161, 188, *supra*.) If the mortgagee, instead of selling the property, *mortgages* it as if it were his *absolute* property, this *mortgage* will perhaps be treated as a *sale* within the meaning of art. 134. If this article is not applicable to such a case, art. 144 must be held to be applicable.

As to when the possession of an alienee from the *mortgagor*, specially where such alienation is not a *voluntary* act of the mortgagor, becomes adverse to the mortgagee, see p. 160, *supra*; and compare Manly *v.* Patterson, I. L. R., 7 Calc., 394; and Sobhagchand *v.* Bhaichand, I. L. R.,

Part VIII.—Twelve years.

ART. 135. 6 Bomb., 193. Even a purchaser at an ordinary *judicial* sale, under a mere money-decree, can hardly be regarded as a *bonâ fide* purchaser of an *absolute* interest *without notice*. (I. L. R., 6 Bomb., 193, 205.)

Articles 133 and 134 do not provide for the case of purchasers from *mortgagors*, nor for the case of purchasers who buy property in good faith from a person guilty of *concealed fraud* under sec. 18. (See p. 164, *supra*; and the notes to sec. 18.)

These articles reduce to twelve years the periods to which the depositor, pawnor, or mortgagor would be otherwise entitled under arts. 145 or 148.

Section 5 of Act XIV of 1859 provided that, in the case of purchase from a depositary, pawnee, or mortgagee, no suit for the recovery of the property from the purchaser should be maintained, unless brought *within* the time allowed for such a suit against the depositary, pawnee, or mortgagee himself. This proviso has been omitted in the Acts of 1871 and 1877, probably as unnecessary.

Description of suit.	Period of limitation.	Time from which period begins to run.
135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.	Twelve years ...	When the mortgagor's right to possession determines.

No. 135. (No. 135, Act IX.) See pp. 160 to 164, *supra*, and the notes to art. 134, as to adverse possession in mortgage cases.

Article 146 applies to similar suits in Courts established by Royal Charter.

Under Act IX of 1871, art. 135 gave a period of twelve years from the time when the mortgagee was *first* entitled to possession. This very unfortunate provision in the Act of 1871 has been corrected by the Act of 1877. (Ghinarain *v.* Ram Monoruth, 7 C. L. R., 580, 581.) This *amended* article meets the case of the mortgagor and mortgagee agreeing to go on upon the footing of the mortgage after the mortgagee is *first entitled* to possession. Under the present Act, the payment and acceptance of interest, it is apprehended, might be evidence of the *continuance* of the relation between the parties created by the mortgage-deed. Until the mortgagor or his representative advances any rights adverse to the mortgagee, the possession of the mortgagor or his representative is not adverse to the mortgagee. (See Mankee *v.* Shikh Munnoo, 22 W. R., 543; and the P. C. cases cited therein.) The mortgagor's right to possession *determines* when the terms of the mortgage entitle the mortgagee to take possession, *or* if the parties agree to go on upon the footing of the mortgage when such agreement comes to an end, *or* when the mortgage is foreclosed. It should be remembered that a foreclosure is considered as a *new* purchase of the land, and that the effect of an order of foreclosure is to vest the *ownership and beneficial title* to the mortgaged land for the *first* time in the mortgagee; so that an action for possession as owner, brought within the ordinary period next after the order of foreclosure (against the mortgagor himself or any person who claims or is entitled to claim the equity of redemption only), is not barred by limitation, although more than the ordinary period has elapsed since the mortgagee was first entitled to possession. (See Pugh *v.* Heath, 6 Q. B. D., 345; S. C. on appeal, 7 App. Cas.,

Part VIII.—Twelve years.

235.) There can be no two things more distinct or opposite than possession as *mortgagee*, and possession as *owner* of the estate (*ibid*). The recovery of possession by the mortgagee *as mortgagee* does not extinguish the incumbrance, whilst redemption by the mortgagor or foreclosure by the mortgagee undoubtedly has such effect. (I. L. R., 6 All., p. 559.) When the mortgagee takes possession of the mortgaged property, not as owner after foreclosure, but *as mortgagee* under the terms of the deed of mortgage, he is *accountable* to the mortgagor for the profits which he receives. (22 W. R., 90-92.) The suit provided for by art. 135 is a suit by the mortgagee for possession *as mortgagee*. (7 C. L. R., 580; I. L. R., 6 Calc., 564.) It has been held that if a mortgagee, who may sue for possession, as mortgagee, under the terms of the mortgage, within the time allowed by this article, *commences* foreclosure proceedings and thus takes steps to *alter* his position or character *within* such period, he will, under art. 144, be entitled to another twelve years from the date of such *change* of character. (7 C. L. R., 580, 581.) In Dinonath *v.* Nursing, 22 W. R., 90, the mortgagee not having taken foreclosure proceedings within twelve years from the date when he was first entitled to possesion under the terms of the mortgage, and the defendant being an execution-purchaser of the mortgaged property, who asserted an *absolute* right in himself, it was held that the foreclosure proceedings gave the mortgagee *no fresh* right to sue for possession. In Madun Mohun *v.* Ashad Ali, I. L. R., 10 Calc., 68, it would appear to have been laid down that unless the mortgagee's character is *changed* into that of an absolute owner (by the *expiry* of the year of grace under the Regulations) *within* the twelve years allowed by art 135, he cannot, even in a suit for possession against the mortgagor himself, claim a fresh start from the date of foreclosure. In Pugh *v.* Heath, 6 Q. B. D., 345, in which a mortgage, in England, had been absolutely foreclosed shortly *after* the expiry of the ordinary period of limitation allowed to a mortgagee to sue for possession, Lord Selborne laid down generally that the order of foreclosure gave the mortgagee a fresh start to sue for possession as absolute owner. When the defendant is a *bonâ fide* purchaser without notice of the mortgage, and as such holds the property *adversely* to the mortgagee, the mortgagee is not entitled to a fresh start, simply because he has changed his character by taking foreclosure proceedings. (See 16 W. R., P. C., 19 and 33; 22 W. R., 90.) On the other hand, when the defendant claiming under the mortgagor does not advance a title inconsistent with the mortgage, but asserts only a title to redeem the mortgage, foreclosure proceedings under the Regulation, taken *after* the expiry of twelve years from the date of default, are not necessarily too late. (See 4 W. R., P. C., 37.) In fact, as against persons claiming the equity of redemption only, no time had been prescribed by the law for taking foreclosure proceedings under the Regulations. Under the present law, *suits* for foreclosure are governed by the sixty years' rule.

In the case of a mortgage, the terms of which do *not* entitle the mortgagee to take possession before the mortgage is foreclosed, the mortgagee may sue for possession as owner within twelve years from the date of foreclosure, or the expiry of the year of grace allowed by the Regulations. (Noonoo *v.* Lalla, 1 Shome, 21; Modun *v.* Ashad, I. L. R., 10 Calc., 68.) And even if the mortgagee is, under the *terms* of the mortgage, entitled to possession *before* the mortgage is foreclosed, if the mortgagee does not take possession, but makes some *new arrangement* with the mortgagor, by which the latter is *allowed* to retain possession, the possession thus continued by the morgagor cannot be considered adverse

Part VIII.—Twelve years.

ARTS. 136–138.

to the mortgagee, and limitation will not run against him during its continuance. (22 W. R., 543; 1 Shome, 21.) But if the defendant in possession of the mortgaged property is a party who asserts a title inconsistent with, and adverse to, the title of the mortgagee, and has been in adverse possession for more than twelve years, the mortgagee's suit for possession must be dismissed under art. 144, although it is brought within twelve years of the foreclosure of the mortgage. As to what constitutes adverse possession in such cases, see p. 160, *supra*.

When there are two different mortgages of the same property, the *puisne* encumbrancer may have a *fresh* right to sue for possession *as mortgagee*, in case the mortgagor redeems the first mortgage and recovers possession from the first mortgagee. (Narain *v.* Simbhoo, I. L. R., 1 All., 325, P. C.)

Description of suit.	Period of limitation.	Time from which period begins to run.
136.—By a purchaser at a private sale for possession of immoveable property sold, when the vendor was out of possession at the date of the sale.	Twelve years ...	When the vendor is first entitled to possession.

No. 136. (No. 136, Act IX.)

A purchaser at a private sale cannot count limitation from the date of his purchase, but from the date of accrual of his vendor's right to sue. (Bhikaree *v.* Ajoodhya, 3 W. R., 176.) Auction-purchasers at a sale for arrears of revenue or rent are in this respect entitled to a special privilege. (See notes to art. 121, and I. L. R., 4 Calc., 103; 10 W. R., 15, 19.) As to when a claim for possession is not independent of the right to sue for specific performance of the contract of sale, see the notes to art. 113.

A suit for possession by the vendee against the vendor, when the vendor was in possession of the property at the time of sale, is not governed by this article. Article 144 will apply to such a case, and the possession of the vendor will be deemed to be adverse from the time when the ownership passed to the vendee. See I. L. R., 11 Calc., 229.

137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Twelve years ...	When the judgment-debtor is first entitled to possession.
138.—By a purchaser of land at a sale in execution of a decree, for possession of the purchased land, when the judgment-debtor was in possession at the date of the sale.	Ditto ...	The date of the sale.

Nos. 137 and 138. (Nos. 137 and 138, Act IX.) See the notes to art. 136. An execution-purchaser is, in *general*, treated as a private purchaser,

See 12 Moore I. A., 336, the notes under the terms "plaintiff" and "defendant" in sec. 3, and Donendro *v.* Ramcoomar, 10 C. L. R., 281, P. C. Compare Sobhagchand *v.* Bhaichand, I. L. R., 6 Bomb., 193, 205, F. B.

The execution-purchaser's suit against a third person, who has been in possession of the property (under an alleged private purchase from the judgment-debtor) is barred, if such third party has been in possession for twelve years. (Shambhubhai *v.* Shivlaldas, I. L. R., 4 Bomb., 89.)

If the judgment-debtor was in possession at the date of sale, the execution-purchaser may obtain possession in the execution department under secs. 318 and 319 of the Civil Procedure Code. Formal delivery of possession by the officer of the Court gives the purchaser a fresh start so far as the judgment-debtor is concerned, but not against third parties. (See p. 136, *supra*; and Runjit *v.* Bunwaree, I. L. R., 10 Calc., 993.)

In Krishna Lall *v.* Radhakrishna, I. L. R., 10 Calc., 402, a Division Bench of the Calcutta High Court, while holding that an execution-purchaser may bring a *regular suit* for possession against the judgment-debtor, laid down that, if the formal possession obtained through the Court was not followed by any act of actual possession, the suit must be brought within twelve years from the date of sale under art. 138. But this is hardly consistent with the Full Bench Decision in I. L. R., 5 Calc., 584, as explained by the same Bench in Doyanidhi *v.* Kelai, 11 C. L. R., 395, 398. This question has been fully discussed in Shamachurn *v.* Madhub, I. L. R., 11 Calc., 93. For other cases under art. 138, see I. L. R., 4 Calc., 103 (which was decided before the Full Bench case referred to above); and I. L. R., 6 All., 75, cited under art. 91.

The plaintiff, in a case under art. 138, has no *right* to sue until the sale is *confirmed*, but time runs against him from the date of sale. (See pp. 227, 258, and 259, *supra*.) When the execution-purchaser obtains possession, but is afterwards dispossessed, art. 142 will apply.

Description of suit.	Period of limitation.	Time from which period begins to run.
139.—By a landlord to recover possession from a tenant.	Twelve years ...	When the tenancy is determined.

No. 139. (No. 140, Act IX.)

This article applies only when the land is in the possession of a person who was a *tenant* of the plaintiff. As to how a person who alleges a tenancy under the plaintiff can plead limitation, see 21 W. R., 70, F. B.; and I. L. R., 7 Bomb., 96. As to how and when the possession of the land becomes adverse to the landlord, see *supra*, pp. 147 *et seq.* Suits for arrears of rent are governed by art. 110.

Mere non-payment of rent does not constitute adverse holding. (See pp. 152 and 329, *supra*.) As against the landlord, possession is not adverse until the tenancy is properly *determined*. (See pp. 152, 153, *supra*.) The landlord may (under art. 144) sue a person who has dispossessed his lessee within twelve years of the expiry of the lease. (See pp. 154—158, *supra*, and Krishna *v.* Hari, I. L. R., 9 Calc., 367; Sheosohye *v.* Luchmeshur, I. L. R., 10 Calc., 577.)

Although the landlord cannot sue for *khas* possession so long as the tenancy continues, it is *open* to him to bring a suit against the trespasser for the purpose of having his rights *declared* as against such trespasser. (Bissesuri *v.* Baroda, I. L. R., 10 Calc., 1076.) It has been also laid down in this last case that the landlord may, in a suit against

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

Part VIII.—Twelve years.

ART. 140.

the tenant and the trespasser, ask for the further relief that he should be placed in the same position "as before" as regards the tenant.

Article 139 refers to suits in respect of tenancies in which the leases have expired and so have terminated, or in respect of tenancies terminable by due notice. It does not refer to a suit by which the plaintiff seeks to recover possession by establishing that a permanent mokrurce lease (granted by a preceding ghatwal) is invalid and not binding (as against a succeeding ghatwal). See Ajoodhya *v.* Collector, I. L. R., 9 Calc., 419.

The publication of a notice to quit in a local newspaper, under circumstances which make it highly probable that the notice in question has come to the knowledge of the tenant, is not, without more, such proof of service as will suffice to terminate the tenancy, or entitle the tenant to contend that he remained, after the date fixed by the notice for vacation, in *adverse* possession of the premises. (Chandmal *v.* Bochraj, I. L. R., 7 Bomb., 474.)

A landlord is generally a *reversioner*. But in the case of a permanent saleable undertenure, though rent is payable to the superior holder, he has no reversionary right in the land. (See Beejoy *v.* Kally Prosono, I. L. R., 4 Calc., 327.) A permissive occupation, which has very considerable *resemblance* to an English tenancy-at-will, is of frequent occurrence in this country. But we are not hampered here by the provision which has raised so many nice points in England under sec. 5 of the Statute of William the 4th, with regard to tenancies-at-will, *ceasing* at the end of the *first* year's occupancy. (Gobindlal *v.* Debendronath, I. L. R., 6 Calc., 311, 314, 316.) A tenancy-at-will created by A in favor of B is not *necessarily* determined on the death of either A or B. (I. L. R., 6 Calc., 311, 315; 4 Bomb., A. C., 155.) The possession of B's heirs may continue to be permissive. (*Ibid.*)

Every permissive occupation is *not* a *tenancy* within the meaning of art. 139. (I. L. R., 5 Calc., 679, 683.) Where one party is permissively in the occupation of land which belongs to another, although the period during which he had permission to occupy may have expired, no cause of action arises until one of two things has happened: either that there has been a demand of possession on the part of the owner, or that the owner's title has been denied by the permissive occupant. (Khurruckdharee *v.* Rewat Lall, 12 W. R., 167, 168.) So long as such occupation does not become *adverse* to the owner, limitation does not begin to run against him either under art. 142 or art. 144. (I. L. R., 6 Calc., 311.) Where once the relation of landlord and tenant is established, it is for the defendant to establish its determination by affirmative proof over and above the mere failure to pay rent. (See Prem Sukh *v.* Bhupia, I. L. R., 2 All., 517; and pp. 151, 152, *supra*.)

When the landlord is entitled to possession by reason of any forfeiture or breach of condition, before the expiry of the term of the lease, he must (under the Transfer of Property Act) do some act showing his intention to determine the lease; otherwise, the tenancy *continues*. (See sec. 111, Act IV of 1882.)

Description of suit.	Period of limitation.	Time from which period begins to run.
140.—By a remainderman, a reversioner (other than a landlord), or a devisee, for possession of immoveable property.	Twelve years ...	When his estate falls into possession.

No. 140. (No. 141, Act IX.)

In the same land there may at the same time be an estate in *possession*, and one estate or several estates in *remainder*, and an estate in *reversion*. When the estate in possession is determined, the estate in remainder (if there be any), otherwise the estate in reversion, will become an estate in possession. (Wharton.)

Remainder.—That expectant portion, or residue of interest, which, on the creation of a particular estate, is at the *same* time conveyed away, by the owner, to another who is to enjoy it immediately after the determination of such particular estate. A remainder does not, like a reversion, arise by operation of law, but is always created by act of parties. (Wharton and Stephen.)

An estate in *reversion* is where any estate is derived by grant or otherwise, out of a larger one, *leaving* in the original owner an ulterior estate immediately expectant on that which is so derived. On the determination of the estate so derived by grant or otherwise, that is, on the determination of the *particular estate*, the possession returns or *reverts* to the original owner, who is for this reason called the *reversioner*.

A childless Hindu widow's estate is *not* a particular estate for life. She is more like a tenant-in-tail, and the so-called reversionary heirs are more like the issue-in-tail. As regards an *adverse* holder of the property, the issue-in-tail are barred by limitation, if the tenant-in-tail is barred, but the remainderman is not so barred. (Nobin Chunder *v.* Issur Chunder, 9 W. R., 505, 507, F. B.) Article 141, however, expressly gives the so-called reversionary heirs privileges similar to those which the remainderman or the reversioner is entitled to under art. 140. (See pp. 165-66, *supra*, and Sreenath *v.* Prosunno, 13 C. L. R., 372, F. B.; I. L. R., 9 Calc., 934. Cf. I. L. R., 9 Bomb., pp. 229—231.)

It may be that when an impartible estate vests in a joint family consisting of several coparceners, and is capable of enjoyment but by a *single* member at a time, the rights of survivorship vesting in the other coparceners cannot arise *as between themselves*, until each branch entitled to preferential enjoyment, according to seniority of descent, either becomes extinct or relinquishes its rights. But as between the joint family and *adverse* holders, the senior coparcener in enjoyment for the time being represents, for purposes of limitation, the entire joint family consisting of his lineal descendants and collateral coparceners. The representation of the junior members in the person of the senior member is *more complete* than the representation of a reversioner by a childless Hindu widow. Adverse possession, which bars the senior member, will, therefore, bar the junior members, although their right to the enjoyment of the property does not accrue until the senior member dies or relinquishes his rights. (Vigayasami *v.* Periasami, I. L. R., 7 Mad., 242.) A case such as this does not fall within the terms of either art. 140 or art. 141.

In the case of an endowment, where the founder granted lands to A and his descendants for the purpose of maintaining the worship of an idol, the management of the endowment being vested in the family of A, each member of such family succeeds to the management *per formam doni* (by the form of the gift), and it has been held that, in a suit to recover a share of the management by A's grandson against another member of the family, the plaintiff is not barred by limitation, simply because his deceased father would have been so barred. (Trimbak *v.* Narayan, I. L. R., 7 Bomb., 188.) But a succeeding *sebait* is bound by a decree obtained by a third person against his predecessor

ACT XV OF 1877. — ART. 141.

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

Part VIII.—Twelve years.

in respect of the idol's property. (Prosunno Koomari *v.* Golab Chand, 23 W. R., 253, P. C.) As to succeeding *mutwullees*, see 17 W. R., 430.

Where a grant by a Rajah of a *mokurari* lease in lieu of maintenance is, by the custom of the *raj*, liable to revocation at the instance and at the discretion of succeeding Rajahs, each Rajah who, having notice of a claim to hold such *mokurari*, allows twelve years to go by without taking steps to get rid of it, is, at least so far as he is concerned, barred by limitation. (Petamber *v.* Nilmoney, I. L. R., 3 Calc., 793.)

It has been held by the Bombay High Court, that, in respect of *vatans* appendent to hereditary offices, if A, the present incumbent, *alienates* the land, and after A's death, A's successor in office suffers twelve years from that event to elapse without bringing his suit to recover the land, not only he, but his successors also, would be barred by limitation. (Babaji *v.* Nava, I. L. R., 1 Bomb., 535.) As to *adverse possession*, see I. L. R., 9 Bomb., 198. When a permanent tenure has been granted by a *ghatwal*, if the successor of such *ghatwal*, being one of the *ghatwals* to whom Beng. Reg. XXIX of 1814 applies, wishes to resume that tenure, he must bring his suit within twelve years after succeeding to the *ghatwali* estate. (Madho *v.* Tekait, I. L. R., 9 Calc., 411.)

Estates in remainder or reversion are estates in *expectancy* as opposed to estates in *possession*. The estate of the remainderman or the reversioner *falls into possession* on the determination of the particular estate which precedes it.

According to the English law, a reversioner, on a particular estate for years or lives, has the ordinary period within which he may pursue his remedy *after* his reversion falls *naturally* into possession, independently of any right which he may previously have acquired (but has not exercised) to the same by reason of any forfeiture. No one is obliged to take advantage of a forfeiture. This is old law, and is *expressly preserved* by sec. 4 of 3 and 4 Will. IV, c. 27. (Banning, pp. 100, 102, 147.)

Article 140 does not apply to a suit by a *landlord* as such. See p. 158.

When limitation has once *begun* to run against the owner in fee, he cannot, by putting the estate into settlement, give new claims to persons taking remainders, &c., under such settlement. (See Banning, 111; and p. 163, *supra*.)

Description of suit.	Period of limitation.	Time from which period begins to run.
141.—Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female.	Twelve years ...	When the female dies.

No. 141. (No. 142, Act IX.) See notes to arts. 125 and 140.

When a Hindu widow becomes a *byragini*, she is *civilly* dead. When a Hindu widow *remarries*, all her rights in her husband's property cease and determine as if she is dead. (Act XV of 1856, sec. 2.) *Remarriage* is *expressly* referred to in art. 125, but not in this article. As to the *onus* of proving the *death*, see p. 130, *supra*. As to adverse possession in reference to the widow's estate, see pp. 165, 166, *supra*.

The rule that adverse possession which bars the widow bars the reversionary heir (9 W. R., 505, F. B.; 15 B. L. R., P. C., 10) is no

longer the law in cases falling under art. 141. (Chundernath *v.* Asaram, 1 Shome, 167; Srinath *v.* Prosunno, I. L. R., 9 Calc., 934, F. B.) The case of Saroda *v.* Doyamoyee, I. L. R., 5 Calc., 938, which put a restricted interpretation on the words of this article, though approved of by Kindersley, J. (I. L. R., 4 Mad., 124, 129), has been overruled. (I. L. R., 9 Calc., 934, F. B.)

Description of suit.	Period of limitation.	Time from which period begins to run.
142.—For possession of immoveable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve years ...	The date of the dispossession or discontinuance.

No. 142. (No. 143, Act IX.) As to what is possession, see pp. 133—141, *supra*.

As to what amounts to dispossession or discontinuance of possession, see pp. 142, 143, *supra*.

The word 'adverse' occurs only in arts. 124 and 144, and does not occur in this or in any other article. In Gobinlall *v.* Debendro Nath Mullick, I. L. R., 5 Calc., 679, Wilson, J., was of opinion, that the framers of the Act were minded to get rid of the distinction between adverse and non-adverse possession wherever it could be done, and wherever any *other* test could be found. With reference to art. 142, the learned Judge held, that where there had been possession followed by a discontinuance of possession, time ran from the moment of its discontinuance, *whether there had or had not been any adverse possession*, and without regard to the intention with which, or the circumstances under which, possession had been discontinued. And it was suggested that, when a friend, relative or other person was *permitted* to enter into possession, the true owner could protect himself only by establishing the relation of *landlord and tenant* between himself and the person so put in possession, or by insisting on periodic written *acknowledgments* of his title. But the permissive occupation or detention, in such cases, is legally no possession at all (see p. 136, *supra*); and the owner cannot, strictly, be said to be 'dispossessed' or to have 'discontinued his possession.' It was accordingly held, on appeal in the same case, that where the owner, in the exercise of his proprietary right, *permits* some other person to occupy his land, or to receive his rents, then (whether the relation of landlord and tenant exists between the parties or not) the *possession* of the owner is *not discontinued*, because, under such circumstances, the possession of the occupier is the possession of the owner. (*Per* Garth, C. J., I. L. R., 6 Calc., 311, 315.) A suit by the true owner for the recovery of immoveable property, in such cases, is not governed by art. 142. If the permissive occupant proves that the character of his possession has *subsequently* become *adverse* to the owner (12 W. R., 250, and p. 151, *supra*), and that he has been in *adverse* possession for twelve years, the suit will be barred by art. 144. (See I. L. R., 6 Calc., 311.)

In suits under art. 142 for possession, as upon a dispossession or discontinuance of possession, the *onus* is on the plaintiff to prove that he, or the person under whom he claims, was in possession within twelve years of the institution of the suit. (See pp. 114—129, *supra*; and

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

Part VIII.—Twelve years.

I. L. R., 9 Calc., 125; I. L. R., 9 Calc., 744, F. B.; and I. L. R., 10 Calc., 374.) As to how far this rule is modified in cases where the land is shown to have been in a condition *unfitting* it for actual enjoyment in the *usual* modes, see I. L. R., 9 Calc., 744, F. B.; and pp. 119—129, *supra*.

Suits for recovery of possession by an occupancy *raiyat* under the Bengal Tenancy Act, 1885, are *specially* provided for by that Act. Act VIII of 1869, B. C., as well as Act X of 1859 made *special* provisions for such suits by tenants. (See 7 W. R., 186, F. B.; I. L. R., 4 Calc., 527; 5 Calc., 317; 8 Calc., 365; 9 Calc., 280, 423.)

Description of suit.	Period of limitation.	Time from which period begins to run.
143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Twelve years ...	When the forfeiture is incurred or the condition is broken.

No. 143. (No. 144, Act IX.) Cf. Act VIII of 1885, Sched. III, No. 1.

The operation of this article has been considered in Sadha *v.* Musst. Bhagwani, 7 N. W. P., 53, and in Bibi Sahodra *v.* Rai Jang Bahadur, I. L. R., 8 Calc., 224, P. C. In the latter case it was held, that *no condition* attached to the life-estate in question, and that there was no forfeiture of it; but it appears to have been *assumed* that if there had been a forfeiture, a suit by the reversioner for possession might have been barred under this article, although it was brought within twelve years of the time when the reversion *naturally* fell into possession. In the former case it was held, that although the defendant, a usufructuary mortgagee for the term of twenty years, had incurred a forfeiture of his rights by reason of his failure, in the very first year, to pay the mortgagor the annuity stipulated for in the deed of mortgage, each successive failure of payment gave the mortgagor a new right to eject the mortgagee; and that the suit was within time under the provisions of sec. 23, Act IX. (The provisions of sec. 23, Act XV, are in this respect different from the provisions of Act IX.) Article 143 does *not* say that the plaintiff may not waive a forfeiture. (See notes to art. 140.) But if no new arrangement has been come to between the parties, and the suit is brought to enforce the forfeiture under the terms of the *original* grant, &c., the suit, it is apprehended, must be brought within twelve years of the time when the forfeiture was first incurred. See notes to art. 75.

144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	Twelve years ...	When the possession of the defendant becomes adverse to the plaintiff.

No. 144. (No. 145, Act IX; sec. 1, cl. 12, Act XIV.)

A "suit for possession" is not necessarily a suit for *physical* possession. An *interest* in immoveable property does not, in many cases, admit of physical possession. Possession by receipt of rent is, of course, *possession* within the meaning of this article.

It has been held that a suit to recover a right to an *easement* is a suit to recover an *interest* in immoveable property, and (when acquired

otherwise than under sec. 26, Act XV) is governed by the twelve years' rule. (Kurupam *v.* Merangi, I. L. R., 5 Mad., 253. See also 24 W. R., 300.)

A suit by a person admittedly in possession as a *tenant*, for a declaration of his right to possession as *proprietor*, is a suit for (proprietary) possession. (I. L. R., 3 All., 40.) See the notes to art. 120, as to whether all *declaratory* suits in respect of immoveable property are governed by art. 144.

The words "not hereby otherwise specially provided for" refer to suits for possession of *immoveable* property, and not to suits *generally*. (See 25 W. R., 521, 523, and the notes to art. 113.)

A suit by the mortgagee, for possession of the mortgaged property, against a person who subsequently purchased the property, *bonâ fide*, as an absolute property, from the mortgagor, will probably fall within this article. (See the notes to arts. 134 and 135.) So a suit by a landlord against a person who purchased the land from his tenant is governed by this article. (Compare art. 139.) A suit against a person who purchased the plaintiff's immoveable property, *bonâ fide* and for a valuable consideration, from a person who is guilty of concealed fraud under sec. 18, is also "not specially provided for." (See notes to sec. 18.) Suits against trespassers on property mortgaged or leased will apparently fall within art. 144. (See W. R., Gap No., p. 375; I. L. R., 9 Calc., 367.) As to *adverse possession* in these cases, see pp. 154—165, *supra*.

A suit to recover possession of land from a party who had been originally put into possession of it by the owner as a *permissive* occupant is governed by this article. (See I. L. R., 6 Calc., 311.)

A suit by a mortgagee to enforce his mortgage lien against the mortgaged property is governed by this article, if the defendant has been in possession of it adversely to the mortgagor and the mortgagee. (I. L. R., 5 All., 1, P. C.)

A suit to recover possession of mortgaged property, as *absolute* owner after foreclosure, is governed by this article. (I. L. R., 10 Calc., 68.)

Where lands have been partitioned by a private arrangement between two co-sharers, A and B, if the arrangement by which *distinct* plots are held by A and B in severalty is afterwards set aside at the instance of an execution-purchaser of the rights and interests of A in the whole of the lands, and such purchaser takes possession of A's undivided share of the *whole*, B's suit for his share of the *specific* plots which had been allotted to A by such arrangement, is governed by this article. (Dewan Manwar Ali *v.* Annoda Persad, I. L. R., 5 Calc., 644, P. C.) See pp. 129-130, *supra*.

"When the possession of the *defendant* becomes *adverse* to the plaintiff."—The possession of any person *from or through* whom a defendant derives his liability to be sued is also the possession of the *defendant*. (*Vide* sec. 3.) Possession properly taken by Government for the enforcement of a revenue demand is not adverse to the true owner, even although payments of surplus-proceeds are made to the defendant. Such possession is like the possession of a stakeholder who holds the property for the real owner, whoever he may be. The defendant, in such a case, is not entitled to add to the period during which he has himself been in possession, the period during which the Government was in such possession: 1*st*, because the possession of Government was *not adverse* to the plaintiff; and 2*ndly*, because the defendant does *not derive* his liability to be sued from or through the Government. (Karan Singh *v.* Bakar Ali, I. L. R., 5 All., 1, P. C. This case is referred to and explained in I. L. R., 10 Calc., 374, 378; and I. L. R., 10 Calc., 697, 708.)

Where, in consequence of dissensions in the family of the real owners, Government attaches their lands and holds the same as their guardian

Part VIII.—Twelve years.

ART. 145. or bailiff, and does not restore the lands to the real owners, until sixty or seventy years after the date of attachment, a suit by the real owners against a person who entered into possession as a tenant of the Government, is not barred by limitation if brought within twelve years from the date of the restoration. The plaintiffs would be excused by all legal principles from having taken any legal steps in the meantime, not only on the ground of their individual rights being in suspense—in *custodia legis* in a particular sense—but because they *could not act or sue*—the inability of the plaintiffs to bring their suit earlier falling within the purview of the maxim *contra non valentam agere non currit præscriptio*. (Tukaram *v.* Sujangir, I. L. R., 8 Bomb., 585.)

As to what constitutes *adverse* possession, see *supra*, pp. 144, *et seq.*

In the case of a sale out and out, if the vendor remain in possession, his possession is *adverse* to the purchaser from the date of the *execution* of the conveyance. The commencement of the adverse possession is *not* deferred until the *registration* of the document. (Anandcoomari *v.* Ali Jamin, I. L. R., 11 Calc., 229.)

The periods of possession of successive and independent trespassers cannot be added to make up the twelve years required by *this article*. The last of the trespassers, against whom the suit is brought, does *not derive* his liability to be sued from or through any of the preceding trespassers. (See pp. 170, 171, 337, *supra*.)

In a suit falling within art. 144 (and *not* under art. 142, for possession *as upon a dispossession*), it is not necessary for the plaintiff to prove that he was in *possession* within the period of twelve years. (I. L. R., 5 All., 1, P. C.; I. L. R., 10 Calc., 374, 379.) If the plaintiff's suit is not *primâ facie* barred by limitation (see p. 111, *supra*), it lies on the defendant to prove an adverse possession for twelve years in order to establish his defence under this article. (See I. L. R., 10 Calc., 374, 379.) As to the question of *onus* in cases under art. 144, see pp. 129, 130, *supra*.

Part IX.—Thirty years.

Description of suit.	Period of limitation.	Time from which period begins to run.
145.—Against a depositary or pawnee to recover moveable property deposited or pawned.	Thirty years ...	The date of the deposit or pawn.

No. 145. (No. 147, Act IX; sec. 1, cl. 15, Act XIV.)

Before 1862, suits against depositaries or mortgagees for recovery of property deposited or mortgaged, were not barred by any limitation. (See. pp. 51, 52, *supra*, and p. 632, *infra*.)

As to *acknowledgments* of the title of the depositor or pawner or of his right of redemption, see sec. 19, and pp. 273, 274, and 277, *supra*.

A *depositary* is a person holding possession of moveable property originally delivered to him to be kept for the owner. A *pawnee* is a person to whom such property is delivered in pledge as security for a debt.

Suits for *money* deposited under an agreement that it shall be payable on demand are governed by art. 60. Article 145 applies to deposits recoverable *in specie*. (16 W. R., 164 (note); 25 W. R., 415.) The balance of monies paid to the Collector, to meet uncertain sums due for Government revenue, subject to an adjustment when the share of the revenue for which the plaintiff is responsible shall be ascertained, is not a deposit, and the Collector in such a case is not a depositary. (Gobind *v.* Collector, 11 W. R., 491.)

Part IX.—Thirty years.

A suit against a person other than the depositary or pawnee is not governed by this article. A suit against a person who has bought the property from the depositary or pawnee is governed by art. 133. ARTS. 146, 147.

Time runs from the date of the deposit or pawn, not from the date when the property is to be returned or the debt to be paid. (See. p. 258, *supra.*)

Description of suit.	Period of limitation.	Time from which period begins to run.
146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Thirty years ...	When any part of the principal or interest was last paid on account of the mortgage-debt.

No. 146. (No. 149. Act IX; sec. 6, Act XIV.)

See the notes to art. 135 which provides for similar suits in the Mofussil. The suit under this article must be brought against the original *mortgagor* or some other person who claims the right of redemption. Art. 135 does not *expressly* state *against whom* the suit under that article must be brought.

Under Act XIV, the period of limitation was 12 years, under Act IX, it was 60 years, under this Act it is 30 years. The provisions of this article are explained in 16 W. R., P. C., 33, and I. L. R., 4 Calc., 283. See p. 323, note 9, *supra.*

The 12 years' limitation will apply where there has been *no* payment on account of the mortgage-debt. (Ramchunder *v.* Juggutmonmohinee, I. L. R., 4 Calc., 283.)

This article does not apply when the defendant is a person *other* than the mortgagor. A person who represents the mortgagor and merely claims the equity of redemption is, of course, bound by this article. In England under 7 Will. and 1 Vict., C. 28, even where a *third* party is in possession, payment of interest by the mortgagor saves the mortgagee's suit for possession. (See. p. 163, *supra.*)

Part X.—Sixty years.

Description of suit.	Period of limitation.	Time from which period begins to run.
147.—By a mortgagee for foreclosure or sale.	Sixty years ...	When the money secured by the mortgage becomes due.

No. 147.

Before the Transfer of Property Act, 1882, the mortgagee, under the Bengal Regulations, had to *apply* to the District Judge to issue a notice of foreclosure on the mortgagor or his representatives, and if the mortgage-debt was not paid off within a year of the service of such notice, the mortgage was foreclosed. There was no limitation applicable to such an *application.* (22 W. R. p. 94.)

A *suit* to foreclose an English mortgage or an equitable mortgage, in a court established by Royal Charter, was under Act XIV of 1859 governed by sec. 1, cl. 12. (See I. L. R., 3 Bomb., 312, 331.) Under

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

Part X.—Sixty years.

ART. 148. Act IX, such a suit might be treated as a suit for the enforcement of a charge under art. 132 or as a suit for possession of mortgaged property under art. 149. (Ganput *v.* Adarji, I. L. R., 3 Bomb., 312, 331.)

According to the Calcutta High Court, the 12 years' rule applied to a suit for foreclosure under Act XIV and Act IX. (Ramchunder *v.* Juggutmonmohinee, I. L. R., 4 Calc., 283, 302, 303.)

As the right to foreclose is, in the absence of any stipulation, co-extensive with the right to redeem, the *same* period of limitation should be prescribed for suits for foreclosure and suits for redemption. Act XV expressly allows 60 years in both cases.

As to whether a suit by a simple mortgagee to enforce the payment of the mortgage-money by a sale of the mortgaged property is governed by this article or by art. 132, see I. L. R., 6 All., 551, F. B., and the notes to art. 132. As to what mortgagees are entitled to sue for foreclosure or sale, see notes to art. 132. If the mortgaged property is in the possession of a person who claims to hold the property as his absolute property, *adversely* to the mortgagor and mortgagee, the mortgagee's suit will be governed by art. 144. (See. 16 W. R., P. C., 19; I. L. R., 2 Mad., 226.) A suit against such a person is not a suit for *foreclosure* of the mortgage, but a suit for possession of the property. (Compare Manly *v.* Patterson, I. L. R., 7 Calc., 394.) As to the effect of a foreclosure, see p. 621.

Description of suit.	Period of limitation.	Time from which period begins to run.
148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	Sixty years	... When the right to redeem or to recover possession accrues. Provided that all claims to redeem, arising under instruments of mortgage of immoveable property situate in British Burmah, which have been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that province immediately before the same day.

No. 148. (No. 148, Act IX; sec. 1, cl. 15, Act XIV.)

See notes to art. 145.

Before the enactment of cl. 15, sec. 1, Act XIV of 1859, there was no limitation to suits for the redemption of mortgages. (See Daia *v.* Sarfraz, I. L. R., 1 All., 425, 427.) But if a *bonâ fide possessor* held the property for the prescribed period, the mortgagor could not recover the property from *him*. (See pp. 52 and 57, *supra*.)

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

Part X.—Sixty years.

ART. 149.

For suits against a mortgagee of immoveable property for the recovery of the same, Act XIV of 1859 prescribed a limitation of 60 years from the time of mortgage. A suit even against a *usufructuary* mortgagee was barred after 60 years from the date of the mortgage. (See p. 189, *supra*.) A suit by a *simple* mortgagor to *redeem* the mortgage was not governed by this provision.

Act IX of 1871 re-enacted the same rule in very nearly the same words with a proviso in favor of certain mortgages in British Burmah. Act XV of 1877 speaks of suits for *redemption* as well as of suits to *recover* possession of immoveable property mortgaged. And the period of 60 years, under this Act, runs, *not* from the *date* of the mortgage, but from the time when the right to redeem or to recover possession accrues. As to when this right accrues, see secs. 60 and 62 of the Transfer of Property Act. Even where the mortgage-money is "repayable *within* 10 years," the right to foreclose, and consequently the right to redeem, does not accrue until after the *expiry* of 10 years. (Vadjee *v.* Vadjee, I. L. R., 5 Bomb., 22.) A written acknowledgment of the right of the mortgagor gives a fresh start under sec. 19. (See pp. 273-277, *supra*.)

This article applies so long as the relation of the parties is not changed by foreclosure. If the right of redemption is extinguished by foreclosure, the mortgagor's suit is *not* a suit for *redemption* or for recovery of property *mortgaged*. (See Lotf Hossein *v.* Abdool Ali, 8 W. R., 476; *Bromhomoyi* v. *Jugobundhoo*, 7 C. L. R., 583, 589.) The same remarks might apply to cases where the mortgage-debt has been *paid off* by the usufruct or otherwise. But see Baboo Lall *v.* Jamal (9 W. R., 187, F. B.)

The mere assertion of an *adverse* title by a *mortgagee* in possession does not enable him to abbreviate the period of 60 years. (I. L. R., 1 All., 655.)

Art. 148 applies to suits against a *mortgagee* or against persons *claiming under* the mortgagee, except purchasers for value (art. 134), but it does not apply to suits against *strangers*, nor to suits which are not suits for redemption or for recovery of property mortgaged. (Ammu *v.* Ramkrishna, I. L. R., 2 Mad., 226. But see 12 Bomb., 180.) If the owner of the right of redemption of *part* of an estate under mortgage pays the *whole* debt and redeems the *whole* mortgage, he thereby puts himself in the place of the *mortgagee* and holds the *other* parts of the estate as a security for the surplus payment he may have been obliged to make. (Asansab *v.* Vamana, I. L. R., 2 Mad., 223.) A suit by the *other owners* of the equity of redemption for recovery of their shares of the property will, in this view, be governed by the 60 years' rule under art. 148. (See p. 162 note, *supra*.) The possession of the redeeming mortgagor is not adverse to his co-mortgagors until the date of redemption, and the latter will have, *at least*, 12 years to recover their shares under art. 144. (See I. L. R., 3 All., 24, F. B.; I. L. R., 7 Mad., 26.)

As to when possession becomes adverse in cases of mortgage, see pp. 160-164, *supra*, and notes to arts. 135, 144, 146, and 147.

As to whether the right to officiate as priest at the funeral ceremonies of Hindus in a particular mouza is *immoveable* property within the meaning of this article, see 13 C. L. R., 263, and pp. 177, 202 (notes), *supra*.

Description of suit.	Period of limitation.	Time from which period begins to run.
149.—Any suit by or on behalf of the Secretary of State for India in Council.	Sixty years ...	When the period of limitation would begin to run under this Act against a like suit by a private person.

ACT XV OF 1877.

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

Part X.—Sixty years.

ART. 149. No. 149. (No. 150. Act IX; sec. 17, Act XIV.)

As to the old law on the subject, see pp. 51, 64, and 69, *supra*. Beng. Reg. II of 1805 allowed 60 years to suits *by or on behalf of Government* for any *public* rights or claims whatever, in the mofussil of the Presidency of Bengal. Sec. 17, Act XIV of 1859, left the law on this subject unaffected by its provisions. Reg. II of 1805 was repealed by Act VIII of 1868. (See the note to sec. 17, Act XIV of 1859.) Act IX of 1871 prescribed 60 years' limitation to suits *in the name* of the Secretary of State for India in Council. Act XV of 1877 prescribes the same period for suits *by or on behalf* of the Secretary of State for India in Council.

Under Beng. Reg. II of 1805 it was necessary to consider whether the suit was in respect of a *public* right. The recovery of costs incurred by Government in the character of agents was not a *public* right. (Government *v.* Shurrafoonnissa, 3 W. R., P. C., 31.) Under Reg. II of 1805, sixty years was fixed as the *absolute* limit beyond which neither fraud nor any other special allegation gave the Government a cause of action. (Bromanund *v.* The Government, 5 W. R., 136.) It is otherwise under Acts IX and XV.

As to actions and contracts by the Secretary of State, see secs. 65, 68 of 21 and 22 Vict., chap. 106.

Applications for execution of decrees by or on behalf of Government are, it has been held, governed by the ordinary rule applicable to private suitors. (See Construction No. 1348; Cal. Sud. Dew. Rep. for 1854, p. 426; The Collector *v.* Sheehury, 22 W. R., 512; Appaya *v.* The Collector, I. L. R., 4 Mad., 155.) It is true that in Shamee Mahomed *v.* Moonshee Mahomed (11 W. R., 67), Norman and Jackson, JJ., held, that the right of Government to the value of the stamp duty which had been remitted in respect of a *pauper* suit was a public right within the meaning of Reg. II of 1805, and that the Crown not having been named in sec. 20, Act XIV of 1859, was not barred by the 3 years' limitation provided for in that section. But under Act IX of 1871, it was held that, as regards the question of limitation, so far as *appeals* and *applications* were concerned, the Legislature made *no* difference between Government and its subjects. (Venubai *v.* The Collector, I. L. R., 7 Bomb., 552, note.)

It has not yet been finally decided by all the High Courts that the maxim *Nullum tempus occurrit regi* (no time affects the Crown) applies to this country. The maxim could hardly have applied to the East India Company, and so far as the Secretary of State in Council, under 21 and 22 Vict., c. 107, stands in the place of the old Company, it may be doubted if the maxim applies even to him. (See I. L. R., 4 Mad., 155; I. L. R., 7 Bomb., 542, 545. Cf. pp. 199 and 431, *supra*.)

But as Act XV contains express provisions prescribing limitation to the Government for the institution of suits (art. 149) and the presentation of criminal appeals (art. 157), it may be *inferred* that the Legislature contemplated that the Crown should enjoy a privilege to the extent expressed and no further—*expressum facit cessare tacitum*. (Appaya *v.* The Collector, I. L. R., 4 Mad., 155.) It may be observed, however, that the *third division* of the second schedule of Act XV, which relates to *applications*, does *not* make *any* express provision as regards applications by *Government*. (See pp. 431 and 432, *supra*, as to the effect of naming the Crown in one part of a statute and not naming it in another.)

Where the Mahomedan Government had made an endowment for pious and beneficial purposes, and the plaintiff, upon his appointment as *mutwallee* or superintendent of the endowment, sued to recover possession of property belonging to the endowment, it was held that, under

Part X.—Sixty years.

Beng. Reg. XIX of 1810, the *mutwallee* was the *agent of Government* for performing its duty of protecting the endowment from misapplication, and that the suit fell within the 60 years' rule under Reg. II of 1805. (Jewan Dass *v.* Shah Kubeerooddin, 6 W. R., P. C., 3.) As the Government has now divested itself of the management of religious endowments and as the provisions of Reg. XIX of 1810 have been modified, the *ordinary* rules of limitation are now applicable to suits by *mutwallees*. (Shaik Laul *v.* Lalla Brij, 17 W. R., 430.)

Where the Government has no title to intervene in a contest between two private owners, it can not, by improperly making common cause with the plaintiff, extend the period of limitation to sixty years. (Gunga Govind *v.* The Collector, 7 W. R., P. C., 21.) But where a *ghatwallee* mehal was attempted to be converted into a *mal* mehal by the collusion of the zemindar and the former *ghatwal*, the Government, it was held, could *properly* make common cause with a succeeding ghatwal for the recovery of the *ghatwallee* lands. The 60 years' limitation was applied in this case. (Petumber *v.* Juggurnath, 18 W. R., 130. see also 5 W. R., 136.) But compare the remarks of Markby, J., in Erskine *v.* The Government, 8 W. R., 232, 238.)

It has been held that a private person, by the mere fact of his purchasing a *khas mehal* from Government, does not get 60 years within which to bring his suit for recovery of lands belonging to such mehal, and that such a purchaser is bound by the ordinary rule of limitation. (Boondi Roy *v.* Pundit Bunsee, 24 W. R., 64.) Where the plaintiff, as lessee under a Government settlement, claimed certain lands of which the defendant, another lessee of Government, had held possession for more than 12 years, it was held that the plaintiff was not entitled to the extended limitation under Reg. II of 1805. (Assoo *v.* Rajoo, 10 W. R., 76.)

In England, the privilege of the Crown has, in some cases at least, been extended to a grantee or lessee of the Crown. (Doe *v.* Roberts, 13 Mee. and W., 520; Lee *v.* Norris, Cro. Eliz., 331; Banning, 251; Brown, 94.) Where the Crown takes as assignee the rights of a subject, through a forfeiture or otherwise, there is more difficulty in the question. (See Brown, 543; Banning, 252.) In British India, *any* suit brought *by* or *on behalf* of the Secretary of State for India in Council is governed by the 60 years rule. But the Court has to consider whether or not the right of the subject was *barred or extinguished* at the date of the assignment. If the right was not barred or extinguished on that date, art. 149 will give the Secretary of State an extended period.

SECOND DIVISION: APPEALS.

Secs. 4, 5, 6 and 12 apply to *appeals* as well as to suits and applications.

An *application* for leave to appeal as a pauper (sec. 592, Civil Procedure Code), or an application for the admission of an appeal to Her Majesty in Council (sec. 598, *ibid*), is *not* an *appeal*. Such applications are provided for by arts. 170 and 177. It may be mentioned here that the words "A High Court" include the highest civil court of appeal in any province of British India. The Chief Court of the Punjab and the Court of the Judicial Commissioner of Burmah are High Courts. (See Act I of 1868.)

Description of appeal.	Period of limitation.	Time from which period begins to run.
150.—Under the Code of Criminal Procedure from a sentence of death passed by a Sessions Judge.	Seven days ...	The date of the sentence.

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

	Description of appeal.	Period of limitation.	Time from which period begins to run.
ARTS. 151, 152, 153, 154, & 155.	151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras and Bombay* in the exercise of its original jurisdiction.	Twenty days ...	The date of the decree or order.

As to appeals from original decrees of the Punjab Chief Court, see Act XVII of 1877, secs. 17 and 18.

"The date of the decree."—As the decree is to bear date the day on which the judgment is pronounced, the appeal must be filed within 20 days from the day on which the *judgment* is pronounced. So long as the Legislature does not alter the law, this rule applies even when the decree is not drawn up and signed until after 20 days have expired from the delivery of the judgment. If the party against whom judgment is given applies for a copy of the decree before these 20 days expire, his appeal may be saved by the provisions of sec. 12. (Rainey *v.* Broughton, I. L. R., 10 Calc., 652.)

152.—Under the Code of Civil Procedure, to the Court of a District Judge.	Thirty days ...	The date of the decree or order appealed against.

Any order made upon an application for a review of judgment (*except* an order *rejecting* the application) becomes, if it in any way modifies or alters the original order (although the modification or alteration extends only to the rectification of a clerical mistake), the final order in the case. The party aggrieved by the original decree is entitled (although the modification or alteration was made in his *favor*) to treat the order upon review of judgment as the final decree or order in the case, and may appeal within thirty days from its date. (Joy Kissen *v.* Ataoor, I. L. R., 6 Calc., 22.) The same rule applies if an application for review of judgment is granted, but on review the original decree is ultimately *upheld*.

153.—Under the same Code, section 601, to a High Court.	Thirty days ...	The date of the order refusing the certificate.

This appeal is from an order refusing to certify that a final decree passed by a court *other* than a High Court is such that it may be appealed to Her Majesty in Council.

154.—Under the Code of Criminal Procedure, to any court other than a High Court.	Thirty days ...	The date of the sentence or order appealed against.
155.—Under the same Code, to a High Court, except in the cases provided for by No. 150 and No. 157.	Sixty days ...	Ditto.

---

* The words "or the Chief Court of the Punjab" are inserted after "Bombay" by Act XVII of 1877, sec. 12.

SECOND SCHEDULE—SECOND DIVISION: APPEALS—*(contd.)*

Description of appeal.	Period of limitation.	Time from which period begins to run.
156.—Under the Code of Civil Procedure, to a High Court, except in the cases provided for by No. 151 and No. 153.	Ninety days ...	The date of the decree or order appealed against.

A second appeal to the Judicial Commissioner of British Burmah under secs. 27 and 34 of the Burmah Courts Act was not intended to be governed by this article. (Mahomed *v.* Inodeen, I. L. R., 10 Calc., 946.)

157.—Under the Code of Criminal Procedure, from a judgment of acquittal.	Six months ...	The date of the judgment appealed against.

For the old law on the subject, see sec. 272, Act X of 1872, sec. 23, Act XI of 1874, and Empress *v.* Jyadulla, I. L. R., 2 Calc., 76.

THIRD DIVISION: APPLICATIONS.

Secs. 7—9, 14, 17—19 of the Act apply to *applications* as well as to suits. Secs. 4, 5, 6 and 12 apply to *applications* as well as to *suits* and *appeals*.

Description of application.	Period of limitation.	Time from which period begins to run.
158.—Under the Code of Civil Procedure, to set aside an award.	Ten days ...	When the award is submitted to the Court.

Chap. 37 of the Code of Civil Procedure is referred to here. Under sec. 522 of the Code, if no application is made within the prescribed period to set aside the award of arbitrators (to whom any matter in dispute between the parties to a suit has been referred by the Court), the Court is bound to give judgment according to the award, provided it sees no cause to remit the award for the reconsideration of the arbitrators. As to the computation of the period, see sec. 12, last para.

159.—For leave to appear and defend a suit under Chapter XXXIX of the Code of Civil Procedure.	Ten days ...	When the summons is served.

Chap. 39 of the Code refers to *summary* procedure on Negotiable Instruments. See sec. 533 of the Code.

160.—For an order under section 629 of the same Code, restoring to the file a rejected application for review.	Fifteen days ...	When the application for review is rejected.
161.—*For the issue of a notice under section 258 of the same Code, to show cause why the payment or adjustment therein mentioned should not be recorded as certified.	Twenty days ...	When the payment or adjustment is made.

* Originally this stood as follows: "For an order under section 258 of the same Code compelling a decree-holder to certify payment or adjustment." The amendment was made by Act XII of 1879.

ACT XV OF 1877. SECOND SCHEDULE—THIRD DIVISION: APPLICATIONS—(*contd.*)

ARTS. 162—65.

The payment out of court of money payable under a decree, or the adjustment of a decree in whole or in part, is required to be certified by the decree-holder to the court whose duty it is to execute the decree. If, on the application of the judgment-debtor, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the court records the same.

Description of application.	Period of limitation.	Time from which period begins to run.
162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras and Bombay* in the exercise of its original jurisdiction.	Twenty days ...	The date of the decree or order.

See sec. 623 of the Civil Procedure Code. Compare No. 173, which applies to applications for reviews of judgments of the Mofussil Courts and of the High Court in the exercise of its appellate jurisdiction.

Arts. 162—164, arts. 166—170, arts. 172 and 173, arts. 175, 177 and 180 do not *in terms* refer to the Code of Civil Procedure.

163.—By a plaintiff, for an order to set aside a dismissal by default.	Thirty days ...	The date of the dismissal.

See sec. 103 of the Civil Procedure Code, and compare art. 168.

164.—By a defendant, for an order to set aside a judgment *ex parte*.	Thirty days ...	The date of executing any process for enforcing the judgment.

See sec. 108 of the Civil Procedure Code, and compare art. 169. Under this article, time does not begin to run until sometime *after* the accrual of the right to apply. The defendant has a right to apply to set aside an *ex parte* judgment, even though *no* attempt has been made to *enforce* the judgment.

A notice to show cause why the decree should not be executed, under sec. 248 of the Procedure Code, is not a "process for enforcing the judgment." A legal process of attachment or arrest must be formally executed before time begins to run against the applicant. (Poorno *v.* Prossuno, I. L. R., 2 Calc., 123.) The Court may *presume* that the process of attachment was *regularly* executed. The date of executing the *first* process sets time running against the applicant, even if he is not aware of it. (Bhoobunessury *v.* Jadobendro, I. L. R., 9 Calc., 869.) The service of a precept or injunction on the defendant in pursuance of the judgment or order may be sufficient. (Sunraj *v.* Ambika, I. L. R., 6 All., 144.)

165.—Under the Code of Civil Procedure, by a person dispossessed of immoveable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Thirty days ...	The date of the dispossession.

* The words "or the Chief Court of the Punjab" are inserted after "Bombay" by Act XVII of 1877, sec. 18.

The application of the *decree-holder* or the *execution-purchaser* who is resisted or obstructed, is governed by secs. 328, 334, and 335 of the Civil Procedure Code, and art. 167 of this Act.

After delivery of *formal* possession by the Court, the decree-holder or auction-purchaser *may*, if necessary, bring a *regular* suit for possession against the *judgment-debtor*. (See Shama Churn *v.* Madhub, I. L. R., 11 Calc., 93.)

Under this article, the application is *against* the decree-holder or the purchaser. See secs. 332 and 335 of the Civil Procedure Code. An order passed on an application under this article may be questioned in a *regular suit* to establish the right of the party against whom the order is given. Where the suit has reference to an order under sec. 335 of the Procedure Code, art 11 applies. Where, however, the suit has reference to an order under sec. 332 of the Code, the *ordinary* rule of limitation applies. (Ayyasami *v.* Sawiya, I. L. R., 8 Mad., 82.)

If *no* application is made under sec. 332 or sec. 335, the party dispossessed has the ordinary period of twelve years to bring his *suit*. (See Protab *v.* Brojolall, 7 W. R., 253, F. B.; Kishen Sunder *v.* Fukeerooddeen, W. R., Gap No., p. 61.)

Art. 165 refers mainly, if not entirely, to applications by *third* parties. But in Mahomed *v.* Kokil (I. L. R., 7 Calc., 91), this article was considered to be applicable to applications by the *judgment-debtor*.

Description of application.	Period of limitation.	Time from which period begins to run.
166.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale, *or on the ground that the decree-holder has purchased without the permission of the Court.**	Thirty days ...	The date of the sale.
See secs. 294 and 311, Civil Procedure Code.		
167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree, or of dispossession in the delivery of possession to the decree-holder or the purchaser of such property.	Thirty days ...	The date of the resistance, obstruction or dispossession.

See secs. 328, 334, and 335 of Civ. Pro. Code, and notes to art. 165.

The *first* portion of art. 167 refers to applications *by* the decree-holder or the execution-purchaser. Arts. 165 & 167 partially overlap each other.

Sec. 328 of the Civil Procedure Code, which was passed *after* Act XV of 1877 came into operation, enacts that the *decree-holder* may, in case of obstruction, complain to the Court at any time within *one month*. Sec. 334 extends the provisions of sec. 328 to cases where the *judgment-*

* The words in italics have been added by Act XII of 1879.