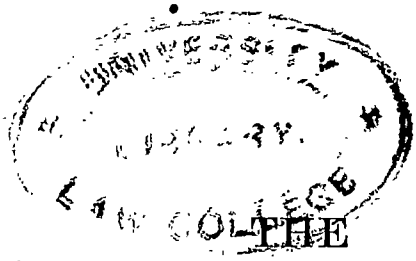


THE
MADRAS LAW JOURNAL.

II] JULY [1942

THE HINDU LAW OF SUCCESSION BILL.
(L.A. BILL No. 27 OF 1942)

We note with pleasure that many of the suggestions made in the columns of our Journal in reviewing the Memoranda[1] on the Hindu law of succession issued by the Hindu Law Committee have been incorporated in the Bill on the law of succession that has just been introduced in the Central Legislative Assembly by the Government of India. The prescriptions that all the widows of a deceased person, where there are more than one, should cumulatively take a share, that the illegitimate son should drop out of the line of heirs, that the widow of a pre-deceased son and the widow of a predeceased son's predeceased son shall have no heritable capacity to their father-in-law and grandfather-in-law respectively, that a daughter shall not be excluded by a son or a widow and shall take a half share, that there shall be no discrimination between daughters, etc.. will command general approval. The doctrine of absolute estates for women will result in the removal of one of the disabilities founded on sex and will place Hindu women on a par with their Mussalman, Christian and Jaina sisters.

It is to be regretted that it has not been possible to introduce even at the outset a Bill covering all the branches of Hindu law. That would have facilitated an approach to and appreciation of the changes proposed from the proper perspective. That apart, there are certain comments which we should like to make in regard to the provisions of the Bill as they stand.

The Bill makes it clear that it is not to apply to agricultural lands. One of the essential objects of the legislation, namely, to abolish the several schools of law and evolve a uniform system of laws for all Hindus, may well be frustrated if it is left to the Provincial Governments to sponsor complementary legislation. How they may not react promptly or properly is illustrated by the sequel to the advisory Opinion delivered by the Federal Court in In the matter of *The Hindu Women's Rights to Property Act*, 1937.[2] While the Government in the United Provinces immediately promulgated the necessary legislation to make the law uniform for the devolution of agricultural as well as non-agricultural property the Madras Government declined to take any action.

1. *See* (1941) 2 M. L J. (Jour,) p. 37.
2. (1941) 2 M.L.J. 12.

The definition of the term "Hindu" in S. 2 (1) (*e*) requires clarification. It is arguable that since any person who if the Act were not in force would be governed in matters of intestate succession by the Hindu law is included within the purview of that term under the definition as given in the Bill, communities who though converts to an alien faith still continue to retain the principles of Hindu law in some respects and in some places, would come within the scope of the proposed legislation. It is equally possible to argue on the other hand that since the Hindu law of succession applies to such communities only by way of *custom* it is only the principles of such law as they stood at the time of their conversion that would apply to them and not the changes ushered in subsequently by legislation in the country, unless it be by express enactment. It is therefore desirable to add to S. 2 (1) (*e*) at its end the words "but not one to whom such law applies by way of custom only".

S. 2 (1) (*b*) states that cognates are those between whom there is blood relationship but not wholly through males. This would seem to imply that there must be at least one male link between the parties. If that is correct, a son born of a woman's second marriage cannot inherit as a cognate to his brother born of his mother's first marriage and *vice versa*. Nor can he under the Act inherit in any other capacity. He is certainly not an agnate, nor is he in the list of enumerated heirs, the word "brother" therein being evidently applicable only to the full brother and a half brother sprung from the same father. Since widow remarriages are statutorily permitted and not infrequently practised such cases are likely to occur. In fact in *Ekoba* v *Kashiram*[1] the Bombay High Court seems to have recognised his heritable capacity. The definition of cognates will have to be amended to provide for such cases. In S. 2 (1) (*b*) after the word "wholly", the words "or otherwise" may be added.

In S. 2 (1) (*i*) defining stridhana after the words "or by gift" the words "from a relative or stranger before, at or after her marriage" are superfluous and hence may be deleted.

The placing of the divided son on a par with the undivided son [S. 2 (1) (*h*) and S. 7 (*b*)] is not justifiable. It does not accord with reason that he who deliberately cuts himself off should rank equally with one who prefers to sail with the family. The rule will also do injustice to the afterborn son. It is hard that he should have to share the patrimony with the divided son in spite of the latter having already had a share.

It is not clear whether the son and grandson of an existing son are intended to be affected. There is no reason for the abrogation of the existing rule that a person inheriting property from his father, grand-father or great grand-father will hold it as ancestral property with reference to his own descendants. The rule may therefore be allowed to remain.

The rule as to legitimate kinship alone giving rise to heritable capacity [S. 2 (*f*)] will produce anomalous results if strictly applied. There is no meaning in applying it to succession to the

1. (1921) I. L. R. 46 Bom. 716.

property of degraded women and dancing girls. The position should therefore be reconsidered.

The *dwyamushyayana son* is given rights in both the families. But there is no reason for giving his descendants the same rights. It should be made clear that they will have rights only in the family of their father's birth.

The rules of preference of the "enumerated" heirs to the other classes and of the agnates to the cognates will mean that an heir like the son's daughter's son will be superseded for instance by the mother's sister's son who is accorded a place among the "enumerated" heirs. This is altogether wrong. Considerations of natural affection, sentiment and spiritual benefit all point the other way. It is anomalous that the father's daughter's son (sister's son) should be accommodated in class II of the "enumerated" heirs while persons like one's own son's daughter's son, son's daughter's daughter, daughter's son's son, daughter's son's daughter, daughter's daughter's son, etc.,whose positions if any are *a fortiori* should be left to linger among agnates. In the notes on Cl. 5 the matter is alluded to. It is stated: "If they are to be included —and there are many who think they ought to be—they should come in the above order immediately after the daughter's daughter in class I". It is but just that class I of the "enumerated" heirs is enlarged so as to admit these heirs.

There seems to be no justification for excluding the father's sister, father's father's sister and mother's sister from the list of "enumerated" heirs. The original draft proposals had recognised their right to be in that category. Classes III, IV and V of the "enumerated" heirs will have to be revised so as to admit all these heirs. It is also desirable that the heirs in Class V should be given priority over those in Class IV and the Classes re-arranged.

There is no meaning in retaining the rule in S. 10 as to succession by preceptor, fellow-student etc., in the present condition of Hindu society. The rule is vague, and cases involving its application are rare. It requires considerable clarification as to who an acharya or disciple is, for the rule to be workable.

Special rules as to mutts should be reserved. Words like 'in the same hermitage' in S. 11 (3) would seem to be an anachronism and positively misleading.

The supersession of the son by the daughter in the matter of stridhana succession is no longer justified and ought not to be continued. With the concession to the daughter of rights of succession to the paternal property even in the presence of the son, the reason for according preference to her in stridhana succession has ceased to exist. S. 13 (*b*) may therefore be amended and in entry 1 the words " son, son's son, son's son's son" may be added after the word "daughter" and the numbering of the other entries may be revised.

The special rule regarding the devolution of property inherited by a widow from her husband as distinguished from her other stridhana property [S. 13 (*a*)] is presumably due to the fact that she is not an "agnate" of her husband but a recruit in his family. If that be so, the same reason will equally hold good in

regard to property inherited by a woman from a son or grandson. If there is to be a departure from the normal rules of succession, it should rest on a rational basis and not be arbitrary.

L.A. BILL No. 26 OF 1942.

A Bill to amend and codify the Hindu Law relating to intestate succession.

WHEREAS it is expedient to amend and codify, in successive stages, the whole of the Hindu Law now in force in British India;

AND WHEREAS it is expedient first to amend and codify the general law of intestate succession;

It is hereby enacted as follows:—

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE HINDU CODE, PART I (INTESTATE SUCCESSION).

(2) It extends to the whole of British India.

(3) It shall come into force on the 1st day of January, 1946.

Definitions and interpretation.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(*a*) one person is said to be an "agnate" (*gotraja*) of another, if the two are related by blood wholly through males;

(*b*) one person is said to be a "cognate" (*bandhu*) of another, if the two are related by blood, but not wholly through males;

(*c*) "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;

(*d*) "heritable property" means property which belongs to an intestate in his or her own right and passes by inheritance as distinct from survivorship;

Illustration.

All property of a Hindu governed by the Dayabhaga School of Hindu Law is heritable property as it passes by inheritance and not by survivorship; so too is the self-acquired property of a Hindu governed by any Mitakshara School of Hindu Law, as such property also passes by inheritance and not by survivorship.

(*e*) "Hindu" includes any person who, if this Act were not in force, would be governed in matters of intestate succession by the Hindu Law;

(*f*) "related" means related by legitimate kinship, and any word expressing relationship or denoting a relative shall be construed accordingly;

(*g*) two persons are said to be related to each other by the "full blood" when they are descended from a common ancestor by the same wife, and by the "half blood" when they are descended from a common ancestor by different wives;

(*h*) "son" includes a *dattaka* son, *dwyamushyayana* son and *kritrima* son, but not a *dasiputra*; and *dattaka* son, *dwyamushyayana* son, *kritrima* son and *dasiputra* have the same meanings as in the Hindu Law;

(*i*) *"stridhana"* means property acquired by a woman by inheritance or devise, or at a partition, or in lieu of maintenance, or by gift from a relative or stranger before, at, or after her marriage, or by her own skill or exertions, or by purchase, or by prescription, or by any other mode whatsoever.

(2) In this Act, unless there is anything repugnant in the subject or context, words importing the masculine gender shall not be taken to include females, and for the purposes of this Act,—

(*a*) a person is deemed to die intestate in respect of all property of which he or she has not made a testamentary disposition capable of taking effect;

(*b*) a woman shall be deemed to be an agnate of her father and his agnates, and shall not, by reason only of her marriage, be deemed to be an agnate of her husband or his agnates;

(*c*) the domicile of a Hindu shall be determined in accordance with the provisions contained in sections 6 to 18, both inclusive, of the Indian Succession Act, 1925;

(*d*) when an adoption takes place,—

(*i*) in the case of a *dattaka* son, the natural tie is severed and is replaced by the tie created by the adoption;

(*ii*) in the case of a *dwyamushyayana* son, the natural tie continues side by side with the tie created by the adoption;

(*iii*) in the case of a *kritrima* son, the natural tie continues, while the tie created by the adoption is limited to the person adopted and the person or persons adopting him.

Illustration.

A adopts *C*, son of *B*. *C* has a son, *D*, born to him after the adoption. Then, for the purposes of inheritance, the following consequences will result, depending upon whether *C* was adopted as a *dattaka, dwyamushyayana* or *kritrima* son of *A*.

If *C* was adopted as a *dattaka* son, he becomes the son of *A* and ceases to be the son of *B*. He also becomes the grandson of *A's* father and the nephew of *A's* brother, and so on. He ceases to be the grandson of *B's* father and the nephew of *B's* brother. Likewise, *D* becomes the grandson of *A* but not of *B*.

If *C* was adopted as a *dwyamushyayana* son, he becomes the son of *A*, but continues to be the son of *B* as well. He also becomes the grandson of *A's* father and the nephew of *A's* brother, but continues as well to be the grandson of *B's* father and the nephew of *B's* brother. Likewise, *D* becomes the grandson of *A*, and of *B* as well.

If *C* was adopted as a *kritrima* son, he becomes the son of *A* while continuing to be the son of *B* as well. He does not, however, become the grandson of *A's* father or the nephew of *A's* brother, but remains the grandson of *B's* father and the nephew of *B's* brother *D* on birth becomes the grandson of *B* and not of *A*.

Application of Act.

3. This Act regulates the succession to the heritable property of a Hindu, other than one governed by the Marumakkattayam, Aliyasantana or Nambudiri law of inheritance, dying intestate after the commencement of this Act, in the following cases, namely:—

(*a*) where the property is movable property, unless it is proved that the intestate was not domiciled in British India at the time of death;

(*b*) where the property is immovable property situated in British India, whether at the time of death the intestate was domiciled in British India or not:

Provided that this Act shall not apply—

(*i*) to agricultural land; or

(*ii*) to any estate which descends to a single heir by a customary or other rule of succession or by the terms of any grant or enactment:

Provided further that upon the death of any woman who at the commencement of this Act had the limited estate known as the Hindu woman's estate in any heritable property, such property shall devolve on the persons who would under this Act have been the heirs of the last full owner thereof if he had died intestate immediately after her.

Succession to the property of males.

Devolution of heritable property of males.

4. The heritable property of a male intestate shall devolve according to the rules laid down in this Act—

(*a*) upon the enumerated heirs referred to in section 5, if any;

(*b*) if there is no enumerated heir, upon his agnates, if any;

(*c*) if there is no agnate, upon his cognates, if any;

(*d*) if there is no cognate, upon the heirs referred to in section 10, if any.

Enumerated heirs.

5. The following relatives of an intestate are his enumerated heirs:—

Class I.—*Widow and descendants*:—

(1) Widow, son, daughter, son of a pre-deceased son, and son of a pre-deceased son of a pre-deceased son (the heirs in this entry being hereinafter in this Act referred to as "simultaneous heirs").

(2) Daughter's son.
(3) Son's daughter.
(4) Daughter's daughter.

Class II.—Mother father and his descendants:—

(1) Mother.
(2) Father.
(3) Brother.
(4) Brother's son.
(5) Brother's son's son.
(6) Sister.
(7) Sister's son.

Class III.—Father's mother, father's father and his descendants:—

(1) Father's mother.
(2) Father's father.
(3) Father's brother.
(4) Father's brother's son.
(5) Father's brother's son's son.
(6) Father's sister's son.

Class IV.—Father's father's mother, father's father's father and his descendants:—

(1) Father's father's mother.
(2) Father's father's father.
(3) Father's father's brother.
(4) Father's father's brother's son.
(5) Father's father's brother's son's son.
(6) Father's Father's sister's son.

Class V.—Mother's mother, mother's father and his descendants:—

(1) Mother's mother.
(2) Mother's father.
(3) Mother's brother.
(4) Mother's brother's son.
(5) Mother's brother's son's son.
(6) Mother's sister's son.

Order of succession among enumerated heirs.

6. Among the enumerated heirs, those in one Class shall be preferred to those in any succeeding Class; and within each Class, those included in one entry shall be preferred to those included in any succeeding entry, while those included in the same entry shall take together.

Illustrations.

(*i*) The surviving relatives of an intestate are his widow, his mother and his father's father. The widow, who is included in Class I is preferred to the mother who is in Class II and the father's father who is in Class III.

(*ii*) The surviving relatives are two daughters and a son's daughter. The daughters who are included in entry (1) of Class I are preferred to the son's daughter who is in entry (3) of the same Class, and the two daughters take together.

(*iii*) The surviving relatives are a widow, two sons, three daughters, two grandsons by a pre-deceased son and a great-grandson by another pre-deceased son's pre-deceased son. All of them, being enumerated heirs included in entry (1) of Class I, succeed simultaneously, no one excluding the others.

Manner of distribution among simultaneous heirs.

7. The distribution of an intestate's property among the simultaneous heirs in entry (1) of Class I shall take place according to the following rules, namely:—

(*a*) The intestate's widow or if there is more than one widow, all the widows together, shall take one share.

(*b*) Each son of the intestate shall take one share, whether he was undivided or divided from, or re-united with, the intestate.

(*c*) Sons, sons of pre-deceased sons, and sons of pre-deceased sons of pre-deceased sons, shall take *per stirpes,* that is to say, the sons of a pre-deceased son shall take the share which would have been taken by him if he had been alive at the time of the intestate's death; and likewise the grandsons of a pre-deceased son shall take the share which their father would have taken if he had been alive at the time aforesaid.

(*d*) Each of the intestate's daughters shall take half a share, whether she is unmarried, married or a widow; rich or poor; and with or without issue or possibility of issue.

Illustrations.

(*i*) The surviving relatives of an intestate are three sons, five grandsons by a pre-deceased son, and two great-grandsons by a pre-deceased son of another pre-deceased son. Each son takes 1|5th of the heritable estates, each grandson 1|25th, and each great-grandson 1|10th.

(*ii*) Only a widow or daughter, and no other simultaneous heir, survives an intestate. The widow or daughter, as the case may be, takes the whole of the heritable estate.

(*iii*) The surviving relatives of an intestate are two widows, a divided son, two undivided sons, an unmarried daughter, two married daughters, a widowed daughter, and four grandsons by a pre-deceased son. The two widows together take one share, each of the three sons takes one share, each of the four daughters takes half a share, and the four grandsons together take one share. Thus, each widow takes 1|14th of the heritable estate, each son 1|7th, each daughter 1|14th, and each grandson 1|28th.

Order of succession among non-enumerated heirs.

8. (1) The order of succession among agnates and cognates, other than enumerated heirs, shall be determined by applying the Rules of Preference in section 9.

(2) For the purpose of applying the said Rules, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent, or degrees of descent, or both, as the case may be.

(3) Degrees of ascent and degrees of descent shall be computed in the manner indicated in the illustrations below:—

Illustrations.

(*i*) The heir to be considered is the father's mother's father of the intestate. He has no degrees of descent but three degrees of ascent represented, in order, by (1) the intestate's father, (2) that father's mother, and (3) her father (the heir).

(*ii*) The heir to be considered is the father's mother's father's mother of the intestate. She has no degrees of descent, but four degrees of ascent represented, in order, by (1) the intestate's father, (2) that father's mother, (3) her father, and (4) his mother (the heir).

(*iii*) The heir to be considered is the son's daughter's son's daughter of the intestate. She has no degrees of ascent but four degrees of descent represented, in order, by (1) the intestate's son, (2) that son's daughter, (3) her son, and (4) his daughter (the heir).

(iv) The heir to be considered is the mother's father's father's daughter's son of the intestate. He has three degrees of ascent represented, in order, by (1) the intestate's mother, (2) her father, and (3) that father's father, and two degrees of descent represented in order, by (1) the daughter of the common ancestor, *viz.,* the mother's father's father and (2) her son (the heir).

Rules of Preference.

9. The Rules of Preference referred to in section 8 are as follows:—

Rule 1.—Of two heirs the one who has fewer or no degrees of ascent is preferred.

Rule 2.—Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

Rule 3.—Where the number of degrees of descent is also the same or none, the heir who is in the male line is preferred to the heir who is in the female line at the first point (counting from the intestate to the heir) where the lines of the two heirs can be so distinguished.

Rule 4.—Where neither heir is entitled to be preferred to the other under the foregoing Rules, they take together.

Illustrations.

In the following illustrations, the letters F and M stand respectively for the father and the mother in that portion of the line which ascends from the intestate to the common ancestor and the letters *S* and *D* for the son and the daughter respectively in that portion of the line which descends from the common ancestor to the heir. Thus MFSS stands for the intestate's mother's father's son's son (mother's brother's son), and FDS for the intestate's father's daughter's son (sister's son).

(*i*) The competing heirs are (1) FFSD (father's brother's daughter) and (2) FDDS (sister's daughter's son). Although No. (2) is descended from a nearer ancestor yet, as No. (1) is an agnate while No. (2) is only a cognate, No. (1) is preferred to No. (2).

(*ii*) The competing heirs are (1) SDSS (Son's daughter's son's son) and (2) FDDS (sister's daughter's son). No. (1) who has no degree of ascent is preferred to No. (2) who has one degree of ascent.

(*iii*) The competing heirs are (1) FDDD (sister's daughter's daughter) and (2) MFSD (maternal uncle's daughter). The former who has one degree of ascent is preferred to the latter who has two such degrees.

(*iv*) The competing heirs are (1) FDSSS (sister's son's son's son) and (2) MFSSD (maternal uncle's son's daughter). The former who has only one degree of ascent is preferred to the latter who has two such degrees.

(*v*) The competing heirs are (1) MFDSS (mother's sister's son's son) and (2) MFFDS (mother's father's sister's son). The former who has two degrees of ascent is preferred to the latter who has three such degrees.

(*vi*) The competing heirs are (1) MFM (mother's father's mother) and (2) FFFDSS (father's father's sister's son's son). The number of degrees of ascent in both cases is the same, *viz.*, three, but the former has no degree of descent while the latter has three such degrees. The former is therefore preferred.

(*vii*) The competing heirs are (1) FMF (father's mother's father) and (2) MFF (mother's father's father). The number of degrees of ascent in both cases is the same and there are no degrees of descent. The lines of the two heirs diverge at the very first point, No. (1) being in the male line and No. (2) in the female line. No. (1) is preferred to No. (2).

(*viii*) The competing heirs are (1) FDSS (sister's son's son) and (2) FDDS (sister's daughter's son). The heirs are equally near both in ascent and descent. The dissimilarity in the lines occurs at the third point. At this point No. (1) is in the male line and No. (2) in the female line. No. (1) is therefore preferred.

(*ix*) The competing heirs are (1) FMFSS (father's mother's brother's son) and (2) FMFDS (father's mother's sister's son). The former is preferred.

(*x*) The competing heirs are (1) FDDS (sister's daughter's son) and (2) FDDD (sister's daughter's daughter). The former is preferred.

(*xi*) The competing heirs are a daughter's daughter's son of one sister (FDDDS) and a daughter's daughter's son of another sister (FDDDS). Both of them take the estate in equal shares.

Heirs not related by blood.

10. If there is no cognate entitled to succeed under section 4, the heritable property of the intestate shall devolve, in the first instance, upon his preceptor (*acharya*); if there is no preceptor, upon the intestate's disciple (*sishya*); and if there is no disciple, upon the intestate's fellow-student (*sa-brahmachari*).

Rules for hermits, etc.

11. (1) Where a person completely and finally renounces the world by becoming a hermit (*vanaprastha*), an ascetic (*yati* or *sanyasi*), or a perpetual religious student (*naisthika brahmachari*), his property shall devolve upon his heirs, in the same order and according to the same rules as would have applied if he had died intestate in respect thereof at the time of such renunciation.

(2) Any person who has so renounced the world shall not inherit to any relative of his, by blood or marriage, but the inheritance shall, in such a case, pass to the heir who is next in the order of succession.

(3) Any property acquired by such a person after his renunciation shall, on his death, devolve, not upon his relatives by blood or marriage, but as follows:—

(*a*) in the case of a hermit, upon a spiritual brother belonging to the same hermitage (*dharmabhratraikatirthi*);

(*b*) in the case of an ascetic, upon his virtuous disciple (*sacchishya*);

(*c*) in the case of a perpetual religious student, upon his preceptor (*acharya*).

Stridhana.

Right of women over *stridhana*.

12. A woman shall have the same rights over her *stridhana*, including the right to dispose of it by transfer *inter vivos* or by will, as a man has over property acquired by him in the like manner, that is to say, a woman's rights over her *stridhana* shall not be deemed to be restricted in any respect whatsoever, by reason only of her sex.

Order of succession to *stridhana*.

13. The *stridhana* of a woman dying intestate, in so far as it consists of heritable property, shall devolve as follows:—

(*a*) Property inherited by her from her husband shall devolve upon his heirs, in the same order and according to the same rules as would have applied if the property had been his and he had died intestate in respect thereof immediately after his wife's death.

Explanation.—For the purposes of this clause, property devolving on another widow of the husband, whether under this clause or under entry (9) in clause (*b*), shall be deemed to be property inherited by such widow from her husband.

(*b*) Other property shall devolve upon the following relatives of the intestate, in the order mentioned, namely:—

(1) Daughter;
(2) Daughter's daughter;
(3) Daughter's son;
(4) Son;
(5) Son's son;
(6) Son's daughter;
(7) Husband;

(8) Husband's heirs, in the same order and according to the same rules as would have applied if the property had been his and he had died intestate in respect thereof immediately after his wife's death;

(9) Mother;
(10) Father;

(11) Father's heirs, in the same order and according to the same rules as would have applied if the property had been his and he had died intestate in respect thereof immediately after his daughter's death;

(12) Mother's heirs, in the same order and according to the same rules as would have applied if the property had been hers and she had died intestate in respect thereof immediately after her daughter's death.

(*c*) Where of two or more heirs of the intestate, no one is entitled to be preferred to any other under the provisions of this section, they shall take together.

Stirpital succession to *stridhana* in certain cases.

14. If the *stridhana* of a woman devolves on two or more of the following relatives, namely, daughters' daughters, daughters' sons, sons' sons and sons' daughters, they shall take it *per stirpes* and not *per capita*.

Illustration.

The surviving relatives of a woman are four grand-daughters by one daughter, *A*, and three grand-daughters by another daughter, *B*. Each of *A's* daughters takes 1|8th of the property and each of *B's* daughters takes 1|6th.

General Provisions.

Full blood preferred to half blood.

15. Heirs related to an intestate by the full blood shall be preferred to heirs related by the half blood, if the nature of the relationship is the same in every other respect.

Illustrations.

(*i*) *A* brother by the full blood is preferred to a brother by the half blood; but a brother by the half blood succeeds before a brother's son by the full blood, a brother being a nearer heir than a brother's son.

(*ii*) *A* paternal uncle by the half blood is preferred to a paternal uncle's son by the full blood, an uncle being a nearer heir than an uncle's son.

(*iii*) A full brother's daughter's daughter is preferred to a half brother's daughter's daughter; but the former is not preferred to a half brother's daughter's son, as the nature of the relationship is not the same in the two cases. The latter, who is a nearer heir by virtue of Rule 3 in section 9, is preferred though he is only of the half blood.

Right of child in womb.

16. A person who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate.

Rights of surviving spouse and descendants of a valid marriage.

17. The surviving spouse and descendants of a valid marriage contracted by a male or female Hindu outside his or her caste shall, for all the purposes of this Act, be treated in like manner as the surviving spouse and descendants of a valid marriage contracted within his or her own caste.

Disqualification of widow who was unchaste during husband's lifetime.

18. If an intestate's widow has been unchaste during his lifetime and after her marriage, she shall, unless the unchastity has been condoned by her husband, be disqualified from succeeding to his heritable property, and it shall devolve on his other heirs as it would in her absence:

Provided that the right of a widow to inherit to her husband shall not be questioned on the ground aforesaid, unless—

(*a*) the husband has deprived her of any portion of his property on that ground by a valid testamentary disposition subsisting at the date of his death; or

(*b*) a Court of Law has found her to have been unchaste as aforesaid in a proceeding to which she and her husband were parties and in which the matter was specifically in issue, the finding of the Court not having been subsequently reversed.

Murderer disqualified.

19. A person who commits murder or abets the commission of murder in furtherance of his or her succession to any property shall be disqualified from inheriting such property; and the inheritance shall, in such a case, pass to the heir who is next in the order of succession.

Disease, defect, etc., not to disqualify.

20. No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity or, save as provided in sub-section (2) of section 11 and sections 18 and 19, on any other ground whatsoever.

Mode of succession of two or more heirs.

21. If two or more heirs succeed together to the property of any intestate, they shall take the property—

(*a*) save as otherwise expressly provided in this Act, *per capita* and not *per stirpes*; and

(*b*) as tenants in common, and not as joint tenants.

Escheat.

22. If the intestate has left no heir, or no heir qualified to succeed to his or her heritable property, such property shall go to the Crown.

Repeals.

23. The enactments specified in the Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

THE SCHEDULE.

(*See* section 23.)

Year. (1)	Number. (2)	Short title. (3)	Extent of repeal. (4)
1928	XII ..	The Hindu Inheritance (Removal of Disabilities) Act, 1928.	The whole.
1929	II ..	The Hindu Law of Inheritance (Amendment) Act, 1929.	Do.
1937	XVIII ..	The Hindu Women's Rights to Property Act, 1937.	Section 3, sub-section (1).

THE HINDU LAW OF MARRIAGE BILL.

(L.A. BILL NO. 27 OF 1942.)

The Bill proposes a number of radical alterations in the existing Hindu law relating to marriage. All of them are interesting though some of them are controversial. Monogamy is made obligatory. Bigamy is made punishable. Marriages may be sacramental or civil. The former can take place only between two Hindus. The latter may be between a Hindu and a Hindu, Buddhist, Sikh or Jain. If the bride has not completed her sixteenth year the consent of her guardian in marriage will be essential for a sacramental marriage. The conditions of a civil marriage run on the same lines as those now found in the Special Marriage Act. A sacramental marriage when once completed shall not be deemed invalid by reason only of non-identity of caste or identity of gotra or pravara between the parties.

The Bill does not provide for divorce, in the case of sacramental marriages. Conservative thought stands re-assured. The way is however open to those who do not subscribe to the theory of marriage being a lifelong and indissoluble union to contract a civil

marriage. The rather anomalous result under the existing law that if a Hindu as such contracted a civil marriage with another Hindu he would cease to be governed by Hindu law in matters of succession but would come within the purview of the Indian Succession Act, is avoided by the dropping of the provisions of S. 24 of the Special Marriage Act, in the Bill.

The rules in S. 4 (*b*) and (*c*) requiring identity of caste and difference in gotra and pravara between the parties as *conditions* of a sacramental marriage are practically subverted by the provisions of S. 7 that when once a sacramental marriage is completed it shall not be deemed to be invalid merely by reason of the violation of any or all of these conditions. If S. 7 is to stand S. 4 (*b*) and (*c*) will be superfluous. Pratiloma marriages have always been regarded as void and anuloma marriages where they are allowed really rest on custom. If parties belonging to different castes desire to marry they can contract a civil marriage, particularly as they would still be governed by Hindu law under the proposed state of affairs; or, they can marry under any caste custom permitting such alliances, such a custom being expressly saved by S. 6. Similarly as regards alliances within the gotra or pravara, there again resort may be had to a civil marriage. Relief may no doubt be needed where a sacramental marriage has through mistake, inadvertence or recklessness taken place between Hindus of the same gotra or pravara. In such a case there is no marriage at all according to the Shastras and it may suffice if the parties are permitted to regularise the matter by going through a civil marriage. To deem a marriage to be a sacramental marriage in spite of the violation of some of its fundamentals will be to make a travesty of it.

S. 4 (*e*) seems to be unnecessary. A valid sacramental marriage under the existing law takes place only with the consent of the guardian in marriage of the girl. Where for some reason the principle has not been observed or violated the Courts have always applied the principle of *factum valet* and declined to set aside the marriage unless there has been force or fraud. Again why select sixteen years as the limit? Is it that on completion of the sixteenth year a girl is sure to have attained her years of discretion? That surely must depend on the facts of each case. Or is it by way of accepting the Hindu law age of majority for acting in the matter of marriage, etc.? If at all any limit below eighteen is needed why not fix it at fourteen, the age on completion of which a girl ceases to be a *child* under the Sarda Act?

In the case of marriages outside the caste the consent of the guardian should be made a condition precedent if the bride is below twenty-one years of age, whether the marriage is sacramental or civil. Even under the Special Marriage Act the consent of the guardian is essential if the bride is under that age.

The rule as to monogamy is no doubt desirable. But a rigid enforcement may cause great hardship. For instance in the case of a woman afflicted with a loathsome and hideous disease, the husband will be barred from taking a second wife where the marriage is sacramental, even if the first wife is willing. The

same result will ensue even if the marriage is civil unless resort is had to the tortuous path of divorce which neither of the spouses may desire and which can be had only for one of the causes specified in the Divorce Act leaving the woman utterly adrift. It is desirable therefore that the rule as to monogamy should be relaxed in suitable cases.

The Bill prohibits marriage between uncle and niece. S. 6 does not save any custom to the contrary. It should be made clear that the prohibition will not invalidate any such marriage which has already taken place in pursuance of a caste custom and will govern only marriages taking place in future.

L.A. BILL No. 27 OF 1942.

A Bill to codify the Hindu Law relating to marriage.

WHEREAS it is expedient to amend and codify, in successive stages the whole of the Hindu Law now in force in British India;

AND WHEREAS it is now expedient in pursuance of that design to enact a law of marriage for Hindus;

It is hereby enacted as follows:—

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE HINDU CODE, PART II (MARRIAGE).

(2) It extends to the whole of British India.

(3) It shall come into force on the 1st day of January, 1946.

Interpretation.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "caste" means one of the four primary *varnas* or castes into which Hindus are divided and does not include any sub-caste;

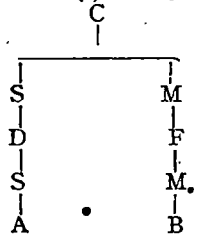
(*b*) "*gotra*" and "*pravara*" have the same meanings as in the Hindu Law;

(*c*) (*i*) "*Sapinda* relationship" with reference to any person extends as far as the fifth generation (inclusive) in the line of ascent through the mother and the seventh (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation;

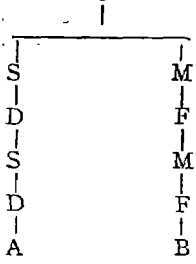
(*ii*) two persons are said to be "*sapindas*" of each other if one is an ancestor of the other within the limits of *sapinda* relationship, or if they have a common ancestor who is within the limits of *sapinda* relationship with reference to each of them;

Illustrations.

(*i*) *A* is the son's daughter's son's daughter of *C*, who is the mother's father's mother's father of *B*. Here *C*, the common ancestor, is the fifth generation from *A* in the father's line and the fifth generation from *B* in the mother's line. *A* and *B* are *sapindas* of each other.



(*ii*) *A* is the son's daughter's son's daughter's daughter of *C*, who is the father's mother's father's mother's father of *B*. Here *C*, the common ancestor, is the sixth generation from *A* in the mother's line and the sixth from *B* in the father's line. *C* being outside the limits of *sapinda* relationship with reference to *A*. *A* and *B* are not *sapindas* of each other.



(*d*) two persons are said to be within "the degrees of relationship prohibited by this Act," if they are related by blood to each other lineally, or as brother and sister, or as uncle and niece, or as aunt and nephew.

Explanation.—For the purposes of clauses (*c*) and (*d*) relationship includes—

(*i*) relationship of the half blood, that is, descent from a common ancestor by different wives, as well as of the full blood, that is, descent from a common ancestor by the same wife;

(*ii*) illegitimate blood relationship as well as legitimate;

(*iii*) relationship in the family of adoption as well as in the family of birth;

and all terms of relationship shall be construed accordingly.

Two forms of Hindu Marriage.

3. There shall be two forms of the Hindu marriage, namely:—

(*a*) a sacramental marriage;

(*b*) a civil marriage.

Sacramental Marriages.

Requisites of a sacramental marriage.

4. A sacramental marriage may be solemnized between any two Hindus upon the following conditions, namely:—

(*a*) neither party must have a husband or wife living at the time of marriage;

(*b*) both the parties must belong to the same caste;

(*c*) if the parties are members of a caste having *gotras* and *pravaras*, they must not belong to the same *gotra*, or have a common *pravara*;

(*d*) the parties must not be *sapindas* of each other;

(*e*) if the bride has not completed her sixteenth year, her guardian in marriage must consent to the marriage.

Ceremonies essential for sacramental marriage.

5. Two ceremonies are essential to the validity of a sacramental marriage, namely:—

(*a*) invocation before the sacred fire;

(*b*) *saptapadi*, that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire.

The marriage becomes complete and binding when the seventh step is taken, and consummation is not necessary to complete a marriage or make it binding on the parties.

Marriages according to custom deemed to be valid sacramental marriages.

6. Notwithstanding anything contained in sections 4 and 5, a marriage shall be deemed to be a valid sacramental marriage if it is solemnized in accordance with the customs or usages of any locality or community to which both the parties belong, or the rules of any school of personal law which they both follow, whether such community be a caste, subcaste, sect, tribe, or other group:

Provided that the condition specified in clause (*a*) of section 4 is fulfilled and that the parties are not within the degrees of relationship prohibited by this Act.

Sacramental marriages not to be deemed to be invalid in certain cases.

7. No sacramental marriage solemnized after the commencement of this Act shall, after it has been completed, be deemed to be, or ever to have been, invalid merely by reason of one or more of the following causes, namely:—

(*a*) that the parties to the marriage do not, or did not, belong to the same caste;

(*b*) that the parties belonged to the same *gotra* or had a common *pravara*; or

(*c*) unless there was force or fraud, that the consent of the bride's guardian in marriage to the marriage was not obtained.

Civil Marriages.

Requisites of a civil marriage.

8. A civil marriage may be contracted under this Act by any person professing the Hindu religion with any other person professing the Hindu, Buddhist, Sikh, or Jaina religion upon the following conditions, namely:—

(1) neither party must, at the time of the marriage, have a husband or wife living;

(2) the man must have completed his eighteenth year, and the woman her fourteenth year, according to the Gregorian calendar;

(3) each party must, if he or she has not completed his or her twenty-first year, have obtained the consent of his or her guardian in marriage to the marriage;

(4) the parties must not be within the degrees of relationship prohibited by this Act.

Marriage Registrars.

9. (1) The Provincial Government may appoint one or more Registrars under this Act for any portion of the Province.

(2) The officer so appointed shall be called "Registrar of Hindu Civil Marriages" and is hereinafter referred to as "the Registrar".

(3) The portion of territory for which any such officer is appointed is hereinafter referred to as his district.

Notice of marriage to Registrar.

10. (1) When a civil marriage is intended to be contracted under this Act, one of the parties must give notice in writing to the Registrar before whom it is to be contracted.

(2) The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

(3) Such notice may be in the form given in the First Schedule.

Marriages Notice Book.

11. The Registrar shall file all notices given under sub-section (1) of section 10 and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book furnished to him for that purpose by the Provincial Government, to be called the "Hindu Civil Marriages Notice Book," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

Objection to marriage.

12. (1) Fourteen days after notice of an intended marriage has been given under section 10 such marriage may be contracted, unless it has been previously objected to in the manner hereinafter provided in this section.

(2) Any person may, before the expiration of fourteen days from the giving of the notice of an intended marriage, object to such marriage on the ground that it would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) and (4) of section 8.

(3) The nature of the objection made shall be recorded in writing by the Registrar in the Hindu Civil Marriages Notice Book and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

Procedure of Registrar on receipt of objection.

13. (1) If an objection is made under section 12 to an intended marriage the Registrar shall not allow the marriage to be contracted until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court.

Objector may file suit.

(2) The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) and (4) of section 8, and the officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed.

Certificate of filing of suit to be lodged with Registrar.

(3) If the certificate referred to in sub-section (2) is lodged with the Registrar within fourteen days from the receipt by him of the objection, if there is a Court of competent jurisdiction open at the time, or, if there is no such Court open at the time, within fourteen days of the opening of such Court, the marriage shall not be contracted till the decision of such Court has been given and the period allowed by law for appeals from such decision has elapsed; or, if there is an appeal from such decision, till the decision of the Appellate Court has been given.

(4) If such certificate is not lodged in the manner and within the period laid down in sub-section (3) or if the decision of the Court is that such marriage would not contravene any of the conditions prescribed in clauses (1), (2), (3) and (4) of section 8, such marriage may be contracted.

(5) If the decision of the Court is that the marriage in question would contravene any of the conditions prescribed in clauses (1), (2), (3) and (4) of section 8, the marriage shall not be contracted.

Court may fine when objection not reasonable.

14. Any Court in which any such suit as is referred to in sub-section (2) of section 13 is filed, may, if it appears to it that the objection was not reasonable and *bona fide*, inflict a fine not exceeding one thousand rupees on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

Declaration by parties and witnesses.

15. Before the marriage is contracted the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the Second Schedule. If either party has not completed his or her twenty-first year, the declaration shall also be signed by his or her guardian, except in the case of a widow, and, in every case, it shall be countersigned by the Registrar.

Marriage how to be contracted.

16. The marriage shall be contracted in the presence of the Registrar and of the three witnesses who signed the declaration. The contracting may be done in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, "I, (*A*), take thee, (*B*), to be my lawful wife (or husband)."

Place where marriage may be contracted.

17. The marriage may be contracted either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire:

Provided that the Provincial Government may prescribe the conditions under which marriages may be contracted at places other than the Registrar's office, and the additional fees to be paid thereupon.

Certificate of marriage.

18. (1) When the marriage has been contracted, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the "Hindu Civil Marriages Certificate Book" in the form given in the Third Schedule, and such certificate shall be signed by the parties to the marriage and the three witnesses.

(2) The Hindu Civil Marriages Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of such fees as may be prescribed by the Provincial Government.

Transmission of certified copies of entries in marriage certificate book to the Registrar General of Births, Deaths and Marriages.

19. The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the territories within which his district is situate, at such intervals as may be prescribed by the Provincial Government, a true copy certified by him, in such form as the Provincial Government may prescribe, of all entries made by him in the Hindu Civil Marriages Certificate Book since the last of such intervals.

Fees.

20. The Provincial Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act.

The Registrar may, if he thinks fit, demand payment of any such fee before performing any duty in respect of which it is payable.

Indian Divorce Act to apply.

21. The Indian Divorce Act shall apply to all civil marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clauses (1), (2), (3) and (4) of section 8 of this Act.

Penalty for signing declarations of certificates containing false statements.

22. Every person making, signing or attesting any declaration or certificate required under this Act, containing a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of the offence described in section 199 of the Indian Penal Code.

General Provisions.

Guardianship in marriage.

23. (1) The persons entitled to be guardians in marriage—

(*a*) of a Hindu girl who has not completed her sixteenth year, for the purposes of her sacramental marriage,

(*b*) of a Hindu (other than a widow) who has not completed his or her twenty-first year, for the purposes of his or her civil marriage under this Act,

are the following, in the order given, namely:—

(1) the father;

(2) the mother;

(3) the paternal grandfather;

(4) the brother;

(5) any other agnatic male relation;

(6) the maternal grandfather;

(7) the maternal uncle.

(2) Where any person entitled to be the guardian in marriage under sub-section (1) refuses, or is, by reason of absence, desertion, disability or other cause, unable or unfit, to act as such, the person next in order shall be entitled to be the guardian.

(3) Where there are two or more persons equally entitled to guardianship under the foregoing provisions, it shall be in the discretion of the Court having jurisdiction under the Guardians and Wards Act, 1890, to decide which of them shall be regarded as the guardian.

(4) Nothing in this Act shall affect the jurisdiction of a Court to prohibit by injunction an intended marriage arranged by the guardian, if in the interests of the minor the Court thinks fit to do so.

Punishment of bigamy.

24. Any marriage between two persons, one professing the Hindu religion and the other the Hindu, Buddhist, Sikh, or Jaina religion, solemnized or contracted after the commencement of this Act is void, if at the date of such marriage either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal Code shall apply accordingly.

Power to make rules.

25. The Provincial Government may, by notification in the official Gazette, make rules to regulate any matter which is to be or may be prescribed under this Act.

Enactment amended.

26. The Special Marriage Act, 1872, shall be amended in the manner specified in the Fourth Schedule.

GILLETTE INDUSTRIES, LTD. *v.* BERNSTEIN, (1941) 3 All.E.R. 248 (C.A.).

Patents—Condition against re-sale of article below a fixed price —Breach—Crucial time of knowledge of restrictive condition—Whether time of purchase or of re-sale—Practice—Certificate of validity of patent—When to be given.

In an action to restrain the defendants from selling Gillette blades, manufactured by the plaintiffs under their patents, at less than certain regulated prices,

Held, that the burden lies upon the patentee to show *inter alia* that the defendant had the restrictive condition brought to his notice at the time when he acquired the patented goods and it is not sufficient to show that that condition came to his notice in the interval between his acquisition of the goods and his disposal of them.

Columbia Graphophone Co., Ltd. v. *Thomas,* 41 R.P.C. 294, explained.

Held, further, that the Court should not as a matter of practice or custom grant a certificate of validity of a patent in a case where there has been no effective contest, merely on *prima facie* evidence of validity being given.

BISHOP *v.* BISHOP, (1941) 3 All.E.R. 268.

Divorce—Petition—Rule of practice requiring petitioner to state "whether" there has been any resumption of cohabitation since

the making of order in previous proceedings with reference to the marriage—Duty to state negative fact.

The Matrimonial Clauses Rules, 1937, R. 4 (1) (*f*), provided:—The petition in a matrimonial case . . . shall state . . . (*f*) whether there have been in the High Court or a Court of summary jurisdiction any, and if so what, previous proceedings with reference to the marriage . . . the effect of any decree or order made in such proceedings, and "whether there has been any resumption of cohabitation since the making thereof. . . ." On a construction of the rule, *held*, the word "whether" in the rule clearly means "aye" or "no" and the petition for divorce should plead "whether or not", there has been a resumption of cohabitation as it is desirable that the Court should know precisely the state of affairs between the parties.

MANCINI *v.* DIRECTOR OF PUBLIC PROSECUTIONS, (1941) 3 All.E.R. 272 (H.L.).

Criminal trial—Murder—Prosecution for—Accused setting up self-defence but asking for reduction of crime to manslaughter—Facts disclosing a possible case of manslaughter—Proper summing up to the jury—Duty of Judge.

Although the accused's case at the trial for murder was in substance that he had been compelled to use his weapon in necessary self-defence—a defence which, if it had been accepted by the jury, would have resulted in his complete acquittal—it is the duty of the Judge in summing up to the jury, to deal adequately with any other view of the facts which might reasonably arise out of the evidence given, and which would reduce the crime from murder to manslaughter. The fact that a defending counsel does not stress an alternative case before the jury (which he may well feel it difficult to do without prejudicing the main defence) does not relieve the Judge from the duty of directing the jury to consider the alternative, if there is material before the jury which would justify a direction that they should consider it. But if the evidence before the jury at the end of the case does not contain material upon which a reasonable man could find a verdict of manslaughter instead of murder, it is no defect in the summing up that manslaughter is not dealt with. Where there is no evidence to raise the issue of provocation it is not the duty of the Judge to invite the jury to speculate as to provocative incidents from the evidence.

Re A DEBTOR (No. 6 of 1934), (1941) 3 All.E.R. 289 (Ch.D.).

Bankruptcy—Order directing bankrupt to pay £5 per month out of his salary "during the bankruptcy" and "until the Court shall make an order to the contrary"—Subsequent order of discharge expressly continuing the order for monthly payment—Validity.

An order was made on March 1, 1938, under S. 51 (1) of the Bankruptcy Act that the sum of £5 monthly should be paid to the trustee out of the bankrupt's salary "during the bankruptcy" and "until the Court shall make an order to the contrary." On March 10,

1938, the Court granted the debtor an immediate discharge but directed that the order under S. 51 (1), dated March 1, 1938, be expressly continued on a special case stated to test the validity of the order continuing the appropriations out of the bankrupt's salary,

Held, that, (1) orders made under S. 51 need not be limited to property vested in the trustee under the other provisions of the Bankruptcy Act. (2) The discharge of a bankrupt does not put an end to the bankruptcy and therefore it cannot be held that the words "during the bankruptcy" refer to a period which comes to an end the moment the bankrupt gets his discharge. (3) In any event what the Court did in effect by the order of March 10 (whether or not it was entirely necessary) was to impose on the discharge of the bankrupt the condition that the order of March 1 should continue in operation. (4) The order of March 10 was therefore valid and effective.

WOOLFALL AND RIMMER, LTD. *v.* MOYLE, (1941) 3 All.E.R. 304 (C.A.).

Insurance—Insurance against liability to workmen—Question in proposal form "Are your machinery, etc., properly fenced and guarded and otherwise in good order and condition?"—If refers to future condition—Condition in policy that assured shall take reasonable precautions to prevent accidents—If discharged by selecting competent foreman—Accident due to negligence of foreman—Effect.

In a proposal for insurance against liability to employees one of the questions asked was "Are your machinery, plant and ways properly fenced and guarded and otherwise in good order and condition"? and the answer was "Yes". In the policy of insurance was *inter alia* a condition that "the assured shall take reasonable precautions to prevent accidents and to comply with all statutory obligations." The insured employed a foreman who was obviously a competent and skilled man. In an action for indemnity under the policy for liability to a workman by an accident due to a defective scaffolding subsequently set up,

Held, (1) The question in the proposal form and the answer thereto merely relate to the moment of time at which the proposer is answering it and does not extend to the future condition of the machinery, plant and ways during the currency of the policy.

(2) By entrusting to a competent foreman the task of providing suitable and safe material for scaffolding and by selecting suitable materials for the job the employers took the reasonable precaution imposed by the condition and the insured are not in breach of the condition if the foreman is in fact negligent in carrying out the task entrusted to him.

R. *v.* HAMMOND, (1941) 3 All.E.R. 318 (C.C.A.).

Criminal Trial—Procedure—Admissibility of evidence—Objection to when to be taken.

The counsel for prosecution in a murder trial had started his opening, had stated a few facts to the jury and was proposing to open to the jury the circumstances in which a complete confession had been made by the accused. When counsel for defence informed him that there would be an objection to the admissibility of the confession, the jury was sent out and the question of admissibility was argued.

Held: The ordinary practice in such a case, if there is any objection on the part of counsel for the defence to the admissibility of a piece of evidence, is that he should inform the prosecution of that fact beforehand, and that the piece of evidence should not be opened to the jury. But in cases like the present where it is convenient and in which it cannot possibly result in any harm in its being done, a Judge can hear advance arguments as to the admissibility of evidence. But in most cases the ordinary rule should be adhered to and it would have been very much better if it had been followed. Counsel for the prosecution could have opened the facts as to the murder and various other matters, medical evidence and so forth, and then simply have told the jury that there was some other vital evidence which he was not in a position to mention to them at the moment, but that it would be tendered in evidence at the proper time and the objection to admissibility could have been taken then and decided.

LAURIE *v.* RAGLAN BUILDING CO., LTD., (1941) 3 All.E.R. 332 (C.A.).

Tort—Negligence—Vehicles skidding and striking a person on pavement—Negligence—Burden of proof.

No vehicle has a right so to manoeuvre itself that its tail or radiator, or whatever it may be, projects over the pavement to the injury of pedestrians lawfully there. The circumstance that the accident was due to a skid is not sufficient to displace the *prima facie* presumption of negligence. The skid by itself is neutral and may or may not be due to negligence. It rests on the defendant to displace the *prima facie* case of negligence by proving that the skid happened without any fault on the part of the driver.

LIVERSIDGE *v.* ANDERSON AND ANOTHER, (1941) 3 All.E.R. 338 (H.L.).

See also GREENE *v.* SECRETARY OF STATE FOR HOME AFFAIRS, (1941) 3 All.E.R. 388 (H.L.).

Defence (General) Regulations (1939)—*Reg.* 18-*B*—*Imprisonment under—Onus of proof as to the validity of detention order—Claim for particulars of defence—Sustainability.*

Defence (General) Regulations—Reg. 18-B was in the following terms:—

"If the Secretary of State *has reasonable cause* to believe any person to have been or to be a member of or to have been or to be active in the furtherance of the objects of any such organisation as is hereinafter mentioned and that it is necessary to exercise control over him, he may make an order against that person directing that he be detained".

The plaintiff having been detained by an order made by the Home Secretary under the Defence (General) Regulations 1939. Reg. 18-B as a person of hostile association, in an action for damages for false imprisonment raised the validity of the order of detention. The plaintiff sought to have certain particulars from the defendant (the Secretary for Home affairs) of the grounds for belief of existence of reasonable cause which the Courts below refused to order.

Held, (Lord Atkin dissenting) that the words in the regulation. "If the Secretary of State *has reasonable cause,* for the belief" in the context point simply to the belief of the Secretary of State founded on his view of there being reasonable cause for the belief which he entertains and not that there must be an external fact as to reasonable cause capable of being challenged in a Court of law.

The order of the Secretary of State is *prima facie* proof of the validity of the detention and as the onus shifts on to the plaintiff to prove its invalidity the particulars of the grounds of the "reasonable cause" cannot be ordered to be given.

RHODES *v.* SECRETARY OF STATE FOR WAR, (1941) 3 All.E.R. 407 (C.A.).

Compensation (Defence) Act, 1939—*S.* 2 (1) (*d*)—*Dwelling house requisitioned by the military authorities—Compensation—Costs of solicitor engaged for negotiation—If recoverable as costs incurred in complying with the requisition.*

Under the Compensation (Defence) Act, 1939, compensation in respect of land requisitioned by the military may be settled by agreement or in default of agreement by the appropriate tribunal. A person who had engaged a solicitor for negotiating the amount of compensation, claimed the costs incurred as "expenses incurred in complying with the directions" given on behalf of His Majesty—the requisitioning of the land,

Held, though the expenses of a solicitor in connection with making arrangements to comply with directions of the authority would be recoverable as part of the compensation expenses incurred in measuring the compensation for having complied with the directions they are not recoverable as part of the compensation under the terms of the Act.

Re N. V. SCHEEPVEERT AND SOVFRACHT, (1941) 3 All. E. R. 419 (C.A.).

Aliens—Company incorporated and carrying on business in territory since occupied by enemy—If enemy aliens—Right to continue, arbitration proceedings previously started in England—Effect on retainer of solicitor.

The modern rule of international law is that while the occupying power exercises a military authority over the occupied territory, it does not by the mere fact of occupation exercise sovereignty over it. The mere fact that a person or company is continuing to trade within territory (like the Netherlands) occupied by the enemy does not impress that person with the character of an alien enemy

at common law to the extent that British subjects may not lawfully have dealings with him and access to the King's Courts is not denied to him. There may well be cases where the occupying enemy or some or all of the inhabitants of the occupied territory, so act that it may be a fair inference that all the inhabitants or some of them have acquired an enemy character and each case must be decided on the facts available to the Court.

On the facts of the present case the company had not such an enemy character as to exclude it from acting through solicitor in England or from presenting a claim as claimant in an arbitration or from appearing as "actor" in the King's Courts.

Re V. G. M. HOLDINGS, LTD., (1941) 3 All. E. R. 417 (Ch. D.).

Practice—Execution—Stay order—Subsequent variation of the order as to amount of security—No jurisdiction to make after orders passed and entered.

Where on an application for a stay of execution pending an appeal, a judge has exercised his jurisdiction as to the amount of security which should be given and as to the time within which the security should be given and the order as to stay has been passed and entered, the judge is *functus officio* and has no jurisdiction to vary the order. The only remedy to get the order varied is to go to the Court of Appeal.

BUTLER *v.* ALCOCK, (1941) 3 All. E. R. 411 (C.A.).

Insurance—Society given power by rules to institute legal proceedings on behalf of members—Failure to institute proceedings—Society when liable.

A society was established for the definite object of administering on behalf of its members the provisions of the National Health Insurance Act. A rule of the society provided that "The executive committee of the society shall have power to institute legal proceedings on behalf of members of the society in cases where it may deem it advisable so to do, and may direct the institution of any legal or other proceedings or inquiries which it may consider desirable in the interests of the society or its members. A member involved in a road accident suffered severe personal injuries. He claimed in an action against the society that the society had been guilty of negligence, in that it had assumed on his behalf responsibility for taking legal proceedings to recover damages against the other party to the accident—namely a County Council by one of its drivers—and in breach of its duty had omitted to commence those proceedings within the period of six months allowed by the Public Authorities Protection Act, 1893. He claimed that as a result of that delay the chance of obtaining damages was lost to him.

Held, that the rule did not impose on the committee any obligation whatever to institute legal proceedings on behalf of members. It gave the committee power to do so only in cases where it may deem it advisable so to do.

JOTTINGS AND CUTTINGS.

Shakespeare and the Law.—Mr. Justice Bennett delighted listeners in his Court on 2nd December, by devoting part of his judgment in an action for an injunction and damages for breach of contract to produce a popular musical play in its entirety and in a first class manner, to an examination of the literary merits of the lyrics of the play. There had been some expert evidence to the effect that the "continuity of the story" had been destroyed and the "balance of the play" had been upset, but his lordship observed that with all respect to the authors, although the play was highly successful, there was no literary merit in the lyrics, with one exception, which, his lordship said, displayed the touch of a master. It was one which conjured up an early English morning on a summer's day. In it there was not one word that was too much. The lyric began with the words "Hark, hark the lark". It is refreshing to know that the law of England is interpreted and applied in these harsh days by men who are so sincerely appreciative of the fine flower of English literature and who can pause for a minute or two to pay homage to the greatest poet of all time. Shakespeare himself would have appreciated this homage from the bench, for one tradition has it that a fellow native of Stratford-on-Avon procured him employment in a lawyer's office on his arrival in London. Lord Campbell in his "Shakespeare's Legal Acquirements" in 1859 attributes his knowledge of legal matters to his early intercourse with members of the Inns of Court. This seems to be borne out by Tranio's "And do as adversaries do in law, strive mightily but eat and drink as friends" in "The Taming of the Shrew". Perhaps Falstaff's "the rusty curb of old father antick, the law" was written with a memory of Shakespeare's father's litigation. Cloten's lovely song "Hark, hark the lark" from "Cymbeline," deserves all the homage that can be paid to it, and indeed the author himself did not think meanly of it, as he described it as "a wonderful sweet air, with admirable rich words to it".—*S. J.*, 1941, *p.* 463.

Paper Waste.—At the Manchester Assizes Mr. Justice Croom-Johnson condemned waste of paper in pleadings; in one case he had noticed five complete blank sheets and some pages contained nothing but names of counsel. From this point of view it is well that Chancery pleading has so long been pruned of its redundancies. The old "Bill in Chancery" was generally an enormous screed setting out the suitor's wrongs at great length, together with the transgressions committed by the defendants. This Bill was then turned into "interrogatories" to be answered by the defendants on oath, each statement being turned into a searching question; the rough draft was usually prepared by the clerk of junior counsel and the result was often curious. There is a story of a "Cross Bill" filed on behalf of a trustee, sued by a married woman, who had prevailed upon him to allow trust money, which she was restrained from anticipating to be advanced to her husband, ostensibly to save him from bankruptcy. Part of the interrogatories prepared by the clerk went like this: "Did not the defendant fall down on her knees or on one and which of them

and implore the plaintiff with tears in her eyes and in one and which of them to advance the said sum of £—— or some other and what sum to her husband to save him from bankruptcy and their children from ruin or how otherwise?'' It is said that one junior once bet another that if a few lines of ''Paradise Lost'' were interpolated into a Bill his clerk would turn them into interrogatories without flinching. This is what resulted: ''Was it man's first or some other and what disobedience, and the fruit of that forbidden or some other and what tree, whose mortal taste brought death into this or some other and what world and all our woe, and if not why not or how otherwise?''—*S. J.*, 1941, *p.* 474.

War Work and the Bench.—According to a report in a Sunday paper His Honour Judge A. C. Caporn, of Wolverhampton County Court, ''clocks in'' daily at a Midland war factory during his vacation and works as a volunteer hand at the carpenters' bench with secondary school-boys. He is quoted as having expressed his liking for the kind of work which he does at the factory and admitted that he ''potters around a bit'' at home. Unfatigued by his labours in the county court, His Honour, like the owner of Locksley Hall, may call men his brothers, ''men the workers, ever reaping something new; that which they have done the earnest of the things that they shall do.'' The carpenter's bench is very different from the judicial bench, and it is only by turning the mind to things different from the daily round and common task of judgment summonses, possession cases and workmen's compensation that the perfect recreation for county court judges may be found, and thus, as Browning said ''Work grows play, adversity a winning fight''. Dryden wrote: ''Work is a pleasure, when we choose our task''. It is doubly a pleasure when it contributes to the winning of the war, and, according to report His Honour is willing to share his pleasure by forming a ''Solicitors' Labour Corps'' from the ranks of local lawyers. If solicitors have any spare time in these days of labour scarcity, they could give their service to no better cause. It is doubtful, however, whether many solicitors in active practice will be able to join the corps, but they will certainly feel the benefit of His Honour's new pre-occupation in other ways, and more particularly in having on the bench a judge with first-hand knowledge of factory conditions and work. Judge Caporn's is an inspiring example and may well be copied with advantage by other and higher luminaries of the bench.—*S. J.*, 1942, *p.* 9.

Legal Calendar.—On the 16th February, 1733, there was heard in Doctors Commons a case relating to one Mrs. Lewis, a widow, who had made her will, married again and survived her second husband. This will having been found after her death the question arose whether or not it was void. Counsel contending that it was valid, showed that when Romans who had made their wills and been afterwards taken captives regained their liberty, the force of those wills revived and thence be inferred ''that as matrimony was a state of captivity, wills made by unmarried persons, who by surviving their husbands became free, the same ought to revive with their freedom''. But the judges rejected

this contention, distinguishing between captivity and matrimony, the former being the effect of compulsion and the latter a voluntary act.—*S. J.*, 1942, *p.* 55.

Presumption of Innocence.—That excellent institution, the Brains Trust, was asked at its broadcasting session on 10th March, whether there was any difference between the practical effects of the English maxim that every person is innocent until he is proved guilty, and that prevailing on the Continent that an accused person is guilty until he is proved to be innocent. The questioner stated that in both cases trial and procedure follow identical lines. After a proper though somewhat unusual silence, it was suggested by way of answer that the presupposition that a man is guilty was one that produced in the mind of the jury a different outlook from that prevailing in the mind of an English jury, and that the question was mainly psychological. Another member said that the barrister had to assume that his client was guiltless if he was to do his best, and the Continental principle did not conduce to that state of mind. Finally, a view was expressed that the facts might not be as stated, and that no further progress could be made on the legal basis. Time then mercifully came to the rescue of the Brains Trust. There can be no doubt of the English rule. Lord Sankey said in *R* v. *Woolmington* (1935) A.C. 462, that throughout the web of the English criminal law one golden thread was always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt. Where there was at the end of the case a reasonable doubt, created either by the evidence for the prosecution or by that of the defence, the prisoner was entitled to an acquittal. The complications of modern life have necessitated the addition to the Statute Book of a number of cases in which the onus is placed on the defendant of proving his innocence with regard to certain facts which lie peculiarly within his own knowledge but these exceptional cases underline and do not negative the general rule. The psychological factor, as the speaker on the Brains Trust said, is by no means to be ignored where juries are concerned, and it may be that any similarity between the procedure abroad and that prevailing in England is only apparent where the trial abroad is before one Judge or a panel of Judges, who may be expected to give every assistance to the prisoner in establishing his innocence.

—*S.J.*, 1942, *p.* 80.

Binding Precedent.—In an interesting article in *The Irish Law Times and Solicitors' Journal* for 4th April, on "Precedents and the Common Law", the writer traces the history of the doctrine of binding precedent as applied in the English Courts. Prior to 1356, he pointed out, the Court records in England were made in Latin, while pleading and practice were effected in the French tongue until as late as 1731. Over 100 years ago, Jeremy Bentham wrote: "Traverse the whole continent of Europe, ransack all the libraries belonging to the jurisprudential system of the several political States, add the contents all together, you would not be able to compose a collection of cases equal in variety, in amplitude, in clearness of statement, in a word, all points taken together, in

instructiveness, to that which may be seen to be afforded by the collection of English Reports of adjudged cases." The doctrine of binding precedent he stated, was only to be found in those jurisprudential systems which were based on English law. A precedent meant, in the words of Sir Frederick Pollock, that "a judgment looks forward as well as backwards. It not only ends the strife between the parties, but lays down the law for similar cases in the future". Precedents, he said, were freely quoted in the eighteenth century, and Blackstone, in the first book of his "Commentaries," published in 1765, pronounced it to be the duty of the presiding Judge to adhere to them. Probably the present doctrine of strict adherence was not fully established until the latter part of the nineteenth century. The writer stated that unless the principles of growth and change are admitted by appellate tribunals it might be that the qualities of expansion and adaptability in our common law would be greatly restricted. He suggested that a single judgment in an appellate Court gave more authority to the pronouncement of the Court than individual judgments. In Ireland, he added, the practice was to follow Irish decisions as far as possible, but reported decisions of the English Courts continued to assist Irish lawyers. Reports of American cases were accepted by the Courts as illustrations of the workings of principles. On the other hand, while decisions of Irish and Scottish Courts were not binding on Courts in England, they were invariably received there with the greatest respect. It is necessary to add that the amount of respect accorded to judgments of courts administering a legal system with a common origin to our own, necessarily varies with the name of the Judge, and even in the confines of our own legal system that principle has been known to apply. In England an admonition to tribunals not to apply precedents too rigidly where the circumstances of society have changed might be considered superfluous having regard to the number of cases in which that has been recognised, notably in the many cases dealing with the subject of restraint of trade. At a time when the liberties guaranteed by the English common law are in peril nothing but good can come from exchanges of views concerning the development of our common heritage.—*S.J.* 1942, *p.* 121.

BOOK REVIEW.

LEGAL RIGHTS OF HINDU WOMEN, by K. B. Gajendragadkar, Pleader, Satara, with a foreword by the Right Hon'ble M. R. Jayakar, published by the Indian Institute of Sociology, Bombay, 1942.

This brochure was meant essentially for the consideration of the Hindu Law Committee. It is aimed at elucidating the true and rational basis of reform in Hindu law towards a just and adequate recognition of the rights of women. The suggestions of the author, though on some points—that divorce should be allowed in cases of extreme hardship in Hindu marriages, that suits for jactitation of marriage should be permitted where either spouse is suffering from inherent incapacity for the purpose of marital duties, that marriages in contravention of the Child Marriage Restraint Act should be made void, that provi-

sion for the registration of marriages like births and deaths should be made, etc.—debatable are generally such as to find acceptance. There are some grmmatical and typographical errors which could have been easily avoided. The appendices, particularly the one giving an outline of the Baroda Government's legislation regarding Hindu law will be found to be highly interesting.

A TEXT-BOOK OF EQUITY, by D. Bose, M.A., B.L., published by G. N. Sarkar, 6-A, Dinabandhu Lane, Calcutta, 1942, 249 pages. Price Rs. 3.

In its framework the book is a second edition of the author's Students' Handbook of Equity published in 1934. The present edition is intended to fulfil the general requirements of a text-book for students. The author has candidly stated that it is essentially "a work of compilation whose novelty lies in its arrangement and mode of presentation". The points have been taken from standard works, judiciously arranged and lucidly set out. There are sixteen chapters of which the first four deal with principles of equity and equitable estates generally, while Chapters V to IX deal with trusts and the other chapters with miscellaneous topics like Satisfaction and Ademption, Conversion, Election, Mortgages, Liens, Equitable Relief in Contracts, etc. The footnotes given are generally helpful. We have great pleasure in welcoming the publication.

CENTURY EDITION OF ALL-INDIA CRIMINAL DIGEST, (1840-1941), Vol. II, by A. N. Khanna, Advocate, Lahore, published by Atma Ram & Sons, Lahore.

This volume covers the case-law bearing on Ss. 240 to 487 of the Code of Criminal Procedure. It fully maintains the high standard set by the first volume and is alive to the dual objective of the author, namely, that it should serve the purpose of a digest and a subject index. The headings and sub-headings adopted are such as to conduce to clarity. The points are intelligently grouped and the matter is set out briefly and yet lucidly. The volume is very well got up and will be highly useful to the members of the legal profession.

THE LAW OF INSURANCE, by Bishan Nath, Advocate, Lahore, second edition, 1942, published by the University Book Agency, Lahore, Price Rs. 5.

This book gives the text of the Insurance Act—Act IV of 1938—as amended by subsequent legislation, as also the rules framed under the Act. Short notes are appended to some of the sections with a brief advertence to case-law, wherever the points are knotty. The synopsis of the Act given at the beginning stating the requirements of the Act for an Insurer and for a Provident Fund Society, Powers and duties of a Superintendent of Insurance, Powers of the Central Government, Rights of a Policy-holder, etc., forms a helpful feature of the book. The book is a welcome addition to the literature on the subject and will be of use to lawyers and insurance companies alike.
