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Exceptions and separate provisoes.

XI. If there be an exception in the enacting clause of a statute, it must be negatived in pleading; but if there be a *separate* proviso, that need not.[5] So far as laws of limitation are concerned, this technical distinction is perhaps of little use in British India. The Civil Procedure Code requires the plaintiff in all cases to state when his cause of action accrued, and, if the cause of action accrued beyond the period ordinarily allowed by any law of limitation, the ground upon which exemption from the law is claimed.[6]

Repealing a repealing Act.

XII. If a statute be repealed, and afterwards the repealing Act be repealed, this revives the original Act.[7] This common law rule has been abolished in British India.[8] For the purpose of reviving, either wholly or partially, a repealed Statute, Act or Regulation, it is necessary *expressly* to state such purpose.

Time when a statute comes into force.

XIII. A statute comes into operation from the very day it passes, if the law itself does not establish the time.[9]

Statutes are not presumed to be retrospective.

XIV. Although the Legislature possesses the power to divest existing rights, it is not to be understood as intending to exercise that power *retrospectively* to any greater extent than the express terms of, or necessary implication from, its language requires.[10] The pre-

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years. (Goodtitle *v.* Baldwin, 11 East, 488, cited in Banning on Limitation, p. 252.) As to *presumptions* against the Crown, arising from the acts of other persons, see also Brown, 244.

[5] Kent, Lecture 20.

[6] Act VIII of 1859, sec. 26; Acts X of 1877 and XIV of 1882, sec. 50.

[7] Kent, Lecture 20.

[8] See Act I of 1868, the General Clauses Act, sec. 3, and the Bengal Code of 1793.

[9] Kent, Lecture 20, pp. 501, 505.

[10] Icharam *v.* Govindram, I. L. R., 5 Bomb., 653.

sumption against the retroactive operation of a statute may (where no vested right would be taken away) be rebutted by the fact that a future time is fixed for its coming into operation.[1] When a statute is unconditionally repealed, it must be considered (except as to "anything done," *i.e.*, except as to transactions past and closed) as if it had never existed. A title acquired under an enactment of positive prescription before it is repealed, is a transaction past and closed within the meaning of this rule, and cannot *primâ facie* be retrospectively affected by a new law.[2]

They do not *primâ facie* affect past transactions or pending proceedings.

XV. In the absence of an express provision, the repeal of any Statute, Act or Regulation by any Act of the Governor-General of India in Council does not affect anything done or any offence committed, or any fine or penalty incurred, or *any proceedings commenced* before the repealing Act comes into operation.[3] Except when some provision is made to the contrary, all proceedings in a suit instituted before the repeal, including the appeal and special appeal, as well as specific proceedings in execution commenced *before* the repeal, are governed by the old law.[4] An application to execute a decree obtained in such a suit, if made *after* the repeal, would ordi-

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[1] *In re* Ratansi Kalianji, I. L. R., 2 Bomb., 148, 171; Towler *v.* Chatterton, 6 Bing., 258.

[2] Sitaram *v.* Khanderao, I. L. R., 1 Bomb., 286, 294; *In re* Ratansi, I. L. R., 2 Bomb., 148, 162.

[3] Act I of 1868, sec. 6; and Syud Nadir Hossein *v.* Bissen Chand, 3 C. L. R., 437, 438.

[4] Runjit Sing *v.* Meharban, 2 C. L. R., 391, 392, 396, F. B.; Ruttan Chand *v.* Himmantrao, 6 Bomb., 168. For the test by which an application in a *pending* proceeding may be distinguished from a wholly *new* proceeding, see Chinto *v.* Krishnaji, I. L. R., 3 Bomb., 214, and Rustomji *v.* Kessowji, I. L. R., 8 Bomb., 287, 293.

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narily be governed, not by the old, but by the new law.[5]

The General Clauses Act, 1868.

XVI. In all Acts made by the Governor-General of India in Council since January 1868,[6] unless there be something repugnant in the subject or context,

(*a*) words importing the masculine gender include females;

(*b*) words in the singular include the plural, and *vice versâ*;

(*c*) 'person' includes any company or association or body of individuals, whether incorporated or not;

(*d*) 'year' and 'month' respectively mean a year and month reckoned according to the British calendar;

(*e*) 'Immoveable property' includes land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;[7]

(*f*) 'moveable property' means property of every description except immoveable property;

(*g*) 'British India' means the territories for the time being vested in Her Majesty by the Statute 21

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[5] Govind *v.* Narryen, 11 Bomb., 111; Pasupati *v.* Pasupati, I. L. R. 1 Mad., 52. "Execution initiates a *new* set of proceedings."—Gurupadapa *v.* Virbhadrapa, I. L. R., 7 Bomb., 459, 462.

But see Behary *v.* Goberdhone, I. L. R., 9 Calc., 446.

Cf. sec. 3, Act XIV of 1882.

[6] See Act I of 1868, the General Clauses Act, sec. 2.

[7] The term includes incorporeal hereditaments. See the remarks of the Privy Council in Maharana Futtehsangji *v.* Desai Kullianraiji, 21 W. R., 178, 181, on the meaning of the term in Act XIV of 1859. It includes "growing trees," see Jagrani *v.* Gonesh, I. L. R., 3 All., 435. A right to officiate as priest at the funeral ceremonies of Hindus in a particular mouza is not "immoveable property" within the meaning of this definition. But see Roghu *v.* Kasi, 13 C. L. R., 263, and p. 177 (note), *supra*.

and 22 Vict., c. 106, other than the settlement of Prince of Wales' Island, Singapore, and Malacca ;

(*h*) 'High Court' means the highest Civil Court of Appeal in the part of British India in which the Act containing such expression shall operate.

The word 'from.'

XVII. In all such Acts made after the 3rd of January 1868, the use of the word 'from' is sufficient for the purpose of excluding the first in a series of days or any other period of time. (Sec. 3, Act I of 1868.)

In considering what is the length of a calendar month or year, it is sufficient to go from one day in one month or year, to the corresponding day in the next, and to exclude from the computation the day 'from' which the month or the year is calculated, so that two days of the same number are not comprised in it.[8]

The interpretation clause of Act XV.

XVIII. The interpretation of the following words in the Indian Limitation Act of 1877, is governed by sec. 3 of the Act :

Plaintiff, applicant, defendant, easement, bill of exchange, bond, promissory note, trustee, suit, registered, foreign country, and good faith.

Construction of a general statute must be general.

XIX. A *general* construction must be put upon the terms and clauses of a general statute ; their applicability must be determined by the nature of the thing

[8] See Maxwell on Statutes, p. 310 ; Kashi Kant *v.* Rohini Kant, 7 C. L. R., 342, 343 ; I. L. R., 6 Calc., 325 ; Banning on Limitation, p. 256 ; and Act I of 1868, sec. 3. A debt becomes due at the last moment of the period of time which is allowed to the debtor for payment ; limitation commences to run 'from' the last day of such period, and the day corresponding to that from which the computation of the limitation period begins, is the last day for bringing the suit. If the due date is the 11th April, the period of limitation commences to run *from* the 11th April, and ends on the 11th of April of some following year. The period from the 12th April to 11th April of the next year (*inclusive* of both days) is one year. See Deb *v.* Ishan, 13 C. L. R., 153.

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sued for, and not by the status, race, character or religion of the parties to the suit.

In the case of a general law of limitation, the period of limitation within which a claim is barred must be fixed and uniform, by *whomsoever* the claim is preferred or resisted. The only exception to this rule, if exception it can be called, is where the thing sued for is *incapable* of being held by a person not belonging to a particular race or creed.[9]

Customs do not override the law of limitation.

XX. Customary law must give way to the express command of the Legislature. It cannot override the positive prescriptions of the Limitation Act.[10]

Retrospective operation of laws.

Rules XIV and XV relating to the difficult question of the retroactivity of statutes require some further notice.

It can not be denied that the Legislature has full authority to pass retrospective laws even to the divestment of vested rights; but when it intends to do so, it does so either by expression, or unmistakable indication on the face of the law itself. In the absence of any such guides to the ascertainment of the intention, the *presumption* is, that a statute depriving the subject of a *vested right* is not retrospective. But such a presumption does not exist where a statute merely affects the *procedure* in Courts of Justice (such as one relating to the service of proceedings, or what evidence must be produced to prove particular facts); and where its language in terms applies to all actions, whether before or after

As affecting vested rights, or mere procedure.

[9] Moharana Futtehsangji *v.* Desai Kullianraiji, 21 W.R., 179, 181, P. C. Certain hereditary offices are incapable of being held by persons other than Hindus.

[10] Mohanlal *v.* Amratlal, I. L. R., 3 Bomb., 174, 177.

the Act, the new procedure may be retrospectively applied ; but where the change in procedure is complicated by the divestment of a pre-existing right, the presumption against its retroactivity revives in its full strength.[1]

Postponement of the operation of a law.

Where a statute does not come into force at once, but is postponed for sometime, the hardship of a retrospective law may be considered to have been contemplated and provided for by the Legislature, and such a postponement may induce the Courts to hold the statute to be retrospective.[2] But as to transactions past and closed, as to "anything done" under the old law conferring a right or title, or as to "proceedings commenced" under the old law, the deferring of the operation of the new statute is not by itself a sufficient ground for giving it a retrospective effect.[3]

How far a law of limitation may be presumed to be retrospective.

Statutes of Limitation (as distinguished from Prescription) are generally regarded as Acts regulating procedure ;[4] but even such statutes ought not, *in the absence of a clear indication to the contrary,*

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[1] See the judgment of Westropp, C. J., in the matter of Ratansi Kalianji, I. L. R., 2 Bomb. (F. B.), 148, 180. An inchoate or a merely contingent right is not a vested right. (*Ibid*, 170.) An existing right (to insist upon a *partition* in preference to a *sale* and distribution of proceeds) under an unexecuted *decree*, is a vested right, which cannot, under this rule, be affected by a new statute. (*Ibid*, p. 176.) A right to execute a decree which is in force at the time when a new Act is passed, is also a right which should not ordinarily be affected by the new Act. (*Ibid*, 172.) See also Icharam *v.* Govindram, I. L. R., 5 Bomb., 653.

[2] Maxwell, p. 197 ; Towler *v.* Chatterton, 6 Bing., 258.

[3] Sitaram Vasudeb *v.* Khanderao Balkrisna, I. L. R., 1 Bomb., 286, 294 ; and *In re* Ratansi, I. L. R., 2 Bomb., 148, 162.

[4] Ruckmobayee *v.* Lallubhoy Muttichand, 5 Moo. I. A., 2. But see a *dictum* of Holloway, J., in Tamburatti *v.* Veraroya, I. L. R., 1 Mad., 228, 235.

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to be retrospectively construed,[5] so as altogether to deprive a plaintiff of a vested right of action or proceeding,[6] or to deprive a defendant of any right to treat the claim against him as *already barred*.[7] But they may be retrospectively construed so as only to shorten or lengthen the *period* of limitation for unbarred causes of action arising before they come into operation.[8]

When the retrospective application of an adjective law (including a law of limitation) would destroy a vested right (such as a right to revive an abated suit), or inflict such hardship or injustice as could not have been within the contemplation of the Legislature, then such law is not, any more than any other statute, to be construed retrospectively. This rule applies with greater force to a law which (like sec. 108 of Act XII of 1879) comes into force from the moment of its being passed.[9]

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[5] *Per* Westropp, C. J., in 2 Bomb., 148, 171, quoting the Delhi and London Bank *v.* Orchard, L. R., 4 Ind. App., 127 ; (S. C.) I. L. R., 3 Calc., 47.

[6] Jackson *v.* Wooley (8 E. and B., 784), as explained in Pardo *v.* Bingham (L. R., 4 Ch. App., 735), both of which cases are cited at p. 198, I. L. R., 2 Bomb.

[7] Abdul Kardim *v.* Manji Hansraj, I. L. R., 1 Bomb., 295 ; see also 7 Mad., 283, 288, 298 ; I. L. R., 5 Calc., 897.

[8] I. L. R., 1 Bomb., 295, 303, 306, 307.

[9] Khusal Bhai *v.* Kabhai, I. L. R., 6 Bomb., 26. A Division Bench of the Calcutta High Court goes further, and, on the authority of Westropp, C. J., lays down, that the rule as to the retrospective operation of laws of procedure applies only where they do not *in any way prejudice* any of the parties to the suit.—Behari Lall *v.* Gobordhone, 12 C. L. R., 431, 434 ; (S. C.) I. L. R., 9 Calc., 446. But Westropp, C. J. (in I. L. R., 2 Bomb., 148), does not, at least in so many words, say so. Indeed there is in one sense an element of retroactivity in all laws, since no law can operate except by changing or controlling what would else have been different capabilities, or a different sequence of acts and events having their roots and motives in the past. (*Per* West, J., at p. 210, I. L. R., 2 Bomb.)

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Abolition or introduction of *exceptions*, how far retrospective.

The abolition of an exemption, on the ground of a particular *disability* to sue (such as plaintiff's absence or imprisonment) recognized by a repealed statute, has, where the language of the new law is general, been construed retrospectively, so as merely to shorten the *period* of limitation for enforcing a right.[10]

But the abolition of a mode of renewing the period of limitation by a positive act *inter partes*, such as an acknowledgment or payment by any one of several co-contractors (in the absence of a clear indication of the intention of the Legislature), has not been construed retrospectively. For such a construction *deprives* a plaintiff of his right of action as *revived* in its *entirety* by an acknowledgment or payment which took place before the abolition.[1] The introduction of a mode of interrupting the statute by a positive act *inter partes* has, on the other hand, been construed retrospectively, so as to enlarge the *time* of limitation by a positive act of acknowledgment or payment satisfying the requirements of the statute, although done before the passing of the statute.[2]

Upon a construction of the *particular words* of Reg. II of 1805, sec. 3, which for the first time excepted cases of possession obtained by violent or fraudulent means from the operation of the twelve years' rule of limitation, the benefit of the exception was given to a plaintiff whose suit had been insti-

[10] Pardo *v.* Bingham, L. R., 4 Ch., 735; and Maxwell, pp. 198-9.

[1] Jackson *v.* Wooley, cited at p. 198, I. L. R, 2 Bomb. But the clear and precise language of sec. 18, Act XIV of 1859, rendered payments and oral acknowledgments made before 1862 ineffectual under Act XIV of 1859.

[2] Vincent *v.* Wellington, Long and T., 456; Darby and Bosanquet, p. 160. See p. 210, *infra*.

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tuted while the old law[3] had been in force for only two years, and was pending in appeal when the new law came into operation.[4]

The retrospective operation of Act XIV of 1859;

The terms of sec. 18, Act XIV of 1859, as modified by Act XI of 1861, expressly rendered the provisions of Act XIV applicable to all suits instituted after the 1st of January 1862, and inapplicable to suits instituted before that date. Accordingly a disability to sue on the part of the plaintiff, or verbal acknowledgment of liability, or a part payment or a payment of interest by the defendant, which would have given the plaintiff a *longer period* or a *fresh start* under the old law, was of no avail if the suit was instituted after the 1st of January 1862, when Act XIV of 1859 came into operation. In such cases Act XIV of 1859 had retrospective effect on events and transactions which had taken place before the Act had come into operation.[5] The hardship of an *expost facto* law in those cases was sufficiently provided for by the postponement of the operation of the Act. But on

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[3] Reg. III of 1793, sec. 14; and Reg. II of 1803, sec. 18.

[4] Lall Dokul Sing *v.* Lall Rooder Postule, &c., 5 W. R., P. C., 95. In this case the general question whether, where an Act of Limitation has been repealed, that repeal taking place at a period in a suit between its commencement and its final determination, is or is not to affect the decision on appeal, the original decree in the suit having been passed before the repeal, was raised, but not entered into by their Lordships. If the question is now raised, it will *primâ facie* be answered in the negative. See 6 Ad. and E., 951, referred to in Brown on Limitation, p. 684.

[5] As to *disability*, see Annandi Kowar *v.* Thakoor Panday, 4 W. R., Mis., 21; and Radhamonee Dasi *v.* Goluckchunder Chakerbutty, 1 W. R., 52: as to *oral acknowledgment*, see Doyle *v.* Edoo Gazee.—Suth., S. C. C. Ref., p. 145; and Chamar Ullah Sirdar *v.* Lokenath Halder, *ibid*, p. 40: as to *payments*, see Ramnarain *v.* Bhugwan, *ibid*, 92: as to the effect of applications for execution, made after 1859, but before 1862, not being *bonâ fide* applications as required by Act XIV, see Rajah Satyasaran *v.* Bhyrubch., 11 W. R., 80.

general principles,[6] Act XIV of 1859 could not affect any title acquired, or revive any right to sue barred, under the old Regulations, at or before the date when the Act came into operation.

of Act IX of 1871.

The language of sec. 1, cl. (*a*), Act IX of 1871, distinctly makes the Act inapplicable to suits actually[7] instituted before the 1st of April 1873, and there is sufficient indication in the Act itself that the Legislature intended that from the day to which its operation was *deferred*, it should regulate the bringing of suits on causes of action which had accrued, or transactions which had taken place, before that date.[8]

An application for the execution of a decree being (ordinarily speaking) an application in the *suit* in which the decree was obtained, and the reasons for not applying the new rules of limitation to suits commenced before the 1st day of April 1873, being of equal force with regard to applications for the execution of decrees obtained in such suits, it has been held that, under sec. 1, cl. (*a*) of Act IX of 1871, applications for execution of a decree in a suit instituted before that day are governed by the old law.[9] The operation of Act XV of 1877 was postponed to

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[6] Sitaram *v.* Khanderao, I. L. R., 1 Bomb., 286; see also I. L. R., 2 Bomb., p. 171, and sec. 2, Act XV of 1877.

[7] Joyram Loot *v.* Pani Ram Dhoba, 8 C. L. R., 54.

[8] Abdul Kardim *v.* Manji Hansraj, I. L. R., 1 Bomb., 295; Ram Chunder *v.* Soma, I. L. R., 1 Bomb., 305. See also Madhavan *v.* Achadda, I. L. R., 1 Mad., 301. For a similar construction of 3 and 4 Will. IV, c. 27, see Angell *v.* Angell, 9 Q. B., 328; and Wilberforce on Statutes, p. 162. In the New York Statute of Limitation, causes of action which accrued before the Statute came into operation are *expressly* exempted (sec. 45).

[9] Mungul Persad *v.* Grijakant, L. R., 8 I. A., 123; (S. C.) 11 C. L. R., 113, P. C.

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the 1st day of October 1877, but there is no express provision in that Act similar to cl. (*a*), sec. 1 of Act IX. And the word 'suit' is expressly defined as not including an 'application.' It cannot, therefore, be said that (under Act XV) a thing which applies to the suit, also applies to an application in that suit; and as execution initiates a new set of proceedings, an application for the execution of a decree obtained in a suit instituted before the 1st of October 1877, if made after the 1st of October, is not a *proceeding commenced before* that date. Such an application would, therefore, be governed by Act XV of 1877, and not by the Act of 1871.[10]

In suits instituted on or after the 1st of April 1873, the new provisions of Act IX relating to *payments* by the debtor or his agent, or *acknowledgments* of liability signed by the debtor's *agent*, operate retrospectively upon payments and acknowledgments made before the Act came into operation, although such payments and acknowledgments were of no avail at the date when they were made.[1] In one case the Calcutta High Court held that in suits brought on or after the 1st of April 1873, such new modes of interrupting the statute serve even to revive debts which, according to the provisions of the old law, had been *already barred* before that

Mohesh Lall *v.* Sumput Koeri discussed.

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[10] Gurupadapa *v.* Virbhadrapa, I. L. R., 7 Bomb., 459. But see Behary *v.* Goberdhone, I. L. R., 9 Calc., 446. This question has been lately referred to a Full Bench of the Calcutta High Court.

[1] Teagaraya Mudall *v.* Mareaffa Pellai, I. L. R., 1 Mad., 264. See also the judgment of Holloway, J., in Valia Tamburatti's case, I. L. R., 1 Mad., 228, and of Justice Maclean in Moheshlall's case, 7 C. L. R., 121. This is in accordance with the decision in Vincent *v.* Wellington cited above, see p. 207, *supra*.

date.[2] In that case the suit was instituted when Act IX of 1871 was in force, and the question was whether the right to bring the suit (*i.e.*, the remedy) having been actually barred under the former Act of 1859, it could be revived by the acknowledgment of an *agent* of the defendant made before Act IX was passed. Such acknowledgment was insufficient under the Act of 1859, but sufficient under the Act of 1871, to keep alive the debt. This question was answered by the Judges in the affirmative. The *dicta* of Justice Holloway[3] (not concurred in by Morgan, C.J.) support this view of the case, but none of the other cases referred to by the Calcutta Court goes to the length of holding that a right to sue already barred could be revived by Act IX of 1871. In *Teagaraya Mudali* v. *Mariapha Pellai* (I. L. R., 1 Mad., 264), although limitation had *commenced to run* under Act XIV of 1859, the remedy was *not barred* at the date on which Act IX of 1871 came into operation, and sec. 21 of the latter Act was allowed to have retrospective effect on transactions which had taken place before that date. In *Madhavan* v. *Achuda* (I. L. R., 1 Mad., 301) also, the right to sue was not barred when Act IX of 1871 came into force. On the other hand, Chief Justice Westropp in *Abdool Karim's* case (I. L. R., 1 Bomb., 305), Chief Justice Morgan in *Valia Tamburatti's* case (I. L. R., 1 Mad., 229), and Justice Pontifex in *Nakur Chunder Bose's*

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[2] Moheshlall *v.* Sumput Koeri, 7 C. L. R., 121 ; (S.C.) I. L. R., 6 Calc., 340 ; see also the judgment of Holloway, J., in I. L. R., 1 Mad., 228.

[3] In Valli Temburatti *v.* Vira Rayan, I. L. R., 1 Mad., 229.

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case (I. L. R., 1 Calc., 328) and in *Nursing Doyal's* case (6 C. L. R., 489; (S. C.) I. L. R., 5 Calc., 897) held, that a remedy by suit *barred* by the existing law could not, in the absence of a clear indication of the intention of the Legislature, be revived by a new law enlarging the period of limitation, or introducing new modes of interrupting the statute.

The 'authentic' interpretation of Act IX of 1871 is, that "nothing in that Act contained shall be deemed to affect any title acquired, or to revive any right to sue barred under any enactment thereby repealed."[4] If this declaration by the Legislature, and the rulings quoted above, had been brought to the notice of the Court in *Mohesh Lall's* case, it may be presumed that the Court would not have come to the conclusion that a right to sue barred under Act XIV of 1859 was capable of being revived by the provisions of the Act of 1871, simply because the debt itself had not been extinguished by the repealed Act of 1859.

Generalia specialibus non derogant.

It has been already observed that a *general* later Act does not repeal, control, or alter an earlier special or local one, by *mere implication*. Such an Act is presumed to have only general cases in view, and not particular cases which have been already provided for.[5] The maxim *generalia specialibus non*

[4] *Vide* sec. 2, Act XV of 1877. The same principle is recognized by the Legislature in sec. 72, Act XVII of 1879 (Deccan Agriculturists' Relief Act). See Dharma *v.* Govind, I. L. R., 8 Bomb., 99, in which West, J., refers to Mohesh Lall's case.

[5] Maxwell, p. 157. "The reason is, that the Legislature having had its attention directed to a special subject, and observed all the circumstances of the case and provided for them, does not intend by a general enactment afterwards to derogate from its own act, where it makes no special mention of its intention to do so."—Unnoda *v.* Kristo, 19 W. R., 5, P. C.

derogant applies.[6] It was accordingly held, that the general Law of Limitation (Act XIV of 1859), in the absence of any *express words* or *necessary implication*, did not repeal or affect the limitation clauses of the Bengal Rent Law (Act X of 1859),[7] or of the Act for the adjudication of claims to property seized as forfeited (Act IX of 1859).[8] But a limitation clause in a *general* code of procedure has been held to be modified by a subsequent *general* law of limitation. Thus the exception as to disabilities in the *general* Law of Limitation (Act XIV of 1859) was considered to have been incorporated with the limitation clause in sec. 246 of the *general* Act VIII of 1859.[9]

Sec. 6, Act IX of 1871.

The sixth section of Act IX of 1871 is partly founded on the general maxim quoted above. It expressly saves special and local laws "now or hereafter to be in force," so that whether the general Act is *later* or *not*, its provisions cannot be imported into any local or special law. And after the passing of that Act it was held[10] that the provisions as to disability contained in that or any other Act could not apply to a suit under the special Act XXV of 1857, sec. 9. Similarly, the provision in sec. 5 of Act IX as regards

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[6] The Collector *v.* Punriar, I. L. R., 1 Mad., 89, 110.

[7] Unnoda Prasad Mookerjee *v.* Kristo Kumar Moitro, 19 W. R., 5, P. C. See also Paulson *v.* Modhusudan, 2 W. R. (Act X), p. 21, F. B.

Sec. 3 of Act XIV of 1859 partially corresponds to sec. 6 of Act IX.

[8] Mohomed Bahadoor Khan *v.* The Collector of Bareilly, 21 W. R., 318, P. C.; (S. C.) L. R., 1 Ind. Cas., 167.

On similar grounds the exceptions recognized by sec. 14, Reg. III of 1793, were not extended to the special limitation provided for by Act XIII of 1848. See Cal. Sud. Dew., 1857, pp. 688, 1197, and Huro Chunder Chowdhry *v.* Kishen Kumar Chowdhry, 5 W. R., 27.

[9] Musst. Phoolbas Koer *v.* Lalla Jogeshur Roy, 25 W. R., 285, P. C.; I. L. R., 1 Calc., 226.

[10] Thakur Kapitnath *v.* The Government, 13 B. L. R., 445; 22 W. R., 17.

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the period of limitation expiring on a day when the Court is closed, has been considered to be inapplicable to suits for arrears of rent under Act VIII of 1869, B. C.[1]

Sec. 6, Act XV of 1877.

It has been held by the Calcutta High Court that the language of sec. 6, Act XV of 1877, has introduced a change in the law as stated in the cases mentioned above. Under Act IX of 1871, the rule was that special and local *laws* of limitation were not to be affected by the general law; but under Act XV of 1877 the rule is that the *periods* of limitation prescribed by special or local laws shall not be altered or affected by the general law. This raises an *inference* that the Legislature intended that the *general provisions and exceptions* contained in Act XV of 1877 should be applicable to suits, appeals, or applications governed by special or local laws of limitation. Accordingly, the general provision of sec. 5, Act XV of 1877 (as regards the period of limitation expiring on a day when the Court is closed), has been applied to suits under Act VIII of 1869, B. C.,[2] and to suits under sec. 77 of the Registration Act, III of 1877.[3] Similarly, the general

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[1] Paran Chunder *v.* Mutty Lall, I. L. R., 4 Calc., 50; 2 C. L. R., 543. It may be observed that Act VIII of 1869 was passed by the local Bengal Legislature, and not by the general Indian Legislature, and it is but reasonable to expect that any modification of such an enactment by a general Limitation Act should be apparent on the face of the general law. Act X of 1859, it will be remembered, was passed by the *same* Legislature which passed Act XIV of 1859. The principle of the rule of interpretation adverted to above, therefore, applies with greater force to Act VIII of 1869, B. C., than to Act X of 1859.

[2] Golap Chand *v.* Kristo Chunder, I. L. R., 5 Calc., 314; Khoselal *v.* Gunesh Dutt, I. L. R., 7 Calc., 690.

[3] Nijabutollah *v.* Wazir Ali, 10 C. L. R., 333.

provisions of sec. 12, Act XV (as to exclusion of time occupied in obtaining copies of decrees, &c.), and of sec. 19, Act XV (as to acknowledgments of liability), have been considered applicable to applications and suits under Act VIII of 1869, B. C.[4] And the provisions of sec. 14, Act XV, have recently been applied to suits under the Registration Act.[5] But as these general provisions and exceptions *modify*[6] the periods of limitations prescribed by local and special Acts, they may be said to 'affect,' if not to 'alter,' those periods. And although the corresponding section of Act XIV of 1859 (sec. 3) referred to the *periods* of limitation only, the general provisions of that Act were held by the Privy Council to be inapplicable to suits for which a (shorter) period of limitation had been prescribed by a special Act.[7] Besides, under the well-established rule of construction to which we have referred, a mere *inference*, unless it is a necessary one, is not sufficient to rebut the presumption that the Legislature does not intend by a general enactment to interfere with a special one.[8] On the other hand, it should be remembered that Act XV expressly provides (see sec. 1) that secs. 2—25 shall not apply to suits under

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[4] Beharilall *v.* Mungolanath, I. L. R., 5 Calc., 110. In the report of this case a similar ruling of Sir Richard Garth is referred to. See Parbuttinath *v.* Tejmoy, I. L. R., 5 Calc., 303.

[5] Second Appeal No. 1204 of 1882, decided by Garth, C. J., and O'Kinealy, J., on 20th December 1883, Khetter *v.* Dinabashy, I. L. R., 10 Calc., 265.

[6] Musst. Phoolbas *v.* Lall Joggeshur, 25 W. R., 285, 288, P. C.

[7] Unnoda Persaud *v.* Kristo Coomar, 19 W. R., 5, P. C.; Mahomed Bahadoor *v.* The Collector, 21 W. R., 381, P. C. See also Hariram *v.* Vishnu, 10 Bomb., 204.

[8] 19 W. R., 5, 6, 7, P. C.

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two *particular* special laws, *viz.*, Act IV of 1869 and Mad. Reg. VI of 1831. From this it would seem that the Legislature intended that to suits under *other* special laws, those sections may, as far as possible, apply.[9]

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[9] Against this *inference* (taken by itself) it may be remarked that sec. 1 of Act IX also made a similar express provision, and notwithstanding such provision, it was held that the general provisions of Act IX did not affect suits under *any* local or special law.

But as regards Act XV, see further the recent case of Rama Raw *v.* Venkatisa (I. L. R., 5 Mad., 171, F. B.) In this case, the Judges of the Madras High Court were of opinion that sec. 19, Act XV of 1877, was applicable to summary applications under special and local laws, such as the Acts regulating the rights of landlord and tenant in the North-Western Provinces and in Bengal.

Query—If the general provisions of Act XV are applicable to suits and applications under all special and local laws, why has the Legislature *expressly* extended those provisions to suits under Act XVIII of 1881? (See sec. 23, Act XVIII of 1881, the Central Provinces Land-Revenue Act.)

LECTURE VIII.

THE STARTING POINT OF LIMITATION,—THE PERIODS OF LIMITATION,—THE OPERATION OF ACT XV,—GENERAL RULES AND EXCEPTIONS AS TO THE APPLICATION OF THE PERIODS OF LIMITATION.

Accrual of right to sue (art. 120) — In actions on contracts (art. 115) — Where there are successive breaches — Where there is a continuing breach (sec. 23) — Where no time is specified — Where money is payable on demand — In actions for torts (art. 36 and sec. 24) — Where there has been a continuing wrong (sec. 23) — Where there has been an illegal proceeding — In actions on *quasi* contracts — Instances of defendants' refusal being the cause of action — Cases where the plaintiff's knowledge is an element of the cause of action — Knowledge and means of knowledge — Date of accrual of right to sue not always identical with *terminus a quo* — *Terminus ad quem* — Periods of limitation — The 28 sections of Act XV — Operation of the Act as to time, sec. 2 — Operation, as to place, secs. 1, 6, & 11 — Operation, as to persons — Operation, as to subjects — Preamble, secs. 1, 6, and 10 — Rules and exceptions — First Rule, explanation and proviso, secs. 4 and 22 — Second Rule, complement and proviso — Sec. 25, Act I of 1868, and art. 85, sched. ii — Third Rule, sec. 12 — Fourth Rule, sec. 9 — Sec. 9 explained and illustrated — Proviso to the 4th rule explained — Prevention, suspension, and interruption of the operation of limitation, explained and illustrated — Fifth Rule, sec. 23 and arts. 19, 23, 42, 115 and 116 — Sixth Rule, sec. 24 and art. 25 — Exceptions to the application of the periods of limitation.

THE third column of Sched. II, Act XV of 1877, *specifies* the particular events from which limitation runs in *particular* cases. The *general* article (No. 144), relating to suits for the possession of *immoveable* property, or any interest therein not otherwise specially provided for, makes limitation start from the time when the possession of the defendant becomes adverse to the plaintiff. The question of *adverse possession* has already been considered. But

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there is a still more *general* article (No. 120), relating to "suits for which no period of limitation is provided elsewhere in this schedule" (Sched. II), which makes the time when the *right to sue* accrues, the starting point of the period of limitation. The question "when does the right to sue or the cause of action accrue" requires some notice here. It may be laid down that, in general, "the cause of action arises when and as soon as the party has a right to apply to the proper tribunals for relief."[10] And the infringement of the plaintiff's (substantive) right gives him a right to apply for relief.[1]

Accrual of right to sue (art. 120).

In actions on contracts. (art. 115).

In actions on contracts, the right to sue accrues at the time of the *breach* of contract, and not at the time when *knowledge* of the breach first comes to the plaintiff, except where the right to sue is fraudulently concealed by the defendant.[2] The time at which the *damage* arising from the breach occurs, does not also affect the starting point of limitation.[3] Where there are *successive* breaches, as, for instance, in the case of nonpayment of a bond payable by instalments, a fresh right to sue accrues upon every fresh breach, so that time may be a bar to the suit for the earlier breaches without affecting the suit for the subsequent

Where there are successive breaches.

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[10] Angell, para. 42.

[1] Jardine, Skinner & Co. *v.* Ranee Shamasoonderi, 13 W. R., 196.

It may be here observed, that a statement in the plaint as to the time when the cause of action arose does not absolutely bind the plaintiff. —Fuckeruddeen *v.* Mohima, I. L. R., 4 Calc., 529, 531. See also Phillips *v.* Nundo, 8 W. R., 385.

[2] Rajah Indro Bhusun *v.* T. J. Kenny, 3 W. R., S. C. Ct. Ref., 9; and sec. 18, Act XV of 1877; Roscoe's Digest, 613; art. 115, sched. ii. A similar rule applies to actions of *tort* (see p. 221), as well as to *other* cases (see Azrool *v.* Lalla, 8 W. R., 23).

[3] Darby and Bosanquet, p. 24.

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ones.[4] Where the breach is a *continuing* one, as in the case of a tenant neglecting, in violation of his covenant, to keep the demised premises in repair, a fresh right to sue arises at every moment of the time during which the breach continues.[5] The cause of action in this case is said to be renewed *de die in diem*,—that is, renewed from day to day; and the suit is absolutely barred, only by the lapse of the prescribed period from the time when the breach *ceases* to exist.[6] Mr Shephard, in his work on the Limitation Acts, points out that this rule applies only to "contracts obliging one of the parties to adopt some given *course* of action during the *continuance* of the contractual relation." "Every breach persisted in" by the obligor is not a *continuing* breach. The relation between the contractor and contractee must *continue* to exist for *some time*, as in the case of partners, landlords and tenants, principals and agents, bailors and bailees; and "the matter to which the defaulting party is obliged should *not* consist of doing *specific* acts at *stated times*," such as paying rent every quarter, or rendering accounts every six months.[7]

Where there is a continuing breach (sec. 23).

Where the time for the performance of the contract is not determined by the contract itself, where it is not a case of a promise to do anything at a *specified* time, or upon the happening of a *specified* contingency, where performance is due as soon as the creditor or obligee may desire it, the rule of English law (which, notwithstanding Austin's protest, has been adopted

Where no time is specified.

[4] Art. 115; art. 74; Darby and Bosanquet, p. 100.

[5] Sec. 23, Act XV of 1877; Darby and Bosanquet, p. 100.

[6] See art. 115, sched. ii.

[7] See Shephard on Limitation, pp. 48, 49, 1st Edition.

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by the Indian Legislature) gives the creditor or obligee an *immediate* right to sue, as in the case of goods sold without any specific credit, of money lent generally, or of money *lent* under an agreement that it should be payable *on demand*.[8]

Where money is payable on demand.

The following passage from the Abstract of the Proceedings of the Legislative Council on the 19th July 1877, refers to this question: "In the case of suits for money lent under an agreement that it should be payable on demand, we had made the time run from the date of the transaction, instead of from the demand, the date prescribed by the present law,[9] the framer of which in this respect had followed a judgment of the Bengal High Court (6 B. L. R., 10), which judgment rested on what the authority[10] of Mr. Justice Holloway (*quis jure peritior?*) emboldened Mr. Stokes to call a mistake of Austin's. It seemed unreasonable that a creditor should be able to give himself an unlimited time to sue by merely abstaining from making a demand. Moreover, as Mr. Justice Innes, one of the Judges of the Madras High Court, observed, in a Minute to which the Committee were much indebted—'It is a well-known principle of English as well as Continental law, that the words *payable on*

[8] Austin, Lecture 25; art. 52, sched. ii, Act XV, art. 57 and art. 59. According to Austin, in these cases as well as in cases of deposits, a previous actual demand is necessary, for without it the *debtor* cannot *know* that he is breaking his obligation. But in Evans's Digest of the Statutes, it is pointed out that, in these cases (as *distinguished* from cases of *deposits* returnable on demand), there is an immediate duty, and that it is a perfectly legitimate conclusion that no demand can be necessary in addition to the duty itself. The Indian Legislature also distinguishes money deposits from loans, see arts. 59 and 60 of Act XV, and art. 145.

[9] Act IX of 1871.

[10] See 7 Mad., 293, 296, 300.

demand are not a condition. The creditor, by the clause, does not seek to impose a conditional obligation; he merely gives notice to the debtor that he is to be ready to pay the debt at any time when called upon. If the obligation depended upon a personal act of the creditor (as Savigny observes), it would be extinguished by his death before demand, which is not the case. Consistently with this view, it has always been held in England that a debt payable on demand was a debt from the date of the instrument, on which therefore the cause of action arose (*Norton* v. *Ellam*, and other cases), and that time runs from that date, and not from date of demand.' The Committee agreed with Mr. Innes in thinking it desirable that the law in India and that in England should be in accord on this point, as they were prior[1] to the enactment of Act IX of 1871."

In actions for torts not specially provided for in the schedule, time begins to run from the occurrence of the act or omission complained of, and not from its *discovery* by the plaintiff, nor (generally) from the time when the consequential damage ensues.[2] But where the consequential damage is the ground of action, where the tortious act itself, without specific damage, does not give rise to a cause

In actions for torts (art. 36 & sec. 24).

[1] But even prior to that date, the Bengal High Court did follow Austin in cases not governed by English law. (Poorna Chunder *v.* Gopalchunder, 17 W. R., 87.) The other High Courts followed the English law, see Vinayak *v.* Babaji, I. L. R., 4 Bomb., 230. Even in England, a bill or note payable *after demand* is not payable till demand is made. Banning, p. 27. Compare arts. 72 and 73 of Act XV. As to promises made in consideration of some *collateral* thing being done *on demand*, see Ramchunder *v.* Juggutmonmohiny, I. L. R., 4 Calc., 283, 294.

[2] In these cases nominal damages are at once recoverable. See Banning, p. 270; Collett on Torts, para. 418; and art. 36, sched. ii, Act XV.

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of action, limitation runs from the damage accruing, and not from the *act* complained of.[3] In the case of a *continuing* wrong, limitation begins to run at every moment of the time during which the wrong continues.[4] Where the defendant obstructs a way, a watercourse or a drain, the cause of action is renewed *de die in diem*, so long as the obstructions are allowed to continue.[5] But in the case of a wrongful seizure of property under a process of Court, the continued detention of the property cannot be treated as fresh causes of action from day to day.[6] A party is not allowed to bring a fresh action merely because there has been a fresh damage, as where what was originally 'simple hurt' subsequently turns out to be 'grievous hurt.' In such a case, the damages have to be "assessed prospectively and once for all." But where the wrongful act is persisted in, and there is continuing *injury* as well as continuing damage, successive actions, it would seem, might be brought *toties quoties* (as often as might be necessary).[7]

Where there has been a continuing wrong (sec. 23).

It is a mistake to suppose, that where a proceeding is illegal, and may be a cause of action, the cause of action does not arise until the proceeding has been set aside by the Court. There may be cases in which,

Where there has been an illegal proceeding.

[3] Darby and Bosanquet, p. 30 ; sec. 24 and art. 25, sched. ii, of Act XV of 1877 ; Bonomi *v.* Backhouse, 9 H. L. Ca., 503, which was a case of a subsequent subsidence of plaintiff's land caused by the excavation of defendant's contiguous land.

[4] See sec. 23, Act XV of 1877, and arts. 19, 23, and 42, sched. ii. (False imprisonment, injunction wrongfully obtained, and malicious prosecution.)

[5] Rajrup Koer *v.* Abul Hossein, I. L. R., 6 Calc., 394 ; (S.C.) 7 C. L. R., 529 ; Ramphull *v.* Misree, 24 W. R., 97.

[6] D. Hughes *v.* The Chairman, 19 W. R., 339 ; art. 29, sched. ii, Act XV.

[7] See Shephard, pp. 58, 59 ; and Whitehouse *v.* Fellows, cited at p. 58, *id.*

before an action can be brought, it is necessary to have the proceedings set aside; but where there is an entire want of jurisdiction, where the alleged wrong-doer is not acting judicially, and would have no protection from his judicial capacity, it is not necessary to wait until his illegal and unfounded proceedings are set aside.[8]

Breaches of contracts, and violations of rights *in rem*,[9] may give rise to causes of action without demand and refusal. But, in general, it may be said that *quasi*-contracts and *quasi*-delicts are merely sources of obligations, the *refusal* to fulfil which is properly the cause of action.[10] So far as the starting point of limitation is concerned, it does not appear that the Indian Legislature approves of this rule. Suits for contribution and suits for money had and received, which are founded in doctrines of equity, and which depend upon *quasi*-contracts, are provided for by arts. 99, 100, and 62 of Act XV of 1877. In *these* cases, at least, time is made to run from the

In actions on *quasi*-contracts.

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[8] *Per* Couch, C. J., 19 W. R., 339, 841.

[9] Torts, according to Austin, are violations of rights *in rem*. But where a duty is imposed upon a contractor by the common law or the custom of the realm (as the duty of a common carrier *irrespective* of any contract), he is, for breach of such a duty, generally sued in an action of tort, though, as the law *implies*, a contract to perform the duty; he may also be sued in an action of contract. See Mothoorakant *v.* I. G. S. Navigation Co., I. L. R., 10 Calc., 166, 186.

[10] Austin, Vol. II, pp. 945, 946. See also Budrunnissa *v.* Muhommad Jan, I. L. R., 2 All., 671, 674. A *quasi*-contract denotes any incident by which one party obtains an *advantage*, which (in equity) he ought not to retain, or by reason of which he ought to indemnify the other. A *quasi*-delict denotes an incident by which *damage* is done to the obligee (though without intention or negligence, immediate or remote) and for which damage the obligor is bound to make satisfaction. See Rambux *v.* Modhoosoodun, 7 W. R., F. B., 377, 383.

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time when the right arises,—*i.e.*, from the occurrence of the incident which constitutes the *quasi*-contract, and not from the time when the obligor *refuses* to fulfil his obligation.[1]

Instances of defendants' refusal being the cause of action.

The defendant's *refusal* is the starting point of limitation in the following suits:—

In a suit against Government for compensation for land when the acquisition is not completed, time runs from the date of the *refusal* to complete. (Art. 18, sched. ii, Act XV of 1877.)

In a suit for the recovery of a wife, or for the restitution of conjugal rights, the period of limitation begins to run from the time when possession or restitution is demanded and *refused*. (Arts. 34 and 35.)

In a suit against a factor for an account, or by a principal against his agent for moveable property received by the latter and not accounted for, limitation begins to run from the time when the account is, during the continuance of the agency, demanded and *refused*. (Arts. 88 and 89.)

In a suit by a Mahomedan for exigible dower, the statute commences to run from the time when (during the continuance of the marriage) dower is demanded and *refused*. (Art. 103.)

In a suit to establish a periodically recurring right, the *punctum temporis* is the time when the plaintiff

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[1] In other cases of *quasi*-contracts not expressly provided for in the schedule, the rule laid down by Austin may be followed, but as English lawyers generally treat many cases of *quasi*-contracts as genuine implied contracts, it may be doubted if the Courts will adopt that rule in every case.

A suit for the recovery of money paid by the plaintiff by mistake, and *bonâ fide* received by the defendant, should be preceded by a demand. Freeman *v.* Jeffries, L. R., 4 Exch., 199, 200. Student's Austin, 232.

is first *refused* the enjoyment of the right. (Art. 131.) See also arts. 78 and 129.

It has been already observed, that neither in cases of contracts, nor of torts, does the plaintiff's ignorance of the occurrence of the breach or the tortious act affect the accrual of the cause of action or the starting point of limitation. The Indian Legislature departs from this rule in the following cases, in which plaintiff's *knowledge* is made, for purposes of limitation, an ingredient of his cause of action.

Cases where the plaintiff's knowledge is an element of the cause of action.

In a suit against a person who, having a right to use property for specific purposes, perverts it to other purposes, limitation runs from the time when the perversion first becomes *known* to the party injured. (Art. 32, sched. ii, Act XV of 1877.)

In a suit for specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same, the period begins to run from the time when the person having the right to the possession of the property first *learns* in whose possession it is. (Art. 48.)

In suits by principals against agents for neglect or misconduct (not being suits for moveable property received by the latter and not accounted for), the statute runs from the time when the neglect or misconduct becomes *known* to the plaintiff. (Art. 90.)

In suits to rescind a contract, or to cancel or set aside an instrument, or to declare the forgery of an instrument issued or registered, or for relief on the ground of fraud or mistake, plaintiff's *knowledge*

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materially affects the starting point of limitation. (See arts. 114, 91, 92, 95, 96.)

In a suit for property which the plaintiff has conveyed while insane, limitation runs from the time when the plaintiff being restored to sanity has *knowledge* of the conveyance. (Art. 94.)

In a suit for the specific performance of a contract, if there is no date fixed for the performance, time runs from the date when the plaintiff has *notice* that performance is refused. (Art. 113.)

In a suit to obtain a declaration that an alleged adoption is invalid, or never in fact took place, the *punctum temporis* is the date when the alleged adoption becomes *known* to the plaintiff. (Art. 118.)

In a suit by a person excluded from joint family property to enforce a right to share therein, the *terminus a quo* (the point from which the period commences to run) is the time when the exclusion becomes *known* to the plaintiff. (Art. 127.)

Knowledge and means of knowledge.

Under many circumstances, means of knowledge and actual knowledge may be very different things. But in no case is a man at liberty to shut his eyes to information within his reach, and so lengthen indefinitely the period of time within which he is to make his claim.[2]

There may be cases where the existence of the means of knowledge might lead irresistibly to the inference that the party had actual knowledge. Culpable and wilfully blind ignorance is equivalent to, or carries with it, the consequences of knowledge.[3]

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[2] Dhunput Sing *v.* Ruhoman, 9 W. R., 329; and 11 W. R., 163.

[3] Radhanath *v.* Gobind, 4 W. R., S. C. Ct. Ref., 19; Bibee Solomon *v.* Abdool, 8 C. L. R., 169, 184.

It may be here observed that, in cases not governed by the *general* articles in sched. ii, the time of limitation does not *necessarily* begin to run from the date of the accrual of the right to sue. Under the *express* provisions of the schedule, in some cases,[4] limitation runs from a time *after* the right to sue has accrued, and in a few other cases[5] it runs from a time *before* the right to sue has accrued.

Date of accrual of right to sue, not always identical with *terminus a quo*.

The other *terminus* of the period of limitation (the *terminus ad quem*) is the last day when the plaint (in an ordinary suit) may be presented to the proper officer of the court.[6]

Terminus ad quem.

The periods of limitation are always prescribed by positive law. The (general) periods prescribed are given in sched. ii, Act XV of 1877.

Periods of limitation.

Ten specific periods are made applicable to *suits*. These periods (varying from 30 days to 60 years) are as follows :

30 days	...	One article	...	Art. 1.
90 „	...	One „	...	„ 2.
6 months	...	Three articles	...	Arts. 3—5.
1 year	...	Twenty-four „	...	„ 6—29.
2 years	...	Seven „	...	„ 30—36.
3 „	...	Seventy-nine „	...	„ 37—115.
6 „	...	Five „	...	„ 116—120.
12 „	...	Twenty-four „	...	„ 121—144.
30 „	...	Two „	...	„ 145 & 146.
60 „	...	Three „	...	„ 147—149.

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[4] For instances, see art. 10 (suit to enforce a right of pre-emption) ; art. 85 (suit for a balance due on a mutual account) ; art. 101 (suit for a seaman's wages).

[5] See art. 145 (suits against depositaries and pawnees), and art. 138 (certain suits by execution-purchasers).

[6] See sec. 4 of the Act. "The period of limitation ends on the day on which the plaint is duly lodged." (Morley's Digest, Vol. I, p. 245.)

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Six several periods are specified as applicable to *appeals*. These periods (ranging from 7 days to 6 months) are :

7 days	...	One article	...	Art. 150.
20 „	...	One „	...	„ 151.
30 „	...	Three articles	...	Arts. 152—154.
60 „	...	One article	...	Art. 155.
90 „	...	„ „	...	„ 156.
6 months	...	„ „	...	„ 157.

Ten different periods are allowed for *applications*. These periods (varying from 10 days to 12 years) are as follows :

10 days	...	Two articles	...	Arts. 158 and 159.
15 „	...	One article	...	Art. 160.
20 „	...	Two articles	...	Arts. 161 and 162.
30 „	...	Eight „	...	„ 163—170.
60 „	...	Four „	...	„ 171A, 171B, 171C and 172.
90 „	...	Two articles	...	„ 173 and 174.
6 months	...	Three „	...	„ 175—177.
3 years	...	Two „	...	„ 178 and 179.
6 „	...	One article	...	Art. 179.
12 „	...	„ „	...	„ 180.

The 28 sections of Act XV.

The first three sections of Act XV of 1877 relate to *preliminary* matters. Sections 4—25 (together with sched. ii) are concerned with the *limitation* of suits, appeals, and *certain* applications to Courts. Sections 26 and 27 provide rules for the acquisition of easements, including *profits á prendre*, by *positive prescription*.[7] And the last section (sec. 28) relates to the indirect acquisition of the ownership of corporeal property by *extinctive prescription*.

[7] Secs. 26 and 27 and the definition of 'easement' in sec. 3 do not apply to the Presidency of Madras, the Central Provinces and Coorg. See sec. 3, Act V of 1882.

(The following remarks mainly refer to the *limitation of suits.*)

The *operation* of Act XV may be considered with reference to—the circumstances of *time* and *place*, the *persons* to whom it is applicable, and the *subjects* (sorts of suits, appeals and applications) to which its provisions wholly or partially apply.

Operation of the Act as to time, sec. 2.

I. With regard to the circumstance of *time*, it may be observed that the Act was passed (*i.e.*, received the assent of His Excellency the Governor-General) on the 19th July 1877, but did not come into force on that date. Its operation was postponed to the 1st October 1877, the day on which the Civil Procedure Code of 1877 came into force. The Act operates upon suits[8] instituted on or after the said 1st day of October, save and except suits for which *longer* periods of limitation were allowed by Act IX of 1871. As to these exceptional suits (see for instances arts. 59, 73, 118, 119, 127, 146, &c.), the operation of the Act was further, temporarily, deferred. Titles already acquired, and causes of action already barred, are expressly saved from the operation of the law. With these exceptions, the Act applies to transactions which took place before or after the 1st October 1877, and to causes of actions which accrued before or after that date.[9]

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[8] The Act applies also to appeals presented and applications made on or after that date. As to applications in execution of decrees obtained in suits *instituted before* the 1st October 1877, there is some difference of opinion. See Gurupadapa *v.* Virbhadropa, I. L. R., 7 Bomb., 459; and Behary *v.* Gobordhone, I. L. R., 9 Calc., 446. Both these cases are referred to in Lecture VII, p. 210.

[9] Sec. 2, Act XV, and Lecture VII, pp. 205, 206.

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Operation, as to place, secs. 1, 6, & 11.

II. In respect to the circumstance of *place*, it may be remarked that the territorial operation of the Act extends to the *whole* of British India, including the scheduled districts as defined in Act XIV of 1874. In other words, it extends to the territories for the time being vested in Her Majesty by the Statutes 21 and 22 Vict., c. 106 (an Act for the better government of India) other than the Settlement of Prince of Wales' Island, Singapore, and Malacca.[10]

It is expressly declared that the limitation laws of *foreign States* shall have no application in the Courts of British India, even in respect of contracts entered into in such States, unless such laws have *extinguished* the contract, and the parties were domiciled there during the periods prescribed by such laws.[1]

As to *local* (and special) laws[2] in force or hereafter to be in force in British India, it is enacted that the *periods* of limitation specially prescribed by such laws shall not be altered or affected by the Act.[3] A local (or special) law, sometimes, *expressly* extends the *general provisions* of the Act to cases for which special periods are prescribed by such law. Thus sec. 23 of Act XVIII of 1881 (The Central Provinces Land-Revenue Act) enacts that, in *computing* certain periods of limitation prescribed by that Act, and in *all* respects not therein specified, the provisions of the Indian Limitation Act, 1877, shall apply.

Operation, as to persons.

III. The persons affected by the Act. The Act applies to *all* persons who may sue or be sued in the Courts of British India, including the Government.

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[10] See Act I of 1868.

[1] Sec. 11; and Lecture II, pp. 43—48.

[2] Such as the Dekkhan Agriculturists' Act (XVII of 1879), sec. 72.

[3] See sec. 6.

It applies to subjects as well as to aliens,[4] to juristical[5] as well as to natural persons, to Christians as well as to Hindus, Mahomedans, and others.

Operation, as to subjects.

IV. The *subjects* to which the operation of the Act extends.

A power of sale or a power to adopt a son is not within the purview of the Act. There is no limitation to the *exercise* of such a *power*.[6]

Preamble, secs. 1, 6, & 10.

The Act governs all *suits*, not being suits under the Indian Divorce Act (IV of 1869), or suits relating to certain hereditary offices in the Revenue and Police Departments, under Madras Regulation VI of 1831. The Act further applies to all appeals and applications to Courts, specified in the second and third divisions of sched. ii, and to other applications *ejusdem generis* with the applications so specified. Applications for certificates under Acts XXVII of 1860 and XL of 1858, and applications for probate or letters of administration,—not having any connection with any suit pending or already decided,—are not governed by the provisions of the Act.[7]

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[4] As to suits by aliens, and by or against foreign and native rulers, see chap. xxviii of Act XIV of 1882. The time during which an alien enemy is prevented from suing is not excluded in his favor. There is one important difference in the application of sec. 7 of the Act to persons not domiciled in British India. A person *domiciled* in British India attains his majority according to the provisions of Act IX of 1875. But other persons are in this respect governed by the law of their own domicil. So far as the cessation of minority is a starting point of limitation, there is a difference in the application of the Act to these classes of persons.

[5] A corporation, a Hindu idol, &c., are juristical persons.

[6] Joychunder Roy *v.* Bhyrub Chunder Roy, decided by the Calcutta Sudder Court on the 18th December 1849. (Calcutta Sudder Dewanny Rep., 1848, p. 461.) See also Bamundoss *v.* Tarinee, 7 Moore's I. A., 169; and Mason *v.* Broadbent, cited in Banning, p. 278.

[7] *In re* Ishan Chunder Roy, I. L. R., 6 Calc., 707; 8 C. L. R., 52.

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Further, the Act does not apply to applications which the Court has no discretion to refuse, nor to applications for the exercise of functions of a ministerial character.[8]

Again, suits against express trustees, or their representatives (not being assigns for valuable consideration), for the purpose of *recovering the trust-property for the trusts in question*, are exempted from the operation of the Act.[9] In order to bring the case within this exception, the trusts must be shown to have been created for some definite or particular purpose or object as distinguished from trusts of a general nature, such as the law impresses upon executors and others who hold recognized fiduciary positions.[10]

Lastly, the provisions of the Act do not affect or alter the *periods* specially prescribed for any suits by special[1] (and local) laws. It has been held by the Calcutta High Court that the general provisions and exceptions relating to the computation of the periods of limitation do apply even to such suits.[2]

It may be here observed that the general exception as to "legal disabilities" does not apply to suits to enforce the right of pre-emption (sec. 7), and that the exception as to "death before right to sue accrues"

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[8] Kylasa *v.* Ramasomi, I. L. R., 4 Mad., 172; Vithal *v.* Vithojirov, I. L. R., 6 Bomb., 586. For *other* cases, see I. L. R., 6 Calc., 60; I. L. R., 8 Calc., 420; and I. L. R., 7 Bomb., 322.

[9] Sec. 10; Balwant Rao *v.* Puran Mal, 13 C. L. R., 39, P. C.

[10] Gireender *v.* Mackintosh, I. L. R., 4 Calc., 897.

[1] Such as the Law of Landlord and Tenant, the Registration Act, &c., &c. Sec. 6.

[2] See Lecture VII, pp. 215-6; and Second Appeal, No. 1204 of 1882, decided by the Calcutta High Court on the 20th December 1883. The same remark applies to appeals and applications under special or local laws.

(sec. 17) does not apply to such suits, nor to suits for possession of immoveable property or hereditary offices.

Rules and exceptions.

Having briefly reviewed the *operation* of Act XV in respect of time, place, persons and subjects, we shall next consider the rules and exceptions (as to the limitation of suits) enacted by that law.

First rule, explanation and proviso, secs. 4 & 22.

First general rule. Subject to the exceptions and provisoes mentioned below, *every suit instituted after the prescribed period of limitation shall be dismissed, although limitation has not been set up as a defence.*[3]

By a *subsidiary* rule it is explained, that an ordinary suit is instituted when the plaint is presented to the proper officer of the Court; and a suit *in formâ pauperis*, when the application for leave to sue as a pauper is filed.[4] And it is *provided* that, when, after the institution of a suit, a *new* plaintiff or defendant is substituted or added, the suit shall, as regards the new plaintiff or defendant, be deemed to have been instituted when he was so made a party.[5]

Second rule, complement, and proviso.

Second general rule. As the complement of the rule[6] that the words 'year' and 'month' in the *Act*,

[3] Sec. 4. See Lecture IV, pp. 91, 100.

The first general rule applies to suits, appeals and applications. But para. 2 of sec. 5 allows *appeals*, and applications for *reviews* to be admitted even *after* the prescribed period for any sufficient cause of delay.

[4] See explanation to sec. 4, which further provides that, in the case of a claim against a company which is being wound up by the Court, the suit is deemed to be instituted when the claimant first sends in his claim to the official liquidator. As to applications for leave to sue as a pauper being registered as a plaint, see sec. 410, Act XIV of 1882.

[5] Sec. 22. The legal representative of a deceased plaintiff or defendant when the suit as instituted is continued by or against such representative, is not a *new* plaintiff or defendant within the meaning of this proviso.

[6] See the General Clauses Act, 1868. The second rule, also, applies to appeals and applications as well as to suits.

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respectively mean a year and month reckoned according to the British calendar (which, since the 2nd September 1752, is the same as the Gregorian calendar), it is enacted by sec. 25, that *all 'instruments' shall, for purposes of limitation, be deemed to be made with reference to the Gregorian calendar.*

Sec. 25, Act I of 1868, and art. 85, sched. ii.

So that, 'year' and 'month' in the Act, as well as in contracts, wills and other instruments bearing native or non-English dates, shall be construed in the sense which they bear in the English calendar. When, for instance, the date of a contract and the date when it is to be performed are dates of the Bengal or Fussily year, the corresponding dates of the English year should be taken, and the period of limitation calculated from such English dates according to the Gregorian calendar.[7]

Provided that, in a suit for the balance due on a mutual, open and current account, where the period of limitation runs from the close of the 'year' in which the last item admitted or proved is entered in the account, if any era *other* than the English era is used in the said account, the 'year' is to be computed as in the account.[8]

Third rule, sec. 12.

Third general rule. Inasmuch as fractions of a day are not recognized (except where it becomes essential for the purposes of justice to ascertain the exact hour or minute), the day of the accrual of the cause of action must be either included or excluded

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[7] Nilkanth *v.* Dattatraya, I. L. R., 4 Bomb., 103; Almus Banu *v.* Mahomed Raja, 6 C. L. R., 553.

[8] Art. 85, sched. ii. See also Maharajah Jay Mungal *v.* Lal Rung Pal, 4 B. L. R., App., 53; 13 W. R., 183.

in its entirety.[9] The Act adopts the latter alternative, and lays down that, *in computing the prescribed period of limitation, the day from which such period is to be reckoned shall be excluded.*[10]

Fourth rule, sec. 9.

Fourth general rule. *When once the period of limitation has commenced to run in any case, it will not cease to do so by reason of any subsequent disability or inability*[1] *to sue* (*although such disability or inability may be within the saving of the Act*). (*Sec.* 9.)

Sec. 9 explained and illustrated.

The minority, insanity or idiocy of the plaintiff will not stop the running of time, if the cause of action accrued, or rather if the event from which limitation starts occurred, while he or the person through whom he claims was under no such disability. The previous non-existence of the person now entitled to sue or liable to be sued, does not exempt him from the operation of limitation, if, *at the time* when the cause of action arose, there was a person in existence capable of instituting the suit, and another against whom the suit might have been instituted.[2]

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[9] Banning, p. 254. See the judgment of Denman, J., in Migotti *v.* Colvill, 4 L. R., C. P. Div., 233.

[10] Sec. 12, para. 1. In *excluding* the time of the continuance of an injunction or order by which the institution of a suit has been stayed, the first day, *viz.* the day of the order, *is included.* (Sec. 15.) The 3rd rule, like the first and second, applies to appeals and applications as well as to suits. The other paras. of sec. 12 allow exclusion of additional time in case of appeals and certain applications.

The third general rule refers to the *first* day of the period of limitation, and the first general exception (sec. 5) to the *last* day of that period.

[1] Disability is want of a legal qualification to act. Inability is want of a physical power to act.

[2] The *express language* of secs. 7 and 17 renders it necessary that the *disability* and *inability to sue* mentioned in those sections must exist at the time when limitation (ordinarily) commences to run. So far as these sections are concerned, the rule in sec. 9 is therefore unnecessary. Indeed, as observed by Sir James Colvile, in the Statement of Objects

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Inability to sue by reason of want of funds, or by reason of the Courts being closed during the *beginning* of the period of limitation, is not a ground of exemption or extension recognized by the Act. And as no equitable construction can be put upon the Act, such inability, though existing at the time of the accrual of the right to sue, does not prevent the operation of limitation. And the same remark applies to the non-existence of a particular person at the time when the period of limitation commenced to run against some *other* person in existence, and then entitled to bring the suit, as in the case of a suit to set side an adoption (under art. 129 of Act IX of 1871) instituted by a sister's son of the adoptive father, where the sister's son was born after the adoption.[3]

The first part of sec. 9 is not an enabling enactment. It does not say that any disability or inability to sue existing at the time when the cause of action accrues *shall entitle* the plaintiff to an extension of time, but only that any subsequent disability or inability *shall not entitle* him to such an indulgence. The Indian Legislature does *not* (as some text-book writers do)[4]

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and Reasons appended to his Limitation Bill of 1855, the English and American rule that when the Law of Limitation has once begun to run, nothing shall stop it, "seems to depend more on the language of the statutes than on any sound principle."

But the framers of the Acts of 1871 and 1877 emphasize the rule by giving it an independent force. The rule will probably operate in cases of concealed fraud under sec. 18. If no fraud is practised on the person entiled to sue, and limitation commences to run, it will not cease to run by reason of any subsequent fraud against his successor.

[3] See Siddheshur Dutt *v.* Sham Chand, 23 W. R., 285. The altered language of art. 118, Act XV of 1877, removes this difficulty.

[4] Banning on Limitation, pp. 6, 227, 234, 253. Chief Justice Hornblower, in an American case, says, that where the Statute of Limitations has

lay down that no subsequent *event* shall stop the running of time, but simply that no subsequent *disability* or *inability to sue* shall have that effect.

A defendant not residing within the limits of British India may (in many cases at least) be easily sued in the Courts of British India. The defendant's *absence* from British India is not a 'disability' within the meaning of secs. 7 and 9, and is not an "inability to sue" within the purview of the latter section.[5] Nor are the terms applicable to written *acknowledgments* and *payments* made by the defendant or his agent. Nevertheless, in these and other cases,[6] the

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commenced running, "it runs over all subsequent disabilities and intermediate acts and events." See Angell, sec 477, note. Mr. Banning mentions three exceptions to this rule: (1) where debtor is administrator of creditor; (2) where an abated suit is revived against the representative of a deceased defendant; (3) where the Crown is assignee of an unbarred debt. The first exception is recognized by the proviso to sec. 9. The second exception is rendered unnecessary by the express provision of art. 171c (see Act XII of 1879, sec. 108). The third exception will probably be recognized by our Courts.

[5] See Beake & Co. *v.* Davis, I. L. R., 4 All., 530, where the ruling in the case of Narranji *v.* Mugniram (I. L. R., 6 Bomb., 103) was dissented from, and it was held that the time of defendant's absence from British India, whether *subsequent* to the accrual of the cause of action *or not*, is to be excluded in favor of the plaintiff under sec. 13 of the Act. It may be observed that the rule was exactly the same under Act XIV of 1859 (see Thompson, 2nd Ed., p. 284), and is the same under sec. 27 of the New York Revised Statutes, Vol. II, part iii, ch. 4, tit. 2, from which the Indian Legislature has borrowed the provisions of sec. 15 of the Act. See Angell, Appendix, lxiii. In the case of subsequent absence (according to the theory of the Act) time *runs* as usual, but the period of absence is not *deemed* a portion of the time prescribed by sched. ii.

Prevention, suspension, and interruption of the operation of limitation, explained

[6] The rule as to the continuance of the running of time being dependent on the continuance in force of the enactment under which time has been running, if before the prescribed period has expired, the statutory pressure be removed by the total repeal of the Act, the operation of limitation is suspended or rather stopped unless the Legislature re-enact the old law. If a *new* rule of limitation be enacted before the action is barred by the old law, the running of time may be interrupted by the

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running of time is (practically) *suspended* or *interrupted* by an event which occurs *subsequently* to the

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and illustrated.

new rule. See Abdul Karim *v.* Manji, I. L. R., 1 Bomb., 295, 303. There are several cases of actual or virtual suspension of limitation. (For six of these cases, see sec. 9, proviso, and secs. 13 to 16, and the Table.)

Under Act XIV of 1859 it was held, that estoppels *in pais* and compromises in some cases had the effect of suspending or preventing the operation of limitation. (See *ante*, pp. 95, 105.) Where a debt is made payable by instalments, with a proviso that, on default of payment of any one instalment, the whole debt, or so much of it as may then remain unpaid, shall become due, limitation runs from the time of the first default. But if the plaintiff *waives* the benefit of the proviso by a subsequent act, such waiver practically *suspends* or rather *interrupts* the running of time. (See art. 75, Act XV; Cheni Bash *v.* Kadum, I L. R., 5 Calc., 97.) Articles 179 and 180, relating to the execution of decrees, offer other instances in which the running of time is practically interrupted by an application, a notice, revivor, &c., &c. Suspension or interruption occasioned by the repeal of old laws, and interruption caused by waiver or by applications, &c., in execution, are not referred to in the Table.

Limitation is practically suspended when certain durations of time are allowed to be deducted in the computation of the period. Limitation is practically interrupted when a fresh period is allowed after it has run for some time.

According to the *language* of the Act, in the case of the legal disability of the plaintiff, limitation *does not (begin to) run* against him. In the case of the administration of a creditor's estate by his debtor, the *running of time is suspended* by the administration. In the case of defendant's absence, and some other cases mentioned in secs. 14, 15 and 16, the plaintiff is entitled to the *exclusion of certain periods in the computation* of the time of limitation,—that is, such periods are not deemed to be any portions of the prescribed time. (In these cases, the running of time is *virtually* 'suspended.') In the case of death *before* the right to sue accrues, or of concealed fraud, the period of limitation is to be *computed from a later date* than the date of the actual cause of action. The running of time is here virtually prevented by the operation of limitation being postponed to the date of the statutable cause of action. In the case of an acknowledgment or payment, *a new period of limitation is to be computed* from the date of such acknowledgment or payment. *Practically*, previous death and concealed fraud "prevent the running of time," and acknowledgments and payments "interrupt the running of time." But in all the excepted cases, save those of legal disability and debtor's administration of the creditor's estate (secs. 7, 8 and 9), according to the theory and language of the Act, limitation *runs* as usual,

accrual of the right to sue. The only case in which a *subsequent disability* or *inability* to sue suspends the running of time is a case where there is the same hand to give and receive. The proviso to sec. 9 is as follows :—*Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.*

Proviso to the 4th rule explained.

Here the Act *expressly* says that the running of time shall be *suspended* by a specified subsequent event. But there are five other events mentioned in Part III (see secs. 13, 14, 15 and 16, and the Table appended to this Lecture) which *virtually* suspend the operation of limitation, cause a break in the period, and give the plaintiff an *extended* time. These five cases are not referred to in the proviso, either because they are not cases of disability or inability to sue within the meaning of the rule in sec. 9, or because they are treated as cases in which limitation, theoretically, continues to run, though certain periods during which it so runs are not *deemed* to be any portions of the prescribed time of limitation. For obvious reasons suspension, which may be caused by a *total repeal* of the law, is, also, not mentioned.

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though under the express provisions of the Act, the period of limitation is extended, by the operation of limitation being *practically* 'suspended,' as shown above, or 'prevented' by the introduction of a statutable cause of action, or 'interrupted' by the renewal of the period of limitation. Cessation of legal disability (under secs. 7 and 8) is a statutable cause of action like that provided for by sec. 17 or sec. 18, but it is only in cases under secs. 7 and 8 that, in the *language* of the Act, *time does not run* from the ordinary starting point, as it is only in cases under the proviso to sec. 9 that the *running of time is suspended* by a subsequent event.

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The proviso to sec. 9 refers to the case of a debtor obtaining letters of *administration* to his *creditor's estate* either before or after limitation has commenced to run. Cases where a debtor becomes the *executor* of his creditor, and a *creditor or legatee* becomes the executor or administrator of his *debtor's or testator's estate*, are not mentioned.

The grant of letters of administration, not being an act of the parties, operates as a *suspension* of the remedy. But where a creditor appoints his debtor an executor, and the executorship is accepted, this being an act of the parties, the debt is *extinguished* on the supposition of its being paid by the executor to himself, and thus becoming assets in his hands for which he is accountable.[7] This is probably the reason why the proviso does not extend to the case of the debtor becoming *executor* to his creditor. In the *converse* case of a creditor or legatee becoming the executor or administrator of the debtor or testator, the creditor or legatee may pay himself out of the assets which he has to administer. He cannot (and is not obliged to) bring any suit for the purpose of making *himself* pay the debt or legacy.[8]

The fourth rule applies to suits as well as to applications.[9] Two other rules (relating to the starting

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[7] Brown, p. 468; Banning, 226, 227.

Sec. 87 of the Indian Trusts Act, No. II of 1882 (which does not extend to Bengal and Bombay), enacts as follows:—"Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein."

[8] See Binns *v.* Nichols, 2 Eq., 256; and Banning, p. 226.

[9] The term "to sue" is not defined in the Act. "Inability to sue" includes "inability to apply." See Shumbhoo *v.* Guru Churn, 6 C. L. R., 437.

point of limitation in certain cases) are given in secs. 23 and 24.

Fifth rule. *Where there has been a continuing*[10] *breach of contract or a continuing wrong (independent of contract) a new period of limitation begins to run at every moment of the time during which the breach or the wrong continues.* (*Sec.* 23.)

Fifth rule. Sec. 23, and arts. 19, 23, 42, 115 and 116.

It is, however, provided by arts. 115 and 116, sched. ii, that, in a suit for compensation, in the case of a continuing breach of contract, the time when the breach *ceases* is the time when the period of limitation begins to run. Articles 19, 23 and 42 in the same way provide that, in certain cases of continuing wrong, limitation runs from the time when the wrong *ceases*. So far as the bar of limitation is concerned, there is *practically* this difference between these provisions and the rule in sec. 23, that, according to the language of these articles, the defendant, in a suit for compensation for false imprisonment (art. 19), or for the other wrongs or breaches (arts. 23, 42, 115 and 116), cannot divide the time of the continuance, and plead limitation to so much of the wrong or breach as took place more than the prescribed number of years from the time of the institution of the suit.[1] But in cases of continuing breaches and wrongs, not covered by these special provisions, such a course may be open to the defendant.

Sixth rule. *In the case of a suit for compensation*

Sixth rule. Sec. 24,

[10] See pp. 219, 222, *ante*, for an explanation of this term.

[1] In a case of false imprisonment, he may do so in England (see 12 East, 67; and Darby and Bosanquet, p. 30), and under sec. 23 he might do so in British India, if the provisions of that section were not controlled by art. 19.

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for an act which is not actionable in itself, without some (special damage or) specific injury caused thereby, the period of limitation shall be computed from the time when the (damage or) injury is caused. (*Sec.* 24.)

Article 25 expressly enacts that, in a suit for slander, if the words are not *per se* actionable, the period of limitation runs from the time when the special damage complained of results. This express provision would seem to be unnecessary (in view of the rule laid down in sec. 24), except where more than one specific injury is caused by the slander, and the plaintiff complains of the later injury.[2]

The fifth and sixth rules may be treated as *provisoes* or *exceptions* to the ordinary rule, that limitation commences to run from the date of the act or omission complained of, and they have been so treated in the Table at the end of this Lecture.

In this Lecture, we have already noticed all the sections[3] of Parts I, II and III, except sec. 3 (which is an interpretation clause) and the sections which relate to exceptions[4] founded on special grounds,

Exceptions to the application of the periods of limitation.

[2] The plaintiff may be in time from the date when the special damage *complained of* results, though out of time from the date of the earlier injury or damage.

[3] Secs. 1, 2, 6, 10 and 11 relate to the *operation* of Act XV of 1877.

Secs. 23 and 24 and sched. ii, col. 3, relate to the *starting point* of limitation.

Sched. ii, col. 2, relates to the *periods* of limitation.

Secs. 4, 22, 25, 12, 9 (and secs. 23 and 24 also) relate to (general) *rules*.

Sec. 3 relates to interpretation.

The other sections (of Parts II and III), *viz.*, secs. 5, 7 and 8, proviso to sec. 9, and secs. 13-21, relate to (general) *exceptions*.

[4] These are exceptions to the two most important general rules, *viz.* the first and the fourth.

A Tabular View of the Exceptions to the Ordinary Rule of Limitation under Act XV of 1877.

(1) Exceptional Suits and Cases.

I. Suits expressly exempted from the operation of limitation.
- Suits for trust-property against express trustees, or against their representatives not being assigns for valuable consideration. (Sec. 10.)

II. Suits to which the Limitation Act does not apply.
- (a) Suits under the Indian Divorce Act, IV of 1869. (Sec. 1.)
- (b) Suits respecting certain hereditary offices and the emoluments annexed to such offices, under Madras Reg. VI of 1831. (Sec. I.)

III. Cases in which the *periods* of limitation are not affected by the Act.
- Suits, Appeals, and Applications for which special periods of limitation are prescribed by special or local laws. (Sec. 6.)

IV. Suits to which a *foreign* limitation law may (also) apply.
- Suits instituted in British India on contracts entered into in a foreign country, where the Law of Limitation of that country has *extinguished* the contracts, and the parties were domiciled there during the periods prescribed by that law. (Sec. 11.)

V. Suits to which some of the general exceptions do not apply, or to which *only*, a particular exception applies.
- (a) Suits to which the exception grounded on *legal disability* does not apply.
  - Suits to enforce rights of pre-emption. (Sec. 7.)
- (b) Suits to which the exception founded on *death before right to sue accrues*, does not apply.
  - 1.—Suits to enforce rights of pre-emption. (Sec. 17.)
  - 2.—Suits for possession of immoveables or hereditary offices. (Sec. 17.)
- (c) Suits to which (only), Sec. 16 applies ... ... Suits for possession by an execution-purchaser.
- (d) Suits to which (only), the proviso to Sec. 9 (about administration of creditor's estate) applies ... ... Suits to recover debts.
- (e) Suits to which (only), Sec. 20 (about payment) applies ... ... Suits for debts or legacies.

(2) Exceptions (to the application of the period of limitation) founded on special grounds—

I. Existing at the time when the period of limitation ordinarily *begins* to run; and—

A. Preventing the operation of limitation until the ground ceases to exist.

(a)—Legal disability of the plaintiff, (single, double or successive). (Sec. 7.)*
- 1.—Minority.
- 2.—Insanity.
- 3.—Idiocy.

Exception—Suits for pre-emption.
Proviso—Where the ordinary period exceeds three years.
Proviso—As to the disability of some of several joint claimants. (Sec. 8.)

(b)—Where there is no person in existence capable of suing or being sued. (Sec. 17.)*
- 1.—Where the claimant dies *before* the right to sue accrues, and there is no legal representative of his to bring the suit.
- 2.—Where the party to be sued dies before the right to sue accrues, and there is no legal representative of *his* against whom the suit may be brought.

Exceptions—Suits, (1) for pre-emption, (2) for possession of immoveable property, and (3) for possession of hereditary offices.

(c)—Where the right to sue or the title on which it is founded or a document necessary to establish such right, is fraudulently concealed from the plaintiff, by the defendant or by any person through whom the defendant claims. (Sec. 18.)*

Exception—Where the defendant is a purchaser in good faith and for a valuable consideration.

B. Interrupting limitation and renewing the cause of action from day to day.
- (a)—Where there is a continuing breach of contract.
- (b)—Where there is a continuing wrong independent of contract.

Sec. 23.)*(*l*)

C. Preventing the operation of limitation until some specific injury results from the *act* complained of.
- Where the suit is for compensation for act not actionable without special damage. (Sec. 24.)

II. Existing at the time when the period ordinarily *expires*, and extending the period to the time when the ground ceases to exist.
- Where the Court is closed. (Sec. 5).**

III. Existing at *any time during* the course of the ordinary period; and—

A. Suspending limitation, and excluding the plaintiff in the computation of the period, to the exclusion of the time during which the ground exists.
- 1.—Where letters of administration to the estate of a creditor have been granted to his debtor, and the administration continues. (Sec. 9, proviso.)
- 2.—Defendant's absence from British India. (Sec. 13.)
- 3.—Where plaintiff has been prosecuting in good faith and with due diligence, *another civil proceeding* against the defendant, for the same cause of action, in a Court which, from *defect of jurisdiction*, or other cause of like nature, is unable to entertain it. (Sec. 14).*
- 4.—Where the commencement of the suit has been stayed for some time by injunction or order. (Sec. 15.)
- 5.—Where the judgment-debtor has taken proceedings to set aside the execution-sale of property which the purchaser is seeking to recover by suit. (Sec. 16).

B. Suspending limitation, and entitling the plaintiff in the computation of the period, to the exclusion of the interval between the institution of a suit and the date when proceedings therein are stayed under section 20, Civil Procedure Code, and also of the time requisite for going to the Court in which the suit is reinstituted.
- Where a suit instituted in one Court is reinstituted in another, under sec. 20, Civil Procedure Code. (Sec. 14, cl. 2.)

C. Interrupting limitation, and giving the plaintiff a *fresh* period of limitation.
- 1.—Written acknowledgment of liability signed by the defendant or his agent. (Sec. 19.)*
- 2.—Payment of interest on a debt or legacy by the person liable to pay it or by his agent. (Sec. 20.)*(*l*)
- 3.—Part-payment of a debt evidenced by the handwriting of the debtor or his agent. (Sec 20.)*(*l*).
- 4.—Receipt of produce of mortgaged land by the mortgagee in possession. (Sec. 20.)

Proviso—One of several partners, executors, joint-contractors, or mortgagees, not chargeable by reason of any such act of any other or others of them. (Sec. 21.)

N. B.—Exceptions marked with one asterisk * apply, *mutatis mutandis*, to Applications. That marked with two asterisks ** applies to Appeals, as well as to Applications and Suits. Those without any mark apply to suits only. *Quære*—Whether Secs. 20 and 23 apply to Applications. B and C of (2) I. may be treated as *Rules*, rather than as Exceptions.

(3) Special Exceptions in the case of Appeals and certain Applications.

I. As to Applications, for leave to appeal as a pauper, or to set aside an award.
- Exclusion of time requisite for obtaining a copy of the decree or award complained of. (Sec. 12).

II. As to Appeals, and Applications for review.
- 1.—Exclusion of time requisite for obtaining a copy of the decree, sentence, or order appealed against or sought to be reviewed; and if a *decree* is the subject of complaint, also the time requisite for obtaining a copy of the judgment. (Sec. 12.)
- 2.—Additional time allowed if the Court is satisfied that there was sufficient cause for exceeding the ordinary period. (Sec. 5.)

N. B.—As regards applications for the execution of decrees affected by the provisions of Sec. 325A of the Code of Civil Procedure, there is another exception which was first introduced by Act XII of 1879. *Vide* Sec. 325A of the Code of Civil Procedure.

such as the closing of the Courts on the last day of the period of limitation, the legal disability of the plaintiff, the absence of the defendant from British India, *bonâ fide* proceeding in a wrong Court, temporary injunction staying the commencement of suit, death before right to sue accrues, concealed fraud, acknowledgments, and payments.

The appended Table gives a general view of these as well as other exceptions.

LECTURE IX.

THE EXCEPTIONS. LEGAL DISABILITY.

Important exceptions. Secs. 5, 7, 13, 14, 18, 19 & 20 — Reasons for these exceptions — Legal disability of plaintiff — Minority — The Majority Act — The previous state of the law of minority and majority — Foreign laws — Insanity and idiocy — Co-existing and successive disabilities — Subsequent birth or adoption of claimant — Disability of defendants no ground of exemption — Sec. 7, Act XV, applies to suits and applications — Disability at the time from which the period of limitation is to be reckoned — Inconvenience of this rule — Arts. 44 & 94 — Cessation of disability or death under disability, a statutable cause of action — Proceedings during the period of disability — Disability confers a *personal* privilege — Assignees not entitled to the privilege — Hard cases under the existing law — To whom is cessation of disability, or death under disability, a cause of action — The law allows the maximum period of 3 years from the statutable cause of action, or the full period from the ordinary starting point of limitation — No fixed limit to the indefinite extension of time under sec. 7 — An exception to the exception — Disability of one of several joint claimants.

Important exceptions. Secs. 5, 7, 13, 14, 18, 19 & 20.

Of the exceptional circumstances which directly extend the period of limitation, or which indirectly do so[5] by preventing, suspending or interrupting

[5] Where the existence of the exceptional circumstance does *not* give the plaintiff a *longer* time, the section relating to the exception is not applied. Thus, if plaintiff is dispossessed of a taluk when he is 13 years old, and he attains his majority 5 years after, he may sue to recover the taluk within 12 years from the date of his dispossession (*i. e.*, until he is 25 years old), and section 7 of Act XV of 1877, which gives him only 3 years from the time of attaining his majority, will not apply. The plaintiff need not avail himself of the provisions of that section, and the defendant cannot compel him to do so. (Kaleedoss *v.* Behari, 2 W. R., 305; Radhamohun *v.* Mohesh, 7 W. R., 4.) The same remark applies to the cases referred to in Illustrations (e) and (f) appended to section 7. Similarly payment of interest on money lent, when the principal is not yet due, will not prevent the creditor from suing within the ordinary period reckoned from the due date. It is *only* in cases like these that the

the running of time, the following seven[6] may be considered the most important:

1. The fact that the *court is closed* (whether on authorized holidays or on working days)[7] during the latter end of the prescribed period of limitation. Here the period is *directly* extended to the day when the court reopens. Section 5.

2. The legal *disability* (minority, insanity, idiocy) of the plaintiff. Here the operation of limitation is *prevented* by the continued existence of the disability. Sections 7 and 8.

3. *Absence of the defendant* from British India. Here the operation of limitation is practically *suspended* so long as the defendant is absent. Section 13.

4. Abortive *bonâ fide proceeding* by the plaintiff against the defendant in a court which has no jurisdiction. Here also the operation of limitation is practically *suspended* so long as the proceeding continues. Section 14.

5. *Fraudulent concealment* by defendant, of plaintiff's right to sue, &c. Here the operation of limitation is *prevented* by the fraud, and postponed to the discovery of the fraud. Section 18.

6. Written *acknowledgment* of liability by a defendant or his agent. Here the operation of limitation is *interrupted* by the acknowledgment, and

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ordinary period prescribed by the Act is *not extended*, by the existence of the exceptional circumstance.

The exception as to express *trustees is a total* exemption from the operation of limitation.

[6] Five of these (*viz.* 2 to 6) were the only general exceptions which, with certain restrictions, were recognized by Act XIV of 1859.

[7] Bishen *v.* Ahmed, I. L. R., 1 All., 263. The old law and the cases thereon are referred to in a note at p. 265, *ibid.*

LECTURE IX.

time runs again from the date of the acknowledgment. Sections 19 and 21.

7. *Payments of interest* or *part payments* by the defendant or his agent. Here also the payments *interrupt* limitation, and give the plaintiff a fresh period. Sections 20 and 21.

Exception (1) applies to the limitation of suits, appeals and applications.

Exceptions (2), (4), (5), (6) and perhaps[8] (7) apply to the limitation of suits, as well as of applications. Exception (3) applies to the limitation of suits[9] only.

Reasons for these exceptions.

The first of these grounds of extension is based on an act which proceeds from *neither of the parties* to the case, and which occurs at a time to which a recourse to law is very often deferred, namely, the latter *end* of the period of limitation.

The second exception is founded on the *involuntary disability of the plaintiff* (the party who has to initiate the proceedings), at the time when limitation ordinarily *commences* to run.

The third ground of extending the period of limitation is based on the absence from British India of the *defendant* (the party to be sued), whether such absence is *voluntary or involuntary*, and whether it

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[8] See Ramhit *v.* Satgar, I. L. R., 3 All., 247, where the correctness of the ruling in Kally Prosonno *v.* Heeralall, I. L. R., 2 Calc., 468, was doubted by Stuart, C. J., who was inclined to hold that part payments of *judgment* debts, after decree, would give a fresh start, as regards *applications* for execution. See Lecture XI.

[9] In all these exceptions, save that relating to defendant's *absence*, 'plaintiff' includes 'applicant,' and 'defendant' includes "the party *opposed* to the applicant." In the exception relating to the Court being closed, 'plaintiff' includes 'appellant' also.

occurs in the beginning[10] or *any* other part of the period of limitation.

The fourth, fifth, sixth, and seventh grounds of extension are based on certain *voluntary acts* of one of the *parties*;—the fourth, on acts of the *plaintiff*, positively shewing his diligence; the fifth, on acts of the *defendant*, which prevent the plaintiff from proceeding against him; and the sixth and seventh, on acts of the *defendant*, which remove the obliterating effects of the time that has already elapsed, by shewing, directly or indirectly, that his liability still exists.

In these and other cases, the time of limitation is virtually enlarged, because, under the circumstances, the plaintiff is not considered guilty of *laches* in not enforcing his right within the specified period, or because the conduct of the defendant renders it unnecessary to exact the penalty attached to the lapse of time.

But as the maxim *cessante ratione legis, cessat et ipsa lex* (the reason of the law ceasing, the law also ceases), and arguments founded on analogy, are inapplicable[1] to positive enactments of the Legislature, too much stress should not be laid on the *reason* of the law. The exceptions recognized by the Legislature are founded on its own ideas of expediency, that is, on what it considers expedient upon the balance of convenience and inconvenience.

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[10] Narainjee *v.* Mugniram, I. L. R., 6 Bomb., 103, in which it was ruled that the *subsequent* absence of the defendant is no ground of extension, has been dissented from in Beake *v.* Davis, I. L. R., 4 All., 530. See Lecture VIII, p. 237.

[1] See Lecture VII, pp. 182, 196, *supra*.

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The Judge and the lawyer, arguing analogically from the reason of the law, cannot engraft a *new* exception upon the rule, or refuse to apply an exception to a case which is within the *plain* meaning of the words in which it has been enacted.

These seven exceptions (together with others mentioned in the Table) will be considered again in the notes under the several sections of the Act. In this and the following two lectures, we shall confine our attention to the three exceptions in respect of legal disability, acknowledgments, and payments.

Legal disability of plaintiff.

Under Act XIV of 1859, the following persons were deemed to be under legal disability:—Married women in cases governed by English law, minors, idiots, and lunatics. Coverture was not deemed a legal disability under the Regulations, nor is it deemed such under the later Acts of 1871 and 1877. The identity of interests between husband and wife, even where the English law is applicable, would, in the opinion of the Legislature, be sufficient to secure attention to her claims against third parties.[2] And where the interests of the *feme covert* are in opposition to the claims of the husband, she may sue by her next friend.

The minority, insanity, and idiocy of plaintiff are the only grounds of legal disability that are now recognized by the Law of Limitation in British India. The disability of alien enemies under sec. 430 of the Civil Procedure Code is not a disability

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[2] See Reports of the Indian Law Commissioners for 1843-1844. In 1859, the Legislature was of a different opinion. In 1871 and 1877, the Legislature agreed with the Commissioners.

within the meaning of the exception in sec. 7, Act XV of 1877. The existence of a dispute as to the plaintiff's title, and the pendency of a suit respecting it, do not constitute a legal disability.[3] Nor is plaintiff's absence from British India, or his imprisonment or transportation, a ground of disability under sec. 7.

Minority.

In Act IX of 1871 'minor' meant a person who had not completed his age of eighteen years. Act XV of 1877 omits this definition, because a definition is (in the generality of cases) supplied by the Indian Majority Act (IX of 1875). In a question of minority or majority arising upon the issue of limitation under Act IX of 1871, there was no distinction between persons domiciled in British India, and persons who were not so domiciled.[4] But now, the question, when a foreigner not domiciled in British India attains his majority, is left undetermined[5] by Act XV of 1877, or Act IX of 1875.

The Majority Act.

The Indian Majority Act, which came into force on the 3rd June 1875, enacts the two following rules:[6]—

(*a*) Every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the juris-

[3] Muddun Mohun *v.* Nund Kishore, 5 W. R., 295. See also Rajah Saheb Perhlad *v.* Moharajah Rajendro, 12 W. R., P. C., 6. See further, pp. 235—240.

[4] Rainey *v.* Nobocoomar, 5 C. L. R., 543.

[5] Justice Markby decided this question in Roelo *v.* Smith (1 B. L. R., O. C., 10), but Jackson, J., was not satisfied as to the correctness of that decision. See Rainey *v.* Nobocoomar, 5 C. L. R., 543. In the absence of a definition in Act XIV of 1859, the term 'minor' was construed according to the law of the party in each case. Hari *v.* Vasudev, 2 Bomb., 344.

[6] Section 3, Act IX of 1875.

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diction of any Court of Wards, shall be deemed to have attained his majority when he shall have completed his age of *twenty-one* years, and not before.

A guardian *ad litem* is not a guardian within the meaning of this rule.[7] The guardian must be actually appointed (by the *issue*[8] of a certificate under Act XL of 1858 or Act XX of 1864 or by a similar proceeding), or the Court of Wards must actually assume the management[9] of the minor's estate, *before* he completes his eighteenth year. Otherwise, rule (*b*) applies.

(*b*) Every *other* person (whether a native or a foreigner) *domiciled* in British India, shall be deemed to have attained his majority when he shall have completed his age of *eighteen* years, and not before.

So far as the capacity to sue[10] is concerned, a minor attains majority under rule (*a*), at the beginning of the 21st anniversary of his birth-day, and under rule (*b*), at the beginning of the 18th anniversary of that day.[1]

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[7] Section 443, Civil Procedure Code.

[8] Stephen *v.* Stephen, I. L. R., 9 Calc., 901. Application for a certificate, or a mere order granting a certificate, is not sufficient.

[9] Periyasami *v.* Seshadri, I. L. R., 3 Mad., 11.

[10] Section 2, Act IX of 1875, enacts a *proviso*, so far as the capacity to act in certain *non-judicial* matters is concerned. Puyikuth *v.* Kairshirapokil, I. L. R., 3 Mad., 248.

[1] Section 4, Act IX of 1875.

It may be mentioned here, that Act IX of 1875 extends to the whole of British India, and, so far as regards *subjects* of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty. The Act was passed with the object of prolonging the period of nonage and of attaining greater uniformity and certainty respecting the age of majority.

The previous state of

The previous state of the law was anything but satisfactory. Mahomedans attained their majority at the age of sixteen unless symptoms of puberty appeared at an earlier age. (Abdool *v.* Musst. Elias, 8 W. R., 301,

"Twenty-one is the full age by the laws of England, Spain, and of the United States of America, and also by the law which now prevails in France, Belgium, and Holland; but in the three countries last mentioned, a minor is emancipated and obtains majority at once by marriage; or, if he has completed his fifteenth year, by a judicial declaration of the father, or, if the father be dead, of the mother."[2] LECTURE IX. — Foreign laws.

The term 'lunacy' (see sec. 12, Act XIV of 1859) has acquired an extent of meaning equal Insanity and idiocy.

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but see Agra Sud. Rep. for 1857, p. 21.) Hindus, according to the Bengal school, attained majority at the end of fifteen years, and according to the Mitakshara school, on the completion of the sixteenth year. (Cal. Sud. Dewany Reports for 1853, p. 505; 2 Bomb., 325.) In the mofussil, sec. 2, Beng. Reg. XXVI of 1793, extended the period of minority of *proprietors of estates paying revenue to Government* to the end of the 18th year, whether they were Hindus or Mahomedans, males or females, in possession or out of possession, in respect of all acts done by such proprietors, both as to matters connected with real estate, and matters of personal contract. (Bykunt *v.* Pogose, 5 W. R., 2; Ranee Roshun *v.* Raja Enayet, 5 W. R., 4.) Act XL of 1858 similarly extended the period in the case of *all* persons in the mofussil of the Bengal Presidency, not being European British subjects, whether certificates had been taken out under the Act or not. (Modhusudun *v.* Debi Govinda, 10 W. R., F. B., 36.) A different construction was put upon the corresponding Bombay Act (XX of 1864), and it was held that the limit of 18 years was not applicable to any person until the Act was brought into play by the exercise of the jurisdiction of the Court. (Shivji *v.* Datu, 12 Bomb., 281.) Hindus and Mahomedans and others, domiciled in Calcutta and subject to the jurisdiction of the Supreme Court or the Original Side of the High Court, were not affected by Reg. XXVI of 1793 or Act XL of 1858. (Mothoor Mohun *v.* Coomar Surendro, 24 W. R., 464, F.B.; Kally Churn *v.* Bhuggobutty Churn, 19 W. R., 210, F. B.) But in Rajcoomar Roy *v.* Alfuruddin, 8 C. L. R., 419, in which the Full Bench decision in the 24 W. R. was not referred to, it was held by a single Judge, that if a resident of Calcutta had property in the mofussil, the age of his majority might be extended by the provisions of Act XL of 1858, at least, if the cause of action occurred, and the suit was brought, in the mofussil. the law of minority and majority.

[2] Macpherson's Civil Procedure Code, 5th Ed., p. 67.

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to that of the generic term 'insanity,' though it was formerly used to denote periodical insanity only.[3]

An idiot is a person who, by a perpetual infirmity from his birth, has been without understanding. A man who is deaf and dumb from his birth is not necessarily an idiot, though this may be the legal presumption. Insanity is not congenital, it is caused by sickness, grief or other accident.

Insanity or unsoundness of mind is a ground of exemption, whether there has been a commission of lunacy, or committeeship, or any analogous measure or not.[4] Under Acts XXXIV and XXXV of 1858, a person is a lunatic when he is incapable of managing his affairs by reason of unsoundness of mind.[5] And 'unsound mind' comprehends imbecility, whether congenital or arising from old age, as well as mental alienation resulting from disease.[6] A temporary loss of memory and understanding arising from accidental and temporary causes, or mere weakness of intellect, does not constitute insanity or unsoundness of mind.[7] If the mind is unsound on one subject, provided that unsoundness is at all times existing upon that subject, such a mind is not really sound on other subjects.[8] In the case of lunacy, the ordinary presumption is, that those who are thus unfortunately visited never entirely recover

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[3] Webster.

[4] Troup *v.* E. I. Co.; Dyce Sombre *v.* E. I. Co., 4 W. R., P. C., 111. But a lunatic is not obliged to sue by his next friend unless he is *adjudged* to be so. Sec. 463, Civil Procedure Code.

[5] Mr. G. Sherman *v.* E. Sherman, 24 W. R., 124.

[6] Brown, p. 549.

[7] *In re* Cowasji, I. L. R., 7 Bomb., 15.

[8] See Waring *v.* Waring, 6 M. P. C. C., 341, cited at p. 549 of Brown on Limitation.

their mental faculties. Where the fact of lunacy is proved generally, a lucid interval is not presumed, but the sanity and legal competency of the party must be clearly proved. A mere diminution or remission of the complaint is not sufficient.[9] So far as I know, it has not been decided in any reported Indian case that the occurrence of a lucid interval shall be deemed to be a cessation of disability within the meaning of the Exception.

Co-existing and successive disabilities.

Act XIV of 1859 did not expressly provide for double or co-existing disabilities. Act IX of 1871 supplied this defect, but did not provide for supervenient or successive disabilities in the same or different persons.[10] Act XV of 1877 not only extends the time when the plaintiff is under two disabilities, at the time when limitation ordinarily commences to run, but it grants the same privilege, if a second disability supervenes before the cessation of the first. And it does the same, if the person to whom the right to sue first accrued dies before he ceases to be under a disability, and his legal representative labours under the same or another disability. Thus if *A*, the party first entitled to sue, is a minor at the time when the period of limitation begins to run, and insanity supervenes before he attains majority, or if *A* dies a minor, leaving an infant or insane son as his legal representative, limitation

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[9] Angell, sec. 197 (note), where selections from D'Augnessean, and Sir Wm. Grant's decision in Hall *v.* Warren, 9 Ves., 611, are referred to.

[10] Sookhmoyee *v.* Raghubendro, 24 W. R., 7; Rajah Lall *v.* Delputti, 5 C. L. R., 372, 392. Successive disability in different persons, that is, the disability of representatives, is no ground of extension under 3 and 4 Will. IV, c. 27. See sec. 18.