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.

(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.

Synopsis

1. Scope.
2. Sub-section (1).
3. Applicability of sub-section (2) to (4) to proceedings not referred to in the Act.
4. Applicability of sub-section (2) to (4) to proceedings under special or local laws.
5. Exclusion of day of pronouncing judgment.
6. Exclusion of time for copies.
7. Document in respect of which exclusion may be made.
8. Copies obtained by stranger or for different purpose.
9. 'Time requisite'--meaning of.
10. Day of copy application and day on which copy is ready to be excluded.
11. Application for copies made to wrong person.
12. Defective application for copies.
13. Separate applications for copies of judgment and decree.
14. Delay in furnishing folios, stamps, etc.
15. Delay in taking delivery of copy.
16. Supply of folios before they are called for by Court.
17. Despatch of copies by post.
18. Delay caused in getting a vernacular copy of decree or judgment.
19. Copies of same document taken on two occasions.
20. Application for copy mislaid by office.
21. Time between date of application for copies and date of notice of requisition for stamps and folios.
22. Holidays intervening between dates of judgment and copy application.
23. Interval between judgment and signing of decree, exclusion of.
24. Delay caused by getting orders varied and settled.
25. One common judgment to be filed in two appeals.
26. Appeal from judgment on review.
27. Application for leave to appeal to Supreme Court.
28. Application for leave to appeal in *forma pauprís*.
29. Application for review.
30. Application to set aside award.
31. Filing of an appeal with a copy of judgment or decree alone.
32. Appeal in criminal cases.
33. Finding as to time requisite.
34. Dates endorsed on certified copies--evidentiary value of.
35. Appeals from orders.
36. Section 5 and "time requisite".
37. Application for exclusion of time not necessary.

1. Scope. This section does not apply to proceedings in foreign Courts.[11]

Sections 5 and 12--distinction. Under section 12 (1) the Court is required by law to exclude the time requisite for obtaining a copy of the order appealed from. This is a statutory provision of exclusion and is to be distinguished from the power conferred on a Court of law under section 5 of the Limitation Act to admit an appeal after the period of limitation prescribed therefor, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period. In this sense the operation of section 12 is distinct from that of section 5, which confers a discretionary power on the Court. No such discretion vests under section 12 and the litigant is entitled, as of right, to exclude the period spent in obtaining copies.[12]

Remedy for refusal to apply section. The refusal by a Court to apply the provisions of this section is a flagrant violation of the section and a petition under Art. 203 of the Constitution of 1973 lies in respect thereof.[13]

2. Sub-section (1). Where time is to be computed from date of the cause of action the day on which such cause of action arises is to be excluded.[14] Where a mortgage deed dated 6-10-33 provided that principal amount would be paid within 3 years, and the last day fixed for payment of principal was 6-10-36; it would expire only at midnight and the mortgagee could not enforce payment of principal before expiry of that day.[15]

Acknowledgment. If, in respect of a cause of action, there is an acknowledgment the day of the acknowledgment is to be excluded.[16]

Contract for specific performance. In reckoning the period stipulated in a contract for specific performance, the date on which the document was executed must be excluded.[17]

Criminal offence. Where a period of limitation has been fixed for filing a complaint against a criminal offence the date on which the offence came to the notice of the Inspector must be excluded when computing the period of three months. "Within three months" means within the whole course of three months, *i.e.*, before the end of the last day of three months. Anything that is done on the last day of the three months is "within three months".[18]

3. Applicability of sub-sections (2) to (4) to proceedings not referred to in the Act. The section directly applies only to applications and appeals referred to in

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11. AIR 1927 Lah. 200=8 Lah. 54 (DB).
12. 1984 PSC 520=PLD 1984 SC 208.
13. AIR 1954 Pepsu 173=ILR 1954 Patiala 294+AIR 1955 Him. Pra. 12 (AIR 1954 Pepsu 173, *Rel. on*).
14. ('87) 10 Mad. 292 (DB)+AIR 1958 Ker. 326=ILR 1957 Ker. 887 (DB), (AIR 1924 Mad. 257 (FB) *Applied*)+AIR 1950 Pat. 206 (DB)+('25) 90 Ind. Cas. 827 (DB) (Cal.)+('69) 4 Mad. H.C.R. 409 (DB).
15. ('51) 29 Mys. L.J. 51 (DB).
16. AIR 1923 Nag. 143.
17. 1951 Ker. L.T. 191 (DB).
18. AIR 1961 Allahabad 151.

the Act,[19] because sub-sections (2) to (4) apply only to (1) appeals, (2) applications for leave to appeal, (3) applications for review of judgment, (4) applications to set aside an award.[20]

Appeal from original side of High Court. The word 'appeal' will include appeals from the original side of the High Court dealt with in Arts. 151 and 156.[1]

Letters Patent appeal. In a Letters Patent appeal the time requisite for obtaining copies of the judgment and decree should be excluded in computing the period of limitation fixed by the Rules side of the High Court for preferring a Letters Patent appeal.[2]

Time taken for obtaining a certificate that the case was fit for appeal under Letters Patent should be excluded as time requisite in computing limitation prescribed for Letters Patent appeal by Rules of High Court.[3]

Second appeal. Time spent in obtaining copies of judgment and decree of trial Court cannot be excluded from period of limitation under this section but when the rules 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 in so 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.[4]

Revision. 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 review of a judgment. This sub-section nowhere mentions revision applications. 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 is not accidental. It signifies that sub-section (2) of section 12 of the Limitation Act was not intended to apply to revision applications. Extending the provisions of S. 12 (2) to revision applications, will, therefore amount to enlarging its scope, for which there is no justification.[5]

Deposit of pre-emption money. Where a decree for pre-emption fixed a period for the plaintiff to deposit an amount into Court the time spent in obtaining a copy of the order could not be excluded.[6]

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19. AIR 1917 Low Bur. 17 + AIR 1952 Kutch 48 + ('95) 18 Mad. 484 (DB).
20. AIR 1932 All. 598 = 54 All. 282 + AIR 1956 Trav-Co. 113 = ILR 1955 Trav-Co. 33 (DB) + ('26) 93 Ind. Cas. 1023 Lah.) + ('96) 18 All. 215 (DB).
1. AIR 1928 P.C. 103 = 6 Rang. 302 = 55 Ind. App. 161 + AIR 1922 P.C. 352 = 49 Ind. App. 307 = 49 Cal. 999 + AIR 1935 Rang. 65 = 12 Rang. 525 (FB).
2. PLD 1967 Kar. 537 = PLR 1968 (1) W.P. 571 (DB). (*Rev.* PLD 1966 B.J. 14) + AIR 1956 All. 273 = ILR (1956) 2 All 252 (FB). (Per Majority of the Full Bench) + AIR 1956 All. 585 (DB). (Although the special appeal under Ch. VIII, R. 5 is against a judgment as distinguished from a decree the time spent in obtaining a copy of the decree can be excluded.) AIR 1956 All 273 (FB). (*Foll.*) + AIR 1941 Lah. 257 (FB).
3. AIR 1957 Punj. 317 = ILR 1957 Punj. 1719 (DB).
4. PLD 1957 Lahore 381 = PLR 1957 (2) W.P. 433.
5. PLD 1960 Karachi 795 (DB). (*But see* AIR 1941 Mad. 589 + AIR 1942 Oudh 392 + AIR 1950 Ajmer 1).
6. 1883 All W.N. 4 (DB) + 1881 All. W.N. 165 (DB).

Execution application. Section 12 (3) does not apply to an application for execution.[7]

Application for rehearing of appeal. Section 12 does not apply to an application for rehearing of appeals decided *ex parte*.[8]

Setting aside of 'ex parte' decree. So far as an application for setting aside an *ex parte* decree is concerned, the time, which the applicant spent in obtaining certified copies, was not "requisite" and the same could not be allowed under section 12 (2) of the Limitation Act.[9]

4. Applicability of sub-section (2) to (4) to proceedings under special or local laws. Section 12 would apply to local or special Acts unless the Acts specifically exclude such application.[10] S. 12 (2) of the Limitation Act does not say that the order mentioned therein shall be only an order as defined in the Civil Procedure Code. If a statute provides for the making of an order and confers a right of appeal to an aggrieved party against that order within a prescribed time; sub-section (2) of S. 12 of the Limitation Act says that the time requisite for obtaining a copy of such order shall be excluded.[11]

Workmen's Compensation Act. In an appeal under Workmen's Compensation Act from an order of the Commissioner, the appellant is entitled to deductions under this section.[12]

Payment of Wages Act. When filing an appeal under S. 17, Payment of Wages Act, time spent in obtaining a copy of the direction sought to be appealed against shall be excluded.[13]

Punjab Tenancy Act. The section applies to appeals under the Punjab Tenancy Act.[14]

Registration Act. Section 2 (12) of the Limitation Act does not apply to suits. Hence time spent in obtaining a copy of the Registrar's order cannot be excluded from the period of 30 days prescribed by S. 77 of the Registration Act.[15]

Provincial Insolvency Act. Section 12 of the Limitation Act has been clearly made applicable to an appeal under S. 75 of the Provincial Insolvency Act by the provisions of S. 78 and the time taken for getting copies for that purpose can be excluded.[16] But the period required for obtaining copies cannot be excluded while making an application under S. 68, Provincial Insolvency Act.[17]

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7. ('45) 24 Pat. 421 (DB) + AIR 1953 Kutch 11 + ('55) 59 Cal. W.N. 1011.
8. PLD 1958 Kar. 467.
9. PLJ 1971 Kar. 275 = PLD 1978 Kar. 818 + PLD 1969 Karachi 183.
10. 1975 LN 168 (Kar.) + L. N. 1973 Kar. 168.
11. AIR 1964 Supreme Court 1099.
12. AIR 1950 Nag. 201 = ILR 1951 Nag. 166.
13. AIR 1956 Mad. 79 (DB).
14. AIR 1954 Pepsu 173 = ILR 1954 Patiala 294.
15. AIR 1953 Manipur 4.
16. AIR 1953 Mad. 465.
17. AIR 1915 Mad. 360 (DB).

W.P. Urban Rent Restriction Ordinance. Time spent in obtaining copies of orders passed under the Ordinance sought to be appealed against may be excluded under this section.[18]

NWFP Pre-emption Act. Provisions of the Limitation Act, 1908 and the General Clauses Act, 1897, would be applicable to suits of pre-emption with regard to the limitation. Date of expiry of limitation would be in accordance with S. 12 (1) of Limitation Act, 1908.[19]

Bengal Agricultural Debtors Act. As S. 37-A (8), Bengal Agricultural Debtors Act, 1936 requires the debtors to present a copy of the award, the time for obtaining the copy must be added in calculating the time within which presentation of the award should be made.[20]

Bengal Finance (Sales Tax) Act. In computing the period of limitation for an application under S. 21, Bengal Finance (Sales Tax) Act, 1941 to state a case, the time requisite for obtaining a copy of the order of the Board of Revenue should be excluded.[1]

Factories Act. Section 12 applies in computing the period of limitation prescribed by S. 106, Factories Act, 1948 and the date on which the offence came to the notice of the Chief Inspector is to be excluded in computing the period of 3 months.[2]

Criminal Procedure Code. Section 12 (2) applies to limitation prescribed by S. 417, Criminal P.C.[3]

Land Acquisition Act. In computing the period of limitation for an application under S. 18 of the Land Acquisition Act, 1894, time taken to obtain a copy of the collector's order cannot be deducted.[4]

Income Tax Act. Time spent in obtaining copies of the order passed under S. 60, sub-section (2) of the Income-tax Act cannot be deducted in computing limitation for an application under S. 66, sub-section (3) of that Act.[5]

5. Exclusion of day of pronouncing judgment. The date of delivery of the judgment must be excluded even though that day happens to be a holiday.[6]

Date of judgment communicated to parties. When the date of judgment is duly communicated to pleaders for the parties, limitation for appeal commences from

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18. NLR 1982 AC 549 + PLD 1967 Lah. 663.
19. PLD 1986 Pesh. 58 = NLR 1986 Civ. 414 = 1986 Law Notes 261.
20. ILR (1952) 2 Cal. 67.
1. ('49) 53 Cal. W.N. 191.
2. AIR 1959 All. 787 = 1959 Cri. L. Jour 1393.
3. AIR 1959 All. 500 = ILR (1958) 2 All. 618 = 1959 Cri. L. Jour 930 (DB).
4. AIR 1932 All. 598 = 54 All. 282 + AIR 1960 Bom. 499 + AIR 1960 Ker. 80 = ILR 1959 Ker. 1034 = AIR 1958 Punj. 490 = ILR 1958 Punj. 854 (DB) + AIR 1927 Lah. 858 = 9 Lah. 244 (DB).
5. AIR 1931 All. 673 = 53 All. 684 (DB).
6. 1971 DLC 239 (S. 9, General Clauses Act lays down the same principle) + 1885 All. W.N. 257 (DB) + ('70) 13 Suth. W.R. (P.C.) 17 + ('25) 94 Ind. Cas. 121 (DB) (Nag.) + AIR 1920 Mad. 359 = 43 Mad. 640 (DB).

the date of the judgment notwithstanding absence of either the party or his pleader at the time of delivery of the judgment.[7]

Date of judgment not communicated to party. Where a Judge signs the judgment on a particular date but does not pronounce it in accordance with the law of procedure and the party comes to know of the fact of the signing of the judgment only on a subsequent date, the latter date must be deemed to be the date, of pronouncing of judgment.[8]

6. Exclusion of time for copies. Section 12 confers a substantive right upon appellant to claim time as excluded and Court cannot impose upon statutory right of any appellant a restriction not warranted by the Act.[9] The fact that the copying department has taken a long time in preparing the copies is no ground for extending the period of limitation under this section.[10]

Copies not necessary for filing appeal, etc. Time spent in obtaining copies of the judgment and decree must be excluded in computing the period of limitation for appeal, even though such copies need not, according to the rules of the High Court, accompany memorandum of appeal.[11] Thus where an application for leave to appeal under Letters Patent was filed more than 60 days after passing such judgment and even though the copy of the judgment was not required under the Rules of the Court to be filed along with memorandum of appeal under the Clause, it was obtained by the Senior Advocate who was absent at the time of passing the judgment, with a view to make a decision if he would advise filing an application for such leave. It was held that the time taken for obtaining the copy, was time taken for obtaining something requisite within the meaning of section 12 and hence should be excluded from computation of the period of limitation prescribed for filing the application.[12] Where an appellant applied for copies of the order against which he intended to file a letter patent appeal but later on finding that the copies were not ready and the matter was being delayed he filed the appeal without a copy of the order. Time which had elapsed in waiting for preparation and delivery of a certified copy to him was not the result of any negligence on the part of petitioner, but due to circumstances beyond his control, namely, non-preparation of certified copy of the judgment of the Single judge by Copying Branch of the High Court. The delay of nineteen days was condoned.[13]

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7. AIR 1927 Lah. 59 = ('11) 34 Mad. 151 (DB).
8. PLD 1983 SC (AJ&K) 70 = PLJ 1983 SC (AJ&K) 31 + PLJ 1981 SC (AJ&K) 561 = NLR 1981 SCJ 177 + PLD 1967 Kar. 61 (DB) + AIR 1938 Lah. 707 + AIR 1923 Pat. 129 (DB).
9. PLD 1984 SC 208 = 1984 PSC 520.
10. PLD 1977 AJ&K 86.
11. PLD 1972 Quetta 97 (DB) + PLD 1967 Kar. 537 = PLR 1968 (1) W.P. 571 (DB) (*But see* PLD 1966 B.J. 11 (DB)) + AIR 1928 P.C. 103 = 6 Rang. 382 = 55 Ind. App. 161 (*Reversing* AIR 1927 Rang. 20) + AIR 1951 All 122 = ILR (1952) 1 All. 274 (FB) + AIR 1941 Lah. 257 = ILR 1941 Lah. 191 (FB) + AIR 1947 Pat. 329 = 26 Pat. 157 (SB) + AIR 1959 All. 500 = ILR (1958) 2 All. 618 = 1959 Cri. L. Jour 930 (DB). (Case of appeal under S. 417 (4), even though there were no rules requiring such copies to be filed along with the memo of appeal) + AIR 1957 Cal. 479 (DB). (This applies even to Letters Patent appeals) + AIR 1956 Pepsu 40 (DB) + AIR 1954 Cal. 520 = ILR (1955) 1 Cal. 274. (The fact that the appeal is filed not before Court but before a *'Persona designata'* is immaterial). (*But see* PLJ 1984 SC (AJ&K) 5 = PLD 1984 SC (AJ&K) 51 = 1984 PSC 356).
12. 1974 SCMR 33 + AIR 1964 Calcutta 438 + AIR 1928 P.C. 103.
13. PLJ 1984 Lah. 20 (DB).

Copy not filed in Court. Period of limitation for filing appeal or application for leave to appeal or application for review of judgment, would be calculated on basis of certified copy filed by appellant or applicant alongwith memo. of appeal or application and Court shall have nothing to do with any other copy obtained by appellant or applicant and not filed alongwith memo. of appeal or application as the case may be.[14] Therefore, the fact that a review application need not be accompanied by a copy of judgment or of the decree will not deprive the applicant of his right to exclude the time spent in obtaining such copies in computing limitation for such application.[15] But where no copy of the order sought to be reviewed was supplied to the Court, the period spend in obtaining a copy of the order cannot be excluded from the period of limitation for filing the review petition.[16]

Second appeal. In case of a second appeal appending the copy of the trial Court's judgment to the memorandum of appeal has been made obligatory by amendment of Order XLII, rule 1, C.P.C. and strictly speaking, the period taken in obtaining such copy is not to be reckoned under section 12 of the Limitation Act, yet because filing of the said copy has been made necessary by the rules of this Court, it has always been considered that time spent in obtaining such copy is to be reckoned by extension of the principles of section 5 of the Limitation Act.[17] Section 12 provides only for deduction of the time spent in getting the copies of the judgment and decree of the Appellate Court. There is no scope for extending the provisions of section 12 to obtaining copy of the judgment of the trial Court.[18]

Copy obtained before expiry of limitation. Where copies of judgment were received by a party much before expiry of limitation period. S.12 would not be applicable.[19]

Formal order though not necessary yet written. The words order and judgment in this section are interchangeable and carry the same meaning.[20] Even in cases where a formal and final order is not necessary, to be prepared a party will be entitled to deduct the time taken for obtaining a copy thereof if such an order is actually prepared.[1]

Application for copies must be made within period of limitation. In order to entitle an appellant to deduct the period required for obtaining necessary copies, a proper application for copies must be made within the period of limitation for appeal.[2] Where application for issuing copy of impugned order was made after period of limitation, question of computation of period taken for preparation of

14. 1985 CLC 1801.
15. AIR 1934 All. 367 = 56 All. 591 (DB) + AIR 1952 Bhopal 39 + AIR 1951 Him. Pra. 67 + ('95) 17 All. 213 (FB) + AIR 1921 Lah. 124 + AIR 1920 Mad. 633 (DB) + AIR 1917 Cal. 320 (DB).
16. NLR 1980 SCJ 433.
17. PLD 1973 Lah. 403.
18. PLD 1977 Lah. 376 = 1977 Law Notes 80.
19. NLR 1987 CLJ 58 = 1987 CLC 972.
20. PLD 1974 SC 344.
1. AIR 1925 All. 419 = 26 Cri. L. Jour 961 = 47 All. 462.
2. PLJ 1987 Pesh 13 = PLD 1987 Pesh 1 = KLR 1987 CC 362 + 1987 CLC 2043 (DB) + PLD 1983 SC (AJ&K) 26 + NLR 1981 AC 121 (DB) + 1980 CLC 1130 + PLD 1952 Dacca 399 = 4 DLR 509 + PLD 1960 Kar. 840 (FB) + PLD 1961 Lah. 300 (DB) + ('37) 39 Pun. L.R. 374 (DB).

copy would not be available.[3] The principle, that the period of limitation comprises two elements, namely, the primary period plus the periods allowed by the various provisions of the Limitation Act itself is certainly not open to any exception, and so long as this period has not expired, the right of appeal subsists. Such being the case an application for obtaining a certified copy of the judgment or decree can be made within this period, with the result that the period shall stop running until such time as the copy is delivered.[4]

Restoration of application for copies dismissed for default. The inherent jurisdiction to restore to file an application for copies dismissed for default should be exercised only after notice to the respondents in the contemplated appeal, and after taking into account how it will affect the limitation for purposes of appeal.[5]

7. Document in respect of which exclusion may be made. In computing period of limitation for an appeal of an application for review, time requisite for obtaining both a copy of the judgment as well as a copy of the decree, should be excluded, subject to the qualification that where the periods overlap, one of the overlapping period, should be left out of account.[6] Thus where 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 copy was obtained on the 25th August and the appeal was filed on the 28th August, 1947. 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 the 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.[7]

Two orders passed in same matter. Where two orders have been passed in the same matter and one of them was part of the other, time spent in obtaining copies of both the orders must be excluded under this section. Where separate applications for copies have been made and an application for copy of the second order was made within the period of limitation as extended by the first time spent in obtaining the copy must be excluded.[8]

Workmen's Compensation Act, order under. In case of an order awarding compensation under S.30, Workmen's Compensation Act, only the time requisite in obtaining a copy of the final order can be deducted.[9]

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3. PLD 1986 AJ&K 228 = NLR 1986 UC 520.
4. PLD 1973 Lah. 710.
5. AIR 1959 Mad. 406 = ILR 1959 Mad. 176.
6. 1980 CLC 1130 + PLD 1952 Dacca 339 = 4 DLR 509 + PLD 1961 Lah. 300 (DB) + AIR 1938 Lah. 707 + AIR 1950 Bom. 350 = ILR 1950 Bom. 696 (DB) + AIR 1948 Pat. 260 = 26 Pat. 295 (DB) + AIR 1937 Oudh 65 = 12 Luck. 472 (DB) + ('37) 65 Cal. L. Jour 415 + AIR 1930 Nag. 113 = 26 Nag. L. R. 66 (FB) (7 Nag. L.R. 67, *Overruled*) + AIR 1925 All. 436 = 47 All. 509 (DB) + AIR 1924 Bom. 185 = 48 Bom. 292 + ('21) 41 Mad. L. Jour 273 (DB) + ('98) 8 Mad. L. Jour 148 (DB).
7. PLD 1952 Dacca 399 = PLR 1951 Dacca 815 = 4 DLR 509.
8. AIR 1961 Punjab 503.
9. AIR 1955 Punj. 156 + AIR 1954 Assam 80 = ILR (1953) 5 Assam 167.

Second appeal. In second appeal time spent in obtaining copies of the judgment and decree of the first Court cannot be excluded in computing period of limitation for second appeal.[10]

8. Copies obtained by stranger or for different purpose. An appellant who is required to file with his memorandum of appeal a copy of the decree appealed from, may file a copy obtained by another party; and under section 12 (2), he is entitled to deduction of time taken in obtaining that copy.[11] It is not necessary that, in order to claim exclusion of time an application for copies should have been made by the party himself in person.[12] But it is necessary that the act of applying for copies should ultimately be attributable to the party.[13] Where that condition is fulfilled, a party can use a copy obtained by another party or even by a stranger and claim exclusion of the time spent in obtaining that copy.[14]

An application can be made through the party's agent but time will be excluded from the date only when an agent actually made an application to the proper officer.[15]

Purpose of obtaining copy. It is not necessary to show that the copy was obtained for the purpose of the appeal or application in question.[16] But where no copy of the order sought to be reviewed was supplied to the Court, the period spent in obtaining a copy of the order could not be excluded from the period of limitation for filing the review petition.[17]

9. 'Time requisite'--meaning of. The expression 'time requisite' means time properly and reasonably required.[18] The question as to what is time requisite for obtaining copies must be determined with reference to facts and circumstances of each case and in the light of the rules, if any, framed on the subject and of the practice of the Court.[19] Normal rule is that the time deductible under section 12 commences from the date of application and ends with the date when the copies are ready for delivery but it can also be further extended as part of a "time requisite".[20]

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10. PLD 1963 Lah. 335 = 15 DLR (W.P.) 86 (DB) + AIR 1918 All. 389 = 40 All. 1 (FB) + Madh B.L.J. 1954 H.C.R. 722 + AIR 1952 Him. Pra. 9 + AIR 1939 Lah. 378 + AIR 1928 All. 416 + AIR 1927 Lah. 717 (DB) + AIR 1925 Rang. 344 = 3 Rang. 310 (DB) + ('08) 32 Bom. 14 (*See also* AIR 1954 Assam 80 = ILR (1953) 5 Assam 167).
11. PLD 1976 Pesh. 50 = PLJ 1976 Pesh. 4 = 1976 Law Notes 96 (DB).
12. AIR 1934 Lah. 135 + AIR 1952 Him. Pra. 6 = 1952 Cri. L. Jour 313.
13. AIR 1952 Him. Pra. 6 = 1952 Cri. L. Jour 313. (Where the copy of the judgment is applied for and taken delivery of by the father of the person alleged to have been murdered and not by the Government, the Government is not entitled to the benefit of S. 12 (2)).
14. AIR 1920 Mad. 159 = 63 Mad. 633 (DB) + AIR 1952 Him. Pra. 6 = 1952 Cri. L. Jour 313 + AIR 1951 Punj. 388 + ('07) 29 All. 264 (DB) + AIR 1914 Oudh 244.
15. ('34) 35 Pun L.R. 713 + AIR 1914 Nag. L. R. 139.
16. ('07) 29 All. 264.
17. NLR 1980 SC 433.
18. PLD 1984 SC 208 = 1984 PSC 520 + NLR 1981 AC 121 (DB) + PLD 1962 Dacca 381 = 14 DLR 765 (FB) + 1940 Bom. 415 (DB) + AIR 1952 Bom. 122 (FB) + AIR 1950 Bom. 350 (DB) + AIR 1946 Bom. 437 + AIR 1918 P.C. 103.
19. 1984 PSC 520 = PLD 1984 SC 208 + PLD 1989 Lah. 219 = PLJ 1989 Lah. 229 + PLD 1983 Pesh. 143 = NLR 1983 Civ. 474 (DB) + AIR 1937 Bom. 162 (FB) + AIR 1935 Lah. 625 (DB).
20. PLD 1989 Lah. 219 = PLJ 1989 Lah. 229.

The word "requisite" in sub-sections (2) and (3) of section 12 of the Limitation Act means properly required. It is something more than "required". In determining what is the "time 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.[1] The appellant must act with reasonable promptitude and diligence in order to satisfy the Court that the time which he claims to be excluded was properly required in obtaining copies.[2] Delay caused by appellant's carelessness or negligence cannot be considered "time requisite" and cannot be excluded.[3] Where an application for copy of judgment was made on 1-12-1954 and according to the Rule of the High Court the appellant was directed to deposit the remaining copying charges on 3.12.1954 but the appellant deposited those charges on 7-12-1954 without showing any cause for the delay of four days. It was held that the appellant was not entitled to exclude four days as it could not be regarded as time requisite for obtaining a copy of the judgment within the meaning of section 12 (2), Limitation Act.[4] Where the copy was delivered on 17-6-1982 and the petitioner kept it till 21-8-1982, when it was resubmitted for completion. The missing part related to the entry of the date of the application for copy, in the endorsement to be made by the copy officer regarding various particulars. The contents of the judgment, however, were complete even when the copy was delivered in the first instance on 17-6-1982. This period therefore would have to be counted against him when computing the period of limitation.[5]

Delay over which litigant had no control. The guiding principle for determining "time requisite" for obtaining a copy is that of the delay in obtaining the copy was caused by circumstances over which the litigant had no control and the same had to be included in the time required for obtaining the copy.[6]

Time actually spent is immaterial. The "time requisite" is not always the time actually spent in securing copies.[7]

Time spent in considering advisability of filing appeal. After the decree is signed and is ready, the time which a party may require to consider the decree and to obtain the advice of his lawyer cannot be excluded.[8]

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1. 1987 CLC 2043 + 1980 CLC 1130 + PLD 1952 Dacca 399 = 4 DLR 509 + AIR 1922 P.C. 352.
2. 1984 PSC 520 = PLD 1984 SC 208.
3. 1987 CLC 1385 = KLR 1987 CC 694 + 1987 CLC 2043 (DB) + NLR 1981 AC 121 (DB) + NLR 1980 Civ. 107 + ('90) 12 All. 79 (DB) + AIR 1956 Bom. 86 (DB). (On the original side of the High Court the order is to be drawn up by attorneys and therefore on the Original Side the Attorneys have to satisfy the Court that the time they took in drawing up the order was the time properly required for doing so. When a party wishes to appeal against an order by which he is aggrieved the party appealing has to take the necessary steps) + AIR 1936 Sind 53 = 29 Sind L.R. 445 (DB) + AIR 1937 Bom. 64 = ILR 1937 Bom. 421 (DB).
4. AIR 1961 Madhya Pradesh 310.
5. 1983 PSC 170 (SC).
6. 1987 CLC 2043 (DB) + PLD 1981 Kar. 52 = PLJ 1981 Kar. 138 (DB).
7. AIR 1940 Bom. 415 (DB) + AIR 1954 Hyd. 104 = ILR 1954 Hyd. 12 (DB) + AIR 1952 Bom. 122 = ILR 1952 Bom. 514 (FB) + AIR 1919 Lah. 103 + AIR 1937 Bom. 64 = ILR 1937 Bom. 421 (DB).
8. AIR 1952 Bom. 122 = ILR 1952 Bom. 514 (FB).

Delay caused by office of Court. Delay by the office or the Court for which the appellant is not responsible will have to be excluded as time requisite for obtaining the copies.[9] Thus delay caused by Copying Department in estimating cost, preparing copy or due to non-compliance of any rule. Would be time requisite for obtaining certified copy.[10] Time can be extended under this section if 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.[11] Where applications for copy of judgment and decree were made on 7-6-1955 and an incomplete copy was served on 16-5-1955. It was taken back and a fresh copy complete in all respects prepared and distributed to the appellants on 14-7-1955. The time between 7-7-1955 to 14-7-1955 would be time requisite for obtaining a copy of the judgment within the meaning of section 12 of the Limitation Act. The appellants are entitled to add these 37 days to the ordinary period of limitation which is 30 days and it shall be said that they could file an appeal within 67 days of the date of the judgment of the trial Court.[12] Where the defendants had applied for a copy of the judgment and also for a copy of the decree on 3-6-55. The copy of the judgment though originally distributed on 9-6-55 was taken back from them as the endorsement of the copying officer made on the back of the copy shows, and redistributed to them on 20-7-1955. The defendants appellants were entitled to exclude the time from 3-6-55 to 20-7-55 as time requisite for obtaining a copy of the judgment.[13]

Where the office does not comply with rules so that date of delivery of copy was not mentioned in the receipt given for application for copies, and list of copies prepared and ready for delivery was not posted on the notice board. The party could not be burdened to go to the copy branch daily to enquire if the copy was ready for delivery or not nor the party could be made to suffer for carelessness or negligence of the Copying Agency. Therefore the entire period from the date of application to the date of receipt of the copies had to be excluded from the period of limitation.[14]

Case where copy is to be supplied by Court. The words "time requisite for obtaining a copy" are not inapplicable in those cases where the appellant is not required to obtain a copy at his own expense but is entitled by statute to get a copy free from the authority concerned within a certain time. In a case of this description the time taken by the authorities concerned to supply the copy would be legitimately "time requisite for obtaining a copy" within section 12 (2).[15]

Question of time requisite, case may be remanded by second appellate Court. A case may be remitted to First Appellate Court for inquiry and fresh decision on question of limitation in accordance with law and after recording evidence of

9. AIR 1936 Lah. 120 + AIR 1940 Oudh 173 = 15 Luck. 376 (DB) + AIR 1936 Lah. 200.
10. NLR 1989 CLJ 116 = 1989 CLC 267.
11. PLD 1989 Lah. 219 = PLJ 1989 Lah. 229 + NLR 1980 UC 563 + PLD 1981 Kar. 52 = PLJ 1981 Kar. 138 (DB) + NLR 1981 UC 400 + PLD 1960 Lah. 443 (DB).
12. PLD 1962 Azad J. & K. 21 (DB).
13. PLD 1962 Azad J. & K. 23 (DB).
14. PLJ 1980 Kar. 279 = 1980 CLC 1972 = 1980 Law Notes 405.
15. AIR 1960 Pat. 212 (DB) + AIR 1959 Cat. 413 (DB).

parties and looking into record of Copying Agency to find out as to quantum of "time requisite".[16]

10. Day of copy application and day on which copy is ready to be excluded. The day on which an application for copy is made and the day on which the copy is granted are both part of the time requisite for obtaining the copy and an appellant is entitled to have both those days excluded from the period of limitation.[17]

The day notified for appearance of the party to take delivery of the copy of the decree has to be excluded in computing the period of limitation for filing an appeal from that decree. It must be counted as part of the time requisite for his obtaining the copy of the decree within the meaning of section 12(2).[18] If such copy has been prepared on a date not intimated or earlier than the date so notified to the applicant, then limitation would not be computed from that date, that being not the notified date.[19]

Application for copy or date of judgment. Where an application for copies is put in on the same day as the judgment, that day cannot be excluded twice over.[20]

11. Application for copies made to wrong person. An application for copies must be made to the proper officer appointed to entertain such application,[1] and if it is made to a wrong person, the time spent in doing so cannot be excluded from the period of limitation. But where the application is presented to the right person but subsequently it is found that the application will have to be obtained from elsewhere because the file was not in that Court, time taken by the officer in informing the applicant of the correct position must be excluded from period of limitation. Where an application for copy of judgment was presented at *P* but it was returned to the applicant after 9 days with the endorsement that the file had not been sent to the office from *C*. The applicant subsequently presented an application at *C* for copies after an interval of 2 days. It was contended that the previous period of 9 days for which the application for copies remained with the copying department at *P* could not be deducted from the period of limitation. It was held that the application was rightly made at *P* and accordingly, if the Copying Department at *P* took nine days in returning the application to the appellant for the reason that the judicial file had not been received, it cannot be said that this period was not time requisite for obtaining a copy. The appellant's negligence in not submitting the application at *C* for the next two days cannot alter the character of the period which had already been taken by the Copying Department at *P*.[2]

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16. PLD 1989 Lah. 219=PLJ 1989 Lah. 229.
17. KLR 1987 CC 55=1987 CLC 664+PLD 1964 Peshawar 187=PLR 1964 (2) W.P. 1130 (DB)+AIR 1939 Nag. 150 (DB)+AIR 1938 Mad. 823.
18. AIR 1961 Kerala 207.
19. 1979 CLC 694+PLD 1968 Lah. 1205=PLR 1969 (1) W.P. 822.
20. 1970 S.C.M.R. 59 (AIR 1939 Nag. 150 (DB) and AIR 1960 H.P. 29 do not lay down correct law)+AIR 1924 Lah. 599+('92-96) 3 Upp Bur Rul 456.
1. AIR 1914 Nag. 60=10 Nag. L.R. 139+AIR 1936 Lah. 771=17 Lah. 429 (FB). (AIR 1935 Lah. 625+AIR 1935 Lah. 889. *Overruled*).
2. PLD 1964 Peshawar 187=PLR 1964 (2) W.P. 1130 (DB).

12. Defective application for copies. In order that a party may deduct period required for obtaining copies, a proper application for copies must be made within limitation.[3] Time requisite for obtaining a copy of the decree cannot refer to any period antecedent to the appellant's asking for a copy by the usual mode for applying therefor.[4] Therefore the period of vacation of Court was not to be excluded from time requisite for obtaining copy of judgment.[5] It follows that where an application for copies is made after an appeal or application has been made to the higher forum, no exclusion of time for obtaining the copies can be claimed.[6]

Defective application. Where an application for copies is defective and is returned for correction, the period of exclusion commences only from the date of its representation after due correction.[7] Thus where an application, dated 24th of August, for a copy of judgment appealed against mentioned the 19th of August as the date of judgment, whereas, in actual fact the date was the 22nd of August. The mistake was corrected by the applicant only on 30th of August. It was 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.[8]

Even where a defect arises out of wrong information supplied by the copying department itself, the delay caused thereby in obtaining copies cannot, as of right, be excluded under section 12.[9] But time lost on account of mistake in copy application can be excluded as time requisite where the mistake could have been immediately detected by the copying department but it did not do so.[10]

13. Separate applications for copies of judgment and decree. Under section 12 of the Limitation Act, the appellants are entitled to exclude not only the time requisite for obtaining a copy of the judgment but also the time requisite for obtaining a copy of the decree.[11] It is open to the appellant to make his applications for copies of the judgment and the decree on different dates; but the second application must be within the period of limitations extended by the first.[12] 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 a copy of the

3. NLR 1981 AC 121 (DB) + ('37) 39 Pun. L. R. 374 (DB).
4. 1955 Baj. L. W. 498.
5. PLD 1977 Kar. 564.
6. PLD 1978 Kar. 818 = PLJ 1978 Kar. 275.
7. AIR 1930 Nag. 129 = 26 Nag. L.R. 149 + ('26) 91 Ind. Cas. 425 (Oudh).
8. PLD 1957 Lah. 370 = PLR 1957 (2) W.P. Lah. 439.
9. AIR 1935 Nag. 109.
10. AIR 1948 Nag. 395 = ILR 1948 Nag. 169.
11. 1990 MLD 120 + PLD 1962 Azad J. & K. 23 (DB).
12. 1980 CLC 530 (SC AJ&K) + PLD 1961 Lah. 366 (DB) + AIR 1917 Cal. 619 (DB) + AIR 1956 All. 436 (DB) + AIR 1947 Lah. 168 (DB) + AIR 1925 All. 436 (DB) + AIR 1924 Bom. 425 (DB) + AIR 1926 Lah. 529 + AIR 1919 Nag. 136 + AIR 1916 Nag. 116 + AIR 1915 Oudh 170 = 18 Oudh Cas. 74 + AIR 1924 Pat. 113 (DB) + AIR 1936 Pesh 179 (DB).

decree. Where some portions of these two periods overlap each other, the overlapping period will be excluded only once.[13]

Applications made on same day. Where copies of the judgment and decree are applied for the same day, the longer of the two periods should be credited to the applicant and he is not entitled to add to the longer period any time within the terminus of the longer period.[14]

14. Delay in furnishing folios, stamps, etc. Where the rules of Court require that the applications should be accompanied by a deposit of cash or stamps fixed by rules or estimated by the applicant and the application bears the necessary court-fee stamp and is addressed to proper officer. It is a valid application even if it is not accompanied by the full cost of preparation and certification of the copy.[15] If such application is accepted without any objection and without demand for the deposit with the application, it must be regarded as a proper application.[16]

Where an application for copies was filed without requisite stamp the application should have been rejected as provided in rule 324 of the Sind Civil Court Rules. Since this was not done and the copy was prepared then in accordance with rule 331 of the Sind Civil Court Rules the respondent should have been given notice by pasting the list on the notice board. But this was not done. Instead a note was made on the application "stamp not supplied". Within two days of that the applicant supplied the necessary stamp. It was held that the period spent in obtaining copies may be excluded from period of limitation for appeal because the parties should not suffer due to any act or omission of the Court or its officers. If the application had been rejected on the ground of non-supply of the stamps as required by the Rules still there would have been time and the respondent could possibly have filed another application alongwith the requisite stamps within the period of limitation. The respondent could not be allowed to suffer on account of the omission of the office of the Court.[17] Where an application for copies was first refused not because there was no deposit but because the decree had not been then drafted and signed and the copy was subsequently granted without a fresh application, the whole period from the date of the application could be excluded.[18]

If the amount of deposit is not sufficient, the Court will have to cause the appearance of the applicant and inform him as to how much more money is necessary. If the copying department does not call for the applicant and give him that information, time during which the copy could not be prepared on account of the deficiency cannot be reckoned against the applicant. If after such information is given to the applicant he is not diligent, the delay of course goes against him.[19] Where an application for copies is made with requisite folios and stamps and it is notified by a mere entry in the register that further stamps and folios are required

13. 1990 MLD 120+NLR 1989 SCJ 57+1980 CLC 530 (SC AJ&K)+PLD 1961 Lah. 366 (DB).
14. 1895 All. W.N. 101 (DB)+('05) 12 Cal. W.N. 25 (DB).
15. AIR 1936 Lah. 771=17 Lah. 499 (FB). (AIR 1935 Lah. 889, *Overruled*).
16. AIR 1936 Lah. 693+('36) 17 Lah. 574 (DB).
17. 1963 CLC 1235 (Kar).
18. ('32) 6 Sind L. R. 244 (DB).
19. AIR 1933 Nag. 218=AIR 1936 Lah. 550+('97) 2 Cal. W.N. 55 (DB)+AIR 1921 Nag. 141+AIR 1916 Pat. 267=1 Pat. L. Jour 573 (FB).

but the applicant comes to know of it only on the date originally fixed for the delivery of the copies, the delay in supplying the stamps and folios ought not to be counted against him.[20] But where after the applicant is given information by the copying department as to the deficiency in deposit, he is not diligent, the delay goes against him.[1] Thus where an application for copy of judgment was made on 1-12-1954 and according to the Rules of the High Court the applicant was directed to deposit the remaining copying charges on 3-12-1954 but the appellant deposited those charges on 7-12-1954 without showing any cause for the delay of four days. It was held that the appellant was not entitled to exclude four days as it could not be regarded as time requisite for obtaining copy of the judgment within the meaning of S.12(2), Limitation Act.[2]

In computing time for copies the day on which the foilos are called for and the day on which the stamps are supplied must be excluded, any intermediate delay in supplying foiles should go against the appellant.[3] In computing time the day on which the deficiency in deposit is notified and the day on which deficiency is made good should both be excluded.[4] Thus where a copy application was made on 3-9-45 and intimation to supply funds was made on 18-9-45. The funds were supplied on 28-9-45. The applicant was entitled to exclude the day on which funds were supplied in addition to the period between 3-9-45 to 18-9-45 (both inclusive).[5]

Partition decree. In partition cases, a party who wants to appeal against the partition decree must file the requisite stamp for preparation of decree within the period of limitation for filing the appeal; otherwise, he cannot make a grievance that as the decree sheet was not ready, the appeal could not be filed. Where the appellant fails to pay the requisite stamp duty in time and to get the decree prepared the time between the date of the judgment and the date of the decree cannot be allowed to be deducted under S.12 (2).[6]

Holidays following notice to supply. Where the day or days immediately after the date of notice for requisite folios happen to be holidays, such days will be excluded. But the applicant must deposit the papers on the re-opening day.[7] But if arrangements are made for receiving the folios or printing charges during the holidays and this fact is duly notified, the applicant is not entitled to wait till the re-opening of the Court for making the requisite supply.[8]

Delay in supplying folios or stamp for other documents. Where time is being occupied for obtaining a copy of either the decree or judgment, a delay during the

20. AIR 1941 Cal. 378 = ILR (1941) 1 Cal. 536.
1. AIR 1952 Nag. 9 = ILR 1951 Nag. 748 + AIR 1919 Pat. 38 (DB).
2. AIR 1961 Madhya Pradesh 310.
3. ('10) 5 Low Bur Rul 15 + ('09) 12 All. 79 (DB) + ('90) 12 All. 461 (FB) + ('26) 97 Ind. Cas. 728 (DB) (Cal).
4. AIR 1946 Nag. 50 = ILR 1947 Nag. 323 + AIR 1952 Nag. 9 = ILR 1951 Nag. 748 (DB). (*Overruled* AIR 1944 Nag. 356).
5. AIR 1948 Nag. 50 = ILR 1947 Nag. 323. (AIR 1938 Nag. 287 *Rel. on*, AIR 1944 Nag. 356 *Diss*).
6. AIR 1964 Punjab 320.
7. AIR 1931 Cal. 731 = 58 Cal. 969 (DB) + ('13) 25 Mad. L. Jour 354 (DB) + AIR 1936 Nag. 289 = ILR 1938 Nag. 342 + AIR 1921 Nag. 141.
8. AIR 1919 Mad. 581 (DB).

same period in supplying folios in respect of the other document cannot be counted against the appellant.[9]

Ascertaining folios, time spent in. The time occupied in ascertaining the requisite number of folios, cannot be deducted from limitation.[10]

Illegal fees sought to be recovered. If an application for a copy to be made is required to be accompanied by any fees legally prescribed, then the failure on the part of the applicant so to do before the limitation had run out would deprive him of the benefits of section 12. But where no fees were legally payable for the copy although such fees were being charged all through, the non-payment of the fees would not amount to carelessness or negligence and would not disentitle the appellant to the benefits of section 12.[11]

15. Delay in taking delivery of copy. The date on which the copy is ready should be excluded as time requisite for obtaining it.[12] Time between the date on which the copy is ready and the date on which it is actually taken delivery of by the party cannot be excluded.[13] However, delay could be condoned only on furnishing of sufficient explanation in that behalf. Supreme Court, however, desired legislative intervention to the effect that the period spent from the date of application for copy up to the duly intimated date of delivery of the same, be treated as time requisite for obtaining copy.[14]

Where an application for obtaining certified copies was made on the 19th of May, 1956, and the copies were ready on the 22nd of May, 1956, which were delivered to the appellants on the 11th of June, 1956, the appellants were not entitled to deduct the days during which the copies were lying ready in office, but undelivered.[15] But the time 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.[16]

Where no date of delivery of copies was given to appellant by the copying department, time from date of application for copies of judgment to its actual delivery was excluded for the purposes of limitation.[17] But where the appellant had not established that he was given any wrong information as to date on which copies would be ready or that he was not given any information about the date when they would be ready for delivery, no extension of time can be granted.[18]

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9. ('21) 41 Mad. L. Jour 273 (DB).
10. ('86) 12 Cal. 30 (DB).
11. ('58) 62 Cal. W.N. 293 (DB).
12. 1988 SCMR 1256+PLD 1973 S.C. 222+AIR 1939 Bom. 46 (DB)+AIR 1933 Nag. 362 (AIR 1914 Nag. 60, *Rel. on*)+AIR 1937 Oudh 26=12 Luck. 531.
13. PLD 1988 SC 258=PLJ 1988 SC 144+NLR 1987 Civ. 648+NLR 1987 AC 476+NLR 1980 Civ. 107+PLD 1976 Kar. 105=PLJ 1976 Kar. 96+PLD 1967 Lah. 653+PLD 1960 Lah. 473+AIR 1919 Lah. 103+AIR 1922 Lah. 423+AIR 1917 Sind 52 (DB). (*But see* 1988 CLC 1935).
14. PLD 1988 SC 258=PLJ 1988 SC 144=NLR 1988 SCJ 414.
15. PLD 1968 Peshawar 85.
16. 1988 SCMR 1256+1973 SCMR 555.
17. 1984 CLC 927 (DB)+1987 CLC 1512=PLJ 1987 Lah. 300=NLR 1987 Civ. 554.
18. 1988 SCMR 1256.

Where no stand was taken in writing in memorandum of appeal as to reason for not taking delivery of copies when they were ready nor such facts were supported by affidavit. Mere statement of counsel of appellant that the appellant had no knowledge about copy of judgment lying ready in the office of District Judge could not be regarded as sufficient for exclusion of the extra time taken. Appeal was held to be barred by time.[19]

No date for delivery given to applicant. Where copying agency did not give a specific date as to when copy would be ready. Time falling between date of application and when it is delivered shall be deemed to be, "time requisite" for purpose of S. 12(2).[20] The time could be further extended if copying agency failed to give any information or gave wrong information to a party as to the date on which copies would be ready.[1] Where the copying section did not give any date of delivery to the applicant and vacation in the High Court supervened. The applicant collected the copies after the vacation. The delay was condoned by the Supreme Court and it was held that the appellant might well have been misled into thinking that the copy would not be available during the vacation of the High Court, particularly since the copying section had no given him any date for the delivery of the copy.[2] Where the party had shown due diligence in collecting copies and the column "reason for delay" in the form had been left blank by the officer who delivered the copies. It was held that even if it be not excluded there was sufficient cause for condonation of delay as there was no negligence and want of care and attention on the part of the counsel. The negligence must be treated as that of the copyist in not filling up the column "reason for delay."[3]

Not notice that copies were ready. In the absence of a notice or a communication to the party of the date on which the copies are ready for delivery, the delay in taking delivery cannot be counted against the appellant.[4] In Sind, Rule 331 of the Sind Chief Court Rules, provides that party should be intimated date of delivery or preparation of certified copy. In the absence of such notice time requisite for obtaining copy would end when copy was delivered.[5] Where the costs of copies were assessed on 22-9-1977 but no notice to that effect was put on the notice board as provided by the Rules and the applicant deposited the costs on 29-9-1977 and obtained the copies. The period from 22-9-1977 and 29-9-1977 was excluded from the period of limitation for appeal.[6] Where the copying establishment is unable to tell the exact date on which copies will be ready and the appellant is not guilty of undue delay in taking delivery, period between the date of their being ready and the date of taking delivery should be excluded.[7]

19. 1987 CLC 1385 = KLR 1987 CC 694.
20. NLR 1985 Civ. 410 = 1985 CLC 1619.
1. 1984 CLC 1696.
2. 1974 SCMR 33.
3. AIR 1964 Manipur 28.
4. PLD 1960 Lah. 473 = PLR 1960 (2) W.P. 1205 + AIR 1934 Lah. 135 + AIR 1957 Raj. 339 = ILR (1957) 7 Raj. 923 = 1957 Cri. L. Jour 1314 + AIR 1951 Him Pra. 87 + AIR 1920 Pat. 278 + ('90) 12 All. 105.
5. 1985 CLC 836 = PLJ 1985 Kar. 132.
6. 1983 CLC 522 (DB).
7. 1984 CLC 927 (DB) + 1979 CLC 694 + NLR 1982 A.C. 549 + PLJ 1977 Lah. 788 (DB) + PLD 1977 Kar. 376 = 1977 L. N. 80 + PLD 1960 Lah. 472 + PLD 1950 B.J. 90.

Holiday after due date. Where a Sunday or a holiday succeeds the day on which the copy is ready for delivery, such a day also will be excluded if the delivery is taken the next day.[8] But where special arrangement is made to deliver copies during holidays and this fact is known to the appellant he cannot take delivery of the copy on the re-opening of the Court and claim deduction of the whole period if it remains undelivered.[9]

16. Supply of folios before they are called for by Court. Where an application is made for copies of judgment and decree, and the application is accompanied by deposit of folios sufficient for the copy of decree, the period between the date of application and the date on which the copy of decree was ready for delivery would be deducted as time requisite for copy of decree even if all folios necessary for judgment were not deposited in proper time.[10]

17. Despatch of copies by post. The period, between the date on which copy was ready and the date on which it was despatched by post is to be excluded but not the time taken in the transmission of the copy by post.[11] If for being despatched by copying department to a wrong address, the copy is returned to the department and again re-despatched to the correct address, the period between the date of despatch to the wrong address and date of despatch to the right address will be excluded.[12]

Copies not sent by post when requested. Where an applicant requested for copies to be sent by post under the rules but the department failed to do so and only posted notice on the board that copies were ready the party took delivery of it in person after waiting for a reasonable time. The period between the date when the copy was ready and the date of delivery should be deducted from the period of limitation.[13]

18. Delay caused in getting a vernacular copy of decree or judgment. The time taken in obtaining a copy of translation of judgment appealed against cannot be excluded.[14] Thus where a decree was drafted in English and the party filed only vernacular copy of the decree along with the appeal, the time taken for obtaining such copy cannot be deducted.[15]

19. Copies of same document taken on two occasions. The most reasonable interpretation which can be placed on the term "time requisite" for obtaining a copy as used in section 12(2) will, in case where more than one application has been made within the period of limitation for obtaining copies, be the period between the date of the first application for copy and the date on which the first copy of the order, judgment or decree appealed from was obtained. The appellant cannot take credit for any period prior to the date of his application for copy nor

8. AIR 1964 Manipur 28+('13) 25 Mad. L. Jour 354 (DB).
9. AIR 1919 Mad. 409.
10. AIR 1926 Cal. 1105 (DB).
11. AIR 1922 Lah. 219=3 Lah. 280+AIR 1952 Vidh Pra. 16+AIR 1922 Lah. 415 (DB)+AIR 1919 Oudh 11+AIR 1933 Pesh. 22+('12) 9 All L. Jour 15 (DB)+('12) 8 Nag. L.R. 11+('12) 8 Nag. L.R. 172+('01) 14 CPLR 40.
12. AIR 1922 Lah. 170 (DB).
13. PLD 1990 SC 90+('05) 8 Ouch Cas. 150.
14. AIR 1920 Lah. 224=1883 Pun. Re. No. 145, p. 439 (DB).
15. AIR 1912 Lah. 287 (DB)+AIR 1934 lah. 304.

for any period after a copy of the order, judgment or decree had been obtained. The appellant can in no circumstances say that the "time requisite" for obtaining a copy was even beyond the period on which the first copy of the order appealed from was actually obtained by him. An order acquitting the accused persons was passed on 10-11-1962. Three applications for obtaining copies of the judgment were made on behalf of the District Government Counsel, within the prescribed period of limitation. The first application was made on 15-11-1962. A copy was notified to be ready in pursuance of the first application on 3-1-1963 but the first copy of the judgment became available to the District Government Counsel as a result of the second application for copy on 20-12-1962. It was held that the only period which could be excluded in the case under section 12 (2) as 'time requisite' for obtaining a copy of the order appealed from was the period between 15-11-1962 (the date of the application for copy) and 12-1-1962 (the date on which the first copy was received).[16]

20. Application for copy mislaid by office. The fact that time is lost by reason of the party's copy application being lost in the copying department and that another application is rendered necessary is not to be counted against the appellant.[17]

21. Time between date of application for copies and date of notice of requisition for stamps and folios. Time between the date of application for copies and the date of notice of requisition for stamps and folios (both dates included) should be excluded.[18] The proper mode of informing the application of the requisite or deficit stamps and folios is to put up a notice in Court; calling out the names of the applicant in the copying department is not sufficient notice.[19]

22. Holidays intervening between dates of judgment and copy application. As a general rule, no period prior to the date of application for copies can be regarded as "time requisite" for obtaining the copies.[20]

Judgment delivered on last day before holidays. Where a judgment is delivered on the last day before the closing of the Court and a copy application is filed on the re-opening date and copies are obtained with which the appeal or other proceeding is filed, there is a conflict of opinion on the question whether the holidays should be regarded as 'time requisite' for obtaining copies.[1] One view is that if judgment was delivered at an hour after which no copy application could have been filed, the period during which the Court was closed subsequent to the date of judgment must by regarded as 'time requisite' for obtaining copies. But if the copy application could have been filed on the date of judgment, holidays

16. AIR 1965 Allahabad 443 (DB) + AIR 1935 Lah. 682.
The following cases do not lay down correct law. AIR 1934 Mad. 306 = 37 Mad. 560 (FB) + AIR 1960 Andh Pra 140. (AIR 1934 Mad. 306 (FB) and AIR 1950 All. 486 *Rel on*) + AIR 1955 Trav-Co. 552 = ILR 1953 Trav-Co. 715 + AIR 1950 All. 486.
17. AIR 1914 Lah. 545 + 1915 Pun Re (Cri) No. 3.
18. AIR 1931 Cal. 731 = 58 Cal. 969 (DB) + AIR 1936 Lah. 650 (DB) + ('03) 7 Cal. W.N. 109 (DB).
19. AIR 1931 Oudh 314 = 6 Luck. 578.
20. AIR 1921 Pat. 175 = 6 Pat. L. Jour 350 (FB) (*Overruled* on another point in AIR 1936 Pat. 45 (FB) + 1955 Raj. L.W. 498 + AIR 1920 Mad. 359 = 43 Mad. 640 (DB) + 1922 Oudh 39 = 25 Oudh Cas. 71 + AIR 1920 Cal. 304 (DB) + ('11) 7 Nag. L.R. 67.
1. ('04) 27 Mad. 21 (DB).

cannot be regarded as time requisite.[2] The other view is that in such cases holidays must necessarily be excluded as time requisite whether copy application is filed on re-opening day or later.[3] Yet another view is that holidays should be excluded but not on the ground that it is time requisite.[4]

Judgment delivered during holidays. Where a judgment is delivered during the vacation when the Court is closed for the holidays and a application for copies is filed not on the re-opening day but some days after the re-opening and copies are obtained with which an appeal is filed, holidays cannot be regarded as time requisite for obtaining copies.[5]

Judgment delivered several days before holidays. Where several days after the delivery of judgment the Court closes for vacation and limitation for appeal expires during the holidays and a application for copies is filed on the re-opening day and on getting the copy the appeal is filed, there is a conflict of opinion as to whether the time taken for obtaining copies can be excluded as time requisite and whether the appeal is in time, one view is that appeal is barred.[6] But the other view is that the appeal is not barred.[7]

23. Interval between judgment and signing of decree, exclusion of. No exclusion can be claimed in any case between the signing of the decree and the application for copies.[8]

Exclusion of time between judgment and decree. An appellant is entitled to claim exclusion of the period between the date of the judgment and the date of the signing of the decree, over which he has no control and which must necessarily elapse, as "time requisite" for obtaining a copy thereof under section 12 (2) of the Limitation Act irrespective of the question as to whether the appellant has applied for a copy thereof prior to or after the signing of the said decree.[9] Therefore in

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2. AIR 1920 Mad. 1025 (DB).
3. AIR 1961 M.P. 244 + AIR 1916 Pat. 317 = 1 Pat. L. Jour 455 (DB) + 1956 All. W.R. (H.C.) 737 + AIR 1934 Pat. 4.
4. AIR 1915 Nag. 177 = 11 Nag. L.R. 104 + ('37) 39 Pun. L.R. 374 (DB).
5. 1911-1 Mad. W.N. 364 (DB) + AIR 1920 Mad. 359 = 43 Mad. 640 (DB) + AIR 1938 All. 106 = ILR 1938 All. 209 (DB) + ('37) 39 Pun. L.R. 374 (DB). (*But see* AIR 1916 Pat. 317 = 1 Pat. L. Jour 485 (DB) + AIR 1919 Pat. 506 + AIR 1929 Pat. 615 (DB).
6. AIR 1961 Orissa 133 + ('05) 28 Mad. 452 + AIR 1947 Lah. 168 = ILR 1946 Lah. 107 + AIR 1916 Lah. 407 = 1916 Pun Re No. 79 + AIR 1936 Rang. 201 = 14 Rang. 276 (DB).
7. AIR 1938 Lah. 317 + ('97) 19 All. 342 (DB) + (1900) 2 Bom. L.R. 221 (DB) + ('01) 25 Bom. 586 (DB) + AIR 1929 Rang. 96 = 6 Rang. 743 (DB) + AIR 1914 All. 303 + AIR 1931 Pat. 60 (DB) + AIR 1937 Oudh 26 = 12 Luck. 531 (DB).
8. AIR 1922 Lah. 170 (DB).
9. PLD 1962 Dacca 381 = 14 DLR 765 = PLR 1962 Dacca 455 (FB) + AIR 1961 Manipur 25 + AIR 1965 Manipur 18 + AIR 1940 Bom. 415 (DB) + AIR 1959 Mys. 253 + AIR 1957 Madh B 188 + AIR 1952 Bom. 122 = ILR 1952 Bom. 514 (FB). (AIR 1951 All. 122 (FB) and AIR 1927 Nag. 1 (FB) *Dissented from*) + AIR 1955 Assam 129 = ILR (1955) 7 Assam 297 (SB). AIR 1950 Assam 83 and AIR 1949 Assam 83 *Overruled*) + AIR 1957 Tripura 111 + AIR 1956 Tripura 6 + AIR 1953 Sau 38 + AIR 1950 Cal. 356 = ILR (1951) 1 Cal. 45 (DB) + AIR 1948 Pat. 260 = 26 Pat. 295 (DB) + AIR 1948 Sind. 18 = ILR 1947 Kar. 76 + AIR 1940 Oudh 173 = 15 Luck 376 (DB) + AIR 1928 Nag. 199 + AIR 1936 Lah. 976 + AIR 1944 Oudh 154 = 19 Luck. 456 (DB) + AIR 1942 Oudh 392 + AIR 1939 Cal. 711 + AIR 1946 Cal. 10 (DB) + ('86) 13 Cal. 104 (FB) + AIR 1939 Pat. 135 + AIR 1936 Pat. 45 = 15 Pat. 284 (FB). (AIR 1921 Pat 175 (FB) *Overruled* on this point) + AIR 1916 Pat. 175 = 1 Pat. L. Jour 573 (FB).

counting the period of limitation for an appeal, the period from the date of the judgment or the date of the decree and the date on which the decree is signed must be excluded even in cases where an application for a copy of the decree is given after the decree is signed. However, the period which is required for obtaining a copy or any part of that period cannot be considered twice over for the purpose of section 12(2).[10]

Delay in drawing up decree attributable to party. In cases where intervention of the party is essential in the matter of preparation of a decree, the Court would be required to consider whether the time taken up for preparation of the decree would be attributed to the fault or negligence of the appellant. If it could be so attributed, the party would not be entitled to exclusion of time under section 12(2) of the Act.[11] Thus where the Court after pronouncing judgment refused to pass a decree till the plaintiff complied with certain orders in relation to the suit. It was held that time began to run from the date of passing of the decree which must also be regarded as the date of the final judgment.[12] Where a party has to take certain definite steps to have the decree drafted and he has delayed making a requisition for getting the decree drafted or is guilty of laches in attending to other matters necessary to get the decree drafted, such delay will not form part of the time requisite for obtaining copies.[13] Where the Court order the parties to supply requisite stamp within certain time for preparation of decree and the party wishing to appeal from the decree pays the necessary stamp duty after inordinate delay; the time between the date of judgment and preparation of decree could not be allowed to be deducted under section 12 as "time requisite."[14] But where the delay is not caused by the negligence or carelessness of a party but by wrong orders of the Court, the party cannot be penalized for it. Thus as it is the duty of the Court under section 29(g) of the Stamp Act to direct proportion of stamp duty to be borne by each party in respect of a partition decree and the Court does not do so, the time taken in furnishing stamps and getting a copy of the decree can be excluded in computing limitation for filing an appeal.[15] Similarly where the failure of the trial Court to draw up the decree had contributed substantially to the unprecedented delay of ten years in signing the decree after pronouncement of judgment, the litigant deserved to be protected against the default committed or negligence shown by the Court or its officers in the discharge of their duties.[16]

Great interval between signing of judgment and decree. In the absence of an application for a copy of the decree, even if it was not in existence and was prepared and signed subsequently, time would run from the date of the signing of the decree.[17] But where there is an interval of several days between the pronouncement of the judgment and the signing of the decree, such interval cannot be excluded as time requisite without regard to the date of application for

10. 1990 MLD 120 + AIR 1963 Gujerat 255 + AIR 1952 (FB).
11. PLJ 1985 Kar. 309 + AIR 1965 Orissa 193 + AIR 1956 Bom. 86 (DB).
12. AIR 1916 Sind 2 = 9 Sind L.R. 193 (DB).
13. AIR 1932 Cal. 331 = 59 Cal. 1215 (FB). *(Overruling* AIR 1927 Cal. 623) + AIR 1952 Bom. 122 = ILR 1952 Bom. 514 (FB) + AIR 1959 Mys. 253 + AIR 1934 Cal. 543 = 61 Cal. 306 (DB) + AIR 1934 Pat. 266 = 13 Pat. 371 (DB).
14. AIR 1945 Lah. 233 (DB).
15. AIR 1948 Mad. 172 = ILR 1948 Mad. 413 (DB).
16. AIR 1965 Manipur 18.
17. 1990 MLD 120.

the copies of judgment and decree.[18] It is to be noted in this context that if the period of limitation provided for an appeal, 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. 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.[19] In other words 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 as already run out, no subsequent action will bring it back to life. The legal requirement, therefore, is that to interrupt the running of 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? The answer to the questions is that if the time requisite for obtaining a copy of the judgment extends 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, overlapping period will be excluded only once.[20] Therefore where 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 20-1-1958, 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. It was 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 a 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

18. AIR 1948 Pesh. 74 (DB)+1939 Rang. LR 686 (DB)+AIR 1951 All 122 (FB)+AIR 1958 Punjab 283+AIR 1954 Hyd. 104 (DB)+AIR 1953 Raj. 7 (DB)+56 Cal. WN (4 DR) 25 (DB)+AIR 1950 E. Punj. 195+12 All 461 (FB)+23 Bom. 442 (DB)+3 Low Bur Rul 62 (FB)+AIR 1935 Oudh 30 (DB)+AIR 1930 Oudh 369+AIR 1936 Lah. 670 (DB)+AIR 1915 Mad. 308+AIR 1927 Nag. 1 (DB)+AIR 1925 Oudh 600+AIR 1929 Rang. 116+AIR 1921 Sind 42 (DB)+1 Sind LR 71 (DB).
19. PLD 1960 Karachi 840=PLR 1960 (2) W.P. 993.
20. PLD 1961 Lahore 300 (DB).

limitation from the date of the order (judgment). The appeal filed on 27-1-1959 was therefore time-barred.[1]

Application for copies made before signing of decree. When a party applies for a copy of the decree but the same is not provided because of its non-existence, whatever time is consumed in preparation and signing of the decree, is to be excluded under this section.[2] Where an application is made for copies of the judgment and the decree but the office returns the application or the copying folios in so far as the decree is concerned on the ground that the decree has not been signed, the application must be treated as pending all the time, even though the party again applies for a copy after the decree is signed.[3] Where judgment of Trial Court was dated 11-5-1987 copy whereof was ready for delivery on 12-5-1987. Copying agency on 7.6.1987, reported that decree was not prepared and was non-existent. Petitioner on 18-6-1987 applied to the Trial Court for preparation of decree-sheet which was prepared on 24-9-1987. Petitioner, on 6-10-1987 applied for a copy of the decree prepared for the first time on 24-9-1987. Copy of decree was ready for delivery on 29-10-1987 and was received by petitioner on the same date. Appeal was filed on 18-11-1987. It was held that proper calculation of allowable exclusions of the periods requisite for obtaining a copy of judgment and decree added to the statutory period prescribed for an appeal to the Court of District Judge under Art. 152, Limitation Act, 1908, would indicate that the appeal was in time.[4]

In Sind decrees were being prepared a long time after judgment was delivered and considering the special circumstances a rule was evolved that if a party applied for a copy of the decree at any time before the decree was prepared then the time between the date of the judgment and the date of the decree was also to be regarded as time required for obtaining copy of the decree,[5] and the rule continued to be in force even after the creation of the High Court of West Pakistan.[6] It is however to be noted that where the appellant applies for a copy of the decree before the decree is prepared and signed, the period from the date of application to the date of signing of the decree, being already comprised in the period from the date of the pronouncement of the judgment to the date of signing of the decree, cannot be excluded again in computing the period for limitation as it would amount to double exclusion of the over-lapped period.[7]

No decree sheet prepared. Where the Court dismissed a suit but did not prepared a decree sheet, appellant cannot be deprived of the right of appeal on the ground of limitation by calculating the limitation to commence from the date when the impugned judgment was passed but no decree was drawn up. The proper course to be adopted by appellate Court is to grant an adjournment to enable the plaintiff to get a decree prepared and then to dispose of the appeal.

1. PLD 1961 Azad J. & K. 18 (DB).
2. 1990 MLD 120 + PLD 1983 SC (AJ&K) 25 = NLR 1983 SCJ 336 = PLJ 1983 SC (AJ&K) 110.
3. 1990 MLD 120 + 15 Cal. W.N. 787 (DB).
4. 1990 MLD 120.
5. PLD 1959 Karachi 264 (DB) = PLR 1959 (2) W.P. 1389.
6. PLD 1967 S.C. 271 = 19 DLR S.C. 236.
7. PLD 1983 Kar. 537 + AIR 1965 Orissa 193.

The period of limitation would commence from the date of preparation of decree and not from the date of judgment.[8]

Separate application for judgment, and decree. Under section 12 of the Limitation Act, the appellants are entitled to exclude not only the time requisite for obtaining a copy of the judgment but also the time requisite for obtaining a copy of the decree.[9] It is open to him to make separate applications to get these copies on different dates.[10] In such case 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 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 a copy of the decree. Where some portions of these two periods overlap each other, the overlapping period will be excluded only once.[11]

Execution petition. Since an application for execution does not fall within any of the categories of legal proceedings mentioned in section 12 (2), Limitation Act, It would not in terms apply to an application for execution and therefore the question whether the decree-holder is entitled as of right to ask for exclusion of the period of interval between the date of pronouncing the judgment and the date of drawing up the decree cannot arise for consideration in such cases.[12]

24. Delay caused by getting orders varied and settled. Where the appellant applied for a variation and settlement of the order to be appealed from, and he was not during such period, failing to take reasonable and proper steps to obtain a copy of the order, the period can be regarded as requisite for obtaining a copy of the order.[13]

25. One common judgment to be filed in two appeals. Where two separate appeals are filed against a common judgment delivered in two suits, time spent in obtaining copies of the judgment for the two appeals is to be computed separately. Thus where suits *X* and *Y* are decided by common judgment and two appeals *A* and *B* are filed against such judgment. A copy of the judgment applied for in suit *X* is filed along with appeal *A*. The time spent in obtaining a copy cannot be excluded for computing limitation for appeal *B*.[14] But where two suits were disposed of by one consolidated judgment and appellant filed one appeal against the consolidated judgement but on objection filed another appeal subsequently. It was held that after computation of time requisite for obtaining certified copies,

8. 1982 Law Notes 672 (Lah.).
9. PLD 1962 Azad J. & K. 23 (DB).
10. PLD 1961 Lahore 366 (DB).
11. PLD 1961 Lahore 366 (DB) + PLD 1962 Dacca 381 = 14 DLR 765 = PLR 1962 Dacca 455 (FB) + PLD 1960 Kar. 562.
12. AIR 1961 Madhya Pradesh 223.
13. AIR 1937 P.C. 107 = 31 Sind L.R. 239.
14. AIR 1915 Mad. 493 (DB).

subsequent appeal would be within time in spite of non-submission of certified copies of judgment/decree thereof.[15]

26. Appeal from judgment on review. Where a judgment passed on review does not give all the facts of the case and modifies a portion of the first judgment and an appeal is to be filed against judgment in review, the time requisite for obtaining copies of judgment in review as well as the original judgment can be excluded.[16]

27. Application for leave to appeal to Supreme Court. Sub-section (2) of section 12 of the Limitation Act provides that 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. The mere fact that under the Rules and Orders of the High Court, there is no requirement for filing the copies of the judgment and decree is no ground to ignore section 12 of the Limitation Act.[17]

28. Application for leave to appeal in 'forma paupris'. An application for leave to appeal in *forma paupris* will be governed by this section. Therefore time taken for obtaining copies of decree and judgment had to be excluded.[18] A copy of judgment is necessary for preparing grounds of appeal which have to be filed along with the application.[19]

29. Application for review. Where an application for review is filed, time for copies of decree and the judgment sought to be reviewed is to be excluded.[20]

30. Application to set aside award. It is not the business of the Court to ascertain and find out if any of the parties has applied for copies of the award and wait for the full period available for the party to file an application. It is the duty of the party to bring it to the notice of the Court before it proceeds to pass a decree.[1] Even in a case where an application to set aside an award has been filed which is on the face of it out of time, it is the duty of the party to bring it to the notice of the Court that copies have been obtained and time was consumed thereby.[2]

31. Filing of an appeal with a copy of judgment or decree alone. Where an appeal was filed with a copy of judgment alone within limitation period as computed by adding time requisite for copy of judgment and an application was made for a copy of decree and the copy was produced in Court immediately it was

15. 1986 CLC 1666 = NLR 1986 AC 393.
16. AIR 1928 Lah. 755.
17. PLD 1974 SC 344 = PLJ 1974 SC 246 + PLD 1974 SC 56 = PLJ 1974 SC 43 + PLD 1974 SC 17 = PLJ 1974 SC 1 + PLD 1973 SC 222 + PLJ 1973 SC 193 = 1973 SCMR 555 (*But see* 1973 SCMR 409 and 1984 PSC 356 (SC AJ&K)).
18. AIR 1923 Lah. 684.
19. AIR 1964 Kerala 173 (FB) (Time requisite in obtaining copy of judgment to be excluded) + AIR 1944 Mad. 430 (AIR 1925 Mad. 1241, *Rel on*) + AIR 1923 Lah. 684.
20. AIR 1925 Lah. 377 (DB) + 1893 Bom. P.J. 476 (DB).
1. AIR 1932 Mad. 588.
2. AIR 1916 Mad. 634.

obtained. The appeal was held to be within time but not so, if a copy of the decree was produced in Court when time for appeal had expired.[3]

32. Appeal in criminal cases. The section applies to criminal appeals.[4] Therefore in the case of a criminal appeal, or an application for leave to appeal under section 449, Criminal P.C., time taken for necessary copies should be excluded,[5] and in the case of appeals by persons in jail, time taken up in forwarding applications for copies on behalf of intending appellants in jail and in transmission of such copies to the jail must be excluded.[6]

Copies of diary orders. No exclusion can be made of the time taken in obtaining copies of diary orders in a criminal case which were filed with the appeal.[7]

33. Finding as to time requisite. A finding as to the time requisite for obtaining copies is one of fact and is not open to question in second appeal.[8]

34. Dates endorsed on certified copies, evidentiary value of. Where an endorsement on the copy by the copying agency shows that a certain number of days was requisite for the supply of copies, it is to be presumed that the number of days was necessary unless the endorsement shows that a demand for deposit of fee or stamp was made and was not complied with or that the applicant was otherwise negligent.[9]

Correctness of entries. Unless there is very clear proof to the contrary, information given in the endorsement of the copying department must be accepted as correct.[10] But in fit cases an endorsement by the office may be shown to be erroneous or fraudulent.[11]

Proof of correctness. When correctness of an entry made on the copy is challenged, a report of the copyist made in a departmental inquiry started by the Court is not legal evidence without the sworn testimony of the copyist.[12] A record of the dates and events in the register of the copying department may be corroborative evidence of the correctness of the entries on the copies.[13]

35. Appeals from orders. The term "order" in sub-section (2) is general and is comprehensive enough to include a formal order.[14] In the case of appeals from orders, time spent in obtaining the fair order (judgment) and also the final order (in the form of the decree) must be excluded.[15]

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3. AIR 1924 All. 162+AIR 1922 Lah. 170.
4. ('92–96) 1 Upp. Bur. Rul. 129+('92–96) 1 Upp. Bur Rul. 130
5. ('84) 10 Cal. 642 (DB)+AIR 1927 Cal. 307=54 Cal. 52=28 Cri. L. Jour 481 (DB).
6. ('86) 9 Mad. 258 (DB)+1888 Pun. Re. (Cri). No. 5, p. 9 (DB).
7. AIR 1925 Rang 239=3 Rang 220=26 Cri. L. Jour 1371 (DB).
8. AIR 1922 Lah. 423+AIR 1923 Lah. 696.
9. AIR 1936 Lah. 693+AIR 1936 Lah. 120.
10. AIR 1919 Pat. 38 (DB).
11. AIR 1914 Oudh 244 (DB).
12. AIR 1928 Lah. 643 (Entry as to date of copy being ready for delivery).
13. AIR 1919 Pat. 38 (DB).
14. AIR 1956 All. 585 (DB).
15. AIR 1920 Pat. 844 (DB).

36. Section 5 and "time requisite". The rule that the appellant has to account for the delay of each and every day beyond the prescribed time, in order to claim extension, would apply where section 5 of the Limitation Act comes into play but not in the case of section 12 of the Limitation Act. In that case the time requisite for obtaining a copy of the judgment or of the decree can be excluded as a matter of right.[16] If any delay takes place on the part of the appellant in the matter of making the application or supplying the folios or taking delivery, such delay cannot be considered in making the computation. Any indulgence by way of extension of the period of limitation can only be granted not under this section but under section 5.[17]

37. Application for exclusion of time not necessary. Section 12(2) does not require any prayer or application on the part of a party for the exclusion of the time spent in obtaining copies, as such exclusion is made imperative by the section itself and it is the duty of the Court to exclude such time.[18]

13. *Exclusion of time of defendant's absence from Pakistan, etc., and certain other territories.* In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from [19][Pakistan] and from the territories beyond [19][Pakistan] under the administration of [20][the Central Government] [1]* * * * shall be excluded.

Synopsis

1. Scope.
2. "Any suit."
3. Absence from Pakistan.
4. Absence of defendant from Pakistan on several occasions.
5. Absence of several defendants from Pakistan.
6. Ignorance of plaintiff as to defendant's residence.
7. Territories beyond Pakistan under the administration of Central Government.
8. Procedure.

1. Scope. The section provides for the computation of the period in a particular manner, namely by excluding a certain period and there is no question of stopping the running of time.[2]

2. "Any suit." The section applies only to suits and not to execution proceedings.[3]

16. PLD 1962 Azad J & K 21 (DB).
17. ('90) 12 All 461 (FB) + ('81) 9 Cal. L. R. 293 (DB).
18. AIR 1954 Pepsu 173 = ILR 1954 Patiala 294 + AIR 1955 H.P. 12.
19. Subs. by the Central Laws (Statute Reform) Ord., 1960 (21 of 1960), S. 3 and Second Sch. (with effect from the 14th October, 1955), for "the Provinces and the Capital of the Federation" which were subs by the A.O., 1949, for "British-India".
20. Subs. by the A.O., 1937, for "the Govt."
1. The words "or the Crown Representative" omitted by the A.O., 1949.
2. ('95) 9 CPLR 72.
3. ('81) 3 All 185 (DB) + AIR 1922 Oudh 131 = 25 Oudh Cas. 74.

3. **Absence from Pakistan.** The words of the section are express and must be given effect to.[4]

Suit may be filed in the absence of defendant from Pakistan. Section 13 merely enables the plaintiff to wait, if he is so inclined, till the defendant comes back to Pakistan. The journey of the defendant or his absence from Pakistan does not affect the plaintiff's right to sue.[5]

Land transferred to foreign territory by change of course of review. Where land was transferred to a foreign territory by sudden change of course of river and it was retransferred to its original position by the same cause, the period during which the land was foreign territory was excluded.[6]

Mortgagory, absence of. Where possession was not given to the mortgagee in contravention of the mortgage deed, in a suit by the mortgagee, if one of the mortgagors resides outside Pakistan for a considerable time between the date of suit and the date of mortgage, such period can be deducted for the purposes of limitation as against such mortgagor.[7] Where a mortgagor has transferred mortgaged property and the mortgagor is absent from Pakistan whereas his alienee is in Pakistan, the period of absence of the mortgagor may be excluded under this section both against the mortgagor and his alienee.[8]

Mortgaged Evacuee Property. Section 5 of the Pakistan Administration of Evacuee Property Act, 1957 clearly lays down that provision of the Act and rules of orders made thereunder shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any instrument having effect by virtue of any such law. This clearly freezes the rights of the parties with regard to evacuee property as they stood at the time of the vesting of the property in Custodian, *i.e.*, on the 1st day of March, 1947. Therefore no suit for declaring a mortgage irredeemable after the expiry of 60 years lies in case of property mortgaged by non-Muslim evacuees.[9] Therefore provisions of S.13, Limitation Act, 1908, would be applicable in favour of evacuee owner respecting share owned by him which by operation of law vested in Custodian. Mortgagees were not entitled to lay claim on ground of limitation against the evacuee, or against the Custodian, in whom evacuee interest came to vest by operation of law from 1st March, 1947.[10]

Presence in Pakistan of defendant when cause of action arose. The words "absent from Pakistan" do not necessarily imply that the defendant was present in Pakistan at the time when the cause of action accrued or the period of limitation commenced to run.[11]

Cause of action arising outside Pakistan. It is not necessary for the application of this section that the cause of action or the transaction which gave rise to the

4. ('70) 2 NWPHCR 173 (DB) + ('87) 14 Cal. 457 (DB).
5. AIR 1961 Madras 199.
6. 1889 Pun. Re. 34, p. 120.
7. AIR 1933 Lah. 741 (DB).
8. AIR 1945 Mad. 315.
9. 1980 CLC 593 AJ&K (DB).
10. PLD 1987 Pesh 125 = PLJ 1987 Pesh 176 = NLR 1988 CLJ 23.
11. ('86) 14 Cal 457 (DB).

cause of action should have taken place in Pakistan. The section would equally apply to the case of a defendant who was residing abroad when the cause of action arose outside Pakistan but was resident within the jurisdiction of the Court in Pakistan at the time of the institution of the suit.[12]

Agent of defendant residing in Pakistan. The fact that the defendant has a duly authorised agent or manager against whom the plaintiff could have filed a suit and obtained a valid decree, does not disentitle the plaintiff from claiming to exclude the period of the defendant's absence from Pakistan.[13]

Defendant always residing out of Pakistan. In suit against an ordinary person or against a Ruling Prince who always resides outside Pakistan, the section should be read consistently with the provisions contained in Part IV of the Code of Civil Procedure for "suits in particular cases" against defendants who ordinarily would be always out of Pakistan.[14] But where a person who is always resident outside Pakistan has come to live in Pakistan and the period for which he is in Pakistan covers the entire period of limitation, this section does not apply.[15]

Imprisonment of defendant. The plaintiff cannot claim to exclude the period during which the defendant is under imprisonment in Pakistan.[16]

Plaintiff absent from Pakistan. The plaintiff cannot exclude the period of his own absence from Pakistan, whether such absence is voluntary or involuntary.[17]

4. Absence of defendant from Pakistan on several occasions. The fact that during his absence the defendant paid occasional visits to Pakistan will not make the section inapplicable.[18] Therefore where the defendant was absent from Pakistan on several occasions, all such periods of absence should be excluded.[19]

5. Absence of several defendants from Pakistan. The fact that during his absence the defendant paid occasional visits to Pakistan will not render the section inapplicable in so far as the period of absence are concerned.[20] But where the defendant is a joint Hindu family and the manager of the joint Hindu family has gone out of Pakistan the period during which he was so absent can be excluded in computing the period of limitation though other members of the family were residing in Pakistan and there was no legal impediment to the plaintiff filing the suit against them.[1]

6. Ignorance of plaintiff as to defendant's residence. Where the defendant has resided out of Pakistan, the period of such residence can be excluded independently of any question of knowledge of that fact by the plaintiff.[2]

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12. AIR 1955 Mad. 96 = ILR 1955 Mad. 116 (AIR 1928 Mad. 1088 and AIR 1944 Mad. 437, *Overruled*) + 1958-1 Mad. L. Jour 396.
13. ('98) 25 Cal. 496 (FB). (*Overruling* ('84) 10 Cal. 440 + ('95) 9 CPLR 72).
14. AIR 1929 Bom. 14 = 53 Bom. 12 (DB).
15. AIR 1964 Mad. 527 (DB).
16. 1869 Pun. Re. No. 39.
17. 9 DLR 16 + ('68) 10 Suth WR 253 + (1864-65) 2 Mad. HCR 113 (DB).
18. 1897 Pun Re. No. 26, p. 131 (DB).
19. AIR 1921 Bom. 460 = 54 Bom. 1228 (DB).
20. 1897 Pun Re. No. 26, p. 131 (DB).
1. AIR 1952 Mad. 288 (DB).
2. ('70) 2 NWPHCR 173 (DB).

7. Territories beyond Pakistan under the administration of Central Government. Only those territories which are in the administrative control of Central Government are covered by this section. Territories occupied by Pakistan Armed Forces but not under the administrative control of the Central Government do not fall under the section. Where during the war, Basra was under the military occupation of the India Expeditionary Force sent by the Government of India, such occupation did not make it a territory under the administration of the Government of India and if the defendant was at Basra, the plaintiff was entitled to deduct the period of such absence.[3]

8. Procedure. In case the plaintiff claim exclusion of the period of the defendant's absence from Pakistan or from territories under the administration of the Government of Pakistan he should specifically plead and prove strictly that fact.[4]

Computation of time. Section 13 in not affected or qualified by section 9. The proper way of reading section 9 and 13 is that the interval between the date when the cause of action arose and the date when the suit instituted should be first computed. From that period the time during which the defendant has been absent from Pakistan should be subtracted by virtue of section 13. If the resultant period does not exceed the time specified in column 3 of the first schedule to the act, the suit would be in time.[5]

14. *Exclusion of time of proceeding bona fide in Court without jurisdiction.* (1) 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

3. AIR 1923 All. 64=45 All. 18 (DB).
4. ('10) 9 Ind. Cas. 568 (Mad.)+AIR 1954 Ajmer 42 (Statement in plaint that defendant lived in Bundi--No specific allegation that they did not come to British-India--*Held* sufficient plea to exclude time under S. 13)+AIR 1937 Bom. 242=60 Bom. 659.
5. AIR 1961 Madras 199+ILR 8 Bom. 561+ILR 4 All. 530.

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 action shall be deemed to be a cause of a like nature with defect of jurisdiction.

Synopsis

1. Scope and applicability.
2. Second suit in continuation of first suit.
3. Limitation not suspended during continuation of suit in wrong Court.
4. Proceedings to which section applicable.
5. Section 5 and 14.
6. Section 4 and 14.
7. Section 14 and Article 182(5).
8. Withdrawal of proceedings.
9. Plaintiff pro-secuting--Explanation II.
10. Due diligence.
11. "Another proceeding."
12. "Civil proceeding in a Court".
13. Court of appeal--meaning.
14. Parties must be the same.
15. Suit must be based on same cause of action.
16. Same cause of action--Sub-section(1).
17. "For the same relief".
18. "In good faith."
19. "Which from defect of jurisdiction is unable to entertain."
20. "Jurisdiction."
21. "Other cause of a like nature."
22. "Unable to entertain."
23. Misjoinder--Expl. III.
24. Explanation I.
25. Time for obtaining copy of the order in prior proceedings.
26. Exclusion of a portion of the time.
27. Failure to plead exemption under this section.

1. Scope and applicability. The question of applicability of this section does not arise where the impugned order is without jurisdiction and void, because in that case there is no question of limitation involved.[6] The principle of the section is protection against the bar of limitation of a person honestly doing his best to get his case tried on the merits, but failing because the Court is unable to give him such a trial.[7] Therefore where delay in filing the suit was not due to pendency of a previous proceeding, this section would not apply.[8]

Where a named date is prescribed by a statute for filing a suit or application, it is extremely doubtful that this section can be availed of.[9]

6. PLD 1973 Quetta 1.
7. (1900) 22 All 248 (FB) = AIR 1957 Pat. 139 (Necessary conditions stated) = AIR 1956 H.P. 161 = ILR 1956 Hyd. 45 (DB) + AIR 1949 Cal. 24 + AIR 1937 Mad. 357 = ILR 1937 Mad. 36 (DB).
8. PLD 1961 Kar. 612 = PLR 1962 (1) W.P. 466.
9. AIR 1948 Cal. 226 = ILR 1938 (1) Cal. 262 (DB).

The section ought to be liberally construed.[10] It comes into play if the following conditions are fulfilled:-

(*a*) that the plaintiff has been prosecuting another civil proceeding against the defendant;

(*b*) that he has been prosecuting it with due diligence;

(*c*) that this proceeding is founded upon the same cause of action;

(*d*) that it is prosecuted in good faith; and

(*e*) that it does not bear fruit because the Court is unable to entertain it due to defect of jurisdiction or other cause of a like nature.[11]

Litigant has right to exclusion of time under the section. Under the section the Court is not given discretion but the litigant is entitled as of right to exclude the period spent in infructuous proceedings.[12]

Sections 14 and 19--distinction. There is a distinction between S. 14 and the provision made in S. 19 of the Limitation Act. Section 14 does not speak of excluding any period in the computation of the period prescribed under the Limitation Act. But S. 19 and other similar provisions in the Limitation Act speak of a fresh period of limitation for a suit or other proceedings becoming available from the date of acknowledgment. This is achieved in S. 19 by providing that a fresh period of limitation shall be computed from the time when the acknowledgment was signed. Though this appears to stand on a slightly different footing from exclusion of time in computing the period indicated in S. 14, the effect in both these cases appears to be the same.[13]

Return of plaint by Court. Where a suit was filed in a Court having jurisdiction to entertain it and the Court passed an illegal order returning the plaint for presentation to the proper Court. The plaintiff took back the plaint without any objection and re-filed it in the same Court after two days. The suit must be deemed to have been filed within time in the right Court and it is not necessary for the plaintiffs to call in aid S.14, Limitation Act. The suit should be deemed to have remained pending throughout and any delay in filing the same would be immaterial.[14]

Where a suit is filed in the wrong Court and the Court returned it for presentation to proper Court, it cannot extend the period of limitation by its own order. Where the plaint was filed on the last day of limitation and the Court returned it for presentation to the proper Court within one month. It was held that the suit though represented within such time has to be dismissed as barred by

10. AIR 1926 Mad. 1081+AIR 1949 Pat. 293=28 Pat. 102 (FB)+AIR 1951 Hyd. 57=ILR 1951 Hyd. 632 (DB)+AIR 1933 Bom. 276 (DB)+AIR 1919 Mad. 1071=41 Mad. 701 (DB)+AIR 1945 All. 377=ILR 1945 All 394 (DB).
11. 1986 CLC 456+1986 CLC 233=KLR 1986 CC 189=PLJ 1986 Quetta 52 (DB)+PLD 1962 Karachi 510=PLR 1962 (W.P.) 634 (DB)+AIR 1957 Madh. Pra. 95=ILR 1957 Madh Pra. 316 (DB)+AIR 1941 Mad. 319=ILR 1941 Mad. 347 (FB)+AIR 1943 Mad. 457.
12. AIR 1956 Hyd. 161=ILR 1956 Hyd. 45 (DB)+AIR 1957 Hyd. 4=ILR 1956 Hyd. 680.
13. AIR 1963 Madras 202 (DB).
14. PLD 1984 Lah. 25+1982 Law Notes 506 (SC)+PLD 1968 Kar. 589+AIR 1960 Pat. 82+AIR 1944 Kerala 314.

limitation, The Court has no jurisdiction while returning the plaint for presentation to proper Court to enlarge the period of limitation.[15]

Provincial Insolvency Act. Section 9(1)(*c*) of the Provincial Insolvency Act does not prescribe a period of limitation for presentation of a petition by a creditor for adjudication, but sets out a condition precedent, and by applying the rule contained in S. 14 of the Limitation Act a petition filed after the expiry of three months cannot be made to conform to the strict requirement of S.9(1)(*c*) of the Provincial Insolvency Act.[16] Similarly a period of two years referred to in S. 53 of the Act is not a period of limitation prescribed within the meaning of this section.[17]

Carriage of Goods by Sea Act. 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 6 of Article III does not merely prescribe a period of limitation different from the period prescribed therefor by the first Schedule of the Limitation Act but is different in character from the provisions of the first Schedule.[18]

Pre-emption cases. Paragraph 25(9) of the Land Reforms Regulation, 1972 expressly makes applicable the provisions of sections 5 and 12 of the Limitation Act, in computing the period of limitation provided for in sub-paragraph (6) or sub-paragraph (7)of paragraph 25 of the Regulation. But there is no express exclusion of the provision of section 14 of the Act. This being so in the absence of any express exclusion of the provisions of section 14 of the Act, either under the Pre-emption Act or under paragraph 25 of Regulation, the provisions of section 14 are clearly applicable to pre-emption cases.[19]

2. Second suit is continuation of first suit. Where a suit is instituted in a Court having no jurisdiction, and a second suit is filed in the proper Court, the second suit cannot be regarded as continuation of the first even though subject-matter and parties to suits were identical.[20] The real effect of this section is to extend the period of limitation prescribed by the period for which the suit or other proceeding had been prosecuted as envisaged by the section. Since the effect of the section is not to render the suit, after re-filing in the proper Court, a continuation of the original suit, the period of limitation prescribed for the original suit will be applicable to it as a new suit excluding the period specified by this section.[1]

3. Limitation not suspended during continuation of suit in wrong Court. During the period of prosecution of the prior civil proceeding in the wrong Court, limitation is not suspended.[2] Time spent in pursuing review application or time

15. AIR 1964 Kerala 285.
16. AIR 1956 Bom. 650 = ILR 1956 Bom. 748 + AIR 1948 Nag. 385 = ILR 1948 Nag. 523.
17. AIR 1917 Mad. 144 (DB).
18. PLD 1960 Karachi 99.
19. 1982 CLC 1450 (Lah.).
20. AIR 1929 P.C. 103 = 56 Lah. App. 128 = 56 Cal. 1048.
1. ILR (1948) 1 Cal. 488.
2. 1988 SCMR 179 + AIR 1920 Mad. 1 = 43 Mad. 185 (FB) + AIR 1935 All. 323 (DB) + AIR 1934 Rang 329 = 13 Rang 43 + AIR 1927 All. 446 = 49 All. 565 (DB).

spent in obtaining copy of the order passed by Single Judge could be deducted from period of 20 days. Time spent in obtaining copy of the order rejecting review application could not be deducted as under the Rule it was not necessary to file copy of that order alongwith memorandum of Letters Patent Appeal.[3]

4. Proceedings to which section applicable. The section applies to suits and applications.[4] The section does not apply where the prior proceedings were before executive authorities. Thus making of an application to the Factory Inspector for claim in tort can by no stretch of argument be said to be a bona fide proceedings fit for condonation of delay under section 14 of the Limitation Act.[5]

Special or local law. This section is attracted only when the period of limitation under the special statute is different from that prescribed in the Schedule to the Limitation Act.[6] In Bangladesh S. 14 was held to be applicable to proceedings under the Waqf Ordinance.[7]

Ex parte decree, appeal to set aside. Law rather than foreclosing cases on mere technicalities, favours adjudication of disputes in merits. Benefit of rule embodied in provisions of S. 14, Limitation Act would be admissible to defendant to bring his appeal against *ex parte* decree within limitation on account of exclusion of period consumed in pursuing application for recall of *ex parte* decree which was even void.[8] But limitation would run against void decree if proceedings were within knowledge of a person or he knew well about it. Such person should be vigilant to challenge void decree within the prescribed period of limitation.[9]

Appeal. An appeal in reality is an application to the appellate authority for seeking a redress against the decision appealed against. When looked at from the above angle, the word "application" as used in section 14(2) of the Limitation Act, seems to include an application by way of appeal.[10] Even if it be held that S. 14 was not applicable for the purposes of computing period of limitation for appeals, section 14, would be relevant for consideration of case under S. 5 of the Limitation Act, 1908.[11]

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3. 1988 SCMR 179.
4. AIR 1940 Pat. 677=19 Pat. 354 (DB)+AIR 1960 All. 375 (DB) (S. 14 (2) applies to execution applications. AIR 1926 All. 345, *Explained*)+AIR 1956 Assam 63 (DB). (Section 14 has got no application to appeals which are covered by S. 5)+AIR 1932 Lah. 531=14 Lah. 106+('94) 18 Bom. 734 (DB)+('93) 20 Cal. 29 (DB)+AIR 1932 All. 340=54 All. 423+AIR 1942 Sind 37=ILR 1941 Kar. 495 (DB).
5. PLD 1972 Kar. 57 (DB).
6. PLD 1973 Quetta 35=PLJ 1973 Quetta 129.
7. 1985 Dhaka LR (SC) 184.
8. 1988 CLC 806=PLJ 1988 Lah. 212.
9. NLR 1988 CLJ 9=1987 CLC 2143.
10. PLD 1969 Lahore 1080+PLD 1963 Lah. 414+PLD 1964 Lah. 15+AIR 1928 Lah. 136+('13) 18 Ind. Cas. 92 (DB) (Oudh)+AIR 1923 Cal. 291 (DB). (Appeal after an infructuous review application)+1908 Pun. W.R. No. 66, p. 240+('21) 62 Ind. Cas. 957 (DB) (Cal.)+AIR 1930 Pat. 307 (DB).
11. 1985 CLC 2529=KLR 1985 CC 142 (DB)+NLR 1986 Civ. 911.

Arbitration proceedings. By virtue of S. 37, Arbitration Act, 1940 the provisions of this section apply to arbitrations.[12] But a Court cannot convert a plaint into a petition under section 33 of the Arbitration Act in a case where a party to an arbitration agreement has lost time in prosecuting a suit for declaration that the award is invalid. Such a suit is barred on the very fact of section 32 of the Arbitration Act. The party is not entitled to the protection under the provisions of section 14 of the Limitation Act even where he has entrusted all his work to a lawyer who advised him wrongly.[13] After the commencement of limitation for a suit even if petitioners were genuinely pursuing proceedings under section 34, they could not be given benefit thereof.[14]

Proceedings in Court outside Pakistan. This section does not apply to prior proceedings in foreign Courts,[15] or in Courts which are not in Pakistan.[16]

Child Marriage Restraint Act. A complaint under S. 9 of the Child Marriage Restraint Act (XIX of 1929) made to a wrong Court will not save time, under this section, for a subsequent complaint to the proper Court.[17]

Cattle Trespass Act. The section is not applicable to a complaint under the Cattle Trespass Act.[18]

Administration suit. Where in an administration suit a preliminary decree was passed and a receiver was appointed; the suit was dismissed on appeal; the decree-holder defendant could not deduct the period between the date of suit and its dismissal in calculating limitation for execution of his decree. This section did not apply.[19]

Proceedings under I.R.O. 1969. Section 14 applies to proceedings under I.R.O. 1969.[20]

Payment of Wages Act. Since the principle of section 14 is not expressly excluded by the Payment of Wages Act, it will apply to all applications made under section 15 of the Act.[1]

Proceedings in Revenue Court. Where the plaintiff applied to the Collector for payment of the proceeds paid to the defendants by the Civil Court; the Collector held that remedy lay to the Civil Court. In a suit by the plaintiff time spent in prosecuting proceedings before the Collector cannot be excluded.[2]

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12. PLD 1968 Kar. 23 = PLR 1969 (1) W.P. 96 + AIR 1954 Bom. 309 = ILR 1954 Bom. 602. (In order to exclude time taken up in arbitration proceedings the tests laid down by the Legislature in S. 37 (5) Must be applied and satisfied).
13. AIR 1963 Orissa 19.
14. PLJ 1989 Lah. 405 = NLR 1989 Civ. 453.
15. ILR (1937) 1 Cal. 541 + AIR 1950 Andh Pra 625 (DB) (35 Bom. 139; AIR 1923 Nag. 321; AIR 1927 Lah. 200; ILR (1937) 1 Cal. 541. *Followed;* AIR 1949 Raj. 149 (FB). *Disapproved;* AIR 1932 P.C. 165. *Referred to*) + AIR 1927 Lah. 200 = 8 Lah. 54 (DB) + (11) 35 Bom. 139 (DB).
16. AIR 1923 Nag. 321 (DB).
17. AIR 1939 Mad. 512 (DB).
18. AIR 1951 Orissa 40 = ILR 1950 Cut. 349.
19. AIR 1944 Mad. 67 = ILR 1944 Mad. 410 (DB).
20. NLR 1989 Civ. 112.
1. KLR 1985 Civ. 6, 54.
2. AIR 1944 Nag. 315 = ILR 1945 Nag. 427.

E.P. Labour Disputes Act. Section 14 of the Limitation Act will have application in the matters of Labour Laws 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 bona fide and with due diligence should be excluded in computing the period of limitation.[3] In a proceeding under this Act provisions of S. 14 of the Limitation Act apply to an application for setting aside an *ex parte* order. The period between the passing of the *ex parte* order and filing of an application for setting aside of such *ex parte* order shall be computed under section 14 of the Limitation Act.[4]

5. Section 5 and 14. The two expressions "due diligence" and "good faith" in S. 14 do not occur in S. 5 which enjoins only "sufficient cause". It can never be contended that the aforesaid expressions in S. 14 involve the same concept as the expression "sufficient cause" in S.5. If it were so, the Legislature could have used identical expressions in both sections, particularly when "good faith" has been defined in the Act in S.2(7).[5]

Power to excuse delay and grant an extension of time under section 5 is discretionary, whereas under section 14 exclusion of time is mandatory, if the requisite conditions are satisfied.[6] It cannot be said that section 5 of the Limitation Act did not apply because section 14 was not in terms applicable to a particular proceedings. The underlying principles would not ordinarily be excluded when considering a case under section 5 of the Limitation Act.[7] Circumstances contemplated in S.14 should ordinarily constitute a case within the meaning of S.5.[8] Therefore very often the Courts by application of section 5 on the principle governing section 14 condone delay where section 14 does not in terms apply.[9] Thus where a suit triable by a Small Causes Court was originally initiated in a Court having such jurisdiction but was subsequently transferred to another Court not vested with jurisdiction of Small Causes Court. The decision by the transferee Court was nevertheless, a decision of a Court of Small Causes by fiction of law as contained S.24, C.P.C. An appeal against such decision was not competent. A second appeal, a *fortiorari*, was also incompetent. A belated application under S.25, Provincial Small Causes Courts Act, 1887, was however, entertained and delay, under the circumstances, in filing the same was condoned under Ss. 5 and 14, Limitation Act, 1908.[10] Section 14 was not applicable for the purposes of computing period of limitation for appeals. Section 14, however was relevant for consideration of case under S. 5 of the Limitation Act, 1908.[11]

When extension of limitation for an appeal is prayed for under S.5 on a ground analogous to that provided under S.14, it is imperative that the party asking for the indulgence must explain the delay which has taken place between

3. 1973 Dhaka LR 103 (DB).
4. 1981 Dhaka LR 376 (DB).
5. AIR 1965 Orissa 193 + AIR 1962 S.C. 367.
6. AIR 1915 Low Bur 143 = 8 Low Bur Rul 146 (DB) + ('02) 25 Mad. 166 (DB) + 1913 Pun. L.R. No. 254, p. 859 (DB).
7. PLD 1983 SC 262 = PLJ 1983 SC 226.
8. PLD 1985 Quetta 74 = NLR 1985 Lab. 1 (DB).
9. PLD 1985 Quetta 74 = NLR 1985 Lab 1 (DB) + AIR 1961 Pun. 521.
10. PLD 1967 Dacca 441 = PLD 1966 Dacca 1053.
11. 1985 CLC 2529 = KLR 1985 CC 142 (DB).

the termination of the period sought to be excluded and the presentation of the appeal. It is well established that when an appeal is filed in a wrong Court and is therefore taken back, it must be presented to the proper Court as speedily as possible. The same rule applies where prior to the presentation of the appeal, the appellant was engaged unsuccessfully in review proceedings. As soon as the review is rejected, the appeal must be filed without delay and if there is any delay it must be duly accounted for. The High Court in the instant case, however, condoned the delay in exercise of its power under S.5 in favour of the appellant on the ground that it was possible to hold, having regard to the observations in AIR 1917 P.C. 156, that the appellant believed in good faith that the entire period spent in the review application could be excluded.[12]

6. Sections 4 and 14. The day on which the Court was closed prior to the commencement of the period of exclusion under this section cannot be excluded either under section 14 or under section 4.[13]

The two sections are mutually exclusive in their effect and application. A reference to "Court" in S.4 is the proper Court having jurisdiction and unless the plaint is filed in the proper Court, S.4 will not be applicable to it. The effect of S.4 is merely to relieve hardship arising out of the fact that the last day of limitation happens to be a holiday and it extends the time for filing to the next working day. This provision does not pertainm to the computation of the period of limitation. It deals with the case of a plaint filed in a wrong Court, and provides for exclusion of the time taken there and adding the same to the period of limitation when it is filed in the proper Court. In effect, what that section does is to add to the period of limitation prescribed, the period which the plaintiff who filed the plaint in the wrong Court is entitled under its provisions to exclude. Reading Ss. 4 and 14 together, there is no indication in the language used in them that, if on the date the plaint is filed in a wrong Court, it is out of time, Section 14 will be of any avail.[14]

7. Section 14 and Article 182(5). Article 182(5) and S. 14 deal with two separate matters and are not to be mixed together. The former prescribes the period during which an application should be presented and indicates the point from which limitation shall begin to run, S.14 serves a totally different purpose. It contains the method which is to be adopted in calculating the time after the starting point has been fixed. In excluding time under S.14, there is no question of the bar under Art. 182.[15] Therefore a prior application for execution not in accordance with the law and made to the proper Court, will not be sufficient to give a fresh starting point of limitation under Article 182(5) but may fall under this section and entitle the applicant to deduction of the period occupied by such application in calculating the period of limitation for a subsequent application for execution.[16] For an application to execute a decree, the time that lapsed in the proceedings by the obstructor in the shape of a suit as also the appeal would be

12. AIR 1963 Madhya Pradesh 20 (DB).
13. AIR 1923 Mad. 114 (DB)+AIR 1921 Mad. 654=44 Mad. 817 (DB)+AIR 1929 Lah. 425=11 Lah. 12 (DB)+AIR 1920 Lah. 346+AIR 1916 All. 222 (DB).
14. AIR 1965 Madras 459.
15. AIR 1958 Madh. Pra. 347.
16. AIR 1940 Pat. 677=19 Pat. 354 (DB)+AIR 1955 Pat. 187+AIR 1949 Mad. 849.

available to the decree-holder for the suit and the appeal which has been filed by the obstructor should be construed and considered only as a continuation of the execution proceedings, the claim, the suit, and the appeal having all arisen out of the same execution proceedings.[17]

8. Withdrawal of proceedings. There is no real conflict between S.14 of the Act and O.23, R.2, Civil P.C.[18] The section does not apply where the plaintiff himself withdraws the suit under O.23, R.1 of the Civil P.C.[19] Thus where an application for revision filed against an *ex parte* decree passed by a Small Cause Court was allowed to be withdrawn by the High Court on the ground that the defendant wanted to file a review of the judgment before the Small Cause Court and an application for review under S.17(1), Provincial Small Cause Courts Act, was filed; It was held, that there being no decision of the High Court that it was unable to entertain the revision application, the defendant was not entitled to the benefit of S.14, Limitation Act, for the purpose of his review application.[20] It must however be noted that where the plaintiff was honestly in doubt in which of the two Court his suit lay and he instituted it in one of such Courts with due care and caution, but at a subsequent stage it was found that wrong forum had been chosen, and on admission to that effect, the Court returned the plaints for presentation to proper Court. It was not a case of withdrawal of suit by reason only of such admission and section 14 would apply.[1] When the petitioner on coming to know that petition made by him was incompetent withdrewd it with permission to file a new petition and he filed the new petition on the same day. The latter cannot be dismissed as barred by time.[2]

9. Plaintiff prosecuting--Explanation II. An appeal contemplated in Explanation II is from the decision in his favour in the proceeding which the plaintiff himself started.[3] The fact that a third party was prosecuting an application to get a deed, on which the decree is based, set aside, will not save limitation running against a decree-holder for the execution of his decree.[4] In computing the period of limitation for an application for execution, the decree-holder is not entitled to the exclusion of the period during which an application by judgment-debtor to enter satisfaction of the decree has been pending.[5]

Defendant in previous proceedings, if may avail of this section. If the present plaintiff was in the prior proceeding merely resisting the suit of the other party against him, it cannot be said that he was "prosecuting" any proceeding against the

17. AIR 1958 Mad. 21.
18. AIR 1940 Sind 125 = ILR 1940 Kar. 225 (DB) + AIR 1939 Cal. 625 = ILR (1939) 2 Cal. 316 (DB) + AIR 1934 All. 688 = 57 All. 145 (FB).
19. AIR 1939 Cal. 625 = ILR (1939) 2 Cal. 316 (DB) + AIR 1954 Raj. 46 = ILR (1952) 2 Raj. 479 + 1947-2 Mad. L. Jour 337 + AIR 1945 Mad. 80 (DB) + AIR 1933 Bom. 281 = ILR 1938 Bom. 327 (DB) + AIR 1934 All. 688 = 57 All. 145 (FB) + ('05) 29 Bom. 219 (DB) + AIR 1935 Bom. 259.
20. ILR (1955) 1 Cal. 88.
1. AIR 1932 All. 377 (DB).
2. PLJ 1989 Tr. C. 44.
3. AIR 1925 Cal. 67 (DB).
4. 1891 All W.N. 128.
5. AIR 1917 Cal. 460 (DB).

other party and this section can be availed of by him.[6] But where the present plaintiff was only a defendant in the prior proceeding this section will apply, provided he had claimed therein the rights sought for in the present suit.[7]

10. Due diligence. Where a Court discovers that a case ought to have been presented in another Court, time for which it has kept the case on its file must be excluded.[8] If on the date of presentation to the proper Court, the suit was in time after deducting only the period during which it was pending in the wrong Court, the fact that after taking the return of the plaint the plaintiff made some delay in its representation does not matter.[9] Similarly where the suit was undervalued under bona fide but mistaken advice of the counsel and the plaint was returned for presentation to the proper Court after a long delay, the plaint was represented on the next working day. The benefit of S.14 can be claimed by the plaintiff.[10] But benefit of S.14 cannot be claimed by a party who unduly delays filing plaint in proper Court after it is returned to it.[11] Where an appeal filed before the Court having no jurisdiction was ordered to be returned for presentation before the proper Court. Memorandum of appeal was not taken back immediately but was taken back and filed after expiry of limitation period. The appellant cannot be allowed to plead bona fide litigation in wrong Court and take shelter behind his own carelessness. The appeal may be dismissed as time-barred.[12] Where the High Court returned an appeal filed before it for presentation to the District Court and observed that appeal may not dismissed on technical ground of limitation. Petitioner filed the appeal before District Judge after five months of this observation. It was held that the observation of the High Court that appeal may not be dismissed on technical ground of limitation, were made in respect of the time that the respondent had already spent in wrongly filing the appeal in the High Court or for some reasonable time that she might have taken for filing the appeal before the Court of District Judge. Such observation was made on compassionate ground. It had not given omni guarantee to the petitioner to present the appeal at any time of her own choice and will. Under such circumstances, the observation made by the High Court would neither help nor come for the rescue of the petitioner after such long delay.[13]

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6. AIR 1939 Bom. 1 = ILR 1939 Bom. 173 (DB) + AIR 1954 Trav-Co. 237 = ILR 1952 Trav-Co. 426 (DB) + AIR 1924 Bom. 39 (DB) + AIR 1916 Mad. 57 = 38 Mad. 260 (DB) + AIR 1933 Nag. 13 = 28 Nag. L. R. 348. (Executant of promissory note sued for declaration that promissory note was discharged and was unenforceable--Period of pendency of suit held could not be deducted in computing period of limitation for suit on pronote by payee) + AIR 1927 Lah. 200 = 8 Lah. 54 (DB). (Plaintiff obtains *ex parte* decree in foreign Court--Period during which defendant was taking proceedings to have *ex parte* decree set aside, cannot be excluded in computing period of limitation for suit by plaintiff in British Indian Court on foreign judgment).
7. AIR 1916 P.C. 96 = 43 Cal. 660 + AIR 1959 Ker. 7 = ILR 1958 Ker. 833 + AIR 1954 Trav-Co. 237 = ILR 1952 Trav-Co. 426 (DB).
8. AIR 1922 All 404 + AIR 1930 Bom. 187 (DB) + AIR 1925 Mad. 1270 (DB) + AIR 1925 Nag 54 + AIR 1935 All. 759 + AIR 1930 Lah. 503 = 11 Lah. 308 (DB) + ('11) 9 Ind. Cas. 157 (DB) (Mad.) + ('08) 35 Cal. 924.
9. AIR 1935 Oudh 444.
10. AIR 1959 J&K 30.
11. NLR 1989 UC 527.
12. PLD 1971 Azad J. & K. 30 (DB).
13. PLJ 1979 Quetta 17.

Court admitting appeal by mistake. Where a wrong Court by mistake admits an appeal, the time spent in prosecuting the appeal can be excluded under this section. Thus where the heading of plaint correctly mentioned the Court in which a suit was to be filed. The plaintiff's pleader being away his *mukhtear* presented it to the civil Nazir who took it to a wrong Court. The Judge entertained it thinking that he had jurisdiction. It was held that there was due diligence on the part of the plaintiff.[14]

Appeal or revision from order returning plaint or application. A suit is contested between the parties with due diligence when it is, after contest, appealed and the appellate Court comes to the conclusion after considering a large number of authorities that the Court had no jurisdiction and, so it sets aside the decree of the trial Court and directs the return of the plaint.[15] After the plaint has been ordered to be returned the party is entitled to the deduction of the time taken in appeal or revision from that order.[16] But where the party did not take back the plaint immediately after the return was ordered, but waited till the appeal or revision was concluded, any subsequent delay in taking the plaint and its presentation to the right Court would amount to want of due diligence.[17]

Mistake of law. Where a party has filed a plaint in a wrong Court by a mistake of law or knowing that it did not lie there, this section would not apply. Thus when the plaintiff had to amend his plaint, and after amendment, jurisdiction of the Court became altered to the knowledge of the plaintiff and he represented it, as amended, to the same Court. It was held that the plaintiff had not prosecuted the suit with due diligence.[18] Where an appeal was dismissed by High Court after pointing out that proper remedy was by way of application to set aside the sale. The plaintiff-appellant applied for review of the appellate decision instead of adopting the course pointed out. It was held that the plaintiff was not pursuing litigation with due diligence after dismissal of his appeal.[19] Where an appeal lay to High Court the mistake of law did not entitle the plaintiff to exclusion of time under the section.[20] Similarly it is not possible to sustain the interpretation that the period forming the intervals between successive petitions in a wrong Court when the party merely stood by allowing limitation to run, should also be considered as period of "prosecuting" within the ambit of the rule and added to the prescribed period of limitation in addition to the actual days when the proceedings were pending in the Court and were being prosecuted in that Court.[1]

Some of the parties not prosecuting proceedings. When some alone of the parties who could have prosecuted the prior proceedings, were engaged in those

14. AIR 1950 Nag. 37=ILR 1949 Nag. 743.
15. AIR 1958 All 166.
16. AIR 1939 Lah. 47+AIR 1918 All. 180 (DB)+AIR 1937 Nag. 1=ILR 1937 Nag. 291 (DB)+AIR 1944 Mad. 253.
17. AIR 1918 All. 180 (DB)+AIR 1951 Trav-Co. 26 (DB)+AIR 1919 Oudh 378=22 Oudh Cas. 39+('93) 3 Mad. L. Jour 190+AIR 1946 Oudh 116=21 Luck 340. (Finding plaintiff did not act with due diligence is one of fact).
18. AIR 1915 Lah. 459+1881 Pun Re. No. 115. p. 266 (DB).
19. AIR 1949 Pat. 362=27 Pat. 137 (DB).
20. AIR 1961 M.P. 336 (DB).
1. AIR 1961 Madras 197.

proceedings; the others, who did not do so, could not claim the benefit of the section.[2]

Default of prosecution shows want of diligence. Proceedings which are struck off for default of prosecution cannot be said to be carried on with due diligence.[3] Where in an insolvency matter, the creditor took no part by opposing adjudication or by filing proof of his claim, and he filed a subsequent suit on his debt the creditor could not claim deduction of the period of pendency of insolvency proceedings.[4]

Negligence in pleadings. When the plaintiff was non-suited for neglect to state the boundaries of his land or to implead a necessary party, it cannot be said that there was due diligence.[5]

Negligence prior to end of limitation. The fact that the prior suit or execution application was filed on the last day of limitation cannot negative due diligence so long as it was in time.[6]

Party seeking wrong remedy. Where a party seeks a wrong remedy if he acts bona fide and with due diligence, time can be excluded under this section, otherwise not.[7] Where a decree was certified as satisfied, the decree-holder applied for its reconsideration on the ground of mistake. The application was treated by the Court as one for review. In revision the review was held to be not tenable. A fresh application was made under Ss. 47 and 151 and the decree-holder was held to be entitled to the benefit of S.14.[8] Where *A* filed a money suit against his tenant *B* occupying a shed and some structures. He claimed damages from 1945 to 1948 and also claimed future mesne profits till recovery of possession. The suit was decreed but the claim for future mesne profits was disallowed. Therefore *B* filed a suit for declaration that *A's* title to the property had been extinguished. The declaration was refused but *A* was ordered to remove the structures and *B* was directed to assist *A* by stopping his work in the shed. On *B*'s failure to comply with the direction, *A* again filed a suit for damages from 1948 to 1956. For a period beyond 3 years prior to the suit he claimed protection from limitation. It was held that the inclusion of the claim for future mesne profits in the previous suit could not be held to be mala fide or in bad faith or without due diligence and the remedy, even if otherwise misconceived did not fall within the mischief of the law, as so to put the second suit outside section 14 of the Act. *A* was entitled to the benefit of S. 14 and his claim was saved from bar of limitation.[9]

Party taking proceedings expressly barred by law. In order to take advantage of the provisions of sub-section (2) of section 14, a litigant has to show that he had been prosecuting another civil proceedings with due diligence and that the other

2. ('81) 23 All. 434 (DB) + AIR 1942 Mad. 483 = ILR 1942 Mad. 862 (DB).
3. 1864 Suth W.R. (Gap) 378 (DB) + AIR 1946 Pat. 301 = 25 Pat. 50 (DB). (Only time during which other proceeding was actually being prosecuted can be excluded under this section) + AIR 1946 Oudh 116.
4. AIR 1920 Low Bur 148 + AIR 1942 Mad. 483 = ILR 1942 Mad. 862 (DB).
5. ('66) Suth W.R. 184 (FB). (Neglect to state boundaries of land) + AIR 1916 Lah. 234 = 1916 Pun. Re. No. 41 (DB).
6. ('93) 6 C.P.L.R. 85 + AIR 1950 Nag. 37 = ILR 1949 Nag. 743 + AIR 1938 Cal. 791.
7. 1990 MLD 386.
8. AIR 1943 Nag. 335 = ILR 1944 Nag. 370 (DB).
9. AIR 1964 Calcutta 39 (DB).

civil proceedings were prosecuted in good faith. Where appellant instituted the civil suit within ten days of the confirmation of the sale. It was held that as a separate suit for getting the sale set aside was expressly barred by Rule 92(3) of Order XXI, Civil Procedure Code, apparently, the bar treated by this sub-rule was entirely overlooked by appellant and his counsel when he brought the civil suit. It was thus a case where clear and unequivocal provision of law were disregarded when the 'other civil proceedings' were initiated. This could, therefore, hardly be treated as a case where due diligence was shown in filing the civil suit or one where the suit was prosecuted in good faith. Therefore, the preconditions necessary for the applicability of section 14(2) were absent and the time spent in such proceedings would not be excluded.[10]

Extraordinary measures need not be taken by party. The omission of the pleader for the plaintiff to make an application, after the pronouncement of the Court, to have the bill of costs dealt with expeditiously, had to rely on the normal machinery of the Court is not acting without due diligence.[11]

Adjournment of proceedings. Chamber applications are frequently adjourned from time to time to suit convenience of counsel on both sides and it will be unreasonable to impute want of diligence to the parties for such adjournments.[12] Consent of defendant to the adjournment may well be taken as *prima facie* evidence negativing any want of diligence on the part of the party concerned.[13]

Premature suit. Where a party did not prosecute the previous suit with due diligence in so far as they instituted it prematurely on the 22nd March, 1955, in disregard of advice to the contrary, time taken by the proceedings was not excluded under this section.[14]

11. "Another proceedings." Where a plaint presented in time to Court is returned for presentation to proper Court and the same is presented to proper Court, the case is not one of continuation of prior proceedings, therefore this section applies.[15] Where there is a mere continuation of existing proceedings the section does not apply. Thus where a plaintiff institutes a suit against a person, who is dead before its institution, and then impleads legal representatives as defendants, there are no two proceedings and section 14 has no application.[16]

The expression "another civil proceeding" does not mean that the prior proceeding must have been in a different Court.[17] Thus where *A* instituted a suit for rent in Court *X*. The suit was decreed, but was dismissed on appeal on the

10. PLD 1988 SC 409 = PLJ 1988 SC 296 = NLR 1988 AC 473.
11. AIR 1947 Bom. 140 (DB).
12. AIR 1949 Cal. 24.
13. AIR 1949 Cal. 24.
14. PLD 1961 Karachi 612.
15. AIR 1932 All. 377 (DB) + ILR (1948) 1 Cal. 488 + AIR 1934 Lah. 412 (DB) + AIR 1928 Bom. 421 = 52 Bom. 548 (DB) + AIR 1914 Cal. 858 (DB) + ('12) 15 Cal. L. Jour 241 (DB) + AIR 1929 Lah. 877 + ('13) 36 Mad. 482 (DB) + ('13) 36 Mad. 131 (DB) + AIR 1933 Sind 117 (DB) + ('09) 3 Ind. Cas. 79 (DB) (All).
16. AIR 1933 Mad. 454.
17. AIR 1921 Sind 13 = 15 Sind L.R. 11 (DB) + AIR 1958 All. 166. (Plaint returned for representation to proper Court on ground of want of pecuniary jurisdiction--Presentation to same Court after its pecuniary jurisdiction raised).

ground that Court *X* had no jurisdiction. Court *X* was subsequently invested with jurisdiction over such matters. *A* instituted a fresh suit in Court *X* on the same cause of action. *A* was entitled to claim benefit of this section.[18] But where the claim in the subsequent suit is different from that in the previous suit, this section does not apply. Thus where after the plaint is returned for presentation to the proper Court for want of jurisdiction, the plaintiff abandons a part of the claim and again presents it to the same Court after the period of limitation; no exclusion of time can be claimed under this section.[19]

Instances of 'another proceeding'. It has been held that:

(*a*) Period of prosecution *bona fide* in an administration suit of a claim by creditor, under a promissory note executed by the deceased debtor, will be excluded in computing the period of limitation for a subsequent suit on the promissory note.[20]

(*b*) Time taken by a creditor in filing a proof of claim in the insolvency Court can be excluded in computing the period of limitation for a suit by him on the claim after the annulment of adjudication.[1]

(*c*) Where in a suit on a mortgage the decree-holder takes steps for sale in wrong Court but bona fide believing it to be competent; the steps taken are steps taken in another civil proceedings.[2]

(*d*) Where a bona fide application for leave to sue as pauper was refused; the plaintiff instituted a suit on the payment of full court-fee. The plaintiff was held to be entitled to deduction of time taken up by the pauper application.[3]

(*e*) When the petitioners filed a review application after lapse of limitation but has previously been prosecuting an appeal which was dismissed, the case obviously fell under section 14 (2) of the Limitation Act and the time that the petitioners spent in prosecuting the appeal could be excluded.[4]

12. Civil Proceeding in a Court. Revenue Courts are Courts under this section.[5] Thus a Collector having power to determine an application under O.21, R.100, Civil P.C. is a civil Court but not where he has no jurisdiction.[6] Similarly a

18. AIR 1935 Pat. 82 (DB) + ('98) 1 Oudh Cas. 272 + AIR 1941 Oudh 161 = 16 Luck. 402 (DB).
19. AIR 1940 Mad. 689 (DB) (AIR 1939 Mad. 397, *Reversed*) + ('95) 5 Mad. L. Jour 58 (DB).
20. ('06) 10 Cal. W.N. 959 (DB).
1. AIR 1919 Low. Bur. 132.
2. AIR 1937 Mad. 357 + ILR 1937 Mad. 161 (DB). (Principles of S. 14 applies equally to steps taken after decree as to steps taken prior to decree).
3. AIR 1938 Cal. 730 = ILR (1939) 1 Cal. 112 (DB).
4. PLD 1959 Lahore 31 = PLR 1959 (2) W.P. 468.
5. AIR 1930 All. 193 = 52 All 501 (FB) + AIR 1954 Bhopal 21. (Proceedings in Revenue Court to set aside sale for recovery of land revenue are proceedings of civil nature within meaning of S. 14. AIR 1930 All 193 (FB), *Rel. on*) + AIR 1920 Pat. 504 = 5 Pat. L. Jour 697 (DB) + ('93) 20 Cal. 264 (DB).
6. AIR 1924 Nag. 309.

Settlement Officer or Commissioner of a Board of Revenue in preparing or revising a record-of-rights, is not a Court dealing with a civil proceeding.[7]

Executive or administrative Officers. Proceedings before officers acting in an administrative capacity,[8] or in an executive capacity are not covered by the section.[9]

Railway authorities. Proceedings before Railway authorities cannot be regarded as civil proceedings but as proceedings before an administrative officer.[10]

Arbitrators. One view is that arbitrators are tribunals whom the parties have substituted for a Court of law to be judges of the disputes between them; and proceedings before them are civil proceedings in a Court.[11] But the other view is that S.14 did not apply to the proceedings before the arbitrators and the question of exclusion of time in arbitration was now entirely governed by S. 37(5) of the Arbitration Act.[12]

Factory Inspector. Filing of an application to the Factory Inspector for claim in tort can by no stretch of argument be said to be a bona fide proceeding fit for condonation of delay under section 14 of the Limitation Act.[13]

Liquidator. Where claims for damages against a company being wound up were filed before a liquidator and the claims were dismissed. Thereafter a suit was filed for the same relief with the leave of Court. It was held that the application before the joint liquidators can also be considered to be a civil proceeding instituted in a Court of first instance within the meaning of those words in S. 14 of the Limitation Act, and the time taken in those proceedings before the liquidators must be excluded in computing the period of limitation for the suit.[14]

Authority under Payment of Wages Act. An authority appointed under S. 15 (1), Payment of Wages Act, is a *persona designata* and cannot be regarded as a Civil Court within the meaning of S. 14, Limitation Act. The proceedings before such an authority cannot be regarded as civil proceedings.[15]

Execution proceedings. Execution proceedings is a civil proceeding within the meaning of this section.[16]

Bangladesh. An S.D.O. while exercising his functions and powers under section 95 of S.A. & T. Act does not act in his administrative or executive capacity.

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7. ('04) 26 All 382 (DB).
8. AIR 1918 Bom. 82 = 43 Bom. 201 (DB) + AIR 1927 Lah. 186 (DB).
9. AIR 1939 Nag. 141 (DB) + ('04) 26 All 382 (DB) + ('82) 6 Bom. 31 (DB) + ('08) 51 Mad. 495.
10. AIR 1960 Andh Pra 406 = ILR 1958 Andh Pra. 849 (DB).
11. AIR 1929 P.C. 103 = 56 Ind. App. 128 = 56 Cal. 1048 + AIR 1948 Nag. 334 = ILR 1947 Nag. 477 (DB).
12. AIR 1954 Bom. 309 = ILR 1954 Bom. 602 (AIR 1943 All 162; AIR 1948 Nag. 334; AIR 1929 P.C. 103. *Distinguished*).
13. PLD 1972 Karachi 57 (DB).
14. AIR 1964 Bom. 76 (DB).
15. AIR 1955 All. 707.
16. AIR 1958 S.C. 827 = 1959 S.C.R. 811 = II R 1958 Punj. 2093 + AIR 1943 Cal. 460 (DB) + AIR 1962 Raj. 96.

He exercises the functions of a Court deciding civil disputes and thus the proceeding in the court of the S.D.O. under section 95 of the S.A & T. Act was a civil proceeding pending in a court. Therefore time spent in proceedings before the S.D.O. may be excluded while computing time for suit on the same cause of action and for the same relief.[17]

13. Court of appeal--meaning. A Court of appeal includes a Court of revision. The expression "proceeding in a Court of appeal" includes revision proceedings in the High Court.[18] An infructuous civil revision is also governed by S. 14. It can further be assumed legitimately that the considerations that pertain to appeals in regard to exclusion of time under S. 14 would also attach to civil revision petitions.[19] Where a revision is filed against an adverse order in proceedings under O. 21, R. 100, C.P.C. and it is dismissed summarily. Thereupon the plaintiff files a suit under O. 21, R. 103, C.P.C. he is entitled to deduction of time spent for the filing of an application in revision till its summary dismissal.[20]

Court of second or further appeal. A plaintiff is entitled to deduct the period occupied by litigation till its termination in a final Court of appeal. The fact that one appellate Court held against the plaintiff on the ground of want of jurisdiction, will not disentitle him to claim deduction of the time occupied by a further appeal therefrom which was infructuous.[1] Where proceedings to set aside a revenue sale taken in Revenue Courts were dismissed, the period till the decision of the second appeal in the Revenue Court was liable to be excluded in computing one-year's limitation under Art. 12.[2]

14. Parties must be the same. Proceedings in prior and subsequent suit must be between the same parties.[3] Where a writ petition was filed against a different respondent, time spent in the proceedings cannot be excluded.[4] Where a prior suit was instituted by two plaintiffs and a third party on his application, was impleaded as a co-plaintiff. The plaint was returned for presentation to the proper Court. In presenting it to the proper Court, two original plaintiffs alone sued and sought to exclude the time taken up by the prior suit. The parties to the second suit were held to be the same notwithstanding omission of a third co-plaintiff, and time was excluded under this section.[5]

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17. 1983 Dhaka LR 209.
18. AIR 1953 A.P. 388 (DB)+('12) 17 Ind. Cas. 593 (DB) (Mad). (*Reversing* the decision of Ayling, J in 1912 Mad. W.N. 494)+AIR 1943 Mad. 333+AIR 1949 Pat. 293=28 Pat. 102 (FB)+1958 Andh L.T. 749+AIR 1954 Hyd. 225=ILR 1954 Hyd. 815 (DB)+AIR 1951 Trav-Co. 26 (DB)+AIR 1938 All. 78=ILR 1938 All. 192. (Only the time from the date of application for revision to the date of the order thereon should be excluded)+AIR 1918 All. 180 (DB)+AIR 1930 Bom 505. (Another remedy open--Time spent in revision cannot be excluded)+AIR 1915 Mad. 405=39 Mad. 62 (DB)+AIR 1929 Rang 297=7 Rang 466 (DB)+AIR 1915 Low Bur 145=8 Low Bur Rul 146 (DB)+AIR 1931 Nag 17=27 Nag. LR 251. (Under proper circumstances time spent in revision may be excluded).
19. AIR 1965 Andhra Pradesh 388 (FB).
20. AIR 1963 Patna 62 (DB) (*But see* AIR 1963 Kerala 137 (FB)).
1. ('74) 13 Beng L.R. 146 (P.C.).
2. AIR 1954 Bhopal 21.
3. AIR 1921 Cal. 596 (DB)+ILR 1954 Madh. B. 149+AIR 1925 Oudh 369+1890 Pun. Re. No. 154, p. 502+AIR 1946 Sind 14=ILR 1945 Kar. 293 (DB).
4. PLJ 1983 Tr. C. 203.
5. ('04) 14 Mad. L. Jour 287 (DB).

Representatives of same parties. For the application of this section it is necessary that proceedings must be between the representatives of the same parties.[6] A prior suit against a firm and a subsequent suit against the surviving partners of that firm and the persons in possession of the assets of a deceased partner, are against the same parties.[7]

Firm and its partners. A firm is not the same party as the individual members thereof.[8] But where a prior suit is filed by a firm and to the subsequent suit also all members of the firm are parties, it cannot be said that the suit is not between the same parties. Thus a suit by an unregistered firm was filed against D and a subsequent suit was filed 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.[9]

Different officers of Government, suit against. A prior suit, wrongly filed against the Traffic Manager of a Railway Company, instead of the Secretary of State against whom it should have been filed according to law, is not against the same party as the Secretary of State, against whom a subsequent suit is instituted.[10]

Same person acting in different capacities. The same person suing in different capacities is not the same plaintiff.[11] Similarly two suits against the same defendant but in different capacities are not covered by the section.[12]

Subsequent suit with addition of parties. Where in a subsequent suit some parties are added as plaintiffs, it cannot be said that the suit is not between the same parties. Thus where the first suit was against the firm name but in the second suit names of two partners were added. The suit was held to be between the same parties.[13] It is however to be noted that such added party cannot take advantage of the provisions of this section. Where 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. It was held that "L" did not prosecute that suit; as such he was not entitled to the benefit of section 14 of the Limitation Act.[14]

Previous proceedings dismissed for default. Where an application by a decree-holder to enter satisfaction of a decree was struck off on account of absence of the decree-holder and his pleader. The judgment-debtor applied for recording of satisfaction. The time during which application by the decree-holder was pending could not be excluded under this section but the application by the judgment-debtor must be treated as being in continuation of the application by decree-holder.[15]

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6. AIR 1922 Pat. 450 = 1 Pat. 506 (DB).
7. 1929 All. L. Jour 73 (DB).
8. AIR 1927 All. 181.
9. AIR 1946 Sind 14 (DB).
10. AIR 1926 Lah. 572 (DB).
11. AIR 1924 Rang. 123 = 1 Rang. 402 (DB).
12. AIR 1927 All. 628 (DB).
13. AIR 1958 All. 166.
14. PLD 1961 Karachi 612.
15. AIR 1939 Mad. 163.

15. Suit must be based on same cause of action. The section applies only where the cause of action for a subsequent suit is the same as for the previous suit. It does not apply where the causes of action in the two suits were different. Thus where the earlier suit for refund of earnest-money was filed by the vendee merely with a view to somehow avoid the performance of the contract, the benefit of S. 14 cannot be given to him and time spent in prosecuting the suit will not be excluded from limitation for the subsequent suit filed by him for specific performance.[16] Where the cause of action in the suit filed in the first Court was based on the loss of a consignment booked at Station A and the subsequent suit is for the loss of consignment booked at station B, it cannot be held that the cause of action as laid down in the plaint of the first suit is the same as the cause of action on which the subsequent suit has been instituted and the plaintiffs cannot, therefore, be entitled to the benefit of section 14 of the Limitation Act.[17]

Same cause of action but different reliefs. A suit must be based on the same cause of action. The reliefs need not be the same.[18] Thus where the plaintiff brought a suit under S. 77 of the Registration Act. On the dismissal of the suit on the ground of limitation the plaintiff brought another suit for refund of the purchase money. It was held that the former suit was on the same cause of action even though the relief was different.[19] Where the cause of action was the same but the subsequent suit was for mesne profits for double the period in previous suit; the cause of action being the same a period identical in both suits can be excluded.[20]

Amendment in relief. When a plaint is returned to be presented to proper Court on the ground of want of jurisdiction, it is open to the plaintiff to amend the reliefs without prejudice to the right to claim benefit of S. 14, Limitation Act, provided there is no change with regard to the cause of action.[1]

New reason for relief. Where a sale is sought to be avoided a reason put forward by way of amendment for the contention that the sale in invalid cannot be construed as an addition of a new cause of action.[2]

16. Same cause of action--Sub-section (1). Cause of action for a suit is not determined merely by the date of the cause of action mentioned in the plaint but by the whole bundle of circumstances alleged in the plaint.[3] The mere addition of a new relief in subsequent proceedings flowing from the same cause of action would not make the subsequent proceedings one based on a different cause of action.[4] The cause of action in two suits may be the same even where the suits are differently described. Thus where the plaintiff in the previous suit claimed damages for the period from May to October, 1952, treating the defendant of that

16. PLJ 1983 Tr. C. 203 + AIR 1965 M.P. 177 (DB) + AIR 1919 Cal. 381 + AIR 1930 Lah. 211.
17. AIR 1861 Patna 334 (DB).
18. AIR 1949 All 145 + AIR 1952 Trav-Co. 347 = ILR 1952 Trav-Co. 49 (DB) + 1946 Jaipur L.R. 257 (DB) + AIR 1943 Mad. 498 = ILR 1944 Mad. 104 (DB).
19. AIR 1956 Manipur 16.
20. AIR 1934 All. 824.
1. AIR 1954 Mad. 158 (Suit for rent--Plaint returned for presentation to proper Court--Claim for subsequent rent due up to the date of representation may be included).
2. AIR 1954 Mad. 675 = ILR 1954 Mad. 690 (DB).
3. 1941 Oudh W.N. 713 (DB).
4. AIR 1949 Cal. 24.

suit as trespasser as the tenancy had been terminated by service under section 106 of the Transfer of Property Act. But 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. Thereupon the plaintiff brought a fresh suit for rent. It was held that though there is a difference in character of the claim yet the cause of action in both the suits is one and the same.[5] Where in a suit for partition of joint family property the dispute was referred to arbitration, but the question of actual division was not referred. The Arbitrator attempted to bring about compromise between the parties as to this and succeeded with reference to a large portion of the property. One of the parties attempted to enforce this arrangement in proceedings that followed the award. It was held that the arbitrator was not entitled to do so. Thereupon a suit was instituted and it was held that the previous proceeding was founded on the same cause of action as that upon which the present suit was founded and he was entitled to benefit of this section in computing the period of limitation.[6]

Execution proceedings. If two suits are founded on the same cause of action, the fact that no "cause of action" can be predicated in respect of proceedings in execution is no reason for holding that the time bona fide but infructuously taken in executing the prior decree should not be deducted under section 14.[7] Thus where a decree was give against one brother as member of a firm and objection of the other brother was upheld in execution proceedings. The plaintiff's application for declaration that the brothers were liable as partners was successful in the first Court but was dismissed in two appeals. A suit was brought for declaration of rights against the objecting brothers. It was held that the time occupied by application and appellate proceedings should be excluded.[8]

Suits based on different cause of action. Time spent in carrying on wholly independent litigation founded on a different cause of action cannot be excluded.[9]

Instances of suits based on different causes of action.

(*a*) Where a decree-holder attaches a book-debt due to a judgment-debtor and purchases it himself in Court-auction, a subsequent suit by him to recover the book debt is not on the same cause of action as the attachment.[10]

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5. PLD 1961 Dacca 246=12 DLR (1960) 286=PLR 1961 Dacca 521 (DB). (*But see* AIR 1962 Cal. 238 (DB))+9 Cal. 255=9 Moo. App. 82 (P.C.).
6. AIR 1939 P.C. 128=ILR 1939 Kar. P.C. 211.
7. AIR 1937 Mad. 357=ILR 1937 Mad. 161 (DB). (It is the suit in which the decree was passed that must be looked to for determining the identity of the causes of action between the two suits).
8. AIR 1928 All. 10 (DB).
9. AIR 1929 All 101+AIR 1933 Bom. 450=58 Bom. 200 (DB)+AIR 1926 Cal. 693 (DB)+AIR 1925 Mad. 675+AIR 1924 Rang. 123=1 Rang. 402 (DB)+('32) 33 Pun L.R. 360 (DB)+AIR 1916 Mad. 57=38 Mad. 260 (DB)+1928 Bom. 252=52 Bom. 477 (DB)+AIR 1921 Cal. 525=48 Cal. 65 (DB).
10. AIR 1919 Mad. 317=42 Mad. 637 (DB).

(*b*) An application under O. 9, R. 2 of the Civil Procedure Code for restoration of a suit dismissed for the default of the plaintiff and a fresh suit under Order 9, Rule 4.[11]

(*c*) A suit for accounts against defendant as a broker in respect of cotton transactions alone and a subsequent suit against him as a commission agent in respect of cotton and also of other commodities and for certain dividends received by him on behalf of the plaintiff.[12]

(*d*) A suit in a Pakistan Court on a foreign judgment concerning a promissory note and a suit on the promissory note itself.[13]

(*e*) A suit in revenue Court as a full owner to eject defendant as a trespasser and a suit in a civil Court on the basis of his rights as a tenant for restoration of the suit land.[14]

17. "For the same relief". Section 14 applies only when the same relief is claimed in both the litigations.[15] For this purpose the words "same relief" should be construed to apply to precise relief and not to ultimate object of relief.[16] It has been held that an application for review of judgment of the High Court is substantially for the same relief as that prayed for in an application for leave to appeal to Supreme Court, the objective in each case being the reversal of the judgment of the High Court.[17] In the case of an insolvent a suit for injunction restraining the defendant from entering a piece of property on the ground that it belongs to the plaintiff under a Court-auction purchase and a subsequent application for the execution of the balance of the decretal amount against the same property as belonging to the same defendant are for two different reliefs.[18] Relief for possession under a sale-deed is different from a relief for damages or for a return of the purchase money in default of possession.[19]

Different reliefs--Instances. The following are some of the instances of different reliefs:-

(*a*) A suit for injunction restraining the defendant from entering a piece of property on the ground that it belongs to the plaintiff under a Court-auction purchase and a subsequent application for the execution of the balance of the decretal amount against the same property as belonging to the same defendant are for two different reliefs.[20]

(*b*) Relief for possession under a sale-deed and return of the purchase money in default of possession are two different reliefs.[1]

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11. AIR 1929 Nag. 219=25 Nag. L.R. 99.
12. AIR 1933 Bom. 450=58 Bom. 200 (DB).
13. AIR 1928 Mad. 1088 (DB).
14. AIR 1953 J&K 17=11 J&K L.R. 103.
15. AIR 1959 Andh. Pra. 146 (AIR 1951 S.C. 16, *Rel. on*).
16. AIR 1945 Mad. 86 (DB).
17. AIR 1951 Pat. 486=30 Pat. 131 (DB).
18. AIR 1928 All. 368=50 All. 670 (DB).
19. AIR 1927 Mad. 273.
20. AIR 1928 All. 368=50 All. 670 (DB).
1. AIR 1927 Mad. 273.

(*c*) Application to obtain execution under a preliminary decree is not for the same relief as a subsequent application for a final decree in the suit.[2]

(*d*) Suit under O. 9, R. 4, Civil P.C. and an application to restore a suit dismissed for default are not for the same relief.[3]

(*e*) Application by the judgment-debtor to have an *ex parte* decree set aside is not for the same relief as an application for execution of the same decree.[4]

(*f*) Application under O. 21 R. 89 of the Civil P.C. is for a different relief from one claimable under O. 21, R.90.[5]

(*g*) Suit by decree-holder for a declaration under O. 21, R. 63, Civil P.C. with respect to one set of properties and an application for execution in respect of another set of properties of the judgment-debtor are for different reliefs.[6]

(*h*) Petition by the creditor to adjudicate the debtor as insolvent is not for the same relief as a subsequent execution petition by the creditor against the debtor.[7]

18. "In good faith." Inasmush as the definition found in the General Clauses Act is not applicable where there is anything repugnant in the subject or context, the definition given in the Limitation Act alone is applicable in construing S. 14 of the Act.[8] In this section the term bona fide cannot be too narrowly construed. A reasonable construction has to be placed on it, and the question has to be decided having regard to the particular circumstances of the case.[9]

Whether a person has acted in good faith is a question of fact.[10] A person claiming the benefit of this section must prove that he acted in good faith in instituting the earlier proceedings.[11] It is clearly incumbent on him to show that the mistake or error committed by him is not the result of absence of good faith but has been occasioned in spite of due care and attention having been devoted by him.[12] Where the petitioner presented the case before a wrong forum, with full knowledge that it had abated and the Court had ceased to exercise jurisdiction.

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2. AIR 1935 P.C. 85=62 Ind. App. 80=57 All. 242+AIR 1948 Bom. 185 (DB).
3. AIR 1929 Nag. 219=25 Nag. L.R. 99+1886 Pun. Re. No. 63, p. 135 (DB).
4. AIR 1932 All. 601 (DB).
5. AIR 1934 Mad. 593 (DB).
6. AIR 1938 Nag. 534=ILR 1940 Nag. 334 (DB).
7. AIR 1944 Lah. 136=ILR 1944 Lah. 451 (FB). (AIR 1935 Lah. 736 *Overruled*)+AIR 1951 S.C. 16=1950 S.C.R. 852+AIR 1954 Bom. 436=ILR 1954 Bom. 840. (AIR 1951 S.C. 16, *Rel. on.*).+AIR 1949 Bom. 379=ILR 1949 Bom. 634 (DB).
8. PLD 1961 Kar. 612+AIR 1958 S.C. 767=1959 SCR 564+('11) 5 Sind L.R. 181+AIR 1946 Pat. 301=25 Pat. 50 (DB).
9. AIR 1963 Andhra Pradesh 438.
10. AIR 1938 Nag. 300=ILR 1939 Nag. 422+AIR 1960 Raj 219=ILR (1960) 10 Raj. 360+AIR 1959 Cal. 78+AIR 1959 Ker. 237+AIR 1959 Madh. Para. 271+AIR 1938 Oudh 300=14 Luck 4 (DB)+AIR 1932 Lah. 531=14 Lah. 136+AIR 1927 Lah. 909+AIR 1921 Sind 13=15 Sind L.R. 11 (DB)+AIR 1926 Mad. 178+AIR 1944 Mad. 47.
11. PLJ 1989 Lah. 377=1989 CLC 1405+PLJ 1984 Lah. 38+AIR 1941 Mad. 319 (FB) (1937 Mad. 45, *Overruled*)+AIR 1958 SC 767=1959 SCR 564. (Plaintiff not discharging initial burden—Burden does not shift to defendant to prove the contrary)+AIR 1960 J&K 130+AIR 1957 Andh. Pra. 654=ILR 1956 Andh. 162+AIR 1957 Madh. Pra. 95=ILR 1957 Madh. Pra. 316(DB).
12. AIR 1963 Punjab 556 (DB).

Plea of good faith or diligent prosecution before the wrong forum, was not entertained.[13]

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 bona fide which means that it must have been honest and made in good faith, notwithstanding due care and attention.[14] Where the appellant was an illiterate person and he had been bona fide pursuing his remedy in another Court and he had also spent some time in obtaining copies which he had filed before the appellate Court, a delay of two days was condoned.[15]

Prosecution of a wrong proceeding induced by a bona fide mistake is covered by the section.[16] An honest doubt as to whether a suit lies in one Court or another is covered by the expression 'good faith'; the test being one of honesty with due care and caution.[17] The mere fact that the question of jurisdiction is an arguable one does not negative good faith provided the party believed bona fide that the Court in which he instituted the proceedings had jurisdiction in the matter.[18] If in addition to the party the Court in which the prior proceedings were pending also thought that they were in the proper Court, there can be no question of bad faith.[19] Thus where firm K owned by four partners was carrying on business at A. On the printed envelopes of the firm it was mentioned that this firm had a separate firm in the name of M at B. A suit was filed in Court at B against firm K. During the pendency of the suit it was disclosed, that only three of the partners of firm K were partners of firm M. The plaintiffs' application seeking leave for continuing suit at B against all the partners was rejected and the plaint was directed to be returned for presentation to proper Court, i.e., at A. The suit filed at A was not within time: It was held that the plaintiffs were entitled to the exclusion of period during which the suit was pending at B and hence the suit filed at A was not time-barred. There was justification for plaintiffs to assume that firm K, carried on business, though under a different name, within the jurisdiction of Court at B. The plaintiffs could not be said to have acted without due care and attention in relying upon the mistaken assertion on the part of firm K. Moreover they acted with due care when they applied for permission under S. 20, C.P.C. when the true state of constitution of firm M was made known to them. Hence, they were entitled to the benefit of S. 14 of the Limitation Act.[20] But if the initial filing in wrong Court is attributed to carelessness, for which there is little or no excuse, the subsequent prosecution of the suit cannot be said to be in good faith.[1]

13. PLD 1983 Pesh. 134 = 1983 Law Notes 443.
14. PLD 1960 Karachi 736 (DB).
15. 1972 SCMR 23.
16. NLR 1981 U.C. 112 (DB) + 1974 Pesh. 327 + 1980 CLC 972 + AIR 1920 Pat. 462 (DB) + AIR 1930 Pat. 307 (DB).
17. AIR 1932 All. 377 (DB) + AIR 1933 Sind 317 = 27 Sind L.R. 101 (DB) + ('09) 6 All. L. Jour 741 (DB).
18. AIR 1933 Lah. 264.
19. ('78) 3 Bom. 182 (DB) + AIR 1917 All 122 + ('96) 19 Mad. 67 (DB) + ('96) 19 Mad. 90 (DB).
20. AIR 1964 Madhya Pradesh 258 (DB).
1. AIR 1959 Cal. 21 = ILR (1956) 1 Cal. 194.

Due diligence necessary. Under this section indulgence should be granted only where the error is one which might be committed by a reasonable and prudent man exercising due diligence and caution.[2] Where the mistake is made by legal adviser it will be covered by this section if it is made bona fide.[3] Thus in the absence of relevant date and having regard to the fact that immediately after the plaint was returned it was presented to the proper court on the same day and the plaint as originally filed was within time, the plea of limitation is not sustainable.[4] Where the plaintiff instituted a suit on 8-11-1951 long before the last day of limitation, *viz* 16-6-1953. On 25-4-1953 the Court by its judgment held that it had no jurisdiction to entertain the suit as against defendant 2. On 28-4-1953 the Court ordered the name of defendant 2 to be expunged from the plaint on application by the plaintiff to that effect. On revision by defendant I, the High Court by its order dated 5-11-1954 held that the order passed by the lower Court was without jurisdiction as it had become *functus officio* and that the plaint should have been returned for presentation to proper Court. On 10-12-1954 the trial Court made an endorsement on the plaint that it be returned for presentation to proper Court. The plaint was then filed in the proper Court on 14-12-1954. The question was whether the suit was barred by limitation. It was held that the suit was not barred by limitation as the period from the date of institution of suit till the plaint was represented in the proper Court could be excluded under S. 14, Limitation Act in computing limitation. In a case where the plaint is ordered to be returned the proceedings terminate not on the date of the order directing the plaint to be returned but on the date of the actual return with the endorsement on the plaint in accordance with the provision of O. 7, R. 10, Civil P.C. So also the delay of four days thereafter could not be regarded as anything but part of due diligence exercised by the plaintiff and the plaintiff was entitled to the exclusion of four days period as well.[5]

Negligence and carelessness. A party who has throughout the proceedings been negligent and careless cannot take benefit of provisions of this section.[6] If the initial filing in a wrong Court is attributed to carelessness, for which there is little or no excuse, the subsequent prosecution of the suit cannot be said to be in good faith.[7] Thus where under an insurance contract all disputes under the policy were

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2. 1990 MLD 386+1980 CLC 972+1974 CLC 527 (DB)+AIR 1938 Lah. 704 (SB)+AIR 1916 Oudh 139+AIR 1943 Mad. 633.
3. AIR 1938 Oudh 112 (DB)+('60) 64 Cal. W.N. 371. (Suit instituted in wrong Court relying on old decision—Contrary view held in latest decision reported after institution of suit—Plaintiff and his solicitor not aware of same—Plaintiff held entitled to benefit of S. 14)+AIR 1959 Pat. 365. (Whether in a given case the mistaken advice of a pleader would amount to good faith within the meaning of S. 14(1) of the Limitation Act or not has to be decided on the circumstances of each individual case)+AIR 1956 Punj. 30+AIR 1954 Pepsu 126=ILR 1953 Patiala 497 (DB)+AIR 1953 All 106. (No hard and fast rule can be laid down as to when a lawyer's wrong advice to his client may be excused)+AIR 1952 Pat. 4=30 Pat. 1135 (DB)+AIR 1944 Mad. 47+1933 Lah. 568 (DB)+AIR 1915 Low Bur 145=8 Low Bur Rul 146 (DB)+AIR 1933 Lah. 541=14 Lah. 206 (DB). (A leading practitioner acting on the strength of certain decided cases of the High Court)+AIR 1938 Cal. 377=62 Cal. 510 (DB)+AIR 1919 Oudh 378=22 Oudh Cas. 39.
4. AIR 1963 Andhra Pradesh 438.
5. AIR 1963 Patna 407 (DB)+AIR 1926 Mad. 178+AIR 1933 Cal. 914.
6. 1985 Dhaka LR (SC) 184.
7. AIR 1950 Cal. 21=ILR (1956) 1 Cal. 394.

triable in Court at *A* alone, starting an action by the policy-holder against the insurance company at place *B* amounts to nothing but negligence which could not entitle the policy-holder to the benefit of S. 14.[8] Where the law does not enjoin the exhausting of a remedy before a particular authority before filing a suit in a Court of law, if a party carelessly continues to proceed with his remedy allowing the period of limitation to expire, he cannot be held to be prosecuting another civil proceeding in good faith.[9] Where notice, required by law to be given before proceedings could be taken, was not given, the party would be guilty of negligence and time spent in the proceedings could not be excluded under this section.[10]

Error of judgment. Error of judgment is a different thing from bad faith.[11] Therefore proceedings contrary to a clearly expressed provision of law cannot be said to be prosecuted in good faith.[12]

Pretended and deliberate mistake. There must be no pretended mistake intentionally made with a view to delay proceedings or harass the opposite party.[13] The prosecution of an application to sue in *forma pauperis* made mala fide as to pauperism cannot entitle the party to the benefit of this section.[14]

Mistake as to valuation. If the plaintiff gave bona fide a particular value to the suit property, the Court on trial found the value to be different and returned the plaint for want of jurisdiction, it is a case of good faith.[15] Where the circumstances are such that they justify either of two views regarding value of suit property, the plaintiff will not be regarded as having acted dishonestly and without due care and attention because he follows the view more advantageous to him.[16] But if a person knowingly undervalues the subject-matter of a suit so as to institute it in a particular Court, he cannot be said to be acting in good faith.[17]

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8. AIR 1963 Punjab 556 (DB) + ('59) 61 Pun. L. R. 114.
9. AIR 1960 Andh Pra 406 = ILR 1958 Andh Pra 849.
10. PLD 1975 Kar. 209 = PLJ 1975 Kar. 55.
11. 1929 All. L. Jour 73 (DB).
12. AIR 1940 Bom. 5 + AIR 1955 Trav-Co. 51 (FB) + AIR 1956 Assam 63 (DB). (In the absence of any express provision in the Succession Act, appeals from orders passed by a Subordinate Judge, in a case transferred to him under S. 23 of Act, 12 of 1887, would lie to the High Court under S. 299. Hence there was no justification for filing the appeal in the District Court) + ILR 1954 Madh-B 149 + AIR 1955 Bom. 93 = ILR 1954 Bom. 1173 (DB). (Execution of decree-Certificate under O. 21, R. 16, Civil P.C. not obtained--Decree sought to be executed non-existent--No due care and attention) + AIR 1954 Bhopal 21. (Review application not entertainable by Government under S. 34, Bhopal Land Revenue Act--Such application, if made cannot be said to have been made in good faith--No exclusion of time under S. 14) + AIR 1929 Rang. 297 = 7 Rang. 466 (DB) + AIR 1930 Bom. 505 + AIR 1915 Low Bur Rul 145 = 8 Low Bur Rul 146 (DB) + AIR 1915 Mad. 405 = 39 Mad. 62 (DB) + AIR 1943 Oudh 453 = 19 Luck. 279 (DB) + AIR 1942 Pat. 378 (DB).
13. ('93) 6 CPLR 85.
14. AIR 1939 Cal. 394 = ILR (1939) 2 Cal. 68 + AIR 1929 Nag. 268 + AIR 1928 Nag. 296 + ('07) 9 Bom. L.R. 204 (DB).
15. AIR 1932 Cal. 504 (DB) + AIR 1933 Lah. 652 + AIR 1914 Oudh 282 = 17 Oudh Cas. 210.
16. AIR 1938 Nag. 300 = ILR 1939 Nag. 422.
17. AIR 1940 Mad. 689 (DB). (AIR 1939 Mad. 397, *Reversed*) + AIR 1960 J&K 130. (Gross under-valuation of plaint--No due care and diligence) + ('54) 33 Pat. 894 + AIR 1919 Pat. 345 (DB) + ('12) 14 Ind. Cas. 86 (DB) (Oudh) + AIR 1945 Pat. 369 = 24 Pat. 462.

Similarly knowingly to present a plaint to a wrong Court when the plaint valuation patently took the suit out of its cognizance is inconsistent with good faith.[18]

Election of Court for instituting proceedings. Where the plaintiff has a choice of Courts he may elect to institute his suit in any one of them at his own convenience. Plaintiff's choosing a Court inconvenient to the defendant does not constitute want of good faith.[19] Therefore if a plaintiff, having a right to institute a suit in different Courts, elects to sue in the Court in which the defendant was an officer in the hope of getting his money paid easily, there is nothing mala fide in his conduct.[20] But if the plaintiff, with a view to have an advantage over the defendant of another province, makes a false allegation of fact in the plaint in order to enable himself to sue in a place most convenient to himself, there is no good faith.[1]

Mistake of counsel. Prosecution of proceeding in a wrong forum owing to the bona fide mistake of the counsel is protected by the section.[2] The Court, therefore, could show indulgence and condone delay where time had been lost by prosecuting a remedy before a wrong forum, on account of bona fide mistake or error committed by counsel, which a reasonable and prudent man despite exercising due deligence and caution might have committed.[3] A litigant in order to be diligent can do no 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 a suit in a wrong Court, as a matter for which a litigant should be punished. Time should be allowed in such cases.[4] Where the Advocate for the appellants who had presented the appeal to the District Court, had made a mistake but it was not due to gross negligence of counsel. His specific attention was not drawn to the want of pecuniary jurisdiction either by the office of the District Court at the time he presented the appeal nor had the Advocate for the respondent mentioned in his application under Order VII, rule 11 the reason why the District Court had no jurisdiction. Therefore time spent in prosecuting the appeal was to be excluded under section 14, Limitation Act.[5] Where a plaint bearing the heading 'In the Court of the Munsiff' was

18. AIR 1919 Oudh 378 = 22 Oudh Cas. 39 + AIR 1916 Oudh 139 = 19 Oudh Cas. 367.
19. AIR 1939 Pat. 86 (DB).
20. AIR 1919 Mad. 845 (DB) + AIR 1954 Pepsu 45 = ILR 1953 Patiala 271. (Diligent prosecution of case–Delay due to bona fide mistake in presentation of plaint–Time excluded).
1. 1912 Pun. W. R. No. 208, p. 555 (DB).
2. PLD 1983 SC 385 = PLJ 1983 SC 563 = 1983 PSC 1025 = NLR 1983 SCJ 560 + PLD 1985 Quetta 74 (DB) + PLD 1984 AJ&K 1 = NLR 1984 AC 227 + PLD 1963 Lah. 414 + AIR 1961 Orissa 54 + AIR 1927 All. 719 (DB) + AIR 1957 Hyd. 4 + AIR 1953 All 106. (A firm conviction in the correctness of a certain procedure may reduce the degree of care and attention but it can in no sense, suggest a negation or absence of the same) + AIR 1933 Lah. 541 (DB) + AIR 1933 Oudh 231 (DB). (*But see* PLJ 1982 Lah. 393 (DB)).
3. PLD 1985 Quetta 74 = NLR 1985 Lab. 1 (DB).
4. PLD 1983 SC 385 = PLJ 1983 SC 563 = 1983 PSC 1025 = NLR 1983 SCJ 560 + PLD 1960 Lah. 791 (DB) + 1984 Dhaka LR 136 (DB).
5. PLD 1976 Kar. 891.

originally intended to be filed in the Munsiff's court but subsequently the plaintiff changed his mind and reduced the amount claimed so as to bring it within the jurisdiction of the Small Cause Court. The plaint was, however, actually filed in the Munsiff's court on the last day of limitation, *viz.*, 23-1-1954 by the pleader of the plaintiff. The plaint was ordered to be returned to the plaintiff for presentation to the proper court on 28-1-1954 after the plaintiff had supplied deficiency in court fees as ordered by the Court. The plaintiff took back the plaint on 29-1-1954 and presented the same to the Small Cause Court but it was dismissed as time-barred. It was held that in the circumstances it could not be said that the plaintiff had acted without due care and attention. There was nothing to show that the plaintiff did not act with due diligence in taking back the plaint on the 29th though the order for return of plaint was passed on the 28th. The mistake in filing the plaint in the wrong court was entirely due to plaintiff's lawyer and S. 14 protected bona fide mistake of a lawyer when the plaintiff himself acted in good faith.[6] Similarly where the plaintiff upon wrong advice given by his lawyer, who was a very senior advocate of the Bar, bona fide given, filed a suit in a wrong court within limitation, time taken for prosecution of the case thus wrongly instituted can be excluded in computing the period of limitation of the suit, when it was instituted in the proper court within a week of the return of the plaint by the court in which it was wrongly filed.[7]

The legal adviser's mistake must be bona fide.[8] The fact that the Court considered the prior proceeding as misconceived cannot negative good faith where the party, acting on legal advice, bona fide believed that the action was sustainable.[9] Where, however, the mistake in approaching the wrong forum was committed by him due to gross negligence and carelessness and it did not appear that he had shown due diligence and caution before moving the said wrong forum; the only remedy for the unfortunate client of such a counsel appeared to be to sue him for damages for the loss suffered on account of his gross negligence.[10] Thus time spent in filing an appeal under wrong legal advice before an incompetent forum (District Court) instead of filing it before competent forum (High Court) cannot be excluded in computing limitation period prescribed for filing appeal.[11] Where an appeal, jurisdiction value of which was fixed at Rs. 1 lac was filed in the Court of District Judge, the period spent in pursuing the appeal cannot be excluded under this section.[12]

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6. AIR 1961 Allahabad 564.
7. AIR 1961 Orissa 54 + AIR 1958 S.C. 767.
8. NLR 1980 Civ. 175 = 1980 CLC 2183 + AIR 1938 Oudh 112 (DB) + AIR 1954 Pepsu 126 (DB) + AIR 1952 Pat. 4 (DB) + AIR 1933 Lah. 568 (DB) + AIR 1933 Lah. 541 (DB). (A leading practitioner acting on the strength of certain decided cases of the High Court).
9. AIR 1933 Mad. 197 + AIR 1951 Pat. 486 = 30 Pat. 131 (DB). (Ultimate result of proceeding cannot determine bona fides of a party--Person filing petition for leave to appeal to Supreme Court on advice of eminent counsel on ground that a substantial question of law was involved--Fact that applicant failed to make out substantial question of law does not affect his bona fides) + 1913 Pun. L.R. No. 254, p. 859 (DB).
10. PLD 1983 SC 385 = PLJ 1983 SC 563 = NLR 1983 SCJ 560 = 1983 PSC 1025 + PLJ 1982 Lah. 393 (DB) + NLR 1982 CLJ 54 + PLD 1977 SC 102 = PLJ 1977 SC 340 + 1975 SCMR 259.
11. NLR 1986 Civ. 623 (DB) + 1985 CLC 2529 (DB).
12. PLJ 1982 Lah. 393 (DB).

Where wrong advice of a counsel is pleaded but no affidavit by the counsel is placed before the Court, the applicant would not be granted the benefit of this section as it cannot be said that any such advice was given.[13]

Mistake of Court. Where the plaintiff institutes a suit in the proper Court but, due to a mistake of the Court he is driven from Court to Court and ultimately he is required to file the suit again in the same Court, the time occupied by these proceedings must be excluded under this section.[14] Where memorandum of appeal filed within time before District Judge was returned to appellant illegally by District Judge for filing the same in High Court. It was held that delay in filing the appeal, was immaterial, as High Court was not competent to hear such appeal. Appeal was sent back to District Judge to be registered at its original number and disposed of on merits according to law.[15]

Mistake of law. A bona fide mistake of law is sufficient ground for treating the proceedings to be in good faith.[16] Where notification conferring jurisdiction was not easily traceable and even the Courts were not sure as to whether they had jurisdiction in the matter or not, the mistake in pursuing a remedy in a wrong Court was held to be covered by this section.[17] But where the circumstances are such that the party ought to have known the law, there can be no bona fide mistake.[18]

Proceedings contrary to a clearly expressed provision of law cannot be said to be prosecuted in good faith.[19] Thus where a prior suit was for possession only and the subsequent suit was for mesne profits, the belief of the litigant that everything can be had in restitution proceedings does not make this section applicable.[20]

Unnecessary and unsustainable proceedings. When applying this section an unnecessary and unsustainable action is not taken into account.[1] Thus where a

13. NLR 1980 Civ. 175 = 1980 CLC 2183.
14. NLR 1979 Civ. 121 + AIR 1954 All. 199 (Suit under Section 9, Specific Relief Act—Property in dispute agricultural land—Munsiff directing plaint to be filed in revenue Court as suit was believed to be entertainable by revenue Court only—High Court subsequently taking different view—Revenue Court returning plaint for presentation to Civil Court—Plaintiff was entitled to claim exclusion of period spent in both Courts).
15. PLD 1984 Pesh. 22 = NLR 1984 AC 148.
16. AIR 1941 Pesh. 3 (DB) + AIR 1956 Assam 63 (DB) + Madh B.L.J. 1955 HCR 197. (Sharp controversy on a point of law as to the place of suing) + AIR 1940 Oudh 412 + ('97) 19 All. 348 (FB) + ('99) 26 Cal. 414 (FB) + AIR 1921 Oudh 100 = 24 Oudh Cas. 137 + AIR 1916 Sind 82 = 9 Sind L. R. 167 (DB) + ('11) 5 Sind L.R. 181 + AIR 1936 Rang. 184 + AIR 1928 Nag. 227.
17. 1982 SCMR 1105.
18. AIR 1936 Lah. 857 + AIR 1933 Lah. 589 + AIR 1920 Bom. 130 = 44 Bom. 50 (DB) + ('99) 23 Bom. 531 (DB) + AIR 1927 Pat. 256 (DB).
19. PLD 1983 Pesh. 134 = 1983 LN 443 + AIR 1940 Bom. 5 + AIR 1955 Trav-Co. 51 (DB) + AIR 1955 Bom. 93 (DB) + AIR 1929 Rang. 297 (DB) + AIR 1915 Low Bur 145 (DB) + AIR 1915 Mad. 405 (DB) + AIR 1943 Oudh 453 (DB) + AIR 1942 Pat. 378 (DB) + AIR 1961 M.P. 336 (DB).
20. AIR 1935 Mad. 731 (DB).
1. AIR 1938 Rang. 318 (DB) + AIR 1955 Bom. 93 = ILR 1954 Bom. 1173 (DB). (Execution taken out in Court not passing the decree without certificate under O. 21, R. 6, Civil P.C.—

time-barred appeal was prosecuted by a party, the Court refused to exclude under S. 14 the time spent in doing so.[2] Similarly where an application under Order 22, Rule 3, C.P.C. was made after time for making the application had expired, time spent in pursuing such application could not be excluded under section 14, Limitation Act and in absence of application under section 5 of the Act, delay could not be condoned.[3] When dismissal by the trial Court is based not on an inquiry into merits but on the preliminary ground that the objector did not have possession and that the matter involved detailed inquiry into the relative titles of the parties and the objector takes the matter in revision nearly a year after the dismissal; it cannot be said that the objector acted bona fide in carrying the matter in revision so as to claim the exclusion of time under S. 14 of the Limitation Act.[4]

Delay after commencement of proceedings. The question of good faith in prosecuting an appeal in High Court cannot be decided in another litigation on irrelevant considerations such as late payment of process fees or late payment of paper book costs, when the High Court had condoned the default. To deprive a party of the benefit of S. 14 on such ground would be tantamount to unnecessarily curtailing the scope of S. 14, contrary to the specific wording of that section.[5]

19. "Which from defect of jurisdiction is unable to entertain." A party bona fide pursuing the case and seeking adjudication on merits nevertheless prevented from getting trial on merits on account of defect of jurisdiction or other cause of like nature has to be protected against the law of limitation.[6] Section 14 was applicable not only to a case in which a person files a case in wrong Court, *i.e.*, a Court having no jurisdiction to entertain it but also where he brought a suit in wrong Court in consequence of a bona fide mistake or defect of procedure.[7] Defect of jurisdiction would be a cause that would not include any neglect on the part of the plaintift, either in stating his case or in other respects."[8] Therefore where appellant filed a petition before Labour Court as that was the practice before the law was finally settled by Supreme Court. And such appeal was held to be incompetent period spent before Labour Court was condoned.[9]

For the application of this section it is not sufficient to show merely that there were prior proceedings and that they went against the plaintiff,[10] or that the previous action was misconceived.[11] It is essential for the applicability of the section that the Court in prior proceedings must have been unable to entertain it

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No due care and attention) + 1887 All W.N. 198 + AIR 1922 Madh. 417 (DB) + AIR 1932 Cal. 171 (DB).

2. NLR 1982 CLJ 618 + PLD 1971 SC 762.
3. 1983 CLC 1346.
4. AIR 1963 Andhra Pradesh 268 (DB).
5. AIR 1959 Madh. Pra. 271.
6. PLJ 1984 Lah. 38 = 1984 CLC 1258.
7. PLD 1985 Quetta 74 = NLR 1985 Lab. 1 (DB).
8. PLD 1961 (W.P.) Karachi 612.
9. KLR 1984 Tri. C. 316.
10. AIR 1930 Bom. 505.
11. AIR 1930 Lah. 211 (DB) + AIR 1958 Madh. Pra 91 + AIR 1956 Hyd. 161 = ILR 1956 Hyd. 45 (DB) + AIR 1955 Mad. 288 = ILR 1955 Mad. 1278 (DB) + AIR 1949 Pat. 362 = 27 Pat. 137 (DB) + AIR 1922 Mad. 417 (DB) + (1900) 23 Mad. 621 (DB) + ('72) 17 Suth W.R. 266 (DB).

for the reasons specified in the section.[12] The words "in a Court which from defect of jurisdiction or other cause of like nature is unable to entertain it" in S. 14 should not be construed narrowly so as to be confined to the cases of initial inability on the part of a Court to entertain a suit on account of want of jurisdiction or other inherent incapacity. They must be construed liberally so as to include causes where there may be ability to entertain a suit, but where there may be only inability to give a trial.[13] The inability to give a trial need not arise from a defect of jurisdiction or inherent incapacity of the Court only but may be brought about by other causes including agreement between the parties restricting choice of forum.[14] Thus the time taken in disposing of an incompetent appeal filed in good faith before a Sub-Judge would be excluded in computing the time of limitation in moving the High Court in revision.[15] Similarly where an application for leave to appeal to Supreme Court is rejected on merits on the ground that the petitioner had failed to satisfy the conditions precedent for granting of such leave, it can be said that the Court was unable to entertain it from a defect of jurisdiction or other cause of like nature within the meaning of S. 14 (2).[16]

Application returned by Court for want of pecuniary jurisdiction. Where an application was returned by the court to whom it was presented on the ground of want of pecuniary jurisdiction. The time taken up in the court should be excluded u/s. 14, Limitation Act, when filing it in court having jurisdiction.[17]

Decision in prior proceedings on merit. Benefit of the section cannot be had in cases where the prior proceedings were dismissed on merits.[18] Therefore when the High Court refuses to interfere by way of review,[19] or revision with an order passed by a competent Court, this section does not apply.[20] But where a Court which has no jurisdiction in a matter proceeds to entertain it and decides it on merits, the result is that, in law, the matter still remains undecided, and any decision given by such a Court without jurisdiction is a nullity. In such a case if the other conditions laid down by section 14 of the Limitation Act, are satisfied, the respondent shall be entitled to the benefit of that section.[1] Thus where an application for ejectment under S. 18, Karachi Small Causes Courts Act (IV of 1929) was filed in 1952 and ejectment was decreed, but an execution application was subsequently dismissed in 1966 on the ground that ejectment under S. 18 could be ordered only against a tenant or licensee and not against a trespasser. It was held that absence of jurisdiction or want of jurisdiction was discovered only on 25-11-1966 when execution application was dismissed and so whole period

12. 1982 CLC 897+22 DLR (SC) 102+AIR 1948 Nag. 189+AIR 1954 Bhopal 21.
13. PLD 1985 Quetta 74=NLR 1985 Lab. 1 (DB).
14. AIR 1960 Raj. 219=ILR (1960) 10 Raj. 360.
15. 21 DLR 360=1969 DLC 49.
16. AIR 1951 Pat. 486=30 Pat. 131 (DB).
17. 1982 Dhaka LR 150.
18. 1982 CLC 897+AIR 1938 Nag. 534 (DB)+ILR (1958) 8 Raj. 488 (DB)+AIR 1948 East Punj. 68=ILR 1948 East Punj. 89 (DB)+AIR 1932 Cal. 558=59 Cal. 1057 (DB)+AIR 1924 Bom. 39 (DB)+AIR 1924 Cal. 419 (DB)+AIR 1927 Lah. 186 (DB)+AIR 1927 Lah. 785 (DB)+AIR 1916 Mad. 57=38 Mad. 260 (DB)+AIR 1942 Mad. 713 (DB)+AIR 1933 Nag. 130=29 Nag. L.R. 272.
19. 1982 CLC 897.
20. AIR 1942 Pat. 378 (DB)+AIR 1944 Pat. 225=23 Pat. 14 (DB).
1. PLD 1971 Kar. 553+PLD 1964 Lahore 15.

right from 1952 upto 25-11-1966 had to be excluded in computing time for filing of a subsequent civil suit for ejectment and recovery of mesne profits.[2]

Prior proceedings in competent Court. Time spent in a Court which did not decline to entertain the suit cannot be deducted.[3] In other words where a person has been pursuing a remedy in a Court of competent jurisdiction, he cannot claim exclusion of time under this section.[4]

Instances of dismissals not covered by this section. Following grounds of dismissal are not covered by the section:

(*a*) That the claim in the prior proceedings was premature.[5]

(*b*) That the plaintiff's not being the nearest reversioners were not entitled to sue.[6]

(*c*) That the application for transfer of a decree was barred by limitation and that it was not shown that the judgment-debtor had no property within the local limits of the Court which passed the decree.[7]

(*d*) That the application for execution was not in accordance with law or that there was no decree in existence.[8]

(*e*) That the plaintiff was negligent.[9]

(*f*) That the final decree having been already passed an application for a final decree could not be sustained.[10]

20. "Jurisdiction." A defect of jurisdiction is due to the provisions of the law itself and not due to laches of parties.[11] The expression "defect of jurisdiction" means a defect of jurisdiction peculiar to the Court in which the proceedings were taken, and does not cover such mistakes as the presentation and prosecution of an appeal which does not lie to any Court.[12]

The word "jurisdiction" in this section should be interpreted liberally.[13] Thus an untenable appeal would be covered by the phrase 'defect of jurisdiction'.[14] Where an execution application for sale of properties not included in a mortgage, was dismissed on the ground that no decree under O. 34, R. 6 of the Civil P.C. had been obtained. The dismissal was held to be on account of defect of jurisdiction.[15]

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2. PLD 1971 Karachi 553.
3. AIR 1928 Cal. 46.
4. 22 DLR (S.C.) 102 + AIR 1962 Mad. 253 (DB).
5. AIR 1965 Punjab 80 (DB) + AIR 1919 Cal. 381 = 46 Cal. 870 (DB).
6. AIR 1930 Lah. 211 (DB).
7. AIR 1918 Mad. 23 (DB).
8. 1908 Pun. L.R. No. 125, p. 378 + AIR 1949 Pat. 117 (DB) + AIR 1937 Mad. 760.
9. AIR 1931 Nag. 109.
10. AIR 1938 Lah. 177 = ILR 1937 Lah. 671 (DB). (AIR 1937 Lah. 404. *Reversed*).
11. ('86) 10 Bom. 604.
12. ('11) 11 Ind. Cas. 880 = 1912 Pun. Re. No. 22 + AIR 1955 Trav-Co. 51 (FB) + 1893 Pun. Re. No. 45, p. 209.
13. AIR 1933 Mad. 197.
14. AIR 1959 Madh. Pra. 271.
15. AIR 1920 Pat. 462 (DB).

Kinds of defect of jurisdiction. A defect of jurisdiction may be territorial[16] or it may be in relation to the subject-matter.[17]

Want of jurisdiction may arise after the institution of the proceeding.[18]

Want of power to make order. Where a Court has no power to make an order, it does not mean that it has no jurisdiction in the matter.[19]

21. "Other cause of a like nature." The words "Other cause of a like nature" should be liberally construed.[20] The cause stated in the phrase is *ejusdem generis'* with the words "defect of jurisdiction", and therefore it has to be a cause analogous to defect of jurisdiction.[21] The phrase is not capable of being defined with any precision or exactitude and it is not easy to lay down a hard and fast rule or to enumerate all the causes which should be regarded as of a like nature to absence of jurisdiction; but any cause, unconnected with want of diligence or good faith on the part of the plaintiff, which precludes the Court from hraring the former suit or proceedings of the plaintiff on merits, is a cause which comes within the purview of section 14 of the Limitation Act. It would generally be a cause arising out of a bona fide mistake of law, procedure or fact which precludes the Court from considering on merits the issues involved in the case,[22] or at all events as to prevent it from deciding it on its merits.[1] Thus where the decree-holder obtained a preliminary mortgage decree for sale on 12-11-1955. An application for passing a final decree was filed on 8-1-1960. The Court passed a final decree in the absence of the judgment-debtor without noting that the application was barred by limitation. In the final decree proceedings, the Court had directed issue of notice on the judgment-debtor. But the decree-holder did not take notice of the correct address of the judgment-debtor and had done so with an ulterior motive and thereby kept the judgment-debtor from knowledge of his right to resist the application for passing final decree on the ground of limitation. On 27-12-1960, the judgment-debtor was served with notice under O. 21, R. 22, C.P.C., in the proceeding for execution of the final decree. He gathered knowledge about the passing of the final decree on the date of service of this notice. On the legal advice of a senior and experienced member of the Bar, having about 39 years of practice, the judgment-debtor filed an application on 4-1-1961 under O. 9, R. 13, C.P.C., for setting aside the *ex parte* final decree. The application, however, failed not on merits but on account of the decision in AIR

16. AIR 1926 Mad. 813 + ('80) 5 Bom. 48 = 7 Ind. App. 181 (P.C.).
17. ('78-79) 3 Bom. 223 (DB) + 1889 Pun. Re. No. 67, p. 215 (DB) + 1911-1 Mad. W.N. 233.
18. AIR 1941 Pesh. 3 (DB) + AIR 1948 Cal. 226 = ILR (1948) 2 Cal. 334 (DB) + AIR 1922 All. 74 = 44 All. 296 (DB) + ('96) 19 Mad. 90 (DB) + AIR 1940 All. 145.
19. ('68) 9 Suth W.R. 402 (FB).
20. AIR 1939 Bom. 26 = ILR 1939 Bom. 9 (DB) + AIR 1919 Mad. 1071 = 41 Mad. 701 (DB).
21. PLJ 1984 Lah. 38.
22. PLD 1962 Karachi 510 = PLR 1962 (2) W.P. 634 (DB) + 22 All. 248 (FB) + AIR 1949 Cal. 24 + AIR 1946 Sind 14 = ILR 1945 Kar. 293 (DB) + ('11-12) 6 Low Bur Rul. 43 (DB) + AIR 1943 All. 162 = ILR 1943 All. 467 (DB). (Defect of jurisdiction existing at beginning or occurring at later stage).
1. AIR 1944 Lah. 136 = ILR 1944 Lah. 451 (FB). (If Court has to go into merits before case can be dismissed defect will not come within the ambit of these words) + AIR 1951 Trav-Co. 26 (DB). (Defect must be of such a character as to make it impossible for the Court to entertain the suit either in its inception, or at all events as to prevent it from deciding on its merits) + AIR 1951 Pat. 486 = 30 Pat. 131 (DB).

1949 Pat. 68 which the Court was bound to follow. The lawyer for the judgment-debtor did not know that AIR 1949 Pat. 68 had laid down that such a proceeding was not maintainable and he came to know of this decision at the time of argument when other side cited it and thereafter he advised the judgment-debtor not to pursue it higher up and to file an application for review. It was held that the judgment-debtor was entitled under S.14 (2) of the Limitation Act to the exclusion of time taken in the proceedings under O. 9, R. 13. The proceeding was prosecuted in good faith, and the Court was unable to entertain it, not from defect of jurisdiction but from other cause of a like nature.[2]

The cause of a like nature need not be always one, which the plaintiff could have avoided.[3]

Plaintiff's mistake resulting in dismissal of suit. Given good faith and due diligence a cause is not prevented from being of a like nature to defect of jurisdiction merely because it was in the plaintiff's own power to avoid or the dismissal resulted from his own act or from a bona fide mistake of law or procedure.[4] Thus where an appeal was filed under S.47, C.P.C. but it was subsequently held that a suit under O. 21, R. 63 was the proper remedy and a suit was filed. It was held that failure of the appeal was due to a "cause of like nature."[5] Similarly in a suit under O. 21, R. 63, Civil P.C. plaintiff is entitled to deduct time spent in prosecuting with due diligence an abortive civil revision filed under a bona fide mistake of law or procedure against an order passed under O. 21, R. 58, Civil P.C.[6] Where in a suit for declaration, consequential relief of possession was not asked for and the suit was dismissed under S.42 of the Specific Relief Act. It was held that the cause of dismissal was in the nature of defect of jurisdiction.[7] The inability of a Court to decide on the lawfulness of the plaintiff's claim, owing to his wrongly framing his action, involves a cause of a like nature.[8] Where a decree-holder joined in his execution petition a relief not in conformity with the decree, the cause was held to be in the nature of defect of jurisdiction.[9] Where a person proceeded by way of suit instead of making application for his remedy, the error of law was a cause of like nature.[10] Where an application under S.144, Civil P.C. was made instead of a suit for money wrongly paid; the time taken by the proceeding on the application ought to be excluded.[11] Even where the plaintiff omitted to do a thing which was necessary to give jurisdiction to the Court to entertain the suit, *e.g.* procuring the sanction of Government, the period of time taken for prosecuting the prior suit can be excluded, provided of course that the plaintiff has not been negligent in prosecuting the prior suit.[12]

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2. AIR 1964 Orissa 55.
3. ('86) 10 Cal. 86 (DB) + (1900) 22 All. 248 (FB) + ('11-12) 6 Low Bur Rul. 43 (DB) + AIR 1935 Lah. 736 (DB).
4. AIR 1949 Pat. 293 = 28 Pat. 102 (FB) + AIR 1954 Hyd. 225 = ILR 1954 Hyd. 816 (DB).
5. AIR 1938 Mad. 41.
6. AIR 1949 Pat. 293 = 28 Pat. 102 (FB) + AIR 1954 Hyd. 225 = ILR 1954 Hyd. 815 (DB).
7. AIR 1926 Mad. 1081.
8. AIR 1923 Mad. 347 (DB).
9. AIR 1924 Pat. 471 = 3 Pat. 42 (DB).
10. AIR 1920 Bom. 208 = 44 Bom. 97 (DB).
11. AIR 1923 Nag. 94.
12. AIR 1929 Ker. 237.

Instances of 'cause of like nature'. Following were held to be causes of a like nature to defect of jurisdiction:-

(*a*) The present plaintiff having claimed the relief in the prior suit in a wrong capacity.[13]

(*b*) Prior proceedings being barred by the existence of an unvacated previous order on the matter.[14]

(*c*) When the plaintiffs had applied to continue a suit begun by another but their application was dismissed on the ground that it was one which the Court was not competent to entertain, and they instituted an independent suit by themselves.[15]

(*d*) Where jurisdiction of the Court to entertain the suit depends on leave being granted by the Court, and the Court grants leave but subsequently recalls it and rejects the plaint.[16]

(*e*) Belief of parties and the Court that there was want of jurisdiction in the Court.[17]

Instances of 'causes not of like nature.' Following were held not to be causes of a like nature:

(a) A wrong party suing.[18]

(b) Plaintiff's inability to produce a registered certificate of sale with the suit.[19]

(c) Want of notice required by S. 80 of the Civil P.C.[20]

(d) Dismissal of prior suit for default.[1]

(e) Dismissal of an application for want of a necessary affidavit.[2]

(f) Prior application for execution not being presented by the decree-holder or by a vakil duly authorised on his behalf.[3]

(g) Dismissal on ground of *res judicata.*[4]

(h) Dismissal on ground of cancellation of award.[5]

(i) Dismissal of appeal barred by limitation.[6]

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13. AIR 1916 P.C. 96=43 Cal. 660.
14. AIR 1928 All. 10 (DB).
15. AIR 1919 Mad. 572 (DB).
16. AIR 1939 Pat. 86 (DB).
17. AIR 1954 All. 199.
18. ('81) 7 Cal. 367 (DB).
19. ('86) 10 Bom. 604 (DB).
20. ('11) 5 Sind L.R. 181.
1. AIR 1929 Nag. 219=25 Nag. L.R. 99+1945 O.W.N. (HC) 135.
2. AIR 1924 Pat. 40 (DB).
3. AIR 1937 Mad. 760.
4. AIR 1921 Pat. 225 (DB).
5. AIR 1939 Nag. 130.
6. ('99) 26 Cal. 414 (FB).

22. "Unable to entertain." The word "entertain" means to admit for consideration. It does not mean giving relief, and when a suit or proceeding is not thrown out *in limine*, but the Court receives it for consideration and disposal according to law, it must be regarded as entertaining the suit or proceeding, no matter whatever the ultimate decision may be; and a suit is to be regarded as not entertained by the Court only if it is thrown out at its inception and the Court does not decide it on its merits.[7] The section applies even where the plaint or an application in the prior proceedings is returned for presentation to the proper Court.[8]

Decision of Court may be right or wrong. The section applies where the Court in which the prior proceedings were pending rightly though it had no jurisdiction in the matter or where it thought so erroneously.[9]

Court unable to grant relief ultimately. Where the Court entertained a suit but it was ultimately unable to grant relief, this section would apply. Thus where *A* held a decree against *B* with a charge on his property. *C* also obtained a decree against *B* and brought the property to sale. *A* applied for and obtained certain amounts from out of sale proceeds towards discharge of his decree-debt. The sale was set aside and *A* on being ordered refunded the amount and filed an application to execute his decree. The period of prior application was excluded under this section on the ground that Court was ultimately "unable to grant" any remedy.[10] Similarly, where the decree was granted in the first Court but was set aside in appeal the period from institution of the suit to such dismissal could be deducted provided it was spent in good faith.[11]

Insolvency Court. The words "unable to entertain it" cannot apply to the action of the insolvency Court.[12]

23. Misjoinder--Expl. III. Non-joinder of a person as plaintiff is a cause of a like nature to defect of jurisdiction.[13]

24. Explanation I. Period between pronouncement by Court of want of jurisdiction and return of plaint to the plaintiff or his pleader is allowable.[14] Thus the period between the date of the order and the date on which the plaint is made ready for return as per O. 7, R. 10 of the Civil P.C. is to be deducted.[15] It is only for the period which is required by the Court for returning the plaint after an order has been passed in that behalf that the plaintiff can claim exclusion. If some

7. AIR 1958 Madh. Pra. 91.
8. AIR 1932 All. 377 (DB).
9. AIR 1935 Oudh 501 (DB)+AIR 1932 All. 340=54 All 423+AIR 1937 Nag. 69=ILR 1937 Nag. 311+AIR 1925 Oudh 493+AIR 1945 Cal. 381+AIR 1943 Cal. 460 (DB)+AIR 1925 Bom. 113 (DB).
10. 1909 Pun. Re. No. 52, p. 173 (DB).
11. AIR 1929 Rang. 55=6 Rang. 691 (DB).
12. AIR 1942 Mad. 713 (DB).
13. AIR 1923 Mad. 347 (DB)+AIR 1921 Sind. 13=15 Sind L.R. 11 (DB).
14. AIR 1947 Bom. 140 (DB)+('49) 53 Cal. W.N. (1 DR) 75 (DB). (Period between date of order on plaint and its actual return can be deducted).
15. AIR 1939 Lah. 47+AIR 1951 Hyd. 632 (DB)+AIR 1948 Mad. 26=ILR 1947 Mad. 694 (DB)+AIR 1933 Cal. 914=60 Cal. 1122 (DB)+AIR 1933 Lah. 611 (DB)+AIR 1926 Mad. 178+AIR 1939 All. 590=ILR 1939 All. 709+AIR 1922 Bom. 160=46 Bom. 211 (DB)+AIR 1944 Bom. 37+AIR 1917 Cal. 794 (DB)+('97) 7 Mad. L. Jour 261 (DB).

acts are to be done by the Court for the purpose of returning the plaint and it takes some time after an order for the return of the plaint is passed, the proceedings will be deemed to be pending till that date, but it cannot be laid down as a hard and fast rule that the proceedings only come to an end when the plaint is returned to the plaintiff. If the proceedings are therefore kept pending by the plaintiff's own laches he cannot take advantage of the provisions of section 14, Limitation Act.[16] In other words only the time till the date of actual enforcement on the plaint under R. 10 (2) of O. 7, Civil P.C. can be deducted. No deduction after it is permissible, except possibly in cases in which it is proved that the Court delayed the return of the plaint notwithstanding his endeavour to take it back.[17]

Appeal etc., against order. Where the order returning the plaint undergoes first and second appeals, the proceedings started by the presentation of the plaint do not come to an end till final orders are passed in appeal and in case of a remand by any appellate Court, till the proceedings after remand are also concluded.[18]

Period after actual return of plaint, etc. No period after the actual return of the plaint can be deducted.[19]

Period for representation of plaint cannot be fixed. The Court, which returns the plaint, has no power to fix a period within which it should be presented to the proper Court and no such period can be deducted.[20]

25. Time for obtaining copy of the order in prior proceedings. Both on authority and on the language of section 14, there is no scope for limiting the ambit of section 14 to pendency of infructuous proceedings in a Court of law and to disregard the time taken for taking the indispensable and preparatory steps to institute proceedings which ultimately prove to be fruitless.[1] Therefore when a plaintiff has applied for a copy of the judgment and decree to prefer an appeal therefrom, he may be deemed to have been prosecuting, the proceeding during the period occupied in the preparation of the copies.[2] But a party is not entitled to exclude the time required to obtain a copy of the order which ended the prior proceedings when the subsequent suit can be instituted without such copy.[3]

26. Exclusion of a portion of the time. The relief of exclusion of time could be granted only when it is shown that the prosecution was done with due diligence. The right conferred upon a party is not an unqualified
diligence would disentitle a person to get exclusion of the time occupied in the prosecution of the civil proceeding.[4] But want of good faith or due diligence during a portion of the period will not deprive the party of the whole period.[5]

16. AIR 1961 Rajasthan 162.
17. AIR 1948 Mad. 26=ILR 1947 Mad. 694 (DB).
18. ('89) 12 Mad. 434 (DB).
19. AIR 1937 Lah. 464.
20. AIR 1919 Cal. 4 (DB)+AIR 1917 Cal. 794 (DB)+AIR 1937 Pat. 495 (DB).
1. AIR 1965 Andhra Pradesh 388 (FB)+6 Suth W.R. 308+AIR 1951 Trav-Co. 26+7 Ind. Cas. 775 (Cal.)+20 Suth W.R. 380 (P.C.)+AIR 1958 S.C. 827.
2. AIR 1965 AP 388 (FB)+('12) 15 Cal. L. Jour 160 (DB)+AIR 1959 Madh. Pra. 271.
3. AIR 1928 Cal. 46 (Order returning plaint).
4. AIR 1965 Andhra Pradesh 388 (FB).
5. AIR 1934 Nag. 145=30 Nag. L.R. 294.

Where the whole period of the pendency of the prior proceedings may not be excluded, such portion of it during which the party acted with due diligence and in good faith may be deducted.[6]

27. Failure to plead exemption under this section. In order to press into service exclusion of time spent in another proceeding, plaintiff was obliged to make averment as to material facts in plaint to show that he was prosecuting with due diligence and in good faith suit or any other civil proceeding on same cause of action in which he could not succeed for want of jurisdiction or other cause of like nature.[7] Therefore, where petitioner neither had filed any application alongwith objection petition for seeking benefit of S.14, nor had filed application for condonation of delay mentioning such circumstances, he was not entitled to the deduction of time claimed by him.[8] But the other view is that section 14 of the Limitation Act is a mandatory provision of law. Its benefit can be given to the party concerned on a mere reference to the subject-matter which is sufficient for the Court concerned to consider, even though the section is not specifically mentioned by the party concerned and there is also no separate application for the purpose.[9] Where the plaintiffs had not supplied proper details in the plaint to entitle them to the exclusion of time under S.14; but facts were known to both the parties up to the period which was liable to be excluded, proper issues were also framed covering the entire period. It was held that the defendant could not be permitted to complain of any prejudice for want of proper details in the pleading.[10]

Second appeal, extension of time in. If there was no question of limitation at the time when the plaint was filed in Court, it is not at all necessary, nor is it possible for the plaintiff to anticipate, that a circumstances would arise in the course of the suit which may make him rely on S.14. The application of S.14 can, therefore, be considered in such cases by the High Court in second appeal even if no ground under S.14 was taken by him in the plaint.[11]

Application for extension of time. In case of a Letter Patent Appeal, exclusion of time during which the appellant bona fide pursued a remedy in another Court may be allowed, but the delay, cannot be condoned in the absence of an application under S.14, Limitation Act, 1908.[12]

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.

6. AIR 1915 Lah. 459+1911-1 Mad. W.N. 362 (DB).
7. 1986 CLC 233=PLJ 1986 Quetta 52=NLR 1986 CLJ 462=KLR 1986 CC 119 (DB).
8. 1990 MLD 386.
9. PLD 1981 (AJ&K) 44=PLJ 1981 (AJ&K) 131=NLR 1981 CLC 414.
10. AIR 1957 Madh Pra. 95=ILR 1957 Madh Pra. 316 (DB).
11. AIR 1957 Pat. 139.
12. PLD 1968 Peshawar 181 (DB).

(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.

Synopsis

1. Object of section.
2. Application for execution of decree.
3. "Stayed by injunction or order."
4. Stay by agreement of parties.
5. Effect of insolvency.
6. Partial stay of execution.
7. Order granting time to judgment-debtor to pay debt.
8. Institution of collateral suit or proceedings.
9. Attachment, if amounts to an injunction or stay order.
10. Execution only on condition, order of.
11. Adjournment of execution application.
12. "The day...withdrawn."
13. Duration of stay in case of appeal.
14. Revival of execution application.
15. Sub-section (2).
16. Notice required in case of only one or some only of the defendants.
17. Adverse possession.
18. Enactment for the time being in force.
19. *Res judicata.*

1. Object of section. This section is intended to prevent the accrual of any injury to the person who is interdicted by an injunction or order from exercising his right of suit or of execution of the decree obtained by him.[13]

2. Application for execution of decree. Sub-section (1) applies to execution applications only. An application for a final decree in a mortgage suit is an application for execution within this section.[14]

Though an application for restitution under S.144, Civil P.C. is not an application for execution, the principle of this section applies to restitution proceedings.[15]

An application for delivery of possession by the auction-purchaser under O. 21, R. 97 of the Civil P.C. is not an "application for execution" within this section.[16]

For this section to apply the application need not have been pending on the date of injunction or stay order.[17]

Industrial Relations Ordinance. The provisions of Section 15 of the Limitation Act are applicable to suits or applications for the execution of a decree. Therefore

13. ('85) 8 Mad. 229 (DB).
14. AIR 1933 Cal. 508=62 Cal. 66 (DB)+AIR 1947 Pat. 225=25 Pat. 432 (DB)+AIR 1922 Pat. 201=1 Pat. 435 (DB)+AIR 1947 All. 187=ILR 1946 All 709 (DB)+AIR 1941 Bom. 203=ILR 1941 Bom. 435 (DB).
15. AIR 1945 Lah. 227 (DB)+1957 All W.R. (HC) 563.
16. AIR 1935 Cal. 333=62 Cal. 66 (DB)+AIR 1960 Punj. 305.
17. 1985 SCMR 1577=1985 PSC 1144+AIR 1921 Mad. 113 (DB).

where the proceedings have been initiated under the Ordinance the petitioner cannot avail of the benefit of section 15 of the Limitation Act.[18]

3. "Stayed by injunction or order." The words "stayed by injunction or order" refer to orders of Courts and not a disability to sue or apply.[19] Therefore where the judgment-debtor got a stay order from one court or another and thus thwarted an attempt by the decree-holder to file an execution application, the time for which stay orders remained in the field was to be excluded from the period of limitation for application for execution of the decree and the application filed for the first time within the time so computed was held to be within time.[20] Thus where execution was stayed pending decision of claim under O. 21, R. 63, Civil P.C. and a subsequent application for execution was made, in calculating limitation the period during which proceedings were stayed must be excluded.[1]

Injunction or order. For exclusion of period under this section the order of the Court must clearly operate as an injunction or a stay of execution.[2] It is not necessary that the order should be a valid one or that it should be proper.[3] This section would apply even when the party seeking the application of this section was not a party to the proceedings in which the injunctions was granted.[4] It must however be noted that the section applies to injunction and orders judicially made and not to administrative instructions to keep execution cases pending.[5]

Whether an order operates as an injunction or stay must be decided upon an examination of the circumstances under which the order was passed and on a consideration of the terms and effect of the order.[6] The mere filing of a suit to set aside an order made either under Order 21, R. 63, C.P.C. or O. 38, R. 8, C.P.C. would not amount to an injunction or an order of stay. Only those cases where there is an injunction restraining the decree-holder from proceeding with the execution or a specific order of stay or execution of decree that would come within the ambit of section 15 of the Limitation Act. In the absence of it, the decree-holder could not invoke section 15 of the Limitation Act.[7] It has been held that an

18. NLR 1982 Lah. 111 (Lah).
19. AIR 1919 Cal. 706=46 Cal. 526 (DB).
20. 1985 SCMR 1577=1985 PSC 1144.
1. ILR 1953 Mys. 537 (Execution stayed pending decision of claim under O. 21. R. 63, Civil P.C.--Subsequent application for execution is not barred).
2. AIR 1921 Bom. 33+AIR 1959 S.C. 198=1959 S.C.R. 1287+AIR 1956 Cal. 350 (DB)+AIR 1956 Nag. 200=ILR 1956 Nag. 840 (DB)+59 Cal. W.N. 1011+AIR 1954 Madh B 61=ILR 1953 Madh B. 143 (Execution of decree absolutely stayed pending decision of declaratory suit under O. 21, R. 63, Civil P.C.)+1950 Trav-Co. L.R. 81 (DB)+AIR 1948 All. 375=ILR 1949 All. 49 (DB)+AIR 1943 All. 291=ILR 1943 All. 569 (DB)+AIR 1947 All. 187=ILR 1946 All. 709 (DB).
3. AIR 1944 Nag. 155=ILR 1944 Nag. 250 (DB)+AIR 1953 Orissa 13=ILR 1952 Cut. 522 (DB). (A stay of execution granted in an appeal against an order passed in execution under will in law amounts not only to the stay of the particular execution case but to the stay of execution of the decree itself during the subsistence of the stay).
4. KLR 1984 CC 79=1984 CLC 190.
5. AIR 1941 Oudh 93=16 Luck 95=AIR 1959 Raj. 256=ILR (1958) 8 Raj. 1061 (DB) (Executive orders not covered).
6. AIR 1941 Pat. 499. (Compromise decree providing that it should not be executed till a certain other suit was decided--Provision operates as an order staying execution)+AIR 1939 Bom. 1=ILR 1939 Bom. 173 (DB).
7. AIR 1964 Andhra Pradesh 13 (DB)+AIR 1959 S.C. 198.

order staying delivery of possession to the Court-auction-purchaser of the property purchased by him does not amount to an injunction, preventing the institution of a suit for mense profits against the person in wrongful possession of the property.[8] The acceptance of decree by the Court as a security for costs does not amount to an order staying the execution of such decree.[9] An order of a Court for taxation of a solicitor's costs against his client is no bar to the institution of a suit by the solicitor against the client for his costs.[10]

No stay order or injunction. No exemption can be claimed under this section where there is no order to prevent a party from instituting a suit or applying for execution nor for a Court from entertaining such suit or application.[11] Where *L*, a holder of half share in a decree for money, transferred his share to S. A suit was filed by *M* the other decree-holder, against *L* and *S*, for specific performance of an alleged contract of sale in favour of *M* of the half share of *L*. The suit was decreed on 20-1-30. *M* realized the whole amount on 21-7-32. The decree for specific performance was reversed on 2-10-35 and *S* was declared purchaser of half share of *L*. A suit was brought by *S* against *M* for half of the decretal amount realized by *M*. It was held that S. 15 was inapplicable but the suit was held to be not barred by virtue of the general principles of suspension of limitation or right of action.[12]

As a general rule the mere appointment of a receiver to take charge of property in dispute will not suspend the operation of the statute of limitation. Each case, however, is to be decided on the terms or intention of the order. If expressly or implicitly the order operates as stay of execution then the party will get the benefit of exclusion of time during which the proceedings are so suspended by virtue of section 15 of the Limitation Act.[13] For the same reason this section could not reasonably be relied on to exclude the period from the date of delivery of judgment to the date of actual signing of the decree in computing the period of limitation for execution of decree.[14] Where the plaintiff obtained a decree against defendant No. 1 and defendant No. 2. The plaintiff filed execution application but the execution proceedings proved infructuous because the first defendant was adjudicated an insolvent on February 27, 1945. On September 9, 1946 a composition of the debts due from the insolvent and his son the second defendant,

8. AIR 1933 Lah. 615.
9. AIR 1917 Pat. 132=3 Pat. L. Jour 132 (DB).
10. ('08) 35 Cal. 171 (DB).
11. AIR 1940 Lah. 75+AIR 1956 Nag. 200=ILR 1956 Nag. 840 (DB)+AIR 1954 All. 88 (DB)+AIR 1954 Trav-Co. 383=ILR 1954 Trav-Co. 924 (Suit by auction-purchaser or his successor in title for possession of property purchased--Time during which further execution of decree in execution of which property was purchased, was stayed cannot be excluded under S. 15)+ILR 1953 Trav-Co. 396 (FB)+AIR 1944 Pesh. 17 (DB)+AIR 1944 Mad. 67=ILR 1954 Mad. 410 (DB)+AIR 1939 Bom. 1=ILR 1939 Bom. 173 (DB)+AIR 1938 Nag. 531=ILR 1940 Nag. 334 (DB)+AIR 1933 Mad. 418=56 Mad. 490 (FB)+AIR 1924 Bom. 39 (DB)+AIR 1919 Oudh 85.
12. AIR 1947 All. 256=ILR 1946 All. 633 (DB)+AIR 1956 Nag. 200=ILR 1956 Nag. 840 (DB). (Where the execution of a decree was stayed by the High Court and further the Revenue Court ruled that the decree was barred by time and could not be executed, the decree-holder is entitled to the exclusion of the period during which the decree was stayed and of the time during which the order of the revenue Court was in force to remove the bar of S. 48, Civil P.C.).
13. AIR 1964 Orissa 215 (DB).
14. AIR 1961 Madhya Pradesh 223.

was arrived at. To the deed of composition the second defendant was also a party though he was not adjudicated an insolvent. Under the composition arrangement, the entire property of the defendant was to vest in four trustees. The deed provided for the payment of the reduced amount by the trustees to different creditors from the income of the properties or by sale or mortgage of those properties within four years from April 14, 1947. The composition scheme was accepted by the Insolvency Court and the adjudication of the first defendant as insolvent was annulled by the Court on December 19, 1946. The last execution application was dismissed on 19-9-1946. The fresh execution petition was filed on 13-6-52. It was held that S. 15 (1) was restricted in its application to a case where the execution of a decree had been stayed by an injunction of an order. By no stretch of imagination could it be said that the acceptance by the insolvency court of the composition operated as a stay of execution of the decree for the period of four years referred to in the deed or as an injunction. Further, the second defendant was not a party to the insolvency proceedings and could, therefore, not have been entitled to the benefit of the order of the court accepting the scheme of composition. Suspension of limitation in the circumstances obtaining in the case was neither explicit nor implicit in S. 15. Hence the execution petition was barred by time.[15]

Section 48, C.P.C. and this section. Section 15 of the Act controls S. 48 of the Civil P.C. so that the period during which a stay or injunction is continued can be excluded in computing the period of twelve years.[16]

Right of execution taken away by State. It would be sufficient for the applicability of S. 15 (1) if as a result of some action, proceedings get stayed without a specific order in that behalf.[17] Where a rent decree was obtained on 16-7-1954 but the State acquired all rent-receiving interests on 14-4-1956, and thus the right to execute the decree ceased to exist. But the right revived on 15-8-1957 when the State released the rights. The decree-holder thereupon sought to execute the decree but it was contended that the decree had become time-barred. It was held that before 15th August, 1947, the decree-holder had no right to file an execution proceeding in view of the provisions of section 3, sub-section (4), clause (*c*) of the East Bengal State Acquisition and Tenancy Act. So necessarily, the period from 14th April, 1956 to 15th August, 1957, must be excluded in computing the period of limitation.[18]

4. Stay by agreement of parties. Limitation cannot be extended by agreement of parties.[19] The words "stay by injunction or order" cannot apply to a disability to sue or to apply arising from the existence of an agreement between the parties that the suit or execution should not be instituted or proceeded with.[20] But where parties consented to a stay or proceedings and the Court passed an order on consent, grant or stay of the order is covered by this section.[1]

15. AIR 1961 Supreme Court 227 (AIR 1944 Lah. 190 (FB) *overruled*).
16. NLR 1990 Civ. 196+AIR 1964 Pat. 311+AIR 1959 Madh Pra 269+AIR 1957 Trav-Co. 215+AIR 1961 Raj. 271.
17. AIR 1961 Madhya Pradesh 223.
18. PLD 1964 Dacca 572.
19. AIR 1917 Pat. 132=3 Pat. L. Jour 132 (DB).
20. AIR 1927 Mad. 347+AIR 1915 All. 231 (DB)+AIR 1917 Mad. 892=40 Mad. 701 (DB).
1. AIR 1926 All. 473 (DB).

5. Effect of insolvency. Where the insolvency Court actually passes an order amounting to an injunction or stay, the section will apply.[2] The mere fact that the Court has the power to modify such an order does not make it any the less an order staying the execution of a decree.[3] The pendency of insolvency proceedings against a person though it prevents any suit or application from being filed against him, yet will not operate as a stay within the meaning of this section.[4] Even the insolvency of *A* does not operate as a bar to a proceeding against *A* personally in the absence of a protection order.[5] But where leave is refused by the Court to the creditor to proceed against the insolvent, it can be said that there is an injunction or stay order.[6]

The insolvency of *A* does not operate as a bar to proceeding against B.[7] Where there was a decree against father and sons binding sons' interest in joint family properties, insolvency of the father is no bar to execution of the decree against the sons and their interest.[8]

Insolvent's assets vested in official receiver. An order passed under S. 37, Provincial Insolvency Act, vesting insolvent's assets in the Official Receiver does not preclude a decree-holder from applying for execution of his decree. An order of adjudication does not also effect absolute stay within S. 15, Limitation Act.[9]

6. Partial stay of execution. One view which is supported by a Lahore decision is that the section contemplates an absolute stay of execution which renders the decree-holder incapable of taking out any execution of the decree.[10] But subsequently there has been a shift on thinking on the point and it has been held that a partial stay of execution of decree enables the decree-holder to claim the benefit conferred under S. 15 by excluding the time during the injunction was in force.[11]

A stay of execution in one particular mode is not a stay of execution within the meaning of this section, if it is open to the decree-holder to execute his decree in any other mode.[12] It has been held that an injunction restraining a decree-

2. AIR 1919 Lah. 171 + 1912 Pun. L. R. No. 155, p. 474.
3. AIR 1955 Mad. 547. (Hence it cannot be held that as it was open to the decree-holder to have applied to have the order of stay under S. 29, Provincial Insolvency Act modified or vacated it is not such an order of absolute stay as is contemplated by S. 15).
4. AIR 1929 Mad. 715.
5. AIR 1918 Pat. 505 (DB).
6. AIR 1941 Nag. 60 + AIR 1923 Bom. 33 = 47 Bom. 244 (DB).
7. AIR 1938 Pat. 395 + AIR 1931 Lah. 125.
8. AIR 1947 Mad. 271 (DB).
9. AIR 1947 Mad. 238 = ILR 1947 Mad. 661 (DB).
10. AIR 1940 Lah. 75 + AIR 1955 Andh 229 = ILR 1955 Andh 473 (DB). (*Held*, in the circumstances of the case that an order made under O. 21. R. 53. Civil P.C. by the attaching Court, was not a stay order contemplated by S. 15) + Madh B.L.J. 1955 HCR 127 + ILR 1955 Patiala 176 + AIR 1929 Pat. 597 (DB) + AIR 1944 Bom. 303 (DB) + AIR 1924 Bom. 383 = 48 Bom. 485 (DB) + ('89) 17 Cal. 268 (DB).
11. AIR 1964 Kerala 134 + AIR 1965 Kerala 236 + AIR 1958 Cal. 1 (DB) + AIR 1914 Bom. 211 = 38 Bom. 153 (DB) + AIR 1918 Upp Bur 4 = 3 Upp Bur Rul 73 + AIR 1921 Cal. 606 (DB).
12. AIR 1933 P.C. 52 = 12 Pat. 195 = 60 Ind App. 43 + AIR 1959 Punj. 613 + ILR 1955 Patiala 176 (*But see* AIR 1965 Ker. 236 and AIR 1964 Ker. 134).

holder from executing the decree for the principal does not necessarily debar him from realizing the interest.[13]

Stay to determine questions raised in petition. An order staying an execution sale pending disposal of questions raised in pending execution petition is not a stay of the execution proceedings within the meaning of this section.[14]

Stay against one judgment-debtor. An order for stay of execution against one judgment-debtor alone does not operate as a stay against other judgment-debtors.[15] But where in the order of stay there is no restriction as regards a particular judgment-debtor or a particular property, the whole decree is stayed.[16]

7. Order granting time to judgment-debtor to pay debt. An order granting time to a judgment-debtor to pay the debt operates as a stay of execution.[17] But where on the request of the parties the execution proceeding was consigned to the record room and no order granting stay or giving time was made; it was held that there was no stay order.[18]

8. Institution of collateral suit or proceedings. Pendency of another suit does not operate as a stay order or injunction.[19] Thus where *A* has obtained a decree against *B*, the institution of a collateral suit or proceeding by *B* or some other person in respect of the decree or the subject-matter thereof will not operate as a stay of execution of the decree within the meaning of this section.[20] Where an attachment in execution was raised on an objection by a third party, the period of claim suit by the decree-holder cannot be deducted.[1] Where on the dismissal of an execution application the decree-holder filed a suit under O. 21, R. 63, Civil P.C.; the period of suit cannot be excluded for a fresh execution application.[2] Where in an administration suit a preliminary decree was passed and a receiver was appointed. The suit was dismissed on appeal. The decree-holder defendant could not deduct the period between date of suit and its dismissal in calculating limitation for execution of his decree.[3] Where a maintenance decree was sought to be varied by suit; the period of suit for variation could not be excluded as it was not a legal impediment in the way of execution.[4] Where after conclusion of a partition suit between the parties the plaintiffs sued for mense profits (of the land falling to his share) for a period over 12 years. The final partition decree was passed on 13-3-1943, and the suit was instituted on 1-10-1956. During this period the plaintiffs were prevented by injunction and stay order issued in another suit from executing their decree for partition from 14-3-1944 to 29-5-1956, and so they claimed to exclude this period relying on section 15,

13. AIR 1927 Mad. 927 (DB).
14. AIR 1920 Pat. 570 (DB).
15. AIR 1940 Pat. 149 (DB) + AIR 1928 Mad. 627 = 51 Mad. 583 (DB) + AIR 1931 Lah. 125.
16. AIR 1944 Nag. 155 = ILR 1944 Nag. 250 (DB).
17. AIR 1929 Pat. 36 = 7 Pat. 829 (DB) + AIR 1947 Nag. 101 = ILR 1947 Nag. 25 (DB).
18. AIR 1927 Lah. 106.
19. AIR 1924 Cal. 1059 (DB).
20. AIR 1933 Mad. 418 = 56 Mad. 490 (FB) + AIR 1919 Oudh 85 + AIR 1916 Pat. 367 (DB) + AIR 1924 Bom. 39 (DB).
1. AIR 1938 Nag. 534 = ILR 1940 Nag. 334 (DB).
2. AIR 1947 Sind 48 = ILR 1946 Kar. 412.
3. AIR 1944 Mad. 67 = ILR 1944 Mad. 410 (DB).
4. AIR 1946 Mad. 67.

Limitation Act, 1908, saying that they were not in a position to bring a suit for meane profits. It was held that after the passing of the final decree in the partition suit on 13-3-1943, the cause of action for compensation accrued to the plaintiffs from day to day. The plaintiffs were, therefore, required to bring a suit within the period of limitation prescribed by Article 109 of the Second Schedule of the Limitation Act, unless they were entitled to the benefit of section 15 of that Act. As the injunction did not debar decree-holder from suing for mense profits, the section did not apply to exclude any period.[5]

Subsequent inconsistent decree. The section does not contemplate the case of one decree being rendered impossible of execution by a subsequent decree inconsistent therewith passed in another suit.[6]

Temporary injunction. Where *A* obtained a mortgage decree and purchased property in execution. A suit was brought by *B* challenging the mortgage and the decree based on it. A temporary injunction restraining *A* from interfering with *B*'s possession was granted in appeal by *B*. *B*'s suit was ultimately dismissed. It was held that S. 15 is not applicable as the order was merely made to avoid any inconvenence that might arise by permitting execution to proceed while the appeal was pending.[7]

Claim petition under O. 21, R. 58, C.P.C. The pendency of a claim petition filed under O. 21, R. 58, Civil P.C., by a third party claimant operates as a stay of execution inasmuch as the execution of the decree cannot be proceeded with, without first deciding the 'claim' petition.[8]

9. Attachment, if amounts to an injunction or stay order. Where an order of attachment actually prohibits execution by anybody, this section will apply.[9] Thus this section will apply to an order of attachment accompanied by a stay order.[10]

Attachment of book debt. An attachment of a book-debt or of a bond does not operate as an injunction or a stay.[11]

Attachment of decree. Where a decree of one Court is attached by another Court under Order 21, Rule 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.[12]

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5. PLD 1969 Dacca 120 = 12 DLR 97 (DB).
6. AIR 1939 All 82 = ILR 1939 All. 207 (DB) + AIR 1939 Bom. 1 = ILR 1939 Bom. 173 (DB).
7. AIR 1949 Mad. 279.
8. AIR 1955 Mad. 67 (DB).
9. AIR 1924 Mad. 673 = 47 Mad. 641 (DB).
10. AIR 1923 Cal. 310 (DB).
11. ('95) 17 All 198 = 22 Ind. App. 31 (P.C.) + AIR 1919 Mad. 317 = 42 Mad. 637 (DB) + AIR 1918 Cal. 631 (DB).
12. PLD 1952 Dacca 297 = PLR 1951 Dacca 649 = 3 DLR 254 + AIR 1964 A.P. 439 + AIR 1961 Mad. 299 + AIR 1924 Mad. 673 = 47 Mad. 641 (DB) + AIR 1955 Andh 229 = ILR 1955 Andh 473 (DB) + AIR 1924 Bom. 383 = 48 Bom. 485 (DB).

Attachment before judgment. An attachment before judgment issued by a Court at the instance of a third party, prohibiting the judgment-creditor from recovering and the judgment-debtor from paying the debt, is not an order falling within the purview of S. 15.[13]

10. Execution only on condition, order of. Order to execute a decree on a condition operates as a stay order.[14]

11. Adjournment of execution application. The adjournment of hearing of an application for execution cannot operate as a stay of execution or as an injunction.[15]

12. "The day ..... withdrawn." Where stay is ordered, subject to deposit of security and the security is tendered and accepted, the stay will be deemed to operate from the date of order and not from the date of tender and acceptance of security.[16]

13. Duration of stay in case of appeal. A stay granted by the Court operates only for the duration of the proceedings. Therefore where stay is granted by a trial Court, it terminates with the dismissal of the suit or proceeding and does not continue during the pendency of the appeal against the judgment.[17] Where the Court of first appeal granted an injunction, but the suit itself was dismissed in the first appeal for misjoinder. On second appeal the decision of the first appellate Court was set aside and the case was remanded for disposal on merits. It was held that the order of remand by the High Court was not tantamount to issue of an injunction.[18] But where in consequence of a remand the decree of the first Court itself was restored, it was not unreasonable to hold that the stay or injunction revived, if the form of the first Court's decree operated as a stay of execution.[19]

Where an appellate Court has granted a stay of execution of the decree appealed against but the appeal abates, the time from the date of the stay order to the date of abatement may be excluded from the period of limitation for execution of the decree.[20]

14. Revival of execution application. The section has not got the effect of destroying the equitable theory of revival of pending application uniformly

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13. AIR 1957 Trav-Co 40 = ILR 1956 Trav-Co. 727 (DB). (AIR 1918 Cal. 631 and AIR 1919 Mad. 317 and 17 All. 198 (P.C.) *Rel on*).
14. AIR 1920 Pat. 354 (DB). (Application for stay pending Privy Council appeal--Execution directed to proceed on decree-holder's furnishing security--On failure execution dismissed--More than three years after first execution application, fresh execution filed--*Held* that period spent in Privy Council appeal must be deducted) + AIR 1921 All. 174 (DB) + AIR 1918 Cal. 143 (DB). (Final decree in mortgage set aside in appeal against some of the defendants--Cases ordered to be retried--Court striking off execution application against other defendants until case finally settled liability of other defendants--*Held* that the order operated as a stay of execution).
15. AIR 1917 Cal. 444 (DB) + AIR 1921 Bom. 33.
16. AIR 1927 Mad. 391.
17. AIR 1921 All 99 = 43 All. 383 (DB) + AIR 1924 Mad. 178 (DB) + AIR 1916 Pat. 89 (DB) + AIR 1920 All. 174 = 42 All. 564 (DB) + AIR 1928 Cal. 222 = 35 Cal. 512 (DB).
18. AIR 1915 Mad. 756 (DB).
19. ('03) 26 All. 140 (DB).
20. 1981 CLC 98 = PLJ 1981 Lah. 610.

recognized by Courts.[1] Therefore where execution of a decree has been suspended through no act or default of the decree-holder, the latter has a right to ask the Court to revive and carry through the execution proceedings which have been thus suspended.[2]

15. Sub-section (2). The language of sub-section (2) of section 15 appears to be general in character and is apparently applicable to all suits; in which a notice, required by law, had to be given, prior to the institution of the suit.[3] But the sub-section will apply only where the enactment requires that notice should be given of the suit before such a suit is commenced.[4] Thus the period of statutory notice of two months under S. 98 (1) of the Punjab Town Improvement Act, 1922, must be excluded in calculating the period of limitation.[5] Similarly in case of a suit under the Carriage of Goods Act for short delivery or damage to goods, the period of statutory notice should be excluded.[6]

The period of notice must not be excluded where the notice is not a statutory requirement for con.mencement of the suit. As section 77 of the Railways Act by its terms does not impose a bar against the Court entertaining a suit in the absence of a notice contemplated by it. It merely disentitles the plaintiff to the relief which he claims. Therefore the period of 15 days allowed to the railway under S. 77 Railways Act, cannot be excluded in computing the period of limitation for a suit against the railway for damages for loss or injury to goods.[7]

Sub-section (2) has no application where notice is not a notice of suit but is only intended as an information of the claim to the defendant.[8] A notice determining a tenancy is not notice of the suit and sub-section (2) has no application to it.[9]

Notice under S. 80, C.P.C. Prior to the amendment of C.P.C. in 1962 a notice under C.P.C. S. 80 was necessary for institution of suits against Government and therefore under the law as it then stood in Pakistan in case of a notice under S. 80, C.P.C. the entire period including the date on which the notice was served and the

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1. AIR 1927 All. 16=49 All. 276 (FB). (Right of revival is different and distinct from permitting exclusion of time)+1954 Ker. L. T. 905+AIR 1936 Cal. 239=63 Cal. 57 (DB).
2. ('05) 27 All. 334=32 Ind. App. 102 (P.C.)+AIR 1935 Lah. 911 (DB)+AIR 1937 Oudh 158=12 Luck. 743 (DB).
3. PLD 1967 Supreme Court 68=19 DLR S.C. 177.
4. AIR 1939 All. 277=ILR 1939 All. 392+AIR 1960 Cal. 400 (DB)+ILR 1937 Madh Pra 262+AIR 1953 Nag. 10=ILR 1953 Nag. 123 (DB). (Notice under S. 80, Civil P.C. to Railway Administration)+52 Cal. W.N. 494 (DB)+AIR 1932 Bom. 259=56 Bom. 135 (DB)+AIR 1914 Cal. 396=60 Cal. 898 (SB)+AIR 1917 Lah. 212=1917 Pun Re No. 52 (DB)+AIR 1919 Oudh 26=22 Oudh Cas 342+AIR 1922 Pat. 549+AIR 1933 Sind 240+AIR 1925 Mad. 1134=48 Mad. 586 (DB)+AIR 1924 Bom. 364 (DB). (Notice required at the time of giving it--Subsequently notice becoming unnecessary--Still sub-section (2) *applies*).
5. PLD 1971 S.C. 460.
6. PLD 1967 S.C. 68=19 DLR S.C. 177.
7. AIR 1959 Pat. 252 (DB). (AIR 1922 Pat. 549, held *overruled*).
8. AIR 1938 Mad. 612 (DB)+AIR 1954 Trav-Co. 362=ILR 1954 Trav-Co. 298 (DB). (Notice under S. 77. Railways Act--*Obiter*)+AIR 1953 Nag. 10=ILR 1953 Nag. 123 (DB)+AIR 1931 All. 752 (DB).
9. AIR 1937 Cal. 656=ILR (1937) 1 Cal. 499.

date of its expiry was to be excluded for the purposes of limitation.[10] But subsequent to the amendment of 1962, it cannot be disputed that entertainment of a suit in which the Government or a public officer is a defendant is not now dependent on two months' notice. Institution of such suit without the notice contemplated in sub-section (1) of the new section 80, in view of its sub-section (2), results only in certain circumstances in causing some disadvantage to the plaintiff, namely, in disentitlement to costs in the event of the suit succeeding. Sub-section (2) of section 15 of the Limitation Act, which allows exclusion of the period of notice from the period of limitation prescribed for a suit for which a notice has been given in accordance with the requirements of any enactment" can only mean a notice in the absence of of which the suit cannot be instituted. Therefore the period of notice under S. 80 cannot now be excluded under this section.[11]

Notice by successors-in-interest. Where on the death of a person, who has served statutory notice, his successors-in-interest take his place and they serve notice again before filing a suit, there is some confusion as to the application of this section to the notice served by their predecessor-in-interest. It has been suggested that either it should be made clear in the relevant enactment 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 the 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.[12]

16. Notice required in case of only one or some only of the defendants. Where notice is required in respect of some of several defendants only and it is necessary or even permissible for a plaintiff to bring a suit claiming relief against all the defendants jointly, the period of notice should be excluded for the whole suit and not merely so far as the defendants to whom notice was given are concerned.[13]

Unnecessary parties. Where a party to whom notice is given is not a necessary party and has been impleaded unnecessarily time taken in giving such notice cannot be excluded in a suit against the other parties.[14] But where the party to whom notice was given is excluded after contest and it cannot be said that the party was unnecessarily impleaded this section would apply and the period of notice can be excluded.[15]

17. Adverse possession. Title by adverse possession is perfected after twelve years excluding the period of notice.[16]

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10. PLD 1967 S.C. 68 = 19 DLR S.C. 177 + PLD 1956 Lah. 886 = PLD 1956 Lah. 2197 = 8 DLR (W.P.) Lah. 86 + PLD 1962 Dacca 31 = PLR 1961 Dacca 1326 = 13 DLR 186 (DB) + PLD 1962 Kar. 151 (DB) + AIR 1961 Punj. 150 (DB).
11. 1970 DLC 462 = 22 DLR 457 (DB).
12. PLD 1955 Lah. 303.
13. AIR 1930 All. 742 = 53 All. 44 (DB) + AIR 1924 Bom. 364 + AIR 1928 Lah. 349 = 9 Lah. 51[illegible] (DB) + AIR 1922 Pat. 549 (DB) + AIR 1937 Sind 281 = 32 Sind L.R. 106 (DB).
14. AIR 1919 Oudh 26 = 22 Oudh Cas. 342 + AIR 1963 HP 37 + AIR 1955 Punjab. 117.
15. AIR 1955 Nag. 265 = ILR 1955 Nag. 872 (DB).
16. AIR 1928 All 625.

18. Enactment for the time being in force. The enactment referred to must be in force in the place in which the suit is brought.[17]

19. 'Res judicata.' A decision between the same parties in a prior execution application as to the applicability of this section is binding on them.[18]

16. *Exclusion of time during which proceedings to set aside execution sale are pending.* In computing the period of limitation prescribed for a suit 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.

Synopsis

1. Scope. The section applies only to a suit for possession and not to suits filed after possession has been obtained by the auction-purchaser. Thus a person who has purchased at a sale in execution of a decree and has obtained symbolical possession and sues for actual possession, cannot be said to be suing as a purchaser at a sale in execution of a decree within the meaning of this section.[19] Similarly where a holding was sold for arrears of rent against the recorded tenant and purchased by one *R* on 8th April, 1937, in the execution case. *R* obtained delivery of possession of the holding by process of the executing court on the 3rd September, 1937 and thereafter settled the holding with *A*. *A* obtained possession of the land but was subsequently dispossessed by the judgment-debtors. Thereafter *A* filed the abovementioned suits for recovery of possession of the land. The suit was decreed on the 11th April, 1946, and the decree was affirmed on appeal on the 16th November, 1946. In the meanwhile certain other persons who claimed to be the mortgagees to a portion of the holding, made an application under Order 21, R. 90, Code of Civil Procedure, for setting aside the sale held on the 8th April, 1937. The application was allowed *ex parte* and the sale was set aside on the 12the April, 1947. The decree-holders, *i.e.*, *A*, then instituted another suit alleging that they were not bound by the *ex parte* order passed in the execution case and the order of the executing court setting aside the sale was erroneous. This suit was finally decreed by the High Court on 4-1-1957. On 14-2-1958 *A* filed an application for execution of the decree obtained by them on 16-11-1946. It was held that the suit was time-barred. Limitation started to run from 16-11-1946. It was not permissible in law for *A* to deduct the period from 12-4-1947 to 4-1-1957 for computing the period of limitation applicable under Art. 182.[20]

Suit by auction-purchaser. The word "proceeding" refers only to a proceeding to set aside the sale and the period during which the auction-purchaser has been unsuccessfully prosecuting a claim based on the sale cannot be excluded in a suit by him for possession.[1]

17. AIR 1937 Lah. 41 = ILR 1937 Lah. 11 (DB).
18. AIR 1932 Oudh 246 (DB).
19. AIR 1921 Cal. 385 (DB) + AIR 1950 Assam 50 = ILR (1949) 1 Assam. 33 (DB) + AIR 1946 Pat. 202 = 24 Pat. 717.
20. AIR 1964 Pat. 347 (DB).
1. 1864 Suth W.R. (Gap.) 130 (DB).

Time spent in appeal in suit to set aside sale. Where the judgment-debtor filed an application to set aside the sale and, on the application being dismissed, filed a suit to set aside the decree and the sale, and the suit was finally dismissed by the Privy Council, the entire time taken in respect of such proceedings was excluded.[2]

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.

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

Synopsis

1. Scope.
2. Date of accrual of cause of action.
3. Who can benefit from section.
4. Capacity of legal representative.

1. Scope. The section is based on the general principle that unless there is a completed cause of action, limitation cannot run and that unless, *inter alia*, there is a person who can sue and a person who can be sued, there cannot be a complete cause of action.[3]

2. Date of accrual of cause of action. The section only applies where the person to whose estate the cause of action relates dies before the accrual of the cause of action.[4] The section does not apply to cases where the cause of action is also the cause of death of the person in whose favour or against whom the suit is to be filed.[5] But the section applies even to cases where a cause of action which exists in favour of or against the estate of a deceased person, has been the result of the death of such person.[6]

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2. AIR 1917 Cal. 802 (DB).
3. AIR 1938 Mad. 353=ILR 1938 Mad. 586 (FB)+AIR 1916 P.C. 202=43 Ind. App. 113+AIR 1919 Mad. 972=40 Mad. 1040 (FB)+AIR 1949 Cal. 199=ILR (1949) 2 Cal. 263 (DB).
4. AIR 1923 Rang. 98+AIR 1918 Mad. 526 (DB).
5. AIR 1941 Mad. 449 (FB).
6. 7 Cal. 627 (Agency)+20 Bom 15 (DB)+9 Cal. W.N. 537+AIR 1916 P.C. 202.

Where at the time of the death of *X* there is a person capable of suing on behalf of the estate and cause of action arises subsequently in favour of the estate, limitation runs not from the death of *X* but from the time when the cause of action accrues.[7]

3. Who can benefit from section. Section 17 can be invoked only by the actual person disabled and not by his assignee. It is a purely personal exemption which will not apply to the assignee.[8]

4. Capacity of legal representative. In order that limitation may begin to run under the section, the mere existence of a legal representative of the deceased is not enough. It is necessary that such legal representative should be capable of instituting a suit on that cause of action.[9]

Administrator. In cases where an administrator alone can sue or be sued on behalf of the estate, limitation does not begin to run before the grant of the letters of administration.[10] But in cases of Hindus, Muslims, Buddhists, Jains, Sikhs and Pakistani Christians a suit can be brought on behalf of or against the estate of a deceased person even before the grant of letters of administration even though there may be no executor and there will be no postponement of limitation under this section in such cases.[11]

Executor. In cases where there is an executor, he can sue or be sued on behalf of the estate even before obtaining probate of the will and there will be no postponement of limitation under this section.[12]

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,

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

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7. AIR 1936 P.C. 309 = ILR 1937 Mad. 94 = 63 Ind. App. 429 + ILR 1958 Ker. 169.
8. 1960-1 Mad. L. Jour 346.
9. AIR 1916 P.C. 202 = 43 Ind. App. 113.
10. AIR 1916 P.C. 202 = 43 Ind. App. 113.
11. AIR 1938 Mad. 157 = ILR 1938 Mad. 533 (DB + AIR 1937 Sind 318 (DB).
12. AIR 1916 P.C. 202 = 43 Ind. App. 113 + 17 Cal. 272 (DB) + AIR 1926 Mad. 434 = 49 Mad. 21 (FB).

the concealed document; when he first had the means of producing it or compelling its production.

Synopsis

1. Scope and applicability.
2. "Suit or application."
3. "Fraud--what is."
4. Plea of fraud.
5. Burden of proof.
6. Proceedings to set aside execution sale.
7. Starting point.
8. Against whom time can be extended.

1. Scope and applicability. Exemption from the bar of limitation on the ground of fraud cannot be claimed apart from statutory provisions.[13] The principle on which this section is based is that where a remedy is given on the ground of fraud, the right of the party defrauded is not affected by the lapse of time so long as he remains in ignorance of the fraud.[14] In his case time shall be computed from the date when plaintiff had knowledge of fraud.[15] Therefore a person who takes possession by fraud cannot claim ownership by adverse possession if the real owner can bring his case within limitation by application of this section.[16]

The mere fact that the cause of action is founded on fraud is not enough to bring the case within this section.[17]

Fraud subsequent to commencement of limitation. This section must be read with S.9. Therefore a fraud committed after limitation has begun to run cannot stop the running of limitation.[18]

Suits under S. 47, C.P.C.--applicability to. This section is not applicable to suits under Civil P.C., S.47.[19]

Local and special laws--applicability to. 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 provisions are applicable. Therefore, where a sale has been brought about by means of fraud proviso (*a*) to section 36 of the Bengal 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.[20]

Ex parte decree, setting aside of. Where in case of an *ex parte* decree the Court finds that summons were fraudulently suppressed, limitation will run only from the date when the fraud was detected. It is contrary to the essence of justice to saddle a person with knowledge of an *ex parte* decree.[1]

13. AIR 1951 S.C. 16 = 1950 SCR 852.
14. AIR 1922 Cal. 157 = 49 Cal. 886 (DB) + AIR 1925 Mad. 1255 = 48 Mad. 925 (DB).
15. NLR 1989 UC 189.
16. 1985 Dhaka LR. 131.
17. AIR 1929 Rang. 62 = 7 Rang. 104 (DB).
18. AIR 1921 Mad. 283 (DB) + (25) 48 Mad. L. Jour (N.I.C.) 31.
19. AIR 1914 Cal. 691 (DB).
20. PLD 1964 Dacca 756 = 16 DLR 285 = PLR 1964 Dacca 1051 (DB) + 9 DLR 57.
1. 1980 Dhaka LR. (SC) 167.

2. "Suit or application." The section applies only to suits or applications. Therefore the section does not apply to a complaint of a criminal offence,[2] or to an appeal.[3]

"Right to institute a sit." The right to sue cannot be equated with the suit itself. The right to sue must exist before the suit is instituted. A suit only determines the validity of a person's right or claim which existed before the institution of the suit. By such determination in the suit the right or claim of the plaintiff is held to be a valid right or claim. The suit or action is a mere procedure. Furthermore choice of the defendant or framing of he suit is a mere procedure for enforcing the plaintiff's right or claim. The right to sue the defendant must exist before the suit is instituted.[4]

The fraud contemplated by this section is not confined to fraud committed at the inception of the cause of action, but may include fraud committed even before that date.[5]

3. "Fraud--what is." To fall within the scope of this section, in the fraud played there must be some abuse of a confidential position, some intentional imposition, or some deliberate concealment of facts.[6]

A necessary element in fraud is deception or deceit.[7] It covers not only deceit but also circumvention.[8] An open act of a party cannot be said to be a fraudulent act of concealment and is not covered by this section.[9]

Active fraud necessary. The fraud contemplated by the section is an actual and active fraud in the means adopted to keep the person injured out of knowledge of his right.[10] In other words the fraud contemplated by section 18 for the purpose of extending the period allowed by law for the filing of a suit, connotes a deliberate contrivance on the part of the opposite party to supress the transaction or the cause of action from coming to the knowledge of the plaintiff within the prescribed period of limitation. It must be shown that there was deliberate concealment of facts directly intended to prevent discovery.[11] There must be something said or done which is directly intended to keep the plaintiff or

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2. ('96) 20 Bom. 543 (DB).
3. AIR 1964 A.P.314.
4. AIR 1959 Cal. 247.
5. AIR 1925 Pat. 521+AIR 1949 Cal. 212=ILR (1949) 2 Cal. 227+16 Cal. L.Jour 581 (DB)+16 Cal W.N. 894 (DB).
6. AIR 1933 Cal. 253 (DB)+AIR 1960 Orissa 75+AIR 1929 Pat. 228 (DB)+AIR 1926 Pat. 397 (DB)+('11) 11 Ind Cas 313 (DB)(Lah.)+('12) 16 Ind Cas 547 (DB)(Cal).
7. AIR 1929 Bom. 119=53 bom. 271 (DB)+AIR 1952 All 315 (Non-payment of Municipal taxes; not informing purchases of house; or failure to get names mutated held did not amount to fraud)+1902 Pun Re No. 86, p.352 (DB).
8. PLD 1967 S.C. 344=19 DLR (S.C.) 433.
9. (1900) 24 Bom 104 (DB)+('09) 4 Ind Cas 313 (Lah.)+('81) 3 Mad 384=8 Ind App 149 (P.C.)+AIR 1920 Mad. 295 (DB)+AIR 1915 Cal 738 (DB).
10. AIR 1931 Oudh 5=6 Luck. 374+AIR 1960 Orissa 75+AIR 1929 bom 119=53 Bom. 271 (DB)+AIR 1929 All 215 (DB)+1902 Pun Re No. 86, p. 352 (DB)+AIR 1923 Mad. 353 (DB).
11. 1976 SCMR 508=1974 Law Notes 571.

applicant from knowledge of his right to sue or to apply.[12] Mere inaction by the opposite-party, or its negligence to the certain steps which might have brought the transaction to the knowledge of the plaintiff, or mere ignorance on the part of the plaintiff that a certain cause of action had accrued to him, would not constitute fraud as contemplated by this section.[13] It is not enough that there should be merely a tortuous act unknown to the injured party or an enjoyment of property without title while the rightful owner is ignorant of his right.[14] The mere fact that a person was ignorant of his right,[15] or a failure to give information which party is bound to give under contract is not fraud.[16]

Concealment of facts. Concealment by a person in a fiduciary position may amount to active fraud.[17] Where a party is not under a duty to disclose facts to the other party a mere concealment of facts will not amount to fraud.[18] In pre-emption cases wilful omission to notify the fact of sale to the pre-emptor does not *per se* connote a fraud.[19] Where in a pre-emption suit the only fraud alleged by the petitioner was that in the revenue records the vendee continued to be described as a lessee and not as a vendee. It is common knowledge that once a sale has been registered, the duty lies upon the Registrar of documents to send the necessary intimation to the Collector of the district who is then responsible for incorporating the sale in the revenue records of the village concerned. If these processes were not carried out by the official functionaries, it could hardly be said that their omissions amounted to fraud on the part of the vendee.[20]

Pre-emption, concealment of sale by vendor. Concealment simpliciter of sale transaction from pre-emptor by getting it registered at a place other than the place where land is situated would constitute fraud and in such case pre-emptor would be entitled to benefit of S.18.[1]

Act of Court. Application of the doctrine of suspension of limitation will be justified only in cases where the Court by its own act or oversight, causes any injury or injustice to a 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.[2]

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12. AIR 1929 All 213 (DB) + AIR 1960 Orissa 75 + AIR 1951 Orissa 149 = IIR 1950 Cut. 405. (Fraud envisaged by S. 18 contemplates some definite act committed by the decree-holder) + AIR 1927 All 437 + 1902 Pun Re No. 16, p. 62 (DB).
13. 1976 SCMR 508 = 1974 Law Notes 571.
14. AIR 1927 All 437.
15. AIR 1925 Cal. 515 + AIR 1933 Cal. 253 (DB).
16. AIR 1929 Bom 119 = 53 Bom. 271 (DB) + AIR 1916 Low Bur 40 (DB) + AIR 1931 Oudh 5 = 6 Luck 374 + 1912 Pun L. R. No. 259, p. 815 = 1913 Pun Re No. 32 (DB).
17. AIR 1925 Cal. 584 = 52 Cal. 63 (DB) + (09) 4 Ind. Cas. 313 (Lah.) + AIR 1929 Bom. 119 = 53 Bom. 271 (DB).
18. PLD 1961 Lah. 1042 + AIR 1940 Lah. 262 (DB) + (04) 28 Mad. 168 (DB) + AIR 1929 All 213 (DB).
19. PLD 1961 Lahore 1042.
20. 1973 SCMR 206.
1. NLR 1989 AC 310.
2. 7 DLR 391.

Party kept out of knowledge of right, by fraud. There must not only have been fraud but the person injured by it must have been kept from knowledge of his right to institute a suit or make an application by means of such fraud.[3] Thus where *A* collected the debts due to a deceased person and actually concealed the said fact from *B* the heir. *B* was kept from knowledge of his right by such concealment, this section would apply.[4] Where *B* was entitled to a share of debt collected by a co-parcener before partition and that fact was kept back at the time of partition. It was held that *B* was kept from knowledge of his right by the fraud of the co-parcener.[5]

Where the person injured was, in spite of fraud aware of his right to seek relief, he cannot claim the benefit of this section.[6] Thus where a person knowing of his right to seek relief was prevented by fraud from exercising it, the section would not apply.[7] Where a decree-holder had knowledge that he had a right to apply for execution of a decree but he was prevented by judgment-debtor from knowing the existence of certain properties against which the decree could be enforced, the case would not fall within S.18.[8]

Party not realizing significance of fraud. Benefit of S.18 cannot be invoked by plaintiff who had knowledge but did not realise full significance of fraud.[9]

Fraud on Court. This section applied where the fraud alleged was that the judgment-debtor in collusion with the officials of the Court managed to have the file relating to one execution case annexed to the index form of another execution case after surreptitiously destroying the correct file of the latter case and the index form of the former case when the records of the latter case were summoned, and as a result of this fraud the execution application was held to be time-barred.[10]

4. Plea of fraud. Pleas of fraud must be raised at the earliest stage of the proceedings. Where a party had not raised a plea of fraud at any earlier stage, he was not allowed to do so at the stage of appeal before the Supreme Court.[11] Similarly where an application to set aside an execution sale was apparently barred by limitation and exemption under S.18 was not apparent from the pleading. The plea of exemption was raised in L.P. Appeal for the first time. The plea was not entertained.[12]

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3. 1979 CLC 663 + AIR 1914 Cal. 728 (DB) + ('57) 61 Cal. W. N. 468. (The fraud to be inferred from gross under-valuation is not by itself fraudulent concealment within the meaning of S. 18) + AIR 1953 Mys. 48 (DB) + AIR 1950 Mad. 460 + 1950 Nag. L.Jour 396 + AIR 1919 Cal 836 (DB) + 1882 Pun. Re. No. 3. p. 19 (DB) + AIR 1923 Pat. 435 + AIR 1933 Rang. 110 + AIR 1930 Pat 153 + AIR 1917 All 8 (DB).
4. AIR 1921 All 155 = 43 All 440 (DB).
5. ('13) 25 Mad. L. Jour 531 (DB).
6. AIR 1914 Cal. 728 (DB) + 12 Mad 168 (FB) + 1950 Nag. L. Jour 396.
7. ('12) 16 Cal. L. Jour 174 (DB) + AIR 1951 S.C. 16 = 1950 SCR 852 + AIR 1915 Cal. 73 (DB) + AIR 1919 Upp Bur. 26 = 3 Upp Bur. Rul. 169 + AIR 1923 Rang. 103 = 11 Low Bur. Rul. 363 (DB). (AIR 1922 Low Bur 31. *Reversed* on appeal) + AIR 1925 Nag. 374 = AIR 1918 All 336 (DB).
8. AIR 1951 S.C. 16 = 1950 SCR 852.
9. NLR 1989 UC 189 (DB).
10. PLD 1967 Supreme Court 344 = 19 DLR (S.C.) 433.
11. PLD 1971 S.C. 8 = 23 DLR S.C. 81.
12. AIR 1947 Mad. 268 = ILR 1947 Mad. 721 (DB).

Particulars of fraud must be stated. A person seeking to avoid the statute of limitation on the ground of fraud must specifically state the particulars thereof.[13]

Only fraud alleged may be proved. Where one kind of fraud is alleged, another kind of fraud cannot, upon failure of the proof of the fraud alleged, be substituted for it.[14]

5. Burden of proof. The initial burden is upon the plaintiff to establish fraud and that by means of such fraud he was kept from knowledge of his right to seek relief.[15] Where an application is made to set aside an *ex parte* decree, the applicant will have to prove that there was fraud which prevented him from getting any knowledge of the *ex parte* decree.[16]

Once fraud is established, the burden will be shifted to the person who has committed the fraud to show that the person affected thereby had knowledge of the transaction beyond the period of limitation.[17] In other words it is for the party guilty of fraud to show that the continuing effect of the fraud had been removed a. a time too remote to allow a suit to be brought.[18]

Proof of fraud. Fraud cannot be presumed until the person relying upon it establishes his case.[19] Allegations of fraud must be substantially proved though every puzzling artifice or contrivance resorted to by the opposite party need not be unravelled.[20]

The judgment-debtor who brings a case under this section must not only prove fraud on the part of some one, but he must also 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.[1]

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13. 1976 SCMR 508 + AIR 1934 P.C. 208 + AIR 1915 P.C. 7 = 39 Bom. 441. (General allegations insufficient) + AIR 1960 Orissa 75 + AIR 1959 Cal. 247 (General allegations insufficient) + AIR 1957 Trav-Co. 153 (DB) + AIR 1950 Mad. 801 (DB).
14. ('87) 11 Bom. 620 = 14 Ind. App. 111 (P.C.) + AIR 1956 Pepsu 17 = IIR 1955 Patiala 494 + AIR 1955 Assam 177 = ILR (1955) 7 Assam 53 (DB) + AIR 1952 Mys. 151 (DB) + AIR 1951 Orissa 149 = ILR 1950 Cut. 405 + AIR 1929 Bom. 1 = 53 Bom. 75 (DB) + ('10) 37 Cal. 856 (DB).
15. PLD 1961 Dacca 703 + 6 DLR 89 + AIR 1939 Cal. 663 = ILR (1939) 2 Cal. 163 + ('57) 23 Cut. L.T. 178 + AIR 1952 Mys. 47 = ILR 1952 Mys. 151 (DB) + AIR 1951 Orissa 149 = ILR 1950 Cut. 405 + AIR 1938 Lah. 577 (DB) + AIR 1922 Cal. 157 = 49 Cal. 886 (DB) + AIR 1924 Nag. 94 = 20 Nag. L.R. 23 + AIR 1929 Rang 62 = 7 Rang 104 (DB) + AIR 1920 Pat. 725 + AIR 1944 Pat. 40 + AIR 1934 Lah 878 = 16 Lah. 408 (DB) + ('13) 20 Ind. Cas. 538 (Oudh) + AIR 1920 Lah 261 + AIR 1926 Lah 128.
16. 3 DLR 46.
17. PLD 1961 Dacca 703 + 6 DLR 89 + ILR (1937) 2 Cal. 496 + AIR 1943 Pat. 377 + ('93) 17 Bom. 341 = 20 Ind. App. 1 (P.C.) + AIR 1922 Cal. 157 = 49 Cal. 886 (DB) + AIR 1934 Lah. 878 = 16 Lah. 408 (DB) + AIR 1924 Nag. 94 = 20 Nag. L.R. 23.
18. PLD 1970 Dacca 37 + AIR 1949 Cal 307 (DB) + AIR 1956 Pepsu 17 = ILR 1955 Patiala 494.
19. 21 Cal. 612 (DB).
20. AIR 1923 P.C. 73.
1. 3 DLR 97.

Suspicion does not prove fraud. Court must not be too ready to presume fraud from suspicious circumstances.[2] But a number of suspicious circumstances may, when combined, lead to the inference of fraud.[3]

6. Proceedings to set aside execution sale. Where owing to the fraudulent concealment of the proceedings by the decree-holder all knowledge of the proceedings up to the time of sale is withheld from the judgment-debtor, then so long as he does not come to know of the sale, the effect of the fraud continues, and the only conclusion to which he Court can come is that he had been kept from the knowledge of the sale in consequence of the initial fraud practised by the decree-holder. It is only after he becomes aware of the sale that he comes to know of his right to apply. The case, therefore, comes within S. 18, Limitation Act and limitation to set aside the sale under Art. 165, Limitation Act, starts only from the date of such knowledge on the part of the judgment-debtor.[4] If knowledge of proceedings upto sale is withheld from judgment-debtor through fraudulent concealment by decree-holder, the judgment-debtor can apply for setting aside execution sale within the period prescribed reckoned from the date when he becomes aware of the sale.[5] Even the fact that the sale has been confirmed in ignorance of the fraud is no bar to the maintainability of the application.[6] Where a decree was obtained by fraud and the plaintiff was not aware of *ex parte* decree and auction sale, benefit of S.18 should be given to the plaintiff.[7]

Void sale. If an execution sale is merely voidable then an application by the judgment-debtor even under section 47 of the Civil Procedure Code has to be filed under Art. 166 of the Limitation Act within 30 days from the date of the sale. By alleging fraud of the decree-holder which might have kept him out of knowledge of the sale, he may take advantage of the provisions of section 18 of the Limitation Act. But if the sale is void, the application for declaring it so or even for setting it aside--as a matter of abundant precaution--can be filed within 3 years under Art. 181 of the Limitation Act.[8] In a proper case where there is a particular degree 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 wholesale void. The reason why the application will be allowed though filed beyond the period of limitation is not because the case is to be treated as one of fraud, and allowed 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 in the sale proceedings, and therefore no question of limitation arises.[9] It must however be noted that though there is a distinction between fraud which vitiated the sale and fraud by which the judgment-debtor was kept in ignorance of his right to make an application to set aside an execution sale, on principle, if the fraud antecedent to the sale was of such a nature as to suffice for the requirements of

2. 1903 Pun. L.R. No. 27, p. 132.
3. 1898 Pun. Re. No. 12, p. 20.
4. AIR 1964 Kerala 88 + AIR 1925 All 778 + AIR 1939 Cal. 663.
5. AIR 1925 All 778 = 17 All 850 (DB) + AIR 1949 Cal. 212 = ILR (1949) 2 Cal 227 + AIR 1914 Cal. 728 (DB).
6. 17 Cal. 769 (FB) + AIR 1922 Pat. 422 (DB) + AIR 1923 All 282 = 45 All 316 (DB) + 112 Ind. Cas. 847 (Lah.).
7. 1970 DLC 269.
8. AIR 1961 Pat. 508 (DB).
9. 3 DLR (1951) 97.

section 18, that fraud cannot be dismissed from consideration as having had its origin earlier.[10]

Proof of fraud. 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.[11] Where the judgment-debtor applies to have the execution sale set aside on the ground of fraud in the conduct of the sale and seeks to take advantage of S.18 of the Limitation Act, the Court is bound to find when and how the fraud was committed and as to whether the judgment-debtor was kept out of the knowledge of the execution proceedings and the sale. There must be a distinct allegation of fraud in the petition and the party relying upon fraud must state *seriatim* and in detail the facts constituting the fraud (a vague or general allegation of fraud being of no avail). He must state further as to how the fraud was practised, how he was kept out of the knowledge of the execution proceeding and the sale and how he came to know of the same. Broad allegations that the judgment-debtor did not come to know of the sale until certain date and/or that the peon did not go to the locality and that his report was not correct is not sufficient.[12]

Fraud may not be proved against auction-purchaser. It is not necessary for invoking S.18 to prove that the auction-purchaser also was "guilty of or accessory to" the fraud mentioned in the section, and, even without such proof the section would apply to extend the time and save an application from being time-barred, provided the requisite fraud is established against the decree-holder who alone is a necessary party to the making of the application, either as principal or as accessory.[13]

Failure to serve notice. A mere failure to serve the judgment-debtor with the notice of sale is not fraud.[14] But a suppression of notices by a deliberate contrivance is fraud.[15] Thus where after the decree amount has been paid, the decree-holder brings the properties to sale and takes steps so that notice of the sale may reach the judgment-debtor, this section will apply.[16] A failure even to issue notice under O. 21, R. 92 and R. 65, C.P.C. to the parties they had been kept out of knowledge of the execution proceedings from time to time and of the execution sale by fraud, and that they came to know of the sale just within a week before the application, were sufficient to attract S.18, Limitation Act to the case.[17]

Under-valuation of Subject-matter of sale. A mere under-valuation of the property to be sold in the sale proclamation does not amount to fraud.[18] But a

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10. AIR 1964 Kerala 88.
11. PLD 1968 Dacca 887 = 21 DLR 78.
12. AIR 1960 Orissa 77.
13. AIR 1961 Cal. 81 (SB).
14. AIR 1925 Pat. 521 + AIR 1926 Pat. 397 (DB).
15. AIR 1930 Mad. 12 + AIR 1951 Orissa 149 = ILR 1950 Cut 405 + AIR 1923 Mad. 353 (DB) + AIR 1924 Pat. 496.
16. AIR 1928 All. 354.
17. AIR 1964 Kerala 88.
18. AIR 1939 Cal. 663 = I L R (1939) 2 Cal. 163 + AIR 1954 Cal. 604 = ILR (1950) 1 Cal. 158 (DB) + ILR (1937) 2 Cal. 496 + AIR 1922 Pat. 507 = 2 Pat. 65 (DB) + AIR 1944 Pat 40 (Disparity between real value and value in proclamation--Fraud can be inferred--I'

wilful mis-statement of the value of the property to be sold, in the sale proclamation,[19] or a dishonest combination to obtain by artifice the property at a low value is fraud within this section.[20]

7. Starting point of limitation. The time limited under the section shall be computed from the time when the fraud becomes known to the person injuriously affected by it.[1] Therefore where a case is prima facie out of time the Court must find exactly when the plaintiff got knowledge of the fraud to say that the suit is in time.[2] In this context it must be noted that 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 knowledge of the sale but mere knowledge of the sale does not include knowledge of the facts of fraud. Therefore limitation does not commence from the date of knowledge of sale.[3] Where it was alleged that after receiving first information about the execution sale on 15-8-1954, the applicant came to know of the fraud committed by the decree-holders on 17-8-54 when the records of the execution case were inspected. It was urged on behalf of the decree-holders that the limitation under Art. 166 read with S. 18 against the judgment-debtor must be held to have begun on 15-8-1954 and the application filed on 15-9-54 was barred by one day. It was held that onus lay on the decree-holders to prove that the judgment-debtor had acquired definite knowledge of the facts constituting the fraud at a time which was too remote to allow him to make the application to set aside the execution sale where the date of the knowledge of the sale and the date of knowledge of the fraud did not coincide, the *terminus a quo* could not be the former date.[4]

Limitation begins to run from the actual knowledge of fraud. Negligence in pursuing the means available for discovering the fraud will not start limitation running before the date of actual knowledge.[5]

'Knowledge of fraud'--meaning of. To constitute knowledge of fraud within the meaning of this section, the knowledge must be clear and definite knowledge of facts constituting the particular fraud.[6] It must be such as will enable the person defrauded to seek his remedy in Court.[7]

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however there is positive evidence of service of processes, bar of limitation cannot be overcome) + 26 Bom. 543 (DB).

19. PLD 1961 Dacca 589 + 15 Cal. W.N. 965 (DB) + AIR 1922 Pat. 507 = 2 Pat. 65 (DB) + AIR 1925 Pat. 521.
20. 6 Cal. L. Jour 111 (DB).
1. 1986 SCMR 1496 = 1986 PSC 1362 + 1980 Dhaka LR (SC) 167 + 1979 CLC 663 + AIR 1931 P.C. 12 = 5 Luck. 492 + ILR 1954 Cal. 495. (Where the fraud came to be known to judgment-debtor on 17-4-1950 this would be starting point of limitation) + AIR 1943 Lah. 215 = ILR 1944 Lahore 186 (DB). (Fraudulent concealment of divorce by husband--Suit for dower--Time runs when fraud becomes known).
2. AIR 1918 Cal. 77 (DB) + 14 Bom. L.R. 771 (DB).
3. PLD 1968 Dacca 887 = 21 DLR 78 + PLD 1961 Dacca 703.
4. AIR 1964 Pat. 529 (DB) + AIR 1947 Pat. 139 + AIR 1929 Pat. 288.
5. AIR 1938 Cal. 263 = ILR (1938) 1 Cal. 512 (DB) + 17 Bom. 341 = 20 Ind. App. 1 (P.C.) + AIR 1934 Lah. 878 = 16 Lah. 408 (DB).
6. AIR 1922 Cal. 157 = 49 Cal. 886 (DB) + AIR 1934 Lah. 878 = 16 Lah. 408 (DB) + AIR 1924 Nag. 94 = 20 Nag. L.R. 23.
7. AIR 1921 Cal. 251 = 48 Cal. 119 (DB) + 14 Bom. 408 (DB).

8. Against whom time can be extended. Condonation of delay on ground of fraud was only admissible if fraud was committed by a party against whom a right was sought to be enforced.[8] Therefore, time will be extended under this section only as against the person guilty of fraud, or who is accessory thereto or who claims through the person guilty of fraud otherwise than in good faith and for valuable consideration.[9] Therefore where fraud is committed by the decree-holder and purchaser at the sale acts bona fide, the section does not apply to an application to set aside the sale.[10]

Where the decree-holder is not guilty of fraud, but the auction-purchaser is, S. 18 will still apply so as to extend the time for an application to set aside the sale.[11]

19. *Effect of acknowledgment 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, 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.

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.

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8. PLD 1985 Rev. 189.
9. AIR 1959 Mad. 26+23 Cut. L.T. 178.
10. AIR 1936 Cal. 706+64 Cal. W.N. 788 (SB)+AIR 1959 Mad. 26+AIR 1952 Cal. 291 (AIR 1950 Cal. 520. *Ref.*)+AIR 1950 Mad. 460+AIR 1916 Mad. 33=38 Mad. 1076 (DB)+ 36 Cal. 654 (DB)+AIR 1948 Cal. 63 (Application under S. 174(3). Bengal Tenancy Act -- Fraud of auction-purchaser must be proved).
11. AIR 1959 Mad. 26+AIR 1956 Mad. 198=ILR 1956 Mad. 927 (DB)+AIR 1950 Mad. 509.

Synopsis

1. Acknowledgment of liability under prior enactment.
2. Reference to English Law.
3. Distinction between sections 19 and 20.
4. Acknowledgment does not confer title.
5. Acknowledgment, if operates as fresh contract.
6. Distinction between this section and section 25(3) of Contract Act.
7. Applicability of S.31, Specific Relief Act.
8. Section to be liberally construed.
9. "Before the expiration of the period prescribed for a suit or application."
10. Suit for recovery of immovable property.
11. "Application."
12. "Acknowledgment of liability."
13. Conditional acknowledgment of liability.
14. Acknowledgment of past-liability.
15. Admission of execution of document--effect.
16. Acknowledgment by person not liable.
17. Acknowledgment must be in respect of particular property or right claimed in the suit or application.
18. Acknowledgment of anything includes acknowledgment of its legal consequences.
19. Acknowledgment of liability in respect of part of claim.
20. Acknowledgment of liability in respect of promissory notes, whether available in respect of original cause of action.
21. "In writing."
22. "Signed."
23. Admissibility of external evidence for construction of documents alleged to contain acknowledgment of liability.
24. Who may make acknowledgment.
25. Acknowledgment of mortgage by mortgagor after transfer of equity of redemption.
26. Renewal of first mortgage after second mortgage.
27. "Fresh period of limitation shall be computed from the time when acknowledgment was so signed.
28. Oral evidence as to acknowledgment.
29. Acknowledgment coupled with averment that time for payment has not yet come.
30. Acknowledgment coupled with refusal to pay.
31. Acknowledgment of liability coupled with claim of set-off.
32. Acknowledgment not addressed to person entitled--sufficiency of.
33. Acknowledgment contained in balance sheet.
34. Admission claimed in document addressed to Court
35. Admission contained in deposition of witness.
36. Entry in settlement record, etc.
37. Acknowledgment by agent.
38. Acknowledgment by pleader.
39. Acknowledgment by receiver.
40. Acknowledgment by official assignee.
41. Acknowledgment by one of co-judgment-debtors.
42. Acknowledgment by administrator.
43. Acknowledgment by executor.
44. Acknowledgment by Court.

45. Acknowledgment by Court of Wards.
46. Husband and wife--acknowledgment by one for the other.
47. Promissory note for pre-existing debt, whether acknowledgment of liability on original debt.
48. Admission of liability by person in adverse possession.
49. Acknowledgment contained in letter marked "without prejudice".
50. Material alteration of document containing acknowledgment.
51. Acknowledgment contained in document thirty years old.
52. Acknowledgment under circumstances that would vitiate contract.
53. Acknowledgment of liability under breach of contract or tort.
54. Acknowledgment made in official confidence.
55. Agreement to extend time for performance of contract.
56. Suit on default clause in mortgage deed.
57. Stamp on acknowledgment.
58. Registration of acknowledgment.
59. Onus of proof.
60. Pleadings.
61. Acknowledgment--whether question of law or fact.

1. Acknowledgment of liability under prior enactment. Acknowledgment or part payment to be good and valid must generally speaking be made within the period prescribed by the law of limitation which is in force on the date when the suit is brought. But this does not mean that it will not be good for keeping the right to sue alive, if it was made within the period of limitation, which was in force at the time the acknowledgment or part payment was made, upto the date when the new Limitation Act came into force; thereafter the terms of the new Limitation Act, whether contained in the first schedule or in the section, including the saving clause, will apply. In construing the effect of an acknowledgment or part payment, the law in force on the date of the suit has to be looked into and not the law on the date on which the acknowledgment was made.[12] Where the right to sue has become barred under the previous enactment at the time when the new Act came into force, the later Act cannot revive the right.[13]

2. Reference to English Law. English decisions though they cannot be applied *in toto* may be consulted where the language of the statutory provisions concerned is identical in material particulars with the language of this section or where they lay down general principles which are not inconsistent with the principles on which this section is based.[14]

3. Distinction between sections 19 and 20. Section 19 and 20 are not naturally exclusive.[15] The provisions of section 19 and 20 of the Limitation Act.

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12. AIR 1958 Raj. 318 = ILR (1958) 8 Raj. 959 (DB) + 35 All. 227 = 40 Ind. App. 74 (P.C.).
13. AIR 1941 Bom. 178 = ILR 1941 Bom. 260 (DB). (27 Cal. 1004 = 27 Ind. App. 103 (P.C.) *Followed*) + AIR 1930 Bom. 55 (DB) + AIR 1918 Mad. 86 (DB) + 1894 Pun. Re. No. 53. p. 165 (DB) + (`82) 5 Mad. 182 (DB) + 1884 Pun. Re. No. 109. p. 305 (DB) + AIR 1943 All. 393 = ILR 1944 All. 76 (FB).
14. (`11) 9 Ind. Cas. 944 = 35 Bom. 383 + AIR 1932 Oudh 1 = 7 Luck 270 (DB) + AIR 1920 Oudh 236 = 23 Oudh Cas. 176.
15. AIR 1945 Nag. 181 = ILR 1945 Nag. 745 (DB).

1908 are exactly parallel. Under section 19 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 person 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 relates to the very broad and general terms "property" and "right" while section 20 is concerned only with debts and legacies.[16] Under S.19 (1) it is essential that the acknowledgment must have been made by the defendant in the suit against whom the property or right is claimed or by his predecessor-in-interest. That is not necessary in the case of payment and acknowledgment under S. 20(1). Under S. 20(1) all that is necessary is that the person making the payment and the acknowledgment must have been a person who was liable to pay the debt at the time of the said payment and acknowledgment. He need not necessarily be the defendant in the suit nor the person in whom were vested at the time of the acknowledgment the rights which the defendant has at the time of the suit.[17] It follows that an endorsement of payment failing to be effective under section 20 may operate as an acknowledgment of liability under this section.[18]

Endorsement of payment--effect. An endorsement of payment need not imply an acknowledgment of liability and whether it does so or not depends on the language used in each case.[19] It may amount to an acknowledgment of liability within this section, if from the words used in the writing it is clear that an existing liability is admitted.[20]

Acknowledgment against whom operates. No distinction can logically be drawn between section 19 and 20 of the Act with respect to the effect of an acknowledgment 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

16. PLD 1961 Peshawar 51.
17. AIR 1960 Mys. 136 + 1957 Ker. L.J. 1104.
18. AIR 1939 Bom. 252 + AIR 1917 Mad. 805 = 40 Mad. 698 (DB) + AIR 1926 Nag. 252 + AIR 1942 Bom. 218 = ILR 1942 Bom 512 (DB) + AIR 1942 Mad. 146 = ILR 1942 Mad. 405 (DB).
19. ('70) 5 Beng. L.R. 619 (DB) + AIR 1954 Raj. 26 = ILR (1951) Raj. 588 (DB) (Mere endorsement that a certain amount has been paid without there being anything to imply that there is due anything further is not an acknowledgment) + AIR 1946 Pat. 404 (DB) + AIR 1935 All 946 = 58 All 261 (FB) + ('10) 8 Ind. Cas 349 (DB) (Mad.) + AIR 1939 All 117 = ILR 1939 All 200 (DB) Depends on the facts)
20. AIR 1941 Lah. 23 (DB) + AIR 1940 Lah. 106 (DB) + AIR 1940 Oudh 305 = 13 Luck 537 (DB) + AIR 1938 Rang. 84 = 1937 Rang. L.R. 421 + AIR 1938 Rang. 401 = 1938 Rang. L.R. 594 (DB) + AIR 1942 Mad. 353 = ILR 1942 Mad. 590 (FB) + AIR 1946 Pat. 404 (DB). (No acknowledgment) + AIR 1945 Pat. 271 = 24 Pat. 96 (DB) + AIR 1942 Oudh 508 = 18 Luck 241 + AIR 1943 Mad. 133 + AIR 1944 Lah. 88 = ILR 1944 Lah. 528 (DB). (Mere endorsement, is no acknowledgment) + AIR 1957 Andh Pra. 445. (Where the receipt showed that the amount was paid, this amounted to valid acknowledgment of liability) + AIR 1935 All. 946 = 58 All. 261 (FB) + AIR 1917 Mad. 805 = 40 Mad.698 (DB) + AIR 1937 Nag. 304 = ILR 1937 Nag. 374 + AIR 1945 Nag. 181 = ILR 1945 Nag. 745 (DB) + AIR 1921 Cal. 331 = 48 Cal. 1046 (DB) + AIR 1926 Nag 252 + AIR 1923 Bom. 230 = 47 Bom. 632 (DB).

one of them. Payment by one of the several joint debtors, therefore, does not bind the others under S. 20 of the Act.[1]

Acknowledgment to whom may be addressed. An acknowledgment need not be addressed to the person entitled. But a payment under S. 20 must be made to the person entitled.[2]

Signatures on acknowledgment. Section 20 requires acknowledgment in writing by the person to pay but not his signature. S. 19 requires that the acknowledgment should be signed.[3]

4. Acknowledgment does not confer title. An acknowledgment does not confer any right or title on the person whose right is acknowledged but merely extends limitation.[4] Where there was a compromise in a partition suit dealing with both suit properties and properties outside the suit, and the Court drew up a decree embodying only those terms of the compromise which dealt with the suit properties, and a suit was brought for recovery of possession of other properties agreed to be transferred under the compromise. It was held that if the compromise in respect of other properties could be treated as an acknowledgment of title of the party suing for possession, it could be used for saving the bar of limitation only.[5]

5. Acknowledgment, if operates as fresh contract. An unqualified acknowledgment of liability in respect of debt necessarily implies a promise to pay the debt.[6] But the section is not based upon the theory of implied promise. A promise to pay is not a necessary ingredient of an acknowledgment under this section.[8]

Acknowledgment is not new contract. Acknowledgment of liability does not constitute a new contract.[7] Even when a person expressly promised to pay an existing debt there was no new contract.[10] An express promise to pay a debt is entirely different from an acknowledgment of debt. An express promise creates a new cause of action and limitation begins to run from the dates of such promise even when it is made after expiry of limitation on the original claim. Where an entry in an account book of the plaintiff was signed by the defendant reciting that

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1. PLD 1961 Peshawar 51. *But see* AIR 1941 Mad. 110 = AIR 1938 Cal. 129 (DB) + AIR 1935 Mad. 101 = 58 Mad. 418 (DB) + AIR 1932 Oudh 1 = 7 Luck 270 (DB).
3. AIR 1940 Nag. 354 (DB).
4. ('13) 35 All. 227 = 40 Ind. App. 74 (P.C.) + AIR 1942 Nag. 102 = ILR 1942 Nag. 541.
5. AIR 1945 Bom. 143 (DB).
6. 33 Cal. 1047 = 33 Ind. App. 165 = 2 Nag. L.R. 130 (P.C.) + ('95) 22 Cal. 434 = 22 Ind. App. 68 (P.C.) + ('55) Madh B.L.J. 1955 H.C.R 1241 + 1953 A.M.L.J. 150 + AIR 1954 Madh B. 11 + AIR 1944 Bom. 19 (DB). (Agreement containing acknowledgment also providing for contingent security for the debt--*Held* a fresh cause of action was provided by the contract).
7. AIR 1940 P.C. 63 = ILR 1940 Kar. (P.C.) 134 = ILR 1940 Lah. 470 = 67 Ind. App. 160.
8. ('69) 13 Moo. Ind. App. 37 (P.C.). (It is one thing to acknowledge a debt and another to promise to pay it) + ('06) 33 Cal. 1047 = 33 Ind. App. 165 = 2 Nag. L.R. 130 (P.C.) + AIR 1950 Bom. 94 = ILR 1949 Bom. 741 (DB).
9. AIR 1941 Nag. 100 = ILR 1941 Nag. 144 (DB) + ILR 1955 Nag. 669 + AIR 1951 Raj. 74 (DB) + AIR 1938 Lah. 234 + ILR 1933 Lah. [illegible] (FB) + AIR 1930 Nag. 298 = 26 Nag. L.R. 320.
10. ('91) 14 Mad. 258 = 18 Ind. App. 37 (P.C.) + ILR (1955) 5 Raj. 793 + ILR (1953) 3 Raj. 988.

on settlement of accounts a certain sum as found due and was payable by defendant to plaintiff. It was an express promise to pay the debt. Even if it was made after expiry of limitation, it constituted a fresh promise to pay within the meaning of S. 25(3), Contract Act and a suit based on it was maintainable.[11]

Where the defendant *H* who had mutual dealing with the plaintiff, signed an entry in the plaintiff's *khata* (Ledger) on which earlier mutual accounts had been entered to the following effect: Rs. 34,000 balance due to be received upto 1-3-1950 made by cheque and understanding of accounts with *H*'s books . The acknowledgment was signed by *H* with the following endorsement. 'After adjusting the accounts balance of Rs. 34,000 found correct and payable. The plaintiff brought a suit on the basis of the entry for recovery of the amount. On the above facts, it was held by the Supreme Court that the unqualified acknowledgment contained in the entry and the statement of accounts under which the entry was made were sufficient to furnish a cause of action to the plaintiff for maintaining the suit. It was held: the suit, was not based merely on the acknowledgment but was based on the mutual dealing and the accounts stated between them and was thus clearly maintainable.[12]

New contract. Where a party promises to do something in consideration of the other party giving up his original rights against the former, there is a fresh contract which gives rise to a new cause of action.[13] It must however be noted that a new contract implies an offer and acceptance of proposal. it cannot be entered into by unilateral act of a party. Where the plaintiff entrusted certain quantity of aluminium for sale to the defendant. The defendant sold it and intimated the fact to the plaintiff by the letters dated 20-2-1950 and 2-3-1950. On 10-4-1950 he again wrote to plaintiff's son saying that he would send the price so as to reach the plaintiff by 20-5-1950 and requested him to inform the plaintiff. There was no request in the letter for not filing suit or any offer which was required to be accepted either expressly or by any conduct on the party of the plaintiff. It was held, that the letter of 10-4-1950 was an acknowledgment of defendant's liability to plaintiff in respect of the price of the aluminium though it was addressed to the plaintiff's son. But it could not be construed to be an offer much less an agreement to extend time up to 20-5-1950 for payment so as to give a fresh cause of action from that date. Section 63, Contract Act required an agreement for extending time. That meant that there should be proposal and acceptance. The letter was a unilateral act and did involve an acknowledgment but beyond that it did not go. As an acknowledgment fresh period of limitation applicable to the

11. PLD 1969 Kar. 653 (DB) + AIR 1958 Madh. Pra. 21 (DB).
12. AIR 1953 S.C.R. 225 = 1953 S.C.R. 758. (AIR 1935 All. 129. *Overruled*). (*See also* AIR 1932 All. 199 = 53 All. 963 (DB) + Madh B.L.J. 1955 I.L.C.R. 1241 + AIR 1956 Raj. 12 = I.L.R (1955) 5 Raj 85 (DB). (A mere acknowledgment, as distinguished from an acknowledgment in which there are words from an implied promise to pay may be inferred, cannot be the basis of a suit) + Madh B.L.R. 1954 (Civ.) 161 (AIR 1953 S.C. 225. *Ref. on*) + AIR 1922 Bom. 183 = 46 Bom. 24 (DB) + AIR 1929 Lah. 264 = 10 Lah. 748 (DB) + (1300 12 Nag. L. Jour 102).
13. AIR 1931 Oudh 97 + AIR 1929 Lah. 263 = 10 Lah. 745 (DB) + (1909) 32 M.L.J. 284 (DB) + AIR 1923 Cal. 578 (DB) + (1908) 11 Oudh Cas 152 + AIR 1934 Lah. 789 + AIR Nag. 124 + AIR 1924 Cal. 388 = 50 Cal. 974 (DB). (Agreement may be oral or in writing) + AIR 1943 Bom 447.

liability was to be computed from the date of the letter and not from any other date.[14]

6. Distinction between this section and section 25(3) of Contract Act. Under this section an acknowledgment must be made before the expiry of the period of limitation whereas by reason of S. 25(3) of the Contract Act a promise in writing to pay the time-barred debt will give a fresh period of limitation.[15] Where an entry in an account book of the plaintiff signed by the defendant recited that on settlement of accounts between the parties, a certain sum was found due and was payable to the plaintiff by the defendant. It was held, that the acknowledgment of liability contained an express promise to pay the sum within the meaning of S. 25(3), Contract Act and as such the suit based thereon was maintainable.[16]

The expression "promise" is used in S.25, clause (3) of the Contract Act as contradistinguished from an acknowledgment and does not include a promise which is merely implied in an acknowledgment of liability.[17] Whether each document amounts to a mere acknowledgment of liability or contains a promise within the meaning of S. 25, Cl. (3) of the Contract Act is a matter of construction of the document.[18] An acknowledgment fixing the rate of interest to be paid is not a mere acknowledgment and the promise implied in such a case is sufficient under S.25(3) of the Contract Act.[19]

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14. 1958 M. P. L. J. 347.
15. 1987 DLR 243 (DB) + 18 DLR 498 + AIR 1938 Rang 134 = 1938 Rang L.R. 6 (DB) + AIR 1955 Pat. 320 = 34 Pat 487 (DB) + AIR 1937 Lah 642 (DB). (*Reversed in* AIR 1938 Lah. 234 (FB) on another point) + 31 All 495 (DB) + 1881 All W.N. 95 (DB) + 18 Cal. L. Jour 269 (DB) + 18 Cal. L. Jour 329 (DB) + 1905 Pun. Re No. 102, p. 306 (DB) + 23 Mad. 94 (DB) + 6 Mad 293 (DB).
16. AIR 1958 Madh Pra. 21 (DB) + AIR 1959 All 313 (DB).
17. AIR 1941 Nag. 100 = I L R 1941 Nag. 144 (DB) + AIR 1938 Lah. 234 = I L R 1938 Lah. 193 (FB). (AIR 1937 Lah. 642, *reversed on another point*) + AIR 1955 Pat. 320 = 34 Pat 487 (DB) + (AIR 1954 Medh B 11 + AIR 1953 Punj. 28. (Simple acknowledgment of the form of *"baqi rahe"* does not amount to promise to pay and does not give fresh cause of action under S. 25(3), Contract Act) + AIR 1949 Nag. 229 = I.L.R 1948 Nag. 639 (DB) + AIR 1949 Oudh 48 = 23 Luck. 47 (DB) + AIR 1938 Lah. 264 (DB) + AIR 1938 Nag. 180 = I.L.R 1940 Nag. 441 + AIR 1932 All. 461 = 54 All. 506 (DB). (*Reversed in* AIR 1934 P.C. 147 on another point) + AIR 1935 All. 129 = 57 All 434 (DB) + AIR 1928 Bom. 319 = 52 Bom 521 (DB) + 14 Bom. L.R. 1020 + AIR 1933 Cal. 658 = 60 Cal. 714 + AIR 1929 Cal. 444 = 57 Cal. 394 (DB) + 20 Mad. L. Jour 656 + AIR 1930 Nag. 236 + AIR 1932 Oudh 49 = 7 Luck 313 (DB) + AIR 1930 Oudh 287 = 6 Luck. 7 (DB) + AIR 1930 Pat. 604 + AIR 1929 Pat. 258 = 8 Pat. 706 (DB).
18. AIR 1938 Lah. 505 + AIR 1955 Ajmer 59. (Where the words used are *baqi kane rahe* in the handwriting of the creditor and the entry is signed by the debtor, it amounts to an implied promise to pay on the part of the debtor within the meaning of S. 25(3)) + AIR 1949 Nag. 229 = I.L.R 1949 Nag. 639 (DB) + AIR 1949 Oudh 48 = 23 Luck. 47 (DB) + 1878 Pun Re No. 3, p. 25 (FB) + AIR 1923 Cal. 71 (DB) + AIR 1929 Pat. 258 = 8 Pat. 706 (DB) + 6 Bom. 683 (DB) + 8 Bom. 405 (DB) + AIR 1925 Cal. 338 (DB) + AIR 1932 All. 38 + AIR 1938 Mad. 683.
19. AIR 1938 Lah. 234 = I L R 1938 Lah. 193 (FB). (AIR 1937 Lah. 642, *Reversed*) + 32 Bom. 37 (DB) + (1900) 25 Bom. 373 (DB) + 5 Ind Cas 418 (DB) (All) + AIR 1928 Nag. 124 + AIR 1923 Cal. 659 (DB).

7. Applicability of S. 31, Specific Relief Act. Acknowledgment falling under S. 19, is not excluded from operation of S. 31, Specific Relief Act.[20]

8. Section to be liberally construed. This section which contains an exception, to the bar of limitation must be construed liberally,[1] but equitable considerations should not be brought in while doing so.[2]

9. "Before the expiry of the period prescribed for a suit or application". The expression "period prescribed" will include any period prescribed by the Act, whether in the body of the Act or in the first schedule.[3] Where the plaintiff is entitled to a deduction of time under the provisions of some other Act, the period will be a "period prescribed" within the meaning of this section.[4] Thus where a Provincial Act makes it obligatory on the Courts to exclude a period when computing the period of limitation, the Courts have to exclude that period and if after excluding that period a suit or an application can be filed by a certain date any acknowledgment or payment made in accordance with the provisions of Ss. 19 and 20, after the original period of limitation has expired but within the extended period, should be deemed to be an acknowledgment or payment made within the period prescribed for the filing of the suit or application.[5]

This section applies also to periods of limitation prescribed by special or local laws.[6] Where the particular special or local law in question itself expressly provides that this section shall apply to the periods prescribed by it, this section will apply to such periods. The provisions of S. 115, Bengal Tenancy Act, notwithstanding the limitation prescribed in Sch. III of that Act for the institution of suits and appeals or the making of applications, must not be extended under any of the provisions of the Limitation Act, because in respect of those matters S. 185 is controlled by S. 184 and the special law as to limitation prevails. Hence, S. 19, Limitation Act, does not apply to execution proceedings governed by Sch. III, Art. 6, and cannot be called in aid where the execution application is filed beyond the period of limitation prescribed in Art. 6.[8]

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20. AIR 1957 Assam 49 (DB).
1. AIR 1925 Mad. 675 + AIR 1920 Lah. 447 (DB) + AIR 1919 Mad. 941.
2. AIR 1957 All. 438.
3. AIR 1927 All 114 = 49 All 67 (DB). (Acknowledgment made during the special period of 2 years under section 31 (Now repealed)) + AIR 1958 Ker 307 = ILR 1957 Ker 859 (DB) + AIR 1958 Raj. 318 = ILR (1958) 8 Raj. 959 (DB) + AIR 1927 All 577 = 49 All 726 + AIR 1935 Mad. 64 = 58 Mad. 270 (FB) + 11 Bom. 282 (DB). (Acknowledgment within additional period conferred by this section) + 6 Cal 340 (DB). (Do.) + AIR 1930 Bom. 187 (DB). (Acknowledgment before expiry of period of limitation extended by S. 14).
4. AIR 1938 Mad. 19 = ILR 1938 Mad. 439 (DB). (Deduction of time under S. 78(2). Provincial Insolvency Act) + AIR 1937 Oudh 26 = 12 Luck 531 (DB). (Deduction under S. 52. U.P. Court of Wards Act).
5. AIR 1955 All. 41 = ILR (1955) 1 All 548 (FB). (AIR 1938 All. 217 (FB) and AIR 1947 All. 199. *Overruled*) + AIR 1959 Mad. 278 = ILR 1959 Mad. 711.
6. AIR 1925 All 68 (DB) + AIR 1930 Lah. 978.
7. AIR 1930 Pat. 301 = 9 Pat 747 (DB). (Section 185(2). Bengal Tenancy Act) + AIR 1929 Lah. 124. (Period prescribed by Punjab Loans Limitation Act, 1904) + AIR 1933 Cal. 90 (DB). (Period prescribed by Bengal Tenancy Act, Schedule 3) + 22 Pat. L. Tim 416 (DB) + AIR 1945 Mad 215. (Period excluded under S. 78(2) of the Provincial Insolvency Act) + AIR 1944 Pat. 310 = 23 Pat. 437 (DB).
8. AIR 1961 Cal. 379 (DB).

Time granted under section 4. The extra time which a litigant get under section 4 is not part of the period prescribed.[9]

Applicability to period of twelve years under S. 48, C.P.C. The section does not apply to the twelve years' period prescribed under S. 48 of the Civil Procedure Code.[10]

Acknowledgment granted after expiry of limitation. An acknowledgment of liability under this section must be made before the expiry of the period of limitation prescribed for the suit or application.[11] Where acknowledgment is made after the expiry of period of limitation it does not have the effect of extending limitation prescribed for the suit.[12] Where a mortgage provides no period for redemption and yet the interest, according to the terms of the contract, does not accrue until after the lapse of some time, an acknowledgment by the mortgagor or his successor-in-interest within 12 years from the date of accrual of interest but beyond 12 years from the date of mortgage deed will not save the suit brought by the mortgagee to enforce his mortgage.[13] Where the plaintiff contractor entered into a contract with the Government for doing some construction work and deposited earnest and further security, returnable upon completion of the work. The contract not having been completed within time, the Government cancelled the contract on 15-3-1951 and forfeited the deposit. The forfeiture was held to be illegal. The plaintiff filed a suit for the return of the earnest and further security on 8-10-1955. It was held that having regard to the date of the cancellation and institution of the suit, the claim of the plaintiff would be barred by limitation.[14]

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9. AIR 1941 Nag. 100 = ILR 1941 Nag. 144 (DB). (AIR 1928 Nag. 192, held no longer good law) + AIR 1947 Oudh 3 = 21 Luck. 447. (Payment made during vacation of Court cannot give fresh period of limitation) + AIR 1938 Lah. 234 = ILR 1938 Lah 193 (DB). (AIR 1937 Lah. 162, *Overruled*) + 26 Bom. 782 (DB) + AIR 1929 Cal. 68 = 55 Cal. 1210 + AIR 1937 Mad 367.
10. AIR 1917 Pat. 485 = 1 Pat. L. Jour 214 (DB) + 11 Oudh Cas 220 (DB) + AIR 1954 Trav-Co 369 = ILR 1954 Trav-Co 479 (DB) + AIR 1954 Trav-Co. 1 = ILR 1953 Trav-Co. 858 (FB) + AIR 1953 Trav-Co. 539 (DB).
11. PLD 1988 SC (Aj&k) 199 = 1988 PSC 988 = NLR 1988 SCJ 408 + AIR 1939 Nag. 113 = ILR 1941 Nag. 222 (DB) + AIR 1957 Tripura 33 + AIR 1954 Ajmer 51. (Acknowledgment by way of a set off made beyond 60 years from the date of mortgage is not an acknowledgment of the subsistence of that mortgage) + AIR 1952 Mad 136 + AIR 1952 Pat. 73 = 30 Pat 1161 (DB). (An acknowledgment of liability when the debt has become time-barred cannot revive the liability) + AIR 1951 Mad. 674 + AIR 1950 East Punj. 157 + AIR 1948 Bom. 125 = ILR 1947 Bom. 827 (DB) + AIR 1938 Nag. 180 + ILR 1940 Nag. 441 + 33 Cal. 1047 = 30 Ind. App. 165 = 2 Nag. L.R. 130 (PC) + AIR 1947 All. 74 = ILR 1947 All 11 (FB). (Suit on intermediate mortgage--Subsequent mortgagees who held two prior mortgages impleaded as defendants--On application by plaintiff which amounted to an acknowledgment these defendants were removed from the suit as not necessary parties--Subsequently one of the mortgages found time-barred at the time it was acknowledged--*Held* that the acknowledgment could not support the right of priority claimed in respect of the mortgage).
12. PLD 1988 SC (Aj&k) 199 = 1988 PSC 988 = NLR 1988 SCJ 408 + PLD 1959 Kar. 611 + 18 DLR 498 + AIR 1961 Pat. 485.
13. AIR 1959 Punj. 249 = ILR 1959 Punj. 254.
14. AIR 1963 A.P. 216 (DB).

10. Suit for recovery of immovable property. The section applies not only to suits for debts or legacies but also to suits for recovery of immovable property.[15]

11. "Application". The section applies not only to suits but also to applications.[16]

12. "Acknowledgment of liability. The expression 'acknowledgment' itself has not been defined in the Limitation Act.[17] The word" acknowledgment" is not a word of art and must be construed in its plain literal sense.[18] An acknowledgment must be conscious and distinct admission of an existing liability or jural relations between the parties but there is nothing in law to require that an acknowledgment should be express. It may be implied provided the implication is a necessary implication so as to render the acknowledgment clear and unequivocal. It may be added that the acknowledgment need not specify every legal consequence of the thing acknowledged.[19]

A document alleged to contain an acknowledgment of liability must be liberally construed.[20] The question whether a document contains an acknowledgment of liability depends purely on the terms of the document and their construction by the Court.[1] The question as to whether there is an admission of existing liability or not has to be decided with reference to each case and it is not possible to lay down any hard and fast rule. An admission to prevent the running of the time need not be in full sense of the word an admission of the existence of liability on the date of the admission, if the proper inference to be drawn from the admission which is made is, that it was intended to represent the debt as then subsisting.[2] A writing claimed to be an acknowledgment must be interpreted liberally, so as to maintain the right to sue rather than in negation or derogation of such right. This principle has been recognised in several cases.[3] Another rule which has to be kept in mind is that an acknowledgment, like any other document, should be construed according to the intention of the parties, but this intention is the intention as revealed by the language of the body of the deed. If the deed is ambiguous, surrounding circumstances may be looked into, but it is

15. AIR 1928 Sind 45=22 Sind L.R. 117 (DB)+AIR 1930 Bom. 466=54 Bom. 625 (FB). (Applies to suit for redemption of mortgage).
16. AIR 1927 All. 159=49 All. 147 (DB)+AIR 1919 Mad. 709=42 Mad. 52 (DB).
17. PLD 1971 Karachi 925 (DB).
18. PLD 1959 Lah. 295+('06) 33 Cal. 1047=33 Ind. App. 165+AIR 1939 All 728 (DB). (Acknowledgment simply means an admission of truth of one's liability).
19. 1982 CLC 1675=NLR 1980 AC 550.
20. PLD 1978 Kar. 244+PLD 1971 Kar. 925 (DB)+PLD 1970 Kar. 708 (DB)+PLD 1959 Lah. 285+AIR 1961 Pat. 134+AIR 1920 Lah. 447 (DB)+AIR 1925 Mad. 675+AIR 1936 Lah. 629=17 Lah. 737 (DB). (Regard must be had to the meaning of the writer reading the document as whole)+AIR 1931 All 560 (DB). (Surrounding circumstances that may be taken into consideration should be given weight instead of to the literal meaning).
1. AIR 1939 All 177=ILR 1939 All 200 (DB)+AIR 1953 Nag. 302. (It is not necessary that the defendant should admit the documents as acknowledgments It is for the Court to consider whether a particular document is an acknowledgment)+AIR 1939 All 483=ILR 1939 All 728 (DB)+AIR 1934 Bom. 186 (DB)+AIR 1931 Bom. 74+AIR 1935 Cal. 255+AIR 1921 Cal. 331=48 Cal. 1046 (DB)+('13) 36 Mad. 68 (DB)+AIR 1930 Oudh 67=5 Luck 446 (DB)+AIR 1920 Oudh 236=23 Oudh Cas. 176+AIR 1947 All 74=ILR 1947 All 11 (FB).
2. 1958 Ker. L.J. 416.
3. PLD 1978 Kar. 244+PLD 1970 Kar. 708 (DB)+PLD 1971 Kar. 925 (DB).

not open to the parties to come to the Court to say that their intention was wholly different from that expressed in the language of the deed.[4] The test is: (*i*) whether there is admission of liability or of jural relationship, (*ii*) whether this admission is relatable to a subsisting liability or jural relationship, so that in the latter case, on ascertainment of facts constituting the jural relationship, as in the case of accounts between the parties, a debt or liability shall be found to exist against one or the other of the parties. This admission may be evident from the language of the writing itself, or may be inferred by implication, or by ascertainment from the surrounding circumstances if there be any ambiguity in the writing.[5] Thus where the writing set up as acknowledgment of liability within section 19, Limitation Act, 1908 comprised of a letter stating "our Income-tax Officer requires some permanent evidence in support of the financial aid of Rs. 35,000 given by your goodself for construction of Shabina Hotel, last accounting year" following further by another letter reading "received your letter for Income-tax Department with thanks". It was held that these letters were sufficient in the eye of law as proof of acknowledgment of liability.[6] A letter acknowledging a letter stating the payment of a certain sum of money by cheque but not denying receipt of the cheque but seeking receipt of goods delivered to the writer of the letter would be sufficient acknowledgment of the liability created by the cheque.[7]

The following cases have been held to amount to acknowledgment under the section:

(*a*) Court of Wards in charge of estate giving notice to creditor of estate stating that it was ascertained that a debt was due to him and requiring him to appear before the Collector with his account books and papers.[8]

(*b*) Debtor's letter to creditor informing him that he has asked his debtor to send him money and also that he would send money.[9]

(*c*) Letter by debts of bank forwarding bills against overdraft.[10]

(*d*) Endorsement on policy of life assurance referring to assignment of policy in consideration of loan advanced on a promissory note.[11]

(*e*) Statement of judgment-debtor acknowledging decree in reply to decree-holder's application for injunction.[12]

(*f*) Statement by guardian-*ad-litem* admitting a decree as unsatisfied but contending that other properties of father of minor are sufficient to satisfy the decree.[13]

4. PLD 1970 Karachi 708 (DB) + PLD 1971 Kar. 925 (DB).
5. PLD 1978 Kar. 244 + PLD 1971 Kar. 925 (DB).
6. PLD 1971 Karachi 925 (DB).
7. 1984 CLC 360.
8. (1895) 17 All 198 = 22 Ind. App. 31 (P.C.).
9. AIR 1939 All 179 (DB).
10. AIR 1929 Cal. 714 = 56 Cal. 556.
11. AIR 1937 Rang. 503 (DB).
12. AIR 1939 All 483 = ILR 1939 All 728 (DB).
13. AIR 1939 Cal. 399 = ILR (1939) 2 Cal. 33 (DB).

(g) Petition by wife to the Commissioner to sanction the gift of an estate under the Court of Wards restored to the owner on condition that he will not alienate the estate without the previous permission of the Commissioner or to re-grant it to her on the same conditions.[14]

Admission of Liability. An acknowledgment is an admission by the writer, that there is a debt owed by him.[15] The admission may be in any form.[16] It may be express or implied.[17] It may or may not be addressed to the person to whom liability is acknowledged.[18] But the admission must somehow be of liability, a mere admission of title or a state of things is not enough.[19]

When a customer has a current account with the Bank and the Bank sends him a statement of account, the confirmation of the statement amounts to an acknowledgment of debt or liability by the customer and therefore it gives a new start to limitation.[20] A mere admission of the title of the plaintiff without in any way implying that there is any liability on the part of the defendant is not sufficient for the purpose of the section.[1] In case of short delivery by Railway, a letter by Railway intimating the consignee that his complaint regarding short delivery was receiving notice does not amount to acknowledgment.[2] Where, the judgment-debtor, in the course of his application for instalments made another application in which he stated that the decree-holder had obtained an *ex parte* decree against him and that he had submitted an application for a hearing being given to him, and that in pursuance of the latter application an order for producing evidence had been passed but that in spite of this, an order later on had been passed fixing the case for argument and for orders. It was held that the application construed as a whole, did not involve an acknowledgment of subsisting liability although it contained reference to the passing of a decree. The tenor of the whole application was not one of admission of liability but denial of it although factually it was not disputed that a decree had been passed. It was not, therefore, sufficient acknowledgment for the purpose of section 19.[3] Where the plaintiff made a death

14. AIR 1932 P.C. 55 = 59 Ind App 130 = 11 Pat 272.
15. PLD 1971 Karachi 925 (DB) + PLD 1970 Kar. 708 (DB).
16. AIR 1939 All 483 = ILR 1939 All 728 (DB) + Madh B.L.J. 1954 HCR 1680 (An admission in a written statement is sufficient acknowledgment) + ('97) 20 Mad. 239 (DB) + ('93) 16 Mad. 220 (DB) + 1873 Pun Re. No. 79, p. 153 + AIR 1944 Lah. 88 = ILR 1944 Lah. 528 (DB).
17. 1982 CLC 1675 + PLD 1978 Kar. 244 (DB) + AIR 1939 All 483 (DB) + AIR 1955 Cal 194 (DB). (An acknowledgment needs only facts from which the Court can reasonably draw an inference of liability--The acknowledgment itself need not specifically state the debt that is payable) + AIR 1955 Pat. 320 = 34 Pat. 487 (DB) + AIR 1954 Trav-Co. 374 + Mad B.L.J. 1954 H.C.R. 1680 + AIR 1951 Bom 255 = ILR 1951 Bom. 57 (DB) + AIR 1938 Rang 84 = 1937 Rang. L.R. 421 + AIR 1931 All 560 (DB) + ('07) 9 Bom. L.R. 715 (DB) + ('11) 13 Cal L. Jour 139 (DB) + AIR 1919 Lah. 25 = 1919 Pun Re No. 131 + AIR 1936 Mad 70 = 59 Mad. 312 (DB) + AIR 1922 Mad. 104 = 45 Mad. 443 (DB) + AIR 1928 Sind 45 = 22 Sind L.R. 117 (DB) (The implication must be a necessary implication + AIR 1925 Sind 181 = 17 Sind. L.R. 324 (DB).
18. PLD 1977 Kar. 297 = PLJ 1977 Kar. 229.
19. 26 Mad. 34 (DB) + 1 Cal. W.N. 569 (DB).
20. 1986 PSC 638 (SC) (PLD 1964 Dacca 36 = 15 DLR 143 (DB) does not lay down correct law).
1. ('05) 26 Mad 34 (DB) + ('97) 1 Cal W.N. 569 (DB).
2. AIR 1964 Orissa 198.
3. AIR 1963 Madhya Pradesh 181 (DB).

claim against the defendant Insurance Company in respect of the Life Policy of her husband. The defendant wrote to the plaintiff that the matter was having their attention and that he will be informed in due course. After repeated reminders the defendant wrote on 6-3-1954 in reply to the plaintiff's letter as follow: "As you are aware, this is an early claim and the matter is under inquiry. The inquiry is not yet complete. The matter is being expedited. On completion of the inquiry the decision will be intimated to you thereafter." Ultimately the defendant company refused to pay the claim on ground of suppression of material facts in the proposal form. It was held that the letter of the defendant dated 6-3-1954 could not be treated as an acknowledgment of liability within the meaning of S.19, Limitation Act as no jural relationship was admitted either expressly or impliedly.[4]

Admission need not be on document creating liability. It is not necessary for the applicability of S. 19 or S. 20 that the acknowledgment should appear on the document under which the debt is payable.[5]

Acknowledgment must be definite. The section requires a definite acknowledgment of liability.[6] 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 liability or that he is not doing so, the document can never be sufficient for the purposes of this section. Thus where a mortgage debt has merged into a decree, the acknowledgment of decree is not an acknowledgment of the debt.[8]

The acknowledgment need not directly refer to the liability sought to be enforced in the suit.[9] An admission by the debtor that something is due or may be due to the plaintiff is sufficient to constitute an acknowledgment within the meaning of S. 19. It is not necessary that there should be an admission for any precise amount or that the debtor should have expressly acknowledged the liability.[10] Thus where a debt is due to the Bank, in the case of a joint debt one of the several debtors cannot keep the debt alive and subsisting against the other joint debtors by reason only of a written acknowledgment having been signed or a payment made by himself. What is further necessary for the creditor to prove is that the debtor who acknowledges the debt or makes the payment was the agent of the other co-debtors duly authorised by them to acknowledge the liability or to make the payment on account of the debt and to acknowledge payment in writing signed by him.[11]

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4. AIR 1962 Calcutta 625.
5. AIR 1960 Mad. 403 (DB).
6. PLD 1959 Lah. 295 + ('06) 33 Cal. 1047 = 33 Ind. App. 165 = 2 Nag. L.R. 130 (P.C.) + AIR 1951 Bom. 255 = ILR 1951 Bom. 57 (DB) + AIR 1951 Nag. 255 = ILR 1950 Nag 562 (DB).
7. PLD 1959 Lahore 295.
8. AIR 1939 Mad. 678.
9. AIR 1958 Ker. 307 = ILR 1957 Ker.859 (DB).
10. AIR 1965 Jammu & Kashmir 51 (DB) + AIR 1961 S.C. 1236 + ILR 35 Bom. 302 + ILR 33 Cal. 1047 + AIR 1933 Rang. 147 + AIR 1950 Bom. 94.
11. AIR 1965 Andhra Pradesh 349 (DB) + AIR 1920 Mad. 418 + AIR 1929 Mad. 881.

An admission of an unsettled account is an acknowledgment of liability that may be discovered on settlement of account.[12] But a letter written by defendant granting three months time extension for settlement of claim without admission of liability of whatsoever nature does not constitute acknowledgment within the meaning of S. 19.[13]

Acknowledgment must be conscious admission of liability.[14] There is no method available to the Courts to ascertain if a document was written with full consciousness or that the writer's intention was directed towards the question of admission of his liability, except to look at the language of the document itself, and if there is any ambiguity therein, to examine the context or the surrounding circumstances in which the document was written.[15] Thus a memorandum relating to deposit of title deeds as security for equitable mortgage reciting ratification of mortgage already effected and also constituting conscious and unconditional acknowledgment of existing and future over-draft loans of creditor bank was held to be a written acknowledgment of liability in terms of S. 19 giving rise to fresh period of limitation starting from the date of signing it.[16] But a statement that an application under O. 34, R. 6 is premature is view of the fact that all the mortgaged properties have not been sold is not an acknowledgment.[17] Similarly where *B* obtained a money decree against *C* and some others in a Court at *K* on 31-12-1956, *C* in turn had obtained a money decree for lesser amount against *B* in Court at *N* on 13-2-1957. *C* filed an application for execution of his decree in Court at *N* by attachment of *B*'s decree and for substitution of himself as decree-holder to enable him to execute the decree obtained by *B* in *K* Court. The Court at *N* thereupon passed an order on 22-2-1957 attaching *B*'s decree and issuing a notice to *K* Court in form No. 22 in Appendix *D*. The attachment was effected and the execution was closed. Subsequently on 10-2-1960, *C* filed another application for execution at *N* giving up the attachment of *B*'s decree and praying for transfer of his own decree to Court at *K* for execution against *B*'s properties. On 22-3-1960 *B* filed an application for execution of his decree in Court *K* after setting off *C*'s cross decree. The question for determination was whether limitation for execution of *B*'s decree was saved by S. 19, Limitation Act. It was held that neither the

12. PLD 1977 Kar 297 = PLJ 1977 Kar 299 + AIR 1955 Pat. 320 (DB). (Any written admission by a debtor of the existence of an unsettled account with a promise to pay balance if any due is sufficient) + AIR 1954 Nag. 300 (DB). (In answer to the request made by *A* for payment of what was due to him *B* wrote 'You should kindly send your claim to the Karayalaya immediately, so that it may be examined and the amount may be sent': *Held*, that the reply meant that *B* admitted his liability to *A* and was willing to pay the amount on examining the claim and it was thus a clear and absolute acknowledgment).
13. NLR 1987 UC 26 = NLR 1987 CLJ 439 = 1987 CLC 173.
14. AIR 1939 All. 483 = ILR 1939 All. 728 (DB) + AIR 1957 Tripura 33 + AIR 1952 Madh B. 177 = ILR 1952 Match B 416 + 1949 Ker. L.T. 95 (DB). (Acknowledgment of decree contained in execution application-It cannot be said that admission of liability was not voluntary and conscious acknowledgment) + AIR 1953 All. 33 = ILR (1954) 2 All. 76 (DB). (It must be seen whether at the time of writing, the writer had in his mind the question as to his liability) + AIR 1916 All. 201 = 38 All. 540 (DB) + ('08) 10 Bom. L.R. 385 (DB) + ('12) 15 Cal L. Jour 251 (DB) + AIR 1931 Lah. 122 (DB) + AIR 1935 Mad. 287 + AIR 1928 Sind 45 = 22 Sind L.R. 117 (DB) + ('84) 8 Bom. 99 (DB) + AIR 1943 Sind 425 + AIR 1942 Pat. 170 (DB).
15. PLD 1970 Karachi 708 (DB).
16. PLD 1970 Dacca 724 = 23 DLR 22 (DB).
17. AIR 1943 Oudh 453 = 19 Luck 279 (DB).

prayer made in execution petition dated 13-2-1957 nor the statement made in petition dated 10-2-1960 amounted to an acknowledgment.[18]

Part payment, is acknowledgment. Part payment by a debtor or admission of liability had effect of reviving period of limitation.[19]

Acknowledgment cannot be coupled with denial of liability. An acknowledgment, valid and proper, imports promise to pay what was acknowledged. When there is a clear denial of liability it is difficult to import a willing promise to pay. Further, in the case of a document containing equivocation, the dominant intention of the writer is to be seen.[20] In all such cases, the test is whether there is, on the terms of the acknowledgment, either an express or implied statement indicating an intention to continue the pre-existing jural relationship until that is lawfully determined. An acknowledgment of a past liability with a plea of discharge (though false) will not amount to an acknowledgment of liability for the obvious reason that there is no acknowledgment of a subsisting liability.[21] Similarly a letter denying and repudiating liability to pay[1] or in a suit against Railway Company for damages for non-delivery of goods, a letter from the Railway Company saying that in regard to the claim the Railway was in no way responsible is not an acknowledgment as contemplated by this section.[2]

Purpose of acknowledgment is immaterial. The purpose for which the statement, containing the acknowledgment is made is immaterial for the purpose of this section.[3] Therefore where a document contains an acknowledgment of liability, the fact that document is not intended to be acted upon[4] or that it is not to be enforced in a particular manner does not invalidate it.[5]

An acknowledgment of liability coupled with a proposal for its discharge in a particular manner is sufficient.[6]

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18. AIR 1964 Andhra Pradesh 438.
19. KLR 1985 CC 273.
20. AIR 1960 Madh Pra 272.
21. AIR 1963 Madras 403 (DB).
1. AIR 1935 Cal. 255.
2. 1906 Pun No. 108 p. 382 (FB) + AIR 1956 Cal. 66. (A letter from the debtor containing a definite statement that the creditor has no claim and that his claim if any should be established in a Civil Court is not an acknowledgment of liability) + 1956 Ker. L.T. 827 (A statement in a deed that the mortgagee has acquired title by the failure to redeem the mortgage and that he has acquired full rights to the property does not amount to an acknowledgment of liability to be redeemed. It is a repudiation of such liability) + ('54) 7 Sau L.R. 70. (By assigning the mortgage the mortgagee does not acknowledge any liability of being redeemed, and therefore it does not constitute an acknowledgment in a suit for redemption filed beyond 60 years of the mortgage) + AIR 1955 Pat. 182 = 33 Pat. 339 (DB). (Where there is no acknowledgment of liability but on the contrary the letter states in the clearest of terms that the railway administration does not accept any liability for the loss or shortage, the letter does not amount to an acknowledgment of liability).
3. 1984 CLC 360 + 10 Bom. L.R. 385 (DB).
4. AIR 1930 Mad. 796.
5. AIR 1924 Mad. 856.
6. AIR 1924 Nag. 147 + AIR 1938 Mad. 496.

Acknowledgment with claim of set off. Where a debtor acknowledges a debt but claims set off, limitation stands extended by the acknowledgment.[6a]

Unwillingness to pay immaterial. Under S. 19 all that is required is that there should be an acknowledgment of liability made in writing signed by the party concerned. The promise to pay is not a requirement of section 19.[7] An acknowledgment may be sufficient to save an action from the bar of limitation even if it is accompanied by a refusal to pay or is coupled with the claim to a set-off.[8] Where the buyer declined to accept the goods sent by the seller as not conforming to the specifications contained in the contract and demanded from the seller return of the amount of Rs. 1,001 paid as advance towards the price. The seller wrote to the buyer as follows: "You are liable to pay in the shape of damages for breach of contract made by you in not taking delivery of the goods a sum of Rs. 880-9-2. I have appropriated from out of the advance payment the said sum towards damages. There is thus a small balance of Rs. 120-6-10 standing to your credit." The second letter sent by the seller was, as stated by him, in continuation of the former letter. It was held that in the letter there was sufficient admission of facts from which an admission of liability to refund the amount could be inferred. At the same time there was a refusal to pay as the seller claimed a right to adjust that amount against the loss which, according to him, he sustained in the transaction. This constituted an acknowledgment within the meaning of S. 19. The second letter also amounted to an acknowledgment as it expressly said that it was in continuation of the former, thereby impliedly adopting the same.[9]

Liability is necessary for acknowledgment. An acknowledgment for the purposes of section 19 cannot be said to have made if when making it there was no present subsisting liability against the person making the acknowledgment. There must exist a jural relationship between the parties at the time when one of them makes the acknowledgment and it must appear that the statement is made with the intention to admit such jural relationship.[10]

It is necessary that the acknowledger should at the time of the acknowledgment be under an existing liability; it is not sufficient that at the time of the enforcement of the debt the acknowledger had become liable to pay the debt.[11] It follows from this that acknowledgment cannot be of one's liability to oneself. It must be a liability to another.[12]

Acknowledgment must be addressed to creditor. An acknowledgment of a debt to be operative under section 19 of the Limitation Act must be addressed or communicated to the creditor or to someone on his behalf. If that is not done, the acknowledgment is not proper.[13] In case of evacuee property, it is wrong to say

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6a. PLD 1974 SC 174 = PLJ 1974 SC 105.
7. PLD 1964 Karachi 558 + AIR 1963 Mad. 403 (DB).
8. PLD 1970 Karachi 708 (DB).
9. AIR 1963 Madras 403 (DB).
10. AIR 1964 Allahabad 252 (DB) + AIR 1943 All. 393 (FB) + AIR 1953 All. 33 + AIR 1961 S.C. 1236.
11. AIR 1964 Madras 142 + AIR 1964 Mad. 169 (FB) + AIR 1961 S.C. 1236 + AIR 1948 Bom. 125 + (1884) 26 Ch. D. 474.
12. AIR 1964 All. 191.
13. 1971 DLC 185.

that partition effected by A.R.C. gave fresh start of limitation to the owner-mortgagor because the record does not suggest that the mortgagees were also party to that partition or had in any manner given in writing that they accept mortgagor as owner of the land. Section 19 of the Limitation Act therefore, had no application.[14]

13. Conditional acknowledgment of liability. An unqualified admission and an admission qualified by a condition, which is fulfilled, stand upon precisely the same footing and this section applies to both cases.[15] Thus a debtor's statement that he would pay on hearing from the creditor as to how much is due is an unconditional acknowledgment.[16] An admission of liability coupled with the condition that the liability is found by arbitrators to exist, is sufficient for the purpose of this section, provided that such condition has been fulfilled.[17] Where a co-sharer in exclusive possession writes to another co-sharer demanding his share of the expenses for repair or surrender of his interest. This is not a conditional acknowledgment of the other's right.[18] Where a letter by defendant to the plaintiff states that a sum as shown in the annex to the document was according to the defendant due to the plaintiff for 1930, on account of royalty. The statement is followed by a sentence that as soon as the state of dues was accepted as correct a cheque in payment thereof would be sent. It was held, that the acknowledgment of what was due was not subject to the acceptance of the accounts. The second sentence should not be read as a condition attached to the statement made in the first sentence.[19]

A conditional acknowledgment where the condition has not yet been fulfilled is not an acknowledgment falling under this section. Thus where part of the liability was paid and the balance was promised to be paid subject to the decision of the High Court. It was held that the expression, "pending the decision of the High Court" would seem to be ambiguous. It may be construed as a promise to pay only if the award of the sole arbitrator in favour of the defendant was upheld by the High Court. That would make it a conditional acknowledgment, and therefore not the acknowledgment contemplated under section 19.[20]

When the terms of liability in an acknowledgment are clear and unambiguous, the mere imposition of a time limit cannot, under ordinary circumstances, be regarded as annexing a condition.[1]

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14. PLD 1987 Pesh 125 = PLJ 1987 Pesh 176 = NLR 1988 CLJ 23.
15. PLD 1958 Kar. 534 + 1971 DLC 279 = 23 DLR 81 (DB) + ('06) 33 Cal. 1047 = 2 Nag. L.R. 130 = 33 Ind. App. 165 (P.C) + AIR 1955 Pat. 182 = 33 Pat. 339 (DB) + AIR 1951 Trav-Co. 93 (DB) + AIR 1942 Pat. 170 (DB) + AIR 1940 Bom. 172 = ILR 1940 Bom. 225 (DB).
16. AIR 1920 Mad. 488 (DB).
17. AIR 1927 All. 488 = 49 All. 801 (DB) + AIR 1919 Mad. 838 (DB) + AIR 1917 Mad. 892 = 40 Mad. 701 (DB) + AIR 1934 Lah. 973 + AIR 1937 Pat. 616.
18. ('23) 5 Lah. L. Jour 47.
19. AIR 1960 S.C. 953.
20. PLD 1975 Kar 209 = PLJ 1975 Kar 55.
1. 1958 Andh L.T. 827. (Acknowledgment in these terms: "My client is prepared to pay the balance due to your client, as soon as your client comes and settles the account--My client is prepared till about a fortnight to render accounts of subsequent dealings at all business hours in partnership promises and pay up whatever is found due" is not conditional acknowledgment--Time limit pertained to the offer of conciliation settlement rather than enforceability of claim itself).

Acknowledgment of open account. The admission of the existence of open and unsettled accounts between the parties may itself be express or implied.[2] The implied admission of liability to pay is not affected by an accompanying assertion to the effect that nothing would be due from the person admitting or that the balance would be due from the other.[3] Where an unsettled account is admitted and it is submitted to arbitrators, the admission of the account is unconditional and will save limitation.[4]

Admission coupled with denial of liability. 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 anything 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 who owes him a certain sum, but admits that the latter is entitled to set off a certain amount against his claim, there is no acknowledgment of liability.[5] Admission of execution of a pronote coupled with denial of liability on the ground that there was no consideration is not an acknowledgment subject to proof of consideration.[6]

14. Acknowledgment of past liability. The section requires an acknowledgment of a subsisting liability.[7] Ordinarily when a debtor makes an acknowledgment of liability it would mean that he was admitting a subsisting liability to pay unless there is something to the contrary in his statement.[8] But an

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2. AIR 1917 Mad. 845. (Letter saying "I have insured and sent Rs. 100. On receipt of it please credit the said sum of Rs. 100 in our accounts"—*Held*, that this letter acknowledges the existence of an account between the parties) + AIR 1935 Oudh 170 (DB) + AIR 1933 Rang. 147 + AIR 1944 Lah. 65 (DB) + AIR 1927 Lah. 832 + AIR 1933 Cal. 90 (DB).
3. PLD 1974 S.C. 174 + AIR 1939 Mad. 300 + ('55) 57 Pun. L.R. 9. (In a suit brought by the plaintiff for accounts alleging that he was a partner with the defendant is some contract work in the first letter written by the defendant to the plaintiff the defendant stated—"When I get well I shall get the whole account cleared with you, and if there is any money due to the company from you, you will have to pay and if any money is due from the company they will pay." In the next letter the defendant said—"I never said that I shall send the account within 15 or 20 days but that I shall send it in two months' time....I am sorry that you will have to wait for the accounts for some time. In August or September if I am better I shall send for you and we shall go into the account"—*Held* that the letters fell within S. 19 and were acknowledgments of the accountability, particularly when it was stated that whatever was due from whichever party would be payable by him) + ('50) 3 Sau L.R. 124 (DB) + AIR 1949 East Punj. 219 + ('87) 10 Mad. 259 (DB) + ('09) 3 Sind L.R. 53 (DB).
4. ('87) 10 Mad. 259 (DB) + AIR 1948 Nag. 334 = ILR 1947 Nag. 477 (DB) + AIR 1937 Mad. 38 + AIR 1928 Sind 45 = 22 Sind L.R. 117 (DB).
5. PLD 1959 Lahore 295.
6. PLD 1958 Kar. 534 + AIR 1934 Bom. 186 (DB).
7. PLD 1965 Kar. 519 + AIR 1941 Pat. 147 = 19 Pat. 938 (DB) + AIR 1957 Tripura 33 (The acknowledgment must show an existing jural relationship between the parties at the time when admission was made) + AIR 1956 Nag. 267 + ('50) 55 Mys. HCR 11 (DB) + AIR 1954 Trav-Co 374 + AIR 1952 Trav-Co. 518 (DB) + AIR 1949 Mad. 401 + AIR 1948 Bom. 125 = ILR 1947 Bom. 827 (DB) + AIR 1948 East Punj. 36 + AIR 1945 Bom. 200 = ILR 1945 Bom. 167 (FB) + AIR 1920 All 92 = 42 All 575 (FB) + ('02) 25 Mad. 220 (FB) + ('82) 9 Cal. 616 (DB) + AIR 1916 Lah. 234 = 1916 Pun. L.R. No. 155, p. 508 (DB). (Admission of past liability not sufficient) + AIR 1919 Mad 317 = 42 Mad. 637 (DB) + AIR 1932 Oudh 154 + AIR 1945 All 224 + ILR 1946 All 120 (DB) + AIR 1933 Nag. 13 = 28 Nag. L.R. 348 + AIR 1924 Pat. 806 (DB) + ('12) 15 Ind. Cas. 363 (Low Bur).
8. AIR 1945 All 224 = ILR 1945 All 120 (DB).

admission of a past liability, unaccompanied by a denial of the continuance of the liability, does not necessarily imply that such liability continues and that the admission is one of a subsisting liability.[9] Thus where a mortgagee executing a release deed refers only to his past and extinguished rights as a mortgagee, acknowledging the payment of the mortgage money, the very purpose of the release deed was to say the mortgage right had been extinguished by payment and that the mortgagee had no further rights. That cannot obviously constitute an acknowledgment of a subsisting liability. A mere recital of past liability accompanied by a statement as to its discharge cannot be construed as an acknowledgment of liability.[10]

An acknowledgment of liability after expiry of limitation when that liability has ceased to be a subsisting liability does not revive the liability.[11] Where in the mortgagee deed there was a stipulation that if the mortgage was not redeemed by a certain date the mortgage deed would be deemed to be a sale-deed and the mortgagee would be deemed to be a purchaser. After the expiry of the stipulated date the mortgagee sold the mortgaged property and in the sale-deed he had mentioned the fact of the mortgage but had said that by virtue of the stipulation he had acquired the proprietary right therein and that there was no liability existing at the time of execution of the sale-deed. Subsequently it was held that the stipulation in the deed was a clog on redemption and that it was a usufructuary mortgage deed. In a suit for redemption, in order to save limitation the mortgagee stated in the sale-deed that the property was the subject of a mortgage, as an acknowledgment by the mortgagee of his liability. It was held that an acknowledgment within the meaning of S. 19 is an acknowledgment of liability existing at the time of the acknowledgment and not of its having existed sometime earlier. What the mortgagee acknowledged was his liability at one time as a mortgagee. When he claimed to be the proprietor, it mean that he denied that he was still liable as a mortgagee. He based his title as a proprietor on the mortgage-deed and so admitted it.[12]

15. Admission of execution of document--effect. The admission of the execution of a document does not necessarily imply admission of a subsisting liability under it.[13]

Admission before Sub-Registrar. Admission of the execution of a document, before the Sub-Registrar before whom it was presented for registration was held to be an acknowledgment of liability under the document.[14]

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9. AIR 1935 Mad. 371 (Overruled in AIR 1940 P.C. 63 on another point) + AIR 1933 Mad. 565 + 1887 Pun. Re. No. 20, p. 46 (DB) + AIR 1931 Oudh 295 (DB) + AIR 1930 Oudh 67 = 5 Luck 446 (DB).
10. AIR 1964 Madras 269 (FB).
11. 1971 DLR 185 + AIR 1964 Mad. 527 (DB) + AIR 1963 All 422 (DB) (*But see* 1982 CLC 1658).
12. AIR 1963 Allahabad 422 (DB).
13. AIR 1924 All. 70 = 45 All. 679 + AIR 1934 Bom. 186 (DB) + AIR 1935 Cal. 721 = 61 Cal. 512. (May imply admission in view of the context and the circumstances in which it has to be interpreted) + AIR 1927 Mad. 219 = 50 Mad. 548 (DB) + AIR 1947 All. 214 = ILR 1916 All. 375 (DB).
14. AIR 1933 Mad. 713 = 57 Mad. 43 (DB) + AIR 1923 Lah. 369 (DB).

16. Acknowledgment by person not liable. An acknowledgment of liability necessarily implies an acknowledgment by a person who at the time is under a liability in regard to the matter in question and therefore a so-called acknowledgment by a person, who is not under a liability in regard to the matter in question at the time of the acknowledgment is not an acknowledgment at all under this section.[15] Thus an acknowledgment by the son of the proprietor of a sole proprietary firm was not an acknowledgment by the firm as contemplated by this section.[16] An acknowledgment by a mortgagee after transfer of his rights during mutation proceedings is of no effect against the transferee.[17] Where an endorsement at the back of the mortgage-deed recited that a certain sum of money has been received by the guardian of the minor mortgagees. The endorsement merely showed that a certain amount was being received but it said nothing about the guardian being a mortgagee, leaving alone the question of any acknowledgment of her liability with respect to redemption of the mortgage in question by the mortgagor. It was held, that it was impossible to conclude in the circumstances that there was any acknowledgment within the meaning of S.19.[18]

17. Acknowledgment must be in respect of particular property or right claimed in the suit or application. An acknowledgment of liability under this section must be in respect of the particular property or right claimed in the suit.[19] It is not enough under this section that there is a written admission of liability and that such admission is proved to be intended to refer to the right claimed in the suit. The fact that the admission is intended to refer to the right claimed in the suit must be indicated in the document containing the admission.[20] Where the defendant has acknowledged liability in respect of another account and thus the claim and acknowledgment are in respect of different rights, for the purpose of this rule there is no acknowledgment.[1] Similarly where several debts are owing and only one of them is acknowledged without identifying it; the acknowledgment is ineffective.[2] Where a debt has merged into a decree, an acknowledgment of the debt by the judgment-debtor in the insolvency petition filed by him is not sufficient to save limitation for an application to execute the decree. The decree has come into existence and so the original debt could not be put into suit. Only the decree could be put into execution and therefore, clearly the acknowledgment

15. 1981 CLC 1132+AIR 1941 Pat. 147=19 Pat. 938 (DB)+AIR 1952 Orissa 62 (DB)+AIR 1951 Nag. 240+AIR 1948 Bom. 125+AIR 1937 Lah. 171 (DB)+AIR 1919 All. 242 (DB)+AIR 1932 Oudh 1=7 Luck 270 (DB)+AIR 1920 Mad. 1026 (DB)+AIR 1932 Bom. 531.
16. 1981 CLC 1132 (DB).
17. AIR 1959 Punj 626.
18. AIR 1959 Punj. 335=ILR 1959 Punj. 498 (DB).
19. AIR 1941 Mad. 892 (DB)+AIR 1959 Pat. 69 (DB). (Exact nature of property need not be specified--But the property or right must be sufficient deducible)+AIR 1939 Mad. 678+AIR 1933 Bom. 348+AIR 1922 Bom. 356=46 Bom. 1000 (DB)+AIR 1921 Bom. 291=45 Bom. 934 (DB)+AIR 1914 Cal. 487 (DB)+AIR 1920 Oudh 236=23 Oudh Cas. 176+AIR 1928 Sind 45=22 Sind L.R. 117 (DB)+AIR 1919 Sind 33=13 Sind L.R. 183 (DB).
20. ('10) 13 Cal. L. Jour 139 (DB)+AIR 1921 Bom. 291=45 Bom. 934 (DB)+AIR 1922 Bom. 356=46 Bom. 1000 (DB)+AIR 1919 Sind 33=13 Sind L.R. 183 (DB).
1. PLD 1950 Sind 148=PLR 1948 Sind 11 (DB).
2. 17 All. 198=22 Ind. App. 31 (P.C.).

had to be in respect of the right to execute the decree and it is the decree which should be mentioned.[3]

Mortgage debt. Where a debt secured by a mortgage is acknowledged without reference to the mortgage, the acknowledgment would not have effect of extending limitation under S.19.[4]

Identification of claim or right. According to Explanation I to the section, acknowledgment need not specify the exact nature of the property or right in respect of which liability is acknowledged.[5] The section requires that the acknowledgment of liability is to be made in respect of such property or right and need not be in respect of the specific claim advanced by the plaintiff. Explanation I makes it further clear and stipulates that such an acknowledgment would be sufficient even though the acknowledgment does not specifically mention the exact nature of the property or right.[6] Therefore it is sufficient for the purpose of the section, if the right is indicated in such a way that with the help of external evidence it can be identified with the right claimed in the suit. The reason why external evidence is admissible for the purpose of identifying the property or right referred to in an acknowledgment of liability is contained in Explanation I to the section.[8]

Debt, acknowledgment of. An acknowledgment of a debt need not specify any precise sum as due.[9] Where the right acknowledged is indicated to be a right to a debt, the fact that on the date of acknowledgment there was no other debt due from the defendant to the plaintiff may be proved for establishing the identity between the right acknowledged and that sued on.[11]

Mortgage rights, acknowledgment of. A mere admission that there is a mortgage on one's property may be sufficient although there is nothing in the statement itself to identify the mortgage with the mortgage in suit.[11] Where the date of mortgage is wrongly stated in the acknowledgment but the mortgage acknowledged can be identified, the acknowledgment is good for the purposes of this section.[12]

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3. AIR 1957 All. 438.
4. 1987 CLC 1954 = KLR 1987 CC 514 + PLD 1987 Lah 295 = PLJ 1987 Lah 255 = 1987 Law Notes 372
5. AIR 1940 Bom. 172 = ILR 1940 Bom. 225 (DB). (Per Sen. J., in the lower Court's judgment) + AIR 1926 All 75 (DB) + AIR 1932 Bom. 531 + 6 Cal. L. Jour 544 (DB) + 1885 Pun. Re. No. 28, p. 56 (DB) + 26 Mad 34 (DB) + AIR 1920 Oudh 236 = 23 Oudh Cas. 176.
6. 1971 DLC 279 = 23 DLR 81 (DB).
7. AIR 1961 Raj. 235 (DB) + 12 Suth W.R. (OC) 2 (DB) + 5 Beng. L.R. 619 (DB).
8. AIR 1933 All. 352 + AIR 1930 All 368 (DB) + AIR 1934 Lah. 835 = 16 Lah. 258 (DB) + AIR 1924 Mad. 286 (DB).
9. AIR 1930 All. 461 + AIR 1955 Cal. 194 = ILR (1956) 2 Cal. 822 (DB) + 3 Sau L.R. 124 (DB) + 35 Bom. 302 (DB) + 9 Beng. L.R. (App.) 43 + 5 Beng. L.R. 619 (DB) + AIR 1936 Lah. 276 + 6 Ind Cas. 948 = 1910 Pun. Re. No. 55 (DB) + 3 Mad. H.C.R. 308 (DB) + 5 Nag. L.R. 8.
10. 17 All. 198 = 22 Ind. App. 31 (P.C.)
11. 25 Mad. 220 (FB).
12. 26 All. 313 (DB) + 11 All. L. Jour 86.

Acknowledgment need not relate to particular relief. An acknowledgment need not be in respect of the particular relief claimed in the suit.[13]

18. Acknowledgment of anything includes acknowledgment of its legal consequences. For an acknowledgment to be sufficient under this section it is enough if the right claimed in the suit is legal consequence of the matter which has been admitted.[14] Admission by a mortgagor of his liability under mortgage would carry with it admission of all the remedies to which mortgagees might be entitled to.[15] Where a mortgagee acknowledges a subsisting mortgage the acknowledgment clearly implies an acknowledgment of the liability to be redeemed as well as an acknowledgment of the mortgagor's right to redeem.[16] The acknowledgment of an unsettled account would amount to acknowledgment of liability on settlement of the account.[17]

The acknowledgment of the amount due to the other party on settlement of an account implies a promise to pay and hence could be the basis of a suit for recovery of that amount.[18] An endorsement in the handwriting and signature of the debtor on the back of the pronote acknowledging that interest is being paid impliedly amounts to an admission that some principle is also due as set out in the pronote itself on the back of which the endorsement is made. This is so even if no interest in fact is paid.[19]

19. Acknowledgment of liability in respect of part of claim. Where an acknowledgment of liability is made only with reference to a portion of the claim put forward by the plaintiff. Such acknowledgment will save limitation only with regard to such portion.[20] Where the plaintiff submits his bill for a certain amount of money for the work done, to the defendant, and the defendant passes the bill for a lesser amount and disallows the plaintiff's claim for the rest and expressly denies and repudiates its liability in respect of the remaining amount of the bill, the mere fact that the defendant passes the bill for a lesser amount and thereby admits its liability to pay the sum allowed, cannot amount to an acknowledgment of its liability to the plaintiff to pay also the balance amount of the bill which was expressly disallowed.[1] Where, the acknowledgment is in respect of this liability

13. AIR 1929 Oudh 236 = 23 Oudh Cas. 176.
14. 25 Cal. 844 = 25 Ind. App. 95 (P.C.) (*A* liable to contribute to *B* for joint debt which *B* discharged admitting debt is joint--*Held* admission sufficient for suit for contribution) + AIR 1928 Mad. 713 (FB) + ILR 1953 Trav-Co. 48 (DB). (An acknowledgment of a subsisting mortgage right made by a mortgagee clearly implies as acknowledgment of the liability to be redeemed as well as an acknowledgment of the mortgagor's right to redeem) + AIR 1951 Cal. 462. (If there is an admission of facts of which the liability in question is a necessary consequence there would be acknowledgment).
15. 1987 CLC 1954 = KLR 1987 CC 514.
16. ILR 1953 Trav-Co. 48 + AIR 1953 Trav-Co. 244 (DB).
17. AIR 1961 Cal. 188 (DB).
18. AIR 1964 Assam 78 (DB) + AIR 1953 S.C. 225.
19. AIR 1963 All 579 + AIR 1935 All 946 (FB).
20. AIR 1930 All 461 + 1891 All W.N. 126 (DB) + 23 Bom. 177 (DB) + AIR 1935 Cal. 235 + AIR 1918 Cal. 294 (DB) + AIR 1925 Sind 8 (DB) + AIR 1919 Sind 33 = 13 Sind L.R. 183 (DB). (Acknowledgment of the liability in respect of the sum due as principal does not involve an admission as to interest) + AIR 1942 Mad. 167.
1. AIR 1961 Pat. 134.

arising out of the relationship of landlord and tenant and for a specified period then so far as the liability in respect of another period is concerned, the acknowledgment cannot serve to overcome the bar of limitation.[2]

Acknowledgment as to interest. An acknowledgment as to interest is not an acknowledgment of only part of the claim so far as liability to pay the principal is concerned. Therefore an acknowledgment that interest is due can be taken not only as an acknowledgment as to interest but also as to principal.[3]

20. Acknowledgment of liability in respect of promissory notes, whether available in respect of original cause of action. A promissory note does not amount to an acknowledgment within the meaning of section 19, as it does not acknowledge an existing liability but is merely a promise to pay a certain sum of money in future and is truly a security rather than an acknowledgment.[4] An acknowledgment of liability made in the promissory note given in respect of pre-existing debts can refer to new debt substituted by the note but it cannot help in a suit for original debt which revives by reason of the unenforcibility of the promissory note.[5] But where the intention of the parties is that the new note is a conditional payment of the original debt, the acknowledgment is sufficient either for a suit on the note or on the pre-existing debt.[6] Thus where the intention is to give a promissory note in conditional payment of the original debt, the note does not extinguish such debt but is only given on the terms that, if it is paid when it falls due, this must be equivalent to a payment of the original debt.[7] Where a promissory note is given in lieu of an existing debt and a receipt is passed by debtor acknowledging the debt, and receipt of the sum is mentioned in the note. The receipt can be relied upon as an acknowledgment in a suit on the original cause of action.[8]

Unenforceable promissory note. A promissory note otherwise unenforceable was good evidence of acknowledgment of liability under section 19.[9] Where a promissory note in lieu of an earlier debt is inadmissible in evidence for want of stamp, and a receipt was passed by the debtor on the same day on which the note was executed, acknowledging receipt of the sum mentioned in the note, a suit could be based on the receipt as an acknowledgment of liability.[10]

Agreement subsequent to promissory note. An agreement subsequent to the execution of a promissory note could be taken advantage of as an acknowledgment by an endorsee of the note. Thus where a pronote is made by *D* in favour of *B*. On the same date it is agreed that *D* may pay the amount of

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2. AIR 1962 Mad. 389.
3. 1937 Mad. W.N. 1312.
4. PLD 1975 Kar. 844 = PLJ 1975 Kar. 397.
5. AIR 1935 All 129 = 57 All 434 (DB).
6. 7 Mad. 392 (DB). (Case about bill of exchange).
7. 41 Ind. App. 142 = 1914 App. Cas. 618 (P.C.) (Promissory note does not create substantive obligation but only a mode of payment of original debt) + AIR 1917 Mad. 460 (DB). (Acknowledgment can be relied upon whether suit is on the note or on the original debt.).
8. AIR 1933 Oudh 80 = 8 Luck 195 (DB) + AIR 1937 Oudh 387 = 13 Luck 376 (DB) + AIR 1930 All. 368 (DB).
9. 1989 CLC 2441 = NLR 1989 Civ. 533.
10. AIR 1929 All. 980 = 52 All. 169 (DB).

pronote by instalments. *B* endorsed the pronote to *P*. It was held that *B* could take advantage of the agreement for the purposes of limitation.[11]

Where a debt evidenced by a promissory note is acknowledged, limitation for suit runs from the date of the last acknowledgment.[12] Where a pronote was executed on 31-3-1962, execution of balance confirmation slips dated 3-3-1965 and 31-12-1967 and demand promissory note dated 23-2-1968 admitted by the defendant, would constitute acknowledgment of liability and a suit filed on the promissory note on 13-2-1971 would be within limitation.[13]

New pronote. Where a new promissory note was executed in lieu of an earlier one, and endorsement is made on the back of the old note that it had become void as a new note had been executed. The new note was insufficiently stamped; the endorsement on the earlier note could be relied upon to save limitation for the old note.[14] Where a renewed promissory note is materially altered and becomes void on account of S.87, Negotiable Instruments Act, a suit on the original promissory note lies. The document acknowledging part-payment under the renewed promissory note can be treated as an acknowledgment of liability arising under the original promissory note.[15]

21. "In writing." An acknowledgment under this section must be in writing: an oral acknowledgment is not sufficient.[16] Thus a mere payment of a sum of money towards the debt is not sufficient under this section although such payment may be intended as an acknowledgment of the debt.[17] Therefore entries in a Bank accounts regarding payments made by a debtor of the Bank, though correct, cannot amount to acknowledgment within the meaning of the section so long as they are not acknowledged in writing by the debtor.[18]

A mere payment of a sum of money towards the debt is not sufficient under this section although such payment may be intended as an acknowledgment of the debt.[19]

22. "Signed." An acknowledgment of liability under this section must be signed by the person making the acknowledgment or by his agent.[20] Where a suit to recover money was based on *khata* entry made by the defendant himself in the course of his employment as *Munim*. But there was nothing in the entry to indicate that it was authenticated by the defendant or it was made by him with a view to admit his liability for the balance drawn. It was not also signed, the entry

11. AIR 1944 Mad. 57.
12. 1976 SCMR 67 (Diss: PLD 1963 SC 163).
13. 1982 CLC 900.
14. AIR 1939 Mad. 34 + AIR 1931 All. 560 (DB).
15. AIR 1960 Andh. Pra 121.
16. 1986 CLC 644 = 1986 CLC 2555 + PLD 1983 Pesh 58 = PLJ 1983 Pesh 1 + AIR 1939 Bom. 237 (DB) + AIR 1951 Ajmer 59 + AIR 1926 All. 85 + 11 Ind. Cas 445 = 1911 Pun Re. No. 93.
17. AIR 1936 All. 21 = 58 All. 313 (FB) + AIR 1934 Lah. 992 + AIR 1919 Cal. 534 = 36 Cal 168 (DB).
18. PLD 1969 Dacca 529 = 21 DLR 755 (DB).
19. AIR 1936 All. 21 = 58 All. 313 (FB) + AIR 1934 Lah. 992 + AIR 1919 Cal. 534 = 46 Cal. 168 (DB).
20. AIR 1928 All. 310 + AIR 1950 P.C. 15 = 77 Ind. App. 22 = 29 Pat. 272 + AIR 1916 All. 201 = 38 All. 540 (DB) + AIR 1932 Bom. 531 + AIR 1931 Lah. 122 (DB) + AIR 1918 Lah. 248 = 1918 Pun Re No. 34 + 20 Ind Cas 62 (DB) (Oudh) + 2 Upp Bur Rul 462.

could not be treated as an acknowledgment for the purpose of S.19.[1] Similarly a telegram,[2] or a plan not signed by a party but containing an acknowledgment of liability and filed along with the plaint.[3] and entries in account books not signed by parties do not amount to acknowledgment under this section.[4]

Signed--meaning of. The object of the Act is to regard as sufficient what the writer intends to be equivalent to his signature, the form being immaterial so long as it verifies the acknowledgment.[5] Affixing the seal or stamp to a document containing an acknowledgment is equivalent to signing such document.[6] To constitute acknowledgment it will be enough where the person making an acknowledgment not being able to write his name affixes his thumb impression.[7]

A person may authorise another person to sign his (the former's) name on his behalf and in such cases the signature will be held to be that of the principal.[8]

Place of signatures. The signature may appear in any part of the document provided it is clear that the intention of the party is to acknowledge the instrument to be his.[9]

Signature by agent. An acknowledgment as provided under section 19 of the Limitation Act will save limitation only when the same is in writing, signed by the defendants or by some person from whom they derive title or liability, or duly authorised in that behalf. If there be any signature of an agent, then, it is the duty of the party who relies on such acknowledgment to prove that the said agent was specifically authorised to sign the document and that is indicated by the words 'in that behalf' occurring in Explanation II of section 19 of the Limitation Act.[10]

Signature of Party for purpose other than acknowledgment. Where a person signs a document in a capacity other than that of the person liable, there is no acknowledgment of liability. Thus where a mortgagor signs certain entries in the

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1. AIR 1957 Madh Pra 237.
2. 1906 Pun L.R. No. 155. p 508 (DB).
3. AIR 1925 Lah. 529 (DB).
4. AIR 1930 All. 124 (DB) + 34 All. 464 (DB) + 8 Bom. H.C.R. (AC) 6 (DB) + (1856) 3 Suth W.R. 94 (DB) + 1912 Pun L.R. No. 92. p. 277 + AIR 1918 Mad. 238 = 41 Mad. 446 (DB).
5. AIR 1935 Rang. 160 = 13 Rang. 322. (Affixing rubber stamp) + AIR 1957 Mad 8 (DB). (Full signature is not necessary--Initials are enough) + AIR 1935 Mad. 555 = 59 Mad. 72 (Do) + 31 Cal. 1043 (DB) (Actual name of alleged signatory not necessary) + AIR 1942 Mad. 680 = II.R 1942 Mad. 927 (Do)--AIR 1926 Mad. 827. *Overruled*) + 18 Bom. 586 (DB) (Do) + AIR 1925 All. 85 (DB) (Do) + AIR 1915 Mad. 506 (DB) (Do) + 1889 Pun Re No. 122. p. 416 (DB) + AIR 1940 Pat 6 = 18 Pat. 715 (DB).
6. 1883 Pun Re No. 185. p. 566 (DB) + AIR 1933 Lah. 12 = 14 Lah. 14 (DB) + AIR 1935 Rang. 160 = 13 Rang. 322.
7. AIR 1932 Bom. 531 + AIR 1928 Bom. 417 = 52 Bom. 356 (DB) + 7 Mad. H.C.R. 358 (DB) + 1877 Pun Re No. 93. p. 243 + 1891 Pun Re No. 16. p 102 + AIR 1921 Pat. 476.
8. AIR 1940 Pat. 6 = 18 Pat. 715 (DB) + 6 Cal. 340 (DB) + 32 All. 33 (DB) + AIR 1919 Mad. 952 (DB) + AIR 1921 Nag. 1 = 17 Nag. L.R. 209 + 1889 Pun Re No. 122. p. 416 (DB) + 24 All. 319 (FB) + AIR 1935 Rang. 160 + 13 Rang. 322 + 6 Mad. L. Jour 209 + 10 Suth W.R. 293 (DB) + 1877 Pun Re No. 93. p. 243.
9. 6 Cal. 340 (DB) + 1 All. 683 (DB) + 10 Bom. 71 (DB) + AIR 1921 Nag. 1 = 17 Nag. L.R. 209 + 1889 Pun Re No. 122. p. 416 (DB) + (1864) 2 Mad. H.C.R. 79 (DB) + AIR 1941 Oudh 376 (DB) + 5 Bom. 88 (DB) + AIR 1933 Lah. 12 = 14 Lah. 14 (DB) + AIR 1919 Mad. 952 (DB) + AIR 1924 All. 855 = 46 All. 892 (DB).
10. 1971 DLC 185.

account-book of the mortgagee but the mortgagee also signs the entries as a scribe, the latter does not thereby acknowledge any liability on his part.[11] But where a mortgagee puts his seal on the mortgage deed while attesting the mutation, an acknowledgment is effected. The mortgagee being lumbardar does not change the position.[12]

23. Admissibility of external evidence for construction of documents alleged to contain acknowledgment of liability. As a general rule, in determining whether a document contains an admission of liability it is not open to the Court to take into consideration evidence of external circumstances.[13] The meaning sought to be put upon a document must be ascertainable from the language used in it and the surrounding circumstances should not be considered unless the meaning be doubtful. Extrinsic evidence is always admissible not to contradict or vary a written contract, but to apply it to the facts which the parties had in their minds and were negotiating about.[14] Unless there is an error of law in arriving at the conclusion on a question of mixed law and fact, the conclusion though based upon the primary evidentiary facts cannot be challenged on second appeal. Errors in appreciating documentary evidence or errors in drawing inferences are not errors of law and conclusions of fact even if based on circumstances are generally binding on the High Court on second appeal.[15] Extrinsic evidence of every material fact which will enable the Court to identify the persons and things to which the instrument refers, is admissible.[16]

Oral evidence. For the purpose of identifying the right only evidence of surrounding circumstances is admissible. Oral evidence of the person making the acknowledgment, as to his intentions is not admissible.[17]

Date of acknowledgment. Oral evidence is admissible to prove the date of writing of acknowledgment.[18]

24. Who may make acknowledgment. Acknowledgment in respect of right in property in terms of S. 19 may be competently made either by party against whom such right be claimed or by some person through whom he derives title or liability.

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11. AIR 1931 Lah. 122 (DB).
12. 1974 L.N. 715.
13. AIR 1924 P.C. 162 = 48 Mad. 230 = 52 Ind. App. 1 + AIR 1927 P.C. 272 + AIR 1954 Trav-Co. 374 + AIR 1939 All. 177 = ILR 1939 All. 200 (DB) + 26 Mad. 34 (DB) + AIR 1932 Bom. 531 + 6 Cal. L. Jour 544 (DB) + AIR 1925 Mad. 675 + AIR 1936 Lah. 629 = 17 Lah. 737 (DB) + 5 Mad. H.C.R. 90 (DB) + AIR 1921 Nag. 1 = 17 Nag. L.R. 209 + 1884 Pun. Re. No. 2, p. 7 (DB) + 5 Beng. L.R. 619 (DB).
14. AIR 1959 Pat. 69 (DB).
15. AIR 1963 Punj. 95 (DB).
16. (1900) 48 W.R. (Eng) 591 = 1900 App. Cas. 182 + AIR 1945 Bom. 200 = ILR 1945 Bom. 167 (FB) + AIR 1955 Cal. 194 = ILR (1956) 2 Cal. 882 (DB). (Certain property was advertised for sale at the instance of the prior mortgagee. The mortgagor wrote to the subsequent mortgagee as follows: " As you are interested why do not you take up the whole. There is only about Rs. 70,000 due to the mortgagee–a payment of Rs. 10,000 will stop the sale" *Held*, that having regard to the circumstances the word "interested" meant "interested as mortgagee" and thus there was an admission of an existing mortgage debt in favour of the subsequent mortgage) + AIR 1954 Trav-Co. 374 + AIR 1941 Mad. 409 + 17 All. 198 = 22 Ind App. 31 (P.C.) + 25 Mad. 220 (FB).
17. 17 All. 198 = 22 Ind App 31 (P.C.) + AIR 1963 Pb. 95 (DB).
18. PLJ 1981 Kar 202.

It may be competently made either personally or by agent duly authorized.[19] It is sufficient under this section if the acknowledgment has been made by a person against whom the right is claimed in the suit. It is not necessary that at the time when the acknowledgment was made such person must have had an interest in the property in respect of which the acknowledgment was made.[20] Thus where the decree-holder's right is against the decree schedule property, any person getting a transfer of the title to the property from the original defendant would also be deemed to be a party within the meaning of S. 19 and an acknowledgment of the liability of the property as per the decree made by such transferee will be as good as an acknowledgment made by the transferor defendant himself.[1]

Acknowledgment by one of Mortgagees. In order to save limitation acknowledgment of right of redemption should necessarily be signed by all the mortgagees. If it was not signed by all of them, it would not hold good even with regard to the shares of those who signed it as mortgage is indivisible and partial redemption was not permissible in law. The mere fact that each of the mortgagees were recorded as having specific shares would not entitle mortgagor to sue each one of them separately for redemption. Acknowledgment, therefore, could not be separated so as to save limitation in regard to the claim for a part of mortgaged property while the same was ineffectual for the remaining land.[2] An acknowledgment under S. 19 which would help the mortgagor in connection with a suit for redemption must be by all the mortgagees against whom the right of redemption is claimed and the acknowledgment should be with respect to such a right of redemption. Any partition which might have taken place between the co-mortgagees is not of much importance in considering the validity of an acknowledgment by one of the co-mortgagees for the purpose of S. 19.[3] In such a contingency an acknowledgment signed by one only of them, even though several mortgagees were recorded to have a definite share each would not hold good even with regard to the share of one who had signed it as the mortgage was indivisible and would not save the bar of limitation for suit for redemption especially so when there was neither any allegation nor any proof respecting the splitting up of the mortgage by any act of the mortgagees.[4]

Acknowledgment by one partner. Where an acknowledgment of liability is made by one of the several partners in order to bind the firm, evidence must be brought on record to show that the acknowledging partner had the authority of his co-partners or at any rate there were sufficient indications to show that the same could be properly inferred. Where he has no such authority, an acknowledgment by him does not bind the partnership.[5]

Acknowledgment by plaintiff. On principle a person cannot be allowed to have an extended time for enforcement of his rights as against another merely on the strength of his own acknowledgment of liability in respect of a correlative right which might give an extended time to that other. Therefore the contention that as

19. PLJ 1986 SC 1 = PLD 1986 SC 35.
20. 29 All. 90 (DB) + AIR 1951 All. 392 (DB) + AIR 1928 All. 387 (DB) + AIR 1925 Mad. 134.
1. AIR 1952 Trav-Co. 404 (DB).
2. 1987 CLC 1672.
3. 1956 All. L. Jour 264.
4. AIR 1964 Punjab 226 (DB) + AIR 1952 Pepsu 6 + AIR 1920 Lah. 516 + AIR 1934 Lah. 293.
5. PLD 1970 Karachi 495.

the mortgagor's admission of execution before the registering authority gives fresh starting point of limitation, as from the date of registration for a suit by the mortgagee for foreclosure or sale, the foreclosure or sale and redemption being correlative right, the mortgagor must also have in turn the benefit of that same starting point even so far as his redemption suit was concerned, is untenable.[6]

Acknowledgment by person having no interest. Where an acknowledgment of liability is made by a person who has no interest in the matter, the acknowledgment is ineffective and inoperative for the purpose of this section. Thus an acknowledgment of a mortgage by a person having no interest therein does not save limitation.[7] Where a Commissioner appointed by Court to examine accounts stated that certain debt claim was genuine the statement would not amount to an acknowledgment under the section.[8] Even where a person is liable with another in a different capacity and he acknowledges the liability of such other person, the acknowledgment does not extend time. Thus where *A* is liable personally and *B* is liable as a trustee and *A* acknowledges the liability of *B* as a trustee, there can be no extension of time.[9]

Acknowledgment in other proceedings. Where a person seeks relief on an acknowledgment of liability said to have been made in another proceeding, he is bound to prove independently, the fact that there was an acknowledgment of liability and that the person who made it in that proceeding was competent to make it.[10]

Acknowledgment by person through whom title is derived. An admission by a person before he actually inherited the title or liability could not amount to an acknowledgment of liability.[11]

Under section 19 (1) the acknowledgment of liability must be by a party against whom property or right is claimed or by some person through whom he derives title or liability. When section 19 makes an acknowledgment given by one person operative as against another on the ground that the latter derives title or liability from the former. It contemplates that the derivation of title or liability takes place after the acknowledgment has been given. Hence where a mortgagor has sold one of the items of the mortgaged property and retained interest in the rest of the items of the mortgaged property, he cannot by an acknowledgment of liability made after such sale extend the period of limitation against the purchaser.[12] Where acknowledgment is made before actual transfer of interest an acknowledgment of liability in respect of a mortgage on the property by the judgment-debtor will be binding on the auction purchaser, [13] as well as upon the attaching creditor.[14] Similarly acknowledgment of mortgage by mortgagee is

6. AIR 1957 Ker. 117.
7. AIR 1962 Mad. 413.
8. PLD 1970 Karachi 495.
9. AIR 1964 S.C. 227.
10. 1963 Madras 413.
11. AIR 1932 Bom. 531.
12. AIR 1963 Madras 21 + AIR 1940 Mad. 470 (FB) + AIR 1942 P.C. 67 + 1 Cal. L.J. 337.
13. AIR 1918 Cal. 978 (DB). (Acknowledgment after attachment will not bind).
14. AIR 1945 All. 224 = ILR 1945 All. 120 (DB).

binding on an assignee.[15] Where an acknowledgment is made by the previous receiver of an estate through whom succeeding receiver had derived his liability to pay the debt, S. 19 in terms is applicable. No recourse is needed to the second part of Explanation II.[16]

25. Acknowledgment of mortgage by mortgagor after transfer of equity of redemption. There is a conflict of opinion on the question of the binding nature of an acknowledgment of mortgage by the mortgagor made after the transfer of the right. One view is that the acknowledgment will not bind the transferee in any case, irrespective of the question whether at the time of the acknowledgment the mortgagor was himself liable or not,[17] and the other view is that an acknowledgment made even after the date of transfer would be binding upon the transferee provided the mortgagor himself was liable at the time of acknowledgment.[18]

Acknowledgment by decree-holder auction-purchaser. An admission in a sale proclamation about the subsisting character of a mortgage by the decree-holder who ultimately purchased the property in Court auction for a low value on the ground that it was being bought subject to the subsisting mortgage would operate to save limitation in so far as that mortgage is concerned.[19]

26. Renewal of first mortgage after second mortgage. Where a mortgage is renewed, the mortgagee is entitled to a fresh period of limitation from the date fixed for payment under the renewed mortgage.[20]

Though the renewal of a mortgage furnishes a new cause of action, the mortgagee is entitled to priority over intermediate mortgagees to the extent of the amount of the prior mortgage.[1]

27. "Fresh period of limitation shall be computed from the time when acknowledgment was so signed." Section 19 does not make any distinction between an acknowledgment which will give fresh period of limitation for execution of a decree and an acknowledgment which will give a fresh period of limitation for filing a suit.[2]

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15. AIR 1958 Ker. 307 = ILR 1957 Ker. 859 (DB).
16. AIR 1960 S.C. 953.
17. AIR 1940 Mad. 470 = ILR 1940 Mad. 872 (24 Mad. L. Jour 66: AIR 1932 Mad. 516 and AIR 1935 Mad. 899, *Overruled*: AIR 1937 Mad. 826, impliedly overruled) + AIR 1960 Mys. 187 (AIR 1942 P.C. 67, *Applied*: 32 Cal. 1077, *Distinguished* and *Not followed*: AIR 1950 Mad. 553, *Rel on*) + AIR 1953 Trav-Co. 196 = ILR 1953 Trav-Co. 258 (FB) + AIR 1957 Andh Pra 19 (DB) + AIR 1952 Nag 404 = ILR 1951 Nag 973 + AIR 1954 Trav-Co. 311 (DB) + AIR 1950 Mad. 553 (DB) + AIR 1949 Pat. 505 = 28 Pat. 303 (DB) + ('05) 1 Cal. L. Jour 337 (DB) + AIR 1936 All. 636 = 58 All. 912 (DB) + AIR 1947 All. 74 = ILR 1947 All. 11 (FB) + AIR 1946 Mad. 88 + AIR 1942 P.C. 67 = ILR 1942 Lah. 686 = ILR 1942 Kar. (P.C.) 153 = AIR 1944 Nag 163 = ILR 1944 Nag. 383 (FB) + AIR 1947 All. 214 = ILR 1946 All. 375 (DB).
18. AIR 1919 All. 242 (DB) + AIR 1920 Mad. 1026 (DB) + AIR 1937 Lah. 507 = ILR 1937 Lah.171 (DB) + AIR 1932 Oudh 1 = 7 Luck. 270 (DB) + 32 Cal. 1077 (DB).
19. 1960 - 1 Mad. L. Jour 346.
20. AIR 1925 Mad. 1108 (DB) + AIR 1939 Lah. 212.
1. AIR 1918 Mad. 1327 (DB) + AIR 1925 Mad. 1108 (DB).
2. AIR 1957 All. 438.

The fresh period of limitation on acknowledgment is to be computed from the date when the acknowledgment is signed.[3] Where a person borrowed money from a bank in 1956. Thereafter the borrower executed and delivered to the Bank from time to time hypothecation agreements, revival letters, promissory notes, acknowledgments of liabilities and written promises to clear outstanding and payable dues. Lastly the borrower executed acknowledgment in writing, admitting liability (to pay) as on 29-12-1977. It was held that not only liability was kept alive for the purposes of computing period of limitation for filing a suit but a fresh period of limitation was also to be computed from 29-12-1977.[4]

Section 6 and this section. An effective acknowledgment postpones the time from which the limitation for a suit is to be reckoned and to that extent that section controls S. 6.[5] The fresh period of limitation computed under this section is period "reckoned" within the meaning of S. 6 and where the plaintiff is under any of the disabilities mentioned in that section at the time of acknowledgment, he is entitled to the benefit of that section also.[6]

Section 14 and his section. There is a distinction between S. 14 and the provision made in S.19. Section 14 does not speak of excluding any period in the computation of the period prescribed under the Limitation Act. But S.19 and other similar provisions in the Limitation Act speak of a fresh period of limitation for suit or other proceedings becoming available from the date of acknowledgment. This is achieved in S.19 by providing that a fresh period of limitation shall be computed from the time when the acknowledgment was signed. Though this appears to stand on a slightly different footing from exclusion of time in computing the period indicated in S.14, the effect in both these cases appears to be the same.

Mortgage, admission of liability under. Where a debt was secured by mortgage, and continuous acknowledgments of debt by debtor were placed on record and last of such acknowledgments was dated 13-11-1986 wherein it was categorically undertaken that the accounts would be settled by 30th June, 1987 and repayment would commence with effect from March, 1987. Limitation for suit on the mortgage for recovery of the loan would commence from the date when the money sued for became due i.e., 30th June, 1987.[8]

28. Oral evidence as to acknowledgment. An acknowledgment which is relied on for the purpose of saving limitation is a "matter required by law to be reduced to the form of a document" within the meaning of S. 91 of the Evidence Act and hence the fact that an acknowledgment of liability has been made in writing

3. AIR 1927 Mad. 1200+AIR 1952 Pat. 73=30 Pat. 1161 (DB). (And not from the date to which the payment is deferred)+AIR 1945 Mad. 10=ILR 1945 Mad. 521 (DB)+AIR 1922 Nag. 256 (DB)+AIR 1923 Nag. 143 (Day on which acknowledgment is signed should be excluded under S.12 (1)+('90) 13 Mad. 135 (DB).
4. 1982 CLC 2625.
5. AIR 1942 Bom. 248=ILR 1942 Bom. 574.
6. AIR 1933 All. 100=54 All 1019 (DB)+ ('90) 13 Mad. 135 (DB)+AIR 1919 Lah. 177+('12) 14 Ind. Cas. 694 (DB) (Cal)+AIR 1936 All. 152+AIR 1945 Mad. 149 (Mortgage--Death of mortgagee leaving minor son--Subsequent acknowledgment--Death of minor--Mother suing within 3 years of his death--*Held* suit not barred).
7. AIR 1963 Madras 202 (DB).
8. PLD 1990 Lah. 111.

cannot be proved except by the production of the document itself or by secondary evidence of the contents thereof.[9] But it is not correct to say that the acknowledgments must be self-contained and that no outside help should be required in order to show that it related to the debt in suit. Surrounding circumstances are relevant and can always be taken into consideration in construing the words used in the writing which is sought to be utilised as an acknowledgment.[10] Therefore evidence to prove surrounding circumstances in which the document containing acknowledgment was made is admissible.[11]

Evidence as to date of acknowledgment. By reason of sub-section (2) the date of an acknowledgment need not be mentioned in the writing which contains an acknowledgment.[12] Where no date is given in the body of acknowledgment, oral evidence as to such date may be admitted. Where the date given in a writing containing an acknowledgment of liability is scored out, the document is undated and oral evidence may be given of the date of the document.[13] Even in cases where date is given, evidence will be admissible to prove that the date given in the writing is given by mistake for some other date.[14] But where the date given in the acknowledgment is altered, oral evidence to prove the date is not admissible.[15]

Evidence for contradicting or varying, etc., statements in document of acknowledgment. The prohibition contained in S. 92 of the Evidence Act against the admission of evidence to contradict, vary, add to or subtract from the terms of a written instrument does not apply to unilateral documents like acknowledgments of liability.[16] Therefore where a person executes a document containing an acknowledgment of liability and at the same time orally promises to pay the debt, the oral promise can be proved in order to show that there was a fresh contract between the parties and not merely an acknowledgment of liability.[17]

29. Acknowledgment coupled with averment that time for payment has not yet come. When a judgment-debtor states that the amount due under the decree remains unpaid but that the time for its payment has not yet come, his statement is a sufficient acknowledgment of liability under the decree.[18]

Acknowledgment coupled with denial of liability. Where a written statement contained an acknowledgment of liability coupled with an averment that the time for payment had not yet come and the statement further contained plea of a set off or a settlement on account anterior to the date of the settlement which had the effect of putting an end to the liability; it was held that the written statement contained only a denial of liability with a plea in the alternative that the time for payment had not yet come and, thus being an antithesis of what S. 19 together

9. ('21) 3 U.P.L.R. (All.) 179.
10. AIR 1963 Punjab 95 (DB).
11. AIR 1941 Pat. 170 (DB).
12. AIR 1921 Nag. 1 = 17 Nag. L.R. 209.
13. AIR 1933 Mad. 104.
14. 1877 Bom. P.J. 238 Reprint p. 440 (DB).
15. ('02) 26 Bom. 128 (DB).
16. AIR 1930 Nag. 298 = 26 Nag. L.R. 320.
17. AIR 1930 Nag. 298 = 26 Nag. L.R. 320.
18. AIR 1922 Cal. 187 (DB).

with Explanation I requires, could not be held to contain a valid acknowledgment.[19]

Statement of future liability only. Where only a statement that a sum of money will become due on the happening of an event future and uncertain, is made, there is not acknowledgment of a debt at all, but only the allegation of incidents out of which a debt may at some time arise.[20]

30. Acknowledgment coupled with refusal to pay. Under Explanation I in section 19 of the Limitation Act, an acknowledgment may be sufficient to save an action from the bar of limitation even if it is accompanied by refusal to pay or is coupled with the claim to a set-off.[1] An acknowledgment need not contain a promise to pay either in express terms or even in an implied way; what is necessary is that there should be an admission of subsisting liability. Even if such admission is accompanied by a refusal to pay, its character as an acknowledgment will not be altered.[2] Thus an admission that a debt is due from the defendant but that he is unable to pay it to the plaintiff as there are other claimants to the money, is sufficient acknowledgment for the purpose of the section.[3]

Dispute as to mode of payment or making claim. An assertion that a method of payment had been provided which it was the duty of the creditor to resort to before seeking to enforce the remedy against the debtor does not affect the efficacy of an admission of liability made by the debtor.[4] Thus where by the letter written by the defendants to the plaintiff the former acknowledged the liability for payment of wages to the plaintiff as manager but refused to pay the same unless the manager rendered accounts with regard to his acts of mismanagement, etc., it was held that the letter amounted to an acknowledgment within the meaning of Explanation I.[5]

Denial of validity of decree. Where the party stated that the hypothecation bond which was the basis of a suit was not supported by consideration and hence the decree passed in the suit was wrong; it was held that the statement was enough admission on his part, of the existence of an enforceable decree against him.[6]

Denial of liability. For the applicability of this section there must be, in the first place, an acknowledgment of liability and then a refusal to pay.[7] An acknowledgment of a past liability with a plea of discharge (though false) will not amount to an acknowledgment of liability for the obvious reason that there is no acknowledgment of a subsisting liability.[8] Similarly a mere statement that the

19. AIR 1952 Trav-Co. 518 (DB).
20. ('67) 3 Mad. H.C.R. 308 (DB).
1. PLD 1970 Karachi 708 (DB) + PLD 1961 Kar. 722.
2. AIR 1963 Madras 403 (DB) + AIR 1961 Pat. 134.
3. AIR 1919 Mad. 941 + AIR 1955 Pat. 182 = 33 Pat. 339 (DB) + AIR 1941 Oudh 254 (DB). (A letter written by the agent of the debtor that the debtor is unable to pay money to the creditor and that something will be paid when money is recovered is sufficient acknowledgment.)
4. AIR 1936 Mad. 943.
5. AIR 1955 Pat. 320 = 34 Pat. 487 (DB).
6. AIR 1957 Trav-Co. 159 (DB).
7. PLD 1961 Karachi 722.
8. AIR 1963 Madras 403 (DB).

liability existed once but has since been discharged is not an acknowledgment of liability coupled with a refusal to pay.[9] Where the plaintiff submits his bill for a certain amount of money, for work done, to the defendant, and the defendant passes the bill for a lesser amount and disallows the plaintiff's claim for the rest and expressly denies and repudiates his liability in respect of the remaining amount of the bill, the mere fact that the defendant passes the bill for a lesser amount and thereby admits its liability to pay the sum allowed, cannot amount to an acknowledgment of his liability to the plaintiff to pay also the balance amount of the bill which was expressly disallowed.[10] Where in pursuance of an agreement arrived at between the mortgagee's heir and the mortgagor to the effect that the latter should execute a fresh mortgage in favour of the heir and the former should execute a release of the previous mortgage, a draft release-deed and a draft mortgage-deed were prepared and the mortgagor endorsed his approval on the drafts and also signed below the endorsements. The draft release-deed contained recitals to the effect that a particular amount was due on the mortgage and that the mortgagor was desirous of paying off the aforesaid amount to the mortgagee and having a release from the mortgagee, it was contended that the aforesaid recitals amounted to an acknowledgment of liability within the meaning of S. 19. It was held that the recitals did not amount to an acknowledgment of existing liability to the heir, that the document was to be executed not by the mortgagor but by the heir and what was intended to be said therein was intended to be said by the heir and not the mortgagor, and that apart from that, the document was to be read as a whole and when so read, it contained a statement to the effect that the entire debt due on the mortgage had been satisfied. Therefore, if at all there was an acknowledgment of liability, it was not an acknowledgment of a subsisting liability.[11]

31. Acknowledgment of liability coupled with claim of set off. Where the defendant admits that he owes a certain sum to the plaintiff but states that he is entitled to set off against this sum another sum which the plaintiff owes him, the admission is sufficient acknowledgment.[12] Where a written statement contains an acknowledgment of liability coupled with a set off, the fact that the plea of set off was found against the defendant would not affect the question whether the statement contained sufficient acknowledgment or not.[13]

Set off made prior to acknowledgment. The question is whether Explanation I only refers to the right of set-off which is claimed *in praesenti* in the writing which is set up as an acknowledgment, and not to a set-off the right to which is claimed to have been exercised already. It appears that in majority of cases in which the debtor's admission of liability is coupled with the claim of set-off, the debtor would generally assert that he had already exercised this right and, therefore, nothing was due to the creditor. The language of Explanation I would not apply to

9. AIR 1963 Bom. 170 (DB)+AIR 1935 Mad. 374+AIR 1924 Pat. 806+AIR 1919 Mad. 317=42 Mad. 637 (DB)+AIR 1956 Nag. 267+('50) 55 Mys. H.C.R. 11 (DB).
10. AIR 1961 Patna 134.
11. AIR 1963 Bombay 170 (DB).
12. PLD 1964 Kar. 558+PLD 1970 Kar. 708 (DB)+AIR 1921 All. 335=43 All. 216 (DB)+AIR 1955 Pat. 320=34 Pat. 487 (DB).
13. AIR 1952 Trav-Co. 518 (DB). (Court is concerned only with form of acknowledgment, not with truth of its contents).

as set-off of this nature. This Explanation would cover a set-off claimed *in praesenti* as well as a set-off, the right to which is stated to have been exercised at a point in time antecedent to the writing, which is not set forth as an acknowledgment as the expression 'claims to a set-off' used in this Explanation would apply to both the cases.[14]

Denial of liability. A statement that the money claimed is not due, but that if it is, it must be set-off against an amount due from the plaintiff, is not an acknowledgment of liability coupled with a claim of set-off, but is a denial of liability with a claim by way of set-off in the alternative.[15] Where a defendant denies that he owes anything and claims that it is the plaintiff who owes him a certain sum, but admits that the latter is entitled to set-off a certain amount against his claim, there is no acknowledgment of liability under this section.[16]

32. Acknowledgment not addressed to person entitled, sufficiency of. An acknowledgment must be addressed to some person, it need not be addressed to the person to whom liability is admitted.[17] In other words where an acknowledgment of liability is addressed to any person it need not be addressed to the plaintiff or to anyone through whom the claims.[18] But it must be a liability to the plaintiff or some one through whom he claims.[19] Thus an acknowledgment by a mortgagee and of his liability to be redeemed may be contained in a deed of submortgage.[20]

33. Acknowledgment contained in balance sheet. A statement in a balance sheet submitted, in obedience to statute, acknowledging a debt due, is sufficient acknowledgment within of this section.[1] When a balance sheet is sought to be relied upon as an acknowledgment it has to be shown that the balance-sheet acknowledged a liability and that the liability had been acknowledged under the signature of a person who was a duly authorised agent of the Company. In view of the provisions of sub-section (*i*) (*ii*) of S. 133 of the Companies Act (1913) a balance-sheet in order to be authenticated so as to be a valid acknowledgment under S. 19 of the Limitation Act has to be signed not only by the Manager, if there is one, of the company but also by not less than two directors, or when there are less than two directors by the sole director.[2] Even debts due to creditors not

14. PLD 1970 Karachi 708 (DB) + AIR 1963 Mad. 403 (DB).
15. ('13) 25 Mad. L. Jour 259 (DB).
16. 1887 Pun. Re. No. 60, p. 119 + AIR 1948 East Punj. 36 + AIR 1927 All. 317.
17. AIR 1939 Bom. 237 (DB) + AIR 1938 Pat. 180 (DB) + AIR 1919 Cal. 48 (DB) + ('93) 16 Mad. 366 (DB). (Acknowledgment may be contained in a will) + AIR 1945 Mad. 407.
18. AIR 1940 Bom. 172 = ILR 1940 Bom. 225 (DB) + AIR 1952 Madh B 177 = ILR 1952 Madh B 416 + ('06) 33 Cal. 1047 = 33 Ind. App. 165 = 2 Nag. L.R. 130 (P.C.) + AIR 1932 P.C. 55 = 11 Pat. 272 = 59 Ind. App. 130 + AIR 1939 Sind 113 = ILR 1939 Kar. 693. (Acknowledgment in a reference to arbitration held sufficient) + AIR 1927 All 488 = 49 All. 801 (DB) + AIR 1940 Nag. 214 = ILR 1941 Nag. 761. (Acknowledgment in an application before Debt Conciliation Board).
19. ('87) 14 Cal. 801 = 14 Ind. App. 168 (P.C.) + AIR 1936 Lah. 659.
20. AIR 1951 Pepsu 52 = 2 Pepsu L.R. 148.
1. 1986 CLC 2808 = NLR 1987 CLJ 388 + AIR 1962 Cal. 115 (DB) + AIR 1952 Mad. 136 (DB). (Debt due to certain creditor included in the item relating to sundry creditors as contained in the balance sheet of the company--Balance sheet contains an acknowledgment to the particular creditor) + ILR 1958 Punj. 128.
2. AIR 1963 Allahabad 284 (DB).

mentioned by name but included in the item relating to 'Loans (unsecured)' or as due to 'Sundry Creditors' mentioned in the balance sheet amount to an acknowledgment within the provisions of S. 19 so as to extend the period of limitation with effect from the date of the signing of the acknowledgment.[3]

A debt shown in the balance sheet of a public limited company is an acknowledgment within the meaning of S. 19 of the Limitation Act (1908) and in order to be so, the balance sheet in which such an acknowledgment is made need not be addressed to the creditor.[4]

Who may acknowledge debt. A balance sheet can be used as an acknowledgment of debt only when it is signed by persons duly authorised to sign it. Where the balance-sheet was signed by the managing agents of the company who were expressly authorised to borrow money from the plaintiff and to repay them, the authority to repay the debt implied an authority to acknowledge it, and the acknowledgment was a proper acknowledgment under S. 19.[5]

The plaintiff cannot make an acknowledgment in his own favour. Therefore entries in a balance sheet cannot be taken as an acknowledgment in writing if they are not in the handwriting of the defendant but are in the handwriting of the plaintiff.[6]

Admission must be of existing liability. Where the balance sheets do not contain any acknowledgment of an existing liability they cannot be treated as acknowledgments which would extend the period of limitation within the meaning of S. 19.[7] But that does not mean that acknowledgment must show liabilities existing on the date when balance sheet is signed. There is always a time lag between the date of signing a balance sheet and the end of the previous financial year and the balance sheet acknowledges or admits liability due at the end of the financial year and not on the date when it is signed. That amount might be and often was different from the amount shown as due at the end of the previous year, but that fact alone did not take the amount out of the purview of S. 19.[8]

34. Admission contained in document addressed to Court. An acknowledgment contained in a document presented to a Court is sufficient for the purposes of this section,[9] provided the liability admitted is a liability to the plaintiff or some one through whom he claims.[10]

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3. 1986 CLC 2808 = NLR 1987 CLJ 388 + AIR 1958 Punj. 341.
4. AIR 1954 Gujerat 208 (DB).
5. AIR 1962 Calcutta 115 (DB).
6. AIR 1953 Mad. 433.
7. AIR 1917 All. 143 = ILR (1958) 1 All. 407 (DB).
8. AIR 1962 Calcutta 115 (DB) (AIR 1957 All. 173 *dissented from*).
9. AIR 1933 All. 364 = 55 All. 393 (DB) + AIR 1957 Trav-Co. 159 (DB). (A copy of memorandum of appeal preferred for getting the suit restored after setting aside the decree and not refer to the details of the decree. But a copy of a petition filed in the appeal for staying the execution proceeding in another suit on ground that it was connected with the suit in question stated that the hypothecation bond which was the basis of the suit was not supported by consideration and hence the decree was wrong--*Held*, the statements therein were enough admissions on the part of the defendant of the existence of an enforceable decree against him) + AIR 1953 Trav-Co. 539 (DB).
10. 14 Cal. 801 = 14 Ind. App. 168 (P.C.) + AIR 1936 Lah. 659.

An acknowledgment by a mortgagee of the mortgage and of his liability to be redeemed may be contained in a deed of submortgage.[11]

An acknowledgment of liability in the written statement of the debtor in an application filed by the creditor under the Punjab Relief of Indebtedness Act, (7 of 1934) is sufficient acknowledgment.[12]

35. Admission contained in deposition of witness. An admission of liability contained in a deposition of a witness may amount to an acknowledgment of liability provided it is signed by the witness.[13]

36. Entry in Revenue record, etc. Where there is an entry in a settlement record or other public record that certain property is under mortgage and the record is signed by the parties in token of acceptance of correctness of the entry, the document can be used as an acknowledgment of liability in respect of the mortgage.[14] It must however be noted that statements purporting to have been made by a certain person before a Settlement Officer cannot be presumed to be genuine. The presumptions raised under S. 90, Evidence Act would not by themselves amount to proof that the statements were really made by the alleged deponent. That fact can be said to have been proved only when the statements have been signed by the parties.[15] Therefore the signature of the Settlement Officer or any other officer who may be signing the record cannot be taken as the signature of the agent of the parties whose rights and liabilities are recorded.[16]

Mutation entry, acknowledgment in. During the period of sixty years a mutation acknowledging the appellant as mortgagor and the Federal Government as mortgagee was sanctioned. It was held: Mutation entry (dated 11-1-1969) acknowledging appellant as the mortgagor constitutes acknowledgment of liability and the right to equity of redemption possessed by him which clearly constitutes acknowledgment for the purposes of section. 19. Therefore a fresh period of limitation had commenced with effect from 11th January, 1969, and the suit of the appellant having been instituted within sixty years from the aforesaid date was well within time.[17]

37. Acknowledgment by agent. An acknowledgment may be competently made either personally or by agent duly authorized.[18] The authority of the agent to

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11. AIR 1951 Pepsu 52 = 2 Pepsu L.R. 148.
12. AIR 1961 Punjab 175 (DB).
13. AIR 1927 Mad. 219 = 50 Mad. 548 (DB) + 25 Mad. 220 (FB) + 35 All. 437 (DB) + AIR 1940 Nag. 354 (DB). (Deposition signed only by Judge and not by witness cannot amount to acknowledgment) + AIR 1934 Rang. 282 = 12 Rang. 610 (Do).
14. 1 All. 117 (FB) + AIR 1952 Madh B 177 = ILR 1952 Madh B 416 (Entry in settlement record and application for mutation held valid acknowledgments) + AIR 1948 Oudh 257 = 11 Bom. L.R. 318 (DB) + AIR 1919 All. 401 (DB) + AIR 1927 Oudh 457 (DB) + AIR 1921 Bom. 291 = 45 Bom. 934 (DB) + AIR 1933 Lah. 345 = 14 Lah. 587.
15. ILR 1954 Trav-Co. 1165.
16. 1905 Pun. Re. No. 53, p. 184 (FB).
17. 1985 PSC 1491.
18. PLJ 1986 SC 1 = PLD 1986 SC 35.

make an acknowledgment on behalf of another may be special or general.[19] It may be express or implied and may be presumed from attendant circumstances.[20]

The authority to do the following acts was held to include authority to acknowledge:--

(*a*) Authority to settle and pay claims includes authority to acknowledge such claims.[1]

(*b*) Authority to borrow includes authority to acknowledge debts.[2]

(*c*) Authority to buy goods includes authority to acknowledge liability for the price of goods.[3] Therefore an endorsement under the statement of accounts, 'compared the accounts and found the balance correct' and in another endorsement under another statement of account 'After comparing the account, Rs.33,104-2-0 remain due' and both endorsements signed by the servant closely connected with the business and authorised to check accounts and acknowledge debts by the person liable, were held to be acknowledgments within the meaning of S. 19 which saved limitation.[4]

Extent of authority. An agent cannot act beyond the scope of his authority. Where the authority of an agent is confined to dealings with lands and he has no authority to acknowledge liability for personal debts not charged on the lands,[5] he cannot acknowledge such debts. Similarly an agent who is employed only for writing letters cannot acknowledge a debt.[6]

"Duly authorized." The expression "duly authorised" in Expl. II would include duly authorised either by the action of the party indebted or by force of law or order of the Court.[7] It is not necessary that the authorisation should be in writing. The authorization need not also be in express terms, but may be implied from the course of conduct of the parties or from the surrounding circumstances of the case.[8] Therefore the question whether in any case there is authority to acknowledge depends on the facts and circumstances of that case.[9] It is to be

19. (1900) 22 All. 123 (FB)+AIR 1941 Oudh 254=16 Luck 701 (DB). (Agent acting under special authority)+AIR 1940 Pat. 6=18 Pat. 715 (DB) (Do)+AIR 1929 Oudh 479=5 Luck 510 (DB) (Do)+AIR 1925 Mad. 1266 (DB). (Agent acting under general power).
20. AIR 1940 Nag. 354 (DB)+AIR 1958 Raj. 110+AIR 1952 Ajmer 61. (Acknowledgment by Munim, through whom firm carried on business--Implied authority to acknowledge held could be presumed)+AIR 1950 Ajmer 4+AIR 1936 Oudh 280=12 Luck 185 (DB). (Authority may be presumed from the surrounding circumstances)+AIR 1933 Mad. 332 (Do)+AIR 1925 All. 176 (Do)+AIR 1931 All. 398 (DB)+AIR 1919 mad. 370 (DB).
1. AIR 1916 Mad. 235 (DB).
2. AIR 1939 Mad. 414 (DB)+32 All. 51 (DB)+AIR 1962 Cal. 115 (DB).
3. AIR 1919 P.C. 120.
4. 1959 All. W.P. (H.C.) 63 (DB).
5. 17 All. 198=22 Ind. App. 31 (P.C.).
6. AIR 1924 All. 855=46 All. 892 (DB).
7. AIR 1960 S.C. 953 (28 Bom. 221 (FB), 30 All. 422 (FB), AIR 1916 Cal. 107, AIR 1919 Mad. 816 and AIR 1919 Mad. 370, *Approved*).
8. AIR 1962 Mad. 253.
9. AIR 1936 Oudh 280=12 Luck. 185 (DB)+Madh B. L. J. 1955 II.C.R. 1368. (Mukhtaram has no power to acknowledge liability within the meaning of S. 19. Such a liability can only

noted that section 21 is not exhaustive of all the cases where a person can acknowledge on behalf of another unless he has been appointed by letter as an agent.[10] Where there is nothing to show that the person making an acknowledgment was the duly authorized agent of the debtor, any acknowledgment by him is not covered by this section. Thus where a *Patwari* stated that the mortgagee had made a statement that the mortgagee rights had been sold in favour of the vendee and that the possession had been given to the vendee cannot be relied upon by the mortgagor as an acknowledgment by the mortgagee of the mortgage. The *Patwari* cannot be deemed to have been authorised by the mortgagee to sign a statement on his behalf.[11] Where in case of a claim against a municipality for the price of work done a document was set up to serve as an acknowledgment of liability although it was not signed by the chairman or the vice-chairman but by somebody for the chairman. There was no evidence on the record to show that the person who signed was authorised by the chairman to make the acknowledgment. It was held that the document could not give a fresh start of limitation to the claimant.[12] Where a debt is sought to be recovered both against the principal debtor as well as the surety, the acknowledgment by the surety does not save the period of limitation as against the principal debtor. The right will only be saved *qua* the surety and not *qua* the principal debtor by whom there is no acknowledgment.[13] The legal representative of a deceased partner stand on a different footing in relation to the acts done by any of the partners after the dissolution of the firm whether or not public notice is given of the dissolution. That being the case, the legal representatives of a deceased partner cannot be bound by any acknowledgment or payment made towards the debts subsequent to the death of the partner even though it may be said that the partner as the agent of the firm had implied authority under section 47 of the Act to acknowledge a debt.[14]

Where the authority of an agent to acknowledge a liability is questioned the plaintiff should prove that the person who acknowledge the debt was duly authorised.[15]

Acknowledgment in one's own favour. An acknowledgment made in one's own favour as agent of another can be considered sufficient acknowledgment under this section because an acknowledgment of liability by an agent implies that the agent acknowledges the liability of the principal in favour of a third party. Where for certain ulterior purposes, *A* asks *B* to state that the latter is entitled to a certain right against the former and *B* makes such statement, the statement is not an acknowledgment of liability by *B* on *A's* behalf.[16] Similarly where under the

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be fastened upon the principal by a person duly authorised in this behalf) + 7 Ind. App. 8 (P.C.) + AIR 1922 All. 230 = 44 All. 546 (DB) + AIR 1925 All. 176.

10. AIR 1919 Mad. 816 (DB). (Receiver can acknowledge) + AIR 1934 Rang. 282 = 12 Rang. 610 + AIR 1919 Mad. 370 (DB).
11. AIR 1960 Punj. 26.
12. AIR 1961 Pat. 485.
13. AIR 1962 Punjab 495 + ILR 28 Bom. 248 + AIR 1918 Cal. 707 + AIR 1925 Bom. 244 + AIR 1924 Nag. 411 + AIR 1931 Oudh 310 + AIR 1932 Rang. 88.
14. AIR 1964 A.P. 462.
15. 1937 Mad. W.N. 1312 + 1908 Pun Re No. 102. p. 473 + AIR 1925 Mad. 134.
16. AIR 1935 mad. 947. (*B* stating at *A's* request that he is entitled to certain rights against the latter--No acknowledgment by *B* on behalf of *A*).

terms of the managing agency agreement the managing agent was not expressly authorised to acknowledge the liabilities of the company, the list of creditors signed by the managing agent including his own name as one of the creditors of the company and filed in proceedings under S. 153-C of the Companies Act (1913), not on behalf of the Company but by order of the High Court, cannot operate as a valid acknowledgment of the liability of the Company in respect of the remuneration of the managing agent.[17]

38. Acknowledgment by pleader. An admission made by a pleader in the course of his duties on behalf of his client may bind the latter as an acknowledgment of liability under this section.[18] Thus where in reply to a notice issued by the creditors claiming the amounts due under a pronote, the advocate of the debtor sends a notice acknowledging the liability, it has to be presumed, in the absence of any plea that the advocate had no authority to send the notice, that the advocate issued the notice on the basis of the instructions given by the debtor. In that view the reply notice is an acknowledgment signed by a duly authorised agent within the meaning of S. 19, Expl 2.[19] It is however to be noted hat though a lawyer in the ordinary course of his duties as pleader has authority to bind his client by admissions of fact, yet that should not relate to matters outside the scope of the case in which he is engaged and further it should be necessary for the purpose for which he is retained. The Court has, therefore, to see whether at the time the lawyer made the admission it was necessary for the purpose of the matter in dispute to make such an admission, for it is only such an admission, which can bind his client. Therefore the statement of a lawyer admitting the entire debt on behalf of his client, a portion of which had already been decreed, does not serve as an acknowledgment of the said portion within the meaning of S. 19.[20]

39. Acknowledgment by receiver. A receiver appointed by a Court can make an acknowledgment under this section on behalf of the party of whose property he is a receiver, if such acknowledgment falls within the scope of the authority conferred on him by the Court.[1] An acknowledgment by a previous receiver of the estate through whom the succeeding receiver had derived his liability to pay the debt is sufficient acknowledgment under S. 19 and no recourse is needed to the second part of Explanation II.[2]

Receiver of firm. A receiver of the assets of a firm who has been given power to pay debts due by the firm can give acknowledgment so as to prevent the bar of limitation.[3] Similarly a receiver appointed in a suit for dissolution of a firm who has power to do all things necessary for the preservation of the assets of the firm will include the power to acknowledge debts due by the firm where such

17. AIR 1962 Mad. 253.
18. AIR 1934 Bom. 186 (DB)+1950 Ker. L. T. 97 (DB)+22 Bom. 722 (DB)+23 Cal. 374 (DB)+AIR 1919 Pat. 244+AIR 1928 Mad. 713 (FB)+AIR 1931 All. 398 (DB)+9 Cal. 730 (DB). (Petition signed by Vakil praying for time to pay amounts to acknowledgment)+3 All. 247 (FB) (Do)+AIR 1920 Mad. 742. (Admission in letter written on behalf of the client is acknowledgment).
19. AIR 1964 Kerala 175.
20. AIR 1961 A.P. 467 (FB).
1. AIR 1919 Mad. 816 (DB).
2. AIR 1960 S.C. 953.
3. AIR 1937 Mad. 761.

acknowledgment is necessary for the above purpose.[4] but where a partner was appointed receiver of a firm and he acting as Receiver appointed by Court admits a claim and enters the same in accounts book. The defendants (other partners of the firm) had charged the plaintiff with fraud in respect of such claim even before his appointment as Receiver. It was held that though the plaintiff, in the circumstances, possessed all powers of Receiver under the Civil Procedure Code, yet the acknowledgment would be binding against him only and not against the partnership firm.[5]

40. Acknowledgment by official assignee. In a suit against an Official Assignee of the estate of an insolvent to enforce a mortgage executed by the insolvent, the acknowledgment given by the Official Assignee may be relied on as saving limitation.[6] But in a suit against a debtor after the termination of insolvency the previous acknowledgment by an Official Assignee cannot bind the debtor.[7]

41. Acknowledgment by one of co-judgment debtors. Ordinarily an acknowledgment by one of several judgment-debtors will save limitation only as against him who makes the acknowledgment and not against the others.[8] Therefore in case of a joint decree against several persons an acknowledgment of liability by one will not save limitation against the others.[9] But where a promissory note is passed by two promissors, an endorsement of part-payment made by one of them must be deemed to have been made on behalf of the other executant as well, as in such a case the Court can infer that promissors had each authorised the other to make acknowledgments so as to bind both.[10]

Principal debtor and surety. The liabilities of the debtor and surety though arising out of the same transaction are distinct and the payment of interest by the principle debtor cannot extend the period of limitation for the institution of a suit for the recovery of the debt of his surety, and that even if debt is deemed to be joint, section 21 (2) shows that the payment by one of them (the debtor) does not extend the time against the other.[11]

42. Acknowledgment by administrator. An acknowledgment by an administrator before letters of administration are granted cannot bind the estate. But where the heir of the deceased is granted letters of administration, acknowledgment by him before they were granted will bind him.[12]

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4. AIR 1919 Mad. 816 (DB).
5. PLD 1970 Karachi 495.
6. AIR 1918 Mad. 1122 = 18 Cri. L. Jour. 335 = 40 Mad. 791 (DB) + AIR 1957 Mad. 1 = ILR 1957 Mad. 344 (DB). (AIR 1951 Mad. 814, *Overruled;* AIR 1933 Bom. 91, *Dissented from*).
7. AIR 1933 Bom. 91 = 58 Bom. 505 (DB).
8. PLJ 1985 Kar. 368 = 1985 CLC 2335 + 14 Ind. Cas. 1 (DB) (Cal.) + AIR 1952 Trav-Co. 78 = ILR 1951 Trav-Co. 486 (DB) + AIR 1914 Cal. 764 (DB).
9. 27 All. 575 (DB) + AIR 1951 Trav-Co. 78 = ILR 1951 Trav-Co. 486 (DB) + 14 Ind. Cas. 1 (DB). (Cal.) + AIR 1917 Cal. 422 (DB) + 1908 Pun. Re. No. 54, p. 266.
10. AIR 1964 Mad. 238 + AIR 1928 Mad. 175 + AIR 1915 Mad. 307 (1).
11. PLD 1975 Kar 504 = PLJ 1975 Kar. 185.
12. AIR 1930 Mad. 218 = 53 Mad. 480 (DB).

43. Acknowledgment by executor. An acknowledgment of liability by the executor of a will is binding on the estate even though made before the grant of probate.[13]

44. Acknowledgment by Court. A Court cannot make an acknowledgment on behalf of a litigant. Therefore a statement in a judgment of Court that certain persons are mortgagees cannot be used as an acknowledgment of liability against them.[14]

45. Acknowledgment by Court of Wards. An acknowledgment by the Court of Wards will save limitation under this section.[15] It is to be noted that local authorities have wide powers to act as agent on behalf of the Court of Wards, and therefore acknowledgment by them would also be an acknowledgment under this section.[16]

46. Husband and wife--acknowledgment by one for the other. A husband is not authorised to acknowledge debts due by his wife,[17] and the wife has no authority, as such, to acknowledge her husband's debts.[18]

47. Promissory note for pre-existing debt, whether acknowledgment of liability of original debt. Where the promissory note given for an old debt is intended to serve as an acknowledgment of liability for the old debt so as to extend the period of limitation for a suit for such debt, the promissory note can be used as an acknowledgment under this section, in a suit on the old debt.[19] Even where a promissory note duly stamped is not admissible in evidence for some reason, it can be used as an acknowledgment of liability. Thus a promissory note executed in lieu of a prior debt and made payable to the bearer and, therefore, unenforceable under S.26, Paper Currency Act, can be used as acknowledgment of liability in a suit on the original cause of action.[20] Even a promissory note executed in favour of dead person can be used as acknowledgment of liability in a suit on the original cause of action.[1]

Promissory note not sufficiently stamped. A promissory note which is not sufficiently stamped cannot be relied upon for the purpose of serving as an acknowledgment of liability in a suit on the original cause of action.[2] But when a

13. AIR 1924 Mad. 286 (DB)+AIR 1930 Mad. 218=53 Mad. 480 (DB).
14. ('09) 4 Ind. Cas. 579 (All.)+AIR 1957 Mad. 760.
15. 5 DLR 495+AIR 1939 Bom. 237 (DB)+AIR 1952 Raj. 7=ILR (1951) 1 Raj. 297 (FB) (Order by Court of Wards deciding to allow creditor's debt is only acknowledgment--It does not involve any promise to pay)+('94) 17 All. 198=22 Ind. App. 31 (P.C.)+AIR 1938 All. 217=ILR 1938 All. 363 (FB)+('11) 34 Mad. 221 (DB)+AIR 1916 Cal. 107=43 Cal. 211 (DB)+AIR 1937 Oudh 26=12 Luck 531 (DB).
16. AIR 1945 Lah. 210 (DB).
17. AIR 1926 Nag. 252+AIR 1952 Trav-Co. 255. (Nair husband is not by implication from relationship agent of his wife).
18. AIR 1933 Mad. 686=56 Mad. 964 (DB).
19. AIR 1928 Sind 17=22 Sind L.R. 222 (DB).
20 AIR 1926 Mad. 452 (DB)+AIR 1922 Mad. 181=45 Mad. 778 (DB).
1. AIR 1938 Pat. 180 (DB).
2. AIR 1940 Nag. 214+AIR 1939 Mad. 34+('36) 63 Cal. 813+AIR 1938 Mad. 75=ILR 1938 Mad. 210 (DB)+AIR 1933 Lah. 240+AIR 1937 Rang. 408=AIR 1937 Rang. L.R. 127+AIR 1933 Nag. 391+AIR 1928 Oudh 408 (*Distinguishing* 3 All 581 (FB).

promissory note insufficiently stamped has once been admitted in evidence, such admission cannot be questioned at any stage of the same suit or proceedings.[3]

Promissory note accompanied by other document. Where a promissory note is inadmissible in evidence, some other document executed as part of arrangement containing admission of liability of original debt and admissible in evidence can be used as an acknowledge of liability under the original debt.[4] Where a document contains both a promissory note and other matters acknowledging a pre-existing liability and the promissory note, is inadmissible in evidence because of insufficient stamp; the other part can be used for proving acknowledgment of liability contained therein.[5]

48. Admission of liability by person in adverse possession. An admission by a person that he is liable to return property to the person against whom he adversely holds will not interrupt adverse possession. But an admission in writing and signed by the person will give a fresh period of limitation as an acknowledgment of liability.[6] It is to be noted in this context that where a person admits that land of which he is in possession at the time is the property of another, he admits that he is liable to restore it to that other.[7]

Acknowledgment by co-sharer in adverse possession. Where a co-sharer in adverse possession writes a post card to another co-sharer calling upon him to pay his share of the moneys expended on repairs or to surrender his interest in the house it amounts to an acknowledgment of the plaintiff's title.[8]

49. Acknowledgment contained in letter marked "without prejudice". The rule which excludes documents marked "without prejudice" has no application unless some person is in dispute or negotiation with another, and terms are offered for the settlement of the dispute or negotiation.[9]

A suggestion made "without prejudice" that the matter might be settled could not operate to extend limitation.[10] Where a single bale consignment of woollen goods reached the destination in a torn and damaged condition. The plaintiff consignee took open delivery on 30-12-1950 and found that a portion of the goods was missing. The necessary notices under the Railways Act were sent on 22-8-1951. The plaintiff received a letter from the Claims Officer asking him to send, without prejudice, the original *beejuk* within a fortnight to enable him to dispose of the case early. The plaintiff accordingly sent the *beejuk* but did not hear further from the Railways. After waiting for 10 months he filed a suit on 23-6-1952 for compensation for short delivery. It was held that the letter sent by the Claims

3. AIR 1935 Pat. 375 = 14 Pat. 233 (DB) + AIR 1933 Lah. 240 + AIR 1934 All. 951 + AIR 1926 Mad. 1148.
4. AIR 1930 All. 368 + 1943 Oudh W.N. 483 + AIR 1942 Oudh 388 = 18 Luck 191 + AIR 1931 All. 560 (DB).
5. AIR 1939 Mad. 34 + AIR 1933 Mad. 251 + AIR 1930 Mad. 485.
6. AIR 1933 Cal. 414 = 60 Cal. 404 (DB) + (1900) 2 Bom. L. R. 407 (DB) + AIR 1925 Cal. 193 (DB) + AIR 1929 Pat. 117 = 8 Pat. 549 (DB). (*Reversed in* AIR 1932 P.C. 55 on another point).
7. AIR 1914 Cal. 795 (DB).
8. ('23) 5 Lah. L. Jour. 47.
9. (1893) 2 Q. B. 116.
10. AIR 1926 Nag. 57 (DB). (*But see* AIR 1951 Hyd. 47).

Officer had not the effect of extending limitation because it could in no way be interpreted by the plaintiff as raising in him any hope or expectation that the defendant was about to meet his claim.[11]

50. Material alteration of document containing acknowledgment. The principle that material alteration of a document without the consent of other party makes it void, does not apply to a written acknowledgment which is intended only to serve as evidence and to save the bar of limitation and hence, notwithstanding a material alteration in a document containing an acknowledgment of liability after it is given, the document can be relied on as saving limitation under the section.[12]

51. Acknowledgment contained in document thirty years old. The presumption that a document which is thirty years old has been properly signed and executed applies also to documents which contain an acknowledgment of liability.[13] Where an acknowledgment is made in deposition in a settlement inquiry. The record of settlement inquiry is produced from proper custody 30 years old. Reference in Settlement Officer's order to the prior *Kamavan's* statement embodied in the same record can be taken as sufficient proof of the fact that the statement was made and that it was a valid acknowledgment of liability.[14]

52. Acknowledgment under circumstances that would vitiate contract. The acknowledgment, quite as much as a contract, must be the voluntary act of a person who is fully conscious of what he is about. An acknowledgment obtained by threat or intimidation cannot be used under this section.[15] Thus an acknowledgment by a minor will not be available against him.[16] Where an acknowledgment is proved to have been made by inadvertence or mistake, it cannot be treated as implying a promise to pay even though it may be ostensibly unconditional.[17]

53. Acknowledgment of liability under breach of contract or tort. If there is an admission of liability in respect of a sum due on the basis of an agreement in respect of a breach of contract or tort then it is an acknowledgment under this section which gives a fresh period of limitation.[18]

54. Acknowledgment made in official confidence. The production of communication made in official confidence within the meaning of S. 124 of the Evidence Act cannot be compelled by the Court for proving an acknowledgment of liability by the person who made the application.[19] But for that purpose the officer to whom it is communicated should have claimed privilege.[20] Where, however, the material containing the acknowledgment has already been produced,

11. AIR 1961 Orissa 108 + AIR 1926 Nag. 57.
12. 5 Cal 215 (DB) + 25 Bom. 616 (DB) + 9 Cal. W.N. 695 (DB).
13. AIR 1919 Pat. 244 + 1901 Pun. Re. No. 59, p. 182.
14. AIR 1957 Trav-Co. 246 = ILR 1956 Trav-Co. 1162.
15. 8 Bom. 99 (DB) + AIR 1921 Lah. 362. (Threat or intimidation invalidates the acknowledgment) + 1873 Pun. Re. No. 62, p. 88 (DB). (Threat to put the matter into Court and apply for arrest before judgment).
16. 1901 Pun. Re. No. 59, p. 182.
17. AIR 1933 All. 175.
18. Madh B.L.J. 1954 I.L.C.R. 1680.
19. AIR 1922 All. 37 = 44 All. 360 (DB).
20. AIR 1939 Bom. 237 (DB).

and no such privilege is claimed, the question of the acknowledgment having been made in official confidence is altogether immaterial.[1]

55. Agreement to extend time for performance of contract. Where time is extended for the performance of a contract, limitation for a suit on the contract will only run from the date to which the time has been extended.[2]

56. Suit on default clause in mortgage deed. Where a mortgage deed contains a default clause to the effect that the mortgagee would be entitled to enter in possession and default is made and a fresh mortgage deed is executed for all arrears up-to-date. In such a case, limitation for a suit for possession by the mortgagee will run from the next default.[3]

57. Stamp on acknowledgment. An acknowledgment of liability under this section need not be stamped in every case.[4]

Debt, acknowledgment of. An acknowledgment of a debt which otherwise falls within the provisions of Art. 1, Sch. I of the Stamp Act, is liable to a stamp duty and cannot be relied on for any purpose including that of saving limitation under the section when it is not so stamped.[5] In order to determine whether an acknowledgment is liable to stamp duty, the Court has to apply its mind to the question looking at the document and the surrounding circumstances as to what was the intention with which it was given.[6] The question as to whether a document falls within Art. 1 of Schedule I of the Stamp Act depends on whether the document was given in order to supply a statement of account or whether the document is given in order to supply evidence of a debt.[7] Similarly admission made by defendants in reports submitted by them to higher authorities were not acknowledgments of debt within Sch. I, Art. 1, Stamp Act as they were not meant to supply evidence of debt and as such were not required to be stamped. Nevertheless they were acknowledgments within the meaning of S. 19 and saved

1. AIR 1958 Raj. 110.
2. 4 Bom. L. R. 50 (DB) + 12 Mad. L. Jour 351 (DB).
3. AIR 1939 Lah. 212.
4. 63 Cal. 813 + AIR 1950 Mad. 135 + AIR 1938 Nag. 51 = ILR 1939 Nag. 695 + AIR 1947 Nag. 145 = ILR 1946 Nag. 796.
5. 21 Bom. 201 (FB). (*Overruling* 18 Bom. 614) + AIR 1947 Bom. 337 = ILR 1947 Bom. 223 + AIR 1919 Nag. 141 + AIR 1923 All. 297 = 45 All. 374 (DB) + AIR 1934 Nag. 273 = 31 Nag. L. R. 105 + AIR 1921 Pat. 292.
6. AIR 1938 Nag. 51 = ILR 1939 Nag. 695 + AIR 1956 Raj. 12 = ILR (1955) 5 Raj. 85 (DB). (Where in an account book after the opening balance there are some items on the credit side as also on the debit side and then the balance is struck showing certain amount as due from the debtor to the creditor and then there is the signature of the debtor acknowledging the balance as due from him, the presumption is that the intention was to accept the correctness of the account and to make it the account of the debtor and not that the intention was to supply evidence of the debt, unless the contrary is proved by clear evidence and there is no question of any stamp being required on an acknowledgment of this kind.) + AIR 1947 Bom. 337 = ILR 1947 Bom. 223 + AIR 1938 Pat. 139 + AIR 1924 Mad. 352 = 46 Mas. 948 (DB) + 30 Cal. 687 (DB) + 15 All. 56 (DB) + AIR 1936 Mad. 939 + 39 Cal. 789 (DB).
7. AIR 1963 A.P. 138 (DB) + AIR 1959 Bom. 289 = ILR 1959 Bom. 822 (DB). (*Held* on the consideration of facts and circumstances of the case that the statement of accounts did not constitute an acknowledgment within the meaning of the Stamp Act and that it was an acknowledgment within the meaning of the Limitation Act).

limitation.[8] It is to be noted in this context that where an acknowledgment has once been admitted in evidence, its admissibility cannot be questioned subsequently on the ground of insufficiency of stamp.[9]

Other evidence to prove debt. The debt acknowledged can be proved by parole evidence though the acknowledgment may be inadmissible because of insufficient stamp.[10]

58. Registration of acknowledgment. A document whereby a person acknowledges his liability in respect of a right to or in immovable property of the value of Rs. 100 or more is not compulsorily registerable under S. 17 of the Registration Act.[11] Where an acknowledgment of liability is contained in a document which is compulsorily registerable but which is not registered, it is admissible for proving the acknowledgment of liability contained in it.[12]

59. Onus of proof. The onus of proving that a suit is saved from the bar of limitation on account of an acknowledgment of liability is on the plaintiff, and he must give cogent proof of his allegations in order to sustain the plea of acknowledgment raised by him.[13] Where an acknowledgment is denied by the judgment-debtor, the burden of proving that handwriting on the acknowledgment is that of the judgment-debtor is on the decree-holder.[14] Where a document pressed as an acknowledgment forms part of number of papers produced by opposite-party in support of their case but the same was denied by the plaintiff to be genuine. The plaintiff, in the circumstances, cannot use a stray document in proof of the acknowledgment.[15]

Acknowledgment after expiry of limitation. An acknowledgment under S. 19 besides importing subsisting liability, must also be proved to have been made before the expiry of the period of limitation. The burden of proving that the acknowledgment was made before the expiry of the period of limitation is generally on the plaintiff. An acknowledgment of liability by the defendant does not necessarily imply an admission that the liability is not barred by limitation.[16] But there may be circumstances which necessitate the placing of the onus of proof on the defendant to show that the acknowledgment was made after the period of limitation. Thus, where in a redemption suit, the plaintiff was unable to give the date of the mortgage but gave evidence that the mortgage was admitted to have been subsisting within the period of limitation, by the mortgagee the defendant must prove that the acknowledgment was made after the period of limitation.[17]

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8. AIR 1957 Him Pra 23.
9. AIR 1935 Rang. 160 = 13 Rang. 322 + AIR 1925 Mad. 1215 (DB) + AIR 1915 Cal. 280 (DB).
10. 8 Cal. 282 (DB) + AIR 1923 Lah. 301.
11. AIR 1932 P.C. 55 = 59 Ind. App. 130 = 11 Pat. 272 (*Overruling* 4 Bom. 590) + AIR 1942 Nag. 132 = ILR 1942 Nag. 541.
12. AIR 1938 Mad. 865 (DB) + 3 All. 523 (DB) + 26 Cal. 334 + 5 Cal. 215 (DB) + AIR 1932 Lah. 154 (DB) + AIR 1930 Lah. 985 = 12 Lah. 239 (DB).
13. 1971 DLC 185 + AIR 1922 All. 37 (DB).
14. AIR 1947 Pat. 139 (DB).
15. 1971 DLC 185.
16. AIR 1965 Kerala 103 + AIR 1934 Lah. 121 + AIR 1932 All. 461 = 54 All. 506 (DB). (*Reversed in* AIR 1934 P.C. 147 on another point) + AIR 1932 All. 199 = 53 All. 963 (DB) + 1 Bom. L. R. 2 (DB) + AIR 1935 Lah. 515 (DB) + AIR 1930 Lah. 985 = 12 Lah. 239 (DB).
17. AIR 1965 Kerala 103 + AIR 1920 All. 92 (FB).

60. Pleadings. Where on the face of the plaint a suit is barred by limitation, but an acknowledgment of liability is relied on to save the suit from the bar of limitation, the fact that such acknowledgment is relied on must be stated in the plaint.[18] Where it is not so stated a plaint can, in the discretion of the Court, be allowed to be amended by the inclusion of an allegation of acknowledgment of liability.[19] Where a plaint stating the ground on which exemption from the bar of limitation is claimed, the plaintiff can rely at the hearing on a different ground of exemption.[20]

Where the presumption of the bar of limitation does not arise on the fact of the plaint, the acknowledgment relied on need not be stated in the plaint.[1]

Where a plaint, contains a definite allegation of acknowledgment of liability as saving limitation; a mere plea in the written statement that the suit is barred by limitation will not be sufficient to constitute specific denial of the allegation. The allegation will be deemed to have been admitted.[2]

61. Acknowledgment whether question of law or fact. The admission of liability or acknowledgment is a question of fact and not of law. Whether there is acknowledgment depends upon the language and circumstances of each case in which the acknowledgment is made.[3] Where the trial Court held that the acknowledgment in question was not admissible in evidence, that it was not proved to be that of the debtor and that it was not in respect of the debt sought to be adjusted, and on that ground the appellate Court rejected the contention regarding the acknowledgment, the decision cannot be interfered with in revision.[4]

20. *Effect of payment on account of debt or of interest on legacy.* [5][(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:]

[6][Provided that [7][* * * * *] an acknowledgment of the payment appears in the handwriting of, or in writing signed by, the person making the payment].

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18. AIR 1941 Pat. 147=19 Pat. 938 (DB)+AIR 1937 Mad. 826+AIR 1919 Mad. 332+AIR 1922 Lah. 39=3 Lah. 233 (DB)+AIR 1928 Sind 17=22 Sind L.R. 222+AIR 1933 Lah. 491.
19. AIR 1935 Mad. 158+AIR 1934 Lah. 753 (DB).
20. AIR 1922 Lah. 230=2 Lah. 13 (DB)+AIR 1949 East Punj. 219+AIR 1922 Lah. 39=3 Lah. 233 (DB)+AIR 1937 Oudh 391=13 Luck 334 (DB).
1. AIR 1919 All. 227+AIR 1919 Lah. 20=1 Lah. 89+AIR 1920 Oudh 236=23 Oudh Cas. 176+AIR 1922 Oudh 135=25 Oudh Cas. 89.
2. AIR 1916 Pat. 39=2 Pat. L. Jour 24 (DB).
3. AIR 1942 Pat. 170 (DB).
4. AIR 1964 Guj. 122.
5. Subs. by the Indian Limitation (Amendment) Act, 1942 (16 of 1942), S. 2 for the original sub-section (1).
6. Subs. by the Indian Limitation (Amendment) Act, 1927 (1 of 1927), S. 2 for the original proviso.
7. Omitted by Ord. 27 of 1981, S. 3 & Sch. 2.

(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.

Synopsis

1. Scope and applicability.
2. Distinction between payment of interest and principal.
3. "Before the expiration of the prescribed period."
4. Payment--meaning of.
5. "Person liable to pay."
6. "Duly authorised agent."
7. Payment by pleader.
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9. Fresh period--computation of.
10. "Appears.....writing signed by."
11. Payment and writing need not be simultaneous.
12. Signature must refer to acknowledgment.
13. "Person making the payment."
14. Mortgagee in possession.
15. Explanation.
16. Payment of decree debt--certification necessary.
17. Nature of liability affected by payment.
18. Whether and for what a sum of money was paid--question of fact.
19. Unregistered endorsement of payment.
20. Burden of proof.
21. Article 75 and this section.
22. Distinction between Ss. 19, 20 and Art. 183.

1. Scope and applicability. This section cannot be regarded as based on theory of acknowledgment,[8] or on any fiction of an implied promise to pay. Payment of interest or part payment of the principal accompanied by a refusal to pay the balance may still give a fresh starting point of limitation for recovering the debt.[9]

Payment after period of limitation. The section applies to those cases in which it is proved that an interim payment of a debt was made.[10] Therefore payment made after the period of limitation has expired would not save limitation against the debtor.[11]

Suit against Government. The period of limitation was held to have been extended beyond the period prescribed by the part payment of the amount claimed by the petitioner from the Government.[12]

Amendment of 1942--operation of. The present section, as amended in 1942, will not apply where the suit is instituted prior to the coming into force of the

8. AIR 1940 P.C. 63 = ILR 1940 Lah. 470 = ILR 1940 Kar. (P.C.) 134.
9. AIR 1938 Cal. 129 (DB) + AIR 1921 Mad. 704 = 44 Mad. 971 (DB).
10. PLD 1963 Karachi 1022 = PLR 1964 (1) W.P. 1164.
11. AIR 1965 A.P. 349 (DB).
12. PLD 1965 S.C. 310 = 17 DLR (S.C.) 338 = PLR 1965 Dacca 119.

amendment.[13] The amended section will apply to suits filed after the amendment has come into operation.[14] Where the debt has become barred by limitation long before the amendment of S. 21, Limitation Act, took effect, the amendment cannot be relied upon to operate retrospectively so as to revive the barred debt.[15] But section 20 (1) as amended by Act, XVI of 1942 is retrospective in the sense that an open payment made towards a debt prior to the amendment would save the debt from the bar of limitation if its recovery had not become barred prior to the date of amendment.[16]

Section applies only to debts and legacies. The section is restricted to suits for debts and legacies.[17] It contemplates debts of all kinds whether secured or unsecured.[18] Thus the section applies to a claim to recover mortgage amount under S. 68 of the Transfer of Property Act.[19] But it does not apply to a suit for redemption,[20] or a suit for possession of property,[1] or a suit for a share of mortgage-money received by the defendant mortgagor on the allegation that the mortgaged property was undivided ancestral property in which the plaintiff had a right.[2]

Liability of joint Hindu family. The joint liability of the members of an undivided Hindu family for a family debt is not a "debt" within the meaning of this section.[3]

2. Distinction between payment of interest and principal. Sub-section (1) has been framed so as to apply to any payment on account of a debt by the debtor without any distinction as to whether the payment was made towards principal or towards interest as such and without any necessity on the part of the creditor to appropriate as open payment towards principal or interest.[4] But section 20 would not apply to cases where a debtor makes a payment without any specification and the creditor appropriates it, as he is entitled to do under the law, towards interest.[5]

Part payment of interest. A part payment of interest will operate to save limitation in the same manner as the payment of the whole of interest.[6]

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13. AIR 1944 Bom. 37 (DB) + AIR 1946 Pat. 59 (DB) + AIR 1944 Mad. 398 + AIR 1946 Pat. 60 = 24 Pat. 391 (DB) + AIR 1945 Pat. 368 = 24 Pat. 249 (DB).
14. AIR 1949 Orissa 64 = ILR (1949) 1 Cut. 281 (DB).
15. AIR 1946 Mad. 72 (*Rel.* AIR 1944 Mad. 398 + AIR 1946 All. 58).
16. 1955 Andh. W.R. 626 + AIR 1959 A.P. 518 (DB) + AIR 1957 Andh Pra. 437.
17. AIR 1939 Lah. 212 (Also applies to case of mortgage with possession) + AIR 1948 P.C. 36 = 74 Ind. App. 285 = ILR 1947 Lah. 727 = ILR 1947 Kar. (P.C.) 422.
18. AIR 1941 Mad. 6 (DB) + AIR 1948 P.C. 36 = 74 Ind. App. 285 = ILR 1947 Lah. 727 = ILR 1947 Kar (P.C.) 422 + AIR 1938 Cal 129 (DB).
19. AIR 1922 Oudh 102.
20. AIR 1926 All 85 + AIR 1948 P.C. 36 = ILR 1947 Lah. 727 = ILR 1947 Kar. (P.C.) 422 + AIR 1954 Ajmer 51 + AIR 1950 East Punj. 157 + AIR 1924 Lah. 484 + 26 All. 167 + AIR 1917 Oudh 124.
1. 13 Oudh Cas. 179 + 1908 Pun. Re. No. 91. p. 429. (Suit by mortgagee for possession).
2. 22 Ind. Cas. 959 = 1 Upp. Bur. Rul. 178.
3. AIR 1938 Mad. 774 = ILR 1938 Mad. 968 (DB).
4. AIR 1949 Orissa 64 = ILR (1949) 1 Cut. 281 (DB) + AIR 1956 Bom. 347 = ILR 1956 Bom. 458.
5. AIR 1949 Nag. 394 = ILR 1949 Nag. 478 (DB).
6. 35 All. 378 (DB).

3. "Before the expiration of the prescribed period." Section 20 (1) of the Limitation Act requires that for giving a fresh period of limitation payment on account of a debt should be made before the expiration of the prescribed period by the debtor or by his duly authorised agent.[7] The words "prescribed period" refer to the period prescribed by the Limitation Act and not to the period fixed by other enactments such as S. 48 of the Civil P.C.,[8] or the period fixed by contract between the parties.[9] The period within which a suit or application may be filed by reference to S. 4 of the Act is not "prescribed period" within this section.[10]

Amendment by Provincial Act. Where the Provincial Act makes it obligatory on the Court to exclude a period when computing the period of limitation, then the period so extended within which the suit or application has to be filed will be the prescribed period within this section.[11]

Payment after expiry of limitation. A payment made after the prescribed period will not avail to save limitation.[12]

4. Payment--meaning of. There should be payment in some form before this section can come into operation. It is necessary that there must be something which is tantamount to payment.[13] Where there is no actual payment but there are words to the effect that a specified sum has been paid; this section does not apply.[14]

Payment may be made in any form.[15] In order to constitute a payment it is not necessary that it should be in cash or currency.[16] It is not necessary to constitute a payment that money should actually pass.[17] A payment may even be made in kind.[18]

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7. PLD 1987 Lah. 295 = PLJ 1987 Lah. 255 = 1987 LN 372 + 1981 CLC 299 = NLR 1981 UC 148.
8. AIR 1922 Mad. 268 = 45 Mad. 785 (DB) + AIR 1934 Oudh 465 = 10 Luck 208 (DB).
9. 6 Cal 815 (DB) + AIR 1947 Oudh 3 + 12 Cal. L.R. 277 + 11 Mad. 218 (DB).
10. AIR 1940 Nag. 401 (AIR 1928 Nag. 192 = 24 Nag. L.R. 83 Held no longer good law) + AIR 1939 All. 252 (DB) + AIR 1938 All. 606 = ILR 1938 All. 861 (DB) + AIR 1938 Mad. 683 + AIR 1929 Cal. 68 = 55 Cal. 1210 + AIR 1947 Oudh 3 = 21 Luck 447.
11. AIR 1955 All 41 = ILR (1955) 1 All 548 (FB). (AIR 1938 All. 217 (FB) and AIR 1947 All. 199. *Overruled*) + AIR 1959 Mad. 278 = ILR 1959 Mad. 711.
12. AIR 1965 A.P. 349 (DB) + AIR 1941 Oudh 56 = 16 Luck 113 + AIR 1940 Oudh 340 = 15 Luck 573 (FB) + AIR 1955 All. 41 = ILR (1955) 1 All. 548 (FB) + AIR 1949 All. 764 = ILR 1950 All. 701 + AIR 1931 All. 375 (DB) + AIR 1935 Bom. 213 + 2 Upp. Bur. Rul. 466.
13. AIR 1937 All. 260. (Merely entering fictitious payment does not amount to payment) + AIR 1958 Ker. 243 (DB) + (1900) 24 Bom. 493 (DB) + AIR 1936 Pat. 386 + AIR 1916 Pat. 411 (DB).
14. AIR 1945 Nag. 181 = ILR 1945 Nag. 745 (DB).
15. AIR 1938 Mad. 601 = ILR 1938 Mad. 1090 (DB) + AIR 1936 Mad. 848 + ('98) 25 Cal. 844 = 25 Ind. App. 95 (P.C.).
16. AIR 1938 Cal. 538 = ILR (1938) 2 Cal. 320 (DB) + AIR 1950 Ajmer 11 + AIR 1938 Mad. 579 (DB) + AIR 1926 Cal. 1042 (DB) + AIR 1925 Sind 144 = 20 Sind. L. R. 335.
17. AIR 1938 Mad. 579 (DB) + AIR 1938 Pat. 139. (Parties agreeing that amount due previously by creditor to debtor shall be treated as payment by the latter to the former--Agreement operates as actual payment) + AIR 1929 Mad. 432 (DB) + AIR 1923 Cal. 71 (DB).
18. AIR 1926 Cal. 1042 (DB) (But it must be proved that there was an agreement between the parties for making such payment) + (1900) 24 Bom. 619 (DB) + 29 Mad. 234 (DB) + AIR 1935 Rang. 473.

Payment by person other than the debtor. Where a creditor receives money for the debt due to him not from the debtor or his agent but from a source which is independent of the volition of the debtor, it cannot be said that the debtor has made any payment.[19]

A bank, when making payment of a debt, acts as an agent of the debtor. Therefore where the plaintiff had made a demand for the whole of his dues and the plaintiff had received payments of various sums through a bank, it was held that those payments were enough to bring the case within S. 20.[20]

Payment by cheque. The giving of a cheque and its receipt by the creditor does not necessarily constitute a payment unless received as such by the creditor.[1] Where a cheque is received by the creditor towards payment of a debt the passing of a cheque written by a borrower is payment for the purpose of S. 20 and if other conditions are fulfilled, a fresh term of limitation starts from the date of the handing over of the cheque whether or not it is subsequently honoured.[2] In such cases the date of the payment for the purpose of giving a fresh period of limitation is the date on which the cheque is given and not the date on which the cheque is cashed.[3]

Promissory note, payment by. A promissory note may be given by way of payment.[4] Where the plaintiff advanced a loan to defendants and on the same day obtained a promissory note as a security for the repayment of the debt. But the promissory note being insufficiently stamped was inadmissible in evidence. There were however endorsements of payment. In a suit based upon the original cause of action, the debt itself; it was held that the endorsement saved limitation.[5]

Payment of money not in satisfaction of debt. In order to fall within the purview of this section, payment must be of such a nature that it would be an answer in a suit brought by the plaintiff to recover the amount.[6] A payment made as a matter of grace and not towards any admitted debt does not save limitation.[7]

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19. AIR 1934 Mad. 549 (DB) + ('82) 6 Bom. 626 (DB) + 1912 Pun L. R. No. 155, p. 474.
20. AIR 1957 Madh B 97 (DB).
1. AIR 1930 All. 392 = 52 All. 459 (DB) + 1958-1 Andh W.R. 215 + AIR 1956 Andh 105 = ILR 1955 Andh 393 (DB). (A cheque together with the subsequent receipt of the money by the payee would be an acknowledgment of payment within the meaning of the proviso) + AIR 1956 Bom. 553 (DB). (A cheque which is dishonoured cannot be regarded as part payment within the meaning of S. 20) + AIR 1933 Lah. 741 (DB) + AIR 1941 Rang. 344 (DB) + AIR 1945 Mad. 515 + AIR 1931 Sind 28 = 25 Sind L. R. 360 + AIR 1938 Cal. 538 = ILR (1938) 2 Cal. 320 (DB) + AIR 1916 Cal. 580 = 42 Cal. 1043 (DB) + AIR 1933 Lah. 341 = 14 Lah. 580 (DB) + AIR 1937 Sind 95 = 31 Sind L. R. 68 (DB).
2. AIR 1961 Madhya Pradesh 346 (DB) + AIR 1938 Cal. 538 + AIR 1956 Andh 105 + AIR 1936 Mad. 848 + AIR 1954 Punj. 162.
3. AIR 1925 Cal. 937 + AIR 1954 Punj. 162 = ILR 1953 Punj. 439 (DB) (Payment by post-dated cheque) + AIR 1933 Lah. 341 = 14 Lah. 580 (DB).
4. AIR 1938 Mad. 601 = ILR 1938 Mad. 1090 (DB) + AIR 1936 Mad. 848.
5. AIR 1960 Mad. 237 = ILR 1960 Mad. 358.
6. 29 Mad. 234.
7. AIR 1934 Lah. 475 (DB).

Payment of interest. The mere fact that the debtor or the creditor goes on adding interest to the principal in his own books is not a payment.[8] But the addition of interest to the principal in the accounts of the debtor will be a payment where both parties agree to wipe out the previous balance and add the amount of interest to the principals so as to make it a new debt.[9]

Where actual payment was made and it was urged that the payment was for interest due and as such it would extend limitation; it was held that if the sum of money paid was not sufficient to cover the interest due on the debt items, the payment does not save limitation.[10]

Payment by co-debtor. Ordinarily co-debtors 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 other under section 20 of the Act.[11] But a payment made by a co-debtor duly authorised by other co-debtors to make payment is sufficient payment under this section. Where *A* and *B*, are co-debtors, and *A* authorises *B* to make a payment on behalf of both *A* and *B* and *B* makes such payment, this section will apply.[12]

Where a promissory note is passed by two promisors, an endorsement of part payment made by one of them must be deemed to have been made on behalf of the other executant as well, as in such a case the Court can infer that promisors had each authorised the other to make acknowledgments so as to bind both.[13]

5. "Person liable to pay." To fall under this section a payment must be made by a person liable to pay and the liability must be to the creditor.[14] The person liable to pay will include the legal representatives of the person who contracted the debt and in the case of money charged on land the person who has derived title from him.[15] Thus where a pronote was executed by a minor's paternal-grandmother as his *de facto* guardian for a sum due by his father on a previous obligation and a suit was brought on the pronote against the minors alone. It was held that payment by the grandmother was one made "by the person liable to pay the debt" and saved limitation.[16]

Authorized agent, payment by. Payment made by an authorized agent in terms of S. 20 would be sufficient to constitute acknowledgment.[17]

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8. AIR 1930 All. 467=52 All 480 (DB). (Even if it has been in pursuance of an original agreement between the parties to calculate compound interest)+('88) 6 Bom. 103+AIR 1934 Nag. 219+AIR 1918 Mad. 238=41 Mad. 446 (DB).
9. AIR 1930 All 467=52 All 480 (DB)+AIR 1916 Mad. 697 (DB)+(1900) 24 Bom. 493 (DB)+('06) 9 Oudh Cas. 221+('11) 13 Bom. L. R. 482.
10. AIR 1957 Andh Pra. 445.
11. PLD 1961 Peshawar 51.
12. AIR 1934 Mad. 623 (DB).
13. AIR 1964 Madras 238.
14. AIR 1941 Mad. 6 (DB). (*A* mortgaging certain land to *B* and afterwards selling certain other land to *C*--*C* undertaking in the contract of sale to pay off the mortgage of *B*--Payment by *C* is not by person liable and unless *C* can be held to be *A*'s agent authorised to make the payment, it will not save limitation under this section).
15. AIR 1941 Mad. 6 (DB). (No distinction between "person liable to pay" and "debtor")+AIR 1951 Raj. 50.
16. AIR 1944 Mad. 152.
17. PLD 1985 SC 298.

Mortgagees. The expression "person liable" will include persons like purchasers of mortgaged property or puisne mortgagees, whose liability is in respect of property.[18]

Mortgagor, payment by. A mortgagor can after transferring only one of the items of the mortgaged property make payment to the mortgagee so as to give a fresh start of limitation as against the transferred items.[19] Similarly a part-payment by a mortgagor after he has parted with the mortgaged property but who is personally liable to pay on his convenant saves the right of suit against the purchaser of the equity of redemption.[20] But a mortgagor who has lost all interest in the mortgaged and is not personally liable for the debt cannot keep alive the mortgage by a payment under this section.[1]

Partnership debts, liability of deceased partner. The legal representative of a deceased partner stand on a different footing in relation to the acts done by any of the partners after the dissolution of the firm whether or not public notice is given of the dissolution. That being the case the legal representatives of a deceased partner cannot be bound by any acknowledgment or payment made towards the debts subsequent to the death of the partner even though it may be said that the partner as the agent of the firm had implied authority under section 47 of the act to acknowledge a debt.[2]

6. **"Duly authorised agent."** The words "agent duly authorised" include authority given by law as well as authority given by act parties.[3] A payment made to the brother of an account holder who has been appointed his attorney to conduct business with the bank would be sufficient to given a new starting point for limitation to a suit by the Bank for recovery of overdraft loans, made to the account holder.[4]

A *mukhtiamama* or written authority in favour of a person is not necessary for constituting him as "duly authorised agent". Whether there was any authority to make payments may be inferred from the conduct of the parties.[5] It is not necessary that to be binding the authority to pay should always be express; and

18. AIR 1926 Cal. 1218=54 Cal. 479 (DB)+AIR 1960 Mys. 136. (The term "person liable to pay the debt" includes subsequent mortgagees as well as purchasers of the equity of redemption)+AIR 1957 Andh Pra 437+AIR 1941 Mad. 6 (DB)+AIR 1943 Mad. 395 (DB). (Payment by purchaser of portion of hypotheca--Mortgagee gets fresh period as to unsold properties also)+AIR 1938 Cal. 129 (DB)+AIR 1945 All. 239=ILR 1945 All. 733 (FB). (Mortgagor can, by paying part of principal or interest 'as such' due on mortgage give fresh start of limitation with respect to that mortgage, even without consent and behind the back of a subsequent mortgage).
19. AIR 1947 Mad. 329+AIR 1956 Mad. 177.
20. AIR 1942 Mad. 200=ILR 1942 Mad. 308 (DB)+AIR 1955 Vindh Pra. 24. (The authority of the agent can be inferred from the conduct of parties).
1. AIR 1964 S.C. 1295+AIR 1940 Mad. 470=ILR 1940 Mad. 872 (FB)+AIR 1960 Mys. 136+AIR 1955 Pat. 505 (DB)+AIR 1951 Assam 68=ILR (1950) 2 Assam 275 (DB)+AIR 1942 Pat. 363=21 Pat. 330 (DB).
2. AIR 1964 Andhra Pradesh 462+AIR 1960 Mad. 495.
3. AIR 1919 Cal. 7 (DB).
4. 1983 CLC 65=PLD 1983 Pesh. 180.
5. PLD 1985 SC 298+AIR 1965 Mys. 59 (DB)+AIR 1947 Oudh 173 (Payment from time to time made by some of debtors--Endorsements made and signed by son)+AIR 1955 Vindh Pra. 24+8 Sau L. R. 150+ILR (1949) 2 Cal. 152.

implied authority is equally binding.[6] Therefore under this section no formal or express authorisation is required,[7] and the question whether the person making the payment is an agent duly authorised by the person liable to pay the debt or legacy is one of fact to be determined in the circumstances of each case.[8] Thus where one of the properties mortgaged was sold by the mortgagor to *P*. Out of the purchase-money *P* was to pay a certain amount to the mortgagee. The mortgagee consented to this arrangement. It was held, that *P* was the mortgagor's duly authorised agent to make the payment.[9] Where a promissory note is passed by two promisors, an endorsement of part payment made by one of them must be deemed to have been made on behalf of the other executant as well, as in such a case the Court can infer that promisors had each authorised the other to make acknowledgment so as to bind both.[10] But as a claimant of attached property cannot be said to be the agent of the judgment-debtor. In fact their interests are adverse to each other. Payment made by the one does not bind the other.[11]

Special and general authority. Under this section the authority need not be a special authority in respect of the particular loan in question; it may be a general authority in respect of a number of loans.[12]

Proof of authority. There must be definite evidence showing that there was some authority on the part of one person to make the payment on behalf of the other.[13] Authority of an agent may be express or implied, with the result that agency need not be created expressly by a written document and could be inferred from circumstances and conduct of parties.[14] Thus where a debtor sends an amount for payment through his son; the son must be deemed to be his authorised agent.[15] But an endorsement of payment by the father on a pronote executed by the son cannot be presumed to have been made by an agent duly authorised by the son.[16] In the absence of specific authority a Muslim brother is not as such the

6. PLD 1961 Pesh. 51.
7. AIR 1929 P.C. 297=57 Ind. App. 1 (*A* executing a promissory note in favour of *X* in substitution of a promissory note executed by *B* in favour of *X*--Understanding between *A*, *B* and *X* that *B* would pay principle and interest due under *A*'s note--*B* making payment of interest--*Held*. *B* must be regarded as an agent of *A* duly authorised to make payment)+AIR 1941 Cal. 643 (DB).
8. AIR 1965 Mys. 59 (DB)+AIR 1941 Mad. 67=ILR 1941 Mad. 191 (FB)+AIR 1941 Cal. 643 (DB)+28 Bom. 248+11 Ind. Cas. 858 (DB). (Low. Bur.)+('10) 37 Cal. 526 (DB).
9. AIR 1938 Mad. 579 (DB)+AIR 1942 Pat. 166 (DB).
10. AIR 1964 Mad. 238.
11. AIR 1954 Mys. 149=ILR 1954 Mys. 101 (DB).
12. AIR 1933 Cal. 826 (DB).
13. AIR 1939 Rang. 287 (DB)+AIR 1933 Cal. 268 (DB). (Elder brother's authority to act to certain extent on behalf of younger brothers--Authority to make payment to save limitation against them not necessarily implied)+AIR 1914 All 114+AIR 1929 Mad. 881=53 Mad. 119 (DB). (The mere fact that payment by *A* enures also for the benefit of *B*, *C* and *D* does not constitute authorization)+AIR 1935 Cal. 648. (*A*, *B* and *C* liable to pay a debt--*A* making payment --Fact that *B* and *C* are present at the time of payment does not make payment necessarily one by *A* on behalf of *B* and *C*).
14. PLD 1985 SC 298.
15. AIR 1940 Lah. 513.
16. AIR 1940 Mad. 954 (DB).

agent of his sister even if the sister is a *pardanashin* lady.[17] Similarly a Burmese Buddhist husband is not necessarily the agent of his wife.[18]

Extent of authority of agent. An agent who can give the creditor the benefit of this section has to act within the terms of his authority.[19] It has been held that a general authority to pay the total amount due under a bond will include an authority to pay the interest also due on the bond or to make part payment.[20] But an authority only to pay towards the principal does not authorize the payment of interest as well.[1] Similarly a payment made by an appointee of the insolvent's property does not save limitation.[2]

Payment after death of principal. A payment made by the *quandom* agent after the death of the principal will not give a fresh start to limitation under this section.[3]

Court if an agent of litigant. A Court can be regarded as an agent of the party provided the assets of the party are so placed by his own act or by operation of law that the Court can operate upon the assets and make payments, the volition of the party being immaterial.[4] But where that state of thing does not exist the mere fact that a Court ordered that payment be made would not attract this section, where in an application, for execution filed more than three years after the final orders on the earlier application, permission for private sale of some of the judgment-debtor's land was given in another suit out of which amount a certain sum was to be paid towards the present decree of the decree-holder, and the Court directed the issue of a cheque. It was held that the fact that the Judge ordered the issue of a cheque would not constitute him as the duly authorised agent of the debtor so as to bring the case within the ambit of this section.[5]

Subsequent ratification of authority of agent. Where a payment is made by *A* on behalf of *B* without the latter's authority but *B* subsequently ratifies the payment, it will have the same effect against him as if it had been made with his authority though such ratification cannot affect the rights of third parties.[6]

7. Payment by pleader. Payment by an advocate expressly authorised by the *vakalatnama* to make as also to receive payment must be regarded as a payment by a duly authorised agent within the meaning of S. 20 of the Limitation Act.[7]

8. Payment by receiver. The Official Receiver in whom the estate of the mortgagor vested on his adjudication comes within the description of 'a person liable to pay the mortgage debt within the meaning of S. 20 (1) and a payment

17. AIR 1941 Rang 37=1940 Rang. L. R. 603 (DB).
18. AIR 1941 Rang. 37=1940 Rang. L. R. 603+AIR 1939 Rang. 287 (DB).
19. AIR 1914 Mad. 67=ILR 1941 Mad. 191 (FB)+AIR 1941 Mad. 6 (DB).
20. AIR 1925 Rang. 30=2 Rang. 367 (DB)+25 Cal. 844=25 Ind. App. 95 (P.C.).
1. AIR 1926 Mad. 1176 (DB).
2. AIR 1935 Rang. 152 (DB).
3. 1880 Pun. Re. No. 78, page 175.
4. AIR 1921 Mad. 704=44 Mad. 971 (DB)+AIR 1927 Mad. 80.
5. AIR 1956 Mad. 238=II.R 1956 Mad. 895 (DB).
6. AIR 1941 Mad. 6 (DB).
7. AIR 1961 Bom. 258.

made by him towards the mortgage debt and enforced by him with his signature gives a fresh start of limitation for the suit on the mortgage.[8]

9. Fresh period--computation of. An acknowledgment or part-payment to be good and valid must, generally speaking, be made within the period prescribed by the law of Limitation which is in force on the date when the suit is brought.[9]

Commencement of fresh period. The fresh period must be computed from the date of payment and not from the date of the writing evidencing such payment.[10] But in case of a payment by cheque a fresh term of limitation starts from the date of handing over of the cheque. It is immaterial that the cheque is not subsequently honoured.[11]

10. "Appears.....writing signed by." The proviso applies only to sub-section (1) and not to sub-section (2).[12] Proviso to section 20 (1) of the Limitation Act requires that for giving a fresh period of limitation on account of a debt should be made before the expiration of the prescribed period by the debtor or by his duly authorised agent coupled with an acknowledgment of the payment in writing by the person making the payment.[13] Payment *sine* acknowledgment would not give rise to fresh period of limitation u/s. 20 (1).[14] The object of the requirement created by the proviso is to exclude fraudulent oral testimony as to payment.[15] The statement of a lawyer admitting the entire debt on behalf of his client, a portion of which had already been decreed, does not serve as an acknowledgment of the said portion within the meaning of S. 19.[16] Therefore the mere fact that a decree-holder certifies a payment for interest made by the judgment-debtor will not extend the time in favour of the decree-holder unless the payment is evidenced by a writing or signature of the person making the payment.[17] Similarly payment towards a decree made by a judgment-debtor direct, would not amount to an acknowledgment of the decree within the meaning of S. 20 since the payment would not then appear in the handwriting of the judgment-debtor.[18]

A part payment of the principal amount of the debt must appear in the handwriting of the person making the part-payment and not in that of any other person however authorised.[19] The word 'appears' in the proviso to S. 20 (1) only means that the payment was incorporated in a writing brought into existence by the person making the payment or at his instance in a writing signed by him and that this fact should appear to the Court to be established by the evidence in the case.

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8. AIR 1957 Andh Pra 437.
9. AIR 1958 Raj. 318 = ILR (1958) 8 Raj. 959 (DB).
10. 8 Ind Cas. 349 (DB) (Mad.) + AIR 1942 Pat. 395 (DB).
11. AIR 1961 M.P. 346.
12. AIR 1940 Pat. 512 (DB).
13. NLR 1989 UC 146 + 1981 CLC 299 = NLR 1981 UC 148 (Kar).
14. NLR 1989 UC 146.
15. AIR 1921 Mad. 704 = 44 Mad. 971 (DB) + AIR 1951 S.C. 477 = 1952 SCR 116 = 30 Pat. 1210. (Unless there is acknowledgment in the prescribed form, the payment by itself is of no avail) + ILR (1955) 5 Raj. 462.
16. AIR 1964 A.P. 467 (DB).
17. AIR 1933 All. 49 (DB) + AIR 1959 Raj. 107 = ILR (1958) 8 Raj. 1091.
18. AIR 1965 Mys. 59 (DB).
19. 23 Cal. 546 (FB) + 29 All. 773 (DB) + AIR 1916 Pat. 326 = 1 Pat. L. Jour 474 (DB) + 26 Bom 246 (DB) + AIR 1918 Pat. 95 = 4 Pat. L. Jour 365 (DB).

It does not mean that the writing should be actually in existence before the Court at the moment when the Court is adjudicating on the point-in-issue. If the primary evidence of the writing is not forthcoming before the Court, there is no reason why the secondary evidence of the said writing should be ruled out by the Courts, if the same is permissible under the provisions of the Evidence Act.[20]

Signature on document evidencing payment. It is sufficient that the writing is signed by the debtor. The creditor need not prove the writing of the debtor relating to the fact of payment, if it is signed by the debtor.[1] On the other hand actual signature is not necessary provided acknowledgment is in writing of the person making the payment. Acknowledgment must appear to be on account of a debt.[2] If a writing evidencing the fact of payment is subscribed to by the mark of an illiterate person making the payment, it would be a writing signed by him within the meaning of this section.[3] Where it is customary for the scribe to write the payment and to sign it also on behalf of the illiterate person making the payment who touches the pen, the writing would be regarded as being signed by him even though not even a mark had been made by the illiterate person.[4]

Payment of debt to Bank. Where payments made to a Bank by a debtor are evidenced only by entries in Bank accounts, they doe not fall under the section.[5] But where pay-in-slips are signed by the debtor while making payment, it amounts to acknowledgment within S. 19 or payment within S. 20, Limitation Act.[6]

Where the debtor deposits money towards payment of a debt in a Bank on account of overdraft obtained by deposit of title deeds by way of equitable mortgage, the payments fall within the scope of this section.[7]

Endorsement on document. Where the only loan in existence is one evidenced by a promissory note, the interest paid and endorsed at the back of the promissory note will save limitation.[8] Similarly a part payment made and endorsed by the judgment-debtor on the decree will give a fresh starting point of limitation.[9] But the mere endorsement of a *hundi* by the debtor in favour of the creditor is not sufficient to give a fresh starting point of limitation.[10]

Acknowledgment and payment. The same document can be treated as evidence of the fact of payment as well as an acknowledgment of the payment.[11] It

20. AIR 1962 (AJ&K) 12 (DB) + AIR 1959 All. 631 (DB).
1. AIR 1939 Rang. 112 + AIR 1933 Lah. 341 = 14 Lah. 580.
2. AIR 942 Pat. 47 + ILR (1952) 2 Cal. 71 + AIR 1952 Mad. 802 = ILR 1953 Mad. 901. (Instalment decree--Instalment due on 13-5-39--Execution application filed on 4-4-46--Payments made after 13-5-39 appropriated towards instalments--But no acknowledgment or agreement in writing signed by injudment-debtor--Execution is barred).
3. AIR 1928 Bom. 417 = 52 Bom. 356 (DB).
4. AIR 1932 Cal. 440.
5. PLD 1969 Dacca 529 = 21 DLR 755 (DB).
6. AIR 1965 A.P. 349 (DB).
7. PLD 1987 Lah. 295 = PLJ 1987 Lah. 255 = 1987 LN 372 + PLD 1970 Dacca 724 = 23 DLR 22.
8. AIR 1945 Cal. 268 (DB).
9. 5 All 201 (DB).
10. 19 All. 307 (DB).
11. AIR 1938 Cal. 538 = ILR (1938) 2 Cal. 320 (DB) + AIR 1930 All. 123 + 27 All 575 (DB).

is however to be noted that acknowledgment of payment need not appear on a document under which debt is payable.[12]

Cheque. Where a cheque signed by a debtor is given as payment, the fact of payment can be said to be in the handwriting of or signed by the person making the payment.[13]

Effect of saving limitation. This section may be used to save limitation in a case where the claim is otherwise barred by limitation, but once limitation is saved by part-payment made by the debtor, he is liable for any sum which the Court after investigation finds to be due.[14]

Payments made before 1929. A payment made before 1-1-1929 need not be either in writing or signed by the party making it. This is clear from the opening words of the proviso.[15]

Payment not signed, etc., It is only for the purposes of S. 20 that a payment towards a debt should be in the handwriting, etc., of the person making it; the creditor is not debarred from proving by evidence that a payment was made for his debt for other purposes such as that he had waived default of instalments due under an instalment bond.[16]

11. Payment and writing need not be simultaneous. Acknowledgment of payment and actual payment may be simultaneous.[17] But it is not necessary that the writing acknowledging the payment must be simultaneous with the payment. It may be made later.[18] In that case if the payment is made within the time fixed, it is sufficient to extend time though the acknowledgment is made after such period.[19]

Acknowledgment made in written statement. An acknowledgment of payment in the written statement filed in the suit itself cannot be called in aid for the purpose of this section.[20]

12. Signature must refer to acknowledgment. The proviso to S. 20 (1) does not specify that anything more than mere payment should be incorporated in the writing which would bear the signature of the debtor. The use of the word 'acknowledgment' was a deliberate one and was for the purpose of emphasising the fact that the writing in question was the conscious act of the person making the payment. Particulars of the deed and of the debt need not be incorporated in writing.[1]

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12. AIR 1960 Mad. 403 (DB).
13. AIR 1933 Lah. 741 (DB) + AIR 1933 Lah. 341 = 14 Lah. 580.
14. AIR 1938 Cal. 538 = ILR (1938) 2 Cal. 320 (DB).
15. AIR 1951 Mys. 28.
16. AIR 1931 Cal. 157 = 58 Cal. 615 (DB) + AIR 1925 Lah. 394 = 6 Lah. 163 (DB).
17. AIR 1938 Cal. 538 = ILR (1938) 2 Cal. 320 (DB).
18. AIR 1940 Oudh 177 + AIR 1951 S.C. 477 = 1952 S.C.R. 116 = 30 Pat. 1210 + ('94) 17 Mad. 92 (DB) + AIR 1931 All. 375 (DB) + AIR 1933 Bom. 252 = 57 Bom. 453 (DB) + AIR 1937 Cal. 284 = ILR (1937) 2 Cal. 137 (DB) + AIR 1929 Cal. 714 = 56 Cal. 556.
19. AIR 1940 P.C. 63 = ILR 1940 Lah. 470 = ILR 1940 Kar. (P.C.) 134 = 67 Ind. App. 160 + AIR 1951 S.C. 477 = 1952 S.C.R. 116 = 30 Pat. 1210 + AIR 1940 Oudh 177.
20. AIR 1935 Cal. 255 + AIR 1951 S.C. 477 = 1952 S.C.R. 116 = 30 Pat. 1210.
1. AIR 1959 All. 631 (DB).

13. "Person making the payment." Acknowledgment of payment must be in the handwriting or under the signature of the person who made the payment. It is to be noted in this context that the words "the person making the payment" do not necessarily mean the person who physically hands over the money.[2] Where a third person made an endorsement over the signature of the defendant without being authorized to do so, the plaintiff cannot rely on this writing as an acknowledgment.[3]

14. Mortgagee in possession. The word "land" in this sub-section only refers to cultivable land and not to a house or even to the site on which the house stands.[4]

A receipt of rents or produce of land by a mortgagee thereof in possession shall be deemed to be a payment for the purposes of sub-section (1).[5] Even where a usufructuary mortgagee receives rents and profits after a decree has been passed in his favour for sale of the mortgaged property, he must be taken to have received such profits as a mortgagee.[6] Where a mortgage contains a personal covenant to repay and the mortgagee is to enjoy the produce in lieu of interest; time runs from the expiry of the mortgage term but is extended so long as the mortgagee enjoys the produce in lieu of interest.[7]

Receipt of usufruct covers only usufructuary mortgage. Where a usufructuary mortgagee is to take the usufruct for interest the receipt of the usufruct is a payment only in respect of that mortgage and not in respect of any other simple mortgage which the mortgagee may have.[8] Sub-section (2) is not controlled by the proviso to sub-section (1).[9] In other words payments under sub-section (2), are not subject to the conditions of sub-section (1) as to handwriting and signature.[10]

Payment to one of joint mortgagees. Payment of usufruct or interest made to one of the several joint mortgagees is sufficient to extend time. Thus where one of

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2. AIR 1940 Mad. 691 = ILR 1940 Mad. 913 (DB). (Debtor sending money to his friend for payment to creditor--Friend sending same to creditor through messenger with letter to the effect that amount was sent by debtor for payment to him--Payment operates as acknowledgment) + AIR 1939 Rang. 118 + AIR 1926 Cal. 510 = 53 Cal. 163 + AIR 1921 Oudh 29 + AIR 1919 Cal. 144 (DB) + AIR 1920 Mad. 352 (DB).
3. AIR 1934 Rang. 287.
4. AIR 1954 Mad. 890 = ILR 1954 Mad. 1226. (The word "rent" must be construed as *ejusdem generis* with "produce").
5. AIR 1938 All. 188 = ILR 1938 All. 218 (DB). (Mortgagor in possession as tenant of mortgagee--Receipt of rent by mortgagee amounts to payment of interest as such) + AIR 1958 Mys. 43 = ILR 1957 Mys. 277 (DB). (Mortgagee in possession of mortgaged land and raising crops--Separate evidence of receipt of produce not necessary) + AIR 1953 Trav-Co. 63 = ILR 1952 Trav-Co. 53 (DB) + AIR 1952 Bom. 226 = ILR 1952 Bom. 534 (DB) + AIR 1948 Mad. 105 (DB) + AIR 1922 Oudh 102 + AIR 1930 Oudh 178 = 5 Luck. 53 (DB). (Receipt of rent relating to portion of mortgaged property saves limitation against entire property) + AIR 1944 Nag. 37 = ILR 1943 Nag. 764 (DB) + AIR 1924 Pat. 169.
6. ('05) 28 Mad. 473 (FB) + AIR 1941 Mad. 737 = ILR 1941 Mad. 963 (DB) (*Reversing* AIR 1941 Mad. 406).
7. AIR 1921 Bom. 437 = 45 Bom. 1206 (DB).
8. AIR 1927 All. 417 = 49 All. 430 (DB).
9. AIR 1958 Mys. 43 = ILR 1957 Mys. 277.
10. AIR 1940 Pat. 512 (DB) + AIR 1953 Trav-Co. 63 = ILR 1952 Trav-Co. 696 (DB) + AIR 1952 Bom. 226 = ILR 1952 Bom. 534 (DB).

three co-mortgagees was joint with his son. The son took lease of the mortgaged property and promised to pay rent to the mortgagees but appropriated the rent himself. It was held that appropriation by the lessee amounted to payment to all the co-mortgagees.[11]

Possession of mortgagee. The mere receipt of the rent and profits by the mortgagee will not give a fresh start of limitation if he is not in possession.[12]

Sub-section (2) will apply whenever mortgaged land is, in fact, in the possession of the mortgagee whether the mortgage is simple or usufructuary.[13] For the purpose of this sub-section, the mortgagee need not necessarily be in direct possession. It is sufficient if he is in possession through his lessee or agent.[14] If the possession is in fact held as a mortgagee, this section would apply. The Court has to see whether possession is in fact held as a mortgagee even when it purports to be in any other capacity. Thus where *A*, a simple mortgagee, obtains possession from the mortgagor in pursuance of an agreement of sale which is inoperative and invalid in law. The receipt of rents and profits by him can only be in the capacity of a mortgagee as such and this section will apply.[15]

Void mortgage, possession under. Where possession is held under a void mortgage, receipts of rent or usufruct cannot be said to be in the capacity of a mortgagee, and this section would only apply. Thus where possession is under a deed of usufructuary mortgage which is invalid for want of registration; receipt of rents and profits is not one in the capacity of a mortgagee.[16] Similarly where a suit is brought under S. 65, Contract Act, to recover money on the failure of a mortgage which was void *ab initio*. The defendant takes the plea of limitation. The plaintiff pleads acknowledgment by the debtor under this sub-section. The plaintiff must show that the debtor acknowledged liability arising under S. 65, Contract Act.[17]

Possession not held as mortgagee. Where a person is not in possession as a mortgagee the mere receipt of rent of land would not entitle him to the benefit of sub-section (2).[18] Where the plaintiff is in possession as a vendee and not as a mortgagee, receipt of rent and produce cannot be payment within this section so as to save limitation.[19]

15. Explanation. The time for an application for final decree may be extended by a payment for interest towards the preliminary decree.[20]

16. Payment of decree debt--certification necessary. Where payment is made to decree-holder out of Court, certification by him is necessary to save limitation

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11. AIR 1928 All. 387.
12. AIR 1933 Lah. 741 (DB).
13. AIR 1922 Cal. 114 (DB) + AIR 1952 Bom. 226 = ILR 1952 Bom. 534 (DB). (*See also* AIR 1958 Mys. 43 = ILR 1957 Mys. 277 (DB).
14. AIR 1953 Trav-Co. 63 = ILR 1952 Trav-Co. 896 (DB). (Mortgagee in possession--Lease to mortgagor--Payments by mortgagor to original jenmi no behalf of mortgagee).
15. AIR 1922 Cal. 114 (DB).
16. ('84) 7 Mad. 539 (DB).
17. AIR 1943 All. 294 = ILR 1943 All 604.
18. AIR 1947 Oudh 91.
19. AIR 1944 Nag. 37 = ILR 1943 Nag. 764 (DB).
20. AIR 1927 All 159 = 49 All. 147 (DB).

under S. 20.[21] Where the payment has been certified by the decree-holder but has not been recorded by the Court, the person seeking to rely on the payment for extension of limitation under this section, will have to prove that the acknowledgment of the payment on account of the debt is in the handwriting of or in a writing signed by the person making the payment. Even if the fact of payment is admitted by the judgment-debtor in his written statement, it would not fulfil the conditions under S. 20, and in the absence of an acknowledgment under S. 20, the payment cannot be availed of for the purpose of limitation.[22] It follows from this that in such a case the payment towards a decree made by a judgment-debtor direct, would not amount to an acknowledgment of the decree within the meaning of S. 20 since the payment would not then appear in the handwriting of judgment-debtor. But if, on the contrary, the payment was through a draft and by a pleader on behalf of the judgment-debtors, since that draft was endorsed by the pleader in favour of the decree-holder the payment appearing in that way in the handwriting of the pleader if he was the duly authorised agent of the judgment-debtors would clearly amount to an acknowledgment of the decree.[1]

Certification after expiry of limitation. For the purposes of this section the date of the payment is not the date of the certification but the date of actual payment.[2] Therefore a payment within limitation complying with the requirements of S. 20, Limitation Act, will save limitation for the execution of the decree even if the payment is certified by the decree-holder after the expiry of limitation for the execution of the decree.[3] A payment towards a decree-debt made out of Court may be certified at the time of the execution petition. The fact that the decree-holder has not certified that payment earlier is no obstacle to the application of this section.[4] It must however be remembered that the certification must be within three years of the date of the payment though more than three years after the date of the decree or the last starting point of limitation.[5]

Certification after objection on ground of limitation is raised. Certification cannot be made after the judgment-debtor has raised an objection that the application is barred by limitation.[6]

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21. AIR 1943 Pat. 7=21 Pat. 481 (DB)+ILR (1949) 2 Cal. 152. (Decree-holder mentioning payments made by J.D., in execution itself—Payments made within three years of execution application saves time provided payments satisfy requirement of S. 20).
22. AIR 1965 Madras 444.
1. AIR 1965 Mysore 59 (DB).
2. AIR 1928 All. 629+51 All. 237 (FB)+AIR 1935 Mad. 922+AIR 1919 Sind 70=13 Sind L.R. 37 (FB)+AIR 1931 Cal. 719=59 Cal. 760 (FB).
3. AIR 1952 All. 715=ILR (1952) 2 All. 772 (FB). (AIR 1929 P.C. 18. *Foll.* AIR 1928 Oudh 195 (FB)+AIR 1928 All. 629 (FB). *Ref* and ILR (1949) 2 Cal. 152).
4. AIR 1936 Nag. 281=ILR 1938 Nag. 106+AIR 1925 Mad. 131+AIR 1919 Cal. 677=46 Cal. 22 (DB)+AIR 1916 Cal. 451=43 Cal. 207 (DB)+AIR 1918 Mad. 620=41 Mad. 251 (DB)+AIR 1919 Sind 70=13 Sind L. R. 37 (FB)+AIR 1920 Sind 23=14 Sind L. R. 198 (DB)+AIR 1924 Lah. 676.
5. AIR 1925 Rang. 26=2 Rang. 393+AIR 1925 Cal. 1012=54 Cal. 143 (DB)+AIR 1927 Cal. 29 (DB).
6. AIR 1940 Pat. 594.

17. Nature of liability affected by payment. A payment by a mortgagor towards the mortgage debt keeps alive the mortgage itself as against him and not merely his personal liability.[7]

Part-payment of principal and interest. Where a debtor believes that principal and interest are both payable and makes a payment merely on account, it cannot save limitation. Thus a part payment of principal and interest under a bond will not given a fresh starting point of limitation in respect of a claim for damages for non-payment of principal and interest on the due date.[8]

Several debts. Where a person has contracted several debts at different times from the same creditor, a single payment made towards those debts is not sufficient to extend limitation on all of them, if they are separate entities. Thus where the customer takes loans on separate handnotes each of which is a separate promise to pay on demand, in such a case the entire amount on different handnotes cannot be treated as one cause of action for purposes of saving limitation by part payment made not towards any particular debt.[9] But where the debts, though contracted at different times, form a part of one account, a payment made towards the account will save limitation against all the debts on which limitation has not expired. Thus where, with respect to the goods sold at different dates, no fixed period of credit was agreed upon, and a payment within the meaning of S. 20, Limitation Act was made towards the account, the creditor was entitled to appropriate it towards all the items which were outstanding on the date of payment and it would give fresh period of limitation to items which were not barred by limitation on the date of that payment.[10]

Instalment payments. In the case of a decree payable by instalments the question whether the different instalments were intended to be treated as different debts or whether all of them constituted part of a single debt is essentially a question of interpretation to be put on the terms of the decree in the circumstances of each case. Where specified amounts are to be paid on specified dates (whether they are called instalments or not) each amount is a separate item of debt. If a part payment is made in respect of any particular item the limitation for the recovery of the item may get extended under S. 20 on account of the part payment. If the whole of that particular item is paid either before or after the date specified for its payment there can be no question of extending limitation for the recovery of that item. That item will, in that case, have been paid, nor can there be any question on account of that payment of extending limitation for the other debts because the payment made will not in that case be a part payment of the other items. If the decree contains a clause making the entire balance due on the default of payment of one or more items or instalments, any payment made after the whole balance has become due may have the effect of extending limitation for the recovery of that balance. But where payment is made only in respect of a specified instalment before the whole amount has become due on account of the

7. AIR 1929 All. 380 (DB)+AIR 1953 Tripura 10 (Handnote executed on 30-8-1948--Endorsement on its back in hand of executant dated 3-8-1949 as to payment of interest--Suit filed on 10-11-1951--Both handnote and endorsement admitted--Suit is within limitation under S. 20).
8. 1892 All. W.N. 239 (DB).
9. AIR 1954 Vindh Pra 1.
10. AIR 1961 Raj. 154.

default clause, no extension of limitation for the other instalments or for the balance can be claimed on account of that payment under S. 20.[11]

18. Whether and for what a sum of money was paid--question of fact. The question whether or for what a sum of money was paid, was *prima facie* a question of fact and not of law.[12] Therefore where the trial Court held that the acknowledgment in question was not admissible in evidence, that it was not proved to be that of the debtor and that it was in respect of the debt sought to be adjusted, and on that ground the appellate Court rejected the contention regarding the acknowledgment, the decision cannot be interfered with in revision.[13]

19. Unregistered endorsement of payment. Endorsements on mortgage documents acknowledging the payment of a part of the mortgage money are admissible in evidence to prove the discharge of the mortgage *pro tanto* without registration.[14]

20. Burden of proof. Where a suit is *prima facie* barred the burden is on the plaintiff to show that it is not barred by virtue of a payment made under this section.[15] Therefore the plaintiff has to state in his plaint why the suit is within time.[16] He has to show that the payment by the defendant is of such a nature as would extend limitation under this section.[17] In other words the plaintiff has to allege and prove not only that there was payment but also that the payment had been acknowledged in writing in the manner provided by this section.[18] Where the payment is made by a person other than the debtor the plaintiff must show that such person was an agent duly authorised by the debtor.[19]

Presumption as to acknowledgment. The admission made by the promisor on the back of a promissory note to the effect that part payment was made by him on a particular date must be presumed to be true.[20]

21. Article 75 and this section. Where payment of certain instalments has been made and accepted by a creditor, the time will run under Art. 75 from the date of default of next instalment. There is no need to resort to S. 20 and show that by reason of earlier payment the limitation is extended.[1] In such cases the creditor is not debarred from proving by evidence that payment of certain

11. AIR 1962 Allahabad 91 (DB) + AIR 1949 Pat. 447 (DB).
12. AIR 1928 P.C. 243 = 55 Ind. App. 380.
13. AIR 1964 Guj. 122.
14. AIR 1918 Mad. 645 (DB).
15. AIR 1934 Lah. 475 (DB) + AIR 1934 Mad. 549 (DB) + AIR 1930 Mad. 738 + 49 Cal. L. Jour 560 (DB) + AIR 1927 Rang. 255 (DB).
16. AIR 1935 Cal. 255 (If there is no such statement, the Court has to dismiss the suit) + AIR 1921 Nag. 94 + AIR 1935 Cal. 648.
17. 22 Ind. Cas. 959 = (1913) 1 Upp. Bur. Rul. 178.
18. AIR 1951 S.C. 477 = 1952 S.C.R. 116 = 30 Pat. 1210.
19. II Ind. Cas. 858 (DB) (Low Bur).
20. AIR 1937 Cal. 284 = ILR (1937) 2 Cal. 137 (DB).
1. AIR 1925 Lah. 394 = 6 Lah. 463 (DB) + AIR 1931 Cal. 157 = 58 Cal. 615 (DB) + AIR 1920 Lah. 472 + AIR 1924 Pat. 439 (DB).

instalments was made for his debt and that he had waived the default in respect of such instalments.[2]

No wavier of default. Where default has been made and has not been waived with the result that time begins to run under Art. 75 from the date of default, limitation can be extended by payment under this section.[3]

22. Distinction between sections 19, 20 and Art. 183. Under sections 19 and 20, acknowledgment or payment must be made before the expiry of the prescribed period of limitation; but Art. 183 does not prescribe any time limit within which the acknowledgment or payment must be made.[4]

Who may make payment. A payment under Art. 183 need not be made by the person liable or his agent.[5] Signature of the Advocate on the endorsement on the brief recording a consent decree is sufficient to comply with the requirements of the proviso under Art. 183.[6]

Payment not falling under Art. 183. A fresh period of limitation will run from the date of the acknowledgment or payment under sections 19 and 20 notwithstanding the fact that the acknowledgment or payment is ineffective for the purpose of Art. 183.[7]

Acknowledgment not falling under Ss. 19 and 20. Where an acknowledgment or payment satisfies the requirements of Art. 183 but not those of Ss. 19 and 20, the date of acknowledgment or payment will be the starting point of limitation under Art. 183.[8]

21. *Agent of person under disability.* (1) The expression "agent duly authorised in his behalf", in sections 19 and 20, shall, in the case of a person under disability, include his lawful guardian, committee, or manager or an agent duly authorised by such guardian, committee or manager to sign the acknowledgment or make the payment.

(2) *Acknowledgment or payment by one of several joint contractors, etc.* Nothing in the said section renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by or by the agent of, any other or others of them.

[9](3) For the purposes of the said sections--

2. AIR 1927 Cal. 102 (DB)+AIR 1925 Lah. 394=6 Lah. 163 (DB)+AIR 1931 Cal. 157=58 Cal. 615 (DB).
3. AIR 1949 All. 764=ILR 1950 All. 701+AIR 1943 All. 172 (DB).
4. 11 Bom. 506 (DB).
5. AIR 1925 Mad. 1131 (DB)+AIR 1931 Pat. 218=10 Pat. 213 (DB).
6. AIR 1955 Cal. 484.
7. AIR 1940 Cal. 210=ILR (1939) 2 Cal. 523+AIR 1958 Cal. 1 (DB).
8. AIR 1931 Pat. 218=10 Pat. 213+AIR 1925 Mad. 1131 (DB).
9. Sub-section (3) ins. by the Indian Limitation (Amendment) Act, 1927 (1 of 1927), S. 3.

(*a*) an acknowledgment signed, or a payment made, in respect of any liability, by, or by the duly authorised agent of, any widow or other limited owner of property who is governed by the Hindu law, shall be a valid acknowledgment or payment, as the case may be, as against a reversioner succeeding to such liability; and

(*b*) where a liability has been incurred by, or on behalf of, a Hindu undivided family as such, an acknowledgment or, payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.]

Synopsis

1. Revival of time-barred debts.
2. Acknowledgment or payment by guardian of minor.
3. Acknowledgment or payment by guardian of insane person.
4. Court of Wards, acknowledgement or payment by.
5. Acknowledgment by agent of guardian.
6. Sub-section (2).
7. Joint contractors.
8. Muslim co-heirs.
9. Co-mortgagors.
10. Principal and surety.
11. Partner--acknowledgment or payment of debt by.
12. Hindu trading family.
13. Joint mortgagees.
14. Several judgment-debtors.
15. Sub-section (3).
16. Manager of Joint Hindu family--acknowledgment or payment by.
17. Acknowledgment or payment by head of Muslim family.

1. Revival of time-barred debts. Once a debt has become time-barred it cannot ordinarily be revived by a person except against himself. Thus the manager of a Hindu family cannot revive a time-barred debt against the family.[10] Where a father revives a time-barred debt and effects a mortgage in consideration of it, the mortgage is not binding on his children. Similarly a Hindu mother as guardian of a minor son is not competent in law to revive a time-barred debt due from his deceased father.[11]

Revival of debt by Hindu widow. Hindu widow can acknowledge and revive time-barred debt of her husband whether it was barred during or after his lifetime.[12]

2. Acknowledgment or payment by guardian of minor. Payment made by a guardian must be held to be a payment by an agent duly authorised on behalf of

10. AIR 1937 Nag. 327+5 Mad. 169 (FB)+AIR 1921 Pat. 99=6 Pat. L. Jour 256 (DB)+20 Bom. 155 (DB). (Except as against himself)+AIR 1924 Lah. 611=5 Lah. 317 (DB).
11. AIR 1927 Oudh 52 (DB).
12. AIR 1927 Lah. 657=9 Lah. 85 (DB).

the principle.[13] It will be effective irrespective of the question of its being or not being for the minor's benefit.[14]

"Lawful guardian." The expression "lawful guardian", will include natural guardians who under the law are the legal guardians of the minor.[15] Thus the mother of Muslim infant sons, in the absence of any evidence to the contrary, is their lawful guardian.[16] It must however be noted that a mere guardian of the person of the minor will not be a lawful guardian within the meaning of this section.[17]

A *de facto* guardian is not a guardian within the meaning of this section.[18] Thus under Hindu law, after the father and mother, no other relation including the paternal grandmother is the lawful guardian.[19] Even an elder brother is not lawful guardian of a Hindu minor during the mother's lifetime.[20]

Guardian appointed by Court. A person appointed guardian by the Court will be lawful guardian for the purposes of the section.[1] Thus an interim guardian appointed by Court in proceedings under The Guardians and Wards Act is lawful guardian within S. 21, but the powers of such guardian may be defined by the order of the Court. If the order appointing him restricts his power an acknowledgment by him is one of the effect.[2]

Only a person appointed by Court is a guardian for the purpose of this section. A person appointed by Collector as manager of land is not guardian or even an agent to acknowledge personal liability.[3] Similarly a Settlement Officer is not a guardian of a Muslim minor.[4]

Marriage of female ward. A testamentary guardian of person and property of a minor girl does not cease to be guardian of her property on her marriage.[5]

Death of ward. A guardian cannot make an acknowledgment or payment after the ward's death so as to bind the ward's estate.[6]

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13. AIR 1943 Pat. 218 = 22 Pat. 114 (DB).
14. AIR 1939 Cal. 399 = ILR (1939) 2 Cal. 33 (DB) + 1932 Mad. W.N. 1193 + AIR 1934 Lah. 685 (DB).
15. AIR 1940 Mad. 33 = ILR 1940 Mad. 358 (FB). (Acknowledgment or payment by *de facto* guardian of minor will not be binding on minor under this section) + AIR 1949 F.C. 218 = 1949 F.C.R. 65 + AIR 1948 Nag. 293 = ILR 1947 Nag. 710 (DB) + AIR 1943 Bom. 381 = ILR 1943 Bom. 486 (DB) + AIR 1946 Mad. 1 = ILR 1946 Mad. 242 (FB) + AIR 1946 Mad. 198 = ILR 1946 Mad. 648 (DB) + AIR 1939 Cal. 399 = ILR (1939) 2 Cal. 33 (DB) + AIR 1933 Oudh 132 (DB) + AIR 1918 Cal. 977 = 45 Cal. 630 (DB) + AIR 1934 Lah. 685 (DB).
16. AIR 1937 Cal. 191 (DB) + AIR 1917 Lah. 8.
17. AIR 1918 Low Bur 136 = 9 Low Bur Rul 78 + AIR 1942 Mad. 663.
18. AIR 1946 Mad. 1 (FB) + AIR 1946 Mad. 198.
19. AIR 1940 Mad. 33 = ILR 1940 Mad. 358 (AIR 1928 Mad. 42 (DB) + AIR 1926 Mad. 457 (DB) *Overruled*).
20. AIR 1918 Cal. 977 = 45 Cal. 630 (DB).
1. AIR 1932 Pat. 337 = 12 Pat. 147 (DB).
2. 1932 Mad. W.N. 1193.
3. ('95) 17 All. 198 = 22 Ind. App. 31 (P.C.).
4. 1907 Pun L. R. No. 43, p. 234 (FB).
5. AIR 1948 Mad. 155.
6. ('06) 30 Bom. 218 (DB).

Attainment of majority by ward. Where a guardian continues in management of the ward's property after the ward attains majority, payment of interest by the ex-guardian will save limitation.[7]

Acknowledgment by one of several guardians. Where originally there was more than one guardian but only one of the guardians was left to do the whole work of guardianship. An acknowledgment signed by him alone would be binding on the minor.[8]

3. Acknowledgment or payment by guardian of insane person. Only a person appointed by Court to act as guardian of an insane person is his lawful guardian for the purposes of this section.[9]

4. Court of Wards, acknowledgment or payment by. The Court of Wards can make acknowledgments or payments so as to save limitation in respect of the debts due from the ward.[10]

5. Acknowledgment by agent of guardian. A Court must be satisfied that the manager of the estate of a ward apart from his appointment as such was "duly authorised" expressly or impliedly by the guardian or the Court of Wards to make the acknowledgment or payment.[11]

6. Sub-section (2). While in regard to section 19 this sub-section operates only as an explanation and not as an exception, in regard to S. 20 it operates in some cases as an exception and in others as an explanation.[12] The object of the section is to provide that only one of the contracting parties shall not ordinarily impose a liability on the other by anything done by him. Limitation, whether treated as a right or as a liability, is *prima facie* personal and unless the legislature so provides, a co-operative right or liability should not be imposed.[13] The word "only" in sub-section (2) is not a mere surplusage and if effect be given to the word, the sub-section would not interfere with the operation of Ss. 19 and 20, but would restrict the application of those sections to cases which strictly satisfy its requirements.[14]

Word "chargeable" in this sub-section refers to personal liability and to liability in respect of property.[15]

The categories mentioned in this sub-section are exhaustive and not merely illustrative.[16]

Acknowledgment is not binding on other joint debtor. The sub-section does not interfere with the rule under Ss. 19 and 20 that an acknowledgment or payment will operate against the person making such an acknowledgment or

7. ('95) 18 Mad. 456.
8. 1890 Pun. Re. No. 7, p. 15 (DB).
9. AIR 1933 Mad. 686=56 Mad. 964 (DB).
10. ('94) 17 All. 198=22 Ind. App. 31 (P.C.).
11. AIR 1939 Bom. 237 (DB).
12. AIR 1938 Cal. 129 (DB).
13. AIR 1958 Mys. 43=ILR 1957 Mys. 277 (DB).
14. AIR 1927 Cal. 193 (DB).
15. AIR 1929 Mad. 881=53 Mad. 119 (DB).
16. AIR 1930 Mad. 738.

payment and those who claim under this irrespective of its consèquences with regard to other persons who may be jointly liable with him.[17]

Where more persons than one are jointly liable, an acknowledgment by one of them will not bind others.[18] An acknowledgment will bind the particular person who makes the acknowledgment and those who claim under him.[19]

Payment by one of joint debtors. Where more than one person are jointly liable to pay a debt, a payment under S. 20 need not be made by all the persons liable but may be made by any one of such persons.[20] In that case limitation will be saved against the person making payment and those claiming under him, and also against other joint-debtors.[1]

A payment made by one of several persons jointly liable in respect of a mortgage would, under S. 20 operate against all of them, notwithstanding the provisions of this sub-section.[2] Similarly a payment made to one of the several joint mortgagees is sufficient for the purpose of section 20.[3]

Liability not joint. Payment by one of two debtors cannot save limitation as against the others.[4] Where the debt is not common to all the persons but a distinct debt is owed by each of them, a payment by one of them will operate only against the others unless he has been authorised by the latter to make the payment.[5] The authority need not be with reference to the particular acknowledgment or payment in question.[6]

Authority to pay given to one of the joint debtors. A person making an acknowledgment or payment has authority of other members of the group to which he belongs, to make acknowledgment or payment. Such acknowledgment or payment will bino other members also.[7] The authority need not be with reference to the particular acknowledgment or payment in question.[8]

7. Joint contractors. Where a contract is made by two or more persons jointly, all the persons jointly liable on such contract will be joint contractors although they or any of them may not have been originally parties to the contract.[9]

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17. ('12) 15 Cal. L. Jour 251 (DB). (Section 21 does not lay down exceptions to S. 19) + AIR 1928 All. 387 (DB) + AIR 1935 Mad. 101 = 58 Mad. 418 (DB).
18. AIR 1928 All. 387 (DB) + AIR 1941 Mad. 110 + ('05) 27 All. 575 (DB) + AIR 1935 Mad. 101 = 58 Mad. 418 (DB).
19. AIR 1928 All. 387 (DB) + ('12) 15 Cal. L. Jour 251 (DB).
20. AIR 1941 Mad. 110 + AIR 1937 Cal. 191 (DB) + AIR 1938 Cal. 129 (DB) + AIR 1935 Mad. 101 = 58 Mad. 418 (DB).
1. AIR 1941 Mad. 110 + AIR 1940 Cal. 401 = ILR (1940) 2 Cal. 362 + AIR 1939 Mad. 69 = ILR 1939 Mad. 140 (DB). (*Overruled* on another point by AIR 1941 Mad. 925 (FB)) + AIR 1937 Cal. 191 (DB).
2. AIR 1936 Rang. 504.
3. AIR 1917 Mad. 895.
4. AIR 1934 Pat. 224.
5. AIR 1938 Cal. 129 (DB) + AIR 1937 Cal. 191 (DB).
6. AIR 1933 Cal. 826 (DB).
7. AIR 1932 Bom. 316 + AIR 1929 Cal. 714 = 56 Cal. 556 + AIR 1926 Mad. 114 (DB) + AIR 1928 All. 491 + (1900) 24 Bom. 493 (DB).
8. AIR 1933 Cal. 826 (DB).
9. AIR 1941 Mad. 110 + AIR 1938 Cal. 129 (DB) + AIR 1918 Oudh 152 + AIR 1938 Mad. 111 + AIR 1918 Pat. 646 (DB).

But though the payment or acknowledgment by one joint-debtor may not save limitation as against any other debtor, yet the former can sue the other co-debtors for contribution where he has been compelled to pay more than his share of the joint debt.[10]

Payment by one co-contractor. In the case of joint contractors, though the debt may be common to all of them notwithstanding the provisions of S. 20, a payment by one of them will not save limitation against the others.[11] But the payment will save limitation as against the particular contractor who makes the payment,[12] as well as against those who claim under him.[13]

One co-contractor authorized by others. Where one joint contractor has authorised another joint contractor to make a payment, such payment, will save limitation against both.[14] The authorisation need not be express and may be inferred from the conduct of the joint contractors.[15] Thus where a promissory note is passed by two promisors, an endorsement of part payment made by one of them must be deemed to have been made on behalf of the other executant as well, as in such a case the Court can infer that promisors had each authorised the other to make acknowledgments so as to bind both.[16]

Right to contribution of contractor making payment. Although the payment or acknowledgment by one joint-debtor may not save limitation as against any other debtor, the former can sue the other co-debtors for contribution where he has been compelled to pay more than his share of the joint debt.[17]

8. Muslim co-heirs. Whether or not the co-heirs of a deceased Muslim debtor are joint contractors within S. 21, sub-section (2), an acknowledgment made by one of the co-heirs cannot save limitation as against any other co-heir except where the latter has authorised such acknowledgment.[18] Therefore payment by one of the heirs of a deceased Muslim will be effective only against the particular co-heir who makes the payment and not against others.[19]

9. Co-mortgagors. An acknowledgment by one co-mortgagor will be effective only against him and cannot save limitation as against other co-

10. AIR 1915 Mad. 675 = 39 Mad. 288 (DB).
11. AIR 1933 Cal. 90 (DB) + AIR 1956 Punj. 21 = ILR 1955 Punj. 1263 + AIR 1941 Rang. 37 = 1940 Rang. L.R. 603 (DB) + AIR 1937 Rang. 195 (DB) + AIR 1934 Mad. 173 + AIR 1926 Oudh 601 = 2 Luck. 180 (DB) + 11 Ind. Cas. 858 (DB) (Low. Bur.) + 1930 All. L. Jour 1060 (DB) + AIR 1942 Cal. 251 = ILR (1941) 2 Cal. 576 (DB).
12. AIR 1941 Mad. 110 + AIR 1923 Bom. 369 (DB).
13. AIR 1928 All. 387 (DB) + AIR 1932 Cal. 620 = 59 Cal. 1128 (DB) + AIR 1915 Mad. 962 (DB) + AIR 1923 Lah. 135 (DB).
14. AIR 1928 Mad. 173 + AIR 1918 Oudh 152 + AIR 1935 Mad. 101 = 58 Mad. 418 (DB).
15. AIR 1928 Mad. 173 + AIR 1935 Mad. 101 = 58 Mad. 418 (DB) + AIR 1915 Mad. 307 (1).
16. AIR 1964 Madras 238 + AIR 1928 Mad. 173 + AIR 1915 Mad. 307 (1).
17. AIR 1915 Mad. 675 = 39 Mad. 288 (DB).
18. AIR 1936 All. 820 = ILR 1937 All. 272 (DB). (AIR 1918 All. 61 (DB) + AIR 1925 All. 209 (DB) *held overruled*) + AIR 1957 Pat. 559 (DB) + AIR 1930 Mad. 218 = 53 Mad. 480 (DB) + AIR 1942 Pat. 73 = 20 Pat. 770 (DB).
19. AIR 1936 All. 820 = ILR 1937 All. 272 (FB). (*Overruling* AIR 1927 All. 209 (DB) + 14 Ind. Cas. 128 (Cal.) + AIR 1918 Low Bur. 136 = 9 Low. Bur. Rul. 78 + AIR 1937 Cal. 191 (DB).

mortgagors.[20] Therefore payment by one of the co-mortgagors will not save limitation against the other co-mortgagors,[1] not only as regards their personal liability but also as regards their liability in respect of their share in the mortgaged property,[2] and it may be sufficient to discharge both the co-mortgagors from the liability they may have incurred under the terms of the mortgage deed.[3]

Joint family. Where mortgagors are members of a joint family and Manager of the family makes payments towards interest, the payment is not one made by a mere co-mortgagor. Such payment will save limitation against all the co-mortgagors.[4] Thus where business was carried on by two brothers as members of a joint family and the liability was incurred by the family as such, the acknowledgment made by one of them who was the manager of the family at the time, will be deemed to have been made on behalf of the whole family consisting of himself and others. Such a valid acknowledgment will save limitation as against the whole family.[5]

10. Principal and surety. Acknowledgment of liability by the principal debtor will save limitation only as against him and not as against the surety.[6] But payment by a principal debtor will save limitation as against the surety.[7]

11. Partner--acknowledgment or payment of debt by. Where a partner acknowledges a debt, the authority to acknowledge debt on behalf of co-partners can be presumed from circumstances.[8] If the nature of the business of the firm is such that acknowledgments of liability or making part payments or payments of interest are done in the usual course of the business, a partner may be presumed to have been authorized by the other partners to make such acknowledgments or payments.[9] But where there is acknowledgment by one partner without an implied

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20. AIR 1939 Pat. 451 = 18 Pat. 434 (DB) + AIR 1957 Trav-Co. 186 (DB). (The mortgagee can enforce the entire mortgage debt as against the half share of acknowledging debtor even though the claim has become barred by time against the other debtor) + ('02) 25 Mad. 220 (FB) + AIR 1936 All. 820 = II.R 1937 All. 272 (FB).
1. AIR 1941 Rang. 37 = 1940 Rang. L. R. 603 (DB) + AIR 1958 Mys. 43 = ILR 1957 Mys. 277 (DB). ('Joint contractors' include 'co-mortgagors' and 'chargeable' refers not only to personal liability but also to liability on property) + AIR 1939 Rang. 287 (DB) + AIR 1929 Mad. 881 = 53 Mad. 119 (DB) + AIR 1936 All. 820 = ILR 1937 All. 272 (FB) + AIR 1918 Pat. 646 (DB) + AIR 1938 Mad. 111 + AIR 1933 Cal. 268 (DB) + AIR 1938 Cal. 129 (DB) + AIR 1918 Oudh 152 + AIR 1943 Bom. 381 = ILR 1943 Bom. 486 (DB).
2. AIR 1939 Rang. 287 (DB) + AIR 1929 Mad. 881 = 53 Mad. 119 (DB).
3. AIR 1939 Lah. 212.
4. AIR 1938 All. 638.
5. AIR 1964 Assam 114 (DB).
6. AIR 1939 Nag. 31 + AIR 1931 Lah. 691 = 13 Lah. 240 (DB).
7. AIR 1957 Orissa 106 = II.R 1957 Cut. 454 + AIR 1940 Cal. 401 = II.R (1940) 2 Cal. 362 + AIR 1919 Lah. 374 = 1919 Pun. Re. No. 105.
8. AIR 1965 A.P. 349 (DB) + AIR 1919 Mad. 1140 = 41 Mad. 427 (FB). (*Overruling* 32 Mad. 421 + 35 Mad. 142) + AIR 1957 Mad. 8 (DB). (The fact that the acknowledgments were made when no active money-lending was carried on would not make any difference) + AIR 1925 Rang. 30 = 2 Rang 367 (DB) + AIR 1935 Lah. 559.
9. AIR 1928 All. 491 = 50 All. 982 + AIR 1926 Mad. 114 (DB) + AIR 1932 Lah. 456 + 32 All. 51 (DB) + AIR 1916 Bom. 119 (DB) + AIR 1945 Mad. 263 + AIR 1939 Lah. 397 + AIR 1932 Bom. 316.

authority to admit the debt or claim, it is binding against such partner only and not against the partnership firm.[10]

Partnership must be a going concern. The presumption of implied authority exists only where the partnership is a going concern. The presumption of agency does not apply in the case of a partnership which has ceased to be a going concern.[11] It must however be noted that a partner who has been authorised to wind up the business can acknowledge or make payments in respect of debts to save limitation.[12] But it is for the Court to see that acknowledgment was made in the course of winding up of partnership business. Where one of the two partners died in 1948 and the acknowledgment of liability of the firm was made by the surviving partner in 1951. It was held that the acknowledgment was not an act necessary to wind up the affairs of the firm. Therefore he could not bind the estate of the deceased partner in the hands of his heirs by making an acknowledgment.[13]

Acknowledgment not relating to partnership business. Where a partner acknowledges only his own liability and not that of the partnership as a whole, his acknowledgment cannot save limitation as against the other partners.[14] Similarly where an acknowledgment is made by a partner in the course of proceedings relating to his insolvency, a partner cannot be considered to be acting in the course of partnership business and acknowledgment made by him cannot be used as against the other partners.[15]

Acknowledgment after dissolution of partnership. The presumption of agency applicable to a going concern will apply to dissolved partnerships, so far as third parties, who are ignorant of the dissolution of the firm, are concerned.[16]

12. Hindu trading family. An acknowledgment or payment by any member of the family made in the course of the business may be presumed to be authorised by the other members of the family.[17] Even after partition in the family, if the creditor has no notice of such partition, an acknowledgment or payment made by any member of the family in the ordinary course of business will be binding on the other members of the family also.[18]

13. Joint mortgagees. The mere fact that persons stand to each other in the relation of co-mortgagees will not make them agents for each other for making acknowledgments under section 19.[19] Therefore acknowledgment by a co-

10. PLD 1970 Karachi 495.
11. AIR 1916 Low Bur 75=8 Low Bur 363 (DB)+AIR 1960 Mad. 495 (DB) (Dissolution of firm by death of partner--Acknowledgment of partnership debt by surviving partner--Not valid so as to bind legal representatives of deceased partner)+AIR 1925 Nag. 268+AIR 1926 Mad. 114 (DB)+AIR 1916 Mad. 235 (DB).
12. AIR 1929 Lah. 266.
13. AIR 1964 Assam 114 (DB).
14. 3 Bom. L. R. 144 (DB).
15. AIR 1917 Mad. 518 (DB).
16. AIR 1932 Bom. 316+AIR 1930 Bom. 236+AIR 1929 Cal. 714=56 Cal. 556+AIR 1926 Lah. 616=7 Lah. 403 (DB)+AIR 1929 Lah. 266+AIR 1926 Mad. 114 (DB)+AIR 1935 Bom. 357 (DB).
17. 1937 Mad. W.N. 1312+AIR 1928 All. 491=50 All. 982.
18. AIR 1930 Bom. 236.
19. AIR 1941 Pat. 147=19 Pat. 938 (DB).

mortgagee will not operate against the other co-mortgagees for purposes of limitation, except where the latter have authorised him to make the acknowledgment.[20]

An acknowledgment of liability by a co-mortgagee will be ineffective even to sustain a suit for redemption of such co-mortgagee's share in the mortgage.[1] But where the mortgagees have partitioned the mortgagee right and each of them is in separate possession of a portion of the mortgaged property, an acknowledgment by one of them can be used in a suit for redemption of the share which is in his enjoyment.[2]

Where there were two co-mortgagees but the mortgagee right became vested in one of them, an acknowledgment by him will suffice to keep alive the right of redemption.[3]

14. Several judgment-debtors. Acknowledgment by one of several co-judgment-debtors will save limitation only against him and not against the other judgment-debtors.[4] Where the decree has been passed against judgment-debtors in their capacity as joint contractors, partners, executors or mortgagees, the payment will save limitation only against the particular judgment-debtor who makes the payment and not as against the others.[5]

15. Sub-section (3). An acknowledgment by a Hindu widow binds the reversioners.[6]

16. Manager of joint Hindu family--acknowledgment or payment by. Payment or acknowledgment by the manager of a Hindu joint family must be deemed to be made on behalf of the family.[7] Such acknowledgment or payment by the manager need not be expressed as made in his capacity as manager.[8] Such acknowledgment or payment would save limitation against the whole family.[9]

Liability must be a joint family liability. Clause (*b*) of sub-section (3) applies only where the liability in question is a joint family liability.[10] The facts of liability being a joint family liability may be proved by oral evidence.[11]

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20. 1907 Pun. L. R. No. 43. p. 234 (FB) + 4 Ind. Cas. 579 (All.) + AIR 1952 Pepsu 6 = 3 Pepsu L. R. 484.
1. AIR 1952 Pepsu 6 = 3 Pepsu L. R. 484 + AIR 1952 Trav-Co. 310 = ILR 1952 Trav-Co. 28 + AIR 1957 Trav-Co. 253. (Acknowledgment by one only of the heirs of deceased mortgagee).
2. AIR 1930 Bom. 466 = 54 Bom. 625 (FB).
3. AIR 1915 Mad. 962.
4. AIR 1914 Cal. 764 (DB) + AIR 1917 Cal. 422 (DB).
5. AIR 1927 Cal. 193 (DB) + AIR 1933 Pat. 1 = 12 Pat. 93 (DB).
6. AIR 1946 Pat. 120 (DB).
7. AIR 1950 P. C. 15 = 17 Ind. App. 22 = 29 Pat. 272 + AIR 1955 Mys. 31 = ILR 1954 Mys. 293 (11 Mys. C.C.R. 190 and 26 Mys. C.C.R. 75, held no longer good law) + 21 Cut. L.T. 63 + AIR 1939 Nag. 156 = ILR 1939 Nag. 235 (DB) + AIR 1939 Pat. 490 (DB) + AIR 1938 All 638 + AIR 1936 Mad. 871 (DB) + AIR 1944 Mad. 33.
8. AIR 1916 Cal. 747 (DB) + AIR 1925 Cal. 1153 + AIR 1919 Mad. 370 (DB) + AIR 1936 Mad. 871 (DB).
9. AIR 1964 Assam 114 (DB).
10. AIR 1941 Pat. 208 + 25 Mad. 220 (FB) + AIR 1915 Cal. 652 (DB).
11. AIR 1940 Cal. 157 (DB).

A liability incurred by the fact of all the members of the family will be as much a liability of the family as a liability incurred by the manager on behalf of the family.[12] But where a debt is incurred by the manager of the family in his personal capacity and not as Manager of the family, an acknowledgment of liability will not be binding on other members of the family. Thus where a debt was incurred by a father in a Hindu joint family for his own personal needs, an acknowledgment of liability signed by him will not be binding on his sons and grandsons against whom a debt is sought to be enforced under the doctrine of pious obligation.[13]

Acknowledgment by junior member of family. Acknowledgment or payment by a junior member of a Hindu joint family who is not the manager cannot bind the other members of the family.[14]

Time-barred debt, acknowledgment of. The Manager of a Hindu family cannot revive a time-barred debt.[15] He has no authority to keep alive by acknowledgment or payment a time-barred debt.[16] Thus where an unauthorised person makes acknowledgment or payment in regard to a debt due by a Hindu father, ratification of the acknowledgment or payment by the father after the expiry of period of limitation will not keep alive the debt against his sons though it will be kept alive against the father.[17]

Acknowledgment after manager has become insolvent. Manager of Hindu joint family can acknowledge a debt binding on the family even after his insolvency.[18] Therefore merely because an insolvency petition had been filed against the father, he did not lose his right to make part-payment towards a debt or to acknowledge debt so as to enlarge the period of limitation not only against himself but also against his sons.[19]

Acknowledgment by manager in individual capacity. An acknowledgment or payment by the manager of a Hindu joint family in his individual capacity will not be binding on the other members of the family.[20]

Acknowledgment after family is divided. If at the time of acknowledgment or payment by the alleged manager the family is divided, the acknowledgment or payment will not bind the other members of the family.[1] But such payment will be

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12. AIR 1936 Mad. 871 (DB).
13. AIR 1940 Cal. 137 (DB).
14. 3 Bom. L. R. 144 (DB)+AIR 1922 Mad. 23=45 Mad. 345 (DB)+AIR 1918 Oudh 323+AIR 1923 Lah. 135 (DB).
15. AIR 1937 Nag. 327+5 Mad. 169 (FB)+AIR 1921 Pat. 99=6 Pat. L. Jour 256 (DB)+20 Bom. 155 (DB). (Except as against himself)+AIR 1924 Lah. 611=5 Lah. 317 (DB).
16. AIR 1950 P.C. 15=77 Ind. App. 22=29 Pat. 272.
17. AIR 1941 Mad. 6 (DB).
18. AIR 1942 Mad. 721=ILR 1943 Mad. 53.
19. AIR 1953 Mad. 369.
20. AIR 1917 Mad. 518 (DB).
1. AIR 1939 Pat. 451=18 Pat. 434 (DB)+AIR 1953 Orissa 179=ILR 1953 Cut 221 (DB). (It is the duty of the creditor to enquire whether he still retains his character as manager--No duty on the members to intimate the creditor about the partition)+AIR 1938 Mad. 774=ILR 1938 Mad. 968 (DB)+AIR 1937 Mad. 586+AIR 1945 Bom. 511=ILR 1945 Bom. 976. (Sub-section (3) of S. 21 will not apply).

binding on the Manager himself and persons who claim through him. Thus where a debt was contracted by a father while the family was joint and payment was made by him after partition, such payment would be binding on his sons and grandsons.[2]

Where on the division of a family, a certain liability is placed by members of the family on a certain member, an acknowledgment or payment by him would enlarge limitation. Where in a family partition after the death of the executant of a hypothecation bond of 10-6-1926 the hypothecated properties were equally shared by his three sons *K* and *L*. But the responsibility for paying the debt was to be borne by *L*. In pursuance of the arrangement *L* made payment in 1930 and after his death; by his widow, who also died. In a suit for the recovery of principal and interest due on the hypothecation instituted on 14-11-46 against *K* and the widow of the executant; it was held that *L* and his widow were persons liable to pay the debt within the meaning of S. 20 and therefore the payment made on 26-11-34 saved the suit from the bar of limitation.[3]

17. Acknowledgment or payment by head of Muslim family. Head of a Muslim family cannot make acknowledgments or payments on behalf of the whole family.[4]

22. *Effect of substituting or adding new plaintiff or defendant*: (1) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was made a party.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

Synopsis

1. Scope and applicability.
2. Addition of parties under O.1. R. 10, C.P.C.
3. "New plaintiff or defendant."
4. Minor--impleading of.
5. New relief claimed by a party.
6. Misdescription.
7. Suit or appeal by or against a dead person.
8. Consideration of question of limitation.
9. "As regards him."
10. Mortgage suit.
11. Firms, suits relating to.
12. Pre-emption suits.
13. Clubs, suits by or against.
14. Landlord and tenant, suits between.
15. Joint promisors and promisees and owners of joint right of action.
16. Torts.
17. Suit for specific performance of contract to sell.
18. Objection to non-joinder of parties--effect.
19. "When he was so made a party."
20. Sub-section (2).
21. Transposition of parties.

2. AIR 1933 Mad. 708 = 56 Mad. 833 (DB).
3. AIR 1952 Mys. 107 = ILR 1952 Mys. 331 (DB).
4. AIR 1918 Low Bur 136 = 9 Low Bur Rul 78.

1. Scope and applicability. The section safeguards the right of a party who may have acquired it against another by lapse of time in the matter of making persons parties.[5] Therefore where a person is already a party to the proceedings the mere fact that a notice was given to him will not effect his position as a party and this section will not apply to him. Where a final decree was passed without serving notice on a necessary party and the High Court remands the case on that ground in revision. Whereupon notice was served on the party. But the party raised a plea of limitation and urged that notice was of no value as limitation had already expired. It was held that the party being already on the record, the impleading was a formal matter which was not covered by O. 1, R. 1, C.P.C., read with S. 22, Limitation Act. The objection was repelled.[6] Similarly the section had no application to cases in which the action was originally properly constituted as to parties but had subsequently become defective by change or devolution of interest.[7]

Bar as to party impleaded or as to all parties. Whether a suit becomes barred as regards a party alone or as regards other parties also is a matter which will have to be ascertained with reference to the substantive law relating to the subject of necessary parties to an action and the law relating to limitation of actions contained in the statutes of the country.[8]

Applications. Applications are not within the scope of this section.[9] But the principle of the section applies to them.[10]

Appeals. As under the definition in S. 2 (10) a suit does not include an appeal, this section also does not include an appeal; and it does not apply to the joinder of parties in appeals. But the section is based on a general principle; and this principle applies to appeals also.[11]

The section does not apply to transposition of a respondent as an appellant.[12]

The principle underlying this section does not apply to the special power of an appellate Court under O. 41, Rule 20, Civil P.C.[13]

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5. AIR 1927 P. C. 252 = 6 Rang. 29 = 55 Ind. App. 7.
6. PLR 1964 Dacca 820 (DB).
7. AIR 1916 P.C. 202 = 43 Ind. App. 113 + AIR 1958 Kutch. 83 = AIR 1934 Bom. 385 = 59 Bom 536 (DB).
8. AIR 1922 Nag. 213 + AIR 1916 Sind 53 = 10 Sind L R. 38 (DB).
9. AIR 1923 Pat. 88 = 6 Pat. L. Jour 463 (DB) + 10 Cal. L. Jour 396 (DB) + AIR 1921 Pat. 180 = 6 Pat. L. Jour 358 (DB). (Execution application) + AIR 1931 Cal. 385 = 58 Cal. 55 (Application under O. 21, R. 100, C.P.C.) + AIR 1919 Nag. 150 = 5 Nag. L. R. 21. (Application under O. 22, C.P.C.) + 1944 Pat. W.N. 499.
10. AIR 1931 All. 725 (DB) + AIR 1953 Bhopal 35. (Where a person who was not only a plaintiff in the suit but also a joint mortgagee-landlord and as such a joint decree-holder, was joined as non-applicant 2 in the revision after the expiry of the period of limitation; *Held* that the principle of S. 22 applies and the party being a necessary party the whole revision must be deemed to have been barred by time) + AIR 1919 Cal. 510 (DB) + 14 Cal. L. Jour 620 (DB) + 1891 All. W.N. 121 (DB).
11. AIR 1922 Nag. 213 + AIR 1942 Oudh 339 (DB). (Section inapplicable to appeals).
12. AIR 1949 Pat. 309 = 27 Pat. 956.
13. AIR 1937 Mad. 741 = ILR 1938 Mad. 52 (DB) + AIR 1943 Oudh 78 (DB).

Provincial Insolvency Act. Proceedings under S. 68 of the Provincial Insolvency Act, 1920, are more akin to appeals than to a suit and section 22 of this Act does not apply to them.[14]

2. Addition of parties under O. 1, R. 10, C.P.C. When a new person is substituted or added as a party in a suit already pending, then the suit as regards him shall be deemed to have been instituted only from the point of time when he is so made a party. In other words for purposes of determining whether the suit *qua* him is barred by limitation, the time shall be computed as if the suit had been filed by him (if he is a plaintiff), or against him (if he is a defendant) on the date on which he was "so made a party".[15] If on the addition of a new defendant the suit is barred against him, it will have to be dismissed as against him.[16] Where a suit for compensation for an injury the defendant is impleaded one year after the cause of action arose, the suit would be held to be barred by limitation against the defendant.[17] Where the plaintiff brought a suit for his share in the leasehold right within three years from the date of his attaining majority but he impleaded the persons in possession of the suit property after three years of his attaining majority. It was held that the suit was barred by limitation under S. 22 read with S. 6 and Art. 44, Limitation Act against such persons.[18]

Where the party added is only a proper party but not a necessary one, the suit as against the other defendants will not be barred,[19] because the question of limitation does not arise when a person is added as a party merely to enable the Court to adjudicate effectively and completely upon question involved in the suit, without any relief being claimed against him.[20]

Addition of necessary party. If the added party was a necessary party, *i.e.*, if the suit will not be a properly constituted one unless he is made a party, his addition after the period of limitation will entail the dismissal of the whole suit.[1]

Party already constructively impleaded. Where the added party is already constructively a party to the suit as in the case of representative suits, it is really not a case of adding or substituting new parties and this section does not apply to such a case.[2]

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14. AIR 1937 Lah. 611.
15. PLJ 1982 SC 345 = PLD 1982 SC 167 = NLR 1982 AC 363 = 1982 PSC 459 + 1978 Law Notes 402.
16. AIR 1927 P.C. 252 = 6 Rang. 29 = 55 Ind. App. 7 + 1932 Mad. W.N. 330 + AIR 1932 Lah. 314 (DB) + AIR 1936 All. 94 = 58 All. 594.
17. PLD 1968 Kar. 376.
18. AIR 1963 Ker. 344 + 16 Ind. Cas. 420 + AIR 1938 Mad. 677.
19. AIR 1939 Pat. 138 = 17 Pat. 588 (DB) + AIR 1960 Andh. Pra. 98 (FB) + AIR 1943 Oudh 164 = 18 Luck 601 (DB) + AIR 1921 Bom. 152 = 45 Bom. 1009 (DB) = 26 All. 528 (DB) + AIR 1925 Bom. 547. (Del Credre agent suing—Principal not a necessary but only a proper party—Addition after limitation—Section 22 does not apply) + 6 Cal. L. Jour 558 (DB). (Addition of *pro forma* defendants) + AIR 1916 Mad. 1029 = 40 Mad. 722 (DB) + AIR 1914 Mad. 272 = 38 Mad. 837 (DB) + AIR 1916 Sind 53 = 10 Sind L.R. 38 (DB).
20. AIR 1963 M.P. 51.
1. AIR 1938 Cal. 324 (DB) + AIR 1960 Andh. Pra. 98 (FB) + AIR 1933 Sind 121 (DB) + AIR 1933 Cal. 621 = 60 Cal. 777 (DB) + 21 All. 346 (DB) + AIR 1928 Lah. 33 + AIR 1935 Mad. 761 + AIR 1914 Mad. 395 + AIR 1916 Pat. 411 (DB). (All heirs of mortgagee must be impleaded in a suit on mortgage debt).
2. AIR 1924 All. 908 = 46 All. 709 (DB).

Defendant impleaded by Court or on his own application. The mere fact that the Court of its own motion orders, the name of any person to be added as a party does not render the provisions of this section inapplicable. Similarly the section applies to persons who are made defendants on their own application.[3]

3. **"New plaintiff or defendant."** Where a person is effectively represented in the suit, by those whose actions bind him in law, the specific addition of his name among the parties after limitation is not the addition of a new party.[4] A *benamidar* sufficiently represents the real owner therefore joining the latter after limitation is not addition of a new party.[5] A party once discharged and subsequently reinstated is a party only from the date of reinstatement.[6]

Mistake in impleading party. Where by a *bona fide* mistake it was erroneously supposed that the plaintiff should be represented in a particular way and subsequently he is permitted to rectify the mistake and to appear personally, it is not the addition of a new party.[7] Thus where a debutter estate is made a party but it is not properly represented, an amendment adding a proper representative is not an addition of a new party.[8] Similarly where by a bona fide mistake a wrong person is made defendant as the legal representative of a deceased person, and subsequently, the right person is made defendant, this section has no application.[9]

Where names of parties are by mistake omitted in stamped portion of the plaint, an addition of names after limitation will not bar the suit, such addition will relate back to the original date.[10]

Substitution of person having no right to sue for another. Where the person originally impleaded had no right to sue or be sued, the addition of the person so entitled or liable will be the addition of a new party.[11] Thus where a daughter claiming under the will of her father sued to recover property, and subsequently

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3. 8 Bom. L.R. 942 (DB)+AIR 1956 Pepsu 17=ILR 1955 Patiala 494. (Addition seemed effective from date of application and not from date of order on it)+35 Cal. 519 (FB)+AIR 1930 Lah. 747+11 Lah. 688 (DB)+AIR 1925 Sind 181=17 Sind. L. R. 324 (DB)+AIR 1924 Cal. 74=50 Cal. 549+33 Mad. 115 (DB).
4. AIR 1931 All 585 (DB)+AIR 1914 P.C. 136=36 All. 383=41 Ind. App. 216=AIR 1927 P.C. 56=51 Bom. 450=54 Ind. App. 122+AIR 1950 Cal. 236=ILR (1950) 2 Cal. 158+7 Cal. W.N. 817 (DB). (An executor sufficiently represents the beneficiaries)+37 Cal. 229=37 Ind. App. 27 (P.C.)+AIR 1925 Oudh 440=28 Oudh Cas. 393+AIR 1947 Pat. 257 (DB). (Representative suit under O. 21. R. 63. C.P.C.—Co-plaintiffs can be added after limitation).
5. AIR 1938 Mad. 687 (DB)+AIR 1915 Cal. 496+8 Mad. L. Tim. 377 (DB)+AIR 1920 Nag. 184.
6. AIR 1926 P. C. 88+AIR 1942 Pat. 270 (DB).
7. AIR 1916 Cal. 337 (DB).
8. ('05) 32 Cal. 582 (DB)+('13) 25 Mad. L. Jour 452 (DB)+('04) 7 Oudh Cas. 176+AIR 1919 Mad. 809 (DB)+AIR 1945 Cal. 268 (DB).
9. AIR 1941 Mad. 609.
10. AIR 1927 Nag. 95.
11. AIR 1926 Bom. 366 (DB)+AIR 1958 J&K 20 (DB)+AIR 1914 Mad. 395+AIR 1932 Lah. 314 (DB). (Bona fide mistake is immaterial)+AIR 1940 Lah. 262. (Suit to enforce mortgage bond)+AIR 1940 Lah. 274. (Suit on promissory note instituted by person other than person in whose name it had been executed)+AIR 1937 Lah. 369. (Bond in favour of *A*—On *A's* death suit on it by his father in his personal right as *A's* heir—Subsequent application for substitution of *A's* minor son as plaintiff after limitation—Suit is barred).

an executor appointed under the will sought to be substituted as plaintiff. It was held that the latter was a new party and could not be impleaded after limitation.[12]

When a person originally sues in a capacity in which he has no right to sue, and after expiry of limitation he seeks to continue the suit in a different capacity in which he is entitled to sue, it will amount to an addition of a party and the suit would be barred by limitation. Thus where a manager of a joint Hindu family files a suit without stating in the plaint the capacity in which he is suing, the omission to state it within the period of limitation bars the suit.[13] Similarly where a member of an unincorporated association sued in his personal capacity and the plaint was amended to allow the plaintiff to sue him as representing the association. It was held that this was a case of addition of party.[14]

Addition of grounds of relief. If the amendment sought to be made does not lead to a change in the *"persona"* of the parties or does not introduce a new prayer or relief but only seeks to alter or add to the ground or basis of the right or liability of parties already on record, it is not a case of parties being newly added.[15]

Reinstatement of party. When a party originally impleaded is struck out and is again joined a second time, he is a new party within the meaning of this section.[16] But where the name were first struck out by a bona fide mistake the restoration of the name will relate back to the original date.[17]

4. Minor--impleading of. Where a minor is wrongly described as major and impleaded as defendant [18] or a minor sues as a major by a bona fide mistake, an application for amendment of mistake and for proper representation may be allowed even after limitation.[19] Similarly where a major by bona fide mistake was impleaded as a minor plaintiff and the suit was instituted by a next friend, an amendment of the plaint might be made after limitation, to recognise him as major because the case was one of misdescription and not of addition of a new party.[20]

Minor added as new party. If the minor is not a party plaintiff or party defendant at all, but some one else was a party, the addition of the minor after limitation will be addition of a new party.[1]

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12. AIR 1925 Mad. 917.
13. AIR 1916 Bom. 278 = 40 Bom. 248 (DB) + AIR 1916 Pat. 310 = 1 Pat. L. Jour 468 (DB).
14. AIR 1940 Mad. 639.
15. AIR 1943 Mad. 531 = ILR 1944 Mad. 133 (DB) + AIR 1931 Bom. 590 = 7 Cal. W.N. 575 (DB) + AIR 1916 Oudh 115 = 19 Oudh Cas. 221 (DB) + AIR 1920 Sind 82 (DB) + AIR 1925 Cal. 419 = 51 Cal. 845 (DB) + AIR 1917 Mad. 411 (DB) + AIR 1935 Mad. 160.
16. AIR 1931 Bom. 590 (Names of sons originally impleaded as members of joint family where struck out—They were sought to be impleaded again as partners of a firm) + AIR 1926 P.C. 88.
17. 19 Bom. 135 (DB). (Name was first struck out by pleader unauthorisedly).
18. AIR 1941 Nag. 130 = ILR 1942 Nag. 322 + AIR 1930 All. 644 = 52 All. 924 (DB).
19. 1980 SCMR 254 + 1884 Bom. P. J. 262 (DB).
20. PLJ 1979 Lah. 244 = PLD 1978 Lah. 1461 + AIR 1941 Oudh 43 + AIR 1927 Cal. 477 (DB).
1. AIR 1937 Lah. 369 + 1889 Pun Re No. 37. p. 131 (DB).

Appeal. The principle stated in this note would apply to appeals also.[2]

5. New relief claimed by a party. Where a party on record was allowed to set up new facts which put forward a new cause of action, resulting in claim of a new relief, it would not amount to adding a new party.[3] Where original prayer was for a decree in favour of one plaintiff alone and an application was made after limitation for amendment claiming a relief severally instead of in favour of one of the plaintiffs alone. It was held that the case was not a case of joinder of new plaintiff.[4]

6. Misdescription. The broad principle is that if the case is only of misdescription, then the correction of the names of the parties would not entail application of S. 22, but if it is a case of bringing on record a new party, S. 22 applies and limitation is to be reckoned from the date of addition of new party.[5] Therefore where there is a misdescription of the defendant, the plaintiff may amend the plaint at any time to correct it and such correction would not affect the period of limitation.[6] Where under the Fatal Accidents Act, it was contended that the suit in the first instance was against the North Western Railway and the amendment which was allowed brought on record a new defendant, that is 'Pakistan' and this was long after the expiry of the period of one year as provided by Article 36 of the Limitation Act. It was held that the original description of the defendant in the plaint was merely a case of misdescription. When the amendment was allowed, the description was corrected. It was not a case of adding a new party to the suit. Therefore if the suit was originally within limitation, the fact that the amendment was made after the period of limitation had expired would not make it time-barred.[7]

Party wrongly described. Where a particular person is intended to be impleaded but is described wrongly it is a case of misdescription.[8] Where a party is

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2. *See* AIR 1921 Cal. 776=47 Cal. 721 (App[illegible] by minor without next friend may be amended by inserting name of next friend)+AIR [illegible] 26 Nag. 40 (Appeal by major as minor may be amended by striking out guardian's name).
3. AIR 1925 Mad. 917.
4. AIR 1929 Bom. 51 (DB).
5. PLD 1967 Dacca 426=17 DLR 467 (DB)+AIR 1957 Raj. 298=ILR (1957) 7 Raj. 613+AIR 1960 Ker. 75 (DB). (Whether particular description amounts only to misdescription depends on wording of the plaint concerned--On facts case held to be of addition of new party).
6. PLD 1964 Dacca 1=15 DLR 133=ILR 1963 Dacca 1 (DB).
7. PLD 1965 Karachi. 244.
8. AIR 1936 Lah. 147+AIR 1955 Mad. 294=ILR 1955 Mad. 1293 (DB)+AIR 1939 Pat. 40+AIR 1939 Sind 172=ILR 1939 Kar. 275 (DB). (Same legal entity throughout)+AIR 1940 Cal. 153 (DB). (Suit against Chairman of Municipal Commissioners instead of the Commissioner themselves+AIR 1960 Cal. 327. (Suit instituted in joint family trading name--Plaintiff seeking to bring on record persons forming such name--Merely a case of misdescription)+AIR 1960 Cal. 15 (DB). (AIR 1928 Bom. 191+AIR 1931 Cal. 770, *Not followed*)+1957 M.P.C. 122, (Suit by Hindu joint family firm in firm name--Amendment seeking substitution of individual partners--*Held* to be case of misdescription and not of commencing action by non-existent person--S. 22 held not applicable)+AIR 1953 Mad. 838+AIR 1923 Nag. 96. (Suit for temple property--Body of plaint stating plaintiffs as managers--Omission to mentio[illegible]mple in heading--Only misdescription)+AIR 1926 Cal. 722 (DB). ("Hogarth and Sons")+AIR 1924 Sind 144=19 Sind L. R. 262 (DB). (Suit for dissolution of partnership and accounts--Defendant described as a firm instead of as

imperfectly and incorrectly designated in a plaint the correction of the error is not addition or substitution of a party but it merely clarifies and makes apparent what was previously shrouded in obscurity by reason of the error or mistake. The question in such a case is one of intention of the party and if the Court is able to discover the person or persons intended to sue or to be sued, a mere misdescription of such a party can always be corrected provided the mistake was bona fide. Such an amendment does not involve the addition of a party so as to attract section 22 (1), Limitation Act.[9] Where the plaintiff was described as "Karachi Road Transport Corporation" when the description should have been "Karachi Road Transport Corporation Ltd." It was held that it was a case of misdescription which could be corrected even after the expiry of limitation.[10] Where in a petition under the Companies Act, a company in liquidation was described as the petitioner instead of the official liquidator; it was not a fatal defect when the verification and other contents of the petition leave no room for doubt that the official liquidator was the petitioner. The misdescription is remediable in spite of the the fact that an application under O. 1, R. 10, Civil P.C. to amend the heading has been made beyond five years.[11]

Wrong party impleaded. Where one person sues or is sued, and another person is sought to be substituted in his place, the case is not one of misdescription of parties, and an amendment can be allowed only if no question of limitation is involved.[12] Thus where the person intended to be sued is described correctly, but the plaintiff finds subsequently that he was under a mistake in thinking that such person was liable to answer his claim, it is not a case of misdescription.[13] Where a suit was brought against a foreign firms which had, before the suit, been dissolved to the plaintiff's knowledge, and on the suit being found not maintainable against the firms the plaintiff impleading two partners

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individual)+AIR 1924 Cal. 74=50 Cal. 549. (Where two of the partners of a firm were described by single name but in pleadings individuals were clearly indicated)+AIR 1917 Cal. 420 (DB). (Where plaintiff impleaded Mr. P. J. Forbes as defendant instead of Miss P. J. Forbes and circumstances showed that latter was intended to be sued)+AIR 1917 Mad. 471 (DB). (Suit in individual capacity--Suit amended as on behalf of company)+('96) 18 All 198 (FB). (Company in liquidation sued as "Official liquidator, Himalaya Bank, Ltd., in liquidation" instead of "The Himalaya Bank Ltd., plaintiff")+AIR 1923 Bom. 452=47 Bom. 765 (DB). (Defendant described as "Agent B.B. & C.I. Railway Company" instead of "B.B. and C.I. Railway Company").

9. PLD 1961 Dacca 693=13 DLR 66=PLR 1961 Dacca 688 (DB).
10. PLD 1971 Karachi. 583.
11. AIR 1963 Punjab 196.
12. PLD 1959 Karachi 275=1960 KLR (1) 314=PLR 1959 (2) W.P. 419+AIR 1958 J&K 20 (DB)+32 Pat. 803+AIR 1914 Mad. 636 (DB).
13. AIR 1914 Mad. 636 (DB)+AIR 1958 J&K 20 (DB)+AIR 1928 Nag. 319+AIR 1916 Cal. 818=43 Cal. 441 (DB). (Defendant described as Railway Company "by their Agent A.E. Rogers"--*Held*, suit was substantially against Rogers--But amendment was allowed as no question of limitation arose)+AIR 1955 Raj. 57=ILR (1955) 5 Raj. 298 (DB). (Suit against railway in personal name of manager--It is a case of wrong defendant and not misdescription--Name amended after limitation--Suit held barred)+AIR 1925 Cal. 716=52 Cal. 783 (DB). (The Railway Company did not appear and proceed, with the suit but only the agent appeared and objected to frame of suit)+AIR 1921 Pat. 485. (Suing defendant as 'Agent E.I. Ry. Co." held, not against the company in law and amendment after limitation refused)+AIR 1925 Pat. 37=3 Pat. 230 (DB). (Personal decree against the Agent E.I. Ry. Co. was asked for in the plaint--*Held*, suit was against Agent).

who were in India, the case was not one of misdescription.[14] Where a plaint was filed by plaintiff *M* and Sons, a firm carrying on business at Singapore. An amendment was sought to strike off the firm altogether as plaintiff and to introduce in its place names of its five partners, about six years after institution of the suit. It was held this was not a case of misdescription but of substitution of a new plaintiff and could not be allowed.[15] Similarly where a suit in the name of a joint Hindu family is sought to be converted to one by a firm registered under the Partnership Act, the case is of substitution of plaintiff and not of misdescription. Such amendment after limitation cannot be allowed.[16] But where the suit was brought by a sole proprietor in the name of the firm by mistake, and it was clear from the record of the case that he intended to sue as an individual, the case was held to be one of misdescription and amendment was allowed after the period of limitation had expired.[17]

Where a person intended to be impleaded is as a matter of fact not impleaded, it cannot be said to be a case of misdescription though the omission to implead may be due to a bona fide mistake.[18]

7. Suit or appeal by or against a dead person. A suit instituted in the name of a sole plaintiff or against a sole defendant who is dead at the time of such institution is a nullity and the plaint cannot be amended by bringing his legal representatives on record.[19] But an appeal against a sole respondent who is dead at the time of appeal can be amended even after limitation by adding his legal representatives if sufficient cause for delay is shown.[20]

One of several plaintiffs or defendants dead at time of suit. If one of several plaintiffs or defendants is dead on the date of suit, the proper procedure in such a case is to strike out the dead person's name and proceed with the suit.[1]

If the deceased person was a necessary party, the plaint, can be amended by adding his legal representatives as parties.[2] This should be done before the expiry of limitation because if legal representatives are necessary parties their addition after limitation will entail dismissal of the whole suit.[3] Where the legal representatives are already on the record in some capacity or other, the name of the deceased person may be struck off and the suit can be allowed to go on with such persons as legal representatives of the deceased person.[4]

8. Consideration of question of limitation. A Court's power to add a party is different from its duty to dismiss the suit as time-barred when the question of

14. AIR 1936 Lah. 485 (DB).
15. AIR 1957 Cal. 688 (AIR 1955 Mad. 294 *Dissented from*).
16. AIR 1959 Madh. Pra. 425.
17. PLD 1961 Dacca 693 = 13 DLR 66 = PLR 1961 Dacca 688 (DB).
18. AIR 1925 Lah. 343 + ('11) 8 All. L. Jour 814 (DB).
19. PLD 1961 Dacca 693 = 13 DLR 66 = PLR 1961 Dacca 688 (DB) + AIR 1923 Lah. 652 (DB). (Plaintiff) + AIR 1924 Bom. 109 (Defendant) + AIR 1919 Cal. 257 + AIR 1933 Mad. 454 + AIR 1918 Oudh 419.
20. AIR 1925 Mad. 1210 = 49 Mad. 18 (FB) + AIR 1930 All. 131.
1. AIR 1924 Lah. 348 + AIR 1926 Lah. 153.
2. AIR 1927 Cal. 880 (DB) + AIR 1928 I[illegible] 359 = 9 Lah. 526 (DB).
3. AIR 1919 Lah. 25 = 1919 Pun. Re. No. 86 (DB).
4. AIR 1929 Lah. 440 (DB) + AIR 1920 Sind. 82 (DB).

limitation falls to be considered.[5] Therefore the correct principle is that if a Court finds it necessary to add certain persons as parties, it must add them and then apply S. 22 to see the result on the relief asked for or against the parties added.[6]

9. "As regards him." A suit cannot fail as regards the original parties merely because the remedy as regards the newly-added party has been lost unless such a result follows from the nature of the suit.[7] Where the newly-added party is only a proper party, limitation cannot be pleaded in bar of the entire suit,[8] and no question of limitation would ordinarily arise even as regards him.[9]

When the plaintiff is not entitled to claim any relief against the newly-added defendant and the relief claimed against the existing defendants can be granted independently, the addition of the former after limitation will not affect the suit as against the latter.[10]

Necessary party added after limitation. Where a party necessary for the constitution of the suit itself is not added in time, the suit must be dismissed in its entirety.[11]

10. Mortgage suit. Where the mortgagee right is vested in several persons jointly they must all be impleaded in a suit on the mortgage. A suit by one of them alone without impleading the others either as plaintiffs or defendants could fail. The others cannot be added after limitation to make the suit competent.[12] Similarly a mortgagor cannot in a suit for redemption, implead only some of the mortgagees. The addition of other mortgagees after the expiry of the period of limitation will not prevent the dismissal of the whole suit.[13]

Several mortgagors or holders of equity of redemption. In a mortgage suit all persons interested in the equity of redemption are proper parties and not necessary parties. Therefore where only some of the heirs of a deceased mortgagor are impleaded, joinder of others after limitation does not necessarily involve dismissal of the suit. Relief can be granted to plaintiff.[14] The addition of

5. ('92) 14 All. 542 (DB) + ('49) ILR (1949) 1 Cal. 85 (DB).
6. AIR 1929 All. 941 = 52 All. 134 (DB) + AIR 1940 Mad. 639 + AIR 1924 Lah. 188 = 4 Lah. 390 (DB) + AIR 1922 Nag. 213.
7. AIR 1931 Bom. 590 + AIR 1953 Bom. 293 = ILR 1953 Bom. 865 + AIR 1921 Bom. 152 = 45 Bom. 1009 (DB).
8. AIR 1930 All. 436 + AIR 1943 Oudh 164 = 18 Luck 601 (DB) + AIR 1921 Bom. 152 = 45 Bom. 1009 (DB) + AIR 1914 Cal. 681 (DB) + AIR 1912 Lah. 505.
9. AIR 1934 Cal. 187 (DB) + AIR 1923 Lah. 438 + AIR 1935 Mad. 737.
10. AIR 1930 All. 309 + AIR 1927 Cal. 794 (DB) + AIR 1937 Lah. 193.
11. AIR 1936 Cal. 193 = 63 Cal. 324 + 8 Cal. 62 = 8 Ind. App. 135 (P.C.) + AIR 1937 Rang. 124 (DB) + AIR 1928 Lah. 33. (A panchayat, *i.e.*, unregistered or unincorporated body of persons suing--Some of them not made parties. While suit is bad.) + AIR 1927 Mad + 14 All 524 (DB) + AIR 1921 Pat. 498 + AIR 1920 Oudh 173 = 23 Oudh Cas 52 + 10 Bom. 32 (DB).
12. AIR 1929 Cal. 591 (DB) + AIR 1950 All. 598 = ILR (1951) 2 All. 475 (FB) + AIR 1948 Bom. 211 = ILR 1948 Bom. 158 (FB) + AIR 1958 Mad. 621 = ILR 1958 Mad. 1066 (DB) + AIR 1933 Cal. 621 = 60 Cal. 77[illegible] (DB) + AIR 1916 Pat. 310 = 1 Pat. L. Jour 468 (DB).
13. AIR 1918 Pat. 154 + AIR 1927 All. 290.
14. AIR 1943 Oudh 218 = 19 Luck. 183 (DB).

such persons after the period of limitation has expired against them will bar the suit only as against them.[15]

Where there are several persons entitled to redeem, each one of them is entitled to sue on the whole mortgage. A failure to implead all such persons is not fatal so far as the parties actually before the Court are concerned.[16]

11. Firms, suits relating to. Where a suit is brought in the name of the firm by one of its members as its agent the fact that the other partners are made co-plaintiffs after limitation will not mean the addition of new parties.[17] Thus where in a suit filed by a registered firm three of the partners were impleaded as *pro forma* defendants after the period of limitation for institution of the suit was over, no question of limitation arises in view of the fact that the suit is by a registered firm and the names of the partners whether as plaintiffs *pro forma* defendants are redundant.[18] But where a suit is brought by a partner as a sole proprietor of the firm not as an agent, subsequent substitution of the firm as plaintiff after the expiry of limitation will entail dismissal of the suit. Thus where a suit for money is brought by *H* as sole owner of a firm *H* and *H* and on objection that besides *H* there was partner *S*. *H* applies to amend the plaint by substituting the firm *H* & *H* as plaintiff, the effect is that new plaintiff *S* is joined and if the limitation for the suit has expired the entire suit has to be dismissed as barred by limitation.[19]

Where all partners of a firm are on record either as plaintiffs or defendants, the suit is properly constituted and the mere fact that the name of the firm is joined as a co-plaintiff after limitation, will not bar it under this section.[20]

Suit in firm name. If the intention to implead the firm is clear a misdescription in the cause title is immaterial.[1]

Where a suit is instituted by partners in the name of a firm and disclosure of names of partners is made in answer to an application for such disclosure. Partners so declared are deemed to be parties from the date of the suit.[2] If a partner's name is omitted from a declaration the Court may allow a fresh declaration to be made. But if at the time of the fresh declaration the period of limitation has elapsed the partner will be deemed to be a newly-added party within the meaning of this section.[3]

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15. AIR 1919 Bom. 135=43 Bom. 575 (DB)+32 Pat. 803+33 Cal. 613 (DB)+AIR 1921 Bom. 152=45 Bom. 1009 (DB).
16. AIR 1934 Oudh 220=10 Luck. 70 (DB). (AIR 1932 Cal. 34, *Relied on*)+AIR 1958 Mad. 621=ILR 1958 Mad. 1066 (DB).
17. AIR 1916 Mad. 649+1958 Madh Pra 408 (DB). (Disclosure of names under O. 30, R. 1 is neither substitution nor addition of parties and it is obvious that S. 22, Limitation Act will not apply to it.)+AIR 1955 Mad. 294=ILR 1955 Mad. 1293 (DB)+ILR 1954 Madh B 111+17 Bom. 413 (DB).
18. AIR 1962 Pat. 25 (DB).
19. AIR 1957 Raj. 298=ILR (1957) 7 Raj. 613.
20. AIR 1950 Cal. 236=ILR (1950) 2 Cal. 158 (DB).
1. AIR 1924 Bom. 155 (DB).
2. AIR 1935 Sind 225.
3. AIR 1934 Cal 253=60 Cal. 1217.

Reconstituted firm, suit by. Where a partnership is reconstituted and it files a suit in respect of a contract with the old firm, a substitution of the old firm after limitation is substitution of a new party.[4]

Dissolved partnership, suit against. In a suit against a dissolved partnership, the date of the institution of the suit, for purposes of limitation, is the date of the suit and not that of the service of summons.[5]

Suit for dissolution of firm. In a suit by one partner for dissolution of partnership or for accounts, all other partners are necessary parties. If one or more of them is or are not joined within limitation the whole suit fails.[6]

Joint Hindu family firm. In the case of a partnership firm, the firm name is, by fiction of law, representative of the names of its numerous partners. But this is not the case in a joint Hindu family business and O. XXX, Civil P.C. has no application to such a case. The fact that such a business can assume trade name of a joint Hindu family business would indicate or stand for the various co-parceners, constituting at the time of the institution of the suit the joint Hindu family. In the case of a joint Hindu family business, it is only the *Karta,* who as its representative can institute the suit or else all the members of the joint family must joint as plaintiffs, A suit instituted by the joint family business to the name of the assumed business title was a suit by a person who did not exist and was, therefore, a nullity.[7] In such a case the managing member or members thereof can sue, in their own name on contract entered into with them, without impleading the other members.[8] If a member of the family is substituted as plaintiff in place of the firm after institution of the suit, the substitution of the name of another member of the family as a new plaintiff, during the pendency of suit, would take effect from the date of such substitution or addition, and the suit is deemed to have been instituted by him on the date when he was so made a party.[9]

12. Pre-emption suits. All the vendees are necessary parties to a suit for pre-emption and if any one of them is not impleaded in time, the whole suit should fail.[10] Therefore where in a pre-emption suit one of the legal representatives of the vendee was not impleaded within time. He was joined as a defendant long after the expiry of the pre-emption suit, the suit should be dismissed as against the other legal representatives also.[11]

Minor vendee. In cases of pre-emption, of late it has become a growing tendency on the part of the vendees that in the sale-deed they deliberately do not

4. AIR 1924 Sind 47 = 17 Sind L. R. 263 (DB).
5. AIR 1928 Sind 57 = 23 Sind L. R. 54.
6. AIR 1933 Sind 121 (DB) + AIR 1960 Mad. 134. (AIR 1937 All. 502, *Not followed*) + 14 Cal. 791 (DB) + AIR 1914 Cal. 132 (DB). (Some of legal representatives of deceased partner not joined) + AIR 1917 Mad. 197 (DB) (Do).
7. AIR 1965 Allahabad 586.
8. 33 All 272 = 38 Ind. App. 45 (P.C.) + 1912 Pun. L.R. No. 57, p. 180 = 1912 Pun. Re. No. 3 (DB) + 37 Bom. 340 (DB).
9. AIR 1965 Allahabad 586 + AIR 1963 M.P. 151 = AIR 1960 Cal. 327.
10. AIR 1921 Oudh 252 = 24 Oudh Cas. 320 + AIR 1924 Lah. 230 + AIR 1919 Lah. 25 = 1919 Pun. Re. No. 86 (DB) + 8 All L. Jour 814 (DB) + AIR 1925 Oudh 369 (Unless it is possible to give relief against party impleaded) + 1909 Pun. Re. No. 6, p. 11 (DB).
11. PLD 1963 AJ&K 44.

describe or disclose whether any vendee is a minor, with an ulterior motive to entrap a pre-emptor expecting that he will normally repeat the same description of the vendees in the suit as is contained in the sale-deed. After the period of limitation has run out the vendees would surprise the pre-emptor by taking up an objection that one or some of them were minors, and in this way plead that no amendment for correcting the description of the aforesaid minor or minors should be allowed at that late stage of the case. The Court whose function is to do justice between the parties and to maintain the balance should not hesitate to come to the rescue of a suitor who is so entrapped, due to the aforesaid contrivance of the vendees themselves who purchased land jointly with a minor without on their own part appointing his guardian, etc., but rather kept that aspect of the matter screened from all concerned.[12]

13. Club, suits by or against. A suit by or against a club not being a body incorporated under law must be laid by or against all its members and not its Secretary or Managing Board unless the latter have become personally entitled or liable.[13] Where however a suit is brought against the Manager as representing an unregistered body, and the intention obviously is to sue the body as a whole, the addition of members after the time was not an addition of new parties.[14]

14. Landlord and tenant, suits between. In a suit by a tenant for setting aside a surrender deed executed by the plaintiff's guardian, the persons who have been put in possession by the landlord after the surrender are necessary parties and they must be impleaded within the period of limitation along with the landlord. Where the impleading as such necessary parties had taken place more than three years after attainment of majority by the plaintiff, the suit was barred by limitation under S. 22 read with S. 6 and Art. 44, Limitation Act against such person.[15]

In a suit for ejectment of a sub-tenant's sub-tenant, if the former is not impleaded in time the whole suit should fail.[16]

15. Joint promisors and promisees and owners of joint right of action. In the case of joint promisors their liability is joint and several and one or more of such promisors may be sued for the whole debt at the option of the promisee.[17]

Joint promisees. One view is that if a suit is brought to recover a debt due to joint promisees, all of them must be impleaded and the suit must be for the entire debt. If one or more of such persons are impleaded after limitation the whole suit must fail.[18] But the other view which has found favour with Lahore High Court is that in such cases the suit does not fail if it is instituted by one of the joint promisees and the other compromisees are impleaded after the expiry of limitation.[19]

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12 1980 SCMR 254.
13. 20 All. 497 (DB)+21 All. 346 (DB).
14. 1896 Pun. Re. No. 29, p. 80 (DB)+AIR 1924 Lah. 495=5 Lah. 109 (DB).
15. AIR 1963 Kerala 344.
16. 33 Ind. Cas. 795 (DB) (UPBR)
17. AIR 1934 Cal. 253=60 Cal. 1217.
18. AIR 1932 Mad. 583 (DB)+AIR 1916 Pat. 411 (DB)+AIR 1925 Sind 181=17 Sind L. R. 324 (DB)+AIR 1938 Oudh 61+26 Cal. 409 (FB).
19. AIR 1932 Lah. 652. (Only one of the legal representatives of a deceased creditor suing for whole amount—Other legal representatives impleaded after time as plaintiffs—*Held*, suit

Joint right of action. If several persons have a joint right of action all must join in suing.[20] But the Lahore view is that one compromisee can sue without impleading others in time even as defendants.[21]

16. Torts. Where there are several joint tortfeasors it is not necessary to join all of them as defendants in a suit for damages,[1] because where several persons are entitled to sue in respect of a wrong independent of contract, done to them jointly, it is not necessary for all of them to join as plaintiffs.[2]

17. Suit for specific performance of contract to sell. One view is that in a suit for specific performance of a contract of sale if the purchaser with notice is joined after three years, the suit would not be barred as the purchaser was not a primary party to perform the contract, and was joined under S. 27, Specific Relief Act.[3] But the other view which appears to be correct is that where the transferee from the defendant in a suit for specific performance to sell immovable property is joined as a defendant after the expiry of three years from the date of the agreement to sell, the suit would stand barred by limitation so far as that defendant was concerned.[4]

18. Objection to non-joinder of parties--effect. Failure to object to the non-joinder of an indispensable party at the proper stage would not mean that the relief will be given so far as the parties on the record are concerned.[5] But where the non-joinder is of persons who are proper but not necessary parties, the objection if raised at a late stage, will be disregarded and relief will be given so far as the parties on the record are concerned.[6]

19. "When he was so made a party." The suit against a party joined at a later stage can be deemed to have been filed on the date when he was so made a party to the suit. Therefore, after the expiry of the period of limitation against him he cannot be joined as a party.[7]

When a person is added as a party on an application made for the purpose, the addition must be deemed to take effect from the date of presentation of the application.[8]

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not bad) + AIR 1937 Lah. 193. (Suit by members of Hindu joint family on pronote executed in favour of joint family. Other members added as defendants after limitation--Suit not barred) + 1909 Pun. Re. No. 20, p. 42 (DB). (Suit by members of Hindu joint family for debt due to family--One co-parcener made defendant after limitation--Suit not barred).

20. AIR 1922 Mad. 317 (DB). (Joint trustees Suit to recover properties of temple) + AIR 1923 Mad. 337 (DB). (Joint executors as plaintiffs) + 7 All 313 (FB).
21. 1905 Punj. Re. No. 57, p. 192 (FB).
1. AIR 1924 Lah. 348.
2. 15 Cal. L. Jour 225 (DB) + 2 Cal. L. Jour 496 (DB) + 6 Cal. L. Jour 383 (DB).
3. AIR 1920 Mad. 96 (DB).
4. AIR 1964 Mad. 396.
5. 9 Cal. L. Jour 623 (DB) + 25 Bom. 433.
6. 26 All 528 (DB) + 30 All. 538 (DB).
7. PLD 1958 Karachi 510 + PLD 1963 Dacca 364 = 14 DLR 204.
8. AIR 1927 Mad. 468 = 50 Mad. 372 (DB). (This is so even when final order impleading him is made only on appeal or revision) + 17 Bom. 29 (DB) + AIR 1960 J&K 141 (DB). (And not from the date of order of the Court) + AIR 1954 Raj. 135 = ILR (1954) 4 Raj. 262

Order 1, Rule 10 (5), C.P.C. is expressly made subject to S. 22, Limitation Act, the suit as against a newly-added defendant must be deemed to have been instituted when he is made a party so far as regards the question of limitation.[9] Therefore the suit will be barred against the party unless he is served within the period of limitation.[10]

20. Sub-section (2). Sub-section (2) makes it clear that substitution of a person on whom interest of party devolves or to whom they are assigned *pendente lite* is not substitution of a new party.[11] Where a suit has been instituted in time, and the right to sue some other person accrues pending the suit, the question is one of impleading a party affected by the doctrine of *lis pendens*.[12] Therefore a transferee *pendente lite* who acquires an interest in the subject-matter of the suit in conflict with the rights of the plaintiff cannot plead limitation on the ground that the suit should be deemed to have been instituted against him only on the date when he was impleaded.[13]

Discretion of Court as to impleading of parties. This sub-section is not intended to interfere with the discretion of the Court in rejecting an application for addition or substitution of assignees on the ground of laches.[14]

Assignment or devolution. An assignee from a successful claimant under O. 21, R. 58, C.P.C. who takes the transfer after his claim is allowed and attachment is raised and before a suit by the defeated decree-holder is laid under O. 21, R. 63, is an assignee during the pendency of the suit. Such assignee, if made a party after limitation for the suit under O, 21, R. 63 has expired, cannot take the plea that the suit is barred against him under the provisions of Cl. (1) of this section.[15] It is however to be noted that in such a case the assignment must be from a person who is already a party to the suit.[16]

21. Transposition of parties. Section 22 (1) is not intended to apply to the case of a person who is already a party to a suit and who is allowed to be transposed from a defendant to a plaintiff or vice versa. Where therefore, a defendant is transposed as a plaintiff, her claim cannot be said by virtue of S. 22 (1) to have been instituted when she was transposed as a plaintiff but her claim must be treated to have been instituted on the date when the suit was instituted by the plaintiff.[17] The rule that the transposition of a person from the rank of a

(DB) + AIR 1930 Sind 259 = 32 Cri. L. Jour 174 = 25 Sind L.R. 107 (DB) + AIR 1927 Nag. 95 + AIR 1945 Nag. 57 = ILR 1944 Nag. 768 (DB) + AIR 1937 Rang. 175 (DB).

9. 12 Ind. Cas. 586 (DB) (Bom).
10. PLD 1963 Dacca 364 = 14 DLR 204 + PLD 1932 Sind 64 = PLR 1951 Sind 87 + 30 Ind. Cas. 795 (DB) + AIR 1925 Pat. 37 = 3 Pat. 230.
11. AIR 1957 Nag. 8 = ILR 1956 Nag. 471 (DB) + AIR 1950 Kutch 83.
12. AIR 1942 Pat. 185.
13. AIR 1930 All. 597 (DB).
14. AIR 1925 Lah. 574 (Assignment disputed and long delay in application).
15. AIR 1939 Pat. 138 = 17 Pat. 588 (DB). (AIR 1915 Mad. 495. *Followed* + AIR 1915 Mad. 495 = 38 Mad. 535 (DB) + AIR 1940 Lah. 497.
16. AIR 1925 Mad. 487.
17. AIR 1961 Allahabad 97 (DB).

defendant to that of the plaintiff or vice versa is not an addition of party to which S. 22 applies stands as an absolute rule and is not subject to any qualifications.[18]

The benefit of this rule is extended even to the case of transposition of a defendant as co-plaintiff when the original plaintiff has no right to sue at all.[19] Thus where a promissory note stood in the name of a *benamidar* and a suit was instituted by the beneficial owner on the note making the *benamidar* a defendant, the latter was allowed to be transposed as a plaintiff.[20]

Increase in claim. The fact that by a transposition of parties the plaint claim is enhanced is no ground against the operation of sub-section (2).[1] If on transposition the value of the suit should exceed the jurisdiction of the Court the proper course is to return the plaint to be presented to the proper Court.[2]

Defendant seeking to become plaintiff after expiry of limitation for separate suit. The transposition of a defendant as a co-plaintiff should always be allowed, where it is necessary for a complete adjudication upon the question involved in the suit and to avoid multiplicity of proceedings.[3] Where a defendant seeks transposition as a plaintiff and where a separate suit by him against other defendants on the same cause of action would be barred by limitation, the Court must not disallow such transposition.[4] Where in the suit for partition and separate possession brought within 12 years of the death of the limited owner the plaintiffs alleged that they and defendants 1 and 2 being the nearest reversioners to the estate of the last male-holder were entitled to recover the entire properties of the last male-holder from defendants 3 to 8 and that defendants 1 and 2 were impleaded as defendants as they were not co-operating with them. It was held that the suit as laid by the plaintiffs was for partition of the entire property into four shares though the relief for recovery of possession was restricted in regard to half share of the plaintiffs and therefore though defendants 1 and 2 filed their written statement claiming separate possession of their shares more than 12 years after the death of the limited owner their claim was not barred by limitation. Further in such a case defendants 1 and 2 might be transposed as plaintiffs and no question of limitation would then arise after transposition by reason of the provisions of S. 22 (2).[5]

Transposition resulting in change in cause of action. The transposition of a person from the category of a defendant to that of a plaintiff which has the effect of bringing on record a new plaintiff with a cause of action and a relief entirely

18. PLD 1968 Kar. 345 = PLR 1969 (1) W.P. 932 (DB) + AIR 1915 Cal. 759 (DB) + AIR 1959 Punj 123 = ILR 1958 Punj. 2258 (DB) + ILR 1958 Andh Pra 383 (DB) (Section confined only to addition of parties—No question of Limitation involved when party is transposed) + 51 Cal. W.N. 907 + AIR 1919 Mad. 30.
19. AIR 1923 Mad. 180 (DB). (A defendant transposed as co-plaintiff. original plaintiff in Court's view being not entitled to one) + AIR 1921 Sind 59 = 16 Sind L. R. 71. (Provided there was bona fide mistake in instituting suit in wrong person's name).
20. AIR 1932 Pat. 346 = 11 Pat. 616 (DB). (AIR 1928 Pat. 24 held not to have decided this point but *overruled* on the point whether transposition of defendant should be allowed after expiry of time).
1. AIR 1932 Pat. 304 (DB).
2. AIR 1926 Pat. 28.
3. PLD 1966 Kar. 345 (DB) + AIR 1931 P.C. 162 = 58 Ind. App. 228 = 59 Cal. 80.
4. AIR 1933 Pat. 339 + AIR 1932 Pat. 346 = 11 Pat. 616 (DB) (*Overruling* AIR 1928 Pat. 24).
5. AIR 1961 Andhra Pradesh 495 (DB).

distinct from that in the original plaint is not saved by this sub-section.[6] Transposition of a defendant as a plaintiff should not be granted if it results in changing the character of the suit,[7] or where it is allowed to enable the defendant to amend the plaint according to his contention.[8]

23. *Continuing breaches and wrongs.* In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Synopsis

1. Scope and applicability.
2. Section applies only to continuing wrongs.
3. Declaratory suits.
4. Breach of covenant.
5. Breach of contract to pay money.
6. Obligation to give possession, breach of.
7. Other cases of breaches of contract.
8. Obstruction to watercourse and to flow of water.
9. Obstruction to right of way.
10. Obstruction to right of ferry.
11. Refusal of conjugal rights.
12. Trespass and ouster.
13. Procuring wrongful attachment under S. 146, Cr.P.C.
14. Other cases of continuing wrongs independent of contract.
15. Successive breaches of contract.
16. Successive wrongs independent of contract.

1. Scope and applicability. Right is an interest respect for which is a duty and the violation or disregard of which is a wrong.[9] The word 'wrong' in this section is used in a restricted sense and implies something in the nature of a tort.[10]

The underlying principle of the section is that a plaintiff is not bound to launch an endless succession of suits each day a continuing wrong persists. He can wait and include in the action all damages down to the date of the suit. Equally he can sue again for any fresh loss occurring after the suit in respect of the same continuing wrong.[11]

All the articles in the first schedule must be read subject to this section.[12]

Test of continuing wrong. Where the wrong consists of a breach of positive duty the test to find out whether there is a continuing wrong is to see whether the duty is to continue to do that thing.[13] In the case of negative duties, the fact that

6. AIR 1925 Sind 207 = 18 Sind L.R. 149 (DB) + ILR (1949) 1 Cal. 85 (DB).
7. AIR 1964 Pat. 508 (As where the defendant does not wish to adopt the plaintiff case) + AIR 1922 Cal. 459 (DB) + AIR 1935 Mad. 95 = AIR 1939 Mad. 467 (DB).
8. AIR 1960 J&K 57.
9. 3 Sind LR 228 (FB)
10. AIR 1944 Oudh 139 = 19 Luck 515 (DB).
11. AIR 1947 Nag. 224 = ILR 1947 Nag. 726.
12. AIR 1940 Pat. 561 = 19 Pat. 844 (DB) + AIR 1957 Andh. Pra. 419 = ILR 1956 Andh. 525.
13. 1928-1 K.B. 421 = 97 L J.K.B. 263 + AIR 1957 Cal. 483 = 1957 Cri. L. Jour 834 + AIR 1949 Orissa 1 (DB).

the correlative right is a continuing one, does not make the breach of it a "continuing wrong," though every such breach will give rise to a fresh cause of action.[14]

The test whether a breach of contract was a continuing one or not is to see whether the person committing the breach was entitled to resume performance and compel the other party to accept such performance after the breach.[15] Where a wrongful act produces a state of affairs, every moment's continuance of which is a new wrong (*i.e.*, which is continuing source of injury) and is of such a nature as to render the doer of it responsible for its continuance, is a continuing wrong.[16] Similarly where the wrong is capable of being corrected and is not corrected it is a wrong which continues.[17]

Right of partition. Right of partition is continuing right incidental to the ownership of joint property.[18]

Public and private suits. This section makes no distinction between private suits and public or representative suits and applies to both kinds of suits.[19]

Local and special Act, applicability. Although the Limitation Act has made S. 23 inapplicable to cases where the period of limitation is laid down in special or local Acts, a special or local Act may either make it applicable or may incorporate the principles enunciated there so as to make it applicable.[20]

Criminal offences. Section 23 of the Limitation Act, 1908, *proprio vigore* does not and cannot apply in respect of an offence as it is concerned with breaches of contracts and wrongs independent of contract, and not with offences. As regards the principle underlying the section, it is of universal application, because all it says is that if a fresh cause of action arises, it gives rise to a fresh starting point for limitation. In its application to criminal cases, it would only mean that if a continuing offence gives rise to a fresh offence *de die in diem*, such fresh offence shall give rise to a fresh starting point for limitation. The principle underlying S. 23 is applicable to an offence even though it is not specifically made applicable by the Act.[1]

2. Section applies only to continuing wrongs. The criterion for the applicability of the section is not whether the right or its corresponding obligation

14. AIR 1938 Lah. 227 (DB) + AIR 1933 Lah. 920 (DB) + AIR 1933 Mad. 699 = 57 Mad. 250 + 2 Low Bur Rul. 113 (DB) + 12 Oudh Cas. 320.
15. AIR 1917 Mad. 465 = 40 Mad. 910 (DB).
16. AIR 1941 Pat. 181 = 19 Pat. 852 (DB) + AIR 1959 S.C. 798 + AIR 1957 Andh. Pra. 419 = ILR 1956 Andh. 525 + AIR 1950 East Punj. 21 + AIR 1949 Orissa 1 (DB). (If the wrongful act is a fleeting or evanescent act, it is not a continuing wrong) + AIR 1916 Cal. 751 (DB) + AIR 1935 Mad. 967 = 59 Mad. 75 (DB). (If the wrongful act is a fleeting or evanescent act, it is not a continuing wrong) + AIR 1933 Pat. 224 = 12 Pat. 261 (DB).
17. AIR 1940 Pat. 561 = 19 Pat. 844 (DB).
18. AIR 1915 All. 1 = 37 All. 155 (DB) + 1 Cal. L. Jour 73 (DB) + 10 Cal. W.N. 839 (DB) + AIR 1920 Lah. 184 (DB) + AIR 1926 Mad. 1018 = 49 Mad. 939 (DB) + AIR 1922 Pat. 489 = 1 Pat. 228 (DB).
19. AIR 1940 Pat. 449 = 19 Pat. 208 (DB) + AIR 1941 Pat. 181 = 19 Pat. 852 (DB).
20. AIR 1957 Cal. 483 = 1957 Cri. L Jour 834. (Principle of S. 23 cannot be invoked for extending period of limitation laid down in S. 79, Mines Act).
1. AIR 1962 Madh. Pra 311 (DB).

is a continuing one, but whether the wrong is a continuing one.[2] Where the act complained of is not a wrong or ceases to be a wrong the section does not apply.[3]

Distinction between continuing wrong and continuing effect of wrong. In considering whether the particular act complained of constitutes a 'continuing wrong' within the meaning of section 23 for which the cause of action arises *de die in diem*; it is necessary to keep in mind the distinction between an "injury" and the "effects of that injury". Where the injury complained of is complete on a certain date, there is no "continuing wrong" even though the damage caused by that injury might continue. In such a case, the cause of action to the person injured arises, once and for all at the time when the injury is inflicted, and the fact that the effects of the injury are felt by the aggrieved person on subsequent occasions, intermittently or even continuously does not make the injury a "continuing wrong" so as to give him a fresh cause of action on each such occasion. If however, the act is such that the injury itself is continuous, then there is a "continuing wrong" and the case is governed by section 23.[4] Thus where the right claimed by the person in adverse possession of mango trees is not only a right to take the fruit from the trees periodically but also a right to possess the trees, to tend them and to see that no injury was caused to them, such right is not of such a nature as to attract the application of S. 23 by its exercise.[5]

3. **Declaratory suits.** The section applies to declaratory suit.[6]

4. **Breach of covenant.** Violation of duty to continue to keep a building in repair is a continuing breach of contract within the meaning of this section so long as the building is out of repair.[7]

Covenant for title. Where on the date of sale a seller has no title to property sold or his title is defective, a breach of covenant occurs once and for all. It is not a case of continuing wrong.[8]

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2. ('03) 26 Mad. 410 (DB) + AIR 1959 S.C. 798 + AIR 1957 Andh. Pra 419 = ILR 1956 Andh. 525 + AIR 1955 Pat. 432 = 34 Pat. 661 (DB) + AIR 1951 Nag. 327 = ILR 1950 Nag. 633 (DB) + AIR 1949 Orissa 1 (DB) + AIR 1935 Mad. 967 = 59 Mad. 75 (DB) + AIR 1930 Bom. 61 = 54 Bom. 4 (DB) + ('05) 1 Cal. L. Jour 73 (DB) + AIR 1944 Oudh 139 = 19 Luck 515 (DB).
3. AIR 1938 Lah. 369 (FB) + ('06) 4 Cal. L. Jour 568 (DB) + AIR 1935 Mad. 967 = 59 Mad. 75 (DB).
4. 9 DLR 559 (*Foll.* AIR 1940 Lah. 359 (FB) = 19 Pat. 208 + AIR 1942 Pat. 188 (*Diss.* AIR 1935 Cal. 405 + AIR 1935 Cal. 201 + AIR 1923 Cal. 356 = 6 Cal. 394) + AIR 1940 Lah. 359 = ILR 1941 Lah. 22 (FB) + AIR 1959 S.C. 798 + AIR 1957 Andh. Pra 419 = ILR 1956 Andh 525 + AIR 1950 East Punj. 21 + AIR 1949 Orissa 1 (DB) + AIR 1940 Pat. 449 = 19 Pat. 208 (DB) + AIR 1924 Bom. 290 (DB) + AIR 1920 Pat. 324 = 5 Pat. L. Jour 359 (DB) + AIR 1930 Pat. 528.
5. AIR 1956 Vindh Pra. 34.
6. AIR 1933 Pat. 224 = 12 Pat. 261 (DB) + AIR 1934 Pat. 34 + AIR 1935 Cal. 201 + AIR 1935 Cal. 405 (DB).
7. ('87) 10 All. 85 (DB) + AIR 1917 Mad. 465 = 40 Mad. 910 (DB) + 1900-2 Ch. D. 156 = 69 L. J. Ch. 493.
8. ('01) 25 Bom. 593 (DB) + ('02) 26 Bom. 750 (DB) + AIR 1916 Mad. 480 + AIR 1917 Mad. 465 = 40 Mad. 910 (DB) + AIR 1915 Nag. 46 = 11 Nag. L. R. 186.

Covenant for quiet possession. The covenant imports obligation to give possession in beginning of a term and to maintain it during the term.[9] Where no possession was given to the covenantee in the first instance, a covenant for quiet enjoyment does not come into play and the covenantee cannot sue upon the covenant.[10] Even when possession has been given, a breach of the covenant does not constitute a "continuing breach" though the covenant for quiet enjoyment is a "continuing covenant".[11]

5. Breach of contract to pay money. In a contract for payment of money the duty to pay is a positive duty but non-payment of money is not a continuing breach of contract.[12] A contract of payment may be implied where a mortgage bond did not specifically provided for payment of interest after the date fixed for payment of the principal, the obligation to pay was an implied obligation and every day the principal remained unpaid, there was a breach of contract and the creditor was entitled to payment of principal with interest at the rate stated in the deed for the entire period of non-payment.[13]

6. Obligation to give possession, breach of. Where a usufructuary mortgagee bound to give back possession to mortgagor or redemption failed to do so. It was held that putting mortgagor in possession of property was in the nature of a continuing obligation which could not cease so long as mortgagor's right to redeem was not barred.[14] But where the obligation to give possession relates to a certain date and possession is not delivered on that date the cause of action arises on that date and there is no continuing wrong involved. Where the plaintiff, the lessee during the currency of his lease, agreed to surrender his right as lessee over the premises in consideration of the agreement entered into between the parties to the effect that for a period of 15 days, at the time of *Deepavali* each year, the plaintiff would be permitted to occupy the downstairs portion in the premises to sell crackers. On 17-10-1953, the plaintiff asked for possession of the premises for a period of 15 days as specified in the agreement. The claim was however repudiated by the defendants on 26-10-1953. The result was that the plaintiff had to sell crackers at a loss. In a suit to recover the loss: it was held that this was a simple case of a breach of contract to which Art. 115 would apply. Breach was complete when the time for putting the plaintiff in possession of the property had expired on 6-11-1953. The limitation commenced to run from this date in spite of the fact that the plaintiff could not file a suit that very day because some time might have to lapse to determine the quantum of damages. There was no question of any continuing wrong within the meaning of S. 23.[15]

7. Other cases of breaches of contract. Certain obligations arise directly out of contract whereas others are implied in a contract. The Directors of a company have an implied obligation to work for the company and decide matters falling in their domain. Where the directors of a company omitted to come to any

9. AIR 1917 Mad. 465 = 40 Mad. 910 (DB).
10. ('01) 25 Bom. 593 (DB) + (1893) 14 W.N. (Eng.) 471 = 62 L.J. 586 + ('02) 26 Bom. 750 (DB).
11. AIR 1917 Mad. 465 = 40 Mad. 910 (DB).
12. AIR 1921 All. 73 (DB) + AIR 1951 Mad. 291 = ILR 1951 Mad. 593 (DB) + AIR 1925 All. 488.
13. ('97) 17 All. 39 = 23 Ind. App. 138 (P.C.).
14. ('10) 33 Mad. 71 (DB).
15. AIR 1965 Madras 532.

conclusion on an important piece of business proposed for decision of the Board of Directors; the obligation to do so was one arising out of contract implied in Articles of Association and breach of the duty was a continuing one so long as the decision was deferred.[16] Where under Articles of Association of a company, a director was under positive duty to cause true accounts to be kept by his agents and he negligently failed to do so, the wrong committed by the director was a continuing one.[17] The deterioration of goods consigned for carriage over a railway due to continued negligence of the servants of the railway company is a continuing wrong.[18]

Marriage under the Muslim Law, is a civil contract and a husband's impotency is a continuing breach of the contract of marriage.[19]

8. Obstruction to watercourse and to flow of water. Where a person has a right to unobstructed flow of water in a watercourse and some one puts a dam across it or otherwise causes obstruction in the flow of water, the wrong is a continuing one.[20] Similarly an obstruction caused by closing the main sluice of a tank through which the plaintiff takes water to his lands will be a continuing wrong.[1] Where the defendant stopped the flow of water from a spring which used to irrigate the land of the plaintiff; the act is a continuing wrong for every time the plaintiff is deprived of the use of water, which he claims, he suffers injury in the shape of loss to his crop.[2]

Obstruction to the plaintiff's right to the discharge of surface water of the plaintiff's land over the defendant's land will be a continuing wrong.[3] Similarly closing of a drain by the defendant through which the plaintiff is entitled to throw the water from his house will be continuing wrong.[4]

9. Obstruction to right of way. An obstruction to a right of way is a continuing nuisances as to which a cause of action will be renewed *de die in diem* so long as the obstruction continues.[5] But the section has not the effect of conferring a perpetual right to sue because where by lapse of time the trespasser himself acquires certain indefeasible rights or where the right of the person affected by the act is extinguished under S. 28 of the Limitation Act, the plaintiff will be left with no right which he can enforce.[6]

Complete dispossession of plaintiff. If the obstruction to the right of way amounts to a complete dispossession of the plaintiff, the defendant's act will not

16. AIR 1933 Sind 103.
17. AIR 1930 Bom. 572 = 54 Bom. 226 (DB).
18. AIR 1947 Nag. 224 = ILR 1947 Nag. 726.
19. AIR 1939 Lah. 454.
20. 6 Cal. 394 = 7 Ind. App. 240 (P.C.) + 3 Sind L.R. 228 (FB) + AIR 1958 Assam 93 = ILR (1956) 8 Assam 166 = 1958 Cri. L. Jour 1125 + AIR 1938 Mad. 180 (DB) + AIR 1942 All. 77.
1. AIR 1925 Nag. 189.
2. PLD 1959 AJ&K 31
3. AIR 1918 Cal. 422 (DB).
4. AIR 1926 Lah. 242 (DB).
5. AIR 1934 Pat. 34 + AIR 1957 Andh Pra. 419 = ILR 1956 Andh 525. (Obstruction to right of way is a continuing nuisance) + AIR 1935 Cal. 201 + AIR 1935 Cal. 405 (DB) + AIR 1937 Lah. 94.
6. AIR 1958 Assam 93 = ILR (1956) 8 Assam 166 = 1958 Cri. L. Jour 1125 + AIR 1949 Orissa 1.

be a continuing wrong.[7] Thus the erection of permanent structures over a pathway constitutes a complete ouster and not a continuing wrong within the meaning of section 23 of the Limitation Act and therefore, a suit brought after the period of limitation for the removal of the obstruction from the pathway would not lie.[8]

10. **Obstruction to right of ferry.** Violation of a right of ferry by setting up another ferry is a continuing wrong so long as the latter ferry is allowed to remain.[9]

11. **Refusal of conjugal rights.** A husband or a wife has a right to the society of his or her spouse. A breach of this obligation as a continuing wrong within the meaning to this section and time will begin to run at every moment of time during which the society is withheld.[10] It is however to be noted that the section does not apply to a suit by a wife to get a declaration that her marriage is null and void. In such cases the cause of action accrues from marriage or when defendant claims marital rights and not from the plaintiff's knowledge of her rights.[11]

12. **Trespass and ouster.** A trespass or ouster need not always be a continuing wrong. Where it is temporary and comes to an end there is no continuing wrong. Thus the fact that a person walks across another person's flower garden, amounts to trespass but if he just-walks away the trespass will not be a continuing wrong.[12] But if trespass or obstruction is continued by the wrong-doer in the sense that it is not abandoned, the wrong continues.[13] Thus private residence by a person in a *balakhana* of a mosque is a continuing wrong.[14] Similarly where a person has no right to use a private lane, but he uses it off and on, the use of the lane is a continuing wrong and every fresh use of the lane gives the objecting party a new cause of action.[15]

Complete ouster by trespasser. Where the trespass amounts to a complete ouster or dispossession, it is not a continuing wrong.[16] But where the ouster is not complete and the trespass continues the wrong is a continuing one. Where a co-sharer in a well fixes a persian-wheel to it and makes use of it for irrigation purposes in spite of objection to such use by another co-sharer who was in

7. AIR 1940 Lah. 359 = ILR 1941 Lah. 22 (FB) + AIR 1959 S. C. 798 + AIR 1957 Andh Pra. 419 = ILR 1956 Andh 525.
8. 9 DLR 599 + AIR 1940 Lah. 359 (FB) + 19 Pat. 208 + AIR 1942 Pat. 188.
9. 18 Cal. 652 (DB) + 9 Ind. Cas. 846 (Cal).
10. AIR 1922 Oudh 109.
11. AIR 1945 Cal. 484 = ILR (1946) 1 Cal. 32.
12. AIR 1940 Pat. 449 = 19 Pat. 208 (DB) + AIR 1925 Nag. 189.
13. AIR 1958 Assam 93 = ILR (1956) 8 Assam 166 = 1958 Cri. L. Jour 1125.
14. AIR 1917 Lah. 160 = 1917 Pun. Re. No. 31 (DB).
15. 1970 SCMR 623 (DB).
16. AIR 1941 Pat. 181 = 19 Pat. 852 (DB). (Whether dispossession is of public) = AIR 1959 S.C. 798 (AIR 1940 Pat 449 and AIR 1940 Lah. 359. *Approved.*) + AIR 1957 Andh Pra 419 = ILR 1956 Andh 525 + AIR 1949 Orissa 1 (DB) + AIR 1940 Lah. 359 = ILR 1941 Lah. 22 (FB). (Whether dispossession is from land in exclusive possession of plaintiff or from land in joint possession of plaintiff and defendant.) + AIR 1939 Nag. 145 (Whether dispossession is of individual or community.) + AIR 1914 All. 531 + 27 Bom. 515 (DB) + 19 Mad. 154 (DB). (Whether dispossession is of Municipality) + AIR 1919 Cal. 807 (DB) + AIR 1945 Nag. 78 = ILR 1944 Nag. 753 (DB) + AIR 1942 Pat. 188 (DB).

enjoyment of the well; the act complained of did not amount to complete ouster of the plaintiff from enjoyment and was therefore a continuing wrong.[17]

13. **Procuring wrongful attachment under S. 146, Cr. P.C.** Where the defendant attempted to interfere with the plaintiff's possession whereupon a Magistrate attached his property, the act of the defendant was a continuing wrong.[18] But where the facts did not show that attachment of property by a Magistrate was caused by wrongful denial of the plaintiff's title by the defendants, the defendant was held not guilty of any wrong and no fresh period of limitation began to run under this section.[19]

14. **Other cases of continuing wrong independent of contract.** Where a wrongful act is complete when it is done, the wrong is not a continuing wrong even when the consequences of the act continue long afterwards. It has been held that wrongful seizure of movable property under a legal process is not a continuing wrong.[20] Similarly withholding of the property wrongfully seized is not a continuing wrong.[1] A wrong entry in the village papers against the rights of the plaintiff is not a continuing wrong.[2] A refusal of the public authority to follow the prescribed procedure under the Land Acquisition (Mines) Act of 1885 and refusal to pay compensation is not a continuing wrong.[3]

Building in defiance of injunction. Where an order of injunction is issued against *A* restraining him from building a will, but *A* in breach of the order builds up the wall. There is continuing wrong and an application under O. 21, R. 32, Civil P.C. is not barred as long as the wall remains.[4]

Infringement of trade mark. An infringement of a trade mark is a continuing wrong so long as the infringement continues.[5]

Cutting of water connection. Where a person has acquired a right to a water connection of his house and the Municipality cuts off the connection unlawfully, there is continuing wrong so long as the connection is withheld.[6]

Continuing nuisance. Causing of a nuisance by throwing latrine-water through a hole in the wall is a continuing wrong.[7] Similarly diverting of water on to the neighbour's fields constitutes a recurring cause of action, so that no question of limitation can arise in regard to a suit for the restoration of the surface of the flowing water.[8] Where a person discharges his *pamala* on the wall of another, the nuisance or injury is continuous because each time water is discharged on the

17. AIR 1950 East Punj. 21.
18. AIR 1922 Cal. 419 = 49 Cal. 544 (DB) + AIR 1916 Cal. 751 (DB) + AIR 1938 Pat. 212.
19. AIR 1925 Nag. 236 = 20 Nag. L. R. 195.
20. AIR 1940 Rang. 276 = 1941 Rang. L R. 1 (FB) + AIR 1937 Mad. 117 = ILR 1937 Mad. 491 + AIR 1930 Mad. 635 = 53 Mad. 621 (DB).
1. 25 Mad. 540 (DB).
2. 20 All. 35 (DB) + 4 Cal. L. Jour 568 (DB) + 5 Ind Cas. 115 (DB) (Cal.) + AIR 1937 Oudh 291 = 13 Luck. 143 (DB).
3. AIR 1936 Pat. 513 = 15 Pat. 510 (DB).
4. AIR 1936 Lah. 334 (DB). (*Reversing* AIR 1935 Lah. 702).
5. 1912 Pun L. R. (Supp Vol.) No. 5, p. 9 = 1913 Pun Re No. 97 (DB).
6. AIR 1929 All. 870 (DB).
7. 60 Ind Cas. 529 (Lah.).
8. AIR 1956 Madh-B 209.

plaintiff's land there will arise a fresh cause of action against the defendant within the meaning of S. 23 of the Act.[9] But a nuisance in wrongfully causing or allowing the escape of a deleterious thing, such as a tree, into the land of another is not a continuing wrong.[10]

Adverse possession. Where adverse possession is claimed on the basis of complete physical possession for the prescribed period, limitation will commence from the date of such possession, but where it is based on periodic acts done on the land, S. 23 will apply. Thus where claim of adverse possession was made by defendants not on the basis of erection of a building but on the basis of cultivation of disputed land every year, the case would fall within the provisions of S. 23, and Art. 144 or Art. 142 or Art. 120 of the Act has no application.[11]

15. Successive breaches of contract. Where a party has recurring or successive cause of action under terms of a contract, each cause of action gives a fresh start to the period of limitation. The mere fact that a party has not availed himself of an earlier cause of action will not prevent him from availing himself of the later one.[12] Where a tenant denies his landlord's title, the landlord can condone forfeiture of his right, and he is entitled to sue on any subsequent act occasioning such forfeiture.[13] Where *A* stands surety for *B*, a judgment-debtor arrested in execution of a decree. *A* undertakes but fails to produce *B* on each date of hearing of the case, the case is one of successive breaches of contract and not one of a continuing breach.[14] Where under a compromise a defendant undertook to deliver a quantity of grain to the plaintiff yearly. Failure to pay the grain each year gave rise to the plaintiff yearly. Failure to pay the grain each year gave rise to a fresh cause of action and the plaintiff could enforce his right to the grain for as many years back as were within the period of limitation.[15]

16. Successive wrongs independent of contract. The mere fact that a party has not availed himself of an earlier cause of action will not prevent him from availing himself of a later one.[16] Where *X* was appropriating for himself without any right daily surplus income from offerings made to a Hindu temple. Ten years later a shebait of the temple sued *X* for a declaration that he was entitled to the said income; the suit was not barred by limitation.[17]

Breach of trust. Every breach of constructive trust gives a fresh cause of action,[18] and every denial of the right to an account from a trustee will give rise to a fresh cause of action.[19]

Invasion of rights. Each invasion of rights to take fallen wood gives rise to a fresh cause of action and a suit for a declaration can be brought within six years of

9. AIR 1961 J&K 53 + AIR 1920 Lah. 195 + AIR 1914 All. 531.
10. AIR 1955 Pat. 432 = 34 Pat. 661 (DB).
11. AIR 1957 Pat. 448 (AIR 1940 Pat. 449, *Rel on.*).
12. AIR 1931 Pat. 285 = 11 Pat. 112 (DB).
13. AIR 1916 Lah. 403.
14. AIR 1935 Lah. 174.
15. AIR 1904 Pun. L. R. No. 106, p. 393.
16. AIR 1914 All 531 = AIR 1920 Lah. 195 + AIR 1941 Mad. 498 = ILR 1941 Mad. 544 (DB).
17. AIR 1914 P.C. 72 = 42 Cal. 244 = 41 Ind. App. 267.
18. 23 Bom. 659 (DB).
19. AIR 1920 Cal. 558 (DB) + 9 Cal. L. Jour 383 (DB).

each invasion.[20] Similarly where there is an invasion of or interference with a right to worship every time the defendants dispute the plaintiff's right, there is a recurring cause of action.[1]

24. *Suit for compensation for act not actionable without special damage.* In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Illustration

A owns the surface of a field. *B* owns the sub-soil. *B* digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by *A* against *B* runs from the time of the subsidence.

Synopsis

1. Scope and applicability. 2. Contract and tort.

1. Scope and applicability. The section applies only where cause of action arises from some specific injury. It does not apply where the defendant's act itself constitutes legal injury. The mere fact that plaintiff suffers damage subsequently will not enable him to compute period of limitation for the suit for compensation in respect of such act, from the date of the damage.[2] Where *A*, a company had a current account with *C* Bank. *B* company had also an account with *C* Bank and on various dates in 1947 deposited certain bills for collection but these bills had been wrongly credited to *A*. The mistake was discovered in July, 1952. *C* filed an application in Court under Ss. 216 and 235 on 26-10-1953. The application was held to be barred having been presented more than three years after the appointment of liquidator of *A* company in 1949 in the winding up of *A*. It was held that assuming that S. 235 applied the trial Court was justified in dismissing the application. Section 24 of the Limitation Act did not apply to the facts of the case as the section is applicable to suits for compensation for acts not actionable without special knowledge.[3] Where the plaintiff, the lessee during the currency of his lease, agreed to surrender his right as lessee over the premises in consideration of the agreement entered into between the parties to the effect that for a period of 15 days, at the time of *Deepavali* each year, the plaintiff would be permitted to occupy the downstairs portion in the premises to sell crackers. On 17-10-1953 the plaintiff asked for possession of the premises for a period of 15 days as specified in the agreement. The claim was however repudiated by the defendants on 26-10-1953. The result was that the plaintiff had to sell crackers at a loss. In a suit to recover that loss, it was held, that it was not a case in which a cause of action had not accrued to the plaintiff on the date of the breach, within the meaning of S. 24.[4]

20. AIR 1918 All. 102=40 All. 461 (DB).
1. AIR 1945 Nag. 106=ILR 1945 Nag. 273.
2. AIR 1924 Bom. 290 (DB)+AIR 1920 Pat. 324=5 Pat. L. Jour 359 (DB).
3. AIR 1962 Punj. 87.
4. AIR 1965 Mad. 532.

The section does not extend or restrict any period of limitation but alters the date or time from which limitation has to be computed according to the third column of the articles of the first schedule.[5] Computation of time under this section is to be made from the date on which the injury results and not from the date on which the plaintiff becomes aware of the injury or loss.[6]

2. Contracts and tort. The section applies to suits based on torts as well as to suits based on contracts.[7] Thus where *A* entrusted *B*, a firm of brokers with the sale of certain shares of a bank, *B* sold the shares to the Bank itself which went into liquidation and *A* was called upon to pay unpaid call money. Though *A* was aware of the sale in 1939, he made the payments first on 13-3-1944 and last on 20-4-1945. *A* then filed a suit on 1-10-1945 for damages against *B* on the ground that *B* was negligent in selling the shares to the Bank. It was held that the suit was one in which the cause of action could not be complete unless and until, the specific injury namely, payment of unpaid calls, had actually resulted to *A*.[8] Where a person delivered certain goods to a railway company for carriage and the company allowed the goods to deteriorate due to rain water, etc., it was held that S. 24 applied and no suit for damages could be brought unless and untill injury occurred to the person.[9]

Injury by accident. Where a worker was injured and lost a leg in an accident. His services were terminated some time after the accident. It was held that the accident itself furnished the appellant with the cause of action for the claim for pecuniary losses and the cause of action did not arise subsequently when he was removed from service.[10]

25. *Computation of time mentioned in instruments.* All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations

(*a*) A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian calendar.

(*b*) A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiration of one year after date computed according to the Gregorian calendar.

Synopsis

1. Scope.
2. Conflict as to dates given in instrument.

1. Scope. Section 25 of the Limitation Act is unconditional. If a question of limitation arises, the instrument must be deemed to have been made with

5. AIR 1929 Pat. 245 = 8 Pat. 776 (DB) + 1909 Pun. Re. No. 72, p. 240 (DB) + 18 Cal. 91 (DB).
6. AIR 1936 Rang. 310.
7. AIR 1926 All. 605 (DB). (Act includes illegal omissions).
8. AIR 1953 Mad. 726.
9. AIR 1947 Nag. 224 = ILR 1947 Nag. 726.
10. 1980 SCMR 485 = PLJ 1980 SC 386.