modern statutes of limitation. But the real policy and purpose of these laws (the quieting of disputes about titles and other matters of right, for the public good) would be defeated, if there was to be a further enquiry as to whether there had been acquiescence on the part of the right-holder.[2] Whatever the theory may be, their true foundation, in point of fact, is *public utility and convenience*.[3]

The true foundation of prescription, public utility and convenience.

It is often maintained that the lapse of the prescribed period raises a presumption that the claim is satisfied or released.[4] But it must be admitted that a statute of limitation is not designed merely to raise such a presumption, and that the presumption of satisfaction is not a correct theory for the administra-

The theory of satisfaction or release.

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[2] See note 1, *ante*, p. 34.

[3] See the judgments of the Lord Chancellor and of Lord Blackburn and the opinion of Field, J., in Dalton *v.* Angus (1881), 6 App., Cas. 740. At page 756, Field, J., says,—that "the foundation of a right upon mere long uninterrupted possession, as a matter of public convenience, is of very general application. Statutes of Limitation have no other origin, and it is upon this principle that Story, J., in Tyler *v.* Wilkinson, puts rights of this kind," (prescriptive rights). In an earlier case, Adnam *v.* Sandwich (1877), Q. B. Div., p. 485, Field, J., refers to the *theory* of these statutes in the following terms: "They all rest upon the broad and intelligible principle that persons who have at some anterior time been rightfully entitled to land or other property or money, have, by default and neglect on their part to assert their rights, slept upon them for so long a time as to render it inequitable that they should be entitled to disturb a lengthened enjoyment or immunity to which they have in some sense been tacit parties." The learned Judge considered this theory of laches, in construing an *ambiguous* law of limitation, and held that it was not intended by the Legislature to apply to a case where the rightful owner had been guilty of no neglect or default. The language of the law in that case was fairly open to the construction put upon it.

[4] Pothier, Lord Kames and others put forward this theory, but even these authorities do not hold that the statute affords positive presumptions of payment and extinction of contracts. See Angell, s. 66, note.

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tion of such a law, specially where it does not extinguish the right, but simply bars the remedy.[5]

Different laws in different countries, and in different times.

Although the reasons of public policy and other subsidiary reasons adverted to above are of general application, they do not lead to the enactment of the same laws of limitation and prescription in every age and in every country. The length of time required by such laws, the manner and extent of their operation, the exceptions to them, and the events from which the time begins to run, vary not only according to the nature of the rights affected, but also according to the circumstances and necessities of each particular state.[6] One of the most important of these circumstances is the state of the commerce and trade of the country. The progress of commerce leads to the multiplication of contracts, and the frequency of intercourse between man and man, and thus enlarges the field of dispute and litigation. To check this litigation, rules of limitation

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[5] See the remarks of Justice Wayne in Townsend *v.* Jemison. Angell, s. 66, note. Justice Holloway, in Valia *v.* Vira (I. L. R., 1 Mad., 228, 231), says, that Savigny and Lord Coke supposed, "perhaps erroneously," that such statutes are based on the presumption of discharge. As regards immoveable property, M. Melvill, J., says:—"The principle upon which Statutes of Limitation rest is not so much that long adverse possession creates a presumption of title (for the law could hardly treat such a presumption as irrebuttable); but, rather, that it would be unfair to call upon a defendant to defend his title when, through lapse of time, his muniments of title would be likely to have been lost."—Chhagonial *v.* Bapubhai, I. L. R., 5 Bom., 68, 72.

But even where the statute does not apply, the *fact* of payment or satisfaction may, of course, be presumed from lapse of time or other circumstances which render the *fact probable*.—Angell, s. 93.

[6] See Angell, s. 22.

In this view Statutes of Limitation may be regarded as "rule of *domestic* policy."—Westlake, p 254.

more or less stringent are rendered necessary. But until this necessity arises, the Legislature does not ordinarily interfere. Thus, there was no statute limiting actions *ex contractu* or *ex delicto* in England, until the reign of James I, and the ancient Hindus, who were by no means a commercial people, had no such law at all.

The principle on which the length of the period of prescription is determined.

Another circumstance is the state of knowledge in the country and the character of the administration of justice. Where the people are ignorant, and where suits cannot be carried on except at great sacrifice of time and money, longer periods of limitation are allowable. But as knowledge is diffused and the administration of justice becomes regular and pure, the periods of limitation are safely abridged.[7] The periods should be so fixed as "to leave to the owners of things, and to those who pretend to any rights," ample time to recover them, and yet not to countenance claims which have been long dormant.[8]

According to Vattel the law of limitation and prescription is a part of the law of Nature and the voluntary law of nations.

It has been maintained by Puffendorf, Wolfius, and Vattel that the doctrine of limitation and prescription is derived from the law of Nature. M. De Vattel observes, that although Nature has not herself established an exclusive right of property over

[7] The First Report of the English Real Property Commissioners.

[8] *Ibid*; and Domat, Bk. III, tit. 7, s. 4. The facilities for *recovering* debts in England being greater than in India, the shorter limitation of three years to actions of debt here is open to objection. See Mr. Stoke's speech in the Legislative Council, 19th July 1877. But the fact that written evidence is more liable to destruction in this country is one reason why our periods of limitation are shorter.—*Ibid*.

The periods of limitation applicable to bills of exchange and other mercantile contracts should, if possible, be the same in all countries which are closely connected with each other by commerce.

See Statement of Objects and Reasons of Sir J. Colvile's Limitation Bill.

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things, she approves of its establishment for the peace, the safety, and the advantage of human society. And as the absence of some limit to the assertion of rights apparently abandoned is calculated to introduce disorder into society, Nature approves of the institution of property on condition that every proprietor should take care of his property and make known his rights, so that others may not be led into error ; and she lays down that every person who, for a long time, without just reason, neglects his right, should be presumed to have entirely renounced it. It is true that the law of Nature alone cannot determine the *number* of years required to found a prescription, but this notwithstanding, the principle of prescription is founded in the law of Nature and is a part of the universal voluntary law of nations.[9] Others[10] maintain that, as the institution of property supposes the existence of civil society and civil Government, prescription which is a corollary of property must necessarily rest on civil and positive law. It is not denied by these authorities that the utility of the doctrine has caused its adoption, to a

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[9] Vattel's Law of Nature, Bk. II, chap. xi.

The necessary and the voluntary law of nations (as distinguished from the customary and the conventional law of nations) are both established by nature, but each in a different manner; the former as a sacred law, which nations and sovereigns are bound to respect and follow in all their actions ; the latter, as a rule, which the general welfare and safety induce them to admit in their transactions with each other. The voluntary law is the uniform practice of nations in general.

[10] See Brown on Limitation, Bk. I, chap. i, s. 1.

Grotius favors the opinion that prescription is established by municipal law, though he is sometimes quoted as upholding the opposite view. Lord Coke observed that the limitation of actions was by force of divers Acts of Parliament. Co. Litt. 115.

greater or less extent, by most civilized nations. Lord Stair, in his Institutions treating of the law of Scotland, says: "Prescription, although it be by positive law, founded upon utility more than upon equity, the introduction whereof the Romans ascribed to themselves, yet hath it been since received by most nations, but not so as to be counted amongst the laws of nations, because it is not the same, but different in diverse nations as to the matter, manner, and time of it."[1]

According to Lord Stair, it is a Positive law.

The great jurist Thibaut considers the law of limitation and prescription to be a singular, or special and arbitrary law, and he accordingly places it under the head of *jus singulare*,[2] as opposed to *jus commune*, which is common to all societies and conformable to natural legal principles.

According to Thibaut, it is *jus singulare*.

Modern jurists divide the municipal or positive law of every political community or nation into two kinds: 1st, Natural; 2nd, Positive.[3] Natural laws are those which are common to all political societies, and being palpably useful have their counterpart in the shape of moral rules, even in natural societies which have not ascended from the savage

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[1] See this passage quoted in Montriou's Institutes of Jurisprudence, p. 178: and in Dalton *v.* Angus, 6 App. Cas., p. 818.

"Matter"—whether it applies to all things and rights, or only to some things and some rights.

"Manner"—whether it operates negatively only or positively also.

"Time"—whether the prescriptive period is 12 years or more or less.

[2] Lindley's Thibaut, pp. 30 and 175.

It should be observed that laws creating *privilegia* are sometimes called *jus singulare*, but Thibaut does not use the term in that sense.

[3] The expression "positive law" is sometimes used as the name of a genus, and sometimes as the name of a species.

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state. All other laws are merely positive, *i.e.*, of purely human position.[4] According to this classification, laws of limitation and prescription are *positive* laws.

But a "sense of a great good and a great evil" has in all times and places led almost all civilized nations, by perfectly distinct paths, to the adoption of the doctrine of prescription, which though "arbitrary in its term, is fixed in its principle."[5] It must be admitted, however, seeing that the doctrine is not recognized by the old customs of Scotland and the laws of the Jews and the Mahomedans,[6] that laws of limitation and prescription are not natural laws of universal application. Lord Blackburn, in his judgment in Dalton *v.* Angus (1881), adopts the view put forward by Lord Stair, and holds that such laws are not derived from natural justice, but are positive laws founded on expedience and varying in different countries and at different times.

Lord Blackburn follows Lord Stair.

Laws of limitation and prescription are often classed as a department of Public Law. They are introduced mainly for the public good, and are simply imperative or absolutely binding. The Legislature determines absolutely what shall be the effect of the lapse of a certain time under certain circumstances, whether the parties concerned provide otherwise or

The law of limitation and prescription is public law, as opposed to provisional law.

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[4] Austin's Lectures, Lec. 32. Natural laws are supposed to proceed from the intelligent and rational nature, which directs the universe, and are known to men through a natural reason or an infallible moral sense.

[5] Phillimore's Private Roman Law, p. 125.

[6] Lord Stair's Institutions, Bk. II, tit. 12, s. 9. See 6 App. Cas., p. 818; and Lecture 1st, p. 16, *ante*.

not.[7] Such laws cannot be altered or derogated from by private compacts. *Jus publicum privatorum pactis mutari non potest.*

In the Full Bench case of Kisto Kamal Sing *v.* Hurree Sardar (13 W. R., F. B., 44; S. C., 4 B. L. R., F. B., p. 105) Sir Barnes Peacock, C. J., says: "If a man having a cause of action against another to recover immoveable property or to recover money, or to recover damages for a trespass upon his land or for an assault, should say to that person 'I will not sue you for twenty years' he would not acquire a right to sue after the period of limitation fixed by law. If he binds himself not to sue within a stated period, and does not intend to give up his right to sue at all, he must take care not to bind himself beyond the time within which the law of limitation allows him to sue." "The Legislature must have had some object in limiting the period, and that object cannot be frustrated by any private agreement." So again, an agreement by a person *against* whom a cause of action has arisen, that he would not take advantage of the statute, cannot affect its operation on the original cause of action,[8] unless indeed such agree-

[7] In this sense public or prohibitive law is opposed to dispositive or provisional law. The expression "public law" is extremely ambiguous. See Austin's Jurisprudence by Campbell, Vol. II, pp. 780-82. For instances of "provisional law," see ss. 230 and 253 of the Indian Contract Act (No. IX of 1872), and ss. 106 and 305 of the Indian Succession Act (No. X of 1865).

[8] East India Company *v.* Oditchurn Paul, 5 Moo. I. A., 44; and Darby and Bosanquet on the Statutes of Limitation, pp. 56, 57 and 437. According to articles 2220 to 2223 of the Code Napoleon, "prescription cannot be renounced by anticipation," but prescription acquired may be renounced or abandoned if the party is not incapable of making an alienation. See pp. 104, 105, *infra*.

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ment amounts to an acknowledgment of liability which the statute itself recognizes as an exception to the rule.

Laws of prescription and limitation are general private laws, substantive and adjective.

According to Bentham's classification, laws of limitation and prescription are *general* private laws, which are either substantive or adjective.[9] A law of limitation as affecting the form of the remedy, comes under the head of adjective law. A law of prescription as affecting the substance of the right itself comes under the department of substantive law.

Where a particular statute of limitation not only bars the remedy but extinguishes the right, it ceases to be merely adjective law or law which regulates the practice of the forum.[10] It then becomes, in so

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[9] Substantive or material law (as opposed to adjective, formal, instrumental or processual law) is the law which the Courts are established to administer as contradistinguished from the rules of procedure according to which such law is administered. See Austin's Jurisprudence, Vol. II, p. 611. "Private law," according to Bentham, is opposed to political or constitutional law, and "general law" is opposed to the law of personal status.

[10] Krishna Mohun Bose *v.* Okhil Money Dassee, I. L. R., 3 Calc., 331, A.C. See also the remarks of Holloway, J., in Vallia Tamburrati *v.* Vera Rayan, I. L. R., 1 Mad., 228, 234.

It may be here observed that, as regards *immoveable* property, the weight of authority is in favor of the position that even where the law in *terms* limits the suit only, it *in effect* gives the adverse possessor the *property* as well as the possession; and that the question whether the law bars the remedy only, or extinguishes the right, becomes immaterial. Thus, in an action of ejectment brought in the Calcutta Supreme Court to recover some lands in the mofussil of Bengal, although the period of twenty years allowed by the *lex fori* (21st James I, c. 16) had not expired, the Court held, that as the mofussil law (Reg. III of 1793, and Reg. II of 1805) in effect extinguished the right of property after twelve years' adverse possession, the plaintiff, who had been dispossessed for more than twelve years, was not entitled to a decree.—Shib Chunder Dass *v.* Shib Kissen Dass, 1 Boulnois' Reports, p. 70. As regards immoveable property, the *lex loci rei sitæ* is preferred to the *lex fori*. See Story's Conflict of Laws, s. 482, *et seq.*, 581; Westlake's Private International

far as it extinguishes rights, a part of the substantive law of the place. The rule laid down in sec. 28 of the Indian Limitation Act, 1877, is, therefore, a rule of substantive law. But the law of limitation, strictly so called, is always a *lex fori*,—it goes *ad litis ordinationem* and not *ad litis decisionem*; it goes to the remedy, and bars the hearing of the cause; and does not go to the right and determine the merits of the cause.[1]

The law of limitation a *lex fori*.

"It has become almost an axiom in jurisprudence," say their Lordships of the Privy Council in an Indian case, "that a law of limitation is a law relating to procedure having reference only to the *lex fori*."[2] In another case their Lordship say that, in matters of procedure, all mankind, whether aliens or liege subjects, are bound by the law of the forum.[3] The reasons of the rule are thus given by Story in his Conflict of Laws (s. 581): "Courts of law are maintained by every nation for its own convenience and benefit, and

The *lex fori* preferred to foreign law in matters of procedure.

Law, p. 182; Pitt *v.* Dacre, L. R., 3 Ch. Div., 295. *In re* Peat's Trusts (L. R., 7 Eq., 302; 1869), in which the sale-proceeds of certain houses in Calcutta had to be administered in England, it was held by V. C. James, that one of the co-proprietors having been dispossessed of a share of the property for more than twelve years, his claim to such share of the sale-proceeds was barred by cl. 12, s. 1, Act XIV of 1859, which was the *lex loci rei sitæ*. Generally speaking, all suits relating to land are brought in the Court of the place where the land is situate, and the question of preference does not arise. As regards *prescriptive right* to immoveable property, all agree that the *lex loci rei sitæ* must be applied. Opinions, however, differ as to the law which ought to regulate the title to moveables so acquired. But as the title depends on possession, which is a *mere fact*, it is reasonable that the law of the place where this fact occurs should be applied. Woolsey on International Law, 4th Ed., p. 116.

[1] Story's Conflict of Laws, ss. 576, 580.

[2] Ruckmabye *v.* Lulloobhoy, 5 Moo. I. A., 234.

[3] Lopez *v.* Burslew, 4 Moo. P. C. C., 300.

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the nature of the remedies and the time and manner of the proceedings are regulated by its own views of justice and propriety, and fashioned by its own wants and customs." "It is not obliged to depart from its own notions of judical order from mere comity to any foreign nation." Accordingly, where different laws of limitation are established in different countries or in different parts of the same country, and they conflict with each other, the law of the Court or forum in which the suit or proceeding is brought governs the case. The *lex fori* is preferred to the *lex loci contractus* or the *lex loci delicti commissi*. The statute of limitation being a rule of *domestic* policy, it is agreed on all hands that the Courts are justified in declining to enforce an obligation which is barred by the statute, although it may be still enforceable according to some foreign law of limitation.[4]

A foreigner has no right to crowd the tribunals of any independent community with stale claims of his own. There can be no just reason in allowing him higher privileges than are allowed to subjects.[5] And a Native subject to whom a cause of action arises in a foreign country can have no pretence to say that he is entitled to the longer time allowed by the law of the foreign country.

Where the foreign law allows a shorter period, and the action is barred by that law, some jurists (according to whom the bar of the action is a virtual extinc-

[4] See Westlake's Private International Law, p. 254. *Lex fori* is the law of the forum or Court where the suit is brought. *Lex loci contractus* is the law of the place of the contract. *Lex loci delicti commissi* is the law of the place where the tort or *delict* is committed.

[5] Story's Conflict of Laws, s. 576.

tion of the *right*), maintain that such bar ought to be recognized by the Court where the suit is instituted.[6] But in England and the United States of America it has always been a rule, that, in personal actions, limitation strictly affects the remedy and not the right. And unless the foreign law actually *extinguishes* the obligation itself, the English and American Courts refuse to give effect to such law, whether the period allowed by it be shorter[7] or longer[8] than that allowed by their own laws.[9]

The same rule applies whether the foreign law allows a shorter or a longer period.

Story in his Conflict of Laws, s. 582, and Chief Justice Tindal in Huber *v.* Steiner, lay down that a foreign law of limitation may be preferred to the *lex fori* on two conditions:[10] (i) that the foreign law extinguishes the right or obligation itself;[1] and (ii) that both the parties have resided in the country where such law prevails for the whole of the prescribed time. But if the foreign law is so framed as to operate

The conditions on which a foreign law of limitation may be preferred to the *lex fori*.

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[6] See Angell on Limitations, chap. viii, s. 66. Justice Story, before he published his Conflict of Laws, was of this opinion. Mr. Westlake, following Savigny, also appears to take the same view of the matter. See his Private International Law, p. 254. The view taken by the English and American Courts is supported by Vangerow. "Illustrious names are to be found on both sides, Savigny at the head of the one, and Vangerow of the other"—*Per* Holloway, J., in Valia *v.* Vira, quoted above.

[7] Huber *v.* Steiner, 2 Bing., New Cases, 202; and Townsend *v.* Jemison. See Angell on Limitations, chap. viii, s. 66.

[8] British Linen Company *v.* Drummond, 10 B. and C., 903.

[9] Ruckmabye *v.* Lulloobhoy Motichand, 5 Moo. I. A., 234; and Story's Conflict of Laws, s. 577.

[10] Sec. 12 of Act IX of 1871 and sec. 11 of Act XV of 1877 lay down the same rule.

[1] This, however, is not perhaps a frequent case in regard to personal actions. (Banning on Limitation, p. 9.) Even under the Scotch and the French law of prescription as to debts, the right or the obligation is not extinguished, see Don *v.* Lippman and Huber *v.* Steiner.

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upon the case without such residence, the second condition would seem to be inapplicable.[2]

Limitation is not "of the nature of the contract."

In respect of actions *ex contractu* it may be observed, that the limitation of the *remedy* is not a part of the contract, but relates to the breach of it, which it would be contrary to good faith to suppose the parties had in contemplation at the time of entering into it.[3]

Otherwise, when the bar extinguishes the right.

But if the bar extinguishes the right or the obligation itself, it may be taken as an incident of the original contract, and, as such, its validity must be determined even in a foreign forum by the *lex loci contractus*.[4] If the *lex loci contractus* declares the obligation to be a nullity after the lapse of the prescribed period, it may be set up, in any other country to which the parties remove, *by way of extinguishment*.[5]

When the time of the extinguishment of the right itself by the foreign law is shorter than the time of the limitation of the action by the *lex fori*, the validity of the former bar is sufficient to dispose of the case. But where the time allowed by such foreign law is *longer*, the foreign law, as well the *lex fori*, is applicable. The bar to the remedy resulting from the latter, and the extinguishment of the right resulting from the former (the *lex loci contractus*) may both be pleaded on one and the same record.[6]

When the *lex fori* and the *lex loci contractus* are both applicable.

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[2] See Smith's Leading Cases, 8th Ed., Vol. I, p. 699.

[3] See Don *v.* Lippman, 5 Clarke and Finelly, 1, *per* Lord Brougham.

[4] *Per* Colvile, J., in Beerchand Poddar *v.* Romanath Tagore, Taylor and Bell's Reports, p. 131. It is an established principle of international law that the validity, interpretation and obligatory force of contracts must be determined according to the *lex loci contractus* or *solutionis*.

[5] Huber and Steiner, quoted above.

[6] See Beerchand Poddar *v.* Romanath Tagore, quoted above.

If the law of the country in which the suit is instituted, as well as the foreign law, not only bars the remedy but extinguishes the right, the *lex fori* must, so far as it extinguishes the right, yield to the *lex loci contractus* or *solutionis*.

The personal law of the Hindus and Mahomedans yield to the *lex fori*.

The Hindu and Mahomedan laws being *personal* to Hindus and Mahomedans, and foreign to the Courts of British India, the Hindu and Mahomedan rules of limitation, if any, cannot be pleaded by Hindus and Mahomedans in such Courts, even in cases where their own substantive laws are preserved to them by the law of British India. Thus it has been held, that in suits for pre-emption between Mahomedans, it is not necessary to consider whether the Mahomedan law requires the plaint to be filed within a period shorter than that allowed by the Regulations and the Acts.[7] And where the question was whether the *lex fori* of the Calcutta Supreme Court, *viz.*, the Statute 21st James I, which fixed a six years' limit, or the Hindu law which it was alleged prescribed a ten years' limit, should be applied to an action *ex contractu* brought in the Supreme Court by one Hindu against another, it was held that the Statute of James I, was the only applicable bar.[8] It has also been ruled that the law of limitation being a law of

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[7] Mahammed Danesh *v.* Choora Gazee, Cal. Sudr Dewany Adwalat Reports of 1851, p. 29. See also the Reports of 1859, p. 464.

[8] Beerchand Poddar *v.* Romanath Tagore, Taylor and Bell, p. 131. In this case the Court was of opinion that, by Hindu law, there was no limitation to actions on contracts, and that if there was, it did not extinguish the obligation, and therefore did not form a part of the contract, so as to render the Hindu law applicable under s. 17 of the 21st Geo. III, c. 70.

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procedure, in order to see by what computation the time must be reckoned, we must look to the calendar and the mode of computing time, according to the law which regulates the proceedings of the Court by which the suit is tried. In British India, this must be the English calendar, and not the Fuslee or any other native calendar, except where the law expressly otherwise provides.[9]

[9] Maharajah Joy Mungul *v.* Lall Rung Pal, 13 W. R., 183.

LECTURE III.

THE HISTORY OF THE LAW OF LIMITATION AND PRESCRIPTION IN BRITISH INDIA.

(I.) Bengal Mofussil — Plan for the administration of justice, 1772 — Regulation III of 1793 — Regulation II of 1805 — Other laws — (II.) Madras Mofussil — Regulation II of 1802 — (III.) Bombay Mofussil—Regulation I of 1800 — Regulation V of 1827 — The three Codes of Bengal, Madras, and Bombay compared — Non-regulation Provinces — Execution of decrees — (IV.) The Supreme Courts — 21 James I, c. 16; 4 Anne, c. 16 — Act XIV of 1840 — Execution of decrees — The law of the Supreme Courts compared with that of the Mufussil Courts — Draft Limitation Bills, 1841-1855 — Act XIV of 1859 — Act IX 1871 — Extinctive and Positive Prescription partially introduced — Act XV of 1877.

BEFORE Act XIV of 1859 (an Act to provide for the Limitation of Suits) came into operation in 1862, there was one code of laws for the Courts established by royal charter in the Presidency-towns, and a separate code for the Company's Courts in each of the three Presidencies of Bengal, Madras, and Bombay.

I. Bengal mofussil.

When the administration of civil justice in Bengal was first committed to the servants of the East India Company, and Courts of Dewany Adwalat were established, a plan for the administration of justice was proposed by the Committee of Circuit, which was adopted by Government on the 21st August 1772. This document makes the following declaration: "By the Mahomedan law, all claims which have laid

Plan for the administration of justice, 1772.

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dormant for twelve years, whether for land or money, are invalid; this also is the law of the Hindus and the legal practice of the country."[10] This statement does not appear to be correct with respect to the Hindu and Mahomedan laws,[1] though it may have been so with regard to the legal practice of the country; and whether previously established or not, the rule had been in force for upwards of twenty years, when Lord Cornwallis codified the law in 1793.

Reg. III of 1793.

Section 14, Regulation III of 1793, prohibited the zillah and city Courts from hearing, trying, or determining the merits of any suit whatever against any person or persons, if the cause of action accrued previous to the 12th August 1765 (the date of the Company's accession to the Dewany of the Provinces of Bengal, Behar, and Orissa), or if the cause of action arose twelve years before the commencement of any suit on account of it; unless the complainant could shew, by clear and positive proof, (*a*) that he had demanded the money or matters in question, and that the defendant had admitted the truth of the demand or promised to pay the money (within the last twelve years so as to constitute a new ground of action within the limited period); or (*b*) that he had directly preferred his claim within twelve years (after the origin of the cause of action) for the matters in dispute, to a Court of competent jurisdiction to try the demand, and assigned satisfactory reasons to the Court why he had not proceeded in the suit; or (*c*)

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[10] See the Preamble to Reg. II. of 1805.

[1] See pp. 16, 19—27, *supra*.

unless he proved, that either from minority or other good and sufficient cause he had been precluded from obtaining redress. The same prohibitions were extended to the Province of Benares by Sec. 8, Regulation VII of 1795, and to the Ceded Provinces by Sec. 18, Regulation II of 1803, with the substitution of the dates of the Company's acquisition of those provinces for the 12th August 1765.

Reg. II of 1805.

Regulation II of 1805, following the English Nullum Tempus Act (9 Geo. III, c. 16), fixed sixty years as the period of limitation in respect of suits and claims by Government for the recovery of public rights and dues, not being penalties recoverable in the Civil Courts under any law in force. (Secs. 2 and 6.) This Regulation also restricted the limitation of twelve years, in cases of immoveable property, to possession under a just and honest title, and allowed a period of sixty years to claims of right to such property, if the claimant could shew, by sufficient proof, that the person in possession acquired the same by violence, fraud, or by any other unjust and dishonest means, or that the property claimed had been so acquired by any other person from whom the actual occupant derived his title, and was not subsequently held for twelve years under a fair title believed to convey a right of possession and property. (Sec. 3, Regulation III of 1805.)

A period of one year only was allowed to suits for penalties and summary suits for arrears of rent. (Secs. 4 and 6.) It was declared that no length of time would bar the cognizance of suits for the recovery of property mortgaged or deposited, pro-

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vided the party in possession or his predecessor in interest had not held it under a title *bonâ fide* believed to have conveyed a right of property to the possessor. (Sec. 3, cl. 4.) Subject to this declaration, Sec. 3, cl. 3, deprived the Courts of all authority to take cognizance of *any suit whatever* if the cause of action arose sixty years before the institution of the suit; and in Chundrabolee Debi *v.* Lukhi Debi, 5 W. R., P. C., 1, it was held, that this provision modified the *nullum tempus* clause of Regulation XIX of 1793 as to suits for the resumption or assessment of *lakhiraj* holdings created after the 1st December 1790.

Other laws.

Regulation VIII of 1831, Sec. 6, assigned a period of one year to regular suits for contesting the summary awards of the Revenue Authorities in matters connected with arrears or exactions of rent.

Act I of 1845, Sec. 24, and Act XI of 1859, Sec. 33, prescribed a limit of one year to suits to set aside sales for arrears of revenue.

Act XIII of 1848 fixed a period of three years for suits to contest the justice of certain possessory awards made by the Revenue Authorities in the Presidency of Bengal.

II. Madras mofussil. Reg. II of 1802.

Clauses 1, 2 and 3 of Madras Regulation II of 1802, Sec. 18, provided for suits of which the cause of action accrued before the date of the Company's acquisition of the country.

Clause 4 enacted a general law of limitation in the following words: "The Courts of Adwalat are prohibited from hearing, trying, or determining the merits of any suit whatever, against any person or

persons, if the cause of action shall have arisen twelve years before any suit shall have been commenced on account of it, unless the complainant can shew, by clear and positive proof, that he had demanded the money or matter in question, and that the defendant had admitted the truth of the demand, or promised to pay the money, or that he directly preferred his claim within that period, for the matters in dispute, to a Court of competent jurisdiction or *person having authority, whether local or otherwise, for the time being, to hear such complaint*, to try the demand, and shall assign satisfactory reasons to the Court why he did not proceed in the suit, or shall prove that, either from minority or other good and sufficient cause, he was precluded from obtaining redress."

"But from this rule are excepted all claims founded on bonds which shall have been in course of payment by instalments, or of which any proportion shall have been paid within twelve years previous to the institution of the suit; and also all claims on mortgages, the period for rendering which obsolete and unactionable is to be determined by the laws of the country."

The first paragraph of this clause, with the exception of the words italicised, is in the same terms as Sec. 14, Regulation III of 1793. As to the second paragraph it may be observed that it was held by the Calcutta Sudder Court that the operation of Sec. 14, Regulation III of 1793 was also barred by the payment of an instalment on a bond. (Cal. S. D., 1845, p. 193; S. D., 1847, p. 277; S. D., 1849, p. 69; and Macpherson's Civil Procedure.)

Article 13 of the First Regulation of the Governor

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III. Bombay mofussil.

Reg. I of 1800.

of Bombay, confirmed in Council in August 1800, for the institution of a Court of Justice in Surat, was a transcript of Sec. 14 of Bengal Regulation III of 1793, and corresponded to the first paragraph of clause 4, Sec. 18, Madras Regulation II of 1802.

Reg. V of 1827.

Subsequently, Bombay Regulation V of 1827 enacted as follows :—

Section I.—"Whenever lands, houses, hereditary offices or other immoveable property have been held without interruption for a longer period than thirty years, whether by any person as proprietor, or by him and his heirs, or others deriving right from him, such possession shall be received as proof of a sufficient right of property in the same. But it shall be a sufficient answer to the plea of the possession for more than thirty years, that the person in possession as proprietor, or any of the persons by whom he derives his right, acquired such possession by fraudulent means, on proof whereof a suit may be entertained at any period within sixty years.

"Provided that if such property has been held for more than thirty years by a person or persons *bonâ fide* believing his or their title as proprietors to be good, such title shall not be affected by the fraud of a former possessor.

"Nothing contained in this section shall bar an action of damages brought within sixty years against any of the persons by whom the fraud was committed."

Section II.—"In all suits for damages on account of assaults, imprisonments, or other direct insult or injury to the person, it shall be a sufficient defence

that the cause of action arose more than twelve months before the suit was filed.

"And in all suits for damages on account of calumny or slanderous words it shall be a sufficient defence that the plaintiff had been in the knowledge of the calumny or slanderous words more than twelve months before the suit was filed.

"In all suits for recovering the right of participation in caste communications, it shall be a sufficient defence that the plaintiff had been acquainted with his exclusion from the caste more than twelve months before the suit was filed.

Section III.—"In all civil suits for debts not founded upon, or supported by, an acknowledgment in writing, and in all suits for damages other than those specified in the preceding section, it shall be a sufficient defence that the cause of action arose more than six years before the suit was filed."

Section IV.—"In all suits not falling under any of the limitations in the preceding sections of this chapter, it shall be a sufficient defence that the cause of action arose more than twelve years before the suit was filed."

Section VII, Clause I.—"If, however, a defence be rested on any limitation of time hereto specified in this chapter, and the claimant prove that the defendant, or person from whom he derives right, had admitted the justice of the demand, then the time of limitation shall be reckoned from the date of such admission, provided that if the demand be founded on a written acknowledgment of any sort, the admission, if it shall have been made subsequently to

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the date which shall be fixed for the commencement of the operation of this Regulation, must also be in writing."

Clause II.—"Also if the claimant have, within the time of limitation, preferred his claim to any authority (arbitration included) competent to try it, and satisfactory reason be shown why a decision was not passed (such reason no wise affecting the justice of the demand), then the period of limitation shall be reckoned from the date of the last proceeding known to the defendant in such case."

Clause III.—"And in cases of the minority or continued insanity of the claimant no limitation shall bar the recovery of a claim sued for within six years[2] of the minor attaining the age of eighteen years or the insane person recovering the use of reason, and if a claimant die during such minority or insanity, the said period of six years from his death shall be applied to suits entered by his heirs or executors."

Clause IV.—"Except in actions for damages as described in Sec. 2 of this Regulation, in which cases a period of only one year shall be allowed instead of the period of six years recited in the preceding clause."

Section VIII, Clause I.—"If a person claims to recover property held in mortgage, pledge, pawn, or deposit or by other title conferring only a right of

[2] The Agra Sudder Court allowed only a "reasonable" time after the cessation of the disability. The Calcutta Sudder Court allowed the *full* twelve years, if the cause of action first accrued to the plaintiff while he was a minor or a lunatic. (See Calc. S. D., 1855, p. 281.) If a cause of action *devolved* on a person labouring under a disability, the operation of limitation was *suspended*. (See Macpherson's Procedure, App., 198.)

possession, and not a right of ownership, in such case no length of time shall prevent the Court's entertaining the suit."

Clause II.—"But should such property have been held, if immoveable, for more than thirty years, by a *bonâ fide* possessor as proprietor; or, if moveable, for any time by a person possessing *bonâ fide* as proprietor, under a right founded on an equitable consideration, such possessor shall not be disturbed, though an action of damages may be entertained against the person by whom it was illegally alienated."

The three Codes of Bengal, Madras, and Bombay compared.

There was no *special* limitation, by the Regulations of Madras and Bombay, to suits for the recovery of penalties or for the recovery of public rights and dues. Nor was there any *such* limitation by the Regulations of *any* of the Presidencies to suits to set aside the summary decisions of the *Civil* Courts.

Positive prescription was not directly recognized by the codes of Bengal and Madras, but it was partially recognized by Bombay Regulation V of 1827. This Regulation again made lapse of time a sufficient *defence*, while the other Regulations *prohibited the Courts* from hearing, trying, or determining the merits of any suit after the lapse of the fixed period of time. Verbal acknowledgments of liability were sufficient to give a fresh start in all cases in the Bengal and Madras Presidencies, but a written acknowledgment was necessary under Bombay Regulation V of 1827, when the debt was founded on a writing. Then, again, the Madras and Bengal

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Regulations gave the Courts a sort of discretion to extend the period of limitation for any "good and sufficient cause," which precluded the plaintiff from obtaining redress; so that even depositing a document in one Court was in one case held to be a "sufficient cause" for not enforcing a claim under it in another Court.[3] But the Bombay Regulation of 1827 distinctly specified *minority* and *continued insanity* as the only disabilities recognized by it.

The Madras Regulation, and Bombay Regulation I of 1800, fixed one general period of limitation, *viz.*, twelve years, for all sorts of suits, and the Bengal Regulations did the same with some few exceptions. Under the Bombay Regulation of 1827, however, suits for damages on account of injury to the person and reputation, and for the recovery of the privileges of caste, were limited to one year; and suits for debts not founded upon or supported by writings, and for damages other than those above specified, were limited to six years. Suits for the recovery of immoveable property and hereditary offices were barred after thirty years, and all other suits after twelve years. The Bengal Code, as well as the Bombay Code, extended the period of limitation to sixty years in cases where the possession of *immoveable* property had been acquired by *fraudulent* means. The former Code also allowed sixty years in cases of *violence*. There were no such provisions in the Madras Code.

The Madras Regulation and the later Bombay Regulation allowed the plaintiff further time if he pre-

[3] See Special Reports of the Indian Law Commissioners, p. 7 (1841-3.)

ferred his claim to any person having authority, while the Bengal Regulation required that the claim should be preferred to a Court of competent jurisdiction. Thus the Regulation law of limitation of each Presidency differed from that which obtained in the other Presidencies, the difference being most remarkable in the case of Bombay Regulation V of 1827, as compared with the Regulations in the other two Presidencies.

Non-Regulation Provinces.

These Regulations did not apply to the Non-Regulation Provinces. The Punjab Code modified Bengal Regulation III of 1793, Sec. 14, and reduced the limitation of actions of debt or contract, excepting partnership accounts, from twelve to six years. In Oude, certain circular orders of the Judicial Commissioner were in force before Act XIV of 1859 was extended to it by public notification by the Executive Government.[4]

Execution of decrees.

The rule as to applications for the execution of decrees was not expressed in the Regulations, but the twelve years' limitation was adopted in Bengal by analogy to the general law for the trial of suits,[5] and

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[4] See Saligram *v.* Mirza Ali Beg, 10 Moore's I. A., 114; and Shah Mukhun Lall *v.* Nawab Imtiazdulla, 5 W. R., P. C., 18.

[5] See Constructions 3, 136 and 1348, and the case of Juggannath Pershad Sircar decided in 1818. The correctness of these constructions and of the ruling in Juggannath Pershad's case may be questioned, but they were upheld on argument on the principle *stare decisis*. (See the case of Sandes, petitioner, decided by a Full Bench of the Calcutta Sudder Court on the 21st February 1852, at p. 67 of the Reports of that year.) A different rule appears to have obtained in the other Presidencies. By a circular of the Bombay Sudder Court, it was ruled that no decree should be *summarily* executed after the expiration of one year from its date without first calling upon the opposite party to state his objections if he had any to offer; it then rested with the Judge to admit or reject

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such applications might, under slight restrictions, be renewed every twelve years.[6]

IV. The Supreme Courts. 21 James I, c. 16; 4 Anne, c. 16.

The three Supreme Courts in the three Presidency-towns adopted the English law of limitation as contained in 21 James I, c. 16, and 4 Anne, c. 16, and such adoption was recognized by Her Majesty's Privy Council in *The East India Company* v. *Odit Churan Paul* (5 Moore's I. A., 43), and in *Ruckmabye* v. *Lallubhoy Mottichand* (5 Moore's I. A., 234). These statutes provided that actions of debt grounded on any contract without specialty, and actions for torts (except slander), assault and imprisonment, must be brought within six years, and actions of slander within two years after the time when the slander was uttered. The Statute of James I further required an adverse possession of twenty years to bar an action of ejectment.

There was no statutable limitation in England with respect to actions founded on bonds and other specialties, before the 3 and 4 Will. IV, c. 42; but, by analogy to the statute, an artificial presumption of payment or satisfaction at the end of twenty years was applied to such cases.[7]

Infancy, unsoundness of mind, coverture, imprisonment, and absence beyond the territories at the time of the accrual of the cause of action were disabilities which entitled the plaintiff to claim

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those objections, and if no valid objection existed, to direct the execution of the decree. A fresh regular suit was necessary if the objections to the execution were admitted by the Judge. (See the Special Reports of the Indian Law Commissioners, 1843, p. 130.)

[6] Calcutta S. D. Rep., 1858, pp. 1341, 1580.

[7] Darby and Bosanquet, p. 95; Angell, § 93.

exemption from the operation of the Statute of James I. The Statute of Anne introduced a further exception in the case of *defendant's* absence beyond the territories, at the time when the cause of action arose. LECTURE III.

Acknowledgments and payments made by the debtor were treated by the Courts (though not recognized by the statute) as giving the plaintiff a fresh start, on the ground that, from such acts, a promise to pay might be implied. The acknowledgments were subsequently required to be in writing signed by the debtor. (See Act XIV of 1840, extending Lord Tenterden's Act, 9 Geo. IV, c. 14, to India.) Act XIV of 1840.

The 3 and 4 Will. IV, c. 27 (an Act for the limitation of actions and suits relating to real property, and for simplifying the remedies for trying the rights thereto), the 3 and 4 Will. IV, c. 42, providing limitations for actions on specialties, and 2 and 3 Will. IV, c. 71, relating to the acquisition of easements and profits by prescription, were never extended to India, and the Supreme Courts did not administer these laws in the Presidency-towns.

It was held in some cases of contract between Hindus that, under 21 Geo. III, c. 70, s. 17, the Hindu law of limitation, if any, and not the Statute of James I, was applicable in the Supreme Courts.[8] It was, however, subsequently determined by the Calcutta Supreme Court, that the English law of limitation as a part of the *lex fori*, was applicable to all

[8] Krisno Chand Seal *v.* Ramdhone Nundan, 1834, Morton's Reports, p. 345, and other cases in the same Reports.

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classes of suitors in that Court, and that the Statute of George III had reference only to the *substantive* Hindu law of contracts.[9] This question, which had been determined in the same way by the Supreme Court of Bombay, was, in 1852, conclusively settled by the Privy Council in the case of *Ruckmabye* v. *Mattichand* (5 Moore's I. A., 234).

Execution of decrees.

In the Plea Side of the Supreme Courts, writs of execution were required to be sued out within a year and a day after the judgment was entered. But, after the year and day, the claimant was allowed to issue a *scire facias* calling on the defendant to shew cause why execution should not issue. The proceeding was in the nature of a new action to give effect to the old. An award of execution in pursuance of the *scire facias* revived the judgment.[10]

The law of the Supreme Courts compared with that of the Mofussil Courts.

The law of limitation of the Mofussil Courts in each Presidency differed from the English law of limitation which governed the Supreme Courts, not only in the periods of limitation, but in the excep-

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[9] Beer Chand Poddar *v.* Romanath Tagore, Taylor and Bell, p. 231.

[10] See Asutosh Dutt *v.* Durga Charan Chatterjee, I. L. R., 6 Calc., 504; (S. C.) 8 C. L. R., 23. Since the Common Law Procedure Act of 1852 (15 and 16 Vict., c. 76), the period of a year and a day is in England extended to six years, and a writ of revivor is issued in lieu of a *scire facias*. During the lives of the parties to a judgment, execution may now issue as of course at any time within six years from the recovery of the judgment. After that period, or after a change by death or otherwise, before execution can issue upon it, it must be revived by *writ*, or with leave of the Court or a Judge, by *suggestion*. (Broom and Hadley's Commentaries, Vol. III, and Stephen's Commentaries, Vol. III.)

An equity suit in the Supreme Court was revived by a bill of revivor, and latterly by the simpler method of a suggestion introduced by Act VI of 1854, sec. 31. (Attermony Dasee *v.* Hurrydass Dutt, 9 C. L. R., 557.)

tions to the application of those periods; and also in the principle on which those exceptions, where they were the same, were allowed.[1]

Previous ineffectual proceedings for the matters in dispute, in the Mofussil of all the three Presidencies, and fraud in the acquisition of possession in that of Bengal and Bombay, were recognized as exceptions to the ordinary rule of limitation; but such exceptions found no place in the statutes which were administered in the Presidency-towns; while the disability of coverture and the exception in the case of *defendant's* absence in a foreign country,[2] admitted by the English law, had no place in the Indian Regulations. Again, the principle on which the English law had been framed, *viz.*, that when the statute commenced to run it did not cease to run, was unknown to the Regulations.[3] If the person entitled to seek redress, or the person under whom he claimed, was precluded by any disability from obtaining redress, during *any part* of the period of limitation, whether at its commencement or otherwise, the operation of the rule under the Regulation was *suspended*, and the time during which such disability lasted was excluded in computing the period of limitation.[3]

The anomaly of having one code of laws for the

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[1] See Sir James Colvile's Speech in the Legislative Council, 7th July, 1855.

[2] Plaintiff's absence in a foreign country at the time when the cause of action arose was considered a "good and sufficient cause" within the meaning of the Bengal Regulations, but the *defendant's* absence was not *per se* a "good and sufficient cause." (See Macpherson's Civil Procedure, Appendix; and Ishan Chand *v.* Partab, 5 W. R., 31, P. C.)

[3] Troup *v.* E. I. Company, 7 Moore's I. A., 104; 4 W. R., P. C., 121.

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Draft Limitation Bills, 1841-1855.

Courts established by royal charter, and three other codes for the Mofussil Courts in the three Presidencies, attracted the notice of the Legislature about forty years ago. In 1841, a Draft Act was prepared with the double object of amending the law of limitation existing in the Courts of the East India Company, and of extending to the Crown Courts in India the amendments introduced into the English law of limitation by the statutes passed in the reign of William IV, and by 1 Vict., c. 28. Subsequently, in 1842, the Indian Law Commissioners, with the concurrence of a majority of the then Judges of the Supreme Courts, proposed to substitute, for the Draft Act of 1841, a uniform law for the acquirement and extinction of rights by prescription and for the limitation of suits, and they drafted a Bill for the purpose. But nothing further was done in the matter until 1855, when Sir J. Colvile moved the first reading of the Commissioners' Bill as slightly amended by himself.[4] In 1859, the provisions relating to prescription were expunged from the Bill, and it was passed as Act XIV of 1859. This Act provided one uniform law of limitation for all the Courts in British India,[5] except as to proceedings for the execution of decrees of the Supreme Courts, certain suits by mortgagees in those Courts, and suits for public claims under Bengal Regulation II of 1805. The Act *shortened* the periods[6] of limitation allowed by the Regulations and

Act XIV of 1859.

[4] See note 1, *ante*, p. 63.

[5] Kristo Kinkur Ghosh *v* Buroda Kanta Sing, 17 W. R., 292, P. C.

[6] The *general* periods adopted were twelve years for suits relating to immoveable property, specialties governed by English law, and legacies: and six years for other personal demands. The shorter period of three

the Statute of James I; laid down rules applicable to the *execution* of decrees; *specified* the grounds of exception[7] to the operation of the ordinary rule of limitation; and rendered *verbal* acknowledgments of liability, or payments by the debtor, ineffectual to keep alive or revive the debt. The principle of English law that a "legal disability" to be effectual as an exception, must exist at the time when the cause of action accrued, was for the first time adopted by this Act. The Act further provided a limitation to suits for recovery of property against a mortgagee, pawnee, or depositary.

Sir James Colvile proposed to enact specific rules for the acquisition and extinction of rights by *prescription*, but the Act of 1859 provided for the *limitation* of suits only, and as such left untouched the rule of *prescription* contained in Regulation V of 1827 of the Bombay Code.[8]

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years was applied to suits for money lent, for breaches of unregistered contracts, for rents, for hire and for the recovery of property comprised in certain possessory awards. Under the limitation of one year were brought suits for pre-emption, for penalties, for damages not affecting immoveable property, for wages, and for setting aside public sales and summary orders.

[7] The following were the grounds of exception: 1. Legal disability of the plaintiff, including *coverture* in cases governed by English law, minority, idiocy, and lunacy. 2. Ineffectual proceedings *bonâ fide* taken by the plaintiff in a Court *without jurisdiction*. 3. *Defendant's* absence from British India. 4. Written acknowledgments of liability to pay a debt or legacy, *signed* by the defendant. 5. Concealed fraud of the defendant, whether the subject of the suit was immoveable property *or not*. Besides these grounds, which gave the plaintiff an *extension* of time, the Act mentioned another which gave him an *unlimited* time, *viz.*, the relation of trustee and *cestui qui trust*. Secs. 11, 14, 13, 4, 9 and 2 of Act XIV.

[8] Maharana Futtehsangji *v.* Dessai Kullianrai, 21 W. R., 178, P. C.; L. R., 1 I. A., 34. That part of Bombay Regulation V of 1827 which

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Act XIV of 1859 is couched in language much more precise than the loose phraseology of the earlier Regulations, but the Judicial Committee of the Privy Council did not hesitate to characterize it as an "inartificially drawn statute,"[9] and the later Act of 1871 (Act IX) as a "more carefully drawn statute" of limitation.[10]

Act IX of 1871.

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referred to prescription was repealed by Act IX of 1871. Before this repeal the state of the law in the Bombay Presidency was this:—A person who, without title, had been in adverse possession of any immoveable property for twelve years, could, under cl. 12, Sec. 1 of Act XIV of 1859, resist any suit brought to recover it from him, but no such possession short of thirty years could create a title in his favor under Reg. V of 1827. The proprietor's title, therefore, did not become extinguished by twelve years' adverse possession of another, though his right of suit against that other became barred by Act XIV of 1859. Accordingly, if such person happened to lose his possession, and the proprietor to regain it, the former, unless he sued within six months under Sec. 15 of that Act (= Sec. 9, Act I of 1877), must fail in any suit to eject the latter, having no title to stand upon. If the Regulation had not fixed a *longer* period of prescription, the original title would have been practically extinguished by Act XIV, and could not have been revived, by a re-entry after twelve years, upon the doctrine of remitter. See Rambhat *v.* The Collector of Puna, I. L. R., 1 Bom., 592, 598, 599. This doctrine of remitter is inapplicable to a right which is wholly remediless, *i.e.*, for which even a droitural real action does not lie. And the doctrine is necessarily inapplicable where the right itself is *extinguished*. (Sibchunder *v.* Sibkissen, 1 Boulnois, 70; Brindabun *v.* Tarachand, 20 W. R., 114, Brassington *v.* Llewellyn, 27 L. J. Exch., 297.) In England, before the abolition of real actions in general, a droitural action was maintainable even *after* a possessory action of ejectment had been barred by the Statute of James I. In Bengal, no such action was maintainable after the twelve years, and the right was wholly remediless. The doctrine of remitter therefore had no application.

[9] The Delhi and London Bank *v.* Orchard, I. L. R., 3 Calc., 47, P. C.

[10] Maharana Futtehsangji *v.* Dessai Kullianrai, 21 W. R., 178, P. C.

Sir James Colvile, who introduced the original bill, and Sir Barnes Peacock, at whose instance several amendments were made before the bill was passed into law (Act XIV of 1859), were both parties to the judgments in the cases mentioned above.

Act XIV of 1859 had not been in force for ten years when Act IX of 1871 was passed with the object (i) of introducing amendments[1] mainly suggested by

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[1] The following are some of the amendments referred to above:

1. The Courts are required to give effect to the law whether the defence of limitation be pleaded or not. (Under Act XIV of 1859, the rulings on this point were by no means uniform.)—Sec. 4, Act IX of 1871.

2. An extension of time is allowed when the period of limitation expires on a day when the Court is closed. (Under Act XIV, such extension was not allowable. Rajkristo Roy *v.* Denobundhu Surma, 3 W. R., S. C. C. Ref., p. 5.)—Sec. 5, a.

3. Special laws of limitation are expressly saved from the operation of this general Act. (This is in accordance with the rulings on the subject.)—Sec. 6, Act IX.

4. Express provision is made for co-existing or double disabilities. Any mention of the disability arising from coverture is designedly omitted.—Sec. 7, Act IX.

5. It is expressly declared that, in suits on foreign contracts, the *lex fori* shall be preferred to the limitation law of the country where the contract was entered into.—Sec. 12.

6. In computing the period of limitation, the day on which the right to sue accrued is, in every case, to be excluded. (Under the old law, the decisions on this subject were not uniform.)—Sec. 13.

7. The time during which the commencement of a suit has been stayed by injunction is to be excluded. (This rule is borrowed from Sec. 589 of the New York Code.)—Sec. 16.

8. The rule of English law, that a right to sue cannot accrue unless there is at the time a person in existence capable of suing, as also a person in existence capable of being sued, is adopted, except in respect of suits for the possession of land or of an hereditary office.—Sec. 18.

9. Amendments of the law relating to acknowledgments and payments (referred to in the text) are introduced by Secs. 20 and 21. Acknowledgments must now be made *before* the expiry of the period of limitation. The rule of English law, that the terms of a lost written acknowledgment may be proved by parol evidence, has *not* been adopted.

10. The effect of substituting or adding a new plaintiff or defendant (as ruled in Kissen Lall *v.* Chunder Coomar, W. R., 1864, p. 152; Rajkissoree Dasi *v.* Buddun Chunder, 6 W. R., 298; and Srikissen *v.* Ramkristo, 10 W. R., 317) is declared.—Sec. 22.

11. The English-law rule of computing time where there are successive breaches of contract, a continuing breach or a continuing nusance, is adopted.—Secs. 23 and 24.

12. The rule laid down by the House of Lords in Bonomi *v.* Backhouse

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the decisions of the Courts upon the Act of 1859, and (ii) of facilitating the application of the law by a schedule, of the different sorts[2] of suits and of certain applications, of their respective periods of limitation, and of the exact points of time from which such periods were to run. The expression 'so many years *from the time the cause of action arose*' in Act XIV of 1859, Sec. 1, clauses 2, 8, 11, 12 & 16, was too vague, at least for the lay public, and Act IX of 1871 attempted to remove this vagueness as much as possible.[3]

No doubt, in many, probably in most, instances,

(9 H. L., 503) as to suits for compensation for an act which becomes actionable in case it causes damage, is declared by Sec. 25.

13. The decisions of the Bombay High Court, that periods of payment mentioned in instruments bearing a native date should be reckoned according to the native calendar, are disapproved, and it is laid down that all instruments shall be deemed to be made with reference to the English calendar.—Sec. 26.

14. A rule for the acquisition of easements by positive prescription (referred to in the text) is introduced by Secs. 27 and 28.

15. An express rule of extinctive prescription (referred to in the text) is applied to lands and hereditary offices.—Sec. 29.

16. An application to execute a decree within the limited time keeps alive the decree, whether the application be made *bonâ fide* or not, and a new period is allowed from the date of the application or the issue of a notice on the judgment-debtor, but not from the time when a previous *bonâ fide* proceeding terminates. No. 167, Sched. ii, Act IX.

17. Longer time is allowed for the execution of a decree or order of which a certified copy has been registered. No. 168, Sched. ii, Act IX.

[2] But, as observed by Sir Richard Garth, in several unreported cases, suits or actions were *individualised*, rather than *classified*.

In specially mentioning a number of suits which were covered by the *general* clause of Act XIV (*viz.*, cl. 16 of sec. 1), Act IX shortened their periods of limitation from six to three years. Suits based on *quasi contracts*, suits for *mesne profits*, and suits for contributions are instances of this.

[3] Even the term "cause of action" was not used. The words "right to sue" were substituted for it. The term now occurs in Secs. 14 and 24 of Act XV.

the point adopted as the starting point, was in fact coincident with the accruing of the cause of action, but it was not necessarily so.[4]

The Act also repealed and re-enacted the limitation clauses of several special laws, and introduced new modes of interrupting the operation of the rule of limitation, such as acknowledgments signed by the debtor's *agent*, part-payments, and payment of interest by the debtor or his agent. To suits by Government it made the sixty years' limitation applicable in all the Courts and in all the Presidencies.

Extinctive and Positive prescription partially introduced.

In analogy to Sec. 34 of the English Statute 3 & 4 Will. IV, c. 27, Act IX further provided for the *extinguishment* of *right* to *land* by lapse of time; and in analogy to 2 & 3 Will. IV, c. 71, it expressly provided for the acquisition of easements by prescription.[5]

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[4] Gobindloll Seal *v.* Debendro Nath Mullick, 5 C. L. R., 527, 531; I. L. R., 5 Calc., 679

[5] Before Act IX of 1871 came into operation, (prescriptive) easements could be acquired in the Presidency-towns, by *twenty* years' uninterrupted user in accordance with the English law, which prevailed before the passing of the 2 and 3 Will. IV, c. 71. (Elliott *v.* Bhoobun, 19 W. R., P. C., 194; Pranjivandas *v.* Mayaram, 1 Bom., 148; Narrotum *v.* Ganapatrav, 8 Bomb., O. C. J., 69.) In the *mofussil* of the Bombay Presidency, enjoyment for a period of more than *thirty* years was required under Reg. V. of 1827, Sec. 1, cl. 1. (Ram Bhau *v.* Bhai Babushet, 2 Bom., 333; Anaji *v.* Morushet, 2 Bom., 334.) In the Bengal Presidency, the weight of authority was in favor of the position that, by analogy to the law of limitation, an enjoyment for at least twelve years was necessary. (Ameer Ali *v.* Joyprokash, 9 W. R., 91; Mohima *v.* Chundi, 10 W. R., 452; Kartik Sarkar *v.* Kartik Day, 11 W. R., 522.) In the Madras Presidency, a similar opinion was expressed by Scotland, C. J., in Ponnusami *v.* The Collector, 5 Mad., 6; but Justice Innes, in the same case, thought, that there being no common law on the subject, user for a period *shorter* than twelve years, accompanied by circumstances indicative of a grant, might be sufficient. (Subramaniya *v.* Ramchandra, I L. R., 1 Mad., 335.)

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Sir James F. Stephen, in 1870-71, proposed to go further than the English law, and to lay down a *positive* rule of prescription in respect of *corporeal* property; and although he did not succeed in carrying out his proposal to its full extent, he was able to obtain, for the first time, some recognition of the doctrine of prescription by the Legislative Council of India,—*viz.*, the doctrine of extinctive prescription as to land, and of positive prescription as to easements.

Act XV of 1877.

Act IX of 1871 was shortly afterwards replaced by Act XV of 1877, which is the present law on the subject. This Act has extended the principle of extinctive prescription to moveable property, and the principle of positive or acquisitive prescription to profits *à prendre*. It further provides for various applications mentioned in the new Code of Civil Procedure (Act X of 1877, now replaced by the Act of 1882), and the schedule of applications in Act XV is accordingly more extensive than the corresponding portion of the Act of 1871. In other respects too Act XV is more elaborate than Act IX, and the former is in fact an improved edition of the latter. The following are some of the other additions and alterations introduced by Act XV :—

An express declaration that neither Act XV nor Act IX shall be deemed to affect any title acquired, or to revive any right to sue barred, under the latter Act or under Act XIV of 1859.—Sec. 2.

Successive or supervenient disabilities, as well as the disability of legal representatives, have been provided for. —Sec. 7.

The exceptions on account of legal disability, ineffectual but *bonâ fide* proceedings in a Court without jurisdic-

tion, concealed fraud, written acknowledgments, and the non-existence of a person capable of suing or of being sued, as well as the provision as to excluding from computation the day on which the right to sue accrues, have been extended to *applications*.—Secs. 7, 14, 18, 19, 17, and 12.

The Act has been applied to appeals from, and applications to review, decrees and orders of the High Courts in the exercise of their *original* jurisdiction.—Nos. 151 and 162, sched. ii. (These were formerly regulated by rules made under the Charter of 1865.)

Suits to enforce rights of pre-emption have been excluded from the operation of the exceptions as to legal disabilities, and the non-existence of a legal representative capable of suing or of being sued.—Secs. 7 and 17.

A purchaser for valuable consideration from an express trustee, *whether he had or had not notice* of the trust at the time of the purchase, is protected by twelve years' possession.—Sec. 10.

The time of a defendant's absence from British India is excluded in computing the period of limitation, *whether a summons could or could not be served* upon him during such absence.—Sec. 13.

A written acknowledgment in respect of *any* matter of right gives a fresh starting point. (Under Acts XIV of 1859 and IX of 1871, acknowledgments were effectual in respect of debts and legacies only).—Sec. 19.

The effect of a part-payment has been extended to all debts, *whether arising out of a contract in writing* or *not*. The payment must appear in the handwriting of the debtor, but it is no longer necessary that the payment should be endorsed on the instrument or on his own books or on the books of the creditor.—Sec. 20.

The cause of action, or rather the right to sue, is renewed *de die in diem* not only in the case of a continuing breach of contract and a continuing nusance, but also in the case of other continuing wrongs or torts.—Sec. 23.

In the case of suits for money lent under an agree-

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ment that it should be payable on demand, time runs from the date of the transaction, instead of from the date of the demand, as prescribed by Act IX.—Nos. 59 and 73, sched. ii.

The rules as to the estate of Hindu widows, and Hindu managers of joint estates, contained in Nos. 107, 124, and 142 of schedule ii, Act IX of 1871, are extended to Mahomedans where they have adopted the Hindu law of property.—Nos. 107, 125 and 141, sched. ii.

Several classes of suits not specified in Act IX of 1871 have been expressly provided for, such as suits to set aside an order releasing or refusing to release property attached in execution (No. 11), suits to restrain waste (No. 41), suits to compel a legatee to refund (No. 43), suits by wards to set aside sales by their guardians (No. 44), suits by a Hindu for a declaration of his right to maintenance (No. 129), and suits by mortgagees for foreclosure or sale (No. 147). The Act has re-enacted the express provision of Sec. 21, Act VI of 1874, as to the execution of orders of Her Majesty in Council (No. 180), and has added a general clause to cover applications not otherwise provided for (No. 178).

Certain numbers of schedule ii, Act IX, have been omitted as useless, such as Nos. 33, 73 and 79 of Act IX. No. 126 of Act IX has been rescinded, because a suit "by a Hindu governed by the law of the Dayabhaga to set aside his father's alienation of ancestral property" does not lie at all. No. 146, relating to suits for declaration of rights to easements, has also been left out. The distinction between applications for the execution of summary decisions, and of decrees or orders passed in Regular suits or appeals, has been abrogated, and No. 166 of Act IX has been omitted.

The periods of limitation have, in some cases, been *lengthened*, as in suits for infringing an exclusive privilege (No. 11 of Act IX, and No. 40 of Act XV), for taking or wrongfully detaining moveable property (Nos. 26 and 34 of Act IX, and No. 48 of Act XV), for obstructing

a way or watercourse, and for diverting a watercourse (Nos. 31 and 32 of Act IX, and Nos. 37 and 38 of Act XV). The limitation periods have been *shortened* in a few cases, as in suits for establishing or setting aside an adoption (No. 129 of Act IX, and Nos. 118 and 119 of Act XV), and suits instituted by mortgagees in the Original Side of the High Court for possession of mortgaged immoveable property (No. 149 of Act IX, and No. 146 Act XV). The *starting point* of limitation has also been altered in some cases, as in suits to enforce a right of pre-emption (No. 10, shed. ii, Acts IX and XV); suits referred to in Nos. 32, 48, 90, 91, 92, 114, 118 and 127 of Act XV, in which the plaintiff's *knowledge* of certain facts is now made an ingredient of his cause of action; suits for money payable on demand, Nos. 59 and 73 of Act XV; suits for redemption, No. 148; and suits in the Mofussil by mortgagees for possession of mortgaged immoveable property (No. 135 of Acts IX and XV). Besides, any step in aid of execution of a decree or order gives the decreeholder a fresh start.—No. 179 (cl. 4), Act XV.

Act XV of 1877 has itself been slightly amended by Sec. 108, Act XII of 1879, Act VIII of 1880, and Sec. 156 of Act V of 1881.

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THE PLEAS OF *LACHES*, ACQUIESCENCE, AND LIMITATION.

The doctrine of *laches* in equity — The extent to which it is still applicable — *Laches* distinguished from acquiescence — *Laches* and acquiescence distinguished from limitation and prescription — The effect of *laches* in British India — Holloway, Turner, and West, JJ., on the doctrine of *laches* — Declaratory suits — Suits for specific performance and for injunction — Suits for redemption and mesne profits — Lord Chelmsford on *laches* and acquiescence — Lord Eldon on acquiescence — Act XIV of 1859 — Act I of 1877 — Conditions necessary to acquiescence — The morality of the plea of *laches* and acquiescence — The morality of the plea of limitation — The plea of limitation, whether it must be set up by the defendant — Under the English law — Under the Regulations of Bengal and Madras — Under Acts XIV and VIII of 1859 — Exception to the general rule — Under Acts IX of 1871 and XV of 1877 — The effect of a previous final decision — The plea of limitation in Courts of first appeal and of second appeal — Prescription need not be pleaded — Limitation may be pleaded even where the right is denied — Limitation against a joint cause of action — Limitation as against a defendant — Where the defendant pleads a set-off — Where the defendant is bound by a summary order — Prescription may be pleaded against a defendant as well as against a plaintiff — Promise not to plead limitation.

The doctrine of *laches* in equity.

ANOTHER doctrine, namely, that of *laches* and acquiescence, which is similar in its operation to the doctrine of limitation and prescription, requires some notice here.

Courts of Equity in England have always, on general principles of their own, discountenanced the *laches* and neglect of suitors, and refused relief unless sued for within a reasonable time and with reasonable diligence.[6] They did so, even before the 21st

[6] "A Court of Equity," said Lord Camden, "by its own proper authority, always maintained a limitation which prevented its being called into activity, unless at the requisition of conscience, good faith, and reasonable diligence." See Brown on Limitation, p. 514.

James I, cap. 16, provided for the limitation of actions at law. After the passing of that statute, equity has, except in cases of fraud, adopted its provisions so far as *analogy* makes them applicable to suits in equity. And since 1834, some suits, *viz.* suits to recover land or rent, are directly governed by the express provisions of 3 & 4 Will. IV, cap. 27. Where the matter, however, is of a purely equitable nature to which the statutes do not apply even by analogy, Courts of Equity still apply the doctrine of *laches* according to discretion regulated by precedents and the particular circumstances of the case.[7] If an argument against relief, which otherwise would be just, is founded upon simple *laches* or mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of such argument is tried upon principles substantially equitable.[8] Where no new rights and interests have meanwhile come into existence, or where the other party would not be unreasonably prejudiced by the remedy being afterwards asserted, such delay will, in general, be no bar to a plaintiff's right to relief.[9] Where the question is not one of title to recover property, and the plaintiff at the time of suit has no absolutely vested right to the particular relief which he seeks (it being discretionary with the Court to grant it or

The extent to which it is still applicable.

[7] Angell, sec. 26, note.

[8] Lindsay Petroleum Company *v.* Hurd, L. R., 5 P. C., 239.

[9] See Jamnadas *v.* Atmaram, I. L. R., 2 Bomb., 133, 138.

Messrs. Darby and Bosanquet, citing Pickering *v.* Stamford (2 Ves., Jr., 272), say: "It may be stated, as a general rule, that where there is a statutory period of limitation, delay for any length of time short of that will not be an absolute bar to a plaintiff's right to relief, except where, by reason of such delay, innocent persons have been allowed to acquire interests which would be prejudiced by such relief being granted."

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not), the principles of equity, in the absence of a statutory provision, require that the party must come *promptly* and as early as he reasonably can. One important exception to this rule is the case of a person *in possession* under an equitable title, seeking (in a suit for specific performance) to clothe such title with the legal title. Thus, where a lessee under an agreement for a lease has enjoyed the property for years, if the intended lessor were to refuse the tenant his lease, or any of the benefits which he had a right to enjoy under it, the tenant might always come into a Court of Equity and compel the landlord to grant the lease.[10]

Laches distinguished from acquiescence.

But mere *laches* should be distinguished from *acquiescence*. "*Laches* and acquiescence," says Mr. Banning, "are often inexactly used as identical in meaning. In fact, however, there is a great distinction between them."[1] Lapse of time or delay in suing, unaccounted for by disability, ignorance (of fact, if not of law), or other circumstances, constitutes *laches*.[2] *Laches* is merely passive, while even indirect acquiescence implies almost active assent.[3] *Laches*, or delay, is evidence of acquiescence when the conduct of the parties, during the interval, raises a presumption of assent. Acquiescence,—that is, indirect acquiescence,—has been defined as "quiescence under such circumstances as that assent may

[10] See Clarke *v.* Hart, 6 H. L. C., 633; Juggernath Sahoo *v.* Syud Shah, L. R., 2 I. A., 48; 23 W. R., 99; Crofton *v.* Ormsby, 2 Sch. and Lef., 583, 603; and Ahmed Mahomed *v.* Adjein, I. L. R., 2 Calc., 323, 326.

[1] Banning on Limitation, p. 246.

[2] Lewin on Trusts, 7th edn., p. 743; Darby and Bosanquet, pp. 196 and 197.

[3] Banning, p. 246; Lewin, p. 744.

be reasonably inferred from it."[4] The doctrine of acquiescence is based on the rule of equitable estoppel, or estoppel *in pais*.[5]

Generally speaking, the rule is that, if a man, either by words or conduct, has intimated that he consents to an act which has been done, and that he will offer no opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that from which they otherwise might have abstained, he cannot question the legality of the act he had so sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct. If a party has an interest to prevent an

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[4] Lewin, p. 744.

Direct acquiescence is, where the act complained of was done with full knowledge and *express* approbation of another, in which case a Court of Equity will not allow that other to seek relief against the very transaction to which he was himself a party. Indirect acquiescence is where a person, having a right to set aside a transaction, *stands by* and sees another dealing with property in a manner inconsistent with that right, and makes no objection, when also a Court of Equity will not relieve; but in the latter case the Court not only looks to the conduct of the person who stands by, but also considers how far the person in possession of the property has any just claims to the protection of the Court. Where, for instance, the possessor lays out his money with a full knowledge that the property which he improves belongs to another, then it is said he makes the outlay to his own cost. (See Lewin, pp. 744, 745.) It may be here observed, that in British India if the person who makes the improvement is not a mere trespasser, but is in possession under any *bonâ fide* claim of an absolute title, he is entitled (at the option of the lawful owner) either to remove the materials or to obtain compensation for the value of the improvement, independently of any *proof* of acquiescence on the part of the owner. Thakoor Chunder *v.* Ramdhone, 6 W. R., 228, F. B. See also Sec. 51 of Act IV of 1882, the Transfer of Property Act, and Sec. 2, Act XI of 1855, which mitigated the rigour of the English law on this subject.

[5] Sec. 115 of the Indian Evidence Act is concerned with estoppels *in pais*, as opposed to estoppels by matter of record and estoppels by deed.

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act being done, and acquiesces in it, so as to induce a reasonable belief that he consents to it, and the position of others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have had if it had been done by his previous license. (*Per* Lord Campbell Chancellor, in *Cairncross* v. *Lorimer*, 3 Macq. H. L. C., 892.)[6] If a person, having a right, stands by and sees another dealing with the property inconsistently with that right, and makes no objection while the act is in progress, he cannot afterwards complain. That is properly acquiescence. (*Per* Lord Cottenham in *Duke of Leeds* v. *Earl Amherst*, 2 Phill., 117, 123.)[7] If a party, who could object, lies by and knowingly permits another to incur an expense in doing an act under a belief that it would not be objected to, and so a kind of permission may be said to be given to another to alter his condition, he may be said to acquiesce. (*Per* Lord Wensleydale in *Archbold* v. *Scully*, 9 H. L. C., 348, 383.)[8] The party so acquiescing cannot afterwards insist on his strict legal right. It would be unconscientious for him to do so, and interference on his behalf would be refused, even though his right to sue might not be barred by any law of limitation.[9]

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[6] See I. L. R., 1 All., 85.

[7] See Brown, p. 516; and Banning, p. 245.

[8] See Darby and Bosanquet, p. 197.

[9] But consent or acquiescence cannot enlarge the jurisdiction and powers of the Court (Srimati Anundo Moye *v.* Dhurendro, 1 W. R., 103, 106; Aukhil *v.* Mohiny, I. L. R., 5 Calc., 489; Quiros' case, I. L. R., 6 Calc., 83); nor, generally speaking, alter the nature and operation of a decree in execution. (24 W. R., 25; I. L. R., 1 All., 368, but see Sadasiv v. Ramalinga, 24 W. R., 193, 197, P. C.)

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Laches and acquiescence distinguished from limitation and prescription.

Laches, like limitation, deprives the plaintiff of his remedy. Acquiescence, like prescription, destroys his right. But *laches* and acquiescence depend upon general principles, while limitation and prescription depend upon express law. The former are conclusions drawn from the facts of each particular case, while the latter are matters of inflexible law. A positive law of limitation and prescription applies even when there is no actual acquiescence or *laches*.

Laches and acquiescence, again, may be pleaded against either a plaintiff or a defendant, but limitation may be pleaded against a plaintiff only.

The effect of *laches* in British India.

As the law of limitation in British India is directly applicable to all kinds of actions and suits, simple *laches* or delay for any length of time, short of the law-defined period, will not be an absolute *bar* to a plaintiff's suit for relief.[10] But a considerable delay, if unexplained, may raise a presumption[1] against the right which the plaintiff seeks to enforce, and induce the Court to look with very great jealousy at the evidence produced in support of it.[2] Such *laches* may also be a ground for refusing a relief which the Court has a discretion to grant or refuse,[3] specially where innocent persons would be

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[10] "Where there is a statute of limitations, the objection of simple *laches* does not apply."—See Arbhold *v.* Scully, 9 H. L. C., 348; see also 23 W. R., 99; and I. L. R., 2 Bom., 133, 138.

[1] Modhusudan Sandial *v.* Suroop Chandra Sircar, 7 W. R., P. C., 73. See also Sel. Rep., Vol. V, p. 123, and Vol. IV; pp. 89, 130, cited in Macpherson's C. P., Appx., 203; and Sham *v.* Kishen, 18 W. R., 4, P. C.

[2] Ameerunnissa *v.* Ashruffunnessa, 17 W. R., P. C., 259.

[3] The jurdisdiction of the Courts in India to decree the specific performance of contracts and the rectification or cancellation of instruments, to grant injunctions, and to make declarations of status or right, is discretionary. See Act I of 1877, Secs. 12, 22, 31, 42, and 52.

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unduly prejudiced by such relief being granted ;[4] and where the case is one to which the law of limitation does not extend (as where the *defendant*[5] is guilty of laches), long unexplained delay in enforcing a particular right may be the basis of a conclusive presumption of a release or of something done which if done is subversive of the right.[6] Where there is a statutable bar applicable to an analogous case, the Court will not, as a general rule, entertain such a presumption within a less time than the period fixed by the statute.[7]

Where mere laches is insufficient to exclude a claimant from relief, it may yet be ground for depriving him of costs,[8] or for reducing the rate of interest claimed, when such interest is awarded by way of damages.[9]

Holloway, Turner, and West, JJ., on the doctrine of *laches*.

The doctrine of *laches* and acquiescence in India has been fully discussed in *Uda Begham* v. *Imamuddin* (I. L. R., 1 All., 82) and in *Peddamathulaty* v. *N. Timma Reddy* (2 Mad., 370). Justice Holloway, in the latter case, lays down, that where the statute of limitation applies, mere laches short of the pres-

[4] Pickering *v.* Stamford, 2 Ves., Jr., 272. See also Lindsay Petroleum Company *v.* Hurd (L. R., 5 P. C., 239) and Durell *v.* Pritchard (L. R., 1 Ch., 244), both of which are referred to in Jamnadas *v.* Vrijbhukan, I. L. R., 2 Bom., 133, where the Court held that an unexplained delay of ten months (after protest, &c.), which is not shown to have *prejudiced* the defendant, does not disentitle the plaintiff to a mandatory injunction for the demolition of a building erected so as materially to obstruct the plaintiff's light.

[5] Ram Narain Chakerbutty *v.* Poolin Behary, 2 C. L. R., 5. See also Sunt Lall *v.* Bhurosee, 18 W. R., 57.

[6] Lewin, p. 735.

[7] *Ibid*, p. 740.

[8] Archbold *v.* Scully. Brown, p. 515 ; Mohun *v.* Bebee, 2 W. R., P. C., 9.

[9] Juala *v.* Khuman, I. L. R., 2 All., 617.

cribed period is no bar whatever to the enforcement of *a right absolutely vested* in the plaintiff at the period of suit. Justice Turner, in the other case, assents to this dictum with the qualification that it applies to cases in which a suitor seeks some relief, which, if he proves his case, the Court is bound to grant, and has no discretion to refuse. In a Bombay case—*Jamnadas* v. *Vrijbhukan* (I. L. R., 2 Bomb., 133) —Justice West lays down, that even where a plaintiff sues for a mandatory injunction, his legal right to relief continues until it is barred by limitation, that the Courts cannot lay down any shorter period for its assertion, and that the discretional power of the Court as to injunctions cannot, by reason of mere delay, be exercised *against* the plaintiff, except where new rights and interests have meanwhile come into existence, or where the other party will be unduly prejudiced by the relief being granted after such delay.

Declaratory suits.

In *Mrino Moyee Dabee* v. *Bhubon Moyee Dabee* (23 W. R., 42, 44), Sir Richard Couch, C.J., expressed an opinion to the effect that, in a *declaratory* suit, 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 lesser time than the full period of limitation has elapsed.

Suits for specific performance and for injunction.

In an application by a charterer against the master of a ship for an *interim* injunction, Justice West said: —"I am the more disposed to refuse the application here, because it might have been made three days ago, and is now made quite at the eleventh hour (*Hazee Abdullah* v. *Haji Abdul Bacha*, I. L. R., 6 Bomb., 5). In *Ahmed* v. *Adjim* (I. L. R., 2 Calc., 323), Sir Richard

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Garth assumes that the doctrine of *laches* does apply to a suit for the specific performance of a contract, even if it is brought within the statutory period.

Suit for redemption and mesne profits.

In a suit by the representatives of a mortgagor, instituted more than fifty years after the mortgage, for recovery of possession of the mortgaged property, with six years' mesne profits, on the ground that the mortgage-debt had been satisfied by the usufruct of the property, their Lordships of the Privy Council, referring to the main question in the case, say:—"The question is one of *title*, and the right to assert that title is to be determined by the law of limitation as it stands. The law wisely or unwisely has given to mortgagors the long period of sixty years within which to bring their suit, and no Court of Justice would be justified in diminishing that period on the ground of the *laches* of the party in the prosecution of his rights." But the defendants, who were in possession for about eleven years, being (innocent) purchasers for a valuable consideration without notice of the plaintiff's title, their Lordships, in the exercise of their discretion, refused to award any mesne profits *before* the date of suit, on the ground of plaintiff's very great *laches*, although the claim for such profits was not barred by Act XIV of 1859, the law of limitation then in force. (*Jugunnath Shahu* v. *Syed Shah Mahammed*, 23 W. R., P. C., 99.) As mesne profits are in the nature of damages, the plaintiffs had no absolutely vested right to them at the date of suit, and it was considered inequitable to award them under the circumstances of the case.[10]

[10] In Nilcomul v. Gunomonee (15 W. R., P. C., 38, 41) it was considered

Lord Chelmsford on *laches* and acquiescence.

The principles which guide Courts of Equity in England[1] are thus stated by Lord Chelmsford :— "When a person is obliged to apply for the *peculiar relief* afforded by a Court of Equity to enforce the performance of an agreement, or to declare a trust, or to obtain any other right of which he is not in possession, and which may be described as an executory interest, it is an invariable principle of the Court that the party must come promptly, that there must be no unreasonable delay, and if there is anything that amounts to *laches* on his part, Courts of Equity have always refused relief. With regard to interests which are *executed*, the consideration is entirely different. There mere *laches* will not of itself disentitle the party to relief from a Court of Equity, but a party may by *standing by*, as it has been metaphorically called, waive or abandon any right which he may possess, and which, under the circumstances therefore, Courts of Equity may say he is not entitled to enforce ; where, therefore, on principles peculiarly equitable, a person applies to a Court of Equity to do for him that to which his *bare vested rights* would not entitle him to, a Court of Equity is entitled to say, and does say, 'you are entitled to no favor, you were bound to come within a reasonable time.' "[2]

open to the defendant to show any special case, by way of appeal to the *equity of the Court*, to shorten the account which otherwise would have to be taken of the mesne profits claimed by the plaintiff.

[1] The Plea Side and the Equity Side of the Supreme Courts in the Presidency-towns represented, respectively, the Common Law Courts and the Equity Courts of England. The High Court, in its Original Side, exercises both jurisdictions ; since the Judicature Acts of 1873, there has been a fusion of law and equity in England. The Mofussil Courts here were, and are still, in one sense, Courts of Law as well as of Equity.

[2] Clarke *v.* Hart, 6 H. L. C., 633.

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Lord Eldon on acquiescence.

The rule as to acquiescence is thus illustrated by Lord Eldon in *Dann* v. *Spurrier* (7 Ves., 235):—"The Court will not permit a man knowingly, though passively, to encourage another to lay out money under an erroneous opinion of title (and the circumstance of looking on is in many cases as strong as using terms of encouragement)—a lessor knowing and permitting those works which the lessee would not have done, and the other must conceive that he would not have done, but upon an expectation that the lessor would not have thrown any obstacle in the way of his enjoyment. When a man builds a house on land, supposing it to be his own, and believing that he has a good title, and the real owner perceiving his mistake abstains from setting him right, and leaves him to persevere in his error, a Court of Equity will not allow the real owner to assert his legal right against the other without at least making him full compensation for the money he has expended."[3] Under such circumstances equity considers it *dishonest* in the owner to remain wilfully passive, and afterwards to interfere and take the profit.[4] But if the element of fraud (actual or constructive) is wanting, as if both parties are equally cognizant of the facts, and the declaration or silence of the one party produced no change in the conduct of the other, he acting solely on his own judgment, there is no equitable

[3] See Ranee Rama *v.* Jan Mahmud (11 W. R., 574); and Gale on Easements, 5th ed., p. 78. In Langlois *v.* Rattray (3 C. L. R., 1), Garth, C. J., says:—"It is the deceit and fraud of the rightful owner in these cases which is the foundation of the rule of equity, and such fraud and deceit must be very clearly proved.

[4] *Per* Lord Chancellor Cranworth in Ramsden *v.* Dyson, L. R., 1 H. L. 129, 140.

estoppel.[5] If a stranger builds on the land of another *knowingly*, there is no principle of equity which prevents the owner from insisting on having back his land, with all the additional value of the land which the occupier has imprudently added to it. And if a tenant does the same thing, he cannot insist on refusing to give up the estate at the end of his term. It was his own folly to build.[6] But it might be otherwise if the lessor's conduct induced a reasonable expectation that he would not throw any obstacle in the way of the tenant's enjoyment.[7]

Act XIV of 1859 expressly provided that the limitation law therein enacted was not to interfere with any rule or jurisdiction of the Courts established by royal charter, in refusing equitable relief on the ground of acquiescence or otherwise. (See Sec. 16.) This provision in favor of the Supreme Courts might lend some colour to the contention that the equitable doctrine of acquiescence was not applicable to suits in the Mofussil Courts.[8]

Act XIV of 1859.

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[5] Story's Equity Jurisprudence, Vol. II, § 1543.

[6] Ramsden *v.* Dyson, L. R., 1 H. L., 129.

[7] Dann *v.* Spurrier, cited above; see Banee *v.* Joykissen, 12 W. R., 495; Lalla Gopee *v.* Shaikh Liakut, 25 W. R., 211; and cf. Prossunno *v.* Juggunath, 10 C. L. R., 25.

[8] See Ram Rau *v.* Raja Rau (2 Mad., 114), where there is a dictum of Scotland, C.J., which supports this contention. But the correctness of this dictum has been questioned. (See Uda Begham *v.* Imamuddin, I. L. R., 1 All., 82.) Justice Kemp, in Taruk Chander Sandyal *v.* Hurro Sunkur Sandyal (22 W. R., 267), says, that the doctrine of acquiescence does not apply to this country. But the facts of the case do not show anything more than *delay* in bringing the suit. See also Rampal Shahoo *v.* Misru Lal (24 W. R., 97) and Sheikh Ally Hossein *v.* Sheikh Muzhur Hossein, 4 C. L. R., 577. In the former case, although the question of *acquiescence* was raised, it was broadly laid down that our Courts have no discretionary power in the matter of granting reliefs, and that a right not affected by limitation cannot be dismissed on the ground of mere

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Act I of 1877.

But the doctrine of acquiescence operating as an equitable estoppel is, on general principles, applicable to suitors in *every* Court, and cannot be restricted by a doubtful implication.[9] And now the Specific Relief Act, Sec. 56, expressly enacts that where there is a continuing breach of an obligation (whether arising out of a contract or not), an injunction to prevent it cannot be granted, if the applicant has *acquiesced* in it. Where there is more than mere *laches*, where there is conduct or language inducing

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delay. In the latter case one of the Judges held, that the doctrine of *laches* of the English Courts of Equity does not apply to this country.

[9] It may be here observed that the provision of Sec. 16 of Act XIV of 1859 was not re-enacted in Acts IX of 1871 and XV of 1877, and that, in Sir James Colvile's Bill, Sec. 16 of Act XIV of 1859 was not confined to the Supreme Courts. Section 24 of the original Bill and Sec. 27 of the revised Bill ran as follows:—"Nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of *any* Court in refusing equitable relief on the ground of acquiescence or otherwise, to any person whose right to bring a suit may not be barred by virtue of this Act." The words "established by Royal Charter" were added to the word 'Court' at the time of the passing of the Bill. The Indian Law Commissioners, in their Report dated the 1st October, 1842, say:—"We have introduced a provision corresponding with Sec. 27 of the Statute 3 & 4 Will. IV, cap. 27, to preserve any rule or jurisdiction of any Court by which equitable relief may be refused on the ground of acquiescence or otherwise in the party seeking it. This provision seems to be necessary with respect to Her Majesty's Courts; while it may be applicable also in cases falling under the jurisdiction of the Company's Courts. For example, in the case of a person suing in one of the Company's Courts to recover land of which, through fraud or mistake, he had been led to make a conveyance to another, praying that the conveyance may be considered void on the ground of such fraud or error, if it should appear that he had been for some time aware of the alleged fraud or error, and that he had, notwithstanding, by his conduct acquiesced in the adverse possession, as by encouraging the possessor to build upon the land, or otherwise to lay out money in improving it, we conceive that the Court would think itself justified in refusing the remedy and relief sought by him, although not barred by prescription, on the ground that he had by overt acts given an after-confirmation to the deed which his plaint impugned."—See Thompson on Limitation, 2nd ed., p. 302.

a reasonable belief that a right is foregone, the party who acts upon the belief so induced, and whose position is altered by this belief, is entitled, in the mofussil as elsewhere, to plead acquiescence; and the plea, if sufficiently proved, ought to be held a good answer to an action, although the plaintiff may have brought his suit within the period prescribed by the law of limitation.[10]

Condition necessary to acquiescence.

In order that acquiescence may have the effect mentioned above, the following conditions must be fulfilled.[1]

[10] Uda Begham *v.* Imamuddin (I. L. R., 1 All., 82), where the Allahabad Court quotes Cairncross *v.* Lorimer, 3 Macq. H. L. C., 829; and Ramsden *v.* Dyson, L. R., 1 H. L., 129.

[1] See Lewin on Trusts, 7th ed., pp. 450, 789, and 790; Brown on Limitation, p. 516; Darby and Bosanquet, p. 197. As to knowledge, see Jehangir *v.* Shamji, 4 Bomb., 185; Savaklal *v.* Ora, 8 Bomb., 77; Dharamji *v.* Gurroo, 10 Bomb., 311; Bhoobun *v.* Elliott, 6 B. L. R., 85; Juggobondhu *v.* Kurum, 22 W. R., 341; Langlois *v.* Rattray, 3 C. L. R., 1. The weight due to a submission to an adverse title depends on the just belief, that the parties whose interests are affected by acquiescence possess knowledge of their right, means to enforce it, and counsels how to set about resisting a step injurious to it, which are ordinarily in the possession or reach of either of two rival claimants. A presumption by acquiescence in a rival claim, from the mere noncontestation for a limited time of an adverse title, is not pressed against an infant or a Hindu female.—Ramamani *v.* Kulâûthi, 14 Moo. I. A., 346; 17 W. R., 1. Where there is a fiduciary relation (as there is between an attorney and his client) acquiescence will not be lightly inferred from the delay of the *weaker* party in enforcing his right against the other. See Monohor *v.* Ramanath, I. L. R., 3 Calc., 473, 483.

Mr. Collett, in his Commentary on the Specific Relief Act, 1877 (p. 354), writes:—"The following have been said to be the essentials to constitute such acquiescence as will make it fraudulent for a man to set up his legal rights: (1) A must have made a mistake as to his legal rights; (2) he must have laid out money or done some act on the faith of such mistaken belief; (3) B must have known of his own right which is inconsistent with that claimed by A; (4) B must have known of A's mistaken belief as to his (A's) rights; and (5) B must have encouraged A in his outlay or acts, either directly or indirectly, or by not asserting his own right. (Willmott *v.* Barber, 15 Ch. D., 96; Ramsden *v.* Dyson, L. R.,

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(*a.*) The party acquiescing must be *sui juris*, and not an infant or a lunatic.

(*b.*) He must have full knowledge or the means of knowledge of the material facts and circumstances of the case. (Knowledge on the part of an agent may be constructive knowledge on the part of the principal.)[2]

(*c.*) He must also, to a certain extent, be apprized of the law, or how the facts of the case would be dealt with if brought before a Court of Equity. But it may be doubted whether this condition is consistent with the general rule that a mistake of law is no excuse.

The morality of the plea of *laches* and acquiescence.

The plea of *laches*, as well as that of acquiescence proper, requires for its validity a finding of fact under all the circumstances of each particular case. Whether the plaintiff's delay is unreasonable, or whether his conduct has been such as to induce the defendant to alter his condition, whether there is mere *laches* (which is often looked upon as an inferior species of acquiescence), or whether there is acquiescence properly so called, must be determined differently under different circumstances. The bar of the law of limitation, on the other hand, is stringently applied to all cases alike, whether or not there is

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1 H. L., 129; Beauchamp *v.* Winn, L. R., 6 H. L., 223.) But once an act is committed, without such knowledge or assent, a right of action has accrued, and no lapse of time short of the period of limitation will bar it, though it may be that delay viewed as *laches* may make the Court decline a particular form of relief."

Commenting on cl. (*h*) of Sec. 56, Act I of 1877, the same author, at pp. 350-352, points out that the defence of acquiescence is applicable only to the case of a *continuing* wrong, or a *continuing* breach of contract, and not where each act, though the same in kind, is distinct and complete in itself.

[2] Elliott *v.* Bhoobun, 19 W. R., 194, P. C; Moran *v.* Mitter, I. L. R., 2 Calc., 58, 92.

actual *laches* or acquiescence. The plea of *laches* is, in this respect, more equitable than the objection of limitation, and the defence of acquiescence proper is not only equitable, but such as may be conscientiously and righteously urged in a Court of Justice. But the question of the morality of using the law of limitation as a defence is, under certain circumstances, susceptible of a different answer.

The morality of the plea of limitation.

Referring to the statute of limitations passed in the 21st year of James I, Lord Mansfield said:—"The debtor may either take advantage of the statute of limitations, if the debt be older than the time limited for bringing the action; or he may waive this advantage; and in *honesty* he ought not to defend himself by such a plea."[3] Speaking of the same statute Mr. Justice Story, in 1828, observed,[4] that "it had been a matter of regret, in modern times, that, in the construction of the statute of limitations, the decisions had not proceeded upon principles better adapted to carry into effect the real objects of the statute; that the statute, instead of being viewed in an unfavourable light, as an unjust and discreditable defence, should have received such support as would have made it, what it was intended to be, emphatically a statute of repose." As no law can be (legally) unjust, it must be admitted that, from a purely *juridical* point of view, the plea of limitation is not, and cannot be, an unjust defence. But from an *ethical* point of view, it can hardly be denied that, if the defendant has no reason to doubt the (natural) justice of the

[3] Quantock *v.* England; see Angell, sec. 210.

[4] Bell *v.* Morrison; see *ibid*, secs. 23 and 212.