

Article suits which
properly come within
article



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Article 4 is a residuary Article with regard to actions between principal and agent. Where the allegation is of misconduct or neglect of the agent then proper Article is Article 4. The expression 'neglect or misconduct' does not cover every failure of duty on the part of the agent, failure to render account, failure to pay over money in his hands to the principal and so on. In *Thomman v. Pothan Chacko*, (AIR 1957 Ker.

155), it has been held that when a person is entrusted with the money for spending it for a particular purpose, it is neither spent for that purpose nor is refunded, then the retention of the money amounts to neglect or misconduct to attract Article 4. Thus, the neglect or misconduct contemplated by the Article 4 is neglect or misconduct in the course of, and intimately connected with the agency duties, qua agent. In *India Sugars v. Estate of Ramalinga*, (AIR 1953 Mad. 694), it has been held that the Article 4 applies to cases where the principal sues the agent to recover secret profits made by the agent.

In *Magundappa Nealappa Kori v. Javoli*, (AIR 1965 Mys. 237), it has been held that a suit in which a client claims damages for negligence of his advocate is governed by the Article 4. The word 'other' in Article 4 shows that Article 4 does not include suits which properly come within Article 3.

In *Muthiah Chetty v. Alogappa Chetty*, [41 Mad. 1(2)], it has been held that a suit by the principal against an agent for the recovery of money lent by the latter to persons to whom he was not authorised to lend, is a suit for an ordinary money account under Article 3, and is not therefore governed by Article 4. The time of limit in Art. 4 refers to the time when the negligent act

or omission comes to the knowledge of the plaintiff. In *Shankaranarayana v. T D S Bhajan Sabha*, (AIR 1939 Mad. 114), it has been held that mere submission of account books by the agent to the principal should not be considered to be knowledge of the principal of the various acts of misconduct committed by the agent and it is only after a proper scrutiny of the account books the principal could have such knowledge and the time would run only when the principal is actually put in knowledge of loss or damage on examination of the accounts.

Article 4 does not explicitly say that time begin to run when the cause of action for neglect or misconduct came to the knowledge of the plaintiff. In *Annamalai v. Cowasji*, [AIR 1938 Rang. 258 (FB)], it has been held that once, the plaintiff is acquainted with what has happened he cannot sit idle and say that time does not run against him until he choose to take the view that the omission of which he is aware is actionable neglect or that the act of which he is aware is the actionable misconduct.