provide in partition decrees for the marriage expenses of daughters out of the family funds. Of that practice we all, I think, have knowledge, and in the District Munsif's Court the plaintiff himself did not object to it being followed in this case. It may not be appropriate to fix a definite sum for marriage expenses years before a marriage takes place ; but the recognition in the practice that the claim for such expenditure is one which must be met from the funds of the joint-family and not by the father alone after partition is in my opinion in accordance with the law. I agree that this matter is not affected by the decision of their Lordships of the Privy Council in *Ramalinga Annavi* v. *Narayana Annavi*(1).

On the other points in the case also I agree with the judgment of RAMESAM J.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Jackson.

THAYAMMAL AND TWO OTHERS (DEFENDANTS 1 TO 3), APPELLANTS.

v.

MUTUKUMARASWAMI CHETTIAR (PLAINTIFF), RESPONDENT.*

1929, August 2.

Limitation Act (IX of 1908), ss. 20 and 21—Payment of interest by one of several mortgagors, effect of, on others—"Chargeable," meaning of—Evidence Act, sec. 68 as amended by Act XXXI of 1926—Retrospective effect of.

According to section 21 of the Indian Limitation Act, payment of interest as such by one of several mortgagors, who is

(1) (1922) I.L.R., 45 Mad., 489.

* Appeal No. 132 of 1927.

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not the agent of the others, does not by itself serve to keep alive the debt as against the others, who have not authorized the payment. The word "chargeable" in section 21 is not confined to personal liability. It includes also liability to pay out of property.

Act XXXI of 1926, which amends section 68 of the Indian Evidence Act, relates only to processual law and not to substantive law. Hence it is retrospective in its operation. If the execution of a deed required to be attested by law is not denied by the executant, it need not be proved by any attesting witness, though it might have been executed before the Act.

APPEAL against the decree of the Court of the Subordinate Judge of Cuddalore in O.S. No. 68 of 1925.

The facts appear from the judgment.

K. Balasubramania Ayyar for appellant.

T. M. Krishnaswami Ayyar (with *R. Sriramachari*) for respondent.

JUDGMENT.

In this appeal, defendants 1 to 3 are the appellants before us. The plaintiff brought the suit on a mortgage bond, dated the 24th October 1907. The present suit was filed on the 17th October 1925. To save the bar of limitation, the plaintiff relied on a payment of Rs. 10 towards interest on the 17th October 1913, which purports to be endorsed on the mortgage bond and is exhibited as Exhibit A-1. The Subordinate Judge decreed the plaintiff's suit as framed with further interest. Hence this appeal.

Exhibit A-1, the endorsement, was signed by the first defendant and the second defendant for himself and as guardian of his younger brother the fourth defendant. It is said that the third defendant was then absent at Singapore and that the endorsement was signed on his behalf also, but there is no signature which purports to be on his behalf. So far as the first and second defendants are

concerned, the main point that was argued for the appellants was that, though the signatures on the endorsement are genuine, the endorsement was interpolated after the signatures were made, that there was in fact no payment on the 17th October 1913, and that what was represented to the defendants was that an endorsement will be made consisting of the earlier payments, which were really made. Beyond the bare suggestion, there is nothing to support this contention of the defendants. The first and second defendants have not gone into the box to support this contention. On the other hand, the plaintiff has gone into the box and has sworn to a payment of Rs. 10 on that date. This payment appears in the plaintiff's day-book, Exhibit D, at page 515. The actual entry was written by one Venkatachala Chetty, and his writing is proved by his son P.W. 2. This contention on behalf of the appellants 1 and 2 therefore fails.

Another contention raised on behalf of the appellants may also be disposed of. It is that Exhibit A has not been duly proved. It bears the signatures of five attestors and the writer. All these are dead except one namely C. Vadivelu Pillai. It is argued that Vadivelu Pillai has not been called as required by section 68 of the Evidence Act. This section of the Evidence Act has been recently amended by Act XXXI of 1926. None of the defendants has denied the genuineness of the suit mortgage bond. The first defendant only said that it had not been duly attested and that the plaintiff should prove strictly the genuineness but admitted her own execution. The second defendant never filed a written statement. The third defendant also did not plead that he did not execute the bond. We think the amendment is a provision relating to processual law and not to substantive law and therefore must be taken to be

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retrospective in its operation. That being so, it is not necessary to call the only living attestor. This contention therefore also fails. The result is, the appeal of defendants 1 and 2 should be dismissed with costs.

There remains the appeal of the third defendant. His learned Advocate argues that the suit is barred by limitation as against him. The endorsement, dated 17th October 1913, was not signed by him and there is nothing on record to show that those who signed the endorsement were specifically authorized for that purpose. The mere fact that the payment of the money enures for the benefit of all the defendants cannot constitute a specific authorization to sign the endorsement on their behalf within the meaning of section 20 of the Limitation Act. There are certain later payments towards Exhibit A but these were not relied on in the plaint as saving limitation and even if we are inclined to look at them for this purpose, all that we have got is that the payment in 1915 and one payment in 1918 were made by Vadivelu Pillai, the attestor abovenamed. Another payment in 1918 and another in 1919 do not appear to have been made by any specific person. Another payment in 1920 was made by one Munuswami Padayachi. These facts appear from Exhibit D, the plaintiff's later day-book. There is no evidence that Vadivelu Pillai or Munuswami Padayachi was specifically authorized to pay the amounts on behalf of the third defendant. It is true that there is evidence that Vadivelu Pillai had been managing the defendants' family affairs. He was permanently living and messing with the defendants in the same house and he was an inmate of the defendants' house even during his wife's lifetime and he was paying theerva on behalf of the defendants. But in our opinion all these do not constitute a specific authorization within the meaning of

section 20 of the Limitation Act—vide *Bapanna* v. *Bheemalingam*(1). We therefore hold that there is no payment of interest as such by any person authorized by the third defendant to pay on his behalf.

In the plaint, there is an allegation that the third defendant ratified these payments. Paragraph 9 (*a*) of the plaint says that he "agreed thereto" and "acquiesced therein" and "admitted it" and "ratified it". In proof of this so-called ratification, Exhibit F was relied upon. The appellants object that this was filed at a very late stage but it is unnecessary to go into this question as Exhibit F does not purport to ratify any act done by others on behalf of the third defendant. It is merely a letter praying for more time. Assuming that it relates to the suit document, the letter being written on the 24th December 1921, more than 12 years after the date of the document, it cannot operate as an acknowledgment, nor can it amount to a fresh promise. Exhibit F therefore does not avail the plaintiff so far as the third defendant is concerned.

It is then contended for the respondent that under section 20 of the Limitation Act, it is enough if the interest on the debt is paid as such by any person liable to pay the debt. It is true that the words "the person liable to pay the debt" were construed to mean any person liable to pay the debt—vide *Asharam Sowkar* v. *Venkataswami Naidu*(2), relying on *Bolding* v. *Lane*(3) and *Chinnery* v. *Evans*(4). But that was a case to which section 21 of the Act would not apply and there could be no suggestion that the operation of section 20 was cut down by that of section 21, clause (2). In the case of

(1) (1916) 3 L.W., 231. (2) (1920) I.L.R., 44 Mad., 544.
(3) (1863) 1 De. G.J. & Sm., 122; 46 E.R., 47.
(4) (1864) H.L.C., 115; 11 E.R., 1274.

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several joint contractors, partners, executors or mortgagees, the operation of section 20 seems to be cut down or limited by section 21 (2) of the Act. The decision in *Lewin* v. *Wilson*(1) does not help the respondent. That was an appeal from New Brunswick and though sections 29 and 30 of the New Brunswick Act are a reproduction of the corresponding sections in the English Statute, 7 William 4 and 1 Victoria c. 28, and they correspond to our sections 19 and 20, it does not appear that there is a section in the New Brunswick Act corresponding to our section 21, and if there is one, what its exact terms are. It is then argued by Mr. Krishnaswami Ayyar, the learned Advocate for the respondent, that in section 21, the word "chargeable" means "personally chargeable" and does not affect chargeability as to property; and therefore where the main liability included liability as to property and a personal liability, while the personal liability is cut down by section 21, the liability as to property remains on the construction of section 20; only where the main liability itself is a personal liability, the result of section 21 is to make the suit wholly barred. In support of this contention *Achola Sundari Debi* v. *Doman Sundari Debi*(2) and *Ibrahim* v. *Jagdish Prasad*(3) are the only Indian cases referred to; but in those cases the learned Judges have not adverted to section 21 of the Limitation Act at all. They were confined merely to the interpretation of section 20. Those decisions therefore do not help us. The learned Advocate then relied on *In re Macdonald, Dick* v. *Fraser*(4), a decision of STIRLING, J., as he then was. It was a decision under Lord Tenterden's Act (9 Geo., 4 c., 14), section 1. The question there

(1) (1886) 11 A.C., 639.
(2) (1925) 90 I.C., 774.
(3) (1927) A.I.R., All., 209.
(4) [1897] 2 Ch., 181.

was whether an acknowledgment made by one of several executors binds a testator's estate in the hands of the surviving executors, the original liability being that of the testator. In the first place, that section and our section 21 (2) are not identical. Section 21 refers to "partners" and also "mortgagees", but these are not mentioned in Lord Tenterden's Act. Whereas section 21 refers generally to executors, Lord Tenterden's Act refers to executors of any contractor. Again, section 21 refers to both cases of acknowledgment and payment, whereas Lord Tenterden's Act refers to acknowledgment or promise only and not to payment. It is unsafe to assume that the same result was intended in the two Acts even in the case of joint contractors or executors. The case did not go to the Court of Appeal, and the point has not since arisen. So far as executors are concerned, its effect has been incorporated in the text books—vide, for example, Lightwood on Limitation of Actions, 1909 Edn., page 353—but such statements are confined to executors only. In the course of STIRLING, J.'s judgment, he relied on CHITTY, J.'s judgment in *In re Hollingshead, Hollingshead* v. *Webster*(1), where reference to a similar section, namely, section 14 of the Mercantile Law Amendment Act, was made. In that case, the payment was made by a devisee for life and the question was whether it was a sufficient acknowledgment to bind the remainderman. CHITTY J. relied on the general observations of Lord CRANWORTH in *Roddam* v. *Morley*(2), and held that it was a sufficient acknowledgment. This view is in consonance with the view since adopted by the House of Lords in *Chinnery* v. *Evans*(3) and *Lewin* v. *Wilson*(4). In the course of the argument

(1) (1888) 37 Ch. D., 651.
(2) (1857) 1 De. G. & J., 1; 44 E.R., 622.
(3) (1864) 11 H.L.C., 115.
(4) (1886) 11 A.C., 639.

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Mr. Swinfen Eady (as he then was) said that the admission of a debt by an executrix will not take it out of the statute so as to enable a creditor to obtain payment out of the testator's real estate. What use he actually made of section 14 of the Mercantile Law Amendment Act does not appear from the report, but CHITTY, J. in the course of the judgment says that Mr. Swinfen Eady's argument was that the estate was not liable and that the executor who made the acknowledgment was personally liable, and he said that this argument was founded on section 14 of the Mercantile Law Amendment Act. CHITTY, J. then observed that that was an extraordinary result and he proceeded to observe that some reasonable interpretation should be put on the words "so as to be chargeable." The interpretation that he suggested was that the co-executor who has not paid is not to be personally chargeable as for a *devastavit*. Thus it is seen that the interpretation of the word "chargeable" did not actually arise in the case. The discussion about it arose only because Mr. Swinfen Eady tried to support his argument by the analogy of the case of two executors and his further argument as to who would be liable in their case. We think it is unsafe to cut down the plain language of section 21 by reason of these two cases, *In re Macdonald, Dick* v. *Fraser*(1) and *In re Hollingshead, Hollingshead* v. *Webster*(2). The former related to the case of executors, and in the latter, the point did not actually arise. Whatever may be the law as to executors, it is impossible to say that of two joint contractors—which term has been held to include two mortgagors in this Court (vide *Muthu Chettiar* v. *Muhammad Hussain*(3)), —one contractor is bound by the payments of the other.

(1) [1897] 2 Ch., 181. (2) (1888) 37 Ch.D., 651.
(3) (1920) 55 I.C., 763.

The word "chargeable" in section 21 must *prima facie* mean every kind of chargeability possible by reason of sections 19 and 20 of the Act, that is, every kind of chargeability under the original contract, and the term cannot be limited to personal liability only.

The result is, we think, that the suit is barred so far as the third defendant is concerned. We allow his appeal, and the suit is dismissed as against him with costs throughout. Half the pleader's fee only is allowed. But the appeal of defendants 1 and 2 is dismissed with costs. Time for payment is extended to four months from this date.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Jackson.

BALASUNDARA NAIKER AND ANOTHER PLAINTIFFS 2 AND 3), APPELLANTS,

1929, April 15.

v.

RANGANATHA AIYAR AND OTHERS (DEFENDANTS 1 TO 17 AND FIRST PLAINTIFF), RESPONDENTS.*

Indian Evidence Act (I of 1872), sec. 92, cl. (4)—Mortgage-bond —Discharge on payment of a portion of amount due, whether provable—Indian Contract Act (IX of 1872), sec. 63.—Registration Act (XVI of 1908), sec. 17.

Where a mortgagee agreed to take a payment by the debtor as a complete discharge, that is, not only promised previous to the payment to take it in complete discharge, but at the time of payment gave a discharge, such a discharge is not an agreement within section 92, clause (4) of the Evidence Act; consequently the discharge can be proved by oral evidence.

Mohin Chandra Dey v. *Ram Dayal Dutta*, (1925) 30 C.W.N., 371; and *Srimati Bhaba Sundari* v. *Ram Kamal Dutta*, (1926)

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* Appeal No. 394 of 1924.