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CHANGE IN THE WORKING HOURS OF THE HIGH COURT.

The High Court sits from the first of this month at 11 A.M. (corresponding to 10 A.M. according to the time observed till that date) and the commencement of the judicial labours is thus in effect advanced by half an hour. Any change in the working hours of the Courts is a matter affecting alike the Bench, the members of the Bar and the litigant public. "Go by the clock and you will not be in difficulties" is no doubt attractive advice but hardly fits into the Indian habits of life, particularly those of the Hindus. "Go by the sun and regulate your round of duties" has been their guiding principle and it will not be easy for them to adjust themselves to the changed conditions. The religious duties starting with the rising of the sun cannot be pushed back; nor will it be easy for practitioners in a hurry not possessing conveyances of their own to find accommodation in public conveyances during the hours of 9-30 and 10-30 A.M., in view of the considerable reduction in the number of vehicles plying and the congestion likely to be caused in passenger traffic due to all Government and other offices being scheduled to start work more or less at about the same time. We do not know whether the hours of working hitherto observed have been a source of inconvenience to any or whether the change is due to other paramount reasons. Be that as it may, it would have been satisfactory if the opinion of the Bar had been ascertained generally before any final decision was reached in the matter.

Apropos of the change in the working hours, it will be interesting to recall that in England in the 15th century the Courts used to sit at 8 A.M., but the judicial session was short and terminated at 11 A.M. Later on, as stated by Sir Frederick Pollock (the father of the great jurist) the Courts began to sit at 9 A.M. and continued till 4 P.M. Later still, the sittings commenced at 10 A.M. and it is to Mr. Justice Willes, one of the first Judges to live out of London, that the legal profession owed the practice of the Courts starting to function at 10-30 A.M. If in England where daylight fails early the Courts can start work at 10-30 A.M., in India where daylight continues for a long time, surely no inconvenience is likely to result by the Courts commencing their work at 11-30 A.M. according to the new standard time.

THE MADRAS AGRICULTURISTS' RELIEF (AMENDMENT) BILL, 1942.

In February, 1941, the case for a Validation Act was pressed on the attention of the Government for immediate action.[1] Since then a year and a half has passed. A Bill has now been published for eliciting public opinion and there is not much chance of the Bill becoming law before the beginning of 1943, even if the Government could spare time and attention for this matter in the midst of its present engrossing preoccupations.

Remedial legislation may be welcome at any time if it should relate to the permanent rights and duties of citizens. The Agriculturists' Relief Act is itself a remedial legislation of temporary interest only, intended in the main to give relief to debtors in respect of their debts as on a particular date, namely, 1-10-1937. Since then parties have resorted to Civil Courts and at present a good part of the disturbing effects of the Act may be considered to have become a thing of the past. Two Judges of the High Court before whom most of the cases relating to the Act have been posted, have imparted a fair degree of uniformity of interpretation and application and it would seem that litigants and lawyers have more or less settled down over the disturbance created by the Act with all its inequalities and incongruities.

When in 1941 remedial interference was called for by reason of a Full Bench decision taking away a right of appeal in one matter attempted to be conferred by the rules, prompt legislation was of the very essence of the relief to be provided for. In matters like the present, delayed relief is likely to do more harm than the supposed mischief of a declared law by an authoritative decision of a Full Bench. Whether the Full Bench decision is right or wrong, whether the particular rule is *intra vires* or *ultra vires*, the situation has quieted down to an extent that one may take leave to doubt whether after all this delay, a Validation Bill will in any degree be a blessing. It may even be thought unwise that a remedial legislation should be staged at a time when it is likely to cause further disturbance of settled rights and notions.

The Madras Agriculturists' Relief Act provided by section 19 for an application to Courts which had passed decrees, for settling the amount due after scaling them down in accordance with the provisions of the Act. That application was one to amend a decree or to enter up satisfaction of a decree as the case may be. A Bench of the High Court on 20-9-39 took the view that petitions under section 19 of the Act raised questions relating to the discharge or satisfaction of the decree and therefore came within section 47, Civil Procedure Code. On 21-7-39 another Bench of the High Court took the view that an application under section 19 did not raise a question relating to the execution of the decree in the absence of a pending execution application and no appeal therefore lay against orders passed under section 19. When judicial opinion thus differed, the Government

1. (1941) 1 M.L.J. p. 31 (Journal).

framed certain rules with a view to give effect to the provisions of the Act. They preferred to state in the form of rules that orders on applications under section 19 were appealable as from orders under section 47, Civil Procedure Code (rule 8). The rules thus framed may well be regarded as declaratory of the view of the Legislature. Several appeals had been filed and had been disposed of or were pending when the High Court constituted a Full Bench for deciding the question whether the rules in so far as they related to appealability of orders under section 19 were *ultra vires* the Provincial Government. On 5-12-1940 the Full Bench declared that the provision in those rules relating to appeals in so far as it related to orders passed under section 19 of the Act was beyond the rule-making powers and that appeals from orders under section 19 were incompetent.

It was pointed out however that an appeal might lie from the amended decree if the decree was amended under section 19 of the Act. Nothing was said as to cases where by virtue of section 8 the debt should be declared discharged nor as to cases where the application under section 19 might have been wrongly rejected.

As a result of the Full Bench decision, appeals already filed in several Courts became infructuous or were withdrawn. Revision Petitions were filed in several cases—sometimes after the long delays being excused. Some Revisions were dismissed on the ground that appeals lay from amended decrees to the proper Courts. Other Revisions and Miscellaneous Appeals in the High Court got converted into regular appeals as from amended decrees. The High Court helped quicker disposal by treating the order under section 19 as the amended decree and merely collected court-fees as on an appeal from an amended decree. In several cases parties were unable to pay the heavy court-fee required as on an appeal from an amended decree, and were obliged to allow their appeals to be dismissed for non-payment of court-fees; in other cases appeals were filed, heard and decided and costs have been incurred, taxed and paid on the basis of an appeal from an amended decree.

Orders under section 19 were thus being brought up for review partly under the guise of an appeal from an amended decree and partly by way of revision. The High Court has with the existing machinery and with a liberal interpretation of the provisions of section 115, Civil Procedure Code, managed to minimise the hardships that may be said to have resulted from the Full Bench decision.

It seems in the first place highly undesirable to revive controversies over settled matters particularly as the proposed amending Bill is not content with merely regularising the rules under the Act but proposes to enlarge retrospectively the extent of the appealability regarding orders passed under the Act.

In the statement of objects and reasons it is recited that retrospective effect is intended to be given as and from 27-10-1939. We would suggest that retrospective effect if at all, may be given for the sake of uniformity from the date of the Act itself except as to applications and orders regarding non-decretal debts, appeals from which were provided for the first time in the rules framed on 27-10-1939.

We would suggest that retrospective operation of the provision relating to appealability should be given from the date of the Act, 22-3-1938, and not merely from 27-10-1939 because even the rules framed therefor on 27-10-1939 on a permissible understanding of the same gave such retrospective operation. The language of the rule is " as if such order related to the execution, discharge or satisfaction of the decree " and it looks as if it expressed a preference for the view taken in *Jami Venkatappadu* v. *Kamepalli Ramamurthi*,[1] and it will not be out of place to note here that the question of the retrospective operation of the rules was raised in the Full Bench case but was not decided in view of their conclusion that rule 8 was *ultra vires* the rule making powers.

In the case of non-decretal debts, the rules were first framed on 27-10-1939 and consequently retrospectivity can be given with effect from that date. The rules which were framed for non-decretal debts have been declared by the High Court to be within the rule-making powers, see *Swayamprabhai Ammal* v. *Muthukrishna Padayachi*[2] and *Venkayya* v. *Pullayya*.[3] This is now the settled view and in view of the practice of the High Court there is no likelihood of a different view being taken in this matter.

It would have been therefore sufficient to confine the Bill to merely rectifying the effect of the Full Bench decision. But if legislative authority is still believed to be necessary in the case of non-decretal debts, we would suggest that the provisions in section 19-A of the Bill may be enacted subject to the amendments pointed out herein.

We would suggest an amendment to the proviso in section 19-A (1) and (9) for the purpose of removing unnecessary hardships to honest and diligent litigants who otherwise may get punished for justifiable ignorance. It may be that there are cases where a creditor having an option to sue in more than one Court filed his suit in one Court and the debtor filed his application under the Act in another Court also having jurisdiction over the subject-matter of the debt. The proposed amendment would compel the suit and the application to be got together by the provisions for a return and a representation, and the entire matter being disposed of as part and parcel of one litigation. We would accordingly suggest the following amendment to section 19-A (1), namely, that the proviso should be deleted and the following proviso inserted :—

" Provided that any such application shall be transmitted to the Court where a suit for the recovery of the debt is pending and shall be treated as an application in such suit, and be disposed of in accordance with the Act."

Sub-section 19-A (3) is likely to create difficulties particularly in suits on mortgages or where there are several debtors and creditors, sureties etc. and the enquiry may be unduly prolonged in such cases and we would suggest the following amendment:—

" All persons interested in or liable to pay the debt may be made parties to such an application but orders on such applications shall

1. (1939) 2 M.L.J. 853. 2. (1942) 1 M.L.J. 303.
3. (1942) 1 M. L. J. 390.

not prejudicially affect the rights and liabilities of persons not made parties to such a proceeding."

In section 19-A (4) we would suggest that for the words "pass an order" the following words may be substituted :—

"enquire into the nature and amount of the liability and pass an order" or

"pass an order after due enquiry."

In sub-section (5) after the words "for such amount" the words "and grant, after notice to the debtor, such time for payment thereof as it may think fit" may be inserted.

Sub-section (8) may be suitably amended by making the provisions of the Civil Procedure Code relating to setting aside *ex parte* decrees and orders, applicable to proceedings under the Act. There has always been a divergence of opinion as to whether the provisions of the Code relating to matters after a decree has been passed are made applicable by the wording now adopted in sub-section 8 of the Bill. Some of the provisions like setting aside *ex parte* orders and decrees and orders of dismissal for default and provisions by way of review are so salutary that they ought to be incorporated in the powers of Courts dealing with an application or an appeal under the Act. We would accordingly suggest a separate sub-section 19-B or 25-B as follows :

"The provisions of the Code of Civil Procedure shall so far as may be, apply to applications, appeals and orders under this Act."

Sub-section (9) like sub-section (1) may operate harshly in certain cases where the creditor has filed a suit in ignorance of a proceeding by the debtor under the Act and consequently we would suggest that sub-section (9) may be amended as follows :

"No creditor shall, after notice to him by the debtor of an application made by the debtor to a Court, file a suit for the recovery of the debt sought to be scaled down, and any such suit filed by a creditor in ignorance of a debtor's application under the Act may be treated as an application for a decree under sub-section (5) and disposed of accordingly."

No provision is made in the amending Bill for the costs of the proceedings and if what has been suggested for sub-section (8) is accepted, the powers of Courts relating to costs will also apply to proceedings under the Act ; otherwise it will have to be specially provided for.

APPEALS : In the provisions relating to appeals it may be necessary to consider the case of decrees of Small Cause Courts in respect of which ordinarily no appeals lie but only revisions to the High Court and consequently if the provision for appeals is intended to be retained as it is, the forum of appeal ought to be indicated. There is a lacuna about the procedure to be followed in appeals and if what we have suggested for sub-section (8) is accepted the lacuna will disappear.

There is no provision for an appeal against orders passed under section 15 (4) and it may be desirable to introduce a clause therefor in the new section 25-A.

Section 25-A sub-clause (c) may be amended so as to confer a right of appeal both to the creditor and the debtor in respect of the debtor's status as an "agriculturist".

SECTION 4 AND RESTORATION OF APPEALS: Where any appeal stood dismissed or withdrawn either on the ground that no appeal lay or that court-fee as on an appeal from an amended decree had not been paid, the Court must be empowered to restore the appeal to its file on the application of any party thereto made within three months of the date when this Act comes into force.

Where an appeal had been converted into a revision and relief which might have been granted in the appeal was denied to any party such party must also be empowered to apply within 3 months for a rehearing of the revision with a view to reconvert it into an appeal.

In view of certain difficulties felt by Courts in dealing with certain classes of orders it may perhaps be expedient merely to refer to orders passed by Courts under certain specified sections of the Act instead of attempting to define the class of orders in the provision relating to appeals.

RETROSPECTIVITY AND SECTIONS 4, 5 AND 6: Section 4, sub-section (2) may be omitted. Difficulties of interpretation having started from 1939 it would be fair that a fresh period of three months from the date of this Act should be granted for filing appeals against all orders referred to in section 25-A and passed before the commencement of this Act.

Several appeals had not been filed under legal advice on the then state of the law and there is no reason why liberty should not also be allowed to parties to file appeals in cases where appeals are now desired to be filed. Indeed this is not likely to increase the volume of litigation for most of the difficult questions of construction arising under the Act have by now been settled by the High Court and the parties are likely to move the Courts only in clear cases by virtue of the retrospective provisions. It is believed that such instances are likely to be few at present and by the time when the Act should come into force, such cases will become fewer still.

Section 6 should not be limited to the period 27-10-39 but retrospective effect should be given to it from the date when the Act came into operation originally *i.e.* 22-3-1938 except in the case of non-decretal debts for which the rules were framed on 27-10-1939 for the first time.

The Act by its retrospectivity is apparently intended to place the parties in the position in which they would have been if the rules had not been declared *ultra vires*. In very many cases the High Court and the lower Courts have collected heavy amounts by way of court-fees and costs have been taxed and paid as on an appeal from an amended decree instead of as on a miscellaneous appeal. Are these unfortunate persons to be left without a remedy? Provision should be made for fresh taxation of court-fees and costs on the scale of miscellaneous appeals from the orders instead of on the basis of an appeal from an amended decree, and for refund of excess Court fees and costs.

Then there may be a further question whether the amending Act in so far as it relates to procedure and limitation should have the consent of the Viceroy under section 107 of the Government of India Act. Already there has been considerable delay and we trust that the Provincial Government will obtain the consent of the Government of India under section 107 sufficiently in advance and speed up the Amending Act.

SUMMARY OF ENGLISH CASES.

CHARLES OSTENTON AND CO. *v.* JOHNSTON, (1942) A.C. 130 (H.L.).

Practice—Reference to Official Referee—Investigation involving question of negligence of professional persons—Absence of appeal on findings of fact by referee—Exercise of original discretion by lower Court—If can be interfered with on appeal.

Where the findings of an Official Referee on questions of fact will be final and no appeal was permissible, investigation involving question of negligence of professional persons ought not to be referred to an Official Referee thereby depriving the right of the party to be tried by a normal tribunal with a right of appeal.

(1940) 2 K.B. 123 reversed.

Re TANKARD: TANKARD *v.* MIDLAND BANK EXECUTOR AND TRUSTEE CO., LTD., (1941) 3 All.E.R. 458 (Ch.D): (1942) 1 Ch. 69.

Will—Executors—Liability for loss to estate by delay in realising and paying debts.

Apart from any provisions contained in the will of a testator which expressly or impliedly deal with the payment of the debts, it is the duty of executors as incidental to the due administration of the estate to pay the debts of the testator with due diligence having regard to the assets in their hands which are properly applicable for that purpose, and, in determining whether due diligence has been shown regard must be had to all the circumstances of the case. The duty is owed not only to the creditors but also to the beneficiaries, for, the ultimate object of administration of an estate is to place the beneficiaries in possession of their interest, and that object cannot be fully achieved unless all debts are satisfied. There is no rule of law that it is the duty of executors to pay debts within one year. The duty is to pay with due diligence and if debts are not paid within one year the onus is thrown upon the executors to justify the delay. As beneficiaries take under the provisions of the will full effect has to be given to the terms giving the executors power to retain assets. Where the estate is saddled with speculative assets like shares the executors have a discretion to give the speculation a fair run. If by reason of the delay the shares fall in value and result in loss, the executors are not liable as their power of retention has been properly exercised.

In re SKINNER: MELBOURNE *v.* SKINNER, (1942) 1 Ch. 82.

Will—Annuity "free from income tax"—Directions—Form of.

1. If a testator directs payment of an annuity out of the income of his estate, the annuity is not payable free of income-tax unless

there is a direction in the will to that effect. If there is no such direction, income-tax is payable by the annuitant.

2. It makes no difference to the application of that rule if, in fact, the annuity is paid out of income from which income-tax has been deducted at the source before it reaches the trustees.

3. The mere use of the words "a clear annuity" or free of all deductions will not constitute a sufficient direction.

If a testator desires to free an annuitant from the payment of income-tax, he will use the words "free of income-tax," and if he wants to exclude surtax, will add the words "but not free of surtax."

Re APEX SUPPLY CO., LTD., (1942) 1 Ch. 108 : (1941) 3 All.E.R. 473 (Ch.D.)

Hire purchase—Provision for payment of a minimum amount if article returned or retaken within a certain period—Whether penalty or liquidated damages—Provision if in fraud of bankruptcy laws.

By a common form of hire purchase agreement X company (the owner) agreed to let and Y company (the hirer) agreed to hire certain articles of second hand machinery. It was provided that a sum of £ 252 should be paid on or before delivery of the goods and that a total rent of £ 1108-16-0 should be paid in 12 monthly instalments of £ 92-8-0 each, the first instalment to be paid one calendar month after the date of the agreement, and that the period of hire should be 12 months commencing from the same date. Then by another clause it was provided that if the hirer should return the goods or if the owners should retake the same before the expiration of 9 months from the date thereof, for any of certain specified reasons, the hirer should pay a further sum which with the previous payments made by him, should equal the sum of £1020-12-0 by way of compensation for the depreciation of the goods. After the delivery of the goods Y the hirer company went into liquidation within 9 months and X the owners claimed the consolidated sum of £1020-12-0 from the liquidators.

Held, that (1) the amount claimed was neither a penalty nor liquidated damages and even if it were, it was a genuine pre-estimate of the damage sustained. It was a separate contract to pay a certain sum in a certain event and that event having happened the sum became payable;

(2) the claim was not one in fraud of bankruptcy laws as it arose in a multitude of cases only one of which was the liquidation of the company.

VANDYKE *v.* ADAMS, (1942) 1 Ch. 155.

Practice—Defendant a prisoner detained in enemy territory—If "enemy" —Service of summons on cannot be dispensed with—Rules of Supreme Court, Order IX, rule 14B (1).

A soldier in His Majesty's army who has been taken prisoner during the war and is detained in enemy territory, is not an "enemy" in any sense of the word and therefore service of summons of an action against him cannot be dispensed with under the Rules of Supreme Court, Order IX, rule 14 B (1).

WILLIAMS-ASHMAN *v.* PRICE & WILLIAMS, (1942) 1 Ch. 219 : (1942) 1 All.E.R. 310 (Ch.D.).

Trusts—Constructive trustee—Solicitor acting for trustee—When liable for breach of trust.

In a suit by the beneficiaries against the trustee's solicitor, through whom a mortgage transaction was put through and subsequently the proceeds recovered were invested in preference shares in a company and a loan to the trustee's son, alleging that as he knew the money to be trust money he became a constructive trustee of the money and had the duty of showing that the trust money was duly applied in accordance with the trust,

Held, that the agent (solicitor) so long as he acts honestly owes no duty to any one except his principal and that he only becomes liable as a constructive trustee if he intermeddles in the trust by dealing with or disposing of the trust money without his principal's instructions. In the circumstances the solicitor cannot be made liable for breaches of trust committed by the express trustee.

JONES *v.* SHERWOOD, (1942) 1 K.B. 127.

Criminal trial—Conviction of alternative offences—Invalidity.

A person was charged with having committed assault or battery. On the facts proved he was guilty of battery. The justices convicted him in an alternative form, finding him guilty of assault or battery. On appeal,

Held, a conviction of alternative offences is bad and must be quashed as a person may be guilty of an assault without being guilty of a battery.

COLE *v.* LYNN, (1942) 1 K.B. 142 (C.A.).

Debtor and creditor—Assignment of debtor's property for benefit of creditors—Covenant by creditors not to sue debtor—Rights against sureties reserved—Surety's right of indemnity against the debtor—Enforceability.

Where there is an assignment of the debtor's property for the benefit of his creditors, although the provisions of the law of bankruptcy are to be imported into the deed for the purpose of ascertaining the manner and proportions in which the proceeds of sale of the property comprised in the deed are divisible among the creditors the extent of the protection obtained by the debtor by virtue of the covenant not to sue is dependent entirely on the wording of such covenant where the provisions of the law of bankruptcy are not expressly or by implication imported into the terms of the covenant. Accordingly, where under the covenant the assenting creditors are not to sue on account of their debts but the deed is not to affect the rights and remedies of the creditors against any surety the covenant did not affect a surety's consequential right of indemnity against the debtor though the surety was among the assenting creditors. The reservation as between creditor and debtor of the rights against the surety imports the continuance unimpaired of the surety's right of indemnity against the debtor.

DE BUSE *v.* MCCARTHY, (1942) 1 K.B. 156 (C.A.).

Tort—Libel—Borough Council meeting—Agenda in notice containing copy of committee's report containing defamatory statements—Transmission to public libraries—Publication—Whether privileged.

After the discovery of a shortage of petrol at one of a Borough Council's depots and the conviction of two employees for stealing the petrol, the Council appointed a committee "to inquire into the circumstances relating to the loss of the petrol" and to report thereon. One of the convicted employees had during the trial made statements tending to implicate a number of his fellow employees and in their report the committee set out a list of the names of such employees including those of the plaintiffs. The committee stated that the accusations had been reiterated before them and that the employees concerned had emphatically denied the accusations. The report contained in terms no statement that the committee found the charges proved in whole or in part, but there was a recommendation that the employees named, including the plaintiffs, should be removed from their existing positions and transferred to other positions. The town clerk sent a notice of a meeting of the Council to consider *inter alia* the report of the committee. Copies of the notice containing a full copy of the committee's report were affixed near the door of the town hall where the council was to meet and were also sent to each of the public libraries in the borough in accordance with long standing practice approved and authorised by the Council. In an action against the town clerk, mayor, alderman and councillors by the plaintiffs for damages for libel alleging that the defendants meant that each of the plaintiffs had been a party to the stealing of the petrol,

Held, that the publication was not privileged as there was no duty or interest to make the communication to the rate payers at that stage.

MONK *v.* REDWING AIRCRAFT CO., (1942) 1 K.B. 182 (C.A.).

Practice—Particulars—Claim for special damages for wrongful dismissal —Particulars from plaintiff of other employment after dismissal and period of reasonable notice—When to be ordered before delivery of written statement —Rules of practice—If can affect discretion of Judges in special circumstances.

In an action for damages for wrongful dismissal claiming reasonable notice and averring special damage the plaintiff must give sufficient particulars of it. He must state either that he has not earned any remuneration in other employment during the relevant period or that he has done so and any form of pleading or any particulars given which do not bring to the clear knowledge of the defendant which of the two implicit statements he is going to rely on, is embarrassing. Also the defendant is entitled to have particulars of what the plaintiff claims to be reasonable notice. The ordering of such particulars before delivery of defence is desirable to enable the defendants to decide whether they will pay money into Court and if so what amount and plead the same in defence. There is no rule of practice that particulars of special damages cannot be ordered. Rules of practice grow up and justify themselves as indicating that in the ordinary case judicial discretion will not be exercised in a particular way, but no such rule of practice can be binding where complete discretion is

given, and if a Judge considers that an order should be made in the special circumstances of the case before him, he is certainly not bound to follow rules of practice of that kind.

OWENS *v.* MINOPRIO, (1942) 1 K.B. 193.

Criminal trial—Autrefois acquit—*Applicability—Withdrawal of summons as information not laid by authorized person—Second information for same offence—Not barred.*

A withdrawal of a summons on a preliminary point (namely that the information had not been laid by the authorized person) is not equivalent to a dismissal or an acquittal. The basic principle of the plea of *autrefois acquit* is that the person charged has already been put in peril and no man is to be put in peril twice in respect of the one charge. But where there was no withdrawal of the first summons on the merits, but in consequence of an informality in the proceedings and to correct that informality a second information was laid by a different person the justices are bound to hear the second information.

[*Pickavance* v. *Pickavance*, (1901) P. 60 at 63 held to be *obiter* and *Davis* v. *Morton*, (1913) 2 K.B. 479, applied.]

CHARENTE STEAMSHIP CO., LTD. *v.* WILMOT, (1942) 1 K.B. 210.

Income-tax—Replacement of obsolete machinery—Deductions for—Computation of amount.

A company owned a fleet of steamships. From time to time ships which were deemed to have become unsuitable for the company's business were sold and replaced by others. Three ships became obsolete in the year of assessment. In the case of one ship the allowances for wear and tear together with its sale price were less than the original cost of the ship while in the case of the other two ships the amount exceeded the original cost. On a construction of the relevant rules,

Held, that the company was entitled to an allowance in respect of the replacement of the one ship without taking into account the surplus arising in the case of the other two ships.

R. *v.* WANDSWORTH JUSTICES: *Ex parte* READ, (1942) 1 K.B. 281.

Criminal trial—Conviction by Court of summary jurisdiction—Proper remedy where there is denial of natural justice is by certiorari *application to High Court.*

Where an accused is convicted before a Court of summary jurisdiction and there has been a denial of natural justice the proper remedy is not by case stated or appeal to quarter sessions but by application to the High Court for an order of *certiorari* to quash the conviction.

KERR *v.* KENNEDY, (1942) 1 K.B. 409 : (1942) 1 All.E.R. 412 (K.B.D.).

Tort—Defamation—Slander of Women Act (1891)—*Imputation of* esbianism *to a woman—If amounts to imputation of unchastity which will be actionable without proof of special damage.*

The imputation of *lesbianism* to a woman is an imputation of "unchastity" within the meaning of the Slander of Women Act (1891) and she can succeed in an action for damages for slander notwithstanding that no pecuniary damage had been pleaded or proved by her.

WARE *v.* WARE, (1942) P. 49.

Divorce—Desertion for three years—Preceding petition for divorce—If can be broken by mere offer to return by the other spouse which is not genuine.

The principle laid down by the House of Lords in *Pratt* v. *Pratt*, (1939) A.C. 417 (that "if at any time during the three years preceding the presentation of the petition a deserting wife or husband makes a genuine offer to return to the other spouse and the other spouse refuses to accept that offer, the desertion is terminated") can be applied only if the Court is satisfied that there is a genuine offer to resume cohabitation and to behave properly as husband or wife as the case may be. Otherwise a great injustice might be done to a spouse who had been deserted for nearly three years if, at the eleventh hour when he was about to file a petition, he could be defeated by the stratagem of the offending spouse offering to return although not contrite or anxious to resume married life.

BLACKENBOROUGH *v.* SPALDIN URBAN DISTRICT COUNCIL, (1942) 1 All.E.R. 34 (H.L.).

Tort—Steer escaping into the highway from a pen in a market—Death caused by the steer to person on the highway—Market authority—Not liable.

A market for cattle and sheep cannot be treated like a menagerie of lions and tigers (though in the latter case the duty to prevent escape would in any event be higher). Cattle are animals *mansuetae naturae* and as a rule are peaceable beasts. The market authority is under no legal obligation to provide any pens. The provision of pens in a market by the market authority is not a duty undertaken in discharge of obligations to the public. Such provision is a convenience for improving the management and organisation of the market, and the liabilities which may arise from such provision are liabilities to those who use pens or resort to the market and not to the public at large. Accordingly the market authority is not liable for death or injury caused to a person on the highway by a steer escaping from the pen and running amok.

LORY *v.* GREAT WESTERN RAILWAY CO., (1942) 1 All.E.R. 230 (K. B. D.).

Torts—Damages—Pension from other funds—If can be deducted from damages payable under Fatal Accidents Act.

A widow claiming for the estate, and for herself and two children under the Fatal Accidents Act, claimed damages in respect of the death of her husband, alleged to have been due to the negligence of the defendants. The defendants admitted negligence and liability. On the question of damages,

Held, in estimating the damages to which the family is entitled, deductions have to be made in respect of pensions paid to the widow and the children from some pensions fund. The possibility of the widow's death and that of the children and the widow's remarriage must also be taken into account in fixing the amount of damages.

Re CENTRAL EMPLOYMENT BUREAU, (1942) 1 All.E.R. 232 (Ch. D.).

Charity—Establishment of fund for helping educated women and girls to become self-supporting—If valid charitable trust.

The object of a loan fund was stated to be :—" The fund exists solely for the purpose of helping educated women and girls to become self-supporting, and has no commercial object in view."

Held, in so far as it is educational it is a good charity. The implication of the gift to enable the recipients to become self-supporting is a sufficient indication that they stand on the poverty side of the border line, in the sense that they cannot be self-supporting in whatever enterprise they embarked without the assistance of the fund. Accordingly the trusts of the fund are valid charitable trusts.

Re AMAND, (1942) 1 All.E.R. 236 (K.B.D.).

Constitutional Law—Governments of allied states in England—Conscription of their subjects found in England—Power to issue decree for.

It is not contrary to British Constitutional law for the Government of an allied state (in this case the Netherlands Government) established in England with the consent of the British Government to issue a decree conscripting its subjects resident in England.

STOKER *v.* ELWELL, (1942) 1 All.E.R. 261 (Ch.D.).

Interest—Charging order silent as to interest—Interest payable.

Though interest is not mentioned in a charging order, it is nevertheless payable because when the Court has once decided that there is a charge the sum charged must bear interest.

CERAMIC (OWNERS) *v.* TESTBANK (OWNERS), (1942) 1 All.E.R. 281 (C.A.).

Practice—Appeal—Collisions at sea—Apportionment of liability between joint tort-feasors by trial Judge—Power of appellate Court to vary.

In deciding how much a ship is to blame for a collision, the Court has to decide a question which is just as much one of fact as is the question whether she is to blame at all. If an appellate Court is of opinion that the trial Judge has taken a wrong view of the respective degrees of blame to be attributed to the colliding vessels, it has, not only the right but the duty to give effect to its opinion.

REDPATH BROWN & CO., LTD. *v.* HAYES, (1942) 1 All.E.R. 298 (C.A.).

Workmen's compensation—Refusal of workman to have injured leg amputated—Reasonableness—Effect on liability of employer.

A workman's foot was crushed in an accident and after the removal of some bones, though still suffering considerable pain, he was able to

walk two miles slowly with a stick. The employers on other doctor's advice wanted the workman to have his foot amputated which he refused under the advice of another eminent surgeon.

Held, the refusal was not unreasonable in the circumstances. The employers can succeed only if they can establish that the man unreasonably refused to accept the offer to have an artificial foot supplied to him for the rest of his life in place of the injured natural foot which he was asked to get amputated.

FOSTER *v.* GILLINGHAM CORPORATION, (1942) 1 All.E.R. 304 (C.A.).

Tort—Negligence—Local authority placing barriers across road on account of bomb damage—Liability for failure to keep the obstruction lighted.

Where the local authority places barriers across the road on account of bomb damage it is its duty to keep the obstruction lighted. Where the plaintiff while riding a bicycle received injuries through colliding with the obstruction owing to its not being lighted he is entitled to recover damages from the local authority.

Re FOSTER AND SONS, LTD., (1942) 1 All.E.R. 314 (Ch.D.).

Company—Winding up—Surplus assets—Rights of preference shareholders—Extent and nature of.

Once a company has gone into liquidation, everything the company has, after it has satisfied its debts, is to be regarded as surplus assets and to be distributed amongst the members without regard to the particular provisions in the articles dealing with the payment of dividends which *prima facie* apply only while the company is a going concern. Such surplus assets or any part thereof cannot be regarded as profits available for distribution among the preference shareholders in accordance with the articles of association.

The surplus assets, remaining after repayment of capital paid on the shares to the ordinary and preference shareholders, ought to be distributed between the preference shareholders and ordinary shareholders *pari passu* in accordance with the nominal amount of their shares.

GOLD *v.* ESSEX COUNTY COUNCIL, (1942) 1 All.E.R. 326 (K.B.D.).

Tort—Negligence—Radiographer by error of judgment not applying sufficient screen while applying X-ray—Injury to patient's face—Hospital if liable.

The duty which the law implies in the relation of the hospital authority to a patient and the corresponding liability are limited. The governors of a public hospital, by their admission of the patient to enjoy in the hospital the gratuitous benefits of its care, undertake that the patient whilst there shall be treated only by experts, whether surgeons, physicians or nurses, of whose professional competence the governors have taken reasonable care to assure themselves: and, further that those experts shall have at their disposal, for the care and treatment of the patient, fit and proper apparatus and appliances. But the hospital authority does not make itself liable in damages, if members of its professional staff, of whose competence there is no question, act negligently towards the patient in some matter of professional care or skill, or neglect to use, or use negligently in their

treatment the apparatus or appliances at their disposal. Accordingly where a patient's face was injured by reason of the inadequate screening due to an error of judgment while a radiologist was giving X-ray treatment for removal of warts the hospital authority is not liable for damages for the negligence.

HUTCHINSON *v.* LONDON AND NORTH EASTERN RAILWAY COMPANY, (1942) 1 All.E.R. 330 (C.A.).

Tort—Railway—Statutory duty to provide lookout "where any danger is likely to arise" to workmen—Ganger killed while working on line—Liability.

A statutory rule required the railway company to provide a lookout "in all cases where any danger is likely to arise." Where gangers working on a line (along which trains were likely to pass every few minutes) were killed by an on coming train a railway company which did not provide the lookout, cannot contend that the danger was not an exceptional danger and the rule did not apply. If a lookout had been provided the accident would not have happened. The railway company is therefore liable for damages.

HEYMAN *v.* DARVINS, LTD., (1942) 1 All.E.R. 337 (H.L.).

Arbitration Act (1889), *S.* 4—*Repudiation of contract containing arbitration clause—Suit for damages for breach of contract—Stay of—Right to at instance of repudiating party.*

What is commonly called repudiation or total breach of contract, whether acquiesced in by the other party or not, does not abrogate the contract, though it may relieve the injured party of the duty of further fulfilling the obligations which he has undertaken to the repudiating party. The contract survives for the purpose of measuring the claims arising out of the breach ; and the arbitration clause, if there is one, survives for determining the mode of their settlement. The purposes of the contract have failed but the arbitration clause is not one of the purposes of the contract. The doctrine of approbate and reprobate does not apply to prevent the party who had declined to proceed further with the performance of his obligations to the other party from invoking the arbitration clause for the purpose of settling all questions to which his declinature has given rise. Accordingly where a suit is filed for damages for breach by repudiation of a contract containing an arbitration clause, the repudiating party can ask for the stay of the legal proceedings and take advantage of the arbitration clause.

R. *v.* HOME SECRETARY: *Ex parte* BUDD, (1942) 1 All.E.R. 373 (C.A.).

Habeas corpus—*Release of person arrested under invalid order—Re-arrest—If barred by principle of* autrefois acquit.

Where on the issue of a writ of *habeas corpus* a person detained under the *Defence Regulations* was released on the ground that the prerequisites of a lawful detention had not been complied with, the principle of *autrefois acquit* is not applicable and will not bar a subsequent detention.

REGAL *v.* GULLIVER, (1942) 1 All.E.R. 378 (H.L.).

Companies—Directors' fiduciary capacity—Acquisition by directors of shares in subsidiary company—Profit made by resale of such shares—Liability to account to the company.

The directors of the Regal (a company) with a view to the future development or sale of their company, were anxious to extend the sphere of its operations by the acquisition of other cinemas. In Hastings and St. Leonards there were two small cinemas called the Elite and the DeLuxe. Negotiations began both for their acquisition or control by lease or otherwise and for the disposal of the Regal itself. A subsidiary company was created for the purpose with a capital of £5,000 in £1 shares. The directors were the same as those of the Regal with the addition of one Garton. It was thought that only £2,000 of the capital was to be issued and that it would be subscribed by the Regal who would control it. The five directors and a solicitor of the company subscribed 500 shares each and the capital of the new company was fully subscribed, the shares duly paid for and allotted. These shares were afterwards sold at substantial profits.

Held: At all material times the directors of the main company were in a fiduciary position and they used and acted upon their exclusive knowledge acquired as such directors. They sought no authority from the company and by reason of their position and action made large profits. Accordingly they are liable to account to the company for the profits so made, but not so the solicitor and non-director in the main company.

BANK POLSKI *v.* MULDER & Co., (1942) 1 All.E.R. 396 (C.A.).

Bill of exchange—Bills drawn in Poland and accepted in London expressed to be payable in Dutch currency at named bank in Amsterdam—If general or local acceptance.

Bills were drawn in Poland and were accepted in London by a bank, and they were expressed to be payable in Amsterdam, at a named bank there, in Dutch currency. In an action upon the bills,

Held, that in the absence of an express statement that the bills were payable "only at the place specified and not elsewhere," the acceptance was not a local acceptance. The currency in which the bills is payable and the place of payment specified on the face of the bill do not indicate that the parties intended payment to be made at the specified place and there only. (1941) 2 All.E.R. 647, affirmed.

DRUMMOND *v.* HAMER, (1942) 1 All.E.R. 398 (K.B.D.).

Arbitration Act (1889), *S.* 6 (b)—*One party appointing arbitrator and giving notice to the other requiring the appointment of the other arbitrator within seven days—Default—Necessity to again appoint sole arbitrator.*

One of the parties after a reference to arbitration appointed his arbitrator. The other party however failed to appoint an arbitrator on his behalf and consequently was served with a notice requiring him within seven days from the service thereof to name an arbitrator to act on his behalf in the matters submitted, failing which the matter would stand referred to the arbitrator appointed by the first party

as the sole arbitrator. After the seven days had expired the arbitrator proceeded to act alone in the reference. On the question of the validity of the award by him,

Held, that the notice was in effect a mere statement to the other party that, as a matter of law, the one arbitrator is a sole arbitrator and it is not an appointment as sole arbitrator. Under section 6 (*b*) of the Arbitration Act the party giving the notice has to expressly appoint his arbitrator as sole arbitrator in the submission.

HOLT *v.* HEATHERFIELD TRUST, LTD., (1942) 1 All.E.R. 404 (K. B. D.).

Garnishee order—Assignment of debt prior to order—Not completed by receipt of notice by debtor—Effect—Priorities—Equitable assignment.

X and *Y* obtained judgment against *A* for £313-14-9 on June 19, 1939, for costs of an unsuccessful action brought against them by *A*. On June 15, 1940, they obtained a garnishee order *nisi* on some money owing by *C* to *A*, which was served on *C* on June 17. *A* had on June 14, 1940, the very day he recovered judgment against *C* assigned the amount due from *C* to *H* who received the assignment the next day. On June 17, *A* and *H* sent notices of assignment to *C* who did not receive them until June 18. In the circumstances *X* and *Y* claimed that (1) the assignment to *H* was void and a fraud on them and other creditors; (2) alternatively that on the date on which their garnishee order became effective (*i.e.*) June 17, 1940, *H's* title was incomplete, in that the assignment to him was only an equitable assignment until completed by notice to the debtor, and that, since it was given without consideration it was of no avail as against their rights under the garnishee order. On the evidence it was found that *H* was a *bona fide* creditor of *A*.

Held, that (1) the assignment to *H* was not in fraud of creditors ; (2) the assignment was not complete as legal assignment till the receipt of notice of it by the debtor on June 18, 1940 ; and (3) though the assignment had not been completed by notice according to the provisions of the Law of Property Act, 1925, on June 17 when *X* and *Y* served the garnishee order, it operated as a valid equitable assignment by which the rights of *X* and *Y* under the garnishee order were postponed to that of *H*. A judgment-creditor is in no better position than the assignor and cannot garnishee anything which the assignor could not honourably deal with by reason of the prior equitable assignment.

Re GENERAL MORTGAGE SOCIETY, (1942) 1 All.E.R. 414 (Ch.D.).

Companies (Winding-up) Rules (1929), *R.* 150—*Proxies in favour of Official Receiver for creditors meetings—Validity.*

Under the present R. 150 of the Companies (Winding-up) Rules, 1929, in the case of a company which is being wound up by order of the Court, the creditors have a right to appoint the Official Receiver to be their proxy at meetings of creditors convened by the Court. The decisions to the contrary under the old rules, 1881 W.N. 120 and 18 T.L.R. 503 are no longer of any effect.

INCOME-TAX COMMISSIONERS *v.* GIBBS, (1942) 1 All.E.R. 415 (H.L.)

Income-tax Act (1918), *Sch. D, cases I and II—Firm taking in new partner—If cesser in the carrying on of business by old firm and succession by new "person"—Liberal as against literal construction.*

The Income-tax Act (1918), Sch. D, cases I and II, R. 9 reads as follows:—"If a person charged under this schedule ceases within the year of assessment to carry on the trade, profession or vocation in respect of which the assessment is made, and is succeeded therein by another person * * * the Commissioners shall adjust the assessment by charging the successor with a fair proportion thereof from the time of his succeeding to the trade, profession or vocation and relieving the person originally charged from a like amount * * *."

In the case of a stock broker's business carried on for part of the year by *A*, *B*, *C* and *D* in partnership and for the next part of the year by *A*, *B*, *C*, *D* and *E*.

Held (*Lord Russell of Killowen* dissenting), that in the instant case R. 9 must be construed in the popular rather than in a technical sense and that the first partnership must be deemed to have ceased and the second partnership to have succeeded to the first.

(1940) 3 All.E.R. 613 (C.A.), reversed.

RADLEY *v.* LONDON PASSENGER TRANSPORT BOARD, (1942) 1 All. E.R. 433 (K.B.D.).

Tort—Negligence—Public omnibus—Windows liable to come into contact with overhanging branches of road-side trees—Duty of owners to avoid the obstructions.

The duty of the owners of an omnibus is a duty to take at least reasonable care that the passengers shall not be injured while they are in that omnibus. It is the duty to avoid the omnibus running into obstructions, not only on the ground but also in the air (*i.e.*) on the sides higher up like branches of road-side trees. In the absence of any evidence on the part of the owners of an omnibus, a person injured by the breaking of a window of the omnibus by crashing against an overhanging branch is entitled to recover damages on the presumed negligence of the owners.

LEADER *v.* COUNSELL, (1942) 1 All.E.R. 435 (K.B.D.).

Income-tax Act (1918), *Sch. D, case VI—Money realised by sale of right to have mares served by a horse belonging to assessee—Receipt whether of income or revenue nature—Assessability.*

On the death of his owner when *X* a famous race-horse was going to be sold, a number of race-horse owners decided that they would like to join together in order to prevent *X* being taken out of the country. Accordingly, they empowered one *G* to bid for *X* on their behalf. After the purchase by *G*, these race-horse owners made a written agreement under which 24 of them subscribed a sum of £53,000 (£47,000 for the price of the horse and the remainder

for working capital). Each owner took a certain number of shares. In accordance with the agreement they were entitled to send mares to *X* free in proportion to their shares ; but the management of the horse was left in the hands of a committee of three who were to regulate the number of mares which *X* might serve, the price at which he was to stand, and the suitability of the mares which might be sent to him. Subscribing owners who had no mares or no suitable mares were allowed to sell their free nominations to other owners of suitable mares. On the question of the assessability of the amounts realised by the subscribing owner by the sale of such nomination,

Held, that the owners were merely realising the fruits of the horse and the receipts were of a " revenue or income nature " and assessable as such.

BORMAN *v.* LONDON AND NORTH EASTERN RAILWAY CO., (1942) 1 All.E.R. 442 (K.B.D.).

Railways Act (1921), *Sch. III—Amalgamation of railway companies —Dismissal of employees as a measure of retrenchment which would have been done even if there was no amalgamation—If entitles such employees to compensation as for " dismissal on account of the amalgamation."*

Sch. III of the Railways Act provided *inter alia* for compensation for existing officers and servants who suffer damage " by reason of an amalgamation of railway companies." It was found that certain employees were dismissed after an amalgamation to reduce expenses and that they would have been dismissed even if there had been no amalgamation.

Held, on a construction of the relevant provisions of the schedule that the employees were not entitled to compensation as they did not suffer damage by " reason of the amalgamation."

HOBBS *v.* HUSSEY (INSPECTOR OF TAXES), (1942) 1 All.E.R. 445 (K.B.D.).

Income-tax Act (1918), *Sch. D, case VI—Payment for articles in newspaper—Assessability as revenue payment.*

Where an assessee, a solicitor's clerk, received a sum of money for the serial rights in his lifestory the true nature of the transaction is not a sale of copyright of the articles resulting in the realisation of capital but the performance of services, the sale of the copyright being subsidiary thereto.

The receipt therefore is of a revenue nature assessable to income-tax under Sch. D, case VI of the Income-tax Act.

STEELE *v.* GEORGE & CO., (1942) 1 All.E.R. 447 (H.L.).

Workmen's compensation—Fracture of ankle of workman—Refusal of workman to submit to operation—Reasonableness of refusal a question of fact unassailable in Court of appeal.

The question whether a workman was unreasonable in refusing to undergo an operation is a question of fact and where the arbitrator arrived at a finding on proper evidence that the workman was not

unreasonable in refusing to undergo an operation the decision is unassailable in a Court of appeal.

WALES (INSPECTOR OF TAXES) *v.* TILLEY, (1942) 1 All.E.R. 455 (K.B.D.).

Income-tax Act, (1918), *Sch. E—Commutation of salary and pensions—Assessability of amount received.*

A company agreed to pay its managing director £6,000 per annum and a pension of £4,000 per annum for ten years after he ceased to be managing director. Subsequently he agreed to release the company from the obligation and to serve as managing director for £2,000 per annum and in consideration the company agreed to pay him £40,000 in 2 equal instalments.

Held, the payment in commutation of the pension will be assessable as a profit, from the assessee's office.

JOTTINGS AND CUTTINGS.

The Fifth Freedom.—In a broadcast speech on 27th April, the Lord Chancellor referred to a recent speech by Hitler to the effect that there was now no law in Germany except his own will and whim. He said that Hitler, having already appointed himself Commander-in-Chief of the Army, Head of the State and Supreme War Lord, had announced that henceforward he was to be Supreme Law Lord into the bargain, and that everyone must take warning not to offend against the one and only law in Germany, which was himself. It seemed to Viscount Simon that, although this latest claim was all of a piece with what Hitler had been doing all along, it brought out in a very striking way the true nature of a totalitarian state, and emphasised one of the reasons why free men and women must fight against it, at whatever cost, to the very end. In addition to the four freedoms laid down by President Roosevelt, his lordship said that there was a fifth freedom without which no country could truly claim to enjoy liberty. That was the freedom of every citizen to appeal to the law and the courts to protect him from injury or insult, even though the wrong was committed by the misuse of official power. In this country the writ of *habeas corpus* had not been suspended. Defence Regulations imposed extra duties and liabilities and restricted in various ways the free choice which was part of our daily practice in times of peace. But Defence Regulations were all made under the authority of an Act of Parliament, and were liable to challenge by Parliament after they were made. Judges and magistrates in this country administered the law without fear or favour, and there was no power on earth which could direct them to act otherwise than in due course of law. His lordship pointed to the contrast under the system of government which the Nazis and Fascists were trying to force on the world. Whoever heard of anybody in a German concentration camp applying for a writ of *habeas corpus*? Whoever heard of anyone in Germany to-day taking proceedings against the secret police or suing the Gestapo for damages? The truth was, his lordship concluded, that these 80,000,000 or 90,000,000 Germans were living as slaves because there was no German law to protect them, and because there was no

German court that would dare to interfere with the edict of the bullies in power.—*S.J., 1942, p. 127.*

Style's Preface to his Reports.—William Style in his preface to his volume of Reports dated the 17th May, 1658, wrote: "It may be objected that the press hath been very fertile in this our age and hath brought forth many, if not too many births of this nature. I must confess this truth; but how legitimate most of them are let the learned judge decide. This I am sure of, there is not a father alive to own many of them . . . What I have presented you with is, though a homely yet a lawful issue and I dare call it my own and that, I believe, I may do with as good a right as any ever might a work of the like nature, having had as little, if not less, assistance from others in the bringing it forth as any that have travelled in this kind before me."—*S.J., 1942, p. 139.*

Legislation by Reference.—A spirited correspondence in the columns of *The Times* has revived the controversy with regard to legislation by reference. The challenge was thrown down by Mr. A. P. Herbert, M.P., in a letter to *The Times* of 19th May, in an explanation of the objections which he raised in the House of Commons to the drafting of the Pensions (Mercantile Marine) Bill. He wrote that the charge against this and many similar compositions was not that any particular passage defied understanding after due research and study, but that the whole structure was designed in the fashion of a cross-word puzzle. The Bill embodied and extensively amended three sections of a Pensions Act of 1939, and some mental scissors and imaginary paste had to be used to fit the two Acts together. Mr. Herbert asked why the sections should not be printed as amended in the Bill. He said that the present method was economical neither in paper nor in time and quoted a particularly verbose and unintelligible part of the Bill to prove his point. There were fifty lines like that in the Bill, besides forty-five lines of consequential amendments. If a judge wished to answer the question: "Is a sailing barge a ship?" three volumes of the Statute Book must be assembled on his desk. Mr. Herbert referred to a recent speech in which the Leader of the House spoke of the need to bring our democratic methods up to date, and he suggested that as an act of grace the Bill should be withdrawn for re-drafting during the Whitsun recess. On the following day *The Times* published a letter from Major Donald Anderson, in which he stated that the Government of Australia had begun drafting Bills in intelligible English many years ago, and Acts such as that governing the pay and employment of sheep shearers, which had to be hung in every shearing shed, could be understood by the least educated, and the draftsmen even used slang. In a letter to the same paper on 21st May Prof. H. A. Smith added that almost every new law was usually followed by voluminous circulars which attempted to explain the law to those who had to administer it, with enormous resultant waste. Nothing but a bad tradition, he wrote, prevented our legislation from being expressed in lucid and literary form. Such was the actual practice of other countries, and the writer knew from experience that foreign laws could be translated into English which was as clear as the original. "In our language," he wrote, "we possess an instru-

ment which is unrivalled in its delicate precision, but the instrument has been grossly misused." He added that in several American States the practice of legislation by reference was prohibited by the State Constitutions. A letter from Mr. C. H. Gray in *The Times* of 22nd May put the other point of view with regard to legislation by reference and gave an example where it would be necessary to use thirty words to avoid reference. On the following day Mr. P. J. H. Unna wrote to *The Times* quoting section 25 (1) of the Finance Act, 1936, as an example of the unintelligibility caused by legislation by reference. Most lawyers who have had experience of the horrible task of attempting to fit together what is often more of a jig-saw puzzle than a cross-word puzzle of legislation by reference will thoroughly endorse Mr. Herbert's complaint. With regard to the kindred complaint that statutes are not written in plain English, the matter is not so clear. It may be remembered that no less an authority on the writing of English than our present Prime Minister stated on 27th May, 1941, in the House of Commons that official jargon was used, not with a view to causing inconvenience, but because those who had been entrusted with expressing the views and decisions of the House in statutory form had found that the most convenient and precise method (85 S.J. 249). Professor Julian Huxley also, who may be regarded as an authority on scientific expression, recently added his voice in support of technicality in legal expression, with a view to attaining precision (*ante*, p. 121). With regard, however, to excessive legislation by reference, the issue, we submit, can be in no doubt.—*S.J., 1942, p. 149.*