

The promise of one partner, after a dissolution, does not revive a debt once barred, as against his co-partners. The *dictum* to contrary in *Ward v. Howell*, 5 H. & J. 60, overruled in *Ellicott v. Nichols*, 7 Gill, 85. Whether a promise was made before statute attached is question of law. *Newman v. McComas*, 43 Md. 82; *Leonard v. Hughlett*, 41 Md. 387. See also *Ellicott v. Nichols*, 7 Gill, 100; *Seldner v. Mount Jackson Bank*, 66 Md. 494; *Lingan v. Henderson*, 1 Bl. 278.

A contract made by several contractors cannot be taken out of statute by an acknowledgment by one of them. *Lingan v. Henderson*, 1 Bl. 278.

As to payments by a co-maker of a joint and several note, taking case out of statute, see *Burgoon v. Bixler*, 55 Md. 392. *Cf.* *Wilmer v. Gaither*, 68 Md. 343.

Payments by a husband on account of joint note of himself and wife, will not revive debt as to wife. *Wilmer v. Gaither*, 68 Md. 343 (*quaere*, whether this decision holds good since act of 1898, ch. 457).

The plea of limitations.

How statute should be pleaded. *Scaggs v. Reilly*, 88 Md. 65; *Byrd v. State*, 44 Md. 501; *Bevans v. McGlocklin*, 9 Md. 479; *State v. Green*, 4 G. & J. 384; *Dent v. Scott*, 3 H. & J. 32; *Harper v. Hampton*, 1 H. & J. 461; *Murdock v. Winter*, 1 H. & G. 473; *Wooton v. Sprigg*, 4 H. & McH. 352; *Perkins v. Turner*, 1 H. & McH. 400; *Moreton v. Harrison*, 1 Bl. 491. And see *Spencer v. B. & O. R. R. Co.*, 126 Md. 200; *W., B. & A. R. R. Co. v. Moss*, 130 Md. 204.

The statute need not be pleaded to each distinct count in a declaration. *Bullen v. Ridgely*, 1 H. & J. 104. *Cf.* note (a) to this case.

Limitations is not a plea to the merits and cannot be amended or filed after rule day. Where a declaration is amended, limitations must be pleaded at once, or it comes too late. *Griffin v. Moore*, 43 Md. 252; *Wall v. Wall*, 2 H. & G. 81; *Schulze v. Fox*, 53 Md. 42. *Cf.* *Spears v. Griffin*, 23 Md. 430.

Plea of limitations cannot be amended, though the amended plea is filed before the rule day has expired. *State v. Green*, 4 G. & J. 384.

When leave to file additional pleas is granted, limitation may be pleaded provided it be done within time originally allowed for pleading. *Mitchell v. Sellman*, 5 Md. 384.

A plea of limitations is not favored in the law; a party may waive it at his option. *Farmers' Bank v. Sprigg*, 11 Md. 398.

An irregularity in the time of filing a plea of limitations is waived by the filing of a replication to such plea. *Stockett v. Sasscer*, 8 Md. 377.

Though all parties to a suit waive statute, it may be relied upon by anyone who comes in and has an interest to protect. *Hammond v. Hammond*, 2 Bl. 366.

A party whose claim has been rejected or satisfied cannot set up the statute as against other claims. *Cape Sable Co.'s Case*, 3 Bl. 672.

Where the corporation is a party to the cause and does not plead the statute, a stockholder cannot do so. *Davis v. Gemmell*, 73 Md. 537.

Non-residents may plead limitations. *Bannon v. Lloyd*, 64 Md. 49.

The personal representative alone can plead limitations to claims against decedent's estate. A trust in a will to pay debts will not revive debts barred at death of testator, but trustee alone can plead statute. *Spencer v. Spencer*, 4 Md. Ch. 464.

Limitations cannot be relied upon, unless it is pleaded. *Bannon v. Lloyd*, 64 Md. 49; *Merryman v. State*, 5 H. & J. 423 and note (a); *Maddox v. State*, 4 H. & J. 541. And see *Dixon v. Dixon*, 1 Md. Ch. 274; *Hepburn's Case*, 3 Bl. 110; *Estate of Young*, 3 Md. Ch. 476; *Cape Sable Co.'s Case*, 3 Bl. 672; *Smith v. Williamson*, 1 H. & J. 150.

Pleading of limitations is within discretion of administrator—art. 93, sec. 103.

For form of plea of limitations, see art. 75, sec. 28, sub-sec. 50. See also art. 75, sec. 47.

Limitations in equity.

In all cases of concurrent jurisdiction between law and equity, the statute is equally obligatory in each court. *Teackle v. Gibson*, 8 Md. 87; *Hertle v. Schwartz*, 3 Md. 383; *Dugan v. Gittings*, 3 Gill, 161; *Sindell v. Campbell*, 7 Gill, 76; *Tiernan v. Rescaniere*, 10 G. & J. 223.

In equity, defense of limitations may be availed of on demurrer; *contra*, at law. Limitations may be pleaded after a decree *pro confesso*. *Belt v. Bowie*, 65 Md. 353; *Campbell v. Burnett*, 120 Md. 226.

Equity may refuse to grant relief where the statute applies, although it is not pleaded. *Syester v. Brewer*, 27 Md. 319.

In a creditor's suit, any creditor may set up statute of limitations (subject to all its provisos and conditions), as against claims of other creditors. *Strike v. McDonald*, 2 H. & G. 227.

In a creditor's suit, the statute may be pleaded against the claims of creditors subsequently coming in. *Strike's Case*, 1 Bl. 92.

The statute may be set up in equity against a claim at any time after claim is filed, either before or after auditor's report. *Young v. Mackall*, 3 Md. Ch. 410; *Welch v. Stewart*, 2 Bl. 42.

Limitations must be set up in equity as soon as party relying upon such defense becomes aware of claim to which it is applicable. When limitations begins to run. *Berry v. Pierson*, 1 Gill, 248.