

No trust being established, the statute applies in equity. *Piper v. Tuck*, 26 Md. 221. See also, *Flishwick v. Sewell*, 4 H. & J. 430; *Oehler v. Walker*, 2 H. & G. 331; *Belt v. Hepburn*, 4 H. & McH. 525.

#### **Dower.**

Limitations is no bar in equity to a widow's claim for dower or the rents and profits thereof. *Wells v. Beall*, 2 G. & J. 473. See also, *Mitchell v. Farrish*, 69 Md. 241.

Although limitations does not apply to the wife's suit for dower, it does not follow that lapse of time may not become a bar to a bill for an account. *Kiddall v. Trimble*, 1 Md. Ch. 150.

The position that an annuity being in lieu of dower, is like dower, exempt from limitations, may be sound. *Chew v. Farmers' Bank*, 2 Md. Ch. 248.

#### **Application of last clause of this section.**

The last clause of this section applies to dealings between a merchant creditor residing out of Maryland and a debtor residing in Maryland, and in order to take the case out of the exception, it is not sufficient to aver that the creditor returned to, and was within the state of Maryland after the cause of action accrued and more than three years before suit brought. (*Cf.* notes to section 5). *Bond v. Jay*, 7 Cranch. 350 (based on the act of 1715, ch. 23).

The exception in the last clause of this section, has no application to transactions between banks; nor to a bill by a partner for an accounting. *Farmers' Bank v. Planters' Bank*, 10 G. & J. 441; *Wilhelm v. Caylor*, 32 Md. 160.

This section is to be construed in connection with section 5, so that the intent of the legislature to the effect that limitations should not apply to a creditor whose debtor is out of the state, may prevail. *Mason v. Union Mills Co.*, 81 Md. 457; *Hysinger v. Baltzell*, 3 G. & J. 161.

#### **Generally.**

The statute of limitations affects the remedy, but not the debt or lien. *Farmers' Bank v. Iglehart*, 6 Gill. 58; *Donaldson v. Raborg*, 26 Md. 326; *B. & O. R. R. Co. v. Clark*, 19 Md. 520; *Oliver v. Gray*, 1 H. & G. 215; *Barney v. Smith*, 4 H. & J. 495; *Ohio Life Ins. Co. v. Winn*, 4 Md. Ch. 254.

While mortgage notes are barred after three years, the covenant in a mortgage is only barred after twelve years. *Earnshaw v. Stewart*, 64 Md. 516.

The reason and policy of the statute should be considered and applied by analogy in determining whether mandamus will lie. *George's Creek, etc., Co. v. Allegany County*, 59 Md. 262.

Limitations can not be pleaded against the claim of a grantee under a deed of trust with reference to the proceeds of property so conveyed: *contra*, as to other property. *Gibbs v. Cunningham*, 4 Md. Ch. 325.

This section applied in a suit in *assumpsit* by heirs to recover damages for the failure of their warranty. *Flowers v. Foreman*, 23 How. 132.

As to the form and time of filing an issue from the orphans' court raising the question of limitations, see *Cook v. Carr*, 20 Md. 415.

The state may shorten the period of limitations. *State v. Jones*, 21 Md. 438.

An *assumpsit* after the expiration of three years, is not sufficient to take the case out of the statute, the action being founded on a tort. *Galligher v. Hollingsworth*, 3 H. & McH. 122.

The statute may be applied in favor of a plaintiff as well as of a defendant. *Watkins v. Dorsett*, 1 Bl. 532.

It is the duty of the court to give minor defendants the benefit of limitations. *White v. Joyce*, 158 U. S. 128.

No court of law or equity will assume as a matter of law, that limitations will be pleaded where it may be pleaded. *Burtles v. State*, 4 Md. 279.

The statutory period having expired, limitations was held to be a bar in the following cases: *Albert v. Albert*, 74 Md. 535 (debt, father to son); *Dempsey v. McNabb*, 73 Md. 438 (claim for services); *Long v. Long*, 62 Md. 74 (bill for account of rents and profits); *Ecker v. First Nat. Bank*, 59 Md. 302 (promissory notes); *Hertle v. Schwartz*, 3 Md. 382 (bill to recover