LIMITATION ACT

1986

DLR

The

LIMITATION ACT

(IX of 1908)

with

Up-to-date Amendments & exhaustive case-laws.

Second Edition

Revised and enlarged

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Preface

In the present Edition of the Law of Limitation all the decisions of the Superior Courts of Bangladesh and Pakistan have been included. In addition the very large number of decisions on this subject of the sub-continent previous to the partition of the country in 1947 have also been incorporated in appropriate places.

The publishers would hope that this handy book will prove helpful to the legal profession and if it is favoured with the approval of the members of the Bar and Bench the publishers will deem their labour well-compensated.

Dhaka
October 29, 1986

Publishers.

The
Limitation Act

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The

Limitation Act

[1](Act No. IX of 1908)

[*7th August,* 1908]

An Act to consolidate aud amend the law for the Limitation of Suits, and for other purposes.

Whereas it is expendient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property It is hereby enacted as follows :—

PART I

PRELIMINARY

1. SHORT TITLE, EXTENT AND COMMENCEMENT.—**(1) This Act may be called the [2]* Limitation Act, 1908.**

[3][(2) **It extends to the whole of Bangladesh.]**

(3) This section and section 31 shall come into force at once. The rest of this Act shall, come into force on the first day of January, 1909.

General

Applicability—should be applied strictly—Equitable considerations not applicable—exception, when provision of statute not clear.

It is true that provisions of the statutes of limitation must be applied without regard to equitable considerations. Those provisions are founded on the policy of law which, in the interests of the community as a whole requires that there should be some point after which old and ancient disputes should not be agitated. The periods of limitation prescribed in pursuance of such a policy must necessarily, at least in some cases, be artificial and arbitrary and must be applied regardless of hardship in individual cases. These considerations, however cannot apply to a case where a particular provision in a statue of limitation is not clear and definite. In construing such provisions considerations of justice and equity cannot be ignored. When more than one interpretation is fairly and reasonably possible, that which leads to manifest absurdity or injustice must be avoided. It would be a lamentable and intolerable state of law if it were not so. *Hakman Vs. Satto* PLD 1958 (WP) Lahore 936 PLR 1959 (1) WP 956.

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—Applicability and scope—Does not apply to proceeding barred by limitation price coming into force of the act.

In the absence of anything to the contrary if a Limitation Act on the date when the new Limitation Act comes into force and a proceeding is commenced after the coming into force of the new Act it is the new Act which govern all decisions on the point of limitation. If, however, the right to use or the right of apply had already been barred by the provisions of the old Act then in force, unless there was something in the new Act which could be deemed to apply retrospectively to revive claims which had already become barred, the new Act could not be availed of for the purpose of saving limitation : *Peary Lal Vs. Solu Gir*, **A.I.R.** (33) 1946 Allahabad 58.

—Substantive Right : Not to be sought in the Act.

The substantive rights of parties under a bond or a decree cannot be derived from, or sought for in the Limitation Act. *Ranglal Vs. Shyamlal* **A.I.R. 1946 Cal.** 500.

Scope of the Act

Object of limitation is to quiet long possession and to extinguish state demands. 1943 Sind 33 : 205 I. C. 304.

—The Act is meant to be exhaustive. 1936 All. 383, 1938 Nag. 534.

—It is contrary to the sound canon of construction to enlarge the scope of the provisions of Lim. Act by importing words which are absent. 34 C.L.J. 465.

—The determination of periods of limitation must always be to some extent arbitrary and consequently may frequently result in hardship. But in construeing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide. 1932 P.C. 165: 1932 M.W.N. 817: 55 C. L. J. 528 : 34 Bom. L. R. 1065: 9 O.W.N. 681 : 1932 A.L.J. 643: 36 C.W.N. 803 : 33 P.L.R. 621: 63 M. L.J. 329 P.C., 1933 Cal. 422, 1937 Cal. 581, 1941 Mad. 449. 56 C.W.N. 770.

—Particular article must be applied in preference to general article. 55 P.L.R. 1922: 67 I.C. 364, 4 Pat. 448: 1925 Pat. 765.

—An article of the Lim. Act which fully applies to a particular case should not be thrown aside because it might create hardship in other cases. 6 C.L.J. 535.

—Law of limitation applicable to a suit or proceeding is the law in force at the date of institution. 1942 Bom. 138: 200 I.C. 889.

—Rights barred under the old Act cannot be revived by the new Act but rights not barred are governed by the new Act. 1946 All. 58 : 223 I.C. 175.

—There is no scope for the application of any principles of equity in the administering of the statute of limitation. In applying this Act courts are not permitted to travel beyond the articles and the exceptions and provisos embodied in the Act. 43 C.L.J. 155 : 1926 Cal. 65, 62 C. 66 : 1935 Cal. 333. 1941 P.C. 6 : 45 C.W.N. 429: 43 Bom. L.R. 346: 193 I. C. 225 P.C.

—A court cannot dispense with the provisions of the Act or to relieve a suitor from its operation in a case of hardship or mistake. 57 All. 242 : 37 Bom. L. R. 533 : 1935 A.L.J. 578: 39 C.W.N. 640: 61 C.L.J. 267: 1935 P.C. 85 P.C., 1944 Mad. 67: 215 I. C. 318.

—No period of limitation is prescribed for a suit for permanent injunction against the defendant, but a cause of action should exist in such a case. 31 C.W.-N. 82.

—The Limitation Act applies to arbitration proceedings. 33 C.W.N. 485 : 115 I.C. 713: 27 A L.J. 254: 1929 P. C. 103 : 56. M.L.J. 614 P.C. 1931 Mad. 619. 1943 All. 162: 207 I.C. 571.

—There is no limitation against a plea in defence. 113 I. C. 750: 1929 All. 77, 110 I. C. 571: 1928 Cal. 810, 1932 All. 558 but see 1939 Mad. 678: 189 I. C. 200.

—Limitation only bars the remedy and does not extinguish the debt. 1932 All. 199: 53 A. 963, 1941 All. 278 : 194 I. C. 839, or rights apart from s. 28, 52 A. 979 : 1931 All. 858. 1931 Lah. 668, 1946 Oudh 129.

—but in a suit for ejectment the defendant cannot plead and set up a claim to specific performance of contract when his right to enforce such contract by suit has become barred by limitation. 37 C.W.N. 265; 1933 P.C. 29: 141 I. C. 209: 141 I. C. 209: L.R. 1933 P.C. 15: 1933 M.W.N. 10 *P.C.*

(Part I.—Preliminary : Part II—Limitation of Suits, Appeals and Applications.)

2. DEFINITIONS. **In this Act, unless there is anything repugnant in the subject or context,—**

(1) "applicant" includes any person from or through whom an applicant derives his right to apply :

(2) "bill of exchange" includes a hundi and a cheque :

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

(4) "defendant" includes any person from or through whom a defendant derives his liability to be sued :

(5) "easement" includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or

anything growing in, or attached to or subsisting upon, the land of another :

(6) "foreign country" means any country other than [8][Bangladesh] [3A][* * * *]

(7) "good faith" nothing shall be deemed to be done in good faith which is not done with due care and attention :

(8) "plaintiff" includes any person from or through whom a plaintiff derives his right to sue :

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

(10) "suit" does not include an appeal or an application : and

(11) "trustee" does not include a benamdar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

PART II

LIMITATION OF SUITS, APPEALS AND APPLICATIONS

3. DISMISSAL OF SUITS, ETC., INSTITUTED, ETC., AFTER PERIOD OF LIMITATION.—Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

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

Parties in a contract embodied a clause of limitation to sue each other within three months from the date of breach of such contract—Such term in contract is void and statutory period of limitation in circumstances, which is three years, will apply. *Islamic Republic of Pakistan Vs. Nazar Din Khattack.* (1969) 21 DLR (WP) 367.

—Time-barred appeal entertained and disposed of by the Appellate Tribunal—Such appeal stands barred by time under section 3 of the Limitation Act even

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though no plea that the appeal was barred was set up by the defence—Bar of time can only be overcome when an application has been made under-section 5 of the Limitation Act and the Court has condoned the delay.

Section 29 (2) of the Limitation Act itself provides that "where any Special or Local Law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the First Schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that Schedule." The Displaced Persons (Compensation and Rehabilitation) Act, 1958 is undoubtedly of special law. Whether raised or not, it was the duty of the settlement Authority, to notice the point of limitation. A waiver of the question of limitation is not permissible even where the period of limitation is prescribed by a special or a Local Law.

It has also been held by the Supreme Court in several cases that mere disposal of the appeal on merits is not sufficient to lead to the inference that the delay must have been condoned. There must be something in the order or judgment itself to show that the Court concerned was conscious of the fact that the proceeding was out of time and had applied its mind to the question of limitation before dealing with the proceeding on merits. In the present case it has to be pointed out that the respondent No. 3 had not even filed any application for condonation of delay. *Ahsan Ali Vs. Dist Judge and Settlement Commissioner, Sukur,* (1969) 21 DLR (SC) 139.

Rejection of plaint—Time-barred suit to be dismissed in accordance with section 3, Limitation Act.—Order of rejection of plaint in such a case is in fact one of dismissal—Subsequent suit in respect of same cause of action and subject-matter barred as res-judicata. *Shafiq Ahamad Vs. Mirza Muhammad Anwar Beg* (1968) 20 DLR (WP) 113.

It is true section 3 imposes a duty on court to decide, the question of limitation in every suit, etc. before a Court irrespective of whether a question of limitation is raised. But that stage is reached only when the court is called upon to decide the question of limitation. *Kabiruddin Ahmed Vs. Official Liquidator Noakhali Union Bank Ltd.* (1969) 21 DLR 63.

Omission to plead the bar of limitation in the original court does not preclude a party from urging the bar subsequently or the court from holding a proceeding be so barred if it is apparent in view of section 3 of the Act. *Islamic Republic of Pakistan Vs. Nazar Din Khattack* (1969) 21 DLR (WP) 367.

Policy behind the Act.

The law of limitation is a law which is designed to impose of quietus on legal dissensions and conflicts. It requires that person must come to Court and take recourse to legal remedies with due diligence. The main purpose of the Limitation Act is to guillotine cases which seek reliefs at a point of time which is beyond the period specified thereunder. *Debendra Chandra Dey Nath Vs. Bharat Chandra Singha* (1967) 19 DLR 514.

Ss. 3 and 5: An appeal which stood barred by time when admitted does not mean that delay is condoned and at the final hearing Bench may dismiss appeal on the ground that it is barred.

Contention was raised for the appellant that it is only the admitting Bench which could take not of plea of limitation and since the admitting Bench in this case decided to admit this appeal, it will be considered that the said Bench impliedly condoned the delay, and that in any case, the present Bench could not go behind the order of the admitting Bench so as to give effect to the plea of the appeal being barred by time.

Held: There cannot be considered an implied extension of time from the mere fact that the Court admitted the appeal to a regular hearing. It is well settled that there could not have been ex-parte condonations or extension of time and even cases were ex parte condonations are made, the affected parties can always, on coming to know of such orders, take exception thereto and claim that the matter is barred by time, the extention of time, if any, is illegal and that effect to plea of limitation should be given. Ex parte condontions of delay would be illegal as being opposed to violation of the principles of natural justice as well as against law.

Aon Muhammad Vs. Rehabilitation Commissioner. **(1966) 18 DLR (WP) 99.**

Right of a cross objection.

The right to file a cross-objection does not arise until an appeal is preferred. Once the time for preferring an appeal has expired with the consequence stated in s. 3 of the Limitation Act, there is an end of the matter, and there can be no question of any appeal or any cross-objection thereafter. **(1955) 7 DLR 129.**

—The right which a person acquires by reason of lapse of time under sec. 3 of the Limitation Act has not been taken away by rule 22, Or. 41 C.P. Code. It must be remembered that the law of limitation is more than an adjective law; its effect is to extinguish the existing right. *Ibid.*

—Burden of proof to show that the suit is not time barred—Rests on plaintiff.

The burden rests in the first instance upon a plaintiff to show that his suit was not instituted after the period prescribed there for by schedule I and accordingly is not required to be dismissed under section 3. Sir Muhammad Akbar Vs. Most Motail PLD 1947 Privy Council 322.

Plea of limitation: If may be raised in Court of last resort for the first time—Question of fact and law—Plea not to be so raised.

It is true that a plea of limitation can be raised in Court of last resort. but for that it is necessary that there must be sufficient material on the record to decide such question. It is admitted that none of the parties have led evidence on this question, the evidence on the question of possession is very meagre, and, therefore, it would be necessary to remand the case for allowing the parties to lead evidence in support of their contention. It was incumbent on the defendants to raise this particular question in their written statement or at least in the memo or appeal. This being not done, it will be most unfair and unjust at

this stage to allow them to raise the plea of limitation and to demand the case for this particular purpose to the trial Court. The questions whether the plea of limitation should be allowed for the first time in arguments in appeal has been considered in several judicial decisions not only by several High Courts but also by their Lordships of the Privy Council, and the consensus of opinion is that it should not be so raised. *Agha Mir Ahmed Vs. Agha Mir Yaqub* PLD 1957 Karachi 258.

—Plea of limitation not raised in trial Court—Appellate Court may consider question whether suit is barred by time.

The appellate Court was entitled to consider the question of limitation even though it was not raised as a defence in the first Court. *Mosele Eliias Vs. Ahmed Said* PLD 1959 Kar. 760 ; PLR 1960 (1) WP 441.

—Question of limitation not raised by parties—Question of fact Court should not go into.

No doubt under section 3 of the Limitation Act, every suit instituted after the period of limitation prescribed therefor by the Limitation Act has to be dismissed even if limitation has not been set up as a defence yet it does not override the general rule of procedure that the Court ordinarily should not raise and decide a question of fact of its own motion. The question of limitation may be one of fact or of law; if former the Court is not bound to go into it unless raised by the parties, and, if latter the Court is as a general rule bound to raise and decide it, although not raised by the parties. Umar Vs. Afridai PLD 1954 Peshawar 96.

Rent Restriction Act S. 4: Difference between provisions—Applicability of s. 3.

While the first proviso to section 4 of the Karachi Rent Restriction Act, 1953 prohibits the entertaining of any application which is barred by time, section 3 of the Limitation Act, 1908 merely enables the Court to dismiss the suit and appeal etc. which is instituted or preferred after the period of limitation although limitation may not have been set up as a defence. Entertainment of an application relates to the initial stage whereas the dismissal can be ordered at any time. *Haji Jetha Vs. Athar Mirza* PLD 1959 (WP) Karachi 641 ; PLD 1960 (1) WP 30.

Two reliefs claimed by the petitioner: Each claim governed by its own period of limitation.

Where the plaintiff asked for two reliefs in the same suit and each of them had a different period of limitation fixed for it.

Held: that each relief was governed by its own period prescribed in the Limitation Act. *Municipal Committee Sialkot Vs. Eta Elahi* PLD 1956 (WP) Lahore 689 ; PLR 1957 (1) WP 322.

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—Dismissal of suits if time-barred :

When an objection is taken that a suit is barred, the onus is on plaintiff to prove that it is within time. 1940 Mad. 639 : 3940 M.W.N. 446 1948 P.C, 36: 52 C.W.N. 132: 50 Bom. L. R. 539 : 2 D. L. R 310 P. C.

—The court is bound to notice the point of limitation in disposing of the matter before it. 54 C. W. Z. 900.

—Provisions of section must be given effect to even though the point of limitation is taken at a late stage. 34 C. 941, 6 C. L. J. 237 11 C. W. N. 959 *F.B.*

—It is obligatory to dismiss the suit on the ground of limitation, though not pleaded. 57 A. 242: 37 Bom. L. R. 533: 1935 A. L. J. 578: 39 C. W. N. 640: 61 C. L. J. 267: 1935 P. C. 85 *P.C.*, 7 C.L.J. 152, the courtmay of its own motion take the point and dismiss the suit, 28 C. 80 : 5 C. W. N. 160, 1948 Nag. 41 : 230 I. C. 377.

—To take the plea of limitation in appeal for the first time it is necessary that all the facts should have been elicited and must be apparent from the record. 1923 Cal. 283 (C), 67 I.C. 386, and an appellate court is bound under s. 3 to take note of a point of limitation. 90 I. C. 827, 1925 Pat. 549, and there is nothing to prevent even the Court of second appeal from going into the question when it arises on the pleadings and no question of fact has to be enquired into disposed of the question 1930 Cal. 703, 34 C. 941, *Ref.*

—Appeal filed after court-hour in Judge's house may be accepted. 34 A. 482 *F. B.* so also the appeal filed by prisoner before the officer in charge of jail is good filing. 9 M. 258.

—Execution petition filed in time without vakalatnama, which was subsequently filed was not time-barred, 40 C. W. N. 730.

—Objection as to limitation may be taken up even if it was waived. 1940 Lah. 75 : 190 I. C. 379.

—Parties cannot by consent, agreement or conduct extend or alter the period of limitation. 13 W. R. 44 *F. B.*, 20 W. R. 395, 5 C. 820, 8 B. 344. 17 C. W. N. 518. But see 39 M. 129 *F. B.*

—Claim not barred at the time of written statement may be pleaded by way of set-off. 1942 Cal. 559 : 203 I. C. 336.

—Where pending an application to sue as a pauper the plaintiff pays the court-fees the date of institution is the dated of filing the application. 1949 Pat. 465 : 27 P. 259.

—"Suit instituted" meaning of—37 C. W. N. 379 : 57 C. L. J. 166 : 35 Bom. L. R. 319 : 1933 P. C. 63 *P. C.*, 41 C. W. N. 537 : 1937 Cal. 241.

—Date of institution of suit under s. 77 Registration Act against lunatic without guardian *ad litem*, effect. 38 C. W. N. 900: 1934 Cal. 833.

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4. WHERE COURT IS CLOSED WHEN PERIOD EXPIRES.—Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

"Court"—Meaning of---when court would be considered closed.

Now the expression "Court" has not been defined either in the Limitation Act on the General Clauses Act and this can be said of almost all Acts in force in Pakistan. The expression, however, means according to the context in each case either the presiding officer of the whole Court including the presiding officer of the Court or the place where cases are heard. It is clear that in section 4 of the Limitation Act the expression "Court" means the place where the Court is held and does not refer to the presiding Officer because it is only a place that can be closed. If for some reason the court room is closed so that nobody can enter it, it is obvious that the Court is closed. But if the court-room is open, it does not necessarily follow that the Court is not closed. For example, the court room may be open on a day, but it may not be possible to transact any business therein on that day just as on a holiday, and if that be so, the Court will have to be deemed to be closed on that day for the purpose of section 4 of the Limitation Act. *Nazar Muhammad vs Murad Ali PLD* 1960 (WP) Lahore 757 PLR 1961 (1) WP 831.

—Long vacation : Appeal filed after, though limitation expired during vacation—Benefit of s. 4 must be given to litigant.

The limitation for appeal expired during the long vaction The office of the High Court was open and would have received petition if presented during the vacation but that was not done. The petition of appeal was presented on the day the Court reopened. The 90 days period of limitation prescribed for an application under Art. 177 Limitation Act (IX of 1908) for bringing on record legal representative of a deceased respondent, in accordance with r.4 of Or. XXII Civil Procedure Code expired during the summer vacation when the Court was closed "for civil business" but the office was open to receive petitions "from such person as may choose to present them" and the application was presented on day the Court re-opened.

Held : that the application was within time. *Nur Muhammad Vs. Sachul* PLD 1957 (WP) Karachi 843—PLR 1958 (2) W.P. 398.

Where no civil judicial work, except of an urgent nature, is conducted during the vacation, section 4 of the Limitation Act 1908 would apply, with the result that when in any appeal or suit the period of limitation expires during the vacation the matter would be within time if instituted on the first day of the reopening of the Court after the vacation. *Rasul Baksh Vs. Ghulam Qadir* PLD 1960 (W.P.) Karachi 741.

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—Presiding officer of Court on leave—Court deemed to be closed during the period—Plaint presented on the day of return of presiding officer though Limitation expired during his absence—Not time barred.

Now, the expression "Court" has not been defined in the Limitation Act or the General Clause Act and this can be said of almost all Acts in force in Pakistan. The expression, however, means according to the context in each case either the presiding Officer or the whole Court including the presiding Officer of the Court or the place where cases are heard. It is clear that in section 4 of the Limitation Act the expression "Court" means the place where the Court is held and does not refer to the presiding Officer because it is only a place that can be closed. If for some reason the court-room is closed so that nobody can enter it, it is obvious that the Court is closed so that nobody can enter it. But if the court-room is open, it does not necessarily follow that the Court is not closed. For example, that the court-room may be open on a day, but it may not be possible to transact any business therein on that day, just as on a holiday, and if that be so, the Court will have to be deemed to be closed on that day for the purposes of section 4 of the Limitation Act. *Nazar Muhammad Vs. Murad Ali* PLD 1960 (WP) Lahore 757—PLD 1961 (1) WP 831.

S.4. : (Where court is closed when period expires).

Sec. 4 does not extend the prescribed period of limitation. 1942 Mad. 604 : 203 I. C. 5. 1948 Nag. 63.

—Where the court remained open it did not matter that no work was transacted. 1954 Pat. 384 : 33 P. 176.

—Where a suit to be within limitation, advantage of holiday under s. 4 is taken but is instituted in a wrong court s. 14 will not be applicable to bring it within time when subsequently instituted in a proper court. 57 A. 242 : 37 Bom. L. R. 535 : 39 C.W.N. 640 : 61 C.L.J. 267 : 1935 A.L.J. 587 : 68 M.L.J. 665 : 1935 P.C. 85 *P.C.*, 1953 Bom. 353, 41 C.W.N. 956.

—Payment made after the expiry of limitation but during holidays cannot be pleaded to save limitation. 1947 Oudh 3 : 225 I.C. 497.

—Where last day of filing an appeal was a holiday and on the next day application for the copies was made and filed on the day the copies were supplied, it was in time. 1926 All. 111.

—When the last day is a holiday but the court worked on that day with the special permission of H.C. presentation on the next day is sufficient. 1923 M.W.N. 211 : 72 I.C. 13.

—If on the last day when debt could have been enforced was a public holiday and on the next re-opening day the debtor is adjudicated an insolvent the debt is provable in insolvency. 1932 M.W.N. 216 : 55 Mad. 630; 1932 Mad. 287 *F. B.*

Whether general provisions apply to proceedings under Special and Local Laws.

—The general provisions of the Limitation Act apply to proceedings under special and local laws unless the latter are complete Codes in themselves, 3 A.277, 18 C. 368. 30 C. 532: 7 C.W.N. 550, the Code of Civil Procedure neither a special nor a local law. 18 C. 631. Ss. 4 to 25 apply to the periods prescribed by general Acts. 45 M. 785; 43 M L.J. 168. I.C. 226, 18 C. 631, 40 A. 198, 42 A.118. But the Registration Act is a complete Code so s. 14 does not apply to a suit under sec. 77 of that Act. 20 M. 249, 30 C. 532: 7 C.W.N. 550, 18 C. 368, *F.B.*, 5 C.L.J. 188, 24 C.W.N. 4 *F.B.*, 24 C.W.N. 29.

5. EXTENSION OF PERIOD IN CERTAIN CASES.—Any appeal or application for [4][a revision or] a review of judgment or for leave to appeal or any other application to which this may be made applicable [5][by or under any enactment]] for the time being in force may be admitted after the period of limitation prescribed thereof, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—**The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court [6][Division in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.**

[7][* * * * * * *]

S 5: Section 5 of the Limitation Act is now applicable to application made under Or. 9. r. 13. (Limitation Act (I of 1908). s. 5).

By the amendment of Order 9, rule 13 C. P. Code as published in East Pakistan Gazette Part I dated 18th May, 1967 provisions of section 5 of the Limitation Act have been made applicable to the application made under Order 9, rule 13 of the Code of Civil Procedure.

Khorshed Ali Chowdhury Vs. The People's Republic of Bangladesh (1977) 29 DLR 376

Delay in filing the security bond as required under section 17 (1) S.C.C. Act should be explained—Delay due to wrong but bonafide advice of the lawyer is a sufficient explanation of delay.

Lawyer's wrong advice may be good ground for condoning the delay.

Mistaken advice given by a legal practitioner may in the circumstances of a particular case give rise to sufficient cause within the section though there is certainly no general doctrine which saves parties from the results of wrong advice.

Nitya Gopal Saha Vs. Binod Behari Saha.
(1977) 29 DLR 259.

Memorandum of appeal insufficiently stamped was presented within time with a prayer for extension of time to pay deficit court-fee---Prayer for time

rejected—Deficit court-fee was later on paid though out of time with a prayer under section 5 of the Limitation Act to condone the delay—Court in the circumstances of the case found that a reasonable case for condonation of delay has been made out. *Abdul H-kim Vs. Asabuddin,* (1968) 20 DLR 506.

—Appeal by the Government filed out of time—Government's responsibility and diligence in such matter—Delay herein condoned.

The appeal which is barred by time is by the Government. The Government, has a great responsibility in this respect. Any laches on the part of the Government is very serious and the Court has always looked at it with disfavour. The state must come before the Court at an earliest opportuntity within the statutory period of limitation.

But there is another aspect of the matter. The State machinery moves or functions through so many agencies. Where the machinery is run by so many hands it is not always possible for such machinery to come before the Court within the quickest possible time. Although the Court is generally reluctant to consider the question of delay in favour of the Government, yet in the context of things it should not be ignored that the Govt machinery runs through serveral hands and the delay in such circumstauces cannot altogether be avoided.

There is still another aspect of the matter. The different links of the Government are so connected that one cannot work without the co-operation and assistance of the other. In the instant case the Deputy Commissioner who initiated the proposal to prefer an appeal to the High Court could not do so without obtaining the necessary papers and opinion of the local Government Pleader. The Deputy Commissioner had to depend upon the advice of the Government Pleader. The Government Pleader having been away the Deputy Commissioner was somewhat helpless.

Taking all the relevant facts into considerations the Court was pleased to accept the explanation of delay of 221 days and condoned the same. *Province of East Pakistan Vs. Subodh Kumar De Das* (1973) 25 DLR 280.

—Mistake or oversight of Tadbirkar in obtaining information about copy of judgment is a sufficient cause within the meaning of section 5 of the Limitation Act for extension of limitation.

In view of the facts and circumstances of the case it can be said that the mistake or oversight of the Tadbirkar of the petitioners was a sufficient cause within the meaning of section 5 of the Limitation Act and the petitioners are entitled to have an extension of the time. The delay in presenting the appeal should, therefore be condoned. *Md. Ali Bhuiya Vs. Idrish Ali Bhuiya,* (1969) 21 DLR 910.

—Condonation of delay—when appeal preferred by the Govt.—No unusual concession can be claimed by the Govt. *Province of East Pakistan Vs. Md Habibur Rahman* (1973) 25 DLR 254.

—Condonation of delay—Ignorance of law accompanied by circumstances not indicating want of good faith of diligence may furnish as a sufficient ground for

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condonation for delay. *Syed Barkurdar Vs. Syed Mathali Chowdhury* (1973) 25 DLR 203.

—Government filing an appeal out of time—Law does not make any discrimination between the Government and a private litigant in respect of condoning the delay—Negligence of an agent or a servant of the Government not a sufficient cause to condone the delay. *Province of East Pakistan Vs. Abdul Hamid Darjee* (1969) 21 DLR 824.

—High Court entertained the appeal after condoning the delay of 52 days and allowed the appeal by its judgment—Respondents before the High Court appealed against High Court's decree to the Supreme Court—Question of condonation of delay, whether it was legally given or not, can be agitated at the time of final hearing before the Supreme Court.

The appeal having been decided on the merits in favour of the respondents by the High Court and the Bank wishing to appeal from that order, it would be open to the Bank to agitate the question of the condonation of the delay in presenting the appeal to the High Court also, as a ground of appeal. *M/s. Notional Bank of Pakistan Vs. Faridsons Limited,* (1968) 20 DLR (SC) 248.

—Time for filing a second appeal in the High Court lapsed and the appeal was filed when it was out of time by 174 days. The High Court condoned the delay and on appeal to the Supreme Court, the order of the High Court condoning the delay was set aside and the case was sent back on remand with a direction that the "High Court should have required the appellant proposing to file the appeal to explain each day's delay has not been sufficiently explained and in particular found that there is no explanation for the delay at least for the period from 24.11.67 to 28.11 67. The petitioner far from giving cogent explanation for the delay in preferring the appeal failed to explain the delay from the date of filing of the appeal till the application for condonation of delay was moved and held "that the failure on the part of the petitioner to explain away the delay is a ground for refusing the prayer for condonation of delay."

According to the broad principle of law of limitation the vested right accrued to the other side after the prescribed period of limitation cannot be wiped out unless proper explanation is given thereof. *Province of East Pakistan Vs. Md. Habibur Rahman* (1973) 25 DLR 254.

—Mistake or ignorance of law to get round the bar of limitation when can not and when can be successfully pleaded for extension of time.

A mistake or ignorance of law is not a sufficient cause. It would be the shaking of established authority to maintain that ignorance of law or mistake of law are reasons for the excuse and, as such, furnish elements for extending the period of limitation which the statute law provided.

Ignorance of law unaccompanied by negligence in action or want of bonafide, may in proper cases be a sufficient cause, but section 5 of the Limitation Act was not provided to encourage negligence, procrastination and laxity.

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In cases where mistake of law is pleaded, the Court is to be satisfied that the appellant was not guilty of negligence, that he took proper steps to get correct guidance and that he was quite diligent in the matter of pursuing the remedy, If, for example, any person pleads a mistaken advice of a counsel as a cause for extension of a period of limitation, then the Court is to be satisfied that the advice was given in good faith, with due care and caution and not recklessly. *Ibid.*

—Ignorance of law not a ground for extension of time but if sufficient bona-fide cause exists, delay may be condoned. *Ibid.*

"Sufficient cause"—determination of:

Under section 5 of the Limitation Act there has to be a finding of sufficient cause. In pre-partition India sufficient cause had been defined as circumstances beyond the control of the party and this definition of 'sufficient cause' had not yet been rejected.

In determining sufficient cause while dealing with the same expression in Order IX, rule 8, Civil Procedure Code and Order IX, rule 3, C.P. Code the Court had been lenient and had been condoning some negligence i.e. negligence to the extent to which it is regarded as human though they never condoned gross negligence. At the same time the Courts had always been strict in demanding proof of sufficient cause for every day which had expired after the ordinary period of limitation. *Ata Ullah Malik Vs. Custodian of Evacuee Property* (1964) 16 DLR (SC) 298.

—Under sec. 5 of the Act the petitioner is entitled to condonation of delay if he can satisfy the court that he had sufficient cause. The words "sufficient cause" have been liberally construed. The petitioner must satisfy the court that he was not negligent and inactive. It must be considered that when the time for appeal has passed a valuable right has accrued to the successful litigant. (1956) 8 DLR 167.

—Time taken in prosecuting a review application on grounds not covered by Or. 47 and not in good faith cannot be excluded in computing the period of limitation. (1956) 8 DLR 662.

—A person applying for condonation of delay, must explain delay of every day (a). (1953) 5 DLR 20, (1958) 10 DLR WP 75.

Government applying for condonation of delay—not entitled to special latitude—Delay may, however, be condoned in special circumstances. (1958) 10 DLR (SC)168.

—Wrong advice by the counsel with due care and caution would be sufficient ground for exclusion of time—Gross negligence of counsel cannot be ground for exclusion of time. (1958) 10 DLR (WP) 75.

—Time enlarged when the party is misled by wrong advice—Order of dismissal by an incompetent court, delay condoned.

The petitioner through an honest and mistaken belief arising out of a wrong advice by an ignorant lawyer that his appeal lay in the Court of the District Judge

bona-fide filed the appeal in the court and prosecuted it with due diligence and care, but the District Judge who had no jurisdicton to entertain the appeal instead of returning the memorandum of appeal for presentation to the proper Court.dismissed the appeal.

Held : The order of the District Judge who was without any jurisdiction to entertain the appeal cannot operate as a legal bar to apply to the High Court for condoning the delay and for registering the appeal in the High Court. (1955) 7 DLR 272.

—There is no authority for the view that a mistake of a legal practitioner in giving advice with regard to the time for filing an application for leave to appeal as a form a pauper is however gross and inexcusable if bona-fide acted upon by a litigant, will entitle him to the protection of section 5 of the Act. (1953) 5 DLR 265.

Under the Act nothing shall be deemed to be done in good faith which is not done with due care and attention and a pleader who gives wrong advice without reference to the law with regard to matter of which he is ignorant cannot be said to have acted with due care and attention (b). *Ibid.*

—Where the party is not guilty of negligence, the act of Court can be good ground for extension of time. *Ibid.*

—"Sufficient cause" means something beyond the control of the party. It cannot be said that in a case where there has been contributory negligence by a Court, but where for the negligence of the party the proceeding would have been filed in time. sufficient cause existed. While determining sufficient cause, the Court should be lenient and should overlook some negligence that is an ordinary incident of human affairs, but gross negligence cannot be condoned. (1958) 10 DLR (WP) 75.

—Provisions of sec. 5 of the Act applicable to an application under section 174(3) B.T. Act (c). (1957) 9 DLR 89.

—Section 5 of the Act applies to application under Order 44, rule 1. 1952 PLR (Lah.) 188.

Judgment pronounced in parties and their counsel's absence—Neither plaintinff nor his counsel informed—Condonation. 1951 PLR (Lah.) 184.

—Time required for obtaining copies—Time spent in obtaining copy of court of first instance for purpose of second appeal ordinarily not allowable—Delay of each day must have got to be explained. 1954 PLR (Lah.) 624.

Time taken in restoration application if to be excluded in filing appeal.

The appellant made an application for restoration of a suit, and on the same being dismissed filed an appeal. A question arose whether the time taken in prosecuting the restoration application is to be excluded while computing the period for filing appeal.

Held : The general rule that the time spent in prosecuting as application for review with due diligence should be added to the prescribed period of limitation for appeal to an application for restoration of a suit PLR (1960) 2 W.P. 379.

If the period of limitation in filing an appeal against an order of conviction is not extended the result can be that an innocent person may suffer punishment which he does not deserve, but if the same course is followed in the case of an order of acquittal all that can possibly result is that a guilty person may escape punishment which he deserves.

A period of six months is allowed to the Provincial Government to present an appeal under section 417, Cr. P.C., against an order of acquittal and, therefore, this long period should be extended only where exceptional circumstances exist (a) (1959) 11 DLR (WP) 60.

S. 5: Acts 170, 179- -Application under O. 44, r. 1.—Provision applicable. The language of section 5 of the Limitation Act shows clearly that the intention of the Legislature was that the application of the present kind (i.e. to be allowed to appeal as a pauper) could be admitted after the period of limitation had expired if the conditions required by section 5 of the Limitation Act were fulfilled. Section 5 of the Limitation Act was applied by all the High Courts in British India before its partition to applications under Order 45 of the Code of Civil Procedure for leave to appeal to the Judicial Committee of the Privy Council and there is no reason why it should not apply to applications under Order 44, rule 1 of the Code of Civil Procedure.

Both Articles 170 and 179 speak of applications for leave to appeal and there is no doubt that when appeal in section 5 of the Limitation Act the Legislature had in view the language of Articles 170 and 179 of that Act and not of any other enactment But even if at the time of the enactment of that section the legislature had in view the language of the Code of Civil Procedure their intention may have been not to make applications mentioned in Article 179 subject to the section, but could not have been to exclude application under Order 44, rule 1, Civil P C. from the operation of that section.

Muhammad Ghazzanfar Vs. Nur Muhammad Khurshid PLD 1952 Lahore 156; PLR 1952 Lah. 188, Diss: ILR 15 Luc. 390: AIR 1927 Nag. 197 Ref: LIR 17 Luck 628; ILR 12 All 79; ILR 39 Cal. 990; AIR 1928 All 99.

—Application in filing a final decree under C.P C. O.34, r. 5—Section does not apply.

Section 5, Limitation Act has not been made applicable to an application for passing a final decree under O. 34, r. 5 Civil P. C., and therefore the Court has no power to condone the delay in filing such an application. *Kaza Ramakotayya Vs. Nimmagadda Sitharamaswami* AIR (33) 1946 Madras 381 (D.B).

B. Tenancy Act, S. 174 (3)—provision of section applicable.

Having regard to the provisions of section 185, Bengal Tenancy Act which made the provisions of the Limitation Act, barring certain sections referred to in the section, applicable, there is no doubt that the provisions of section 5 of the Limitation Act apply to an application under section 174 (3) of the Bengal Tenancy Act. Jabbar Ali Vs. Bahadur Bepari (1957) 9 DLR 90.

Income Tax Act Section 66(2)—delay in petition cannot be condoned—Provision not applicable.

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There is no provision authorising the Commissioner to have recourse to section 5, Limitation Act in connection with an application presented before him under section 66(2) Income Tax Act. Section 66(2) Income Tax Act contains no saving clause and gives neither the commissioner nor the High Court any power to condone delay if the assessee does not present his application within the time prescribed. S.H. *Mahmood Vs. Assistant Commissioner Income Tax.* PLD 1951 Baghdad-ul-Jadid 42.

—Appeal against acquittal—Court may extend period of limitation only where adequate reason is given for it.

Held: the appeal against acquitted has been preferred after the period of limitation although this Court has discretion to extend the period of limitation it would not be proper to allow for extension when no reason is given for the inordinate delay in the submission of this appeal. The general principle followed in the submission of such appeal is that they should be preferred with the least possible delay. In these circumstances, I decline to accept the appeal which is dismissed as time barred. Crown Vs. Fazal Karim PLD 1954 Baluchistan—33—7 DLR WP Bal. 6.

Ss. 5, 12: Appeal heard ex-parte Provisions not applicable to application for re-hearing of appeal.

Section 5 has not been extended to applications to re-hear ex-parte appeals, section 12 does not apply to such application. *Noor Muhammad Vs. The Reh. Commissioner.* PLD 1958 (WP) Karachi 467.

—Revision to Custodian—Filed 23 days after expiry of limitation—Revision admitted to examine any illegality or irregularity in the revision.

Held : the last day for filing the revision petition was 30th March 1957. It was not filed until 23rd April 1957 and could have been dismissed on the short ground of limitation but the counsel for the petitioner has filed a belated petition for extension of time under section 5, Limitation Act and I have decided to examine the facts of this case in order to see whether there is anything illegal or improper in the concurrent orders of the two Courts below. *Zakir Hussain Vs. Mst. Alia Sultana* PLD 1958 Custodian (Lahore) 12.

—Liberal construction should be made—Criminal case—No right accruing to other party—delay condoned.

Section 5 of the Limitation Act, 1908 should be liberally construed so as to advance substantial justice. Where the appellant, a boy of 12 who was not expected to know that the appeal should have been filed within sixty days from the order convicting him under section 380, Penal Code, filed the appeal against the order 56 days beyond the time prescribed for filing of criminal appeals, the High Court condoned the delay.

The delay in filing a criminal appeal in cases of this nature should ordinarily by excused under section 5 of the Limitation Act, 1908 because no valuable right

accrues to the opposite party. *Abdul Waheed Vs. The State.* PLD 1960 (WP) Lahore 85 PLR 1960 (2) WP 166.

—Delay of every day must be explained.

If the prescribed period of limitation has expired, the person desiring the Court to condone the delay must explain every day of the delay. *Muhammad Ghazanfar Vs. Nur Basar* PLD 1952 Lahore 156—PLR 1952 Lahore 188.

—Discretion of Court—When would be used—Existence of reasonable cause condition precedent for use of discretion.

The existence of sufficient cause for not filing the proceeding in time is merely a condition that must be satisfied before the Court exercises its power of granting or refusing to grant the extension of time. If the condition is not satisfied there is no room for the applicability of the power to excuse delay. Thus, where no cause has, at all, been shown that is, where no explanation has been given for filing the proceeding out of time, there arises no opportunity of considering the sufficiency or otherwise of the reasons for that fact, and there cannot be any room for the exercise of the discretion given by the section. If the condition is satisfied, then the Court gets a discretionary power to grant or refuse the prayer for extension of time. It may in its discretion refuse to extend the time even though there may be sufficient cause for the delay. The extension of time is thus a matter of concession or indulgence to the applicant and cannot be claimed by him as a matter of absolute right. *Said Muhammad Vs. Goma* PLD 1952 Baghdadul-Jadid 8 D.B.

—Discretion—Must be used judicially and not in arbitrary manner.

Section 5 leaves it to the discretion of the Court to admit an appeal after the expiry of limitation if it is satisfied that there was sufficient cause for delay. If the Court bases it discretion on a wrong notion of law, the use of discretion is arbitrary, not judicial. *Bombay Cloth House*, Lahore *Vs. Commr. of income Tax* Lahore. PLD 1954 Lahore 50—PLR 1953 Lahore 269 (DB) 183 PR 1888 (FB).

—Copies of judgment and decree not received in time by Additional Advocate—Application made for certified copies made within time for appeal—Delay condoned.

From the facts disclosed in the application it would appear that the copy of the judgment and decree was not received by the office of the Additional Advocate in time. The Solicitor to the Government had sent a copy of the judgment and the decree along with the covering letter dated the 28th December 1957, but the same was not received by the office of the Additional Advocate-General. The office of the Additional Advocate-General wrote to the Solicitor that the copy of the judgment and the decree had not been received by his office. An application for certified copies of the judgment and decree was made on the 8th January, 1958, within time for filing the appeal.

There is no reason to disbelieve the office of the Additional Advocate-General that though the Solicitor to the Government sent the copy of the judgment and decree in time it was not received by the office of the Additional Advocate-General. There is no counter-affidavit contesting these facts. In these circumstances we would condone the delay in filing the appeal. *Province of West Pakistan Vs. Makhdoom Mohammad* PLD 1961 Karachi 722 (DB).

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—Illness—Medical certificate should be produced with application—No further time to be granted for the purpose.

Where the appellant sought to get the appeal restored on ground of illness.

Held : The appellant ought to have produced the medical certificate along with the application and in any case should have produced it before the final hearing of the appeal particularly as the respondent opposed the application for condonation of the delay. No further time can be granted for this purpose. *Messrs Hashamally Bross Vs. Netherlands Trading Society* PLD 1961 Karachi 231 (DB).

—Appellant misled by conflicting decisions of the Court and practice of Court—Delay condoned.

The appellant in this case was also misled by conflicting decisions in this Court and the practice that had developed. I also consider this as sufficient cause to condone the delay and extend the time of appeal. On this view the appeal is within time. *East and West Steamship Company Vs. Queensland Insurance Co. Ltd.* PLD 1961 Karachi 317---PLD 1961 (1) W.P. 263 (DB).

Advocate...Wrong advice given by counsel after due consideration, by mistake —Time may be extended.

Wrong doubt be sufficient. cause within the meaning of section 5 of the Limitation Act, but negligent advice has never been and can never be a ground for extension of time. *Allha Wasaye Vs. Muhammad Shakir* PLD 1958, Lahore 959—PLR 1959 (2) W. P 79—10 DLR W.P. Lahore 75 (D.B)

—Mistaken advice by counsel is a good ground for extension if counsel does not act negligently, but the standard of care to be applied will depend on the particular circumstances of a case. *Food Stuff Supply Co. Vs. Irfan Cotton Oil Mills,* PLD 1958 Lahore 325—PLR 1958 (1) W.P. 1030.

—Where the counsel genuinely thought that the period spent in obtaining copies as well as the period between date of judgment and signing of the decree would be excluded from the period of limitation and therefore the appeal was filed a few days too late.

Held: this is a fit case where the delay in filing the appeal should be condoned under section 5 of the Limitation Act. *Federation of Pakistan Vs. ASPI* PLD 1960 Karachi 562.

Where the delay in applying for copies is caused by the erroneous advice received by an applicant for leave to appeal to His Majesty in Council from his advocates 'such mistaken advice of the law is a sufficient cause for excusing delay in making the application.' *Bhausaheb Jamburao Vs. Sonabai and others* AIR (33) 1946 Bombay 437. Follow AIR 1937 P. C. 276; A. I. R. 1918 P. C. 135.

It was urged that the reason why the appeal in this Court was not presented within the time fixed by section 15 was that the point whether the appeal lay to this Court or to the Court of the learned District Judge was shrouded in some difficulty.

Held: the mistake committed by the learned counsel for the appellant in the present case could not be said to be so gross as to disentitle his clients from getting the benefit of section 5 of the Limitation Act for condoning the delay in the presentation of the appeal. *Muhammad Azeem Vs Muhammad Nawaz* PLD 1961 Lahore 137.

Bonafide mistake---Appeal filed in wrong Court—No negligence—Extension of time will be allowed.

(Obitor) Where there has been a bonafide mistake, not through misconduct or through negligence nor through want of reasonable skill, but such as a skilled person might make, the client is entitled to indulgence. *Said Muhammad Vs. Goma etc.* PLD 1952 Baghdad-ul-Jadid, 8.

Negligence.

Advocate informed of death of party to appeal— No application filed within time to bring her legal representation on record---Application after one year---Abatement of appeal not set aside.

The advocate of the appellant was informed by the High Court about the death of H, one of the respondents. After one year of the death the appellant put in an application stating that was not a necessary party to the suit and consequently it was not necessary to implead her legal representatives. It was also stated that the plaintiffs who claimed to be the heirs of the deceased were party to the appeal and, therefore, the appeal could not abate. In the alternative it was alleged that the appellant had no information about the death of Husain Bibi, and had therefore, sufficient cause for not presenting the application earlier. He prayed that the appeal may be proceeded within the absence of the legal representatives of Mst. Husain Bibi but in case the Court held that the appeal had abated, then the abatement be set aside and legal representatives of the deceased mentioned in para 5 of the application may be brought on the record.

Held: in these circumstances, if the appeal has otherwise abated then I am not prepared to extend the benefit of section 5 of the Limitation Act, to such a belated application. *Muhammad Khan Vs. Abdul Aziz and others* PLD 1958 Lahore 257.

Advocate, negligent advice by---No ground for extending time.

This is a case of gross negligence on the part of counsel, and while the party may have a good case for proceeding against him his negligence cannot form a ground for extension of time under section 5 of the Limitation Act. Negligence of the counsel is the negligence of the party, because he is the agent of the party. If the negligence of counsel was to be condoned appeals which are not filed through counsel's negligence would never become time barred and in cases where a dismissal in default would have to be restored. *Allah Wasaya and other Vs. Muhammad Shakir.* PLD 1948 Lahore 959 PLR 1959(2) WP 79—10 DLR WP Lah. 75 (D.B)

—Applicability—Party must show that it was not negligent.

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A party wishing to take advantage of section 5 of the Limitation Act must, therefore, satisfy the Court that it had not been negligent and had been prosecuting its case with due diligence and care. *Punjab Province Vs. Sultan Khan and other* PLD 1959 Lahore 500 (D.B).

—Under section 5 of the Limitation Act the petitioner is entitled to condonation of delay, if he can satisfy the Court had sufficient cause for not making the application within the period fixed by Statute. The words "sufficient cause" have been liberally construed. The petitioner must satisfy the Court that he was not negligent and inactive. It must be considered that when the time for appeal has passed, a valuable right has accrued to the successful litigant. Of course, the right accrued is not an absolute right: and it is subject to a judicial discretion as contemplated by section 5 of the Limitation Act. *Amir Hossain Vs. Messrs Kasim and Ismail Limited* 8 DLR 167 (D B).

—Pleader, negligence of—Appeal filed on his advice after period of limitation —Not entertained.

Where the application for leave appeal in forma pauperis was filed more than 30 days after the expiry of the period of limitation on the advice of the pleader.

Held : the erroneous advice in this case cannot be said to have been given after due care and attention. The pleader, no doubt states in his affidavit that he gave wrong advice in good faith apparently meaning thereby that he honestly believed that there was no difference with regard to the period of limitation between regular appeals and appeal sought to be filed in forma pauperis in the High Court. But under the Limitation Act nothing shall be deemed to be done in good faith which is not done with due care and attention. The very fact that he had no previous experience of such cases should have made the Pleader look up the law on the subject. A Pleader who gives advice wihout reference to the law with regard to a matter of which he is ignorant cannot be said to have acted with due care and attention. This, in cur opinion, is a case of ignorance and negligence of the legal adviser. In the circumstances the delay in the presentation of the application for leave to appeal as a pauper cannot be condoned and the application must be dismissed. *Nazir Ahmed Vs. Province of East Bengal*, PLD 1955 Dacca 63—PLR 1953 Dacca 219---5 DLR 265 (D.B.)

The petitioner through an honest and mistaken belief arising out of a wrong advice by an ignorant lawyer that his appeal lay in the Court of the District Judge bonafide filed the appeal in the Court and prosecuted it with due diligence and care, but the District Judge who had no jurisdiction to entertain the appeal instead of returning the memorandum of appeal for presentation to the proper Court, dismissed the Appeal.

Held : the order of the Distriet Judge who was without any jurisdiction to entertain the appeal cannot operate as a legal bar to apply to the High Court for condoning the delay and for registering the appeal in the High Court. *Sreemati Bidhayet Prova Devi Vs. Remadra Nath Chakravarty and others.* 7 DLR 272.

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Proceedings in wrong court.

---Advocate filing appeal in District Court rather than in High Court—Negligence---Time not extended.

When the advocate of the party filed an appeal in the District Court whereas it should have been filed in the High Court.

Held : this act of the advocate cannot be regarded as a bonfide and honest or excusable mistake on his part as he did not act with due care and attention and did not take the trouble to consider whether the value of the suit or the decretal amount determined the jurisdiction of the form of appeal. We are therefore of the view that in the present case the mistake of counsel for the appellant amounts to gross negligence on his part and does not entitle him to the indulgence of extension of time under section 5, Limitation Act. *Mirza Habib Ullah Vs. Mohammoda Begum* PLD 1959 Baghdad-ul-Jadid 43 (D.B.)

Filing of an appeal in a wrong Court through gross carelessness of the counsel is not a "sufficient cause" for presenting the appeal to the proper Court after the expiry of the period of limitation. *Said Muhammad Vs. Goma* PLD 1952 Baghdad-ul-Jadid 8 (D.B.)

When the advocate filed an appeal in Session Court thinking that the decree was for Rs. 3,000 although that was only one item of the decree and total amount involved was Rs. 29,000 the court held that there was no mistake of law but clear negligence was involved. Therefore, no extension of time was allowed. *Food Stuff Supply Company Vs. Irfan Cotton Oil Mills and* 2 *others* PLD 1958 Lahore 325---PLR 1958 (1) W.P. 1030.

Appeal presented to District Judge rather than to High Court --Bonafide mistake of valuation---Delay in filing appeal condoned.

The suit had been valued for purposes of Court fee and jurisdiction at Rs. 110/-.

Held : in view of the decision of the trial Judge dated 29th of January, 1941, that the suit was properly valued both for purpose of Court fee and jurisdiction, the appellant had no option but to prefer the appeal to the Court of the District Judge in the first instance. When before the suit for purposes of jurisdiciion was Rs. 18,000 the District Judge had no option but to return the appeal for presentation to the proper Court. No sooner the appeal was returned by the District Judge, it was presented to this Court. The memorandum of appeal was therefore presented bonafide to the court of the District Judge and in these circumstances the delay in preferring the appeal to this Court must be condoned. *Muhammad Latif Vs. Muhammad Hafiz* PLD 1951 Lahore 479 (D.B.)

The circumstances which led the learned counsel to file the appeals before the District Judge were as follows. He did not notice any valuatlon in the copies of the decrees because instead of appearing at the usual place it was mentioned in the first line at the top on the first pege—almost unusual, and improper, place for stating the jurisdictional value. In the unattested copy of the plaint supplied to the counsel by the client the value was stated to be Rs. 20. As this value did not seem to accord

with the facts in the judgments the learned counsel valued the appeals at Rs. 3.000 and 1,400. respectively, the amounts for which the two sales had been effected. When the two appeals came up for hearing before the District Judge on the 15th of August 1953 it was noticed that the valuation of each of the suits was Rs. 7,500 and the appeals were, therefore returned to the appellant for presentation to the proper Court. They were, filed in this Court on the same day. We are of the opinion that the mistake of the counsel in these case was bonfide and excusable and we condone the delay accordingly. *Masood Ali Vs. Ali Haibat Khan* PLD 1958 Lahore 340—PLR 1958 (2) 1028 W.P. (D.B.).

Appeal competent—Review filed without good faith---Time spent in prosecuting review application---Not condoned.

Where the party filed a review application although an appeal was clearly competent.

Held : the petitioner had no sufficient ground for not preferring his appeal within the time prescribed by law, The proceedings in the review were not reasonably prosecuted and were not in good faith and, therefore, his application under section 5 of the Limitation Act must be rejected. *Haji Md. Yusuf Vs. Messrs. Ahmad Brothers Ltd. & another* 8 DLR 1956 662 (D.B.)

—Delay in application—Disturbed state of country—sufficient cause.

Where owing to the fact that the whole country was in a disturbed state and it was not easy for litigants to appear in Court to make applications or to take delivery of copies of documents which they had applied for within a reasonable time of the copies being ready, there was a few days' delay in making an application for review.

Held : that in the circumstances the delay should be condoned. *Jan Muhammad Vs. Shital Prasad and other* AIR (33) 1946 Patna 417.

---Party not informed of judgment---Judgment pronounced in party's absence---Delay in presentation of appeal condoned.

Judgment was reserved in the lower Appellate Court after the hearing of arguments, but the result was never communicated to both the parties or their counsel, although there Is an endorcement towards the end of the judgment, dated 27th October, 1948, that parties' counsel should be informed. Apparently, counsel for defendants only was informed but not the counsel for the plaintiffs. An affidavit has been filed in this Court to the effect that the plaintiffs only came to know of the lower Appellate Court's decision in the middle of January, 1949, through a clerk in the Additional District Judgs's Office. In these circumstances there is, scope for extention of time in section 5 of the Limitation Act and I accordingly extend the time. *Mst. Fatima Bibi Vs. Nur Muhammad Shah and others.* PLD 1951 Lahore 147---PLD 1951 P. 184 (F. B.)

—Special leave to appeal to Supreme Court---Delay of 44 days—Collection of money from many people---Not sufficient cause.

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An application for special leave to appeal is to be filed in the time limited by the Rules of Supreme Court. Where there was a delay of 44 days in filing petition for special leave and the only ground urged in the support of the application for condonation of delay was that the petitioners had to collect money from amongst a large number of petitioners who were interested in the case.

Held : that was not a sufficient ground for condoning the delay. *Banarsidas Vs. State of Uttar Pradesh* PLD 1956 Supreeme Court (Ind.) 323.

—Sufficient cause : What is; test.

Thus a sufficient cause can properly be said to be a cause which is beyond the control of the party invoking the aid of the section. A cause for delay which by due care and attention, the party could have avoided cannot be a sufficient cause. The test, therefore, whether or not a cause is sufficient is to see whether it could have been avoided by the party by the exercise of due care and attention; in other words, whether it is a bonafide cause, inasmuch as nothing shall be deemed to be done bonafide or in good faith which is not done with care and attention. *Said Muhammad Vs. Goma* etc. PLD 1952 Baghdad-ul-Jadid 8 Rel: 13 Madras 269.

---The section no doubt gives a wide discretion in determining what is sufficient cause, but the discretion has to be exercised judicially and not arbitrarily. Although the expression sufficient cause should be liberally construed so as to advance substantial justice, yet must be determined by a reference to the circumstances of a particular case. *Punjab Province Vs. Sultan Khan and others* PLD 1959 Lahore 500 (D.B.)

---Sufficient cause—Question of, should be determined keeping in mind all relevant considerations.

Whether or not there was sufficient cause for not coming to Court within the period prescribed by the Limitation Act is a question of fact which is to be determined keeping in view all the attendant circumstances. *The State Vs. Ghulam Shah and others* PLR 1959 Lah. 8---PLR 1959 (1) W.P. 758, 11 DLR W.P. Lahore 60 (D.B.)

---Exparte decree--- proceedings taken bonafide to set aside-.Delay condoned.

Where the appeal against an exparte decree became time barred because the party spent some time in getting the expart proceedings set aside. It was held that if the attempt to get the proceedings set aside was bonafide and were prosecuted with due diligence the time spent in it would be excluded. *Nisar Ahmad Vs. Karachi Municipal Corporation* PLD 1960 Kar. 380---PLR 1960 (2) W.P. 379 (D.B.)

—Second appeal : Time spent in obtaining copies of judgment of court of first instance—Not allowed—Time spent in obtaining copies of judgment and decree appealed against allowed.

Only the time requisite for obtaining a copy of judgment appealed against and of the decree can be excluded.

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"In computing the period of limitation for a second appeal, the time taken in obtaining a copy of the decree as well as copy of the judgment of the lower Appellate Court can be excluded under section 12 of the Limitation Act. But the time taken in obtaining a copy of the trial Court's judgement cannot be excluded under that section. Nor can such time be excluded under section 5 of the Act where the copy of the trial Court's judgment was, or could be obtained before the expiry of the period of limitation". *Ghulam Hussian and 3 others Vs. Bahadur* PLD 1964 Lahore 361—PLR 1954 p 624.

...Second appeal : Delay of the thirtysix days occasioned by obtaining copies of judgemet of Court of first instance---condoned.

Held : this appeal was filed in this Court 36 days beyond the prescribed period but in the circumstances of this case we condoned the delay, because the period was spent in obtaining a copy of the judgment of the trial Court. *The Federation of Pakistan Vs. Munshi Muhammed Ismail* PLD 1956 Lahore 222--- PLR 1956 P. 536.

---Second appeal : Delay in obtaining copies...Delay should be condoned.

When the rules of a High Court require a second appeal to be presented along with a copy of the trial Court's judgments, the delay in filing the appeal inso far as it is covered by the time spent in obtaining a copy of the judgment should ordinarily be condoned under section 5 of the Limitation Act. *Muhammad Iqbal Khan Vs. Notified Area Committee Kot Radha Kishan* PLD 1957 Lahore 381—PLR 1957 (2) WP. 433.

—Condonation of delay by Additional Custodian—Question of law—High Court may take cognizance of in proceedings under writ jurisdiction.

The question whether the relevant facts and circumstances did constitute delay or sufficient cause for condoning the alleged delay, is one of law and we think that we can take cognizance of them. *Muhammad Ishaq and another Vs. Dr. Saiddin Swaleh and other*, PLD 1960 Karachi 48.

---No application for condonation of delay---Delay not condoned.

Held : the learned Judge has ignored the provision of Limitation Act by condoning the delay although there was no application for condoning the same. In fact as the learned counsel for the applicant contends, that not only was there no application under section 5 of the Limitation Act for condoning the delay there was no discussion on the point during the course of arguments. *Muhammed Yaqub Vs. Saeld Shah* PLD 1961 Karachi 656 (D.B.)

Extension of period in appeal or application.

Application of the section.

--Sec. 5 does not apply to cases governed by special or local law, 1949 E.P. 299 : 4 D.L.R. (Simla) 117.

...Sec. 5 does not apply to an application for execution. 1932 All. 601. 1941 Rang 56.

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—It does not apply to an application for setting aside an *exparte* decree 1934 Nag. 43 : 144 I. C. 394.

—Broadly speaking this sec. applies to cases in which the limitation period is short. 32 C. W. N. 935 : 56 C. 135 : 1929 Cal. 214, it does not apply to an application under Or. 9, r. 9. 49 B. 839 : 1925 Bom. 521, but see 1950 Cal. 217 : 54 C. W. N. 110. But applies to a pauper appeal under Or. 44, r. 1. 1928 All. 499, 1951 Sau. 12.

—The words "substantial cause" should receive a liberal construction so as to advance substantial justice when no negligence, nor inaction, nor want of *bonafides* is imputable to the applicant. 34 C. 216 : 5 C. L. J. 380, 17 C. W. N. 807, 16 C. L. J. 366.

—Appellant is only required to satisfy the Court that he was unable to present the appeal in time on account of some misadventure on the *last date* on which it ought to have been presented and it is not necessary for him to account for inactivity during the entire period prescribed by law. 34 C.W.N. 1119 : 1931 Cal. 298.

—When necessary papers have not been filed along with the memorandum the court can excuse delay under this sec. 36. C.L.J, 389, 74 I.C. 383 : 1923 Cal. 261.

—The Court must be fully satisfied as to the sufficieney of the cause 12 C.L J. 615, 30 B. 329, and when an appeal is presented the court should exercise discretion under s. 5 guided by s. 44, 35 C.L.J. 106.

—What is sufficient cause being a question of discretion, must depend on the circumstances of each particular case. 10 C.L.J. 39: 2 I. C. 961, 13 C. 266, the words should receive a liberal construction so as to advance substantial justice. 34 C 216: 5 C.L.J. 380.

—Application for leave to appeal to his Majesty in Council clearly comes within this sec. 1923 All. 536, no deduction was allowed. 36 C.W.N. 40: 1932 Cal. 171.

—When the lower appellate court does excuse the delay the H.C. should not interfere. 45A. 432, 1942 Mad. 604 ; 203 I.C. 5.

—An order extending under s. 5 should indicate that the discretion given by the law has been judicially exercised. 1032 Cal. 482: I.R. 1932 Cal. 483. 59 Cal. 388: 138 I.C. 643.

—This sec. does not apply to an application under Or. 21 p. 90 or 91, 1939 Cal. 310: 43 CWN 383.

—This sec. applies to an application under Or. 22, rr. 3 and 4. 1939 All. 717 : 185 I. C. 402.

—This sec. applies to an application under Or. 32, r. 9 (2) C.P. Code. 1938 Bom. 6: 172 I. C. 919

—The sec. does not apply to an application under Or. 34, r. 5 C.P. Code. 1946 Mad. 381: 1946 M,W.N, 207: 226 I. C, 153.

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—The sec. does not apply to an application under Or. 41, r. 21 C.P.C., 1944 Mad. 571 : 218 I.C. 451.

—This sec. does not apply to an application under Or, 41, r. 19 C.P.C. 1943 Sind. 132 : 209 I.C. 326, 1950 E.P. 225 : 5 D.L.R Simla 208.

—This sec. has no application to an application under Or, 44. r. I. C,P.C. 186 I.C. 161.

—This sec. applies to a proceedings for a review. 1938 Cal. 321 : 42 C,W.N. 317.

—Sufficient cause means a cause beyond the control of the party. 1954 Cal. 238 : 92 C.L.J. 1.

Mistake of pleader, clerk, officer, etc.

Bona*fide* mistake of pleader in calculation is sufficient cause 12 C.W.N, 25, 29 A. 638, 17 C.W.N. 807, 45 B. 607, 43 B. 376, 86 I. C, 114 : 1925 Mad.462, 94 I.C. 629: 27 Punj. L.R. 239: 8 L. L. J. 101, 93 I.C. 876,36 C.W.N. 420 : 59 C. 781 : 1932 Cal. 589, 46 C.L J. 257 : 1927 Cal. 829 : 105 I. C. 217, 112 I.C. 307: 1929 Mad. 91, 55 C. 798 : 32 C.W.N 372 : 1928 Cal, 468. 30 C.W.N. 479 ; 43 C L.J. 106 : 1926 Cal. 688, 1942 Lah. 94, 1942 Oudh 125, but where the mistake is both stupid and unaccountable it is no cause. 1929 Mad. 91, 1933 Oudh 523*F. B.*

—Mistaken advice of counsel is not sufficient, unless it was given in good faith. 1938 Lah. 81, 1939 Oudh 245, 1946 Bom. 437: 226 I. C. 95; 1954 Raj. 25.

—Mistaken advice of counsel who is not negligent is sufficient cause. 1937 P. C. 276 : 41 C.W N. 1189: 39 Bom. L. R. 1021 : 169 I. C. 769 P. C.

—The oversight of an advocate is a sufficient cause. 1931 Cal. 298: 34 C.W.N. 1119.

—Mistake of the clerk of the counsel is sufficient cause, 26 I.C, 68 : 12 A. L. J., 941, 59 I. C. 237, 1926 Lah. 693 : 27 Punj. L. R. 623, *contra.* 110 I.C. 374: 1928 Lah. 488, 57 C. L. J. 39 : 1933 Cal. 462. When a party is not joined as respondent owing to the mistake of the pleader's clerk it will not be time-barred. 13 C.W.N. 167 : 8 C. L. J. 135, 1928 Mad. 690 : 110 I. C. 837. But in case of mistake of the clerk the sole index for the exercise of the discretion is whether the appellant has acted with reasonable diligence. 1929 All. 341, 33 I. A. 218 : 33 M. L.J. 486 *P. C. Fol.*, 1923 All. 455, 1924 A. 174, 37 A. 267, 1926 All. 252 *Discussed,*

—Mistake of the officer of the court in preparing the copies of the judgment and decree is sufficient cause, 25 I. C. 26.

Mistake of law.

Mistake of law and due diligence saves limitation. 22 C. W. N. 169 *P. C.*, 13 C. 266, 13 M. 269, 10 A. 524, 19 A. 348, *F.B.*, 29 C.W.N. 472 : 1925 Cal.

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684, 48 M. 631, 36 C.W.N. 1069 : 1932 Cal. 713. A bare mistake of law is not a sufficient cause. 12 A. 461 : 10 A. W. N. 149, *F. B.*, 1943 Oudh 78 : 205 I. C. 628. The true guide is whether the appellant acted with resonable diligence in the prosecution of his appeal. 48 C. L. J. 106.

—There is distinction between a mistake of law and ignorance of law. 94 I. C. 300: 1926 Lah. 474, 75 I. C. 878, 36 C. W. N. 420 : 1932 Cal. 589 : 59 C. 781.

---Ignorance of law is not sufficient excuse. 1943 Oudh 57 : 203 I. C. 579.

Carelessness is no excuse.

Carelessness cannot extend time. 39 I. C. 965, 68 I. C. 777, 21 A. L. J. 817 : 75 I. C. 254.

---Neg'igence of the pleader's agent is the neligence of the pleader and consequently cannot extend the period. 1927 Pat. 232, 101 I. C. 448.

The court should not apply too rigorous a test as regards the diligence of the party. 33 C. W. N. 76 : 1929 Cal. 240.

Bona-fide mistake

A *bona-fide* omission by the appellants to sign *Vakalatnama* is sufficient casus 21 I. C. 444; 11 A. L. J. 779, 103 I. C. 537 : 1927 Lah. 618, a *bona-fide* mistake in filing an appeal in the name of wrong person as appellant enures to the benefit of right person. 4 C.W.N. 58 p 62; so also, in case a wrong person is made respondent by *bona-fide* mistake,

—*Bona fide* mistake about *forum* of the appellate court justifies extension of time. 84 I. C 741 . 1925 Cal. 212, 1923 All. 364 23 C. 526, 13 C. 266. 13 M. 269 10 A. 52, 48 M. 63, 21 B, 552, but where there is no *bona-fide* mistake. 28 B. 235, 34 C. 216, 5 C.L J. 380, there cannot be extension.

—Wrong proceedings taken in good faith is a good ground. 41 C.,W.N 1189.

—*bona-fide* prosecution of appeal in wrong court extends the period. 22 C.W.N. 594, 23 C.W.N. 743 *P C.*,22 C.W.N. 169,45 C. 94 ; 44 1.A. 218, *P.C.*

Waiting for the result of another appeal.

Waiting for the result of another appeal in a connected case is no ground. 17 C.L.J. 596,

Time of review.

An appellant is entitled to exclude time spent in prosecuting with due diligenee a proper application for review of judgment. 80 I C. 76 (C). 45 C.94, : 33 M L.J. 486 : 15 A.L.J. 777 : 19 Bom. L,R 866 ; 26 C L J. 574 ; 27 C W.N. 169 *P.C.* 63 I.201 , 1925 Cal 253, 85 I. C. 996 (C). 45 C. 94. 63 I C. 200 (C). 1925 Lah. 534. 1925 Bom. 137. 1923 Cal. 921. 10 C.L.J 39. 15 C. 242 19 C.W.N. 1113 1926 Cal. 457, 1926 Cal. 677 1927 Bom 221, But the appellant is not entitled as a matter of right to such a deduction. He has to seek extension of period under this sec. in other words to satisfy the court that he had sufficient cause for not preferring the appeal timely. 28 C,L.J. 205 p. 208, 33 C. 1323; 10 C.W.N 986, 1944 Oudh 193 : 216 I.C. 107.

—Ss. 5-6

Amendment of decree.

Amending the decree in the lower court may be sufficient cause. 36 C.W.N. 218: 59 C. 1052; 1932 Cal. 534.

Illness.

—Illness of pleader and the client's ignorance of it, is sufficient cause. 9 M.I.A. 16 *P. C.*

—If Illness in the family is sufficient cause of delay. 1925 Cal. 175.

Poverty of the appellant.

—Poverty of appellant is not sufficient ground. 13 C. 78, 1947 Lah 210: 227 I.C. 95.

Appellant a pardanashin lady.

—The fact that appellant is a *pardanashin* lady is a matter of consideration, under special circumstances only. 9 A. 11, 9 A. 655, *F B.*, but no extension was allowed in, C.W.N. 179: 1933 Cal. 796.

Time required to get copies should be excluded--see cases under s 12

Amendment of the decree.

---Limitation for appeal runs from the date of amendment of decree on material point. 32 C. 908, but if the amendment be not on material point it will not extend time. 3 C. L, J. 188, 40 C. W. N. 83: 165 I.C. 53.

Admission of appeal and objection thereto.--procedure.

---Before an appeal is registered notice to be issued and the application should be heard. 132 Cal. 482: 138 I. C. 643.

---An *ex-parte* admission of appeal out of time should be reconsidered. C. 27 L.J. 253, 22 C. W N 481, 44 M, 412, 59 I. A. 25 *P.C.*, 1925 Cal. 175.

---Excusing delay in the absence of evidence is ultra vires. 1925 Mad. 194.

---Objection must be taken at the earliest possible opportunity. 1922 M W.N. 727: 70 I. C. 827. Admission subject to objection is bad. 3 Pat L. T. 110: 64 I.C. 55.

---Each day's delay must be explained in order to have the benefit of this sec, 103 I. C 498: 1927 Lah. 717.

[8]6 LEGAL DISABILITY. (1) **Where a person entitled to institute a suit [9](or proceeding) or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit [9](or proceeding) or make the application within the same period after the disability has ceased, as would otherwise have been allowed from**

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the time prescribed thereof in the third column of the first schedule [10][or in section 48 of the Code of Civil Procedure, 1908 (Act V of 1908)].

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is at the date of the death affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

Illustrations

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

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

(*c*) *A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.*

S. 6: Limitation for filing a pre-emption case—by the mother guardian on behalf of her minor daughter having knowledge about transfer---case filed 7 years after accrual of right to institute the case---plea of minority does not prevail.

When a minor sues through her natural and legal guardian being a mother as a next friend the knowledge of the mother as guardian shall be deemed to be the knowledge of the minor.

Tarajannessa. Vs. Wazed Ali Sikder (1982) 34 *DLR* 219.

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Minors cannot get benefit of section 6 for preferring appeals.

It is true that a minor is not bound to wait until he attained the majority, and can take legal action by a next friend, but he cannot get the benefit of section 6 of the Limitation Act for preferring appeals. *Khatoon Begum Vs. Hoshant N. E. Dinshaw*, (1969) 21 DLR (WP) 140.

—Legal disability—Receiver cannot assume role of super-owner of estate and change decision of parties not to pursue suits.

The Receiver who was not a party to the suits cannot assume the role of a superowner of the estate and change the decision of the parties who had declined to pursue the suits. He also has no right to file appeals from this point of view. *Ibid.*

6(1) : Legal inability is recognized for purpose of institution of suits and making application for execution of decrees—Benefit of the section not available after that.

The language of section 6(1) shows that legal inability is recognized by the law of limitation for purposes of institution of suits and making applications for executions. After this is done, the plaintiff or the applicant is to follow the ordinary law like any other party (II), *Khatoon Begum Vs. Hoshang N. E. Dinshaw*, (1969) 21 DLR (WP) 140.

—The section is no bar to a minor to institute proper proceeding before he attains majority.

Section 6 of the Limitation Act refers to a period of minority of an infant. But it is a provision which gives minor additional time but it does not mean that the minor is prevented from instituting proper proceedings before he attains majority through the next friend. *Jahang (Minor) Vs. Md. Azizul Haque Khan* (1966) 18 DLR 575.

Minor's property alienated by mother—The period of limitation to file a suit by a minor for recovery of possession is 12 years from the date of the sale or 3 years from the date of minor's attainment of majority, whichever is latter (b), (1951) 3 DLR 305.

Section 6 of the Act which applies to suits and applications for execution of decrees has no application to a question of limitation when limitation is prescribed by a special or local law. 1 PLR (Dac.) 86.

—Alienation by mother's mother—Suit brought by existing reversions decreed —Afterborn daughter's son cannot challenge alienation after 20 years.

The appellant is an after born son and if it be assumed that he has the right to question the alienation, the suit is clearly barred by time having been brought more than 20 years after the alienation. At the time of the alienation some of the reversioners were alive and they brought a suit challenging the alienation, which was decreed. Time therefore began to run from the date of the alienation

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and the subsequent birth of the plaintiff could not stop it from running. *Rana Vs. Muhammad Afzal Khan and others* PLD 1949 Lahore 435—PLR 1948 P 181 (F. B.)

—Alienation after conception but before birth of son—The son cannot claim extension of time for challenging alienation.

Held : although on account of the fact that the plaintiff had already been conceived on the date of the alienation he would have a right of suit he cannot claim an extended period of limitation by virtue of section 6 of the Limitation Act. That is not a question on which there can be two opinions. The section is clear. It applies only to a case where at the time from which limitation is to be reckoned, a person is under any disability. In this case the person was not in existence at all. *Muhammad Ali and another Vs. Abdul Khaliq and others* PLD 1958 Lahore 226, Rel ; AIR 1935 P.C. 33 A.I.R. 1929 Lahore 254.

Special or local law, limitation prescribed by—Provision not applicable—Bengal Tenancy Act.

From section 29 it would be obvious that section 6 has no application to a question of limitation where limitation is prescribed by a special law. *Chand Banoo Vs. Abdul Sobhan and other* PLD 1952 Dacca 79,; PLD 1951 Dacca 86.

—Minor : Suit by, on becoming major—Actual relevant dates should be given to show that suit is within limitation—Burden of proof in matters of limitation is on the minor. Nature of proof.

The burden of proving that his suit is within time rests heavily on the plaintiff which means that he must affirmatively prove that the cause of action arose within the prescribed period of limitation. In the case of a plaintiff who claims that at the time when the cause of action arose he was a minor and therefore competent to sue within three years of his becoming major it is necessary to state in unequivocal terms as to when the cause of action actually arose, when he became a major and further how much time he took after becoming major to come to court. All this requires that not only approximate but actual relevant dates should be given in the plaint and also proved by the evidence.

Medical evidence only gives approximate age. Unless it is supported by some other definite evidence it cannot be regarded as final.

In a case of succession it is incumbent upon the minor to prove the exact date of his father's death, and also the exact date of his own birth. It might be said that in the case of illiterate litigants who cannot be expected to know or trace relevant dates this rule will operate as a great hardship. This might be so. But the law must be administered as it is and not as it ought to be. Failing these the plaintiff's suit should have been dismissed on the ground of limitation alone. *Allah Ditta Vs. Muhammad Azeem* PLD 1953 Baghdad-ul-Jadid 1.

—Minor : Alienation by mother—May sue within twelve years of date of sale or within three years of attaining majority.

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Plaintiff whose property has been alienated by his mother during his minority need not set aside the transfer which is void but he can institute a suit for possession within twelve years from the date of sale or within three years from the date of his attainment of majority whichever may be the later date. If the suit is not so instituted his title in the property would be extinguished under section 28 of the Act and the subsequent suit would be barred by limitation. *Kasem Molla Vs. Fajel Shek* PLD 1952 Dacca 347—PLR 1951 Dacca 781—3 DLR 305.

Legal disabilities.

sec. 6 does not affect sec. 48 C. P. Code. 1944 Lah. 106.

—s. 6 does not apply to cases for which a period of limitation is prescribed by other Acts. 37 A. 638, 37 M. 186, 29 C, 813. 30 C. 532, 7 C. W. N. 550, 17 C. 263, 18 M. 99, F. B., 30 B. 275.

—s. 6 does not apply to a person who is major but who is disqualified because of his property being under the Court of Wards. 19 C. W. N. 1193. 20 C. W.N. 852.

—An infant adopted son is entitled to the benefit of s. 6, 9 C. W. N. 795; 2 C. L. J. 87.

—The exemptions of s. 6 do not apply to the assignee of a minor. 9 C. 663, 12 C. L. R. 269 F. B.. 21 A. W. N. 12. 26 B. 730, 22 C. W. N. 831, 1938 Bom. 358: 177 I. C. 475.

—This section contemplates cases where there is only one minor decree holder or when all the D. Hrs. are minors. 1935 Cal, 631.

—s. 6 must be read in conjunction with s. 17. 9 C. W. N. 537.

—s. 6 will not apply to an application for a personal decree against the mortgagor under Or, 34, r. 6 C.P. C., 33 C. W. N. 519: 49 C. L. J. 362, nor to a final decree. 37 C. W, N. 184: 1933 Cal. 508, 37 C. W. N. 838.

—where a cause of action accrued to a person when he was in embryo he cannot get the advantage of this section as he cannot be considered to be a minor in existence on the date of the conception. 1929 Lah. 254, 173 P. W. R. 1912, 1939 Lah. 290: 183 I. C. 451, contra. 1948 Bom. 150, 1951 All. 630.

—The right of suit accruing to a minor during his minority is not taken away by the fact that his guardian might have maintained a suit on his behalf. 32 C. 129: 8 C. W. N. 809 : 7 Bom. L. R. 765 P. C., 1934 All. 434, 1938 Pat. 92: 174 I. C. 193.

—Under s. 6 the last date for a minor decree-holder to apply for execution is within 3 years after attaining majority and the guardian of a minor also can apply in execution at any time during the minority even though his previous application is more than three years old. 9 Cal. 181, 23 Cal. 374, 20 Cal. 374, 23 Cal. 714, 22 A. 199 F. B., 1930 Bom. 593.

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—If at the time when the cause of action arises a *shebait* to an idol is a minor he can bring suit within 3 years after attaining majority. 32 C. 129: 8 C.W.N. 809: 7 Bom. L.R. 765 *P.C.*, But an idol cannot be regarded as a perpetual infant and the *shebait* his manager for the purposes of limitation. 13 C.W.N. 805, 48 A. 343; 1926 All. 392.

—The reversioner who is an infant at the date of the alienation, or who is born subsequently. is entitled to the benefit of s. 6. 32 C. 62: 9 C.W.N 25.

—But this section and ss. 7 and 8 contemplate persons in existence at the time of accrual of the cause of action and not after, so an alienation by father cannot be questioned by unborn son. 29 C.W N. 666 : 47 A. 165: 27 Bom. L.R. 175: 48 M.L.J. 29; 1925 P.C. 133 *P.C.*, 1927 All. 54, 1935 Mad. 431: 1561. 83.

—Disability must exist at the time from which period of limitation is to be reckoned. 1954 Mad. 831: (1954) M.L.J. 89.

—A child in womb may take advantage of ss. 6 and 8. 6 D L,R All. 152.

—Medical evidence could determine the age. 10 Lah. L.J. 183: 1928 Lah. 250.

[11] 7. DISABILITY OF ONE OF SEVERAL PLAINTIFFS OR APPLICANTS.— **Where one of several persons jointly entitled to institute a suit [12][or proceeding] or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run againt them all : but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.**

Illustrations

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

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

S. 7: Minor's property alienated by mother—The period of limitation to file a suit by a minor for recovery of property is 12 years from the date of the sale or 3

years from the date of minor's attainment of majority, which ever is latter. (1951) 3 DLR 305.

Disability of joint members.

---This sec. applies only to cases where the joint creditors or claimants are persons whose substantive right is joint and does not apply to persons whose rights are distinct and different. 6 C. L. J. 383, 28 M. 479, 14 C. 50, 25 A. 155, *Ref.*

—When a decree-holder cannot give a valid discharge without the concurrence of the minor decree-holder, time does not run against any of them till the minor attains majority. 1945 Cal. 387 : 49 C. W. N. 558.

—Eldest member of a joint family is presumed to be the manager. 1940 Mad. 530 : 191 I. C. 369.

—The elder brother in a Mitakshara family being managing member of joint family can give a valid discharge. 38 M. 118, *F. B.* 43 M. 842, 1925 All. 672, and the manager of the family can 52 B. 551, 6 C. L. J. 383, 48 C. L. J. 555 : 1929 Cal. 165.

—When a rent decree is obtained by an adult and some minor, (Mitakshara family) the latter suing through the former, this section applies as adult can give a full discharge of the decree. 6 C. W. N. 348, 4 A. 512, 13 M. 236, 16 M. 436, *Relied.* 14 C. 50 *Dist.*

—In Dayabhaga family the elder brother cannot give valid discharge to bind his minor younger brothers. 2 C. W. N. 97 *P. C.* But a manager of the family can. 48 C. L. J. 555 : 1929 Cal. 165.

—When a joint decree was passed in favour of one adult and two minors but there was no proof as to whether they were members of a joint family nor as to whether they were members of a Dayabhaga or Mitakshara family nor whether the major was *karta* or not., *held*, that adult was not able to give discharge. 55 C. 608 : 32 C. W. N. 192 : 47 C L. J. 38 : 1927 Cal. 952, 25 M. 26, 7 A. 313, 27 B. 202, 28 M. 487, 28 C. 465, 25 M. 431, 44 C. 120, 36 M. 295, 47 M. 920, 31 A. 156 *Ref.*

---A Receiver is competent to give valid discharge, so the plea of minority does not save limitation. 18 C. W. N. 138.

Alienation by father of ancestral property, suit by sons of whom some are minors—running of time. 29 C. W. N. 666 : 47 A. 165 . 27 Bom. L. R. 175 *P C.*

---A right to sue for declaration against alienatiou by widow is vested in the whole body of reversioners jointly and severally and time begins to run simultaneously against them all and no subsequent disability stops it. 6 Lah. 405 : 26 Punj. L. R. 695: 90 I C. 1022 : 1925 Lah 654, 22 A. 33 *F. B.*, 21 P.W.R. 1907, 22 P.R. 1907, 41 M. 659 *F. B.*, *fol.* 87 I. C. 662 : 1925 All. 563.

—Minors have no privilege of disability in respect of limitation except as regards suits and applications for execution. 14 C.W.N. 845: 11 I. C. 401.

—Ss. 7-8

—A certificated guardian cannot give a valid discharge without the permission of the Court. 1935 Cal. 631.

—In Muhammedan family the heirs are entitled to definite shares as tenants-in-common and the cause of action of such heirs cannot be said to be a joint one for the purpose of limitation. 1929 Lah. 467, 38 M. 118, 1921 Bom. 289, 1928 Mad. 42, 53 J, A. 36: 50 M. L.J. 344, 1929 All. 142.

8. SPECIAL EXCEPTIONS.—**Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend for more than three years from the cessation of the disabilty or the death of the person affected thereby, the period within which any suit must be instituted or application made.**

Illustrations

(*a*) *A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under section 6 and this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.*

(*b*) *A right to sue for an hereditary office accrues to A who at the time is insane. Six years after the accruer A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under section 6 read with this section.*

(*c*) *A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. Section 6 read with this section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.*

S. 8 : Section 8 says that nothing in sec. 6 or sec. 7 applies to suits to enforce rights of pre-emption and when fraud is not made out petitioner is not entitled to the benefit of section 18 of the Limitation Act. 1 PLR (Dac.) 86.

In cases where it is clear that the person entering into possession was under no duty to the lunatic or minor and entered into possession for his own benefit and in assertion of a title hostile to that of the lunatic or minor. Limitation would begin to run from the date when he so took possession, though the lunatic or minor would be entitled to file a suit within 3 years from the date when his disability ceases (a). (1953) 5 DLR 383 (390 Lah. col.).

Special exceptions.

—In no case the disability described in s. 6 can extend the period of limitation for more than 3 years. 5 C.W.N. 545, 24 M. 387: 28 I.A. 81: 9 Bom. L.R. 303 *P. C.*

—If a minor dies after attaining majority his legal representative can sue for possession of property within 3 years period. 40 B. 564.

—In computing the period of three years the date of the cessation of disability or the date of death is to be excluded. 10 C. 748 p. 751.

9. CONTINUOUS RUNNING OF TIME.—**Where once time has begun to run, no subsequent disability to sue stops it ;**

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.

S. 9: Cause of action not arisen—Limitation does not begin to run.

It is a fundamental principle that limitation always implies an existing cause of action and unless the cause of action for a suit has arisen, limitation for such suit cannot begin to run. *Chattar Singh Vs. Roshan Singh* AIR (33) 1946 Nagpur 277.

Continuous running of time

the period of limitation cannot be suspended once it has begun to run unless the suspension is itself provided by the Act. 49 A. 565, 1927 All. 446, 29 B, 68. 1937 All. 481 : 170 I. C. 657.

—When time has begun to run, the minority of the legal representative cannot extend the period of limitation. 27 A. 704, 36 B. 498, 23 WR 285, 29 B 68.

—When the cause of action depends on the result of some proceedings between parties the date of finality of the proceeding is the time of arising of cause of action. 39 C. L. J. 40.

—Ss. 9-10

—Annulment of satisfaction gives rise to fresh cause of action. 2 Lah. 320: 64 I. C. 454, 39 C. L. J. 40, 43 C. 660, 33 C. 1033.

—Where the cause of action is cancelled by reason of subsequent events the section does not apply. 62 C. 66: 1935 Cal. 333, 1943 Nag. 178: 207 I.C. 214, 5 D. L. R. All. 351.

—The disability or inability contemplated by s. 9 is confined to such as are mentioned in the Act itself and it is clear from the mandatory words of sec. 3 that no new exemption can be recognised. The period of pendency of the application by mortgagor to set aside the execution sale does not stop the running of limitation of a suit for a rent by auction-purchaser against the usufructuary mortgagee. 43 C. L. J. 155 : 1926 Cal. 65.

10. SUITS AGAINST EXPRESS TRUSTEES AND THEIR REPRESENTATIVES. **—Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.**

[14][For the purposes of this section any property comprised in a Hindu, [15][Muslim] or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specifiic purpose, and the manager of any such property shall be deemed to be the trustee thereof.]

S. 10 : Managing Director of a company not a trustee within the meaning of section 10 of the Limitation Act.

Naeem Finance Limited Vs. Bashir Ahmed Rafique (1971) 23 DLR(SC) 81

—Trust for any specific purpose :

When the defendants insisted that the full amount of money must be paid to them before they parted with the goods, the plaintiff in order to have the goods released paid the amount under protest saying that they would claim refund of any amount that might be found due to them. The plaintiff in his suit claimed the excess amount which was due to him on the ground that the defendant held the amount in trust for him,

Held : This would be sufficient to constitute a trust for a specific purpose within the meaning of section 10 of the Limitation Act. (1960) 12 DLR 10 (23).

—S. 10

—Misappropriated by the trustee, —the property misappropriated vests in his legal representative –For suit to recover the property, in whatever shape might it exist, section 10 applicable and no question of limitation arises (b). (1953) 5 DLR 175 (183).

Breaeh of trust—Suit against representative of trustee—No specific property involved—Limitation is 3 years—Specific property involved—No Limitation is prescribed—Differcnce between application of s. 10 and Art. 98.

In the case where trustee is dead and the suit has to be brought against his representatives the effect of section 10 taken with Article 98 is that suits against the representative of a trustee to recover trust property are exempted from limitation but that suit for breach of trust not claiming specific property must be brought within 3 years (as required by Article 98). Article 98 and section 10 are to be construed together and the word "loss" in Article 98 refers to the loss of the specific property mentioned in section 10 and the meaning of Article 98 is that in case such specifie property is irrecoverable, its value can be recovered out of the general estate of the deceased trustee within the period prescribed therein, that is, by Aritcle 98. To be more clear, the breach of trust contemplated in article 98 is an ordinary breach of trust and not one covered by s. 10. Consequently before one can apply Article 98, he must first ger rid of section 10. Swami Turiananda *Vs. Sisir Kumar Sen* PLD 1955 Dacca 95-PLR 1953 Dacca 209-5 DLR 175.

—Money paid to Bank under protest—Held in trust by Bank for the purpose mentioned.

The defendant bank, before releasing the goods of the plaintiff, demanded from him full payment of a bill of exchange. The plaintiff in order to have the goods released paid the amount under protest saying that he would claim refund of any amount that might be found due to him on account of devaluation of currency. Subsequently the plaintiff in his suit claimed the excess amount which was due to him on account of devaluation on the ground that the defendant held the amount in trust for him. It was held that under the circumstance a trust for a specific purpose was constituted within the meaning of the Limitation Act 1908. *S. M. Hanif (Dacca) Ltd. Vs. Central Bank of India Ltd.* PLD 1960 Dacca 255-12 DLR 10.

—Mutawalli : Cannot claim adverse possession of Trust property, so long as he holds it as mutawalli.

—Where a person is a mutawalli of a public charitable trust all his acts which are claimed as acts showing adverse possession are referrable to his lawful fiduciary position as mutawalli. Adverse possession in such circumstances, is a notion almost void of content. However flagrant the breaches of duty be on the part of the mutawalli he acts on behalf of the trust and has no right to claim

adverse possession. Having entered into possession as trustee he is stopped from setting an adverse title until he obtains a proper discharge from the trust. *Abdul Rahim Khan Vs. Fakir Mohd. Shah* AIR (33) 1946 Nagpur 401.

Trust—When would be :

---Section 10 leaves no room for doubt that unless the property of one person is transferred to another as a trust for a specific purpose, the transaction cannot be regarded as a trust for the purposes of that section *Muhammad Akbar Khan Vs. Province of West Pakistan* PLD 1959 (W.P) Lahore 295.

Trust—Only express trust covered by the provision :

...A trust for a specific purpose is one for a purpose that is either actually and specifically defined in the terms of the will or the settlement itself, a purpose which from the specified terms can be certainly affirmed. In the Indian law as found in the Trusts Act the Legislature has made sharp distinction between trusts created by the act of parties and certain obligations which are not trusts but which are considered to be in the nature of trust. Section 10 does not apply in the case of a person whom the law looks upon as a trustee because he has to discharge certain obligations in the nature of a trust. It only applies to a trustee of a trust in the strict sense of the term i. e. an express trustee. *Soondera Thakersey Vs. Bai Laxmibai* AIR (33) 1946 Bombay 131 AIR 1922 P. C. 212.

"trust" and "vested in trust"—Meaning of—Trust money deposited with banker with notice of trust—cestui que trust—Section not applicable.

The word "trust" in s. 10 Limitation Act is used in the same sense as in the Trusts Act 1882, and the expression "vested in trust" implies that the ownership in the property has been conveyed to the person referred to in the section.

Where a banker accepts a deposit of trust money with notice of the trust. he does not become a trustee of the money in the strict sense of that expression and consequently a suit for recovery of the deposit by the cestui que trust will not be governed by s. 10 Limitation Act. Office Receiver *Vs*, Kulandaivelan AIR (33) 1956 Madras 519.

—Wakf Property : Suit—That property in the hand of mutawalli is wakf property Incompetent.

In a suit for declaration that the property in possession of the Mutawalli is wakf property no question of limitation can arise in respect of the property if the property is found to comprise the wakf estate. *Muhammad Shah Vs. Fasih-ud-Din Ansari* PLD 1957 S. C. (Ind.) 11.

Suits against express trusteess and their representative

valuable consideration is not synonymous with adequate consideration. 1953 S. C. 514 : 1953 S. C. J. 730.

—A guardian of minor's property is not a person in whom the minor's property is vested for a specific purpose. 1949 Nag. 235: 4 D. L R.Nag. 20.

—S. 10

—To bring a case within the purview of s. 10 there must be a trust for a specific purpose i. e. "a purpose that is either actually and specifically defined in the terms of the will or the settlement itself, or a purpose which, from the specified terms, can be certainly affirmed". 1931 P. C. 9: 60 M. L. J. 1: 54 C. L. J. 175: 33 Bom. L. R. 168: 1931 M. W. N. 137: 35 C. W. N. 145: 8 Rang. 645: 58 I. A. 1 P. C. 61, C 119: 58 C, L. J. 502: 1934 Cal. 87, 1946 Bom. 131.

—To apply this section two conditions must combine ; there must be a trustee with an express trust and an estate or interest vested in the trustee; so, where the effect of a deed is to vest the properties in the deity and not in the trustee for the specific purpose s. 10 does not apply. 30 C. W. N. 415: 44 C. L. J. 399: 1926 Cal. 568.

—The word "vesting" means merely "properly having control over the property". 1926 Mad. 109, but mere transference of management or control is not sufficient. 61 C. 119: 58 C. L. J. 502: 1934 Cal. 87.

—A "specific purpose" must be a purpose that is either actually and specifically defined in the deed of trust or a purpose which from the specified terms can be certainly affirmed. 103 I. C. 418: 1927 B. 398: 29 Bom. L. R. 241.

—"Trust for specific purpose" means "express trust" in English Law. 44. M. L. J. 431 : 72 I. C. 842, 32 B. 394, 1941 Mad. 841: 200 I. C. 357.

—"Vested in trust for specific purpose", meaning of 62 C. 393: 1935 Cal. 246, 38 C. W. N. 400 ; I934 P.C. 77 P.C,

—The section does not apply to implied or resulting trust. 8 C. 788, 8 Bom. L. R. 328, 32 B. 394, 31 B. 222, 45 M. 415.

—This section does not apply to trustee *de son tort* 1957 Oudh 373. 1941 AU 1, 1945 Mad. 116.

—This sec. does not apply to constructive trusts or obligations in the nature of a trust. 1939 Mad. 722: 189 I. C. 316.

—This sec. applies to a suit against an assignee from a trustee as also against an assignee from an assignee of the trustee. 1934 Pat. 289: 208 I. C. 129.

—This section does not apply to a suit agaist a banker who accepted a deposit of trust money with notice of the trust. 1946 Mad. 519.

—Transfers for value of endowed property are outside the scope of the section 54 C. W. N. 960.

—The section applies to express trust only. 45 M. 415, and does not apply to trustees under a will. 21 B. 646: unless created expressly. 29 B. 267: 7 Bom. L. R. 45, 13 C. W. N. 557, 11 Bom. L. R. 1187, 1944 Nag 377.

—Trespasser setting up a new idol is not a trustee *de son tort* for the original idol and sec. 10 has no application to a suit by him. 1925 Cal. 1244.

—The Court of Wards is a trustee for the minor. 5 M. 91.

—Directors of Companies are not trustees for the purpose of the section 54 M. 153: 1931 Mad. 58, 18 B. 119. 1923 Lah. 58: 71 I. C. 899.

—Transferee of trust property by a deed of gift is a person in whom the property has vested in trust. 31 C. 314.

—an auction purchaser of trust property for valuable consideration is an assignee of the trustee within the section 15 C. 703.

—the amendment of s. 10 by Act 1 of 1929 is not retrospective. 56 A. 111: 38 C. W. N. 400 : 1934 M. W. N. 258 : 1934 P. C. 77 ; 1945 All. 121 : 222 I. C. 196.

11. SUITS ON FOREIGN CONTRACTS.—**(1) Suits instituted in [16][Bangladesh] on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act.**

(2) No foreign rule of limitation shall be a defence to a suit instituted in [16][Bangladesh] on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

S. 11—**Suits on foreign contracts.**
—The section applies to execution cases also. 14 C. 570

PART III

COMPUTATION OF PERIOD OF LIMITATION

12. EXCLUSION OF TIME IN LEGAL PROCEEDINGS.—**(1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.**

(2) In computing the period of limitation prescribed for an appeal an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

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

—S. 12

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

S. 12(2): When words are ambiguous in connection with the question of time for preferring appeal—to be interpreted liberally for the benefit of the appellant. *Barada Prasanna Lod Vs Kobbad Mia* (1961) 13 DLR 765.

—When the meaning of the words is clear and plain, Courts cannot refuse to give effect to the same on equitable consideration or on the ground that such construction would cause hardship to the appellant.

But if the words are ambiguous or capable of two interpretations, a beneficial construction ought to be given in order to give the party a right to proceed with the appeal rather than to bar his remedy.

—When there is a doubt as to whether the appellant is entitled to longer or a shorter period of time, the Court should give the appellant the benefit of the longer period.

Two views are possible with regard to the phrase, "time requisite for obtaining a copy". One view is that no time antecedent to the application for a copy of the decree is time requisite within the meaning of section 12(2) of the Limitation Act. This view places a very great emphasis on the word—"obtaining." Another view is that if one would place equal emphasis on the words "requisite" and "obtaining" then that time which has passed between the date of the judgment and the date of the signing of the decree and which is not within the control of the party, is time requisite in the above sense and it is immaterial whether such time that has elapsed is antecedent or subsequent to the application for a copy of the judgment or decree. *Ibid*

In computing the period of limitation—explained.

The words "in computing the period of limitation" in section 12 mean that the period of limitation has to be computed with reference to the said section. *Ibid.*

Time requisite for obtaining a copy of the decree means all the time consumed for obtaining copy—Hence for the purpose of limitation counting shall commence from the date the decree is signed, even if it has been applied for, after the decree was signed. *Ibid.*

—The word "appeal" would also include a revision, where appeal of interference under revision is same as that of an appeal—Therefore time required for obtaining copies of judgment for revision is to be excluded.

Where remedy given to an aggrieved party by way of revision does not differ in essence from an appeal, distinction between the two becomes non-existent. But so far as the Code of Civil Procedure is concerned a distinction has been made between a revision petition and an "appeal" under section 115 of the Code of Civil Procedure. A revision petition only lies where an appeal does not lie.

—S. 12

—But where in a particular Act as in the case of Karachi Rent Restriction Act by section 15(1) it is found that the revision provided has all the characteristics of an appeal. In other words, the revisional power is not subject to any specified restrictions like those mentioned in section 115 C. P. C., there the word 'revision' should bear the same meaning as an appeal.

—Therefore 'appeal' occuring in section 12(2) should be construed in a broad sense so as to include a revision under the Karachi Rent Restriction Act, 1953.

Tahir All. Vs. Chief Judge, Karachi Small Cause Court (1963) 15 DLR (SC) 92.

S. (12)(2)(3): Appellant it entitled, in counting period of limititation, to 30 days under Art. 152 of the Act plus the time necessary to get a copy of the decree or/and judgment. *Barada Prasanna Lod Vs. Kobbad Mia* (1961) 13 DLR 765.

S. 12(2): Limitation, for prefering appeals etc. : Time mentioned in relevant Articles is not the time within which appeals, etc., will have to be filed.

It would not be correct to say that under Article 152 of the Limitation Act the right to appeal subsists only during a period beginning from the date of the decree and ending with 30 days from that date.

It is, therefore, clear that under Article 152 of the Act the right to appeal is not limited to the period prescribed in the schedule to the Limitation Act. *Ibid.*

Time in obtaining copies of decree and judgment by different applications at different times.

Under sub-sections (2) and (3) of section 12 of the Act an appellant is entitled to get a deduction of time requisite for obtaining a copy of the decree as well as copy of the judgment and if he has applied for copies of the decree and judgment at different times, both these periods should be excluded in computing the\ period of limitation provided the applications were made when his right to appeal subsisted, it being now well settled that application for copy must be made before the period of appeal expired. Therefore, if the application for copy of the decree is made when the period of limitation for appeal had already run out, the appellant is not entitled to exclude time under section 12 of the Act in obtaining copy of the decree.

The expression "requisite" means simply the time required by the appellant to obtain a copy of the decree provided he acts with reasonable promptitude and diligence and no period can be regarded as requisite which need not have elapsed if the appellant had taken reasonable and proper steps to obtain a copy of the decree or order. (c) (1952, 4 *DLR* 509 (511 and 515 *rh. col.*)

—Delay caused by laches.

—Where a judgment pronounced by a Judge of a High Court in the exercise of its original jurisdiction on the 22nd March, 1957 and the draft order was served on the appellant on the 10th April, 1957, and made returnable on the

—S. 12

12th April, 57, after approval, and the draft order was approved and returned by appellant on the 8th May, 1957.

Held :—In computing the period of limitation prescribed for the appeal, the appellant is not entitled to exclude the period from the 13th April, 1957 to the 7th May, 1957 under section 12(2) as the appellant did not act with due diligence. 8 *PLR* (*Dac.*) 409.

S. 12(3) : Exclusion of time cannot be counted when appeal is time barred. (1950) 8 *DLR* 597.

—Time requisite for obtaining copies.

Time requisite for obtaining copies—Time spent in obtaining copy of the court of first instance for purpose of second appeal ordinarily not allowable---Delay of each day must be explained. 954 *PLR* (*Lah*) 624.

S. 12 (2)(3) : Appeal---Time taken for obtaining copies of judgment and decree---Excluded from period of limitation---Period overlapping---Not be allowed twice over.

Under sub-sections (2) and (3) of section 12, an appellant is entitled to get a deduction of the time requisite for obtaining a copy of the decree as well as a copy of the judgment and if he has applied for copies of the decree and the judgment at different times, both these periods should be excluded in computiug the period of limitation prescribed for presentation of an appeal, unless the two periods overlap partially or entirely in which case the appellant is not entitled to get a deduction of the same period of time twice over. The judgment was pronounced on the 15th May, 1947, and in taking a copy of judgment 11 days were required but the decree was signed on the 30th June, an application for copy of the decree was made on the 5th August and the copy was obtained on the 25th August and the appeal was filed on the 28th August, 1947. Therefore, the application for copy of the decree having been made when the right to appeal did not subsist, the appellants were not entitled to avail of provisions in section 12 and exclude the time in obtaining copy of the decree. Of course the appellants would be entitled to exclude the time requisite for getting the copy of the judgment and that is a period of 11 days only.

If the time is to be computed from the date of signing the decree on the 30th June 1947 then the appeal should have been filed on the 10th August but it was filed on the 28th August when it was clearly barred by limitation. *Abdul Wahed Vs. Abdul Khalique* PLD 1952 Dacca 499 PLR 1951 Dacca 815—4 DLR 509.

—The period elapsing in between the date of the pronouncenent of the judgment and the signing of the decree is excluded for the reason that it must necessarily elapse before a copy of the decree can be granted. If during the same period an application for obtaining a copy of the judgment has also been made

then the period which is common in both cases can only be deducted once upto the signing of the decree, the period of limitation is already standing still, and does not start to run again until the interruption is over. From the date of the judgment upto the date of the signing of the decree the time stands interrupted. If during this period there is another interruption due to the presentation of an application for a copy of the judgment or decree, such an interruption cannot have the effect of making the time run backward, so as to give the applicant the benefit of doubt deduction. *Federation of Pakistan Vs. Aspi* PLD 1960 (W.P) Karachi 562.

—The interval between the delivery of the judgment and the date of the signing of the decree can be excluded under s. 12 irrespective of the date of the application for copies of the judgment and decree. *Dwarka Das Vs. Gajanan Jagannath* AIR (33) 1946, Calcutta 1013, Calcutta 104 (F. B.)

—An appellant can, for purposes of his appeal take advantage as a matter of right, of the time spent in obtaining the copies of the judgment and the decree passed against him. It is open to him to make separate applications to get these copies on different dates. This is, however, subject to the rule that while the appellant can wait to apply for the copies till the last date of limitation, he is not permitted to do so after it has expired. If the time prescribed for any action has already run out, no subsequent action will bring it back to life. The legal requirement, therefore, is that to interrupt the running of the time, action must be taken before the prescribed time has run out. The question, however, remains when does the prescribed time end ? Does it end with the expiry of the original period or can it have an extended life by operation of any of the provisions of section 12 of the Limitation Act. In our view section 12 aforesaid gives the right to an appellant to exclude the requisite period occupied for obtaining a copy of the decree under sub-section (2) and for obtaining a copy of the judgment under sub-section (3), and the time is extended when either of these steps is taken. If one step is taken, the time is extended for the taking of the other step also. In other words, if the time requisite for obtaining a copy of the judgment extends the time of limitation, then the application made for obtaining a copy of the decree, after the time fixed for filing an appeal, but before the extension of time allowed by reason of time required for obtaining a copy of the judgment expires, will entitle the appellants to further extension of time for obtaining the copy of the decree. Where some portions of these two periods overlap each other, the overlapping period will be excluded only once *Abdul Ghafoor Vs. Sher Ahmad* PLD 1961 Lahore 300 (D.B.)

Ss. 12, 5: Appeal heard ex-parte—Provisions not applicable to application for rehearing of appeal. Section 5 has not been extended to applications to rehear exparte appeals, and since section 12 does not apply to such applications, *Noor Muhammad Vs. Rehabilitation Commissioner*. Karachi PLD 1958 (W.P) Karachi 467.

S. 12(2): Appeal--Time starts runnings from date of judgment and not that of decree.

Shirazi

—S. 12

In case of Limitation for filing an appeal the time starts running from the date of judgment and not that of the decree. The appellant ought to have produced the medical certificate along with the application and in any case should have produced it before the final hearing of the appeal particularly as the respondent opposed the application for condonation of the delay. No further time can be granted for this purpose. *Hashamally Brothers Vs. Netherlands Trading Society* PLD 1961 (WP) Karachi 231.

S. 12(37): Appeal to P. C.—Time for obtaining copy of judgment not excluded. The time requisite for obtaining a copy of the judgment cannot be excluded in computing the period of limitation for an application for leave to appeal to His Majesty in Council. *Ghulam Haidar Vs. Abdul Ghani* PLD 1949 Lahore 570; PLR 1949 Lah. 884. Rel. 57 All. 455, 24, All. 349 78 I. C. 953.

S. 12: Application for copies—Must be made before limitation for appeal expires—Not so made extension of time not allowed.

The application for copy must be made before the period of appeal expires., That is, exclusion under section 12 can be claimed only if the application for copy is made at a time when the right to appeal subsists. *Abdul Wahed Vs. Abdul Khalique* PLD 1952 Dacca 399; PLR 1951 Dacca 815—4 DLR 509.

—Application for copies giving wrong date of judgment. Period of time allowed under s. 12 would be the time after the mistake was corrected.

—Application, dated 22nd of August, for a copy of judgment appealed again mentioned the 19th of August as the date of the judgment, whereas, in actual fact the date was the 24th of August. The mistake was corrected only on 30th of August.

Held: that the period between the 24th and the 30th of August, could by no stretch of reason, be considered as time requisite for obtaining copies and therefore was not allowable under section 12 *Limitation Act. Punjab Province Vs. M. Nurullah* PLD 1957 (WP) Lahore 370 ; PLR 1957 (2) W.P. Lahore 439.

Copying agency—Not an agent of the applicant—Delay by copying agency must be enclosed.

The time "requisite" for obtaining copies which can be excluded under section 12, Limitation Act, is the time which is taken between the date of application and the date when the copies are ready, but it can be further extended if further delay takes place by reason of the carelessness of the office in giving wrong information to the application as to the date on which the copies would be ready, or in giving no information at all. *Gul Muhammad Vs. Allah Ditta* PLD 1962 (W.P) Lahore 473---60(2) W.P. 1205.

No time fixed for delivery of copy of judgment—Time taken for obtaining copies may be excluded.

The appellant applied for copies of judgment on 17th Nov. and no date for delivery of copies was given to him. He obtained the copies from the office on 8th December.

—S 12

All the orders in this file were written up to that date in the hand of an Ahlkar and not by the Presiding Officer. *Ghulam Nabi Vs. Jan Muhammad.* PLD 1950 Baghdad-ul-Jadid 90.

Period between delivery of judgment and signing of the decree—When may be excluded.

If the period of limitation provided for an appeal, as in this case, is to be extended beyond its normal term by the application of some other process, that process must be brought into action before the time actually runs out. A time once exhausted cannot be called back. Therefore, to keep alive the ordinary period of limitation provided for an appeal and to avail of the further time provided by section 12(2) of the Limitation Act, it is essential that an application to obtain the requisite copy must be made before the ordinary period of limitation for the appeal comes to an end. And where an application is made by an appellant within time, his job is done and no amount of delay that may take place in the preparation of the documents thereafter can be debited to his account. The time then intervening till the date of the delivery of the copies will be "time requisite" within the clear contemplation of section 12 of the Limitation Act. *East and West Steamship Company Vs. Queensland Insurance Co. West Ltd.* PLD 1960 (WP) Karachi 840 ; KLR 1960 (1) 31—60(2) (W.P) 993.

—S. 12(2): Period between delivery of judgment and preparation of decreesheet —Not to be excluded for purposes of limitation unless application is made within limitation.

The date of the decree is to bear the date of the judgment and as such the date of the decree which furnishes the starting point of limitation for an appeal under Article 156 of the Limitation Act is "the date of the decree" and not the date of the signing of the decree. In fact, the latter expression would have been inconsistent with Order XX, rule 7 of the Civil Procedure Code. If the legislature had intended to allow the time spent in the preparation of the decree, nothing would have been easier than to express that intention, by using the words "date of signing of the decree" instead of "date of the decree". The statute of limitation being a statute of repose extinguishing remedies requires awareness and vigilance in the pursuit of the actions on the part of the litigants and must therefore, have a merit of certainty. The date of the decree synchronising with the date of the judgment is pronounced. The preparation of the decree, on the other hand, is a ministerial act depending on the rules which vary from Court to Court and the date of the signing of the decree is therefore, an uncertain item depending on when the ministerial staff is able to prepare it for the signatures of the judge and when does the latter sign it, of which ordinarily the litigant public has no notice. *East & West Steamship Company Vs. Queensland Insurance Co. Ltd.* PLD 1960 (W.P) Karachi 840 ; KLR 1960 (1) 31—60(2) W.P. 993.

—The order of the District Judge deciding two preliminary issues was passed on 7. 5. 1958. This order being in the nature of a judgment, a decree ought to have been drawn up. This was not done and without a copy of the decree a

memorandum of appeal was presented in High Court by the appellant. As there was no proper appeal before the High Court it was rejected on 22. 9. 1958. Then on 6. 12. 1958, an application for a copy of the decree was made and also on 20.12. 1958,. an application was presented to the District Judge that the decree sheet be drawn up. The decree sheet was drawn up on 26. 12. 1958 and on 15. 1.-1959 the copy of the decree was delivered and appeal from the decree was filed on 27.1. 1959. On the question of limitation it was contended by the appellant that the appeal was within time for the reason that time began to run from 27. 12. 1958 when the decree sheet was prepared and signed.

Held : that in such a case, without minimizing the Court's duty premium cannot be placed on the inactivity and non vigilance of the appellant. By virtue of section 33, Civil Procedure Code, 1908 the would be appellant can act on the expectations that a decree shall follow the judgment and therefore it is incumbent on him to apply for the copy of the decree within the period of limitation. The period between the date of judgment i.e. 7.5.58 and date of signing the decree i.e. 27. 12.58 could not be excluded as the application for obtaining a copy of the decree was not made within limitation from the date of the order (judgment). The appeal filed on 27.1. 1959 was therfore time barred. *Hoshnak Bibi Vs. Muhammad Ismail Khan* PLD 1961 *Azad J & K.* 18.

—Privy Council—Application for leave to appeal—Time for application may be excluded.

In the case of an application for leave to appeal to the Privy Council the time taken in obtaining certified copies of the judgment and decree can be exeluded. *Dwarka Das Vs. Gajanan Jagannath.* AIR (33) 1946 Calcutta 10.

—"Requisite" : Meaning of,

The word "requisite" in sub sections (2) and (3) of section 12 of the Limitation Act means something more than "required". In determining what is the "tlme requisite" in section 12, the conduct of the appellant must be considered and no period can be regarded as requisite which need not have elapsed if the appellant had taken reasonable and proper steps to obtain a copy of the decree or order. "Requisite" means "properly required".

No period can be regarded as "requisite" which is not subsequent to the presentation of application for copy if made at a time when the right to appeal subsists. *Abdul Wahed Vs. Abdul Khalique* PLD 1952 Dacea 399; PLR 1951 Daeca 815 —4 DLR 509.

—Revision application : Provision not applicable.

Sub-section (2) of section 12 will be available only in cases where there is an appeal, an application for leave to appeal or an application for a teview of a judgment. This sub-section no where mentions revision application. This is made further clear by the expression 'appealed from or sought to be reviewed' employed in the sub-section. The omission of revision application from the sub-section, in my opinion, is not accidental. While sub-section (1) employs the word application

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without any qualification, sub-section (2) restricts tt to merely two kinds of applications namely, an application for a review of a judgment. There was nothing to prevent the Legislature to mention revision application in the sub-section if they so intended.

I am clear in my mind that sub-section (2) of section 12 of the Limitaton Act was not intended to apply to revision applications. Extending the provisions of 12 (2) to revision applications, will therefore amount to enlarging its scope for which in my opinion there is no justification. *Tahiral and others. Vs. Chief Judge,* Karachi Small Causes Court, Karachi and another PLD 1960 Karachi 795 (D.B.)

—Second appeal : Time spent in detalning copies of judgment of court of first instance—should be condoned.

When the ruled of High Court require a second appeal to be presented along with a copy of the trial Court's judgment the delay in filing the appeal insofar as it is covered by the time spent in obtaining a copy of the judgment should ordinarily be condoned under section 5 of the Limitation Act. *Muhammad Iqbal Khan Vs. Notified Area Committee Kot Radha Kishan* PLD 1957 Lahore 381—PLR 1957 (2) W.P. 433.

—Time requisite : Meaning of—How much time would be excluded.

The time "requisite" for obtaining copies which can be excluded under section 12, Limitation Act, is the time which is taken between the date of application and the date when the copies are ready, but it can be further extended if further delay takes place by reason of the carelessness of the office in giving wrong information to the applicant as to the date on which the copies would be ready, or in giving no information at all. *Gul Muhammad Vs. Allah Ditta* PLD 1960 Lahore 443; PLR 1960 (2) W.P. 1205 (D.B.)

Having regard to the fact that some time is bound to be taken up between the passing and the signing of the decree, if an applicant for leave to appeal to His Majesty in Council waits for a reasonable time in applying for copies, he would be entitled to include that time in the period requisite under s. 12. If, however, he waits for an unreasonable time in applying for copies, he will not be able to include that period within the requisite time. So that each case is to be decide on its own facts (interval of 26 days was held unreasonable). *Bhausahed Jamburao Vs. Sanbai and other* A.I.R. (33) 1946 Bombay 437. Follow : A.I.R. 1928 P.C. 103. A.I.R. 1940 Bombay 415.

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—Time spent in obtaining copies of judgment and decree—Excluded only when application has been made for the copies.

If the period of limitation provided for an appeal, as in this case, is to be extended beyond its normal term by the application of some other process, that process must be brought into action before the time actually runs out. A time once exhausted cannot be called back. Therefore, to keep alive the ordinary period of limitation provided by section 12 (2) of the Limitation Act, it is essential that an application to obtain the requisite copy must be made before the ordinary period

of limitation for the appeal comes to an end. And where an application is made by an appellant within time, his job is done and no amount of delay that may taken place in the preparation of the documents thereafter can be debited to his account. The time then intervening till the date of delivery of the copies will be "time requisite" within the clear contemplation of section 12 of the Limitation Act. *East & West Steamship Company Vs. Queensland Insurance Co. Ltd* PLD. 1960 Karachi 840—60 KLR (1) 31—PLR 1960 (2) W.P. 993 (F. B.)

Exclusion of time in legal proceedings.

—This sec. has been made applicable to all special and local laws. 1934 Pat. 353 : 151 I. C. 107.

—Where no date was fixed for pronouncement of judgment, the date on which counsel was given notice of the judgment should be regarded as the date of pronouncement of judgment, 1938 Lah. 707 : 182 I.C. 108.

—This section does not apply to an application under s. 18 (l) of the Land Acquisition Act. 104 I. C. 397, 1932 All. 598. But applies to pauper appeals. 1923 Lah. 684.

—The day of attaining majority will be excluded. 10 C. 748 p. 751.

—The computation must be made according to the English calendar. 13 C.L.R. 153.

—Two days of the same number are not to be included, the first day shall be excluded. 13 C, L. R. 153, 24 W. R. 463.

—The time that elapses between the date of judgment and the signing of the decree is the time requisite for obtaining copy of the decree, and should be excluded. 20 C. W. N. 967, 15 C. W, N. 787, 1927 Cal. 65, 13 C. 104, *F.B.*, 75 I. C. 1055, 1 Pat. L. R. 459 : 73 I.C. 447 : 1923 Lah. 696, 40 C. W. N. 83. Provided application is made before the signing of the decree. 12. A 79. 12 A. 461. *F. B.*, and so long as no such application is made non-signature of the decree will have no effect. 39 C. 766.

—Interval between the delivery of judgment and the signing of the decree must be excluded irrespective of the date of application. 1946 Cal. 10 : 49 C. W. N. 758, 1940 Oudh 173 : 186 I. C. 136, 1948 Pat. 260. Contra 1933 Nag. 125 : 143 I. C. 745, 1950 Assam 83.

—When a decree is signed on the preceding day on which the annual vacation commences, an application for copy is made 3 days after the re-opening of the court, the whole period of the vacation is to be excluded. 20 C. W. N. 1303 (27 M. 21, 34 A. 41) *Ref.* 13 C. L. J. 544.

—When there is any holiday or holidays immediately following the day of application for the copy and the date of notification of the requisite number of stamps and folios, such holiday or holidays must always be excluded in computing the period of limitation for appeal. It is not restricted to the cases where the stamps and folios are supplied on the re-opening day. 1931 Cal. 731 : 58 Cal. 969 : 35 C.W,N. 451.

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—The day on which the copies are applied for and the day on which they are delivered are excluded. 1944 Nag. 356 : 1944 N. L. J. 313.

—The day on which the copy is notified to be ready should be excluded. 1938 Mad. 823 : 182 I. C. 759.

—No time before the date of application for copy can be excluded. 1951 All. 122 : 1950 A. L. J. 946 F. B., 1952 Cal. 176 : 6 D. L. R. Cal. 39.

—Time for preparing copy of decree should be deducted even where it was due to party's not furnishing sufficient stamps and folios but were filed two days before the copy was finally prepared 30 C W N. 926 : 44 C. L. J. 44 : 1926 Cal. 1105 : 98 I, C, 748.

—But when there was delay in drawing up decree owing to the neglect of the appellant, no time should be excluded. 61 C. 306 : 38 C. W. N. 702 : 1934 Cal. 534, 1952 Bom. 122 F. B.

—Time requisite to take the copies of both judgment and decree separately shall be deducted. 21. C. W. N. 217, 3 Lah. L. J. 166 : 60 I. C. 259, 6 Pat. L. J. 237 : 63 I. C. 278, 3 Pat. L. T. 96. 66 I. C. 23, 4 U. P. L. R. 37, 3 Pat. L. T. 289, 25 Bom. L. R. 1309. 1944 Mad. 430. if any of the two periods requisite for obtaining copies of the decree and the judgment overlap each other one of the overlapping periods has to be left out of account. 47 A. 509 : 87 I.C. 484 : 23 A. L, J. 343 : 1925 All. 1436, 950 Bom. 350.

—When more than one set of copy is taken the appellant may use any copy to his advantage, the court cannot enforce any ideal lesser period which might have been occupied if the application for copy had been filed at some other date. 1934 Mad. 306 : 57 M. 650 *F.B.*, 5 D.L.R. All 287.

—The time required for obtaining the copy of the decree and judgment must be excluded even though by the rules of the H. C. such copies are not necessary. The word "requisite" is a wrong word, it means "properly required". 47 C L.J. 510 : 55 I.A. 161 : 30 Bom. L.R. 842 : 32 C.W.N. 845 : 109 I.C. 1 : 1928 P.C. 103 : 6 Rang, 302 : 16 A. L. J. 657 *P.C.*

—But no period can be regarded under this section, as requisite which need not have elapsed if the appellant took reasonable and proper steps to obtain the copy or order appealed against. 27 C.W N. 156: 43 M.L. J. 765: 1922 P C. 352, P. C., 97 I. C. 728 (C), 54 C. 481 : 45 C. L. J. 553: 1927 Cal. 623, 1934 Cal. 543: 38 C. W. N. 702.

—The time during which the party fails to supply folios should not be subtracted. 1917 Pat. 21, P. L. J. 573.

—The time of delay caused by the officer of the court in granting copies should be excluded. 3 C. W. N. 55, 7 C. W. N. 109, 8 C. W, N. 141, 12 A. 79, 105, 461, 28 B. 643, 12 C. 30, 18 M. 374, 75 I. C. 1055.

—Where copies are despatched by post, time of transit is to be excluded. 2 Lah. 280: 1922 Lah. 219.

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—The time required to obtain a variation of the order should be excluded. 1937 P. C. 107: 41 C. W. N. 650: 1937 A. L. J. 440, P. C.

13. EXCLUSION OF TIME OF DEFENDANT'S ABSENCE FROM PAKISTAN AND CERTAIN OTHER TERRITORIES.—**In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from [16][Bangladesh] and from the territories beyond [16][Bangladesh] under the administration of [17][Government] [18]* * * shall be excluded.**

S. 13: Defendant absent exclusion of time.

Section 13 of the Act is a rule of extension of limitation which applies within it terms and its terms do not operate in relation to a legal entity such as the state of a Ruling Chief. (1955) 7 DLR (FC) 170.

—The section has reference only to the defendant from the realm and not that of the plaintiff.(a) (1957) 9 DLR 16.

—Applicability : Applicable only when defendant is absent from the country.

Section 13 of the Limitation Act has reference only to the absence of the defendant from the realm, not to that of plaintiff. Ibrahim Vs. Surendra Kumar Dhar. 9 DLR 1957 16.

—Ruling Prince, suit against—Consent of Central Govt. filed after the period of limitation—Suit barred.

The original plaint of a suit against a ruling prince was in time but the consent of the Central Government was filed after the expiry of limitation.

Held: further, that section 13 or 14 of the Limitation Act had no application to such a case.

—Also that consent filed after the period of limitation could not operate retrospectively so as to save the suit. Khan Sher Dil Khan and others Vs. Sir Abdul Wadud Mian Gul PLD 1955 F. C. 174—7 DLR (F. C.) 170.

Exclusion of time of defdt's absence.

The period during which any person from or through whom the defendant derives his liability to be sued is absent should be excluded. 1945 Mad. 315.

—The period during which the manager of joint Hindu family was absent should be excluded although other members were present. 1952 Mad. 288.

—This section applies even where to the knowledge of the plff. the defts. partners in firm, are, during their absence from British India, carrying on business there through agent, who is empowered to institute and defend suits. 25 C. 496: 2 C. W. N. 269 F. B., 45 B. 1228, 14 C. 457, 1933 Lab. 741

—As a Prince could be sued by his agent his residence out of British India was no ground to apply this section, 53 B. 12, 1929 Bom. 14.

When the cause of action arose outside British India, the plff. could not invoke the aid of s. 13., 1928 Mad. 1088.

14. EXCLUSION OF TIME OF PROCEEDING *Bonafide* IN COURT WITHOUT JURISDICTION.—**In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.**

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

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

Explanation II.—**For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.**

Explanation III.—**For the purposes of this section misjoinder of parties or of causes of section shall be deemed to be a cause of a like nature with defect of jurisdiction.**

S. 14: Application for pre-emption u/s. 96 (I) of the State Acquisition & Tenancy Act returned by earlier court (to whom it was presented), the ground being want of pecuniary jurisdiction—When next it was filed in the court having jurisdiction it was found barred by limitation, if the time taken up by the earlier court is counted for limitation purpose—The time taken up in the earlier court should be excluded u/s. 14, Limitation Act.

Md. Abdul Majid Vs. Sarina Begum. (1982) 34 *DLR.* 150

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Bonafide mistake by even a senior counsel sufficient to condone delay in filing an appeal.

Privy Council held that section 14 of the Limitation Act will be attracted if the sufficient cause contemplated in section 5 of the Limitation Act is available.

Even a Senior Advocate can commit mistake in giving advice and may file a case in a wrong forum. In such circumstances a client should not suffer for wrong advice of the Advocate.

Debabarta Chatterjee Vs. Md. Munsur Ali. (1984) 36 *DLR*. 136.

Time taken in respect of the proceeding before the S.D.O. for restoration of the land u/s. 95 of State Acquisition & Tenancy Act is to be deducted in counting the period for institution of the present suit for restoration of land on the basis of the agreement.

The application before the S.D.O. under section 95 of the S.A. & T. Act as incorporated and amended by P.O. 88 of 1972 is founded on the same cause of action as in the present suit. The relief sought for the cause of action in the earlier proceeding before the S.D.O. is identicial as in the present suit.

S.D O. exercising powers u/s. 95 of S.A. & T. Act does not act in executive or administrative capacity—the proceeding before him was a civil proceeding.

The Court below rightly excluded the period in computing limitation u/s. 14 of the Limitation Act.

Mozahar Sikder Vs. State, (1983) 35 *D.L.R.* 208.

(Read with Emergency Requisition of Property Act (XIII of 1948) s. 7A.)

Period of limitation prescribed under section 7A of the Emergency Requisition of Property Act, 1948 can not be extended under section 14 or under any other provision of the Limitation Act, 1908 which has got no application to the special statute.

Ebadul Hoque Vs. Hajee Rajab Ali Molla. (1983) 35 DLR. 237.

For setting aside an exparte order passed by Labour Court s. 14 of the Limitation Act will apply.

The period between the passing of the ex-parte order till the filing of the application for setting aside of such exparte order shall be computed under section 14 of the Limitation Act

Raj Textile Mills Lid. Vs. Chairman. Labour Court. Khulna. (1981) 33 DLR. 376.

Provision of s. 14 regarding exclusion of time also available to proceedings of the appellate Courts as well of execution Courts.

The language of section 14 of the Limitation Act does not tend to bar its application of the provision of sec. 14 to execution proceedings, The provision of section 14 provides for exclusion of time of proceeding bonafide by a party

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in a court which has no jurisdiction to entertain the proceeding. This section is available not only to proceedings of the Courts of the first instance but also in the appellate Courts and in execution Courts.

Abdul Alim Vs. A.K. Abdul Hoque (1982) 34 DLR (AD) 358.

The words "same relief" in sub-s. (2) of s. 14 mean relief of a similar nature.

In the present case in an application by the decree-holder filed u/s. 151 C.P. Code for amendment of a decree he wanted to get rid of time-bar invoking the provision of s. 14 of the Limitation Act. Question arose whether the amendment prayed for could be allowed in view of sub-s. (2) of s. 14. In the present case decree-holder prayed that words "uttor parsha" should be substi uted for the words "uttar-purba" which occur in the decree.

Following the Privy Council decision in the case reported in AIR 1935 P.C. 85: Held: The words "same relief" occurring in section 14(2) of the Limitation Act can not but be relief of a similar nature.

Abdul Alim Vs. A K. Abdul Hoque. (1982) 34 DLR (AD). 358.

The principle of limitation—Articles 142 and 144 of the Limitation Act will not be applicable to the Instant case, because in case of fraud the plaintiff will be competent to take advantage of section 18 of the Limitation Act in computing the time for binding his suit.

Mokbul Hossain Vs. Anil Kumar Shaha. (1985) 37 DLR. 131.

Exclusion of time of proceeding bonafide in court.

Occasion for the application of the doctrine of suspension of the bar of limitation will be only to cases where the court by its own act or oversight, causes any injury or injustice to particular party, but that oversight or act must be at the instance of the party against whom the relief is sought by the party who at his own instance and under circumstances which do not show their bona fide brought about the oversight or injustice by the Court. (1955) 7 DLR 391.

—Time enlarged when the party is misled by wrong advice—Order of dismissal by an incompetent court—delay condoned. (1955) 7 DLR 272.

—The claim in the previous suit was described as damages from trespassers and in the latter suit it was described as rent due from tenant—the defendant being same in both—whether the barred claim in the previous suit can be included in the latter suit.

—The plaintiff in the previous suit claimed damages for period from May to October, 1952, treating the defendant of that suit as trespasser as the tenancy had been terminated by service of notice under section 106 of the Transfer of Property Act. But later on appeal the Supreme Court held that the tenancy was not validly terminated and the defendant was a tenant under the plaintiff and on that ground refused the claim of the plaintiff for damages for use and occupation by the defendant.

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—In the previous suit the plaintiff described his claim as damages and in the present suit it has been described as rent and upon that it has been contended that the two suits are different.

Held—In the circumstances of the case it is quite clear that the plaintiff was prosecuting with due diligence another civil proceeding on the same cause of action and the limitation though began to run from 1952 remained suspended till the decision of the Supreme Court.

—Though there is a difference in character of claim but the cause of action in both the suits is one and the same.

—The wording in section 14 of the Limitation Act is not only "from defect of jurisdiction" but also "other case of alike nature". The present case comes wtihin the wordings "other case of a like nature" in section 14 of the Limitation Act. (1960) 12 DLR 686.

—Time spent in pursuing a remedy under Order 9, rule 13 C.P. Code in an ex-parte decree cannot be excluded in computing the limitation for filing an appeal. *Shah Mohammad Vs. Ghulam* (1970) 22 DLR (SC) 102.

—Time taken in disposing of an incompetent appeal filed in good faith before the Sub-Judge would be excluded in computing the time of limitation in moving the High Court in revision. *Gunendrala Das Chowdhury Vs. Nitandrala Das Chowdhury*, (1969) 21 DLR 360.

S. 14 (2): Appeal—Limitation—Word "application" in s. 14 (2)—Includes an application by way of appeal. *Genenal Secretary Vs. The Registrar, Trade Unions* (1969) 21 PLR Lahore 1080.

Ss. 14 and 29: Exclusion of time under section 14 it available to plaint in respect of disputes arising under E.P. Labour Disputes Act, when such plaint filed out of time.

Held : Section 14 of the Limitation Act will have application in these matters in view of the fact that there is no specific prohibition of the application of such law as contemplated by section 29 of the Limitation Act. Therefore the time spent in choosing a wrong forum bonafide and with due diligence should be exeluded in computing the period of limitation. Therefore the dispute filed in the present case though out of time should be entertained. *The Manager, Spencer & Co. Vs. Spencer Employees Union*, (1973) 25 DLR 102.

Applicability and scope

—Carriage of Goods by Sea Act—Provision not applicable.

The Carriage of Goods by Sea Act, 1925 cannot be treated as a local or special law for purposes of section 29 of the Limitation Act. and the benefit of section 14 of the Limitation Act cannot be granted to the plaintiff because the third paragraph of Rule of Article III does not merely prescribe a period of limitation

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different from the period prescribed thereof by the first Schedule of the Limitation Act but is different in character from the provisions of the first Schedule. *Issak Haji Vs. United Oriental Steamship Co.* PLD 1960 Karachi 94.

Provision suit failed on merit—Provision applicable to subsequent suit.

Where in such like cases even if High Court comes to a different conclusion the principle of law is that the order of acquittal should not be interfered with unless it is proved that judgment of the trial Court was manifestly wrong. *Crown Vs. Hazoori* PLD 1952 Bagdad-ul-Jadid 26.

Held : S. 14 is applicable to the subsequent proceedings.

Same Cause of Action

S. 14: Two suits described differently but based on some cause of action—Time barred—Claim in previous suit—It may be included in latter suit.

The plaintiff in the previous suit claimed damages for the period from May to October, 1952, treating the defendant of that suit as trespasser as the tenancy had been terminated by service under section 106 of the Transfer of Property Act. But later on appeal the Supreme Court held that the tenancy was not validly terminated and the defendant was a tenant under the plaintiff and on that ground refused the claim of the plaintiff for damages for use and occupation by the defendant as a trespasser.

In the previous suit the plaintiff described his claim as damages and in the present suit it has been described as rent and upon that it has been contended that the two suits are different and cannot be said to be founded upon the same cause of action within the meaning of section 14 of the Limitation Act.

Held : In view of the finding of the Supreme Court that the defendant is a tenant the plaintiff wants to include his claim of rent for the period from May to October, 1952. In the circumstances, it is quite clear that the plaintiff was prosecuting with due diligence another civil proceeding on the same cause of action and the limitation though began to run from 1952, when the suit was filed, but that limitation remained suspended till the decision of the Supreme Court.

In his present suit for recovery of rent from the defendant the plaintiff included the period of May to October, 1952 although his claim for this period was dated by time. The defendant resisted his claim for this period.

Held : though there is a difference in character of the claim but the cause of action in both the suits is one and the same.

The wording in section 14 of the Limitation Act is not only "from defect of jurisdiction" but also "or, other cause of a like nature". The present case comes within the wording "other cause of a like nature" in section 14 of the Limitation Act. *A. F. M. Kutubuddowla alias Kutub Vs. Haji Muhammad Saddeqe* PLD 1961 Dacca 249—12 DLR (1960) 698.

Same Parties.

S. 14 : Subsequent suit with additional party on same cause of action—Additional party not entitled to benefit under the section.

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The plaintiffs brought a suit on the same cause of action on which they had brought a previous suit. A new party 'L' was added to the new suit.

Held 'L' did not prosecute that suit; as such he is not entitled to the benefit of section 14 of the Limitation Act. *Messrs. Farid Sons Ltd. and Mian Muhammad Latif Chawla Vs. Messrs. Siemens and Kalske A. G. Hoff and Pakistan*, PLD 1961 Karachi 612.

—Suit by firm against D—suit by some partners made party—Suit is by same parties.

A suit by an unregistered firm against D and a subsequent suit against D by some of the partners as partners in personam impleading the other partners in the firm, as defendants they being absent from the station, are suits between the same parties within s.14. *Rochaldas Sumomal Vs. Uttamchand Sakhawatrai and other* ALR (33) 1946 Sind 14 (D.B.)

Good Faith and Due Diligence.

—Default: Decree holders execution application dismissed 3 times for default —Due diligence not shown.

Where the decree-holder has no less than three times allowed his execution application in a wrong Court to be dismissed for default it cannot be said that he has been showing "due diligence" withing the meaning of s. 14(2). *Inderdeo Prosad Rai Vs. Deonarayan Mahton* AIR (33) 1946 Patna 301 (D.B.)

—Diligence: Finding of lower court that plaintiff did not act with due diligence - Question of fact—Finding binding in second appeal.

—The finding of the lower appellate Court that the plaintiff did not act with due care in representing the plaint to the proper Court is prima facie a finding of fact and is binding in second appeal. *Ram Adhin Vs. Gulzari Singh* AIR (33) 1964 Oudh 116.

Good faith: Definition of. When section would be applicable.

—The benefit of section 14 can be granted only where the error is such which might be committed by a reasonable and prudent man exercising due diligence and caution. Even a mistake of fact or law has to be bonafide which means that it must have been honest and made in good faith, not withstanding due care and attention. Let us see if such a good faith has been established in this case. *Muhammad Allah Bux Vs. Universal Crop.* PLD 1960 Karachi 736 (D.B.)

—The expression "good faith" in s. 14(2) itself involves due care and attention as is clear from the definition of "good faith" in s. 2(7) of the Act. *Inderdeo Prosad Rai Vs. Deonarayan Mahton* AIR (33) 1946 Patna 301 (D B.).

—The expression "good faith" is not exhaustively defined in section 2 of the Limitation Act but inherently embraces the idea of honesty of purposes. The definition is as follows :—

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"Good faith", nothing shall be deemed to be done in good faith which is not done with due care and attention", its effect is that nobody can be said to have acted honestly for purposes of the Act if he did not act with due care and attention. This is a stricter definition than that contained in section 3(20) of the General Clauses Act, 1897, and excludes its application. *Messrs. Farid Sons Ltd and Mian Muhammad Latij Chawla Vs. Messrs. Siemens and Halske. A G. Hoff and Pakistan* PLD 1961 Karachi 612.

—Suit instituted prematurely in disregard to advice – Diligence not proved:

Messrs Faridsons Ltd., did not prosecute the previous suit with due diligence insofar as they instituted it prematurely on the 22nd March, 1955, in disregard of advice to the contrary. *Farid Sons Vs. Siemens* PLD 1961 (W. P.) Karachi 612.

Defect of Jurisdiction .

—"Defect of jurisdiction : Explained."

"Defect of jurisdiction would be a cause that would not include any neglect on the part of the plaintiff, either in stating his case or in other respects. *Messrs Farid Sons Ltd., and Mian Muhammad Latij Chawla Vs. Messrs. Siemens and Halske A. G. Hoff and Pakistan* PLR 1961 (W.P) Karachi 612.

—Suit filed in wrong court by eminent lawyer—Time should be extended.

A litigant in order to be diligent can do not better than to engage a senior lawyer in his case. The lawyers, however senior and eminent they may be are after all human and for that reason fallible. It is the possibility of the occasional error in the case of the litigants and their counsel that is guarded against by section 14 and other similar sections of the Limitation Act. It will be totally wrong to regard a mistake committed by an eminent lawyer, in instituting the suit in a wrong court, as a matter for which a litigant should be punished Time should be allowed in such cases, *Punjab Province Vs. Kh. Feroze Din Butt and another* PLD 1960 Lahore 791 (D. B.)

—Suit dismissed by Chief Court of Sind for want of jurisdiction—It may be filed again on the inclusion of Sind in West Pakistan when jurisdiction was given to courts to hear the case.

The suit concerned a revenue matter and was dismissed by the Chief Court for lack of jurisdiction. It was contended that although the order under appeal was valid when it was passed and although there was no Court in which a suit could have been instituted even at the time when the present appeals were filed, we would accept these appeals and remand the suit to the Court of Sub-judge because after the creation of one Unit the law han been amended and now there are Courts of Sub-judges and the District Court in Karachi who can hear and determine the suit. Reliance was placed on the proposition accepted in some other contexts that an appeal is only a continuation of a suit.

Held: if they have been diligent section 14 of Limitation Act can very well help them if they institute new suits and if they have not been diligent, we would

not be prepared to help them. *Dada Ltd. Vs. Pakistan* PLD 1959 Karachi 264 (D.B.)

—Cause of like nature : What is—

Inability in the Court to entertain the former suit produced by any cause not connected in any way with want of good faith or due diligence in the plaintiff is a cause of like nature to defect of jurisdiction within the meaning of s.14. *Rochaldas Sumomal Vs. Uttomchand Sakhawatria and other* AIR (33) 1946 Sind 14 (D.B.) followed : 22 All. 248 (F.B.).

—High Court closed for vacation—Limitation expiring during vacation —Letters Patent appeal filed on the day the High Court opened—Appeal not time barred.

Apparently the Letters Patent Appeal was not time barred because vacation had begun within the period of limitation and according to the notification of the High Court, the High Court is deemed to be closed during the vacation for the purpose of civil business, so that an appeal would ha e been even within time if it was filed on the opening of the High Court after the expiry of the vacation. *Mian Abdul Aziz Vs. Dr. C.A. Chisty* PLD 1959 Lahore 31 : PLR 1959 (2) W.P. 468.

Time Spent in Other Proceedings.

—Delay : in proceedings—Not caused by the pending of other proceedings —Delay not condoned.

The fault of the party lay in failing without excuse to institute the present suit for about three quarters of a year after the objection had come to their knowledge on the 9th of April 1956. The previous suit is, therefore, no excuse for this delay.

The proceedings of the previous suit were in fact not responsible for this delay, but section 14 of the Limitation Act will in any case be helpful to them until the date of objection if they have prosecuted the previous suit with due diligence until then. *Faridsons Ltd. Vs. Siemens & Halske A.G. Hoff.* PLD. 1961 (W.P.) Karachi 612.

—Proceedings in wrong Court: Time excluded only when proceeding were being taken with due diligence in other Court.

Where the decree-holder files an application for execution in a wrong Court and allows it to be dismissed for default and then files another application almost three years after and has been doing nothing during the long period between the dismissal of the first and filing of the second execution application he cannot be said during that interval to have been actually prosecuting a proceeding within the meaning of s. 14 (2). No doubt, if the interval has been short and such as has been necessary for taking steps acquiring information and so on different considerations might arise. *Inderdeo Prosad Rai Vs. Deonarayan* A.L.R. (33) 1946 Patna 301.

—Section 14 allows exclusion of that period only during which the plaintiff has been prosecuting with due diligence another civil proceeding. A suit was filed on

25. 3. 1935. On 30.4.1936 the Court ordered the return of the plaint for presentation to the proper Court. This order was set aside in appeal but was restored in revision by the High Court on 12. 8. 1938. The file was returned and received by the trial Court on 21.9.1938. That Court, on the same date, noted that the plaint be returned for presentation to the proper Court. But nobody appeared. The plaint was actually returned on 26.9.1938 after a notice was actually issued by the Court to plaintiff's counsel, and was presented in proper Court on 27.9.1938. Held: that the conduct of the plaintiff or his counsel did not show that he acted with due diligence. The civil proceeding ended on 12.8.1938 or at the latest on 22.9.1938 when the trial Court noted the result of the case and ordered the plaint to be returned. Any period that elapsed after that date was not such period which the plaintiff was entitled to exclude in computing the period of limitation prescribed for the suit. *Rama Aahin Vs. Gulzari Singh* AIR (33) Oudh 1946. 116.

—Review: Time spent in prosecuting appeal—Excluded for filing of review application

—When the petitioners filed a review application after lapse of limitation but had previously been prosecuting an appeal which was dismissed, case obviously falls under section 14 (2) of the Limitation Act and the time that the petitioners spent in prosecuting the appeal can be excluded. *Abdal Aziz Vs. Dr. C.A. Chisty* PLD 1959 (W.P.) Lahore 31: FLR 1959 (2) W P. 468.

Exclusion of time of proceeding *bonafide* in Court without jurisdiction.

Application of the section.

—Applicability of the section. 1931 Cal. 332: 52 C. L. J. 594: 35 C.W.N. 155: 131 I. C. 263, 1937 Mad. 161.

—This sec. does not apply to appeal. 19 C. W. N. 473: 22 C.L.J. 68. 23 C. 325, 48 C. 110: 25 C. W. N. 289: 21 M. L. T. 149: 22 Bom. L R. 1370: 3 P. W. R. 1921: 8 A L.J. 1095 *P. C.* but the principle mny be applied to constitute sufficient case under s. 5. 5 A. 591, 12 B. 30, 28 Punj. L. R. 456; 88 I.C. 327, 1936 Sind 43: 162 I. C. 257. 2954 Pepsu 126.

—It applies to execution of decree also. 22 C. 29, 5 C.W.N. 150, 1932 Lah. 531: 138 I. C. 646, 1940 Pat. 677: 191 I.C. 695.

—Where the execution of decree was sought for and Jt. Dr. objected under s. 47 sucessfully and the D. Hr. preferred appeal and second appeal, the whole period might be deducted in subsequent suit by D Hr. 40 C.W.N. 914: 1936 Cal. 400.

—Time taken in civil revision may be excluded, 1938 All. 78 : 173 I.C. 461, 1949 Pat. 293: 4 D. L. R. Pat. 58 *F. B.*, 1954 Hyd. 225.,

—The prior proceeding must be in judicial courts and not in domestic forums and tribunals. 1954 Bom. 309 : 56 Bom. L. R. 214.

—The expression "civil proceedings in a court" must be held to cover civil proceedings before arbitrators. 33 C.W.N. 485 : 49 C.L.J. 462 : 27 A.L.J. 254

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115, 115 I.C. 713 : 1929 P. C. 103 : 29 L.W. 282 *P. C.*, 1943 All. 162 : 207 I.C. 571, 1948 Nag. 334, but see 1954 Bom. 309 : 56 Bom. L.R. 214. But mutation proceeding before the Revenue Officer is not civil proceeding : the Settlement Officer, the Commissioner and the Board of Revenue are not courts, but are executive officers of Govt. 26 A. 382.

—This sec. does not apply where a Special or Local Law provides a special rule of limitation. 1927 All. 181, not to a suit under s. 77 of the Registration Act ; the reason being that the Registration Act is a complete Code. 30 C. 532 : 7 C.W.N. 550, 18 M. 99. 17 C. 263. *Ref.* 10 C. 265, *discussed.* But s. 184 B. T. Act does not exclude the application of s. 14, Ss. 4, 9 to 18 and 22 will apply to a case unless expressly excluded. 33 C.W.N. 227 : 1929 Cal. 325.

Parties in the previous suit.

—The former proceeding should have been prosecuted by the plff. himself, either as a plff. 1 W R. 29, or as a deft. 1 W. R. 310. and defts. must be the same in two suits. 5 W.R. 281, 33 C.L J. 366, 43 C. 660, *P. C.*, 12 M.I.A. 244 *P C*,

—Suit against wrong person does not save limitation. 1 W. R. 121, 7 C. 367. 1926 Lah. 572, nor in the name of wrong person as plff 7 C 367 8A 475, but the person time during which a suit was prosecuted *bona-fide* against a dead man may be deducted 12 W. R, 45.

—But former suit against firm and subsequent suit against its partners are both against the same parties. 112 I.C. 715 : 27 A. L, J. 73.

Causes of action should be the same.

—Cause of action of the two suits must be the same 17 C. L. J. 596. 9 W.R. 402 *F.B.* 8 A. 475, 1929 All. 101, 43 C. L. J. 45 : 1926 Cal. 693, 12 C. 258, 1922 Mad. 417, 1933 Bom. 450 : 145 I. C. 630,

—Not only the causes of action should be the same but the relief sought also should be the same. 1933 Mad. 778 : 146 I. C. 361. 1954 Bom. 436 : 56 L.R. 414.

Withdrawal of the previous suit.

—Withdrawal of previous suit cannot save limitation. 39 M. 936, 29 B. 219, 12. B. 625, 23 I. C. 205, 1932 All. 377. 1934 All. 688 *F.B.*, 1964 Mad. 80. 206 I. C. 394, 43 C.W.N. 1074.

Exclusion of time of proceeding *bonafide* in court without jurisdiction—contd.

—Where the previous suit which was brought within 2 months of the notice under sec. 80 C.P. Code was withdrawn, the time during which it was pending should be excluded. 1951 *Pat* 382: 18 *P.* 621.

"Prosecution."

—Defending a suit is not prosecuting a suit. 1930 *Bom* 1 : 179 *I.C.* 178.

—Plff. must have been prosecuting another civil proceeding. He is not entitled to any deduction of time when in previous proceeding. under s. 47 C.P.C.

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he was resisting the same as an opposite party. 39 *C.W.N.* 966.

'Other causes of like nature'

—An improper joinder of parties or causes of action is not "a cause of a like nature", eontemplated to fall within the meaning of sec. 14, 35 *C.* 728 : 12 *C.W.N.* 473, (6 *W.R.* 484 *F.B.*, 10 *B.* 604) *Fol.* (10 *C.* 86, 22 *A.* 248), *Dist.*, 23 *C.* 821, 22 *M.* 494. *Dist.* nor *res judicata* 2 *Pat. L.T* 585 : 63 *I.C.* 693.

—The words must be read so as to convey something *ejusdem generis with the* preceding words. 1944 *Lah* 136 217 *I.C* 65 *F.B.*, 1951 *Pat.* 486.

When a suit is dismissed on the ground that it is barred by limitation, the time spent cannot be excluded. 1948 *E.P.* 63 : *D.L.R. Simla* 70.

—The time taken in proceedings necessitated for ascertaining the correct value of the suit can be deduced under s. 14, where it is found that the plaintiff acted *bonafide* throughout and did not intenationally under-value the suit. 1932 *Cal.* 504: 36 *C.W.N.* 426.

—Plff. is entitled to deduct time though he was proceeding with the suit in spite of deft's objection as to jurisdiction. 1935 *Pat.* 82.

Previous proceeding in wrong Court.

—This sec. applies whether the defects as to jurisdiction exists from the beginning or occurs at a later stage, 1943 *All.* 162 : 207 *I.C.* 571.

—If the previous suit was prosecuted *bona-fide* and with due diligence, time should be deducted. 30 *M.L.J* 529 *P.C*, 44 *M.L.J.* 179: 73 *I.C.* 130, 17 *W.R.* 518, 20 *C.*, 29. 19 *A.* 348; 3 *C.W.N.* 233. 23 *A.* 434, 29.*C.* 626, 20 *C.* 264, 19*M.* 90. 1922 *All.* 404. *even if it was in wrong court.* 7 *C.* 284, 24 *W.R.* 26. 12*M.* 1, 49 *A.* 555: 1927 *All.* 719, 14 *A.L.J* 212, 15 *A L.J* 777, 1925 *Bom.* 113, 1949 *Pat.* 293; 28 *P.* 102: 4 *D.L.R. Pat.* 58, *or in court without jurisdiction.* 1927 *Man.;* 813, 20 *C.* 264. 28 *C*, 238: 5 *C.W.N.* 150, 2 *A.* 722 *P.C.*, 48 *C.W.N.* 821, But not in case of test claim. 1923 *Nag.* 24: 74 *I.C.* 317.

—Time spent in prosecuting a suit in a court without pecuniary jurisdiction based on gross under valuation cannot be excluded. 1945 *Pat.* 369: 24 P. 462.

—The time during which the wrong court remains closed before filing cannot be deducted under this sec. 37 *A.* 242: 37 *Bom. L.R* 535: 39 *C.W.N.* 640: 1935 *P.C.* 85 *P.C.*, 44 *M.* 817, 30 *M.* 131, 14 *A.L.J.* 310, 36 *M.* 482, 45 *B.* 443.

—Time upto the date of actual return may be excluded in a proper case. 1944 *Bom.* 37: 215 *I.C.* 121, 1947 *Bom.* 140: 231 *I.C.* 282.

Exclusion of time of proceeding *bonafide* in court without jurisdiction—contd.

—When plaint was presented in wrong court which passed an order of return but it was actually returned three days after, on which date it was refiled, the suit was time barred. 17 *C.W.N.* 1043. 20 *I.C.* 183, 23 *Bom. L.R.* 1023: 64 *I.C.* 160, 46 *B.* 211, 7C. 284, 10 *A.* 348 *F.B.*, 25 *I.C.* 403, 60 *C.* 1122: 1933 *Cal.* 914,

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but the returning court cannot extend time of refiling. 17 *C. W. N*, 515, 24 *C.L.J.* 355, and the time of taking copy of the order cannot be deducted. 46 *C.L.J.* 452 : 1928 ***Cal.*** 46.

—time required till preparation of decree for cost can be excluded. 1938 ***Pat.*** 203 : 175 *I. C.* 89.

—where the previous application under or. 21 r. 89 was dismissed as deposit was not sufficient the period cannot be excluded in computing limitation for a subsequent application under or. 21 r. 90 C. P. Code, 1954 ***Cal.*** 202 : 92 ***C.L.J.*** 237.

—in computing the limitation of a final mortgage decree under Art. 181 the applicant cannot exclude the period spent in the prior execution proceedings. 57 *A.* 242 : 37 ***Bom.*** ***L.R.*** 533 : 1035 ***A.L.J.*** 578 : 1935 ***P.C,*** 85 : 39 *C.W.N.* 640 : 61 C.*L.J.* 267 ***P.C.***

—time cannot be deducted on the basis of an application which would not lie to any court at all, 1926 ***Bom.*** 51, and insolvency proceeding does not save limitation. 47 ***B.*** 244 : 24 ***Bom.*** ***L.*** ***R.*** 509 : 67 ***I.*** *C.* 757, 4 D.L.R. ***Bom.*** 110, 6 ***D. L. R.*** ***S.*** *C.* 73 : 1951 ***S.*** *C.* 16.

—an issue was raised between two defts. one of them got judgment in his favour which was reversed in appeal, the time during which the judgment of the lower court wsa in his favour may be deducted under the sec. 35 *C.* 209 : 7 *C.L.J.* 59 : 12 ***C.W.N.*** 326 : 3 ***M.L.T.*** 90 ***P.C.***, (12 ***M.I,A.*** 244 ***P.C.***, 7 ***M. I. A.*** 323, ***P***, *C.*), *Fol.* affirmed by the ***P. C, in*** 43 ***C.*** 660 : 20 ***C.W.N.*** 522 : 24 ***C.L.J.*** 1 ***P.C.***

Due diligence.

—good faith involves due care and attention. 1944 ***Mad.*** 47 : 211 ***I.C.*** 480., 1946 ***Pat*** 301 : 226 *I, C.* 195.

—the plff, cannot be said to have prosecuted with due diligence when, owing to his negligence or default the suit is so framed that the court cannot try it on merits. 35 ***C.*** 728 : 12 ***C.W.N.*** 473, 62 ***C.*** 510 : 39 ***C.W.N.*** 606.

Bonafide claim.

—where the application to sue as a pauper is mala fide, sec. 14 does not apply. 1939 ***Cal.*** 394 : 34 ***C.W.N.*** 686 : 184 ***I.C.*** 345.

—a claim cannot be said to be not ***bona-fide*** when two courts concur in decreeing the claim, although the final court of appeal holds the decree to be erroneous. 29 *C.* ***W.*** ***N.*** 202 : 1925 ***Cal.*** 456.

Decisions differing.

—time of proceeding in a civil court relying on the decision of the H.C. 44 ***A.*** 296.

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—Ss. 14-15

Sec. 14 read with Section 29 (2).

Time available under section 32(3) of the Waqf Ordinance which is a special law having long expired, the respondent might invoke provision of section 14 of the Limitation Act for exclnding time that was spent in other proceedings—But she being found negligent in the conduct of these proceedings, she is not entitled to get the benefit of section 14 of the Limitation Act. *Syed Amir Hossain Vs. Mrs. Nadera Rahman*, 37 *DLR A.D. P* 185

15. EXCLUSION OF TIME DURING WHICH PROCEEDINGS ARE SUSPENDED.—(1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

—Exclusion of time during which proceedings are suspended,

When a Board vacates a stay order, which prevented the decree holder from proceeding with the execution proceeding. It cannot be said that the decree-holder was debarred from the proceeding with the execution of the decree. (a) (1954) 6 DLR 654.

—Where a decree of a Court is attached by another court under Or. 21. r. 53 (1) (b), C.P. Code, the attachment does not operate as a stay of the execution of the decree within the meaning of section 15 of the Limitation Act; there being no bar either to the attaching decree-holder or his judgment-debtor to apply for the execution of the attached decree. Therefore the party seeking to execute the decree is not entitled to deduct the period during which the decree remained under attachment, (b) (1951) 3 DLR 254.

—Suit against Government or public officer—Prior notice not obligatory for suing the Government or a public officer acting in his official capacity—Entertainment of such suit not pependant on two month's notice - In computing the period of limitation, period of such notice cannot be excluded—Such exclusion is permissible where prior notice is obligatory. *K. M. Atiqullah Vs. Province of East Pakistan* (1970) 22 DLR 457.

—S. 15

—Attachment of decree of one Court by another Court—Limitation execution does not stop running,

Where a decree of one Court is attached by another under Order XXI, Rules 53(1)(b) of the Code of Civil Procedure, the attachment does not operate as a stay of execution of the decree by injunction or by order of the Court within the meaning of section 15 of the Limitation Act so as to entitle the party seeking execution of the decree to a deduction, for purposes of limitation of the period during which the decree remained under attachment. ***Badi Ahmad Chowdhury Vs. Amirazzama*** PLD 1952 Dacca 227; PLD 1951 Dacca 649—3 DLR 254.

—No'ices under S. 80 C.P.C by successors—in-interest of a person when time should be excluded.

Reading section 80 C.P.C. and section 15(2) Limitation Act together, it becomes clear in case of several successors-in-interest having to secrve notices under section 80, that either it should be clarified in section 80 C.P.C, that it does not bar a suit by the successor-in-interest of a person who has already served a notice, or section 15(2) of Limitation Act should be so amended as to exclude the period of all notices served by predecessors-in-interest of the person suing. The former appears to be the proper step to take. ***Federation of Pakistan Vs. Ehsan Elahi*** PLD 1955 Lahore 303.

—Notice under S. 80 C.P.C Entire period of notice must be excluded from period of limitation.

Therefore in case of a notice unders 'S. 80 C.P.C the entire period including the date on which the notice is served and the date of its expiry must be excluded for the purposes of limitation, that section 240 of the Government of India Act makes no distinction between permanent and temporary servants of the Crown. ***Punjab Province Vs. Athar Ali*** PLD 1956 (W.P) Lahore 886; PLR 1956 Lahore 2197—8 DLR .WP. Lahore 86.

Exclusion of time during which proceedings are suspended.

—an order granting time to Jt. Dr. to pay operates as a stay of execution. 1947 *Nag*. 101 : 228 ***I.C.*** 576.

—this sec. applies only where the execution is completely and absolutely stayed. 1944 ***Bom.*** 303.

—the time during which execution is stayed by injunction shall be excluded. 35 ***C.L.J.*** 135, 1925 ***All.*** 572, 6 ***Pat.*** 635 : 102 ***I.C.*** 327, 38 ***B.*** 153, 34 ***A.*** 436, 62 ***I.C.*** 255, 34 ***C.L.J.*** 163, 1926 ***All.*** 473, 49 ***A.*** 276: 1927 ***All***, 16 : 25 ***A.L.J.*** 201 ***F.B.***, 39 ***C.W.N.*** 1030.

—this sec. applies to the limitation prescribed in the schedule to the Act and does not control s, 48 C.P.C. which is self-contained. 45 ***M.*** 785, 1928 ***Mad.*** 1154, *contra* 1943 ***Bom.*** 164, 1944 ***Nag***. 155, 1847 ***Nag.*** 101 : 228 ***I.C.*** 756.

—Ss. 15-16

—an order of attachment of a decree or of attachment before judgment is not an injunction or order staying a snit within this sec. 13 *A*. 70, 17 *B*. 198, *P.C.*, 21 *C.W,N*. 1147.

—When no execution was pending the Judge ordered in a connected suit that the D. Hr. might wait for some time for payment, the order did not suspend limitation and did not operate as a stay of the execution proceeding. 12 *Pat*. 195 : 57 *C.L.J.* 276 : 37 *C.W.N*, 548: 1933 *M.W.N.* 112 : 1933 *P.C.* 52 *P.C.*

—in case of joint Jt. Drs. stay order agrinst one cannot extend the period of limitation against others 51 *M*. 583 : 1928 *Mad*. 627, 30 *M*. 268 *Expl*. 38 *M*. 419 *Ref*. 1921 *Mad*. 116, *Diss Contra*. 1928 *Lah*. 349, 1929 *Pat*. 549, 1927 *Pat*. 344.

16. EXCLUSION OF TIME DURING WHICH PROCEEDINGS TO SET ASIDE EXECUTION-SALE ARE PENDING.—**In computing the period of limitation prescribed for a snit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.**

—Property purchased by auction purchase—Possession taken through Court—Section not applicable.

Plaintiff obtained through an executing Court formal possession of the property purchased at an auction sale and through a suit for actual possession of the same after 12 years from the date when formal possession was given to him seeking to exclude under S. 16 the period during which the proceedings to set, aside the sale were prosecuted.

Held : (1) that S. 16 could be helpful only to an auction purchaser who had not obtained possession through Court. As the plaintiff had obtained symbolical possession he could not avail of S. 36. *Balgabind Prasak Vs. Lila Kuer* AIR (33) 1946 Patna 202.

S. 16. Exclusion of time of proceedings to set aside execution sale.

the word "proceedings" in this sec. includes a suit for setting aside sale; so the plff. aucton-purchaser's suit for possesson will not be barred if the deft. Jt. Dr. conducted a suit for setting aside the sale. 21 *C.W.N.* 305 : 25 *C.L.J.* 133 but see 1917 *Pat*. 58.

—when the auction purchaser has obtained symbolical possession he cannot avail of this sec. 1950 *Assam* 50.

—where Art. 144 L. Act. *applies* no deduction of time under s. 16 can be allowed either in law or equity. 26 *C.W.N*. 364 : 70 *I.C*, 420 : 1923 Cal. 282.

—Ss. 17-18

17. EFFECT OF DEATH BEFORE RIGHT TO SUE ACCRUES.—(1) Where a person, who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

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

(3) Nothing in sub-sections (1) and (2) applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

S. 17 Effect of death before right to sue accrues.

—the intention of the sec. is to limit the time during which an action may be brought and not to take away the right of a person who is a possible deft. to an action. 38 *Bom. L.R.* 1233: 41 *C.W N.* 22: 1936 *P.C.* 309 *PC.*

—s. 6 of the L. Act must be read in conjunction with s. 17, and the operation of earlier sec, must be regarded as qualified by and subject to the exception prescribed by the latter sec. 9 *C.W.N.* 537.

—in a suit for an account accruing to the employer on the death of his manager, limitation will not run until administration has been taken out to such manager's estate. 7 *C.* 627.

—in a suit for account of a partnership business on behalf of a minor by the Administrator-General, time runs from the date of the issue of administration. 23 *B.* 544, *P.C.*

—the executor of a will is a legal representative capable of instituting a suit within s, 17 (1) from the date of the testator's death and not from the date when he obtains probate. 20 *C.W.N*, 833: 35 *I.C*, 323: 1916 *M.W,N*, 455; P.*C.*, 24 *I.C.* 852: 37 *M.* 175.

18. EFFECT OF FRAUD.—Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him.

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the time limited for instituting a suit or making an application.—

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

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

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

The principle of limitation—Articles 142 and 144 of the Limitation Act will not be applicable to the instant case, because in cases of fraud the plaintiff will be competent to take advantage of section 18 of the Limitation Act in computing the time for binding his suit. *Mokbul Hossain & Vs. Anil Kumar Saha.* (1985) 37 DLR 131.

If fraud is proved then there is no question of limitation and it will run from the date when fraud was detected. *Abul Khair Mia, Vs. Abdul Latif Sardar.* (1980) 32 DLR (AD) 167

—In order to deprive a party of securing an extension of time definite knowledge of fraud will have to be proved, only clue or hint will not do.

In order to exclude the application of section 18 and deprive a party of securing an extension of time on the ground of the existence of fraud it is necessary that the injured party should not only have any clue or a hint relating to the existence of fraud, but should know at least broad particulars of it. *Najmul Huq Faraji Vs. Panchanan Poddar* (1969) 21 DLR 78

—Allegation of fraud to save limitation under section 18 must be clearly made out in the pleading. *Naeem Finance Limited Vs. Bashir Ahmed Rofiqui,* (1971) 23 DLR (SC) 81.

—Failure to invoke section 18 when materials on record discloses fraud disentitles the party to invoke the aid of that section in appeal. *Ibid.*

—When execution of a decree within 12 years was prevented by resort to fraud upon Court—the Court is competent to direct execution upon an application being made after 12 years.—Fraud includes "deceit" and circumvention". Judgment obtained by fraud is non-existent in the eye of law. *Saifur Rahman Vs. Haidar Shah* (1967) 19 DLR (SC) 433.

—In a sale set aside case judgment debtor must have complete knowledge of fraud before time runs against him.

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—In a case to have the sale set aside under Order 21, rule 90 of the Civil Procedure Code on the ground of fraud in the publication and conduct of the sale the judgment debtor must have knowledge not merely of the fact of sale but a clear and definite knowledge of the fact which constitutes the fraud before time can run against him.
It is not sufficient to know about some hints and clauses which if vigorously and actively followed up, might have had a complete knowledge of fraud. ***Nur Ahmed Chowdhury Vs. Ruhul Amin Chowdhury*** (1961) 13 DLR 101.

—Effect of fraud

When by a fraud involving suppression of processes and submission of false return the applicant is kept out of knowledge of the sale property such fraud must be held to have a continuing influence. Indeed in such a case it is for the other side to show that the injured party had clear and definite knowledge of the facts which constitute the fraud at a time from which taken as a starting point the suit is barred by limitation (c). (1955) 7 DLR 627 (633),

—Where concise statement is not issued due to landlord's fraud and fraudulent motive, the sale will stand vitiated and the petitioner will be entitled to get the benefit of sec. 18. (1959) 11 DLR 442,

—Fraud, against whom to be proved—Carelessness on the part of the Court in effecting sale may go so far to the root of the matter as to make the whole sale void. (1951) 3 DLR 97,

In order to invoke the aid of sec. 18 of the Act, the petitioner will have to prove that there was fraud which prevented him from getting only knowledge of the exparte decree. (1951) 3 DLR 46,

—A gross undervaluation of the property to be put up for sale amounts to a fraud; in such a case the judgment-debtor is entitled to claim the benefit of the section. Where there was fraud in publishing or conducting the sale, the onus would be shifted to the decree-holder auction purchaser to prove that the applicant had knowledge of the sale and that knowledge was within the presctibed period of limitation. (a), (1953) 5 DLR 43.

—The section casts an initial onus on the person seeking extension. He must show that he was kept from the knowledge of his right to apply by reason of fraud committed by the anti-party or to which the anti-party was privy. Once this is established, the onus then shifts on the person guilty of the fraud to shew that the victim had come to know of the fraud at a time too remote to allow him to file the application.

—The onus could not be discharged by showing merely that he had ceased to practise fraud at the relevant time. What is necessary to show is that] the effect of the fraud already committed, namely ignorance was removed. The principle is this the person affected by the fraud cannot apply for

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his remedy owing to ignorance of the real facts. That is why time does not run against him (b). (1954) 6 DLR 89.

—Provisions of section 18 will not apply to a local Act when it is expressly excluded (c). (1957) DLR 57 (58).

—Where a sale has been brought about by means of fraud, proviso (a) to sec. 36 of the Public Demands Recovery Act will not be attracted and the plaintiff will be competent to take advantage of section 18 of the Limitation Act in computing the time for bringing his suit *Ibid.*

—Applicability—Fraud antecedent to sale—not necessary to prove.

For invoking the benefit of section 18 Limitation Act to extend the period of limitation of an application under Order XXI, rule 90 of the Civil P. C, it is not necessary to prove fraud subsequent to the sale. If there is any fraud antecedent to the sale, its influence must be deemed to continue, till the party affected has clear knowledge of it. ***Jnanoda Sundari Nandi Vs. Narayan Chandra Sardar*** PLD 1957 Dacca 198—7 DLR 627.

—Bengal Public Demands Recovery Act—Sale affected by fraud—Sections applicable.

Section 29 of the Limitation Act says that the provisions of section 18 of the Act will apply to a special or local law unless its provisions are expressly excluded by such special or local law. The Bengal Public Demands Recovery Act. a local law, has not expressly excluded the operation of the provision of section 18 of the Limitation Act in cases where these provision are applicabale.

Therefore, where a sale has been brought about by means of fraud proviso (a) to section 36 of the Public Demands Recovery Act will not be attracted and the plaintiff will be competent to take advantage of section 18 of Limitation Act in computing the time for bringing his suit. ***Tarangini Devi Vs. Govindra Mallik*** 9 DLR 57.

—Carelessness on part of Court in case of sale under Bengal Tenancy Act—Section not applicable—Suit is never barred by limitation.

In a proper case where there is a particular decree of carelessness on the part of the court in effecting the sale such carelessness may, in certain cases, go so far to the root of the matter as to make the whole sale void, The reason why the application will be allowed though filed beyond the period of limitatton is not because the case is to be treated as one of fraud, allowing the benefit of section 18 of the Limitation Act; but because the case is to be treated as one where the sale is void owing to the carelessness of the sale proceedings, and therefore no question of limitation arises. ***Sundari Bibi Vs. Bhupesh Chandra*** 3 DLR (1951) 97.

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—Concealment—Not always considered fraud.

Mere concealment does not necessarily imply fraud. There must be some evidence to establish affirmatively that the respondents had designed to prevent the discovery of the cause of action from the plaintiff, In pre-emption cases wilful omission to notify the fact of sale to the pre-emptor does not per se connote a fraud.

—Jahana Vs. Sher Mahmmad PLD 1961 (W.P.) Lah. 1042.

—Exparte decree—Party must prove fraud which led to his not having knowledge of decree, in order to invoke the aid of section 1 of the Limitation Act, The petitioner will have to prove that there was fraud which prevented him from getting any knowledge of the exparte decree. ***A Rahman Vs. Braja Mohan*** 3 DLR 46.

—Fraud in sale—Gross undervaluation of property—onus of proving that fraud was in knowledge of the party within period of limitation.

A gross undervaluation of the ptoperty to be put up for sale amounts to a fraud; in such a case the judgment-debtor is entitled to claim the benefit of the section.

—Where there is fraud in publishing or conducting the sale, the onus would be shifted to the decree-holder auction purchaser to prove that the applicant had knowledge of the sale and that knowledge was within the prescribed period of limitation. ***Noabjar Vs. Chandra Kumar*** 5 DLR 43.

—The section casts an initial onus on the person seeking extension He must show that he was kept from the knowledge of his right to apply by reason of fraud committed by the anti-party or to which the anti-party was privy. Once this is established, the onus then shifts on to the person guilty of the fraud to show that the victim had come to know of the fraud at a time too remote to allow him to file the application.

This onus could not be discharged by showing merely that he had ceased to practise fraud at the relevant time. What is necessary to show is that the effect of the fraud already committed namely, ignorance was removed. The principle is this; the person affected by the fraud cannot apply for his remedy owing to ignorance of the real facts. That is why time does not run against him. ***Sris Lal Vs. Brinda Ram*** 6 DLR 89.

—Fraud—Against whom must be proved.

The judgment-debtor who brings the case under this section must not only prove fraud on the part of someone, but he must prove fraud on the part normally of the decree-holder or auction purchaser, that is to say, the person against whom he is bringing his application for setting aside the sale. ***Sundar Bibi Vs. Bhupesh Chandra*** 3 DLR 97.

—Gross under valuation of property—Fraud—Benefit of section available to judgment debtor.

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Gross under-valuation of the property to be put up for sale amounts to fraud and in such a case the judgment debtor is entitled to claim the benefit of section 18 of the Limitation Act, 1908 and that where there was fraud in publishing or conducting the sale, the onus would be shifted to the decree-holder auction purchaser to prove that the judgment-debtor had knowledge of the sale and that knowledge was within the prescribed period of limitation. ***Nur Ahmed Vs. Ruhul Amin*** PLD 1961 Dacca 589—13 DLR 101.

—Knowledge of fraud—What is—Explained.

Mere knowledge of the sale will not be sufficient to put the plaintiff out of Court on grounds of limitation.

—The knowledge of sale and knowledge of the fraud are two different things. The knowledge of the facts constituting the fraud may include the knowledge of the sale but the mere knowledge of the sale does not include the knowledge of the facts of fraud. ***Ahsanullah Fakir Vs. Jogendra Nath*** PLD 1961 Dacca 703.

—Proof of fraud—Onus—Knowledge of fraud must be proved by the other party.

When a party alleges fraud and invokes the aid of section 18 of the Limitation Act, he must first establish the fraud committed by the other side, and once he has done so, it will be for the other side to prove that the party injured had the knowledge of fraud at a point of time beyond the period of limitation calculated from the time the application is filed. ***Ahsanullah Fakir Vs. Jogendra Nath*** PLD 1961 Dacca 703.

PRINCIPLE UNDERLYING SECTION 18

In a case when fraud is proved, length of time ought not upon principles of eternal justice to be admitted to repel relief. ***Wood, 1st ed., p.*** 414;1899 ***A.C.*** 351 (***P.C.***), On the contrary, length of time during which the fraud has been successfully concealed and practised is rather an aggravation of the offence, and calls more loudly upon a Court to grant ample and decisive relief. ***Wood, 1st ed., p.*** 414. In Equity the rule was early adopted that time would not run against the right of a person defrauded to obtain relief so long as the fraud remained undiscovered; but as soon as the circumstances constituting the fraud became known, subsequent lapse of time would operate as a bar. ***Hewitt, p.*** 205;1899 ***A. C.*** 351 (***P.C.***). Those who fraudulently appropriate the property of others should be assured that no time will secure to them the fruits of their dishonesty, but that their children's children will be compelled to restore the property of which their ancestors have fraudulently possessed themselves, 1873, 8 ***Ch.*** 8 ***Ch. App.*** 383 ***at p.*** 397; 1922, 27 ***C.W.N.*** 587 587 ***at p.*** 604.

SECTION REQUIRES ACTIVE AND DESIGNED FRAUD.

The person who relies on section 18 must show that he has been a victim of what the English decisions term "concealed fraud" ***Shephard, p.*** 95. ***Sec*** 18 ***is directed against cases of active and designed fraud;*** 1930. 6 ***Luck.*** 374 ***at p.*** 377.

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—Fraud must be actual, not what is called constructive, and it must be active. *Shephard, p.* 95;1927, 101 *Ind. Cas.* 322 (*All.*) 1928,53 *Bom.* 271 *at p.* 289. The words "been kept" in the opening paragraph of section 18 Imply that the fraud must be active, as in the English case of Vane v. Vane (1872, 8 Ch. App. 383), where the plaintiff (really the eldest legitimate son of his parents) was designedly brought up in the belief that he was only the second legitimate son. *Stokes Vol* 2, *p.* 968.—Concealed fraud does not mean the case of a party entering wrongfully into possession ; it means a case of designed and hidden fraud by which a party, knowing to whom the right belongs, conceals the circumstances giving that right, and by means of such concealment enables himself to enter and hold. 1890, 14 *Bom.* 408 *at p.* 427 (*S.C.* 1892, 17 *Bom.* 341. *P.C.*);

Concealment of cause of action preventing running of the statute must consist of some trick or artifice preventing inquiry or calculated to hinder a discovery of the cause of action by use of ordinary diligence. *Wood, 4th ed., p.* 1422; 86 *P. R.* 1902; 27 *Pun. L.R.* 1903; 32 *P. R.* 1913.

MERE CONCEALMENT. SILENCE OR PASSIVENESS IS NOT FRAUD.

—There must be some affirmative act designed to prevent, and which does prevent, the discovery of the cause of action. *Wood, 4th en., p.* 1422, Mere silence or passiveness (there being no fiduciary relation or act of the party calculated to deceive or lull inquiries) is not fraudulent concealment. *Wood, 4th ed, p* 1371 ; 1921, 41 *M. L. J.* 274; 1928 53 *Bom.* 271.—Active concealment of fraud is not always required. If fraud is secret, then the statutory period is postponed to the time when it was discovered; and the 6 years or other period then begins to run. *Lightwood, p.*301; 1899 *A.C.* 351, (*P.C.*) On the other hand, if there is no fraud, defendant is not deprived of the benefit of the statute because plaintiff was not aware during the statutory period, that he had a cause of action. *Lightwood, p.* 301;1916, 36 *Ind. Cas.* 418 (*L, Bur.*); 1930, 6 *Luck*:374 *at p.* 377,—Dishonesty or unfair or wrongful means in obtaining possession does not prevent the possessor from availing himself of the statute, unless the case falls within section 18 : 1866, 5 *W. R.* 283;1864 *W, R.* 364 ; 1899, 24 *Bom* 104 *at p.* 111.

SUBSEQUENT FRAUDULENT CONCEALMENT—ENGLISH AND INDIAN LAW.

—Under the English statute (section 26, 3 and 4 Wm. IV, C.27) it is not enough to prove concealed fraud; and plaintiff must show that he has been by such fraud deprived of the property sought to be recovered, i.e., that the fraud was the cause of the deprivation. 1890-15 *A. C.* 210; 1901, 1 *Ch.* 143. (It is enough that good faith has existed at the moment of the acquisition, i.e., subsequent fraud alone, however reprehensible in itself, does not vitiate previous honest possession. Yet the imputation that fraud was employed in the original acquisition of the property may be strengthened by circumstances in the subsequent conduct of the party to whom the fraud is imputed, such as the abstraction of the muniments of title which are impugned as fraudu-

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lent.) *Macpherson, C. P. C., (Appendix), p.* 201.—Thus, where there is at first a mere wrongful entry so that the statute commences to run against the person entitled, and subsequently possession is taken or kept by means of a fraud, this does not bring the case within the English statute. The owner is deprived of the land by the wrongful entry, not by the fraud, *See* 1893, 2 *Ch.* 545, *Willis v. Earl Howe.* i.e., a fraud committed and concealed even by the defendant or one of his predecessors in title, would not avail the plaintiff if the fraud and its concealment were subsequent to the wrongful entry which gave the plaintiff or his predecessors a right to bring ejectment. 1894,1 *Ch,* 599 *at p.* 605.

Where one practises fraud to the injury of another, the subsequent concealment of it from the injured party is in itself a fraud; and if he is thereby kept in ignorance of his cause of action, he is kept in ignorance by the fraud of the defendant within the meaning of sec. 18, Indian Limitation Act.—*See Wood, p.* 1373.

PROOF OF FRAUD.

—The onus is on the person seeking the protection of section 18 to prove the fraud.—1909, 36 *Cal.* 654;1874, 22 *W.R.* 165 (*P.C.* —Moreover, by reason of Order 7, rule 6, C.P.C., an exemption on the ground of fraud must be claimed in the plaint. 1934,67 M.L.J. 361 (*P. C.*) *at p.* 364,—Fraud must be proved and cannot be inferred, and the court must not presume its existence from certain suspicious circumstances. 1842, 3 *Moo. Ind. App.* 1; 1901, 24 *Mad.* 387 (*P.C.*) *at p.* 396.

KNOWLEDGE OF FRAUD.

—Mere suspicion.—Knowledge required by section 18 is not mere suspicion; it must be knowledge of such character as will enable the party defrauded to seek his remedy in Court. 1884,6 *All.* 406; 1890, 14 Bom. 408, (affirmed, on appeal, in 1892, 17 *Bom.* 341, *P. C.* In other words, the knowledge—must be clear and definite knowledge of the facts constituting the particular fraud.—1922 49 *Cal.* 886; 1934, 16 *Lah.* 408. The right of the party defrauded is not affected by lapse of time, so long as he remains, without any fault of his own, in ignorance of the fraud that has been committed.—1899 *A. C.* 351 : 1922, 49 *Cal.* 886 *at P.* 891. No length of time will run to protect or screen fraud so long as a party is ignorant that it he possesses any right at all, or knowing of his right, is ingnorant that it has been infringed. 1895 *A. C.* 495; i. e., time does not begin to run against the injured party until he has full information of his rights-and injuries. 1932, 36 *C. W. N.* 758 *at p.* 766.—But the statute is put in motion as soon as the fraud is discovered, although its full extent or all facts are not known. *Waod, p.* 1360.

REASONABLE DILIGENCE IN DISCOVERING FRAUD.

Under section 18 of Indian Limitation Act, time runs from the date when the fraud first becomes known, and it is not enough to show that

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In other words, the discovery of the fraud marks the time whence the period of limitation (under section 18) is to start ; and the fact of a person once defrauded failing to make enquiries or being put upon suspicion cannot be used against him as it could under the English statute, 1932, 36 *C W N.* 758 *at p.* 767 ; *cf* 1882, 6 *Bom.* 628 *at p.* 636. It is a question of pure fact when the fraud first became known to the plaintiff. 1889, 12 *Mad.* 512 (*P.C.*) *at p.* 516 ;—But Section 18 does not (it is submitted) mean that one can shut his eyes to obvious facts. The Court may, therefore having regard to the nature of the fraud, the facility with which it may be Known and to the likelihood of attention being called to it, infer such knowledge when the means of knowledge first came or have for a reasonable time been within plaintiff's reach. 1892,20 *Cal,* 425 ; 1869, 11 *W.R.* 163.

KNOWLEDGE OF FRAUD—ONUS.—

"Of course, the plaintiff has to make out fraud first. If the plaintiff establishes fraud, and the defendant again pleads limitation, the defendant has to prove when the plaintiff had knowledge, *See* 1930. 128 *Ind. Cas* 257 (*P. C.*). *per Lord Thankerton* (*In argument*). *"If fraud is once established, the onus is on the defendont* : 17 *Bom,* 341, *P. C.*" , (*per Sir Benod Mitter; Ibid.*),

"DOCUMENT"—CONCEALMENT OF.—

Where the acts which are claimed to constitute the fraud are evidenced by public record or by judicial proceedings, it cannot be said that there was such a concealment as would prevent operation of the statute, *Wood, 4th ed,, p.* 1374; *of.* 1881, 3 *Mad.* 384 (*P. C.*) *at p.* 399.—Thus if a document is regis'ered, that may be sufficient to displace the theory of concealment.—1881, 3 *Mad.* 384 (*P. C.*) *at p.* 398; *cf.* 1884, 6 *All* 406.

LACHES AND ACQUIESCENCE.

—When once the fraud has been discovered it is plaintiff's duty to claim relief promptly, and he is not entitled to any definite period, such as 12 years from the date when it was discovered. *Lightwood, P.* 298; *cf* 1914, 2 *K. B.* 139.—It is submitted that under the Indian Limitation Act, plaintiff is entitled to the full statutory period from date of discovery of the fraud There might, of course, be circumstances of acquiescence, laches and of prejudice to defendant arising after discovery of fraud, which would (even in India) entitle the Court to refuse relief, even though the period of limitation has not elapsed since discovery of the fraud.—*See Darby, p.* 263 *Lightwood, p.* 298 ;

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—fraud in this seco is different from fraud under sec. 48 (2) C.P. C.6 *D.L.R. S. C,* 73 : 1951 *S. C.* 16 : 1951 *S. C. J.* 19,

—if the plff. be fully aware of his right, in spite of the fraud practised upon him, he is not entitled to the benefit of this sec. 19 *C. W. N.*

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533 : 24 *I. C.* 249, because this sec. applies only when the plff. has been kept from the knowledge of his right and not from exercising his right. 25 *I. C.* 884, 43 *A.* 440 : 60 *I. C.* 774.

—to constitute fraud, there must be some abuse of confidential position, some intentional imposition, or some deliberate concealment of facts, a designed fraud by which a party knowing to whom the right belongs, conceals the facts and circumstances giving the right. 55 *C. L, J.* 420 : 36 [*C.W.N,* 758.

—to bring the case within s. 18 the plff. must allege when the fraud pleaded came to his knowledge, 3 *Pat. L.T,* 529 : 31 *M.L.T,* 209 : 67 *I.C.* 914 : 37 *C. L. J.* 430 : 27 *C. W. N.* 294 : 25 *Bom. L. R.* 680 *P. C,* and must establish that there has been fraud by means of which he has been kept from the knowledge of his right to sue. Once this is done the burden is shifted on the other side to show that the plff. had knowledge of the transaction before the period of limitation. 49 *C.* 886. : 36 *C. L. J.* 295, 1935 *Cal.* 779 ,1932 *Cal.* 157, 5 *Pat. L.J.* ,200, 16 *C. L. J.* 126, 32 *C. W. N.* 519 47 *C. L. J.* 351 : 1928 *Cal.* 349, 1929 *Pat.* 228, the mere fact that some hins and clues reached the injured party, which perhaps if vigorously and acutely followed up, might have led to a complete knowledge of the fraud is not enough to constitute clear and definite knowledge of it. 36 *C. L. J.* 295 : 49 *C.* 886, 17 *B.* 341 *P. C.*, 1934 *Lah.* 878 : 155 *I. C.* 654.

—"fraud" is not to be lightly charged or lightly found specially in cases of application to set aside an execution sale where this reserve is too often neglected. 16 *C.W N.* 894 *P.* 896.

—particular allegation of fraud must be made and proved. 17 *C. W. N.* 524 *C. L. J.* 335,15 *I.A.* 119 : 15 *C.* 433 *P. C.* 1921 *Pat.* 181, 2 *Pat L.T.* 401, 41 *C. W. N.* 746 *P. C.*

—fraud may be proved by theories and inferences from facts proved. 18 *C, W. N.* 185.

—this sec. applies where auction purchaser is not guilty of fraud. 1935 *Cal,* 89 : 154 *I.C.* 347, 1933 *Mad.* 626 :145 *I.C.* 388, 1950 *Mad.* 509, 55 *C, W. N.* 197, 1954 *Cal.* 604,

—sec. 18 applies although auction purchaser is not guilty of fraud. 1949 *Cal.* 212 : 53 *C. W. N.* 587, 1950 *Cal.* 166.

—in an application to set aside a sale on the ground of fraud this sec. will apply only where the auction purchaser was a party or accessory to fraud which accompanied the sale. 1951 *Cal.* 402.

—application for setting aside a sale may be made after the limitation period, where the fact of the sale has been concealed from the knowledge of the applicant by the fraud of the opposite party. 18 *C. W. N.* 1266 : 20 *C. L. J.* 341, 16 *C. W. N.* 894, 19 *C. W. N.* 553 : 24 *I. C.* 249, *I. C. W. N.*

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67, 30 *C.* 142 : 7 *C. W. N.* 894, 19 *C, W. N.* 305, 32 *M. L. T.* 232 : 72 *I. C.* 46, 45 *A*, 316, 4 *Pat L. T.* 306 : 99 *I. C.* 94 946 44*C. L. J.* 565, 1939 *Cal.* 663 : 43 *C. W N.* 862, and not of the third person. 1925 *Cal.* 1227,

—where an execution sale was conducted fraudulently by the D. Hr. but the property was *bona-fide* purchased by third person in an application for setting aside sale made by a mortgagee beyond 30 days this section, did not apply, 1936 *Cal.* 706, 41 *C. W. N.* 993.

—mis-statement of value, even if it can be described as "fraud" does not constitute fraudulent concealment and non-publication of sale proclamation in the mofussil would not by itself bring the case under s. 18 *L. Act.* 16 *C. W. N.* 894 p. 890 41 *C. W. N.* 993.

—when the true nature of right was not discovered by the plff. earlier than the time at which his demand for possession was resisted, limitation runs from the date of resistance. 27 *C. W. N.* 949 : 37 *C, L, J.* 346 : 44 *M, L, J,* 489, *P;C,*

19. EFFECT OF ACKNOWLEDGEMENT IN WRITING.—(1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed ; but, subject to the provisions of the Evidence Act 1872 (1 of 1872), oral evidence of its contents shall not be received.

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

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Explanation II.—**For the purposes of this section, "signed" means signed either personally or by an agent duly authorised in this behalf.**

Explanation III.—**For the purposes of this section an application for the execution of a decree or order is an application in respect of a right.**

Payment of rent at rates shown in the provisional rent-roll from year to year by the petitioner to the Government constitutes an acknowledgment within the meaning of section 19 of the Limitation Act by the petitioner to pay the enhanced rate of rent and as such the peritioner's liability to pay at enhanced rate shall run from the last payment of provisional dues and shall continue til. com- pletion of 5 years from such date.

For computing limitation in the present case, it shall run from the date of the last payment of the provisional dues by the petitioner in favour of the Government by way of "Treasury Chalan" and shall continue till the completion of five years from such date whereafter any recovery of arrear rent shall be barred. ***Chandpur Tea Company Ltd. Vs. Joint Secretary.*** **(1980) 32 DLR. 130**

Ss. 19 and 20: A suit under Court of Wards Act against a ward will be governed by Art. 73 of the Limitation Act read with sections 10 cc. and 10D of the Court of Wards Act in which the plaintiff is entitled to take advantage of section 19 and section 20 of the Limitation Act (1953) 5 DLR 495,

S. 19 : Acknowledgement of debt—

Date of limitation to sue will be the date when acknowledgement is made regarding security furnished by deposit of title deeds of immovable property (by way of equitable mortgagee) even though the title deeds were actually deposited earlier. ***M/s. Tripura Modern Bank Ltd. Vs. Islam Khan*** (1971) 23 DLR 22.

—Mortgage security (by deposit of title—deeds) furnished for advance of loans already made as well as for those to be made afterwards—All advrnces on this security shall be on the basis of single mortgage already made and for limitation the time will run from the date of last advance. ***Ibid.***

—Sub-section (1) of section 19 of the Limitation Act lays down that a fresh period of limitation is to be computed in a case when before the expiration of the normal period of limitaiion in respect of any property or right an acknowledgement of liability is made in respect of such property or right. ***The National Insurance Company Vs. Khan Brothers Ltd.*** (1971) 23 DLR 81.

—Entries in bank accounts regarding payments made by debtor—Payments not acknowledged by debtor in writing—payment held, could not create fresh starting point of limitation. ***Nabadwip Chandra Poddar Vs. S.D. Ahmed*** (1969) 21 DLR 755.

Applicability and Scope.

—Court of Wards Act—Suit against ward under—Plaintiff may take advantage of the sections.

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A suit under Court of Wards Act against a ward will be governed by Art. 73 of the Limitation Act read with sections 10ec and 10D of the Court of advantage of section 19 and section 20 of the Limitation Act. ***Monager Court of Wards Vs. Saidpur Commercial Bank*** 5 DLR 495;

—Difference between section 19 and 20—Difference of subject matter only. The provisions of sections 12 and 20 of the Limitation Act, 1908 are exactly parallel. Under section 19 the acknowledgment is to be made by the party against whom the property or right is claimed or by some person through whom he derives title or liability, and under section 20 there is a corresponding restriction namely, that the payment towards interest or principal is to be made by the persons liable to pay the debt or legacy or by his agent duly authorised in this behalf, The difference in wording is due entirely to the difference in subject matter section 19 relating to the very broad and general terms "proparty" and "right" while section 20 is concerned only with debts and legacies. No distinction, therefore, can logically be drawn between sections 19 and 20 of the Act with respect to the effect of an acknowledgement and of payment. Sub-section (2) of section 21 of the Act operates as explanation to both, making it clear that under section 20, as under section 19, the liability is confined to the persons described in the sections and joint contractors cannot be bound by an acknowledgment or payment made by another of them. Payment by one of the several joint debtors, therefore, does not bind the others under section 20 of the Act, ***Rahmatullah Vs. Sardar*** PLD 1961 (WP) Peshawar 51.

Acknowledgment.

Acknowledgment—Must be of the particular claim.

Where the defendant has acknowledged liability in respect of another account and thus the claim and acknowledgment are in respect of different rights.

Held: there is no acknowledgment. ***Wadero Moosokham Vs. Merwanji Edulji*** PLD 1950 Sind 148—PLD 1948 Sind 11 (D.B.)

—Acknowledgement—Must be unqualified—Mere admission of collateral matter is not sufficient.

—An admission in writing cannot be treated as acknowledgment unless it is in the nature of an unqnalified acknowledgment of a subsisting liability. The mere fact that a party has referred, while denying liability, to an agreement on the basis of which the dispute has arisen between them, will not render such reference an acknowledgment within the meaning of section 19 of the Limitation Act. The language of section 19 of the Limitation Act in this respect is very clear. It does not merely require that there should be an admission about the existence of a contract but also requires that there must be acknowledgment of liability in respect of such contract.

Explanation 1 of s. 19 Limitation Act applies to cases where there is an admission that a debt is due but the refusal is based on such grounds which don't amount to denial of liability. In order to constitute acknowledgment there must be clear admission of a subsisting liability. ***Yaqoob Habib Kaliya Vs. A. A. Sattar*** PLD 1958 (W.P) Karachi 534.

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Acknowledgment accompanied by refusal to pay—Sufficient for saving limitation.

Explanation 1 to section 19 requires that if acknowledgment is accompanied by refusal to pay it would be sufficient for the purposes of section 19 of the Limitation Act In other words, there must be, in the first place, an acknowledgment of the liability and then refusal to pay. *Province of West Pakistan Vs. Makhdoom Muhammad* PLD 1961 (W.P) Karachi 722.

Endorsement at the back of mortage—Not acknowledgment.

In the case of an open payment, it can only be treated to have been paid towards interest if from the circumstances it can be found as a fact that it has been paid towards interest "as such". It is not necessary that the writing itself should contain the indication that it is being paid towards interest "as such" the plaintiff is entitled to show from the evidence and the circumstances in the case that the payment was made towards interest "as such". Where the plaintiff does not say that he appropriated a portion of the amount paid by the defendant, which exceeds the interest due on the date of payment towards the principal within the period of limitation but on the other hand says that he received the amount towards interest but there is a clear finding of fact that the amount was not paid towards interest "as such" it cannot be held that a part of the amount went to pay off the principal and that a part was necessarily paid as interest and the plaintiff cannot take advantage of any part of the provisions of S. 20 *Ajodhya Prasad Vs. Gobind Missir* AIR (33) 1946 Patna 404. AIR 1942 Mad. 353 (F.B.)

—Expiry of limitation—Acknowledgment made after expiry—Limitation not extended.

The defendant has admitted his Liability to pay rent in his written statement, but section 19 of the limitation. Act does not extend the period of limitation because the acknowledgment was made after the expiry of the period prescribed for instituting a suit for the recovery of rent. *Haji Gaffar Haji Habib Janu Vs. Wakil Ahmed* PLD 1959 (W.P) Karachi 611.

Liability—Document containing acknowledgment of liability—Liberal construction necessary.

A document alleged to contain an acknowledgment of liability must be liberally construed that is to say, in construing such document regard must be had to the meaning of the writer, judging from the document raad as a whole and such surrounding circumstances as the court can take into consideration in construing document. rather than to the literal meaning of the words used. The section requires a definite "acknowledgment of liability" The document alleged to contain an acknowledgment of liability must clearly contain within itself the meaning that the party is admitting his liability. Where the document is equally capable of meaning either that the party is admitting a liability or that he is not doing so, the document can never be sufficient for the purposes of this section. It requires a clear admission of "liability" of the defendant. *Muhammad Akbar Khan Vs. Province of West Pakistan* PLD 1959 (W.P) Lahore 295.

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Nature of—Mere admission of claim no admission of liability—Not sufficient acknowledgment.

A mere admission of the claim of the plaintiff without in any way implying that there is any liability on the part of the defendant to pay as a balance is not sufficient. Where a defendant denies that on taking accounts anything is due from him and claims that it is the plaintiff that owes him a certain sum, but admits that the latter is entitled to set off a certain amount against his claim, there is no acknowldgment of liability, *Muhammad Akbar Khan Vs. Province of West Pakistan* PLD 1959 (W.P) Lahore 295.

Transfer of part of property by mortgagor—Subsequent acknowledgment—Transferee's interest not affected

An acknowledgment made by a mortgagor after transfer of his interest in one item of mortgaged properties to third person does not bind the transferee even though the personal remedy against the mortgagor had not become barred on the date of the acknowledgment *Subibi Setti Vs. Lakshmitnarasmma* AIR (33) 1964 Madras 88 Foll : AIR 1942 P. C. 62.

SECTION LIBERALLY CONSTRUED.

There is a considerable liberality in construing section 19 in favour of the creditor : (See "Statute construed strictly" under section 3). But however liberally section 19 may be construed, nothing can operate as an acknowledgment unless it can be brought within its terms. 1925, 91 *Ind, Cas.* 833 *at p.* 838 (*Mad*):1934,39 *C.W.N.* 139 *at p.* 141.

IRRECONCILABLE DECISIONS ON ACKNOWLEDGMENTS.

The decisions on the exact meaning and effect of the precise words employed by generations of shifty debtors are, it is agreed on all hands, irreconcilable. 1922,2 *A C.* 507 *at p.* 534, *Per Lord Sumner.*

ACKNOWLEDGMENT SIMPLY RENEWS DEBT BUT CREATES NO NEW RIGHT OF ACTION.

The former period, already running, is not enlarged but terminates and an entirely new period runs from the time of the acknowledgment. 1890, 13 *Mad.* 135; 1932, 54 *All.* 1019.

The acknowledgment does not extinguish the original cause of action 1877,1 Bom 590;1901,26 *Bom.* 221 (F.B.) *at p.* 232 .

ACKNOWLEDGMENT MUST BE OF PRESENT SUBSISTING DEBT OR LIABILITY.

The words used must be such as to show that there was an existing jural relationship (e. g., as debtor and creditor) between the parties at the time when the acknowledgment was made (and not merely at some time before) : and an intention to continue it until it is lawfully determined, must also be evident. 1893,16 *Mad,* 220, (*foll. in* 1921, 45 *Mad.* 443). An acknow-

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ledgment that a debt was due is sufficient, even though it does not expressly and on the face of it say that it is due at the time of the acknowledgment. 1921 41 *M. L. J.* 217,' (*relying on* 1906, 33 *Cal.* 1047, *P. C*,); 1924, 82 *Ind. Cas.* 933 (*Mad.*)

The question whether an acknowledgment of subsisting (i. e, existing) liability can necessarily be implied must depend upon the facts and the surrounding circumstances, and it cannot be implied as a matter of law. 1926, 50 *Mad.* 548, (*followed in* 1933, 57 *Mad.* 43, *and in* 1935, 63 *Cal.* 512).

ADMISSION OF DEBT OR LIABILITY AS ONCE EXISTING AND ALLEGATION THAT IT HAS BEEN PAID OR DISCHARGED.

An unqualified admission of liability, coupled with a declaration as regards the arrangement proposed for its satisfaction, is a sufficient acknowledgment to take the case out of the statute of limitation must be of a present subsisting debt, unaccompanied by any qualification or declaration which, if true, would exempt the defendant from a moral obligation to pay. *Wood, p.* 351 ; 1926, 50 *Mad.* 548.

When a person admits that a claim once existed, but also says that it has been paid, the acknowledgment is not sufficient, although plaintiff proves that the claim hss not been paid. *Wood, Ist ed., p.* 170. The truth or falsehood of the defendant's statement as to paying the demand is immaterial to the true point of inquiry, which should be; whether he has by an express or implied recognition of the debt, renounced the protection of the statute. *Wood, Ist ed., p.* 171.

ACKNOWLEDGMENT IMPLIES INTENTIONAL ADMISSION OF LIABILITY.

Acknowledgment connotes knowledge or consciousness of the burden one assents to hear. It follows that an acknowledgment to be valid must be a conscious acknowledgment of liability and must show that the person acknowledging intended and believed that he was by the statement acknowledging a liability 1912. 16 *C.W N.* 493 at p. 495 ; 1916. 38 *All.* 540; 1934, 159 *Ind. Cas.* 486 (*Mad.*). In other words, not only must the acknowledgment be the act of the person sought to be bound, but the act must be done in circumstances consistent only with the view that the person acknowledging had his mind directed to the question of liability. e.g . of the existence of the debt as a liability subsisting at the time of the acknowledgment. 1935, 59 *Mad.* 312 at pp. 315, 317, 319. 302

Acknowledgment of merely Part of Debt.

In reply to creditor's application for payment of £89, debtor wrote; "It is a claim I am by no means prepared to admit to the full extent. Of that sum £68 is made up of old items. I cannot allow that I am liable to pay that sum." Cheque sent for the remainder. Held that the writing was insufficient re the £68. 1833, *I. C. & M. Brigstocke v. Smith*; *Darby, p.* 84.

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Acknowledgment need not Express'y Specify the Liabi'ity : It may be Inferred.

The acknowledgment need not be express, but it must be made under circumstances from which the Court can infer that the liability was subsisting at the time of acknowledgment. 1921,45 *Mad*, 443, (*explaining* 1906, 33 *Cal.* 1047, *P. C*); 1924,85 *Ind. cas.* 548 (*All.*;)—From an acknowledgment of a debt follow the legal incidenis which flow from the existence of a liability. 1922, 68 *Ind. cas.* 196 (*Oudh*). 304

Conditional and Unconditional Acknowledgments Distinguished.

For a promise to operate as an acknowledgment, it need not be expressed nor need it be absolute. An implied promiss is sufficient. So again the pronise need not be an absolute promiss to pay forthwith or on request. It may be conditional upon happening of a specified event, such as the defendant's obtaining means to pay; or it may be a promise to pay after a certain period *Lightwood p.* 340. In India, however, it is not essential that the acknowledgment should contain either an express or even an implied promise to pay the debt —1869, 13 *Moo. Ind, App.* 37; 1906, 33 *Cal.* 1047, (*P.C*).

Conditional Acknowledgment-Fulfilment of condition.

In case of a conditional acknowledgment, the burden of establishing that the condition has been performed is upon the plaintiff. *Wood, Ist ed. p*, 188; 1921,23 *Bom. L. R.* 1231—When defendant annexes to his acknowledgment some qualification or condition, the acknowledgment is only sufficient upon proof of performance of the qualification or condition. 1918, 37 *M. L. J.* 353 ; 1922, 2 *A. C.* 507 *at p.* 515. 306

Offer or Promise to pay in a Particular Manner.—If the debtor simply acknowledges the old debt, the law implies that simple acknowledgment a promise to pay it; but if he promises to pay the old debt when he is able or by instalments or in (e g.,) 2 years, or out of a particular fund, the creditor can claim nothing more than the promise given him, 1912, 16 *C. W. N.* 636; 1921, 23 *Bom. L. R.* 1231: i e., if an acknowledgment points to payment only in a particular manner or out of a particular fund a promise to pay in any other manner cannot be implied. 1894. 22 *Cal.* 434 (*P.C.*) *in which no question of limitation was raised*), (*cited in argument in* 1916, 44 *Cal.* 388 (*P. C.*) *at p.* 398.

Expressions of Hope or Anticipation to Pay.

The whole of the words used must be considered to see (a) whether there is an acknowledgment at all; (b) whether that acknowledgement is limited or made subject to any condition. mere words of hope and fear, mere prayers for mercy, not amounting to such a limitation or negativiag the technical implication of a new assumption to call the old one out of abeyance. 1922. 2 *A C.* 507 *at p.* 534. *Spencer x. Hemmerde.* Additional words pointing out how little hope of payment there is do not necessarily

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cancel words which impliedly acknowledge that the money ought to be paid. 1922, 2 *A. C.* 507 *at p.* 535.

An acknowledgment, though with an appeal to the creditor's forbearance, may be sufficient. *Wood, 1st ed, p.* 142,—Letter by defendant stating that he "hoped to pay," and that in case of his death he had provided for payment out of his life-policy, held sufficient acknowledgment. *Wood, 1st. ed.; p.* 153.

Promise to Pay when Able or when Convenient.

Where the words used are: "I will send you the money as soon as I can"; 1887, 34 *Ch. D.* 561; *Darby, p.* 90—*or* "I shall be happy to pay you as soon as convenient"; 1834, 2 *C. and M.* 549, (*Edmunds v. Dowe*, Darby, *p.* 84—and there is no proof of ability to pay, the acknowledgment is insufficient. *Darby, pp.* 84 *and* 90—"As soon as I get any money you shall have it. The time may not be long before I shall be able to discharge my debt to you;" sufficient acknowledgment. 1864, 33 *Beav.* 452, (*Hammond v. Smith*); *Darby, p.* 77—"I will try to pay you a little at a time of you will let me. I am anxious to get out of your debt, and will endeavour to send you a little next month," sufficient acknowledgment. —1866, *L.R.* 1 *EX.* 364; *Banning, p.* 44.

Written promise by debtor to pay as soon as he is able; sufficient acknowledgmet.—*Dart v. and P. p.* 466 ; 1880, 6 *Cal* 340.

Promise to Pay Debt when Proved—A promise to pay a debt when proved, or when ascertained, or when the debtor's affairs are arranged, is a sufficient unconditiona' acknowledgment.—1810, 6 *Cal.* 340; 1874, 6 *All. H.C* 150; 1918, 46 *Ind. Cas* 973 (*Mad*)—It seems, however, that a promise by the debtor to his creditor that if he could prove the debt, he would pay him, is a conditional promise.—1833, 36 *Bom. L.R.* 334 *at pp* 338, 339.

Where the maker of a note denies his signature, declaring the note to be a forgery, but said that, if it could be proved that he signed the note, he would pay it, and it was proved that he did sign it, this was held sufficient.—1933, 36 *Bom. L.R.* 334.

Promise to Pay when Creditor' Title is Proved.—Expression of willingness to pay on plaintiff giving proof of his title to receive the amount is a sufficient acknowledgment.—1899, 26 *Cal.* 204; 1858, 7 *Ir. C.L. Rep.* 461;.

Offer to Compromise and Pay Less than is Due.—Offer of a sum of money by way of compromise is not sufficient acknowledgment.—1920, 42 *All.* 390; of. 1920, 44 *Bom.* 871, (*held sufficient*).—The simple offer of a sum by way of compromise does not involve an admission of the justice of the plaintiff's demand so as to suspend operation of the rule of limitation; for such offers are frequently made merely with a view to escape litigation.—1836, 1 *Moo. Ind. App.* 154; *Macpherson, C.P.C.* (*appendix*) *p.* 193.

If a debtor offers to compromise the claim by paying a smaller sum than is due, or to pay it in a certain kind of property, the offer does not operate as an acknowledgment of the debt so as to remove the statutory bar, even as to

the extent of the sum offered, unless the offer is accepted; and, if accepted, it only relieves the operation of the statute to the extent of the offer.—*Wood*, *4th ed., p.* 418; 1920, 42 *All.* 390; *see also* 1933, 56 *All.* 711.

"Without Prejudice".—If acknowledgment be contained in a leter written "without prejudice", no unconditional promise to pay can be inferred.—1830, 4 *C, and P.* 462, (*Cory v. Bretton*).—Of course, if the terms offered by the debtor are accepted by the creditor, the condition is fulfilled, and the letter, though marked "without prejudice" would be effective to bar the statute — *L.R.* 1871, 6 *Ch. App*; 822; 1893, 2 *Q.B.* 116, (*a bankruptcy case*).

Repudiation of Liability.—If acknowledgment of debt is accompanied with repudiation of liability, as a distinct refusal to pay, or a statement that the debt has been paid or that it is barred by the statute or other like grounds of repudiation, no promise can be implied.—1825, 3 *Bing.* 329 (*A Court v. Cross*).

If a man admits that a signature to a note, bill, contract, etc. is his signature, but at the same time says it was never worth anything, and that he was never liable upon the instrument it is not sufficient acknowledgment.—*Wood, 4th ed*, 464. *The above view receives support from the judgment in* 1933, 36 *Bom. L.R.* 334.

Letters, although properly signed, will not amount to an acknowledgment if their object is not to admit or show that the writer was himself liable to the demand, but to fix the liability on a third person —*Sugden* (*Statites*), *p.* 134 *see* 1931, 13 *Lah.* 240 *at p.* 247.—But such writ?nw may, not withstanding the refusal to pay, constitute a sufficient acknowledgment if there is no repudiation of existing jural relationship of creditor and debtor between the parties.—*See* 1936 70 *M.L.J.* 11, (*recent cases*), (*Venkatasubba Rao, J*), (*following* 1908, 32 *Bom.* 296.

Refusal or Inability to Pay: Acknowledgment Coupled With.

"A statement of inability to pay is in no way inconsistent with an implied promise to pay."—1922, 2 *A.C.* 507 at *p.* 539, *per Lord Wrenbury*.—If the debtor, although he admits the existence of a debt, refuses to pay it, or reserves the matter for future consideration, or refers the creditor to some third person for payment, there is no sufficient acknowledgment.—1871, *L.R.* 6 *Ch. App.* 822.—This is on the ground that where reliance is placed upon an acknowledgment as implying a promise to pay, it is essential that there shall be no words accompanying the acknowledgment which are inconsistent with such a promise.—*Lightwood, p.* 341; 1922, 2 *A C.* 507.

If defendant says "I admit the debt," that is enough; but if he says "I admit the debt, but I have not made up my mind to pay ;" or "I owe the money, but I cannot tell when or how I am to pay it ;" or "I do not intend or cannot afford to pay the debt," such ackowledgment negatives the inference of a promise to pay, and therefore is not sufficient.—*Wood*, 4th *ed., p.* 464; *but see explanation* 1 *to sec.* 19.

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Set-off: Acknowledgment Coupled with Claim to —defendant acknowledges a debt, but insists at the same time on a set-off, his acknowledgment is effective.—1899, 26 *Cal.* 715 *at p.* 722 *cf.* 60 *P.R.* 1887;

Request for Time to Pay.—A request for time is a sufficient acknowledgment.—*Lightwood, p.* 347; 1930, 32 *Bom L.R.* 1390.—But a mere request for time without stipulating any time for indulgence, has been considered insufficient.—*Wood, 4th ed., p.* 471.

Promise not to Plead the Statute.—Usually perhaps when there is a promise not to plead the statute, there will be found in the context something further which will amount to an acknowledgment of indebtedness, whence a promise to pay may be implied; but in the absence of such context, a promise not to take advantage of the statute is per se not an acknowledment of liability. —1913, 38 *Mad.* 374; 1916, 40 *Mad.* 701.

Advertisement or Notice to Creditors to Bring in Claims.
If a debtor or (if he is dead) his legal representative advertise for creditors, it will depend on the wording of the advertisement whether it amounts to acknowledgment so as to enlarge the period If the advertisement contains a promise to pay all persons on application who have debts owing to them by the advertiser, it may amount to sufficient acknowledgment.—*Banning, 2nd ed*, *p.* 302.—But section 19 requires that the acknowledgment must be signed. Notice issued by the Court of Wards reciting that money is due by the ward and calling upon creditors to bring in their claims is a sufficient acknowledgment.—1894, 17 *All.* 98 (*P.C.*), (*affirming* 1892, 14 *All.* 162).

Memorandum of Part Payments.—"Enclosed a remittance of £40 to old account" is not sufficient acknowledgment, as it does not import that a further sum is admitted to be due.—1870 5 *Ben. L.R.* 619 (*distin, in* 1921, 26 *C.W.N.* 213.—So where the writing expressly states that the payment is in full discharge of the debt, the writing cannot be construed as an acknowledgment for any remaining liability shown by evidence aliunde.—*See* 1934, 68 *M.L.J.* 73; 1933, 55 *All.* 632 *at p.* 635.—Payment of a certain sum for the present or on account is a sufficient acknowledgment, as it thereby implies liability for a larger debt.—*I P.R.* 1897 (*at p.* 4); 1914. 27 *Ind. Cas.* 744 and 747 (*Mad.*)—Of course, the mere payment is not sufficient under section 19; there must be a writing signed by the debtor or his agent. If there is such a writing, and it recites the payment, it would suffice under section 19 even though the payment was not in fact made —1915, 28 *Ind. Cas.* 15 (*Mad*) (*foll, in* 1934, 68 *M.L.J.* 63).

A debtor's mere signature on the back of a promissory note, the endorsemen of payment of interest &c. being afterwards written by a third party above the debtor's signature and without his authorisations, would not suffice either as an acknowledgment within sec. 19 or as an acknowledgment of payment within the amended proviso to sec. 20.—1934, 152 *Ind. Cas.* 501 (*Ran.*).

Admission of Unsettled Accounts.

An acknowledgment of there being an unsettled account between the parties and of the plaintiff's right to have such account taken, will (unless a contrary

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intention appears) be construed as a promise to pay what, if anything, shall be found due on taking the account.—1871, 6 *Ch. App*; 822 *at p.* 832; 1976 1 *Ex. D.* 72.

—Any written admission by the debtor of the existence of unsettled account, either with or without a promise to pay the balance (if any) due, is sufficient acknowledgment.—1899, 26 *Cal.* 715; 1919, 23 *C.W.N.* 921; 1920, 1 *Lah.* 357; 1928, 56 *Cal.* 556.

Debtor's Willingness to Account.—A mere expression of willingness to go into an account, the alleged debtor insisting that there is nothing due from him, and that he is prepared to show this by the accounts, is not sufficient acknowledgment.—1867, 2 *Ir. Rep. Eq.* 166, *Crawford v. Crawford*; *Hals. Vol.* 19, *p.* 65.

Defendant's letter, in answer to request from plaintiff to settle the account by paying balance due, and in which defendant promised to go into the account, but intimated that the balancee might probably be the other way, held sufficient acknowledgment.—1854, 1 *Kay* 678 (*Prance v. Sympson*), *approved by the P.C. in Maniram's case*, 1906 33 *Cal.* 1047 (*P.C.*).

"I am ready to account. but nothing is due to you," sufficient acknowledgment. *Wood, Ist ed., p.* 146; *cf* 1918,22 *C. W. N.* 104.

Request by Debtor for Account. A request by the debtor "to send in his account" or for details of the allegeddebt or an admission of an open account between the parties, is a sufficient acknowledgment from which a promise to pay the amount found to be due may be inferred. 1880,6 *Cal*, 340;1889, 42 *Ch. D.* 424;116 *P.R.* 1881 (Smyth, *J.*); 1934,153 *Ind. Cas.* 987 *at p*, 991, (*Oudh*).

The request for an account must come from the debtor and be signed by him. The sending in of an account by the creditor and the failure of the debtor to dissent is not an acknowledgment 1894, 42 *W. R.* 491 (*English*), *Re Mcttenry*; *Lightwood. p.* 347.

Asking for further particulars of an account received, saying it was his wish to settle it immediately, sufficient acknowledgment. 1857,2 *H. and N.* 306, *Sidwell Mason*; *Lightwood, p.* 346. But a reference in a letter to a previous applicaton for an account (merely by way of explanation and not of repeating the application) is not sufficient. 1849,3 Exch. 335;(*Williams v. Griffith*:*Lightwood, p.* 347.

Suit for Possession. When an acknowledgment of the title of the person entitled has been given by the party in possession, time for recovery of the land is enlarged to 12 years from such acknowledgment, *Banning, p.* 152; 1896, 1 *C. W.* N. 569;1880. 4 *Bom.* 590, 1915,19 *C. W. N.* 263; *see* 1887, 14 *Cal.* 801 (*P C.*) i.e., where land is out of possession of the owner, under such circumstances that the statute is running against him. his title is kept alive by acknowledgment by the person in possession. *Lightwood, p* 322.

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A mere admission of title once existing is not necessarily an admission that it exists at the date of acknowledgment.—1849,13 *Ir. L. R.* 286, *Hobson v. Burns*; *Lightwood, p.* 333. If however, the acknowledgment is made within 12 years, and admits that there existed prior to the acknowledgment, but also within 12 years, a title in the person through whom plaintiff claims, it may well be argued that such acknowledgment would be sufficient. *Darby, p.* 385.

UNREGISTERED ACKNOWLEDGMENT.

Where in a suit for possession of immovable property worth over Rs. 100 in value. plaintiff, being met with a plea of 12 years adverse possession, relies on an acknowledgment to save the statute. the acknowledgment, if, unregistered, cannot be so used, for, if admitted for the purpose of saving limitation, it would oparate to declare a right, title and interest in the property within the meaning of the Registration Act. The acknowledgment prevents the extinction of plaintiff's title to the property through operation of the law of limitation, and, being unregistered. it cannot be allowed to produce that effect (viz., to prevent the extinction of plaintiff's title); 1880, 4 *Bom.* 590; *Cf.* 1903,27 *Bom.* 515.

An acknowledgment recognizing that the title to the property is in the owner does not in itself create any title or right in the owner (within the meaning of section 17 of the Registration Act,). It merely acknowledges as a fact that such right was his, and is therefore admissible in evidence, without registration. to give a fresh period of limitation under section 19 of the Limitation Act. 1931,11 *Pat.* 272 (*P.C.*), (overruling 1880, 4 *Bom.* 590).

INSTANCES OF ACKNOWLEDGMENTS.

If in answer to a claim for rent the person in possessiom does not deny the title of the person entitled. but begs for forbearance, it may be a sufficient acknowledgment. 1842 10 M. and W. 572, *Fursdon v. Clogg*; *Hals. Vol.* 19, *p.* 132. An admission by the person in possession that he holds the property as a tenant of the person entitled is sufficient acknowledgment. 1858. 28 *L. J., Q. B.* 1, (*Goode v. Job*); *Hals. Vol.* 19, *p.* 132.

A correspondence from which it appears that the person in possession claims to hold the property till certain accounts as to charges thereon to which he claims to be entitled are settled constitutes sufficient acknowledgment. Hals. Vol. 19, p. 132;.

Suit for Redemption.

ACKNOWLEDGMENT GF EXISTING LIABILITY TO BE REDEEMED.

A recognition of the mortgage incidentally in any conveyance or other instrument is sufficient acknowledgment. *Wood, 1st ed. p.* 467;1924,22 *A.L.J.* 1018. (provided the requirements of section 19 as to signature, etc., are duly observed) 1924,86 *Ind. Cas.* 859 (*Lah*). Of course, a direct express recognstion of the right to redeem is not necessary. *Sugden* (*Statutes*). *p.* 118.

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In 1871, 6 *Mad. H. C.* 267, however, the Court held that if the relationship of mortgagor and mortgagee is admitted, the acknowledgment is good, even though the right to redeem is denied. 1871, 6 *Mad H. C.* 267. But the trend of recent Indian decisions is that (notwithstanding the extremely wide language of explanation 1 to section 19), when the writing expressly states that there is no liability and the liability is in fact denied and repudiated, such writing cannot be treated as an acknowledgment. 1929. 119 *Ind. Cas.* 565, (*All*).

DESCRIPTION OF MORTGAGEE, AS MORTGAGEE, SUFFICES.

For the purpose of excluding the law of limitation any expression referring to the estate as mortgaged will be a sufficient acknowledment. No particular form is necessary. The acknowledgment may be made as well by affidavit in a suit, or in a schedule to a deed, or by an answer to interrogatories, as by a letter or other writing. *See* 1929, 115 *Ind. Cas.* 627 (*All.*).

(The P.C. decision in 1906, 33 Cal. 1047 is no authority for the proposition that a mere statement that a certain person was a mortgagee amounted to a statement that mortgage subsisted as an enforceable transaction) 1924. 85 *Ind.Cas* 584 (*All*), *per Mookerji J. See, however,* 1929, 115 *Ind. Cas.* 627 (*All.*), *where the same learned judge held that an admission in a written statement was a sufficient acknowledgment of the existence of the mortgage and of the liability to be redeemed.*

MORTGAGEE'S WILLINGNESS TO ACCOUNT.

When a mortgagee is in possession, a letter by him stating his willingness to give an account to the mortgagor may be sufficient acknowledgment. 1870, 10 *Equity* 275 *at p.* 278; 1841, 12 *Sim.* 402, *Trulock v. Robey*; *Banning, 2nd ed., p.* 185.

ACKNOWLEDGMENT MADE TO ONE OF SEVERAL CO-MORTGAGORS.

Mortgagee's acknowledgment made to one of several co-mortgagors is effectual for (and enures for the benefit of) all co-mortgagors. *Cf.* 1871, 6 *Ch. App.* 478; *Banning, pp.* 48, 159, 164.

RECORD-OF-RIGHTS: MORTGAGEE'S ACKNOWLEDGMENT IN.

Where a mortgagee attests as correct the record of rights (prepared at a settlement with him of an estate), in which he is described as mortgagee of the estate, it is sufficient acknowledgment even though it does not mention the mortgagor's name. 1875, 1 *All.* 117 (*F.B.*); 1920, 42 *All.* 575, (*F.B.*), (*cases discussed*) 1933, 14 *Lah.* 587. Such acknowledgment of the mortgagor's title or right to redeem has never been held to require compulsory registration; and yet, if the decision of the Bombay Court in 1880, 4 Bom. 590 is correct, the mortgagee's acknowledgment would be unavailable unless registered.

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Where the Particular mortgage entry contained in a Settlement Record is not signed by the mortgagee, but the latter's signature appears at the foot of the Record among signatures of other owners and there are other ownership entries in the Record to which the mortgagee's act in signing could be referred, in such a case there is no sufficient acknowledgment for purpose of section 19 unless the mortgaee's signature among a mass of other signatures at the end of the Record in which the mortgagee is also shown as proprietor of other holdings, could be properly referred to the mortgage entry. 32 *P.R.* 1880; 63 *P.R.* 1888; 116 *P.R.* 1891; 39 *P.R.* 1910; 1911, 10 *Ind. Cas.* 238 (*All*). Such mortgage entry must be signed by the mortgagee or his agent, and the Revenue Officer making the entry cannotbe presumed without proof to be the mortgagee's agent for this purpose. 53 *P.R.* 1905 (*F.B.*)

In each case it is a questton whether the signature was intended merely as a general attestation of the Record by the mortgagee in his capacity as proprietor of his own holding or also as a further attestation of his rights in the mortgagor's holding in his capacity as mortgagee. The inference to be drawn in each case is one rather of fact than of law. 145 *P.R.* 1889.

ACKNOWLEDGMENT CONTAINED IN WILL, CONVEYANCE, PLAINT, RECEIPTS OR ACCOUNTL.

Where a testator described an estate in his will as my "mortgased estate", it was sufficient acknowledgment of the mortgagor's right to redeem. 3 *Atkyns' Rep.* 114. *Anonymous Case, per Sir J. Jekyll*, (*foll.* in 1875, 1 *All.* 117, *F.B. at p.* 123); 1803, 16 *Mad.* 366 *at p.* 368.

Acknowledgment by mortgagee contained in a conveyance executed by him in favour of a third party is sufficient. 9 *P. R.* 1897; 1869, 4 *Mad. H.C.* 359; 1912, 18 *Ind. Cas.* 95 (*All*). (But a mere transfer of a mortgage, subject to the equity of redemption, will not amount to an acknowledgment.). *Lord St. Leonard's Handybook, p.* 184.

A plaint filed by a mortgagee (in his suit for possession under the mortgage) is a sufficient acknowledgment of the right of redemption. 1884, 8 *Bom*, 99; 180 *Pun. L.R.* 1911; 1911, 34 *All.* 109 at *p.* 112.

If a mortgagee has entered into possession, accounts of his receipts of rents, signed by him kept for the mortgager may constitute a good acknowledgment. *Hals. Vol.* 19 *P.* 151: *cf.* 1879, 11 *Ch. D.* 284; *Darby, p.* 468.

ACKNOWLEDGMENT IN MUTATION PROCEEDINGS

Application by mortgagee for mutation of names is only an official proceeding to substitue the mortgagee's successor for his predecessor, and it is not an acknowledgment made to the mortgagor. 1900, 27 *Cal* 1004, (*P.C.*), (*distin. in* 1921, 45 *Bom.* 234).: *See also* 1929, 119 *Ind. Cas.* 565 (*All.*), (*admission by mortgagee in mutation proceedings not being a conscious or unequivocal acknowledgment of liability to be redeemed, held insufficient under sec.* 19).

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ACKNOWLEDGMENT BEFORE PERIOD OF LIMITATION EXPIRES.

The acknowledgment by the mortgagee must be made before the 60 years (Article 148) have run out. When the statutory period has full run out, the mortgrgor's title is extinguished, and an acknowledgment by the mortgagee thereafter is ineffectual to revive the title so lost. 1900, 27 *Cal.* 1004 (*P.C.*); 1920, 42 *All.* 575 (*F.B.*).

But the Court may infer from such acknowledgment that the mortgagee's possession had always been consistent with the mortgagor's title, and if the acknowledgment can be so construed, the mortgagor's title continues and is not extinguished. *Banning, pp.* 160, 164.

SUFFICIENT ACKNOWLEDGMENTS

It is sufficient acknowledgement that where debtor expressly assumes liability, as if by writing "I own myself answerable for this debt" 1854, *Key* 669; *Spickernell* v. *Hotham ; Lightwood p.* 346.

INSUFFICIENT ACKNOWLEDGMENTS.

Where the debtor professes ignorance of the debt he does not acknowledge it by expressing annoyance that it is so long unsettled. This is in effect only a promise to examine into the account ; not necssarily to pay it. 1858,27 *L.J.*, *Ex.* 305, *Collinson* v. *Margesson* ;

SUFFICIENCY OF ACKNOWLEDGMENT : QUESTION OF LAW.

Whether a particular writing amounts to a sufficient acknowledgment is a question of law ; *Hals. Vol.* 19, *P.* 63. *i.e.*, the question of the sufficiency of the acknowledgment so far as it depends solely on the construction of a written document is one of law. *Lightwood, P.* 345 ; 1922, 2 *A. C.* 507 *at PP.* 525,526: 1925,23 *A.L.J.* 869 *at p.*871.

But the question whether an acknowledgment of subsisting liability can necessarily be implied must depend upon the facts and the surrounding circumstances. The question being one of fact, the High Court will not interfere in second appeal with the finding of the lower Appellate Court on this point. 1927,53 *M.L.J.* 65.

ACKNOWLEDGEMENT MUST RELATE TO THE PARTICULAR DEBT OR LIABILITY SUED FOR.

There must not be any uncertainty as to the particular debt to which the acknowledgment applies. It must be so distinct and unambiguous as to remove all hesitation in regard to the debtor's meaning. *Wood, P.* 371 ; 1936, 163 *Ind. Cas.* 872 *at p.* 874 (*All*).

It is not essential that the amount of the debt should be stated or even referred to. It is sufficient if the acknowledgment admits something to be due upon a specific claim, and parol evidence is admissible to prove the amount;

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and the same is also true as to the nature of the indebtedness. *Wood, p.* 372 ; 1932, 8 *Luck.* 195, (*extrinsic evidence permissble.*)

The acknowledgment must distinctly and definitely refer to the liability in question and not to any liability 1907, 9 *Bom L.R.* 715; 1920. 45 *Bom.* 934 *at p.* 940. An acknowledgment to whom soever made is a valid acknowledgment only if it points with reasonable certainty to the particular liability under dispute. 1922,46 *Bom.* 1000 *at pp.* 1003, 1007.

SIGNATURE.

The document constitu'ing the acknowledgment must be actualiy signed ; it is not sufficient that it is accompanied by a letter written and signed by a third person, the letter itself being no part of the acknowledgment. 1883,3 *C. and E.* 186, *Ingram* v. *Little*; *Lightwood, p.* 344.

Whenever the maker of an instrument or his agent introduces the maker's name with a view to authentlcate the instrument, such an introduction of the name is a sufficient signature. 1878, *I All* 683 ; 122 *P.R.* 1889 ; 1880' 6 *Cal.* 340.

The agent may sign ei'her his own name or that of his principal so long as the acknowledgment is signed with the debtor's name by his agent in such a way as to make it appear that the acknowledgment is his and that he is the real author of it. 1880,6 *Cal.* 340 1921, 65 *Ind. Cas.* 279(*Nag*).

Position or form of signature is immaterial, so long as it verifies the whole acknowledgment. 1885,10 *Bom.* 71 *at p.* 73; 122 *P. R.* 1889, 1925,50 *Bom.* 284 *at p.* 292.—A business letter written by a munim of a Firm bore no signature other than the name of the Firm in the heading of the letter. Held such a signature was sufficient under section 19. 1924,46 *All* 892 *at p.* 893—When the whole of the writing is in the defendant's handwriting, his name at the top of it suffices. 1864,2 *Mad H C.* 79; 1917,43 *Ind. Cas.* 20(*Mad.*)—Signature by a third person by desire and in the presence of defendant, who unable to write, is sufficicnt—1883,7 *Bom.* 515; 122 *P. R.* 1889.—When defendant unable to write, held the top of the pen while his daughter wrote his name, held an effectual sjgnature. 1841,11 *L.J. Ch.* 17. *Helshaw* v. *Langley.*—Signing in such manner as is usually adopted by the debtor with a view of showing that he intended to be bound by the document is sufficient.—1894,18 *Bom.* 586 ; 1923,75 *Ind. Cas.* 1004, (*All*).

When an account is written by the debtor himself with the introduction of its name in his own handwriting at lhe top of the entry, and below the dntry he writes the words "writer self" or "by his own hand" it is sufficient signature. 1881, 5 *Bom.* 88 and 89; 1904, 31 *Cal.* 1043,

Initials constitute sufficient signature. 1892, 15 *Mad*, 261 at *P.* 264; *Lightwood P.* 332; 1915, 59 *Mad.* 72—A printed or rubber stamp signature may be sufficient 1880,6 *Cal.* 340 *at p.* 345. Pencilled signatur suffices.—*Mitra, p.* 378 —Where a deposition (which contained an acknowledgment) was recorded by the Clerk of the Court, who wrote the debtor's name in the beginning and

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made a mark of the pen towards the end, but the debtor did not touch the pen, held this was sufficient signature (the clerk being regarded as a duly authorized agent).—16 *P. R.* 1891; 1896,20 *Mad.* 239.

Signature by means of a mark or by a seal or stamp bearing an impression of the signatory's name is sufficient. 185 *P. R.*—1883;1874,7 *Mad. H.C.* 358;1927,195 *Ind. Cas.* 93 (*Oudh*) *at P.* 101, (*signatute by a mark*).

Unsisned Acknowledgment cannot support Action for Aceount Stated.

An agreed statement of accounts, where all items are on one side only, if the statement is not signed by the party liable, and is consequently inoperative as an acknowledgment, will not support an action on an account stated in respect of items which are statute-barred, Hals. Vol. 19, *p.* 66; 1922, 72 *Ind. Cas.* 692 *at p.* 695, (*Cal.*)—Where however, there are items on both sides and a balance is struck, the case is different and resolves itself into one of part payment (vide section 20, Indian Limitation Act). 1871, 8 *Bom. H. C.*, *A. C. J.* 6 *at p.* 10;1900, 24 *Bom.* 493;1915,29 *Ind, Cas.* 422 (*Mad.*).

ORAL ACKNOWLEDGMENT.—

An acknowledgment in writing is not the only mode of creating afresh starting point of limitation in case of a debt not time-barred An oral agreement to extend time of payment may effect the same purpose. 1923,50 *Cal.* 974 (*Verbal contract*), *Comppre* 93 *P. R.* 1911 *and* 1923, 75 *Ind. Cas,* 440, (*Nag.*), (*period of limitation not extended*).

UNREGISTERED DOCUMENT : ACKNOWLEDGMENT IN.

Where a document, of which registration is obligatory, is unregistered and contains an acknowledgment of liability which is distinct and separate, it is admissible for purposes. of saving the statute under section 19. 1881, 3 *All.* 523;1930, 12 *Lah.* 239;1899.26 *Cal.* 334.—The principle of these decisions is now embodied in the proviso to section 49 of the Registration Act, inserted by Act 21 of 1929. providing that 'an unregistered document...may be recuived as evidence of any collateral transaction not required to be effected by registered instrument' 1930. 12 *Lah.* 239 *at p.* 249.

UNSTAMPED ACKNOWLEDGMENT : STAMP ACT.—1899—When an acknowledgment (Which falls under Article 1, Stamp Act, 1899) is unstamped, it cannot be used in evidence for any purpose, and accordingly it is valueless to save the statute of limitation. 1896, 21 *Bom.* 201 *F.B.*) *Donogh's Stamp Act. 9th ed., p.* 543. Although an unstamped acknowledgment cannot be acted upon as an acknowledgment of a particular sum being due, it may be used for the collateral purpose of showing an acknowledgment (within the meaning of section 19, Limitation Act) of an existing liability in respect of (Say) goods sold. 1893, 18 *Bom.* 614

A document may not be admissible in evidence as a pro-note by reason of its being insufficiently stamped, but it may nevertheless be admissible on

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the stamp it bears (viz., one anna) both as an acknowledgment under the Stamp Act and for purpose of Section 19 of the Limitation Act. 1881 3 *All*. 581 (*F,B.*); *cf*. 1925, 50 *M, L*, J. 36 *and* 1922. 45 *Mad*. 778.

Under the present Stamp Act, if a promissory note is insufficiently stamped, it is inadmissible in evidence not only as a pro-note but also as an acknowledgment within the meaning of section 19 of the Limitation Act. 1933, 147 *Ind. cas*. 981 (Nag.) Donogh's Stamp Act, 9th ed., pp. 374. 375.

PAROL EVIDENCE.

The written acknowledgment need not contain all the particulars necessary to establish the claim. *Lightwood, p*. 344;—So while the acknowledgment must on the face of it purport to be that of a present existing liability, the creditor's name and the identity and the amount of the debt may be proved by parol evidence. 1869. 13 *Moo. Ind. App*. 37; 1902, 25 *Mad*. 220, 1903, 26 *Mad*. 34—even when the debt is not correctly described in the acknowledgment. —1845,8 *Ir. L.R*. 505, *Hanan v. Power, Darby, p*. 22; 1928, 117 *Ind. Cas*. 571 (*Ram.*)

The contents of an acknowledgment may be proved by secondary evidence (e g, in cases falling under section 65, Evidence Act). 1885, 12 *Cal*. 267; 1892, 15 *Mad*. 491. So if an acknowledgment is lost or destroyed, parol evidence of its contents is admissible. 1886, 13 *Cal* 292; 1909, 2 *K.B*. 724; 93 *P. R*. 1877.

PAROL EVIDENCE TO SHOW TRUE DATE OF ACKOWLEDGEMENT.

Parol evidence is admissible to prove true date of the execution of a written document though it purports to have been executed on some other date. *Hals. Vol*. 7, *p*. 526.

DATE OF ACKNOWLEDGMENT : STATUTE RENEWED FROM DATE OF SIGNING.

In case of the acknowledgment which bears one date, but was in fact executed on another date, the statute is renewed from the time when the acknowledgment was actually executed; —1901,25 *Bom*. 616; *See* 1932, 63 *M. L. J*. 785, (*commenting on* 1902.26 *Bom*. 128)—in other words. although an acknowledgment is dated, evidence may be given to show that it was in fact executed subsequently, and it will then take effect as an acknowledgment from the date of actual execut[on, 1901, 25 *Bom*. 616 ; *See* 1932 63 *M,L,J*, 785 (*Com. menting on* 1902, 26 *Bom*. 128)

In case of a conditional acknowledgment, the statute is renewed from the time when the condition is fulfilled and time runs anew only from that period. *Darby p*. 68; *cf*. 1927, 53 *M. L. J*. 39 (*Recent cases*) i e, an acknowledgment of a conditional liability does not, so long as the condition remains unfulfilled, create a new starting point 1887, 11 *Bom*, 580 (*relied on in* 1921, 23 *Bom. L. R*. 1231); 1906,29 *Mad*. 519.

ACKNOWLEDGMENT MUST BE MADE AND SIGNED BEFORE SUIT AND WITHIN PERIOD OF LIMITATION.

Section 19 requires that the acknowledgment to be operative must be made before the period of limitation has expired. 1906, 33 *Cal.* 1047 *(P C.) at pp.* 1057, 1058, (*Maniram's case*); 1908, 30 *All.* 268 *at p.* 270;1902,26 *Bom.* 782.

An acknowledgment made within the period of grace allowed by section 31 of the Indian Limitation Act, 1908, is valid. 1926, 49 *All.* 67; 1930, 54 *Mad*. 445; 1934, 58 *Mad.* 270 (*F, B.*)

ACKNOWLEDGMENT MADE BEYOND TIME, BUT IN VACATION WHILE RIGHT OF SUIT STILL SUBSISTS.

An acknowledgment made after the period of limitation, but during the vacation of the Court must be deemed to be made within the period of limitation prescribed for the suit (as laid down in section 19 to give a fresh starting point of limitation.—1912, 15 *Bom. L. R.* 348 (*Beaman J*); 1928, 110 *Ind. Cas.* 76 (*Nag.*),

ACKNOWLEDGMENT MADE AFTER EXPIRY OF ORDINARY PERIOD OF LIMITATION BUT DURING PLAINTIFF'S MINORITY.

An acknowledgment made after the expiry of the ordinary period prescribed for a suit, though during the period when the minor plaintiff could have sued by virtue of section 6, is not a valid acknowledgment, inasmuch as the period prescribed (in sec. 19) must refer to the period prescribed by the First Schedule to the Act. 1928,52 *Bom.* 521:

Reading the provisions of sections 6 and 19 together, an acknowledgment during the plaintiff-creditor's minority, must be deemed to have been made "before the expiration of the period prescribed for the suit" (Within the meaning of section 19), as it was made within the period of limitation as extended by section 6. *See* (*by way of analogy*) 1929, 32 *Bom. L. R.* 58, (*Where the provisions of sections* 14 *and* 19 *were read together.*

ACKNOWLEDGMENT DEDUCED FROM A SERIES OF LETTERS.

In order to ascertain the meaning of the acknowledgment, it is permissible to refer to letters written either before or afterwarde, but there must be some one principal writing of a particular date, itself constituting the acknowledgment which is merely deduced as an inference from the tenor of a series of letters is insufficient. 1871, 6 *Ben. L.B*, 550;1880, 6 *Cal.* 340 *at p.* 344 (*argument*);1891, 11 *A.W.N.* 126;2 *P.R.* 1884—But it is submitted that several writings may be relied on as constituting the acknowledgment. *See* 1936. 17 *Lah.* 737 *at p.* 759.

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SUCCESSIVE ACKNOWLEDGMENTS.

A subsequent acknowledgment if made within the "new period" arising from the last preceding acknowledgment, is deemed to be made withiu the prescribed period of limitation and hence the statute begins to run a new from date of such subsequent acknowledgement, i. e., the claim is put on foot for a new period of life co-extensive with the statutory provisions 1881 6 *Cal.* 340; 1887, 11 *Bom.* 282; 1915, 28 *Ind. Cas,* 69, (*Mad.*) But, of course. if the last preceding acknowledgment was itself invalid under section 19 (e. g., where it was not signed), it would not have this effect. 102 *P. R,* 1908.

Where the period of limitation for a suit is three years, each of the acknowledgments must have been made regularly within 3 years of the preceding one, and for this purpose the Court must look at the Gregorian and not the Hindu calendar, (vide Section 25) 1928, 52 Bom, 521 at p. 522.

FRAUD OR JEST—ACKNOWLEDGMENT UNDER.

Acknowledgment obtained by duressor fraud is ineffectual. 62 *P,R,* 1873;59 *P, R,* 1901—It must be a genuine acknoledgment as and when it was given. 1919, 17 *A, L, J,* 763 *at p.* 764. Acknowledgment of debt obtained from client by solicitor without the latter pointing out the effect of such acknowledgment Held that the solicitor was securing an advantage to himself as the result of the fiduciary realation in which he stood to his client, and that the acknowledgment could not stand. 1915. 1 *K. B,* 242—Acknowledgment made in jest,—*Wood, Ist ed. p,* 193—or by inadvertence, is not sufficient.—1932,144 *Ind, Cas,* 1005. (*All,*)

APPLICATIONS ; SECTION APPLICABLE.

A wrtien acknowledgment in respect of any matter or right gives a fresh starting point. Under the Acts of 1859 and 1871 acknowledgments were effectual in respecr of debts and legacies only—*Stokes, Vol,* 2, *P.* 947 The period of limitation for an application under article 181 may be enlarged by reason of an acknowledgment (under section 19). 1981, 42 *Mad.* 52

TORT ; ACKNOWLEDGMENT IN RESPECT OF.

A right of action for a tort cannot ordinarily be revived in England by means of an acknowledgment. *Lightwood, p,* 339,

MATERIAL ALTERATIONS IN ACKNOWLEDGMENT.

An acknowledgment of liability is not rendered void merely because there have been material alterations in it after its execution— 1901, 25 *Bom.* 616, (*Cited without disapproval by Maclean C. J. in* 1905.9 *C. W. N.* 695); 1879. 5 *Cal,* 215 *at p,* 217 ; 1925; 92 *Ind. Cas.* 305 (*Nag.*).

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ACKNOWLEDGMENT MAY BE IN WRITING MADE FOR ANY PERPOSE.

It has been held in India that it is immaterial in what connection and for what purpose and in what form the acknowledgment is made; the sole question is whether the writing, whatever its immediate purpose or occasion, contains an acknowledgment of the liability in dispute. 1908, 10 *Bom.* L.R. 385; 1896, 20 *Mad.* 239 *at p.* 242; 1910, 35 *Bom.* 383; 1913, 19 *C.W.N.* 263.

CONFIDENTIAL DOCUMENT; ACKNOWDEDGMENT IN.

A statement made to the Collector by a person applying to have his estate taken under the Court of Wards setting forth his financial position, i.e., the details of his property and liabilities, is a communication made to a public offcer in offcial confidence withn the meaning of section 124, Evidence Act, and cannot therefore used as an acknowledgment of any liability mentioned there in. 1922, 44 *All.* 360. *So an acknowledgment contained in an income-tax proceeding, treated as confidential by S.* 54 *of the Income Tax Act,* 1922, *would probaby not suffice to save limitation under S.* 19 *of the Limitation Act*;.

WILL: ACKNOWLEDGMENT IN.

Acknowledgment in a will is sufficient, but the will must be precise. A mere vague reference to a possible outstanding debt is not sufficient. 1891, 27 *L.R. Ir.* 567 (*C.A.*) *Scott v. Synge*; *Lightwood, P.* 332; 1881, 7 *Cal.* 772 *at p.* 775. Admission in the debtor's will of the existence of a debt is sufficient acknowledgment. 1852, 3 *Ir. Ch. R.* 236, *Millington v. Thompson.*

But when the will, though in the testator's handwriting, is not signed, an acknowledgment contained therein is ineffective. 1892, 15 *Mad.* 380;

SUB REGISTRAR'S ENDORSEMENT.

AN endorsement by the Sub-Registrar that the executant admitted execution of the document, the endorsement being signed by the executant, may be a suffiicent acknowledgment for purposes of section 19, Limitation Act. 1923. 76 *Ind. Cas.* 751 (*Lah*).

DEPOSITION OR AFFIDAVIT. ACKNOWLEDGMENT IN.

Acknowledgment contained in a deposition, i.e., made in the course of examination by the Court or examination as a witness, is sufficient. 1893, 16 *Mad.* 220, (*Per Muttasami Aiyer J.*); 1897, 20 *Mad.* 239. provided the requirements of section 19 as to signature, etc., are duly observed. 1934, 12 *Ran.* 610.

PLAINT, WTITTEN STATEMENT, ETC. : ACKNWLEDGMENT IN.

Acknowledgment may be sufficient though contained in pleadings (e.g., Plaint, written statement, memorandum of appeal, etc.), filed in a previous suit, whether inter partes or not. 1914, 36 *All* 264 *at p.* 267; 1908, 32 *Bom.* 296; 180 *Pun. L.R.* 1911. provided the requirements of section 19 as to signature, etc., are duly observed. 1924, 86 *Ind. Cas.* 859 (*Lah.*).

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Acknowledgments contained in petitions to Courts are sufficient. 1898, 25 *Cal.* 844 (*P.C*); 1906, 6 *C.L.J.* 141;—Admission of debt made by debtor on applying for. probate of the creditor's will is sufficient acknowledgment. *Cal.* 1047 (*P.C.*) (*Maniram's case*);

BALANCE-SHEET : ACKNOWLEDGMENT IN.

A statement in a balance sheet acknowledging a debt due by the company is sufficient within section 19. 1918, *M.W.N.* 48 (*Short notes*), (*following* 1897, 20 Mad. 239). Balance sheets including fees due to directors, and signed by them, are not acknowledgments of those fees. They are not a written promise by the company or its agents to pay the directors' fees and do not consequently save limitation. 1030, 2 *Ch* 44, *Re Coliseum, Ltd.*

INVALID PROMISSORY NOTE.

Though a promissory note made payable to bearer on demand cannot be enforced as offending against section 26 of the Paper Currency Act, 1910, it can nevertheless be used as evidence of an acknowledgment of liability under section 19, Limitation Act, so as to save the bar of limitation. 1925, 50 *M.L.J.* 36; 1922, 45 *Mad.* 778 *at p.* 784.

ARBITRATION: ACKNOWLEDGMENT CONTAINED IN SUBMISSION TO.

When there was an agreement to refer to arbitration, and the arbitrators were empowered to ascertain by their award what was due and payable, and to order the same to be paid, it was held, on the arbitration proving abortive, that the agreement only amounted to a conditional promise to pay the amount found due by arbitration, and that, as the condition was unfulfilled there was no effectual acknowledgment. *Wood, P.* 416; 1934, 154 *Ind, Cas,* 687 (*Lah.*) (*relying on* 1916, 40 *Mad.* 731).—A submission to arbitration containing a promise to pay whatever shall be found due is not available as an acknowledgment if the arbitration proves abortive. *Hals. Vol.* 19, *P.* 66; 1918, 37 *M.L.J.* 353; 1916, 40 *Mad.* 701.

TELEGRAM : ACKNOWLEDGMENT BY.

Acknowledgment contained in a telegram may suffice, provided that the original writing handed in at the despatching Telegraph Office is signed by the defendant or his agent. 155 *Pun, L. R,* 1906 (*at p,* 512).

INSOLVENCY SCHEDULE : ACKNOWLEDGMENT IN.

Inclusion by the debtor of a debt in his schedule while seeking the benefit of the Insolvency Laws is a sufficient acknowledgment, provided of course that the schedule is signed by the debtor. 1910, 35 *Bom.* 383; 1916. 36 *Ind, Cas,* 389 (*Mad.*) ; 1911, 16 *C.W,N,* 346;

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RESOLUTION : ACKNOWLEDGMENT IN.

There may be a sufficient acknowledgment in a resolution passed at a meeting (e.g.,, of a company). *Darby, p.* 96; 1921, 58 *Ind. Cas.* 446 *at p.* 447 (*Mad*);

Acknowledgment must be addressed or communicated to somebody.—Expanation I to section 19 implies that the acknowledgment to be operative must be addressed to some person. 1906,33 Cal 613; 1886, 10 Bom. 71; 1931, 11 Pat. 272 (*P.C*) at p. 280 (But the acknowledgment need not be addressed to the creditor or to anyone representing him) 1925,91 Ind, Cas. 461 (*Cal.*), (dissenting from 1906, 33 Cal. 613.).

Acknowledgment to A Stranger.—The acknowledgment must be that the person making it is liable to the person seeking to recover possession In order to bring his case within limitation, the person who sttempts to enforce his right must show that the acknowledgment of liability was in his favour, though (by virtue of explanation I to section 19) it need not have been addressed to him. 1936, 165 *Ind. Cas.* 74 (*Lah*), *per* Jai *Lal*, J, (relying on 1887, 14 *Cal* 801, *P C*.). acknowledgment need not be made directly to the party entitled or to his agent; an acknowledgment addressed ty a third party suffices. 1920, 45 *Bom.* 934 *at p*, 939; 1913, 35 *All.* 437; 1931, 11 *Pat.* 272 (*P.C.*) *at p.* 280.

Acknowledgment in a conveyance not addressed to creditor.

The decision last cited (33 *Cal* 613) in holding that the acknowledgment must be addressed to the creditor or to someone on his behalf does not lay down the correct law; the Judicial Committee in 1906, 33 *Cal* 1047 have held that the acknowledgment need not be so addressed. 1908,32 *Bom* 296. 1925,19 *Ind. Cas.* 461 (*Cal*); 1913, 35 *All.* 437;). In other words, the acknowledgment need not necessarily be in a document to which the creditor is a party. 1928, 115 *Ind. Cas.* 263 (*Cal.*).

Acknowledgment by Whom—An acknowledgment, when made by a mere stranger, has no efficacy, for it would be absurd to suppose that the Legislature meant to give any right against the debtor by the acknowledgment of a mere stranger. Brown on Limitation, *p.* 598; 1931, 7 Luck 270 *at p.* 281. Acknowledgment must be by a person to be bound thereby. 1907. 29 *All.* 773. Section 19 requires that the acknowledgment must be made by defendant or his predecessor in title. 1910, 32 *All.* 33, (*S.C.*) on appeal, 1913, 35 *All.* 227, *P, C,*

Mortgagor : *Acknowledment by.* A promise to pay the mortgage debt and referring to the mortgage is a sufficient acknowledgment of the existence of the relations of mortgagor and mortgagee, and is therefore an acknowledgment of the mottgagee's title Darby, p. 384; 1854, 10 Exch, 430, Jayne v. Hughes, (relied on in 1920, 60 Ind. Cas. 189, Oudh). Such acknowledgment is sufficient to keep alive the mortgagee's right to possession, and gives him a

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fresh starting point for his suit for possesssion under Article 135, Limitation Act. 1919, 51 Ind. Cas. 985 (Oudh) ; 1920, 60 Ind. Cas. 189, (Oudh); 1921, 2 Lah. L.J. 549.

Acknowledgment by Mortgagor binds also subsequent assignees:

An acknowledgment by a mortgagor in favour of the first mortgagee cannot operate as against a second mortgagee whose title originated before the acknowledgment was given. 1863, 1 *De. G.J. and S.* 122, *Bolding v. Lane*; 1905, *I C.L.J.* 337, (where most of the English authorities are are reviewed by Mookerji, J.). An acknowledgment by the mortgagor binds only him or persons claiming through him, i.e., assignees from him after the acknowledgment. 1924, 86 *Ind. Cas.* 434 (*Mad.*), (*dissented from in* 1932, 55 *Mad* 758). It may be remarked that Ramesam, J., who was a party to 86 Ind. Cas 434, ante, has on subsequent occasions doubted the correctness of the reasoning adopted in that judgment; *see* 1934, 161 *Ind. Cas.* 924 (*Mad.*).

A mortgagor cannot extend limitation against a subsequent purchaser by making an acknowledgment of the mortgage debt after his (the mortgagor's) personal liability has become timebarred and he has parted with (i.e. sold) the equity of redemption in all the mortgaged property. 1932, 55 Mad. 758 at p. 763.

Executor's Acknowledgment of Deceased's Debts. If in an inventory of the effects of the debtor the debt is included amongst the charges, such inventory is an act which recognizes the debt, and so is a sufficient acknowledgment. Pothier, Vol. 1, p. 501; 1933, 56 Mad. 964 at p. 968; 1929, 53 Mad. 480 at p. 482.

Surety: Acknowledgment By. Promise by surety to make up the principal debtor's deficiency is a sufficient acknowledgment. 1845, 14 M. and W. 1, Humphries v. Jones; Darby, p. 72; When the surety, on being applied to, asked that means should first be used to compel his principal to pay, this was held to be a promise to pay if the principal did not. 1871, 24 L.T. 272 Fisk v. Mitchell; Lightwood, p. 352; 2 P.R. 1878.

Advocate or Vokil: Acknowledgement by. Acknowledgment in a pleader's letter may suffice to save limitation against the client, it being assumed (until the contrary is proved) that the letter was written under instructions. 1933, 144 Ind. cas. 996 (Ran.); *cf* 1928, 112 Ind. Cas. 73, at p, 75 (All).

Hindu Widow : Acknowledgment by. A reversioner is not bound by an acknowledgment given by a widow while in possession of her limited estate, inasmuch as he derives title through the last male owner and not through the widow, who in making the acknowledgment has no power to bind any interests except her own. 1913, 35 All. 227 (*P. C.*) (S. C. 1909, 32 All 33); 1924,86 Ind, Cas. 353 (Cal.); 1924.82 Ind, Cas. 1052 (Nag,), In accordance with the recommendation of the Civil Justice Committee it is no expressly provided by the amending Act of 1927 that for purposes of sections 19

and 20 of the Limitation Act, an acknowledgment signed, or a payment made, in respect of any liability, by a widow or other limited heir, under the Hindu Law. shall be a valid acknowledgment or payment (as the case may be), as against a reversioner succeeding to such liability, (vide section 21, sub-clause (3), of the Limitation Act, as inserted by the Amending Act of 1927. Mulla's Hindu Law, 8th ed., p. 209; 1936, 16 Pat. 45 at p 51.

Court of Wards : Acknowledgment by.— An acknowledgment given by a ward, even after the estate has been taken charge of by the Court of Wards is (it seems) valid to cause limitation to run anew. 1915, 37 All. 13.

Sarbarakar or Manager of Estate : Acknowledgment by.—When a debtor is incapable of managing his property and the Collector appoints another person as sarbarakar or managger, the latter is not an agent to admit a personal liability of the debtor, inasmuch as the office of sarbarakar has regard only to land with which the collector is concerned and not to the person or personal property of the landholder. 1895, 17 All. 198(P, C).

Official Assignee, Acknowledgment by, The official assignee is not the insolvent's agent to make an acknowledgment on his behalf. 1932, 58 Bom. 505.

Repealed Act : acknowledgment made during currency of.

When once a title has been acquired, or a right to sue has become barred under any earlies Act no change of the law of limitation can weaken the title so acquired, or revive the right to sue which had become barred. 1936. 166 Ind. Cas, 182, (All),

Execution Proceedings. Explanation III added to section 19 by the Limitation Act, 1908, makes it clear that the provisions of the section are applicable to execution applications. 1924. 79 Ind. Cas 897 (Pat).

Sufficient Acknowledgment.—A writing showing there was then an unsatisfied judgment-debtor a decree capable of execution. 1913, 38 Bom. 47; 1896. 18 All. 384; 1918, 42 Mad. 52

Insufficient Acknowledgment. A mere statement of the fact of a decree having been passed is not sufficient acknowledgment, as it does not thereby admit a present liability under the decree. 1896,18 All. 384 at p. 385, (distin. in 1924, 82 Ind. Cas 933, Mad.

Acknowledgment of Debt Implies a Promise to Pay : Section 25, Contract Act.— Under section 19 of the Limitation Act a mere acknowledgment of liability suffices, and it is not essential that the acknowledgement should contain either an express or even an acknowledgment should contain either an express or even an implied promise to pay the debt. In numerous cases it has been held (on the authority of the Privy Council judgment in Maniram's case, 33 Cal. 1047) that as an unconditional acknowledgment of a debt always implies a promise to pay, it can itself be the foundation of an action. See (inter-

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alia) 1929, 10 Lah, 748. The question is, however, one of interpretation in each case, and if the Court can spell out of such words a definite and express promise to pay, the entry would, under section 25, Contract Act, form the basis of a fresh cause of action. See 1934, 16 Lah. 258 (this case was decided a few days after the judgment of the Privy Council in Bishun Chand's case, 56 All. 376, was available in India); 1934, 159 Ind. Cas. 677 (Lah.), (where the P.C. judgment in Bishun Chand's case, ante, was referred to).

Promise to pay barred debt.—An acknowledgment is required (by section 19) to be made before the expiration of the period of limitation, where as a promise (section 25, Contract Act) may be made after the limitation period. 1908,30 All. 268, at p. 270, 1929, 8 Pat. 706. Section 25, Contract Act, requircs that there should be not merely an acknowledgment, but an express promise to pay a barred debt. A promise in writing to pay a time-barred debt is valid under sec. 25, Contract Act, even when made without knowledge on the part of the promisor that the debt is then barred. 1913, 21 Ind. Cas. 254 (Cal.); 1935 40 C,W,N, 130, The promise gives a fresh cause of action, and on a suit based on it time would ordinarily reckon from date of the promise; 1910, 5 Ind, Cas, 418(All), The promise is enforceable regardless of all questions of limitation in connection with previous items, Pun, L,R, 1911, (relied on in 1923 79 Ind, Cas, 77, Cal, A conditional promise under section 25, Contract Act, becomes operative only on fulfilment of the condition. 1887, 11 Bom. 580 (relied on in 1921, 23 Bom, L. R, 1231,)

Promise by minoa's guardian.—A minor cannot himself promise to pay a barred debt, as he is incapable of contracting, and a promise under section 25, Contract Act, is a "contract". It seems also that his guardian cannot on the minor's behalf give such a promise as it would merely be tantamount to a gratuitous promise and exceed the authority of a guardian. 1928, 115 Ind. Cas. 263 (Cal). per Mitter J.

Entries In account books. A memorandum siged by the debtor in his creditor's books acknowledging that a certain sum is to be received by the creditor is a sufficient promise under section 25, Contract Act. and *a fortiori* it is a good acknowledgment for purpose of section 19, Limitation Act. 33 P.R, 1882; cf.66 P.R. 1917. A written balance showing that accounts were balanced and found due, nothing being written binding the debtor to pay, is merely an acknowledgment under section 19, and being insufficient under section 25, Contract Act, it cannot be operative in respect of items then timebarred. 36 P.R. 1886; see 102 P.R. 1905. A bare statement of account is not a promise for purpose of section 25, Contract Act. 1882, 6 Bom, 683 (foll. in 1028, 52 Bom. 521), But such writings (e.g., "baki deva" or balance due, and a mere statement of account) would suffice as an acknowledgment for the purpose of section 19, Limitation Act. 1883, 7 Bom. 414 and 515.

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Effect of acknowledgment in writing.
Scope of the section.

Admission of fact of which liability is consequence is acknowledgment. 4 *D.L.R. Cal.* 225.

ackno wledgment must be of a subsisting liability. 1949 *Mad.* 401.

the sec. applies to rent decree. 3 *C.L.J.* 347, 9 *C W.N.* 1025, 34 *C L.J.* 195, 26 *C.W.N.* 486, 9 *C.* 255 *P.C.*, and also to liability of rent. 10 *C.L.J.* 517.

What amounts to acknowledgmeat under this sec.

an oral acknowledgment is not valid. 11 *I.C.* 445, and it must be signed. 34 *A.* 464, 15 *M.* 380, 109 *I.C.* 398: 1928 *All.* 310: 26 *A.L.J.* 420, at any place, 10 *B.* 71, *I A.* 683, 5 *B.* 89, though in case of illiterate person he may acknowledge by getting his name written by other person. 6 *M L J* 30°, 7 *B.* 515, 2 *Pat. L.T* 355, 27 *I.C.* 747, but a signature in a deposition containing a statement is not sufficient. 1928 *All.* 310, 45 *A.* 679, 1929 *Mad.* 634.

customary signature prevailing in any class or community will be sufficient. 18 *B* 586 (specified words), 31 *C.* 1043 : 9 *C.W.N.* 83 (*likhitang khode in hatchita*), 8 *W.R.* 39, ("Sree Maharaja') "*Sri Sri Hari Saranam*". 75 *I.C.* 1004, 26 *I.C.* 911.

affixing rubber stamp signature is sufficient. 1935 *Rang.* 160 : 156 *I.C.* 589.

affixing of initials is sufficient. 1935 *Mad.* 555: 156 *I.C.* 449.

acknowledgment must be made within time. 1938 *Nag.* 180: 174 *I.C.* 374, 1937 *Lah.* 642: 174 *I C.* 258, 1947 *All.* 199: 226 *I.C.* 440.

when limitation expires on a holiday acknowledgment made on the next day is not valid. 1937 *Lah,* 642: 174 *I.C.* 258.

where the acknowledgment consisted of "rupees 2115 *baki dena.*" it could not be admissible in evidence without stamp paper. 19 *C.W N.* 87, 1923 *Cal.* 659, 21 *B.* 201 *F.B.* But a compulsory registrable document though unregistered may operate as an acknowledgment. 5 *C.* 215, *A.* 523.

an unconditional acknowledgment has always been held to imply a promise to pay, because that is the natural inference, if nothing is said to the contrary; if it be conditional acknowledgment evidence must be given that the condition has been performed. 33 *C.* 1047: 33. *I.A.* 165: 10 *C.W.N.* 874: 4 *C L.J.* 94: 8 *Bom. L.R.* 501: 3 *A.L.J.* 525 *P.C.*, 41 *M. L.J.* 217, 36 *C.L.J.* 228, 50 *C.* 974.

refusal of conditional offer is no acknowledgment. 1933 *All.* 348 : 144 *I.C.* 1029.

an acknowledgment need not contain a promise to pay. 1936 *Mad.* 939 ; 166 *I C.* 750, 1950 *Bom.* 94,

mere endorsement of payment does not amount to acknowledgment 1945 *Pat.* 271 ; 220 *I.C.* 255, 1946 *Pat.* 404 : 224 *I.C.* 65.

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there is a distinction between an acknowledgment under this sec. and a promise to pay under sec. 25 (3) Contract Act. 1954 *Pat.* 575.

admission of statement of account by letter saves limitation, 43 *A.* 216, 1925 *Mad.* 1215, 1924 *Mad.* 352, 1925 *All.* 340.

a letter reciting that the writer would see whether any amount was due, is not sufficient 13 C. 195 : 8 *C W.N.* 168. 36 *M.* 68, nor a letter saying that the writer will sign after looking into the account is sufficient, 19 *C.W.N.* 170, whether a particular endorsement does or does not constitute an acknowledgment of the right depends upon its terms 33 *C.L.J.* 433.

but a letter agreeing to renew a promissory note which is about to become time-barred constitutes an acknowledgment. 40 *C.W.N.* 130,

mabalakbandi is good acknowledgment to save limitation under this sec. but is not promise to pay under s. 25 Contract Act and cannot revive time barred debt. 1925 *Cal* 338.

a defectively or insufficiently stamped promissory note cannot be used in evidence as an acknowledgment of debt as s. 35 Stamp Act prohibits its admission. 63 *C.* 813 ; 40 *C.W.N.* 399, 1940 *Nag.* 215.

an insufficiently stamped promissory note may be used as an acknowledgment 1934 *All.* 951.

The debt must be identified.

it is not necessary to specify the debt where there is only one debt. 1937 *Lah.* 827 : 169 *I.C.* 973.

the debt must be identified by the acknowledgment—no oral evidence as to that is admissible. 17 *A.* 198: 22 *I.A.* 31 *P.C.* 2 *Bom. L.R.* 715, 8 I.C. 81, 13 *C.L.J.* 139, *contra*, 1941 *Mad.* 409 : 1941 *M.W.N.* 175.

when there are several debts acknowledgment must be of the distinct liability and not of any liability, 13 *C.L.J.* 139, 9, *Bom. L.R.* 715, 1941 *Mad.* 892 : 198 *I.C.* 611

Conditional acknowledgment how far effective.

an unequivocal and unqualified admission of debt should be established. 30 *C.* 699 : 7 *C.W.N* 651.

if the acknowledgment be conditional the condition must be fulfilled to give effect to it. 40 *M.* 701, 33 *C.* 1047 : 10 *C.W.N.* 874 : *C.L.J.* 94 : 8 *Bom. L.R.* 501 *P.C.*, 36 *C.L.J.* 228.

acknowledgment of debt in case certain circumstances exist, is sufficient. 26 *C.* 204.

a statement in a letter that if upon a comparison of accounts any amount is found due the writer will pay it, is a sufficient acknowledgment, 1928 *Pat* 221 111 *I.C.*617 : 30 Bom L.R. 688.

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Who can acknowledge.

the person making the acknowledgment may not have interest in the property at the time when it is made. 29 A. 90 *contra.* 1951 Nog 240 : 6 D L.R. Nag. 127.

acknowledgment made by mortgagor after sale of his interest does not bind the purchaser 1942 P C. 67 : 47 C W N. 43:45 Bom. L.R 267 : 202 I.C. 740 P.C.

acknowwledgment by a co-sharer dose not bind the other co-sharers. 1942 Pat. 73 : 199 I.C. 566.

an agent's authority to aeknowledge on principal's behalf may be express or implied, it is presumable from circumstances. 85 I.C. 633 : 1925 All. 176.

person having general authority to settle and pay claims may acknowledge. 24 C. W. N. 153.

acknowledgment by the manager or *Korta* of the Hindu family binds the other members. 37 C. 461:14 C.W.N. 741:11 C L.J 484 19 C. W N. 860, 41 C.L.J, 535 : 1925 Cal 1153, 1940 Cal. 137:44 C.W N. 299, 1950 P C. 15:29 P. 273 52 Bom. L.R 466 P C but where the creditor deals with all the members the manager's acknowledgment cannot bind others. 25 M. 220 *F. B.*

an acknowledgment by a natural guardian will bind the minor if it was for his benefit. 30A. 422:5 A L.J 375, 8 Bom. L R. 212, 18 M. 456. so also by the certificated guardian. 26 B 221 *F B* 17 M 221, and by the Court of Wards. 43 C. 211, 34 M. 221, but an acknowledgment by a Hindu widow is not binding on reversioner. 86 I.C 353: 1925 Cal. 863, 17 C.L J. 488 : 17 C.WN. 605:23 A. 227 : 25 M.L.J. 131 : 15 Bom. L.R. 489. *P.C.*

a *defacto* guardian cannot bind the minor by an acknowledgment. 1943 Bom. 381 : 210 I C. 532 1948 Nag. 293.

a partner has implied authority to make an acknowledgment. 1939 Lah. 397 : 184 I C. 734.

an acknowledgment by one of the directors of a company in the course of business saves limitation. 48 C.L.J. 597 : 1929 Cal. 155 : 115 I. C 177.

acknowledgment by the legal practitioner binds the client. 1931 All. 398. 18 A. 384.

an acknowledgment of liability by some only of the heirs of a mortgagor against whom a decree for sale has been passed does not save limitation against others. 1936 All. 820 *F.B.*

an acknowledgment by mortgagor after second mortgage does not bind the second mortgagee. 1947 All. 214 : 222 I C 632, 1949 Pat. 505 : 4 D.L.R. Pat 106, 1947 All. 74 : 229 I.C. 583 F. B.

an acknowledgment of mortgagor binds the puisne mortgagee. 40 M.L.J, 129 : 62 I.C. 833, purchaser from the mortgagor. 32 C 1077 : 9 CWN. 868, 1936 All. 636, third person auction-purchaser of the mortgaged property, if

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the acknowledgment was made before attachment. 22 C. W. N. 278. (22 C. 909. 16 B. 197) *Ref.*

an acknowledgment by principal debtor does not save limitation against the surety unless the latter allowed himself to be represented by the former. 1931 Lah. 691 : 132 I.C. 590, 1939 Nag. 31 : 179 I. C. 771.

Acknowledgment to third person is sufficient.

under this sec. an acknowledgment need not be addressed to the creditor himself but can be made to anybody. 30 C W N 968 : 1926 Cal. 1140: 44 C.L.J. 529, 19 C.W.N. 96, 35 A. 437, 37 B. 326 *P.C.*, 32 B. 296, 16 C.W.N, 346, 33C 1047:10 C.W,N. 874 : 4 C.L.J. 94 *P.C.*, 6 C.L.J. 141, 23 Bom. L.R. 606 : 63 I.C. 923, 458, 934, 24 Bom. L.R. 713, 1939 Bom. 237 : 183 I.C 225.

an acknowledgment made in a document to which plff. is not a party is a valid acknowledgment. 1928 Cal. 850, 33 C. 1047, 19 C.W.N 263, 16 C.W.N. 346, 35 B. 483, 1926 Cal. 686.

an acknowledgment contained in a communication to a third person does not require registration. 1932 P C 55 : 13 pat. L.T. 249 : 55 C.L.J. 136 : 1932 M.W.N. 660 : 1932 A.L.J. 186 : 34 Bom. L. R. 463 : 36 C.W:N. 250 : 136 I.C. 798 : 62 M.L.J. 296 *P.C.*

Acknowledgment of part of the debt, effect of.

acknowledgment of part of a debt is sufficient. 6 C.L J. 141, but only to the extent of debt acknowledged, 16 C.W.N. 493, 72 I.C. 692 : 1923 Cal. 71.

Acknowledgment of barred debt.

an acknowledgment of barred debt, cannot give fresh start of limitation. 16 C.W.N. 636, 67 I.C. 298 (C), 48 M. 693 : 85 I.C. 297 : 1925 Mad. 261, 52 B. 521 : 1928 Bom. 319, 6 C.L.J. 544, 16 M. 220, 1945 All. 224, 1952 Pat. 73 : 30 P. 1161. But a promise to pay made in writing even after the debt is barred may be enforced under s. 25 (3) of the Contract Act. 60 C. 714 ; 37 C. W.N. 326 : 1933 Cal. 658, see other case under "s. 25 (3) *Contract Act*.

an acknowledgment made after the period of limitation but on or before the re-opening of the Court when the period expires on a holiday, does not give a fresh start of limitation under s. 19. 58 C, 1148 : 35 C.W.N. 370 : 1931 Cal. 785, 26 B. 782, 48 A. 726, 1937 Lah. 642.

Effect of acknowledgment,

no cause of section can be founded on acknowledgment. 1941 Nag. 294 : 201 I.C. 77.

an acknowledgment gives a fresh start. 13 M. 135, 20 C.W.N. 952, 17 C L.J 474 *P.C.*, 1945 Mad. 10 : 219 I C. 231 I.C 231, according to the law in force at the time of suit and not the time of acknowledgment 34 A. 109.

the word prescribed in s. 19 means prescribed by any law for the time being in force and is not limited to the first schedule. 1925 All 68: 80 I. C. 743 (A). 30 M. 426 : 11 C.W N. 1005 : 6 C.L.J. 379 : 4 A.L.J. 625 *P.C.*

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Acknowledgment only extends period but does not confer title.

—the acknowledgment of liability only extends the period of limitation and does not confer title and is not a "thing done" within s. 6 General Clauses Act. 17 C.W.N. 605:17 C L J. 488 *P, C.*

Acknowledgment of title by trespasser.

—when a trespasser admits that a portion of the land belongs to the owner but declines to vacate the land in spite of demands, there is open dispossession and the admission cannot extend the period of limitation 60 C. 404 : 1933 Cal. 414.

20. EFFECT OF PAYMENT ON ACCOUNT OF DEBT OR OF INTEREST ON LEGACY.—[19](1) **Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, or by his duly authorised agent, a fresh period of limitation shall be computed from the time when the payment was made :**

[20][**Provided that, save in the case of a payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by the person making the payment.**]

(2) EFFECT OF RECEIPT OF PRODUCE OF MORTGAGED LAND. Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section (1).

Explanation.—**Debt includes money payable under a decree or order of Court.**

Applicability and Scope.

—Attachment of property by chakla Kanungo—Property sold and proceeds given to decree holder by Kanungo—Kanungo, not an agent of judgment debtor—Section 20 not applicable.

In execution of a decree a Chakla Kanungo attached certain movable propsrty of the judgment debtor in pursuance of a warrant issued by the Court directing him to seize the movables of the judgment-debtor and hold them unless and until the amount outstanding under the decree was paid. The Kanungo subsequently sold the properties and paid the proceeds of sale to the decree-holder. The question was whether this payment was a part payment of a debt by the agent of the judgment debtor within S. 20 Limitation Act.