

Ques. This decision goes to the length of laying down that parties can vary the Law of Limitation by private agreement. This seems to overlook the provisions of sections 28 and 23 of the Contract Act.

(2) *Proceedings under the Companies Act.*

When a Company is being wound up and a liquidator is appointed to carry on the affairs of such Company, Section 186 of the Company's Act provides that the liquidator may make an *application* to the Court for an order upon a person "to pay any moneys due from him to the Company." Ordinarily there would have to be a suit. But to avoid multiplicity of suits this special proceedings is permitted by law.

Question is whether Limitation applies to such proceedings. It has been held that "money due" in section 186 means moneys due and recoverable in law, i.e., *moneys not* time-barred. This means that the Law of Limitation applies to such proceedings.

60 I. A. 13 (23)

(3) *Proceedings under the Income Tax Act.*

The Civil Courts in India have no jurisdiction in matters of public revenue.

They can have such jurisdiction only if a particular Revenue Act invests them with such jurisdiction. For example a provision will be found in section 66(3) of the Indian Income Tax Act of 1922. Under the section, a party aggrieved by an order of the Income Tax Officer in the matter of assessment may apply to him for stating a case to the High Court and if he refuses may apply to the High Court for an order compelling the Commissioner to state a case and refer it to the High Court.

There is a time-limit for such an application. But the Law of Limitation does not apply to it. The time-limit is the time-limit prescribed by the Income Tax Act and not by the Law of Limitation.

(4) *Proceedings before the Commissioner of Workmen's Compensation*

The Workmen's Compensation Act, 1923, provides for Compensation to be paid to workmen for injuries caused to them

in the course of their employment. The cases are heard by a Commissioner. The Commissioner is a special tribunal and not a Court and therefore the Limitation Act does not apply to proceedings before him.

This does not mean that the claim for compensation for injury can be prosecuted before him at any time. That would be so if the Act had made no provision for a time-limit. As the Act has presented six months as the time-limit, suits have to be brought within that period.

(5) Proceedings under Registration Act.

(1) Presentation of Documents—4 months.

(2) Appearance of Parties for admitting Documents—4 months.

3. Criminal Proceedings

1. Criminal Proceedings are generally instituted in the name of the Crown because they involve a breach of the King's peace.

2. It is a maxim of Constitutional Law that lapse of time does not affect the right of the King.

3. That being so the Law of Limitation does not apply to criminal prosecutions.

4. Two things may be noted :

(1) There are many Acts which prescribe limits of time for institution of prosecution under those Acts. E.g. Government of India Act, Section 128 : Opium Act, Customs Act, Salt and Excise Acts and Police Act.

(2) Limitation Act, although it does not provide for any time-limits for criminal prosecutions, it does provide for *appeals* under the Cr. P. C.

4. Civil Proceedings

(i) With regard to *suits* different kinds of suits have been specified in different Articles. There is also a general residuary Article No. 120 which is made to apply to any suit for which no period of limitation is provided elsewhere in the Schedule. The Act, therefore, applies to *all* suits.

(ii) With regard to *appeals* there are two Courts to which appeals can lie in India—(i) The Court of a District Judge and (ii) The High Court. The Limitation Act specifies appeals to both these Courts and therefore, it can be said that the Law of Limitation applies to all appeals.

(iii) With regard to *applications*, different kinds of applications are enumerated in the different articles in the Schedule. As in the case of articles relating to suits there is also an Article 181 for applications for which no period of limitation is prescribed elsewhere in the schedule or by section 48 of the C. P. C. But almost all High Courts have held that the operation of this Act is to be restricted to applications under the C. P. C. only. That being so it is clear that the Limitation Act *does not apply* to *all* applications. For instance it does not apply to :

(i) Applications for the grant of probate letters of administrations succession certificates.

(ii) Applications under the Rules of the High Court

32 Bom. 1

48 Cal. 817

46 Cal. 249.

(iii) Applications under a Local or Special Act (unless such Act provides for it).

These not being matters dealt with by the C. P. Code.

In respect of persons

1. The general rule is that the plea of limitation applies to every Plaintiff.

2. Originally, limitation did not apply to the Crown when it sued as a Plaintiff, on the ground that lapse of time did not affect the Crown. This maxim of Constitutional Law although it governs criminal prosecutions has been negated so far as civil proceedings by the Crown are concerned by Article 149 of the Limitation Act which applies to every kind of *suit brought by Government*, and prescribes 60 years as the time-limit. Suits *against* Government must be brought within the ordinary time-limits.

15 Mad. 315.

Similarly, suits by private persons *claiming through* Government are also subject to the ordinary time-limit prescribed by the Act. This was always the rule. It was not always the rule for Government to bring a suit within any prescribed time. This

has now been altered. It can, therefore, be said that as a rule the Law of Limitation applies to *all* persons whether they are private persons or corporate bodies of Governments, and that the plea of limitation is available to every Defendant as against every Plaintiff whether that Plaintiff is a private person or a Government.

3. The plea of limitation is available to every Defendant. To this rule there are certain exceptions.

37 Bom.—S.R. 471

Section 10.

I. The defence of limitation is not available to a person in whom property has become *vested in trust* for any specific purpose nor is it available to his legal representatives or assigns (not being assigns for valuable consideration), in a suit for recovery of the property or the proceeds thereof or for an account of such property. This section is to be applied to an *express trust* as distinguished from an *implied* or *constructive trust*. A trustee of an implied or constructive trust can take the defence of limitation.

Distinction between an Express Trust and Implied or Constructive Trusts.

Persons, therefore, who are holding a fiduciary position are not trustees within the meaning of Section 10 ; E.g. Agent, Manager, Factor, Benamidar, Executor or Administrator, Banker, Surviving partner, Director of a Company Liquidator of a Company, *Karta* or Manager of a joint Hindu family.

Secondly Section 10 is applicable only in cases of persons “in whom property has become *vested** in trust for a *specific purpose*” 44 Mad. 277(281-2).

What is Specific Purpose ? A specific purpose is a purpose that is actually and specifically defined in the document by

* What is meant by vested ? The following suits are excluded —

- (1) Suits seeking to make the trustee liable for what he might have received.
- (2) Suits to enforce Plaintiffs' personal right to manage trust properties.
- (3) Where there is an invalid trust, a suit to recover the property from the trustees in the enforcement of a resulting trust—20 Bom, 511.
- (4) Suits for compensation for breach of trust— 581. A. 279 (297).

which the trust is created for a purpose which from the specified terms can be certainly affirmed.

49 I. A. 37 (43)

58 I. A. 1

That being so even a trustee *de son tort* would fall within this Section.

Meaning of a *trustee de son tort*.

Explanation.—Hindu, Mohammedan and Charitable endowments are declared to be express trusts and their managers express trustees.

Thirdly.—Section 10 not only applies to the defaulting trustee himself, but also applies to his legal representatives and assigns except assigns for valuable consideration. Purchasers for value from a defaulting trustee are protected and they can plead limitation.

Whether purchasers from a trustee must in addition to being purchasers for value should also be purchasers without notice of trust is a point on which the Act is silent. Judicial decisions on this point are, however, in conflict.

Section 29 (3) II. The Limitation Act does not apply to parties litigating under the Indian Divorce Act (IV of 1869).

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As against a Special Law

1. Besides this General Law of Limitation there are other special or local laws which also prescribe time-limits for suits, appeals or applications. In case there is a difference between the time-limits fixed by the general and special law, question is which law is to prevail.

2. The answer to this question is given in Section 29. According to the Section the special law will prevail over the general law.

3. Section 29 also provides for the applicability and non-applicability of the other Sections of the Limitation Act in cases of conflict between the general and special law as to time-limit.

4. According to Section 29, in cases of conflict the provisions of Sections 4, 9 to 18 and 22 of the Limitation Act will apply

(unless expressly made inapplicable) and the remaining provisions of the Act shall not apply (unless expressly made applicable by the Special Law).

The Scheme of the Law of Limitation

1. The Indian Limitation Act consists of 29 Sections and one Schedule.

2. The Schedule is divided into three Divisions :

First Division—deals with Suits.

Second Division—deals with Appeals.

Third Division—deals with Applications.

3. The Schedule in respect of each of its Divisions is cut up into 3 Columns.

Column 1—Describes the nature of the claim for which suit is brought or of the appeal or if application is made.

Provision is made for 154 different classes of suits.

Provision is made for 9 different classes of appeals.

Provision is made for 26 different classes of applications.

Each of these provisions is numbered seriatum and is called article no. so and so. There are in all 189 articles in the Schedule though the last article is 183, that is, because some articles have the same number and are distinguished by the addition of A to the same number.

Column 2.—Specifies the period *within* which the suit must be filed, appeal or application must be made.

Column 3.—Specifies the starting-point of the period of limitation within which *suit* must be filed or appeal or application must be made.

4. The Sections of the Act in so far as they deal with the Law of Limitation as distinguished from the law of prescription deal with various questions arising out of the three columns of the Schedule. The Schedule, therefore, is the most important part of the Law of Limitation.

IV. LAW OF LIMITATION

Questions arising out of Column 3

Subject-matter of Column 3

1. Column 3 deals with the starting point of Limitation.
Two Questions arise—

(1) When does time begin to run ? What is the starting point of Limitation ?

(2) Is there only one starting point of Limitation? *Or* Can there be a fresh starting point of Limitation ?

I. *When does time begin to run ?*

What is the starting-point of Limitation.

1. The answer to the question as to when time begins to run is this. Time in respect of the institution of *a suit, appeal or application* begins to run from the occurrence of the event mentioned in Column 3. In most cases the event is the incident. But in some cases it is the knowledge of the incident to the Plaintiff—90-92. Whether it is the incident or the knowledge of the incident, in any case the occurrence of the event in Column 3 marks the starting point of limitation.

Two questions with respect to right to sue and cause of action.

(1) Must a Plaintiff sue when there is a cause of action ?

2. Confining to suits it may be said that time begins to run when the right to sue arises—Article 120. This is the first fundamental Rule.

When does the right to sue arise ? It arises—

(i) When the event mentioned in column 3 occurs if the suit falls under any of the articles.

(ii) When the suit does not fall under any specific article but falls under the general article (120) then right to sue accrues when the cause of action arises or in certain cases knowledge that cause of action has arisen comes to the Plaintiff, so that time begins to run from the occurrence of the cause of action or from the date of the knowledge of the cause of action.

Cause of action arises when a wrong is done to a party. Every wrong does not necessarily give rise to a cause of action. The wrong must under the circumstances be real and necessitate taking of action.

(iii) The effect of death on the starting point of Limitation.

1. When does limitation commence in the case of a person who dies before the right to sue accrues to him ?

2. When does limitation commence in the case of a person who dies before another person gets a right to sue him ?

I. When a person dies *before* the right to sue accrues to him the period of limitation *will commence* when there is a legal representative of the deceased capable of instituting such a suit.

II. When a person against whom a right to sue would have accrued dies before such accrual, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom a suit could be brought.

Exception to the fundamental Rule—Limitation runs from the moment the right to sue accrues

I. Cases where Limitation commences *before* the right to sue accrues.

(i) Money payable on demand and money payable on a Bill or a Pronote made on demand.

In these cases unless there is a demand to pay and there is a consequent refusal to pay there is no right to sue. The right to sue arises on the date of the refusal to pay. But time begins to run not from the date of the refusal but from the date of the loan or the date of the Bill or note, i.e., *before* right to sue has accrued. 57—58—59—67—73

(ii) Redemption of a Pledge—suits on—

The pawnee's right to sue to recover the pledge accrues on the date on which the debt in respect of goods pledged is paid off by him. But time begins to run not from the date of payment but from the date of the pledge, i.e., *before* the right to sue has accrued—145.

§ Cases where Limitation does not commence even the right to sue has accrued—Sections 6, 7, 8

1. These are cases where a person to whom a right to sue has accrued is suffering from a disability the date on which the right to sue accrued.

2. According to this exception time will not run against a person who is suffering from a disability although the right to sue has accrued to him.

3. Only three kinds of disabilities are recognized— (i) minority, (2) lunacy, (3) idiocy,

4. In the case of a person suffering from a disability, time commences when the disability ceases.

5. Where these disabilities are concurrent or succession in their operation, limitation commences when all such disabilities have ceased.

7. Where the disability continues upto the death of the person then time will commence against his legal representative from the date of his death.

8. If the legal representative is under a disability at the death of the person then time will commence when the disability of the legal representative comes to an end.

9. What is the effect of a disability of persons who are jointly entitled to sue upon the starting point of limitation.

Two cases must be distinguished :

- (i) Where only some of them are under a disability,
- (ii) Where *all of them* are under a disability.

I. Where *only some* of them are under a disability :

(i) Where full discharge or release can be given to the Defendant by the party not *under disability* without the concurrence of the person under a disability time will commence to run against all of them from the time the right to sue accrues.

(ii) Where no such discharge can be given, time will not run against any of them until the disability ceases or until the person under disability loses his interest in the subject-matter.

II. Cases where *all* persons who are entitled to sue are under a disability :

(i) Where *all* are under a disability, rules laid down in Section 6 will apply.

(ii) Where one of them *ceases* to suffer from the disability, Section 7 will apply and the governing question will be whether the person who is free from his disability give a valid discharge without the concurrence of those who continue to suffer from their disability. If the answer is in the affirmative, time will commence to run against *all* from the moment the disability of such a person has ceased to operate. If the answer is in the negative then time will not run against any of them until *all* of them cease to suffer from their disabilities.

9. Within what time from the date of the Cessation of the disability, a suit must be brought by the person who was under a disability when the right to sue accrued to him ?

1. There are three answers to this question.

(i) Within the prescribed period *to be counted from the date of the accrual of the right to sue*, if the period left over after the cessation of the disability is more than three years.

Illus. Prescribed period—12 years from 1920 to 1932.

Years of disability—4 years i.e. 1924 to 1936.

Period left over—9 years. Suit must be brought before 1932.

Suit must be brought within 9 years, i.e., within 12 years from the accrual of the right to sue i.e. within the prescribed period. He gets no benefit at all. Even his time is counted from the date of the accrual of right to sue.

(ii) Within the prescribed period *to be counted from the cessation of the disability*, if the period prescribed is less than three years.

He gets no benefit from his disability ; only his time begins to run from the date of the cessation of the disability.

Illus. Prescribed period 1 year from 1920 to 1921.

Years of disability—4 years. *S. P.* 1924 Bar 1925. Suit must be brought in 1925.

(iii) Within *three* years from the date of the cessation of the disability, if the period left over after the cessation of the disability is *less* than three years and the period prescribed is *more* than three years.

Prescribed period—6 years from 1920 to 1926.

Years of disability—4 years from 1924—Bar 1930.

Period left over after cessation is—2 years.

Suit must be brought in 1928 within three years from cessation of disability.

10. Some points to be noted with regard to this question of disability.

(i) The Section applies only to *suits* and to applications for the execution of a decree, but not to any other applications, nor to appeals.

(ii) The Section applies only to a person who was already under a disability when the right to sue accrued. If the disability supervenes *subsequently* than the Section does not apply.

(iii) The Section applies only where the *Plaintiff* or the person entitled to sue is under a disability. The disability of the *Defendant*—person liable to be sued—does not matter at all.

Time will begin to run against the Plaintiff even if the Defendant is suffering from a disability.

First Fundamental Rule is that limitation starts in the case of person who is not suffering from a disability, from the date of the occurrence of the event mentioned in Column 3 and if no event is mentioned in Column 3 then from the date when the cause of action is said to arise.

Fundamental Rule II

1. When once time has begun to run, no subsequent disability or inability to sue stops it.

2. This means that Limitation, once it starts is never suspended. If a person becomes insane or dies *after* the right to sue has accrued, time will continue to run against them.

II. IS THERE ONLY ONE STARTING-POINT OF LIMITATION ? OR CAN THERE BE A FRESH STARTING POINT OF LIMITATION.

1. Distinction must be made between the occurrence of a fresh cause of action and the occurrence of a fresh starting point if limitation in respect of the *same* cause of action. We are here considering cases where there occurs a fresh starting point of limitation in respect of the *same* cause of action.

2. The general rule of the Law of Limitation is that for a right to sue there is *only one* starting point of limitation and that starting point dates from the day when the right to sue accrues.

3. There are three cases where there is a fresh starting point of limitation in respect of the same cause of action :

- (i) Case where there is an acknowledgment.
- (ii) Cases where there is a part payment.

(iii) Cases where the cause of action arises out of a continuing breach of contract or out of a continuing Wrong independent of contract.

Section 19—§ Acknowledgment

I. GENERALLY

1. The acknowledgment must have been made *before* the period of limitation has actually run out. An acknowledgment made *after* the period has run out is of no avail and cannot be given a fresh starting point of limitation.

2. The acknowledgment must be in writing.

3. The acknowledgment must be signed by the party liable or by his agent duly authorized to sign an acknowledgement of liability.

4. The acknowledgement need not be *to the creditor*.

5. The acknowledgement must contain an admission of a *subsisting liability*. It need not contain a promise to pay. Indeed it may be coupled with a refusal to pay or with a claim to a set-off.

II. SECTION 21 (2)—ACKNOWLEDGEMENT BY PERSONS JOINTLY LIABLE

1. When a property or a right is claimed against persons who are jointly liable such as joint-contractors, partners, executors, motgagees, etc., an acknowledgement signed by any one of them (or by the agent of any one) render the rest chargeable.

III. SECTION 21 (3)—ACKNOWLEDGEMENT BY A HINDU WIDOW

Acknowledgement by a Hindu widow or other limited owner shall be binding upon the reversioners.

IV. SECTION 21 (3)—ACKNOWLEDGEMENT BY A HINDU MANAGER

The acknowledgement signed by (or by the agent of) the Manager of a joint Hindu family shall be binding upon the whole family where the acknowledgement is in respect of a liability incurred by or on behalf of the whole family.

**§ Payment of interest on debt or on Legacy and
Section 20—Part-payment of the Principal**

1. The payment must be payment before time has run out.
2. The payment is made by the debtor or by his agent duly authorized to make such payment.
3. The payment must be *voluntary*.

**Section 23—§ Continuing breach of contract and
continuing wrong independent of contract**

1. In the case of a continuing breach of contract or a continuing wrong, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong continues.

Q.—What is meant by a continuing breach and a continuing wrong-?

Continuing breach of contract

1. Covenant to repair in a lease which is broken every day the premises are out of repair.
2. Use of premises contrary to the covenants in the lease.

Continuing wrongs in respect of a tort

1. Infringement of a trade mark.
2. Refusal of a wife to return to her husband.

In these cases the right to sue arises *de die in diem* (from day to day).

3. The distinction between a continuing and a non-continuing wrong is very difficult to draw. A wrong continues either because the effect of a wrongful act once done continues or because the wrongful act is repeated.

The case of a continuing wrong is the case where the wrongful act is repeated and not where the effect of a wrongful act continues.

