MARCH OF LAW, 1980

Introduction.—Law must be stable and yet it cannot stand still[1]. It must march on. It ought to give answers which everywhere fit the facts like a glove and be reasonably certain and predictable. Yet it often appears arbitrary[2]. This is inevitable because law has to bear many burdens of human life in action, old and new, predictable and unpredictable. Law-making is undoubtedly almost exclusively the duty and function of the Legislature. Judicial legislation is interstitial but nevertheless appreciable. Through interpretation also law expands and grows. This process is what Tennyson described as law broadening from precedent to precedent. The pace and degree of the broadening depends largely on the psychology and outlook of the Judge dealing with particular fact-situations. Justice Sarkaria rightly reminds that there can be no precedents on questions of fact[3]. A case is "no doubt" decided on its particular conspectus of facts, but when the facts materially vary the law selectively shifts its focus[4].

Time was when the apex Courts had come to be looked upon as infallible and their statements of law as final. The infallibility was however only a myth. A former Judge of our High Court, Justice Ramesam used to point out how so eminent a Judge as Lord Moulton delivering the judgment of the Privy Council in the *Medur Adoption case* started it with the misleading statement that a Hindu widow in South India cannot adopt a son to her husband unless she had been authorised by him, whereas the settled law from the time of the *Ramnad case* was that even in the absence of the husband's authorisation a widow could adopt with the consent of the husband's sapindas. Even more incorrect were Lord Shaw's observations in *Sahu Ram's case,* that the pious obligation of a son to pay his father's debts under the Hindu law arose at the death of the father and for the pious obligation to run the father must have been the manager of the joint family when he incurred the debt. Regarding the House of Lords in England there was the joke that its infallibility was only because there was none to say that its decision was wrong. In this context it is interesting to note, as Justice Grover has pointed out, that the House of Lords had a kind of rebuff and Lord Denning, M.R. had a pat on the back in the *Thalidomide Babies case,* when the European Court of Human Rights set aside the decision of the former and approved the decision of the latter. In his book Due Process of Law[1], apropos this, Lord Denning remarked: "Three cheers for the European Court. But what will the House of Lords do now? Will they still regard themselves as infallible?" In India, quite for some time now, the Supreme Court has not hesitated to overrule earlier rulings. A fairly typical instance is the Court's decision in *Tulasamma* v. *Sesha Reddy*[2] overruling its earlier pronouncement in *Narain Devi* v. *Rama Devi*[3] concerning the scope of section 14 of the Hindu Succession Act. Such flexible approach conduces to the march of law in consonance with the spirit of the times and changing fact-situations reducing in some measure petrifaction of law through the operation of precedents. Another factor relevant to the march of law and influenc encing it is the attitude of the Judges. According to Justice S. M. N. Raina[4], Judges are of two kinds, conservative Judges and liberal Judges. A conservative Judge takes the law as it stands and prefers to follow the beaten track. To him justice is merely a synonym for what is lawful, and therefore, he assumes

1. Roscoe Pound. Interpretation of Legal History, p. 1.
2. Prof. H. S. Lawson. Ham'yn Lectures, Third Series.
3. *Hazari Lal* v. *The State*, (1980) 2 S.C.J. 319.
4. *Northern India Caterers* v. *Lt. Governor of Delhi*, (1980) 2 S.C.J. 105, 109.

1. P. 49.
2. (1978) 1 S.C.J. 29: A.I.R. 1977 S.C. 1944.
3. A.I.R. 1976 S.C. 2198.
4. Law, Judges and Justice, p. 66.

that justice automatically follows when a case is disposed of in one of the ways known to the law. This is no doubt justice according to law but it is technical justice. A liberal Judge too has to do justice according to law but he finds a way to mitigate the rigour of the law so as to avoid hardship to a party and thus strives to do substantial justice. Thus while a conservative Judge is merely concerned with deciding the case according to law, the liberal Judge in his quest for justice finds ways and means to do substantial justice taking care that his decision does not go against the existing law. Apart from anxiety to do "substantial justice" the need for rationalisation may also motivate interpretation of law. According to Justice Krishna Iyer "the judicial process does not stand helpless with folded hands but engineers its way to discern meaning when a new construction with a view to rationalisation is needed"[1]. The learned Judge has also laid down[2]: "It is true that Judges are constitutional invigilators and statutory interpreters, but they are also responsive and responsible to Part IV of the Constitution being one of the trinity of the nation's appointed instrumentalities in the transformation of the socio-economic order. The Judiciary, in its sphere, shares the revolutionary purpose of the constitutional order, and when called upon to decode social legislation must be animated by a goal-oriented approach. This is part of the dynamics of statutory interpretation in the developing countries so that Courts are not converted into rescue shelters for those who seek to defeat agrarian justice by cute transactions of many manifestations now so familiar in the country. The judiciary is not a mere umpire but an active catalyst in the constitutional sphere". Again *apropos* section 302 of the Penal Code, the same learned Judge observed[3]: When the legislative text is too bald to be self-acting or suffers zigzag distortion in action, the primary obligation is on Parliament to enact necessary clauses by appropriate amendments to section 302, Indian Penal Code. But if legislative undertaking is not in sight, Judges who have to implement the Code cannot fold up their professional hands but must make the provision viable by evolution of supplementary principles even if it may appear to possess the flavour of law making". In the same exordial spirit but in a minor key, Ramaprasada Rao, CJ., observed: "in these days when social justice is the order of the day, Courts also have to align themselves with such environment which would generate harmony not only between the Court and the litigant but also between the Court and the community at large". By and large, it may be said that in giving meaning to statutory provisions, "the function of Court is to gather the meaning not under dictatorship of dictionaries, but to be guided by statutory purpose, mischief to be countered and public interest to be advanced[1]". How far the tyranny of technicality in the name of legality can operate can be realised from the fact that in one case invocation of the Court's inherent power was repelled because a revision lay and the revision itself was rejected because a copy of the order was not filed though the original itself was in the file[2]. The proper approach is indicated by Lord Denning in his book "The Discipline of Law" where he stated: "Beyond doubt the task of the lawyer and of the Judge is to find out the intentions of Parliament. In doing this you must of course start with the words used in the statute; but not end with them, as some people seem to think. You must discover the meaning of words. At one time the Judges used to limit themselves to the bare reading of the statute itself—to go simply by the words, giving them their grammatical meaning and that was all. That view was prevalent in the nineteenth century and still has some supporters today. But it is wrong in principle".

One or two instances of what the modern approach expects may be noticed. It is pointed out: "Pleadings are not statutes and legalism is not verbalism. Common sense should not be kept in cold storage when pleadings are construed. ..... Law should not be stultified by sanctifying little omissions as

1. *Commissioner of Income-tax* v. *B. N. Bhattacharjee*, (1979) 2 S.C.J. 461.
2. *Authorised Officer* v. *Naganatha Ayyar*, (1980) 1 S.C.J. 118; (1980) 1 M.L.J. (S.C.) 24, 35-36.
3. *Somasundara Kounder* v. *Krishna Kounder*, (1980) 1 M.L.J. 41, 42.

1. *Subhasa Chandra* v. *State of U.P.*, A.I.R. 1980 S.C. 800.
2. See *Raj Kapoor* v. *State*, (1980) 1 S.C.J. 528, 529.

fatal flaws ..... Parties win or lose on substantial questions, not technical tortures and Courts cannot be abettors[1]". In regard to rent control: "It is too platitudinous to preach and too entrenched to shake, the proposition that rent control legislation in a country of terrible accommodation shortage is a beneficial measure whose construction must be liberal enough to fulfil the statutory purpose and not frustrate it. So construed the benefit of interpretative doubt belongs to the potential evacuee unless the language is plain and provides for eviction. The intendment must by interpretation be effectuated. That is the essence of rent control jurisprudence[2]". In the matter of bail, since denial of bail amounts to deprivation of personal liberty the Court should lean against the imposition of unnecessary restrictions on the scope of section 438, Criminal Procedure Code, 1973, especially when not imposed by the legislature ..... The beneficent provisions contained in section 438 must be saved and not jettisoned".

Whether judicial activism amounts to legislation or not, it is to be noted that the Supreme Court has been striving during the last three or four years through the judicial process to transform and reorient legal ideology, and to make law serve social justice. The redefinition of "industry" in *The Bangalore Water Supply* and *Sewerage Board case,* the charter of legal aid in *Hoskote's case,* the postulation of procedural fairness as implied in Article 21 in *Maneka Gandhi's case,* the indication that "distribution of material resources of the community" as per the directive principles would cover nationalisation of means of production in *Ranganatha Reddy's case,* evolution of new technniques to deal with strange and bizarre situations revealed in regard to under-trial prisoners in the *Sunil Batra case,* the *Hussainara Begum case,* etc., are some instances of the judicial process reorienting the law and making it humane.

Since it is now generally held that judicial process must ever be linked with social change the outlook in regard to precedents has necessarily to change. While respect for precedents affords a certain amount of certainty, its weight should not become unduly burdensome and should not have a crushing effect. The discipline of precedent should not become a mere tyranny and loyalty should not degenerate into perpetuating blindly what a Court believes to be a bad or outworn law.

The following review considers the march of law through decisions rendered chiefly by our High Court during the year 1980 under some of the relatively more important titles of the law.

Bar Council and its disciplinary powers.— In *Dakshinamoorthy* v. *Commission of Inquiry*[1], it is pointed out that the Bar Council is the repository of power to refer a matter to its disciplinary committee and acts either *suo motu* on information obtained by it or on a complaint made to it; the Bar Council as a statutory functionary, can take notice of the findings of another statutory functionary like the Commission appointed under the Commission of Inquiry Act and ponder over such information and act *suo motu,* if necessary, if it is satisfied on the facts so found, that there has been professional or other misconduct on the part of an advocate as contemplated under section 35 of the Advocates Act; the term "professional or other misconduct" appearing in the Bar Councils Act or as it is found in the Advocates Act, has to be understood as having reference to the laws of propriety, decency, and worthy living and the fitness of the person to be on the rolls as an advocate; and this has to be decided with reference to his conduct in general or with reference to his conduct touching upon a particular incident.

Constitutional law.—*Sowdambigai Motor Service* v. *State of Tamil Nadu*[2], makes it clear that the very fact that a particular subject-matter of legislation is included in the Concurrent List in Schedule VII to the Constitution shows that uniformity in respect of the law

1. *Noronha* v. *Prem Kumari Khanna,* (1980) 1 S.C.J. 446, 447.
2. *Mani Subrat Jain* v. *Raja Ram Vohra,* (1980) 2 S.C.J. 21.

1. (1980) 1 M.L.J. 121 (F.B.).
2. (1980) 1 M.L.J. 82.

made in relation to such subject-matter was not the sole consideration nor even the main consideration; independent and apart from the question of uniformity, the President is under an obligation to apply his mind to the question whether the law which the State Legislature wanted to make for the particular State differing from the law made by the Centre was necessary or not; the President while applying his mind to the question whether the State Legislature has proceeded on such a basis has no right to sit in judgment over the will and wisdom of the State Legislature and overrule or nullify the same; when the State Government proposes to make changes in a law to be made by the State Legislature departing from the provisions contained in the Central enactment on a concurrent subject it is not necessary for the State Government to refer to the provisions in the Central enactment and state in what respect the proposed State legislation departs from the Central legislation; to question the validity of the President's assent on the ground of his not applying his mind to the relevant considerations is not questioning the validity of the proceedings of the State Legislature or Parliament on the ground of any irregularity in procedure. *State of Tamil Nadu* v. *Union of India*[1], holds that what has to be seen in order to determine the applicability of Article 131 of the Constitution is whether the suit arises in the context of the Constitution, whether there is any relational legal matter involving a right, liberty, power or immunity *qua* the parties to the dispute. If there is, the suit would be maintainable but not otherwise. *Kalyanaraman* v. *Inspecting Assistant, Commissioner of Income-tax*[2], states that the confidential reports of an Income-tax Officer are the subjective satisfaction of the officer concerned though normally one is expected to come to that satisfaction on an objective assessment of the work of the subordinate; even so the High Court exercising its powers under Article 226, cannot sit in judgment over the remarks of the officer as a subjective satisfaction is not open to objective tests by the High Court. *Chelliah* v. *The Industrial Finance Corporation of India*[1], decides that whether the compulsory retirement of an employee of the Industrial Finance Corporation by its Chairman under its Staff Regulation was in his subjective satisfaction which was not open to objective scrutiny in proceedings under Article 226 and since the validity of the Staff Regulation was not in question in the instant case and the impugned order was in accordance with it no interference under Article 226 could be made. *Correya* v. *Deputy Managing Director, Indian Air Lines*[4], lays down that it should be remembered that the Courts must give redressal to a petitioner when a complaint is made that proper effect is not given to the orders passed by the High Court which orders were secured after many a hard battle; the Court cannot refuse to extend help to a person to enable him to achieve the fruits of a well-earned order; if it were to remain otherwise the scope of the writ jurisdiction will get diluted. *Canara Bank* v. *Thyagarajan*[3], expresses the view that when the concerned service regulations specifically said that an order of discharge passed as per clause (11) of Chapter XI of the Service Code was not an order of punishment arising out of disciplinary action it would not be right to treat it differently and that being so the question of violation of the principles of natural justice at any stage of the proceeding would not arise. *Rathinavelu* v. *R. C. Khanna*[4], points out that, merely because the adverse remarks against an employee have been communicated and the remarks related to indiscipline and quarrelsome nature of the employee, it cannot be said that the termination of his service was by way of punishment; it may be that the motivation of the order terminating the service was by reason of his unsatisfactory performance or unsuitability for the purpose, but that will not be considered to be by way of punishment and the order itself does not affect the future career of the employee. *Selvaraj* v. *State of Tamil Nadu*[5], holds that under Article 320 the State Public Service Commission shall be consulted on the principles to be followed in making appointments to civil ser-

1. (1980) 1 M.L.J. 327.
2. (1980) 1 M.L.J. 470.

1. (1980) 2 M.L.J. 206.
2. (1980) 1 M.L.J. 134.
3. (1980) 1 M.L.J. 352.
4. (1980) 1 M.L.J. 476.
5. (1980) 1 M.L.J. 514.

vices and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions and transfers; the consultation contemplated is with reference to the person who is proposed to be appointed or promoted by the State Government; the proposal as such will have to go in some form or other to the Service Commission with reference to a particular candidate or candidates so as to enable them to express their opinion as to the fitness of the candidates for the post; accordingly the words "any doubt about a candidate's fitness for the post" referred to in rule 3 of the Tamil Nadu Public Service Commission's Rules of Procedure can only mean about the fitness of the candidate who is proposed to be promoted and not of one who had already been rejected as not fit.

Industrial and labour law.—Muthukrishnan v. *New Horizon Sugar Mills*[1], expresses the view that the maxim *audi alterum partem* (no man should be condemned unheard) which springs from the principles of natural justice cannot be confined strictly to the conduct of legal proceedings, but ought to be made applicable to a body who is invested with authority to adjudicate upon matters involving civil consequences to individuals; the principles of natural justice appear to be equally invocable even in a case where an administrative decision is taken by a statutory functionary; failure to adhere to such principles would result in a decision which is a nullity because of total absence of jurisdiction; an industry is a society within a total society, being a segment of it; it projects rights and privileges which workers have in juxtaposition to such rights and privileges which employers have; "industrial relations" mean as they do, a totality of life, a diversity of inter-relations between labour, employer, consumer and Government; therefore, if a matter which has an impact on such relationship comes up for scrutiny and it becomes necessary for statutory functionaries under the Industrial Disputes Act, including the Government to take a decision on certain matters coming up before them, then the Government though acting in an administrative capacity should appreciate that it is a body vested with authority to adjudicate upon matters involving civil consequences to individuals. *Loganathan* v. *Beema Rao*[1], lays down that there is a total bar imposed by section 17 (2) of the Industrial Disputes Act, with reference to the maintainability of suits questioning the validity or binding nature of adjudications made under the provisions of that Act; the question of want of jurisdiction by the Labour Court on the ground that the plaintiff was not the employer of the defendant is one which could be decided by the Labour Court itself; if there was an erroneous adjudication on that aspect that should have been corrected by the plaintiff in other appropriate proceedings and resort to a civil Court by instituting a suit questioning the validity of the award is not permissible in the teeth of the prohibition contained in section 17 (2). *Manickam* v. *Cheran Transport Corporation*[2], states that for attracting section 33 (2) (*b*) of the Act the discharge must be for an act of misconduct; termination *simpliciter* or an automatic termination of service under the conditions of service or under the Standing Orders is outside the scope of section 33, and when the service of a workman stands terminated under the Standing Orders, the Government is not bound to refer the dispute arising out of such termination of service for adjudication as the claim will be inconsistent with the agreement between the parties. *Sivagnanam* v. *Presiding Officer, Labour Court*[3], lays down that as far as minimum bonus is concerned it could be agitated in an application under section 33-C (2) as it was a statutory right and there was no necessity to have it either established or declared by raising an industrial dispute or otherwise; in respect of a claim for higher bonus not springing from any settlement or award or from statute the petitioner could not straightway proceed under section 33-C (2); as and when an application is filed for the minimum bonus the Labour Court will have to entertain the claim and dispose of the same on merits after considering the management's contention that the petitioner is not a 'workman' within section 2

1. (1980) 2 M.L.J. 67 (F.B.).

1. (1980) 1 M.L.J. 281.
2. (1980) 2 M.L.J. 353.
3. (1980) 1 M.L.J. 441.

(*s*) of the Industrial Disputes Act, and that even otherwise the petitioner had disqualified himself from getting the bonus under section 9. *Meera Mohideen* v. *Subramania Aiyar*[1], expresses the view that section 33-C (1) while providing for recovery of the amount computed by the Labour Court as land revenue has also enacted that this mode of recovery is not exhaustive; it has left at large all other available modes of recovery open to the workman under the law.

Contracts and ancillary laws.—In *Sayani* v. *Bright Brothers (P.), Ltd.*[2], it is held that the Indian Contract Act, should be viewed as a code relating to the law of contracts; Chapter X dealing with agency and its various subheads have to be dealt with together; the sub-head 'revocation of authority contained in sections 201 to 210 has a purpose to serve and has a bearing on the concept of revocation, the terms 'revocation' and 'renunciation' in the sub-head of revocation of authority in sections 201 to 210 have to be read together instead of being treated in a truncated way for the purpose of interpretation; that the subhead of revocation is so comprehensive as to include revocation both by the principal as well as revocation by the agent; if sections 201 and 204 are to be understood in the realistic, legalistic and equitable sense, then whenever one of the two parties as between the principal and the agent is aggrieved by a premature determination of the right of agency without reasonable cause the other should be compensated; it is unnecessary that such compensation should be given only in a case where a period of time is fixed for the existence or continuance of such jural relationship; as revocation and renunciation of the contract may take place in a myriad ways the rights and obligations that flow from such termination can only be after the party who intends to snap such good relationship puts the other aggrieved party on reasonable notice; whether there is or not an express or implied contract that the agency should be continued for any period of time, a reasonable notice of such revocation or renunciation as the case may be is necessary. *Manavalan* v. *Mary*[3], holds that a contract of sale subject to the sanction of plan by the municipal corporation is not a contingent contract capable of being enforced only when the plan is sanctioned; a contract is a bundle of reciprocal promises and the obligations of the parties are to be performed in the same sequence as set out in the contract and one of the parties cannot insist on compliance with the obligation by the other party without in the first instance performing his own part of the contract which in the sequence of obligations is performable by him earlier.

Property Law and related legislation.—*Madhavakrishnan* v. *Sami*[1] lays down that the conditions necessary for the applicability of section 53-A of the Transfer of Property Act are: (1) The contract must be in writing signed by the transferor claiming to recover possession; (2) the transferee must have taken possession; (3) if he was already in possession he must have continued in possession and must have further done some act in furtherance of the contract; (4) the possession taken or continued must have been in pursuance of the contract to transfer; (5) such possession may be actual or constructive; taking of possession under a subsequent oral agreement necessitated by transferor's difficulty in obtaining possession from the tenants in occupation amounting more or less to a novation of the original agreement of sale will not attract the applicability of section 53-A. *Venkatarama Reddiar* v. *Abdul Ghani Rowther*[2], expresses the view that the principle of exception contained in section 76 (*a*) of the Act cannot be readily and automatically invoked by a tenant let into possession by a mortgagee with possession; that the principle of exception afforded by section 76 (*a*) applies ordinarily to the management of agricultural land and seldom has been extended to urban property so as to tie it up in the hands of the lessee or to confer on them the rights under the special statutes; it may be open to a tenant inducted upon the urban property by a mortgagee with possession to rely upon section 76 (*a*) to claim tenancy right for the full term of the tenancy notwithstanding the redemption of

1. (1980) 1 M.L.J. 114.
2. (1980) 1 M.L.J. 130.
3. (1980) 2 M.L.J. 43.

1. (1980) 2 M.L.J. 398.
2. (1980) 2 M.L.J. 179 (F.B.).

the mortgage earlier, but it is for the person who claims such benefits to strictly establish the binding nature of the tenancy created by the mortgagee on the mortgagor.

Sri Akkaloi Amman Chatram v. *State of Tamil Nadu*[1] points out that there is nothing in the scheme of the Tamil Nadu Inams (Abolition and Conversion into Ryotwari) Act (XXVI of 1963) or in the context of the definition of the term 'part-village inam estate' justifying giving to the expression "part" occurring therein a meaning other than the dictionary meaning; the only grant that is taken away from the scope of the definition is what is contained in *Explanation* 1 (*b*) to section 2 (11) and that *Explanation* will come into operation only where "a grant as inam is expressed to be only in terms of acreage or cawnies or other local equivalent"; the expression "other local equivalent" must necessarily mean equivalent in acreage or cawnies; as far as the Tanjore District is concerned the local equivalents to acreage or cawnie are only veli, mah and kuli and the reference in the purported grant to the extent of land "wherein a particular quantity of paddy can be sown or cultivated" could not constitute a local equivalent of acreage or cawnie.

In *Ramakrishnan* v. *State of Madras*[2], the Supreme Court holds that the concession available under section 5 (4) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act extends only to the stridhana property held by a female on the date of the commencement of the Act and not to property acquired thereafter; the word 'stridhana' is not used in the Act in the sense in which it is used in Hindu law inasmuch as the Act is applicable to Hindus as well as others governed by other personal laws and the expression "stridhana land" should be construed as referring only to the land held by a female on the date of the commencement of the Act and not to land inherited by her or acquired by her as a bequest at any subsequent point of time. In *Authorised Officer, Thanjavur* v. *Naganatha Ayyar*[3], the Supreme Court points out that the conditions to be fulfilled for voiding a transfer or other alienation by the Authorised Officer under section 22 are: (1) there must be a transfer or other alienation, (2) it must have taken place during the period mentioned in the section, and (3) it must have the effect of defeating any of the provisions of the Act; there is no room for importing a fourth principle that the transfer should be 'sham, nominal or bogus'; nor indeed is there any additional consideration that if the transfer is *bona fide* for family necessity or other urgency then it is good even though it defeats the provisions of the Act; thus, if any transfer defeats the provisions of the Act by reducing the extent of surplus land in excess of the ceiling available from any person, such transaction, *bona fide* or not, is void in the matter of computation of the permissible area and the surplus area: the Authorised Officer is within his power if he ignores it as void for purposes of sections 22, 7 and other ceiling-related provisions. *Muthuvel* v. *Authorised Officer*[1] states that where there was no tope on the land on the relevant date but it had been raised subsequently, no exemption in respect of such land can be claimed under section 73 (*vii*); there is no provision in the Act for exclusion of the land which has been encumbered by the holder either; the statute gives an option to the owner of lands to retain such lands as he wants within his ceiling area; though the petitioner had not exercised his option before but at the stage of appeal before the Tribunal requests that he may be permitted to retain some land declared as surplus in lieu of his offering an alternative land of the same extent, so long as the extent is the same there is no impediment in accepting the option exercised by the petitioner at the appellate stage, and the petitioner to whom the statute has given a right of option should not be deprived of the benefit merely on the ground of delay in exercising the option.

Senga Pillai v. *Varadarajan*[2] makes it clear that a co-owner merely as a co-owner does not hold any fiduciary position as regards the other co-owner; in the absence of a binding

1. (1980) 1 M.L.J. 67 (F.B.).
2. (1980) 1 M.L.J. (S.C.) 42.
3. (1980) 1 M.L.J. (S.C.) 34.

1. (1980) 2 M.L.J. 168.
2. (1980) 1 M.L.J. 424.

contract or rule of law to the contrary a co-owner is entitled to grant a lease of his share of joint property but he cannot use the land in a manner contrary to the interest of the other co-owner; if the lease purports to be of the entire properties without reference to the share of the lessor, it operates only on the share of the lessor, unless the lessor is authorised to grant a lease of the whole property; when the lease purports to be of the entire estate it will operate on any share which the lessor may acquire subsequently; as the lease cannot affect the interest of the other co-owner, the non-lessor co-owner cannot also recover any rent from such lessee or maintain a suit in ejectment against the lessee; he will be entitled to file a suit for partition against the lessee.

Hindu Law and related legislation.—In *Sri Aurobindo Society* v. *Ramadoss Naidu*[1], it is pointed out that a *de facto* guardian is not one who acts for the nonce, he is a factual guardian who acts in regular course over a period of time; excepting for legal authority to act for the minor there is practically little or no difference between him and a *de jure* guardian; *ad hoc* guardians are neither *de facto* nor *de jure* guardians; they are self-appointed guardians for the minors as it comes along and their acts are null and void and cannot bind the minor although they purported to be effected in the minor's interest. *Muthuswamy Gounder* v. *Rangammal*[2] states that it is for the coparcener claiming a share in certain property alleged by him to be joint family property to prove that it is joint family property; equally if a coparcener challenges that the property standing in the name of a female member of the family belongs to the family he should establish the same. *Durai* v. *Devarajulu Naidu*[3] lays down that if a coparcener desires to make over his interest in joint family properties it has to be in favour of the entire coparcenary as such; in which event, it would be in the nature of a renunciation and he would be in the same position as one who went out of the family and the other persons would continue in the coparcenary as reduced to that extent; according to the Mitakshara law no coparcener can dispose of his undivided interest in the coparcenary property by gift unless with the consent of the other coparceners; even a father or managing member has no power to make a gift except within reasonable limits of ancestral immovable properties and that too only for pious purposes. *Sundaramoorthy* v. *Shanmugha Nadar*[1] holds, that when the father is alive he is the only person who can deal with the properties of the minor from whichever source the minor gets the properties and not a *de facto* guardian. *Angammal* v. *Balasubramaniam*[2] states that by reason of section 11 of the Hindu Minority and Guardianship Act, after 25th August, 1956, any alienation by a *de facto* guardian is void *ab initio* and the position of an alienee from a *de facto* guardian is that of a trespasser. *Pattayi Padayachi* v. *Subbaraya Padayachi*[3], points out that section 11 applies equally to separate as well as undivided property; the management of the adult member of the family referred to in section 12 contemplates the case of a male member in management and will not cover the case of the mother looking after the undivided interest of the minor in joint family property; *vis a vis* such property the mother will be only a *de facto* guardian and therefore an alienation by her of the undivided interest of the minor would be interdicted by section 11. *Kannika Parameswari Devasthanam* v. *Sadasivam Chettiar*[4], decides that there is no presumption under Hindu law that any repurchase by a member of the joint family enured only to the benefit of the family; likewise there is no presumption that any property standing in the name of the karta or a member of the joint family is joint family property; the manager has no absolute power of disposal over joint family property for a charitable purpose and the extent of property gifted whether it was reasonable or out of proportion could not therefore arise for consideration. *Sampoornammal* v. *Rajendran*[5], expresses the view that the legal obligation of the coparceners to give a share in the property to a daughter has now become transformed into a moral obliga-

(To be continued)

1. (1980) 1 M.L.J. 118.
2. (1980) 1 M.L.J. 21.
3. (1980) 1 M.L.J. 507.

1. (1980) 1 M.L.J. 486.
2. (1980) 1 M.L.J. 242.
3. (1980) 2 M.L.J. 296.
4. (1980) 2 M.L.J. 435.
5. (1980) 2 M.L.J. 35.