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FEDERAL COURT AND JUSTICIABLE DISPUTES UNDER THE GOVERNMENT OF INDIA ACT, 1935.

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The Federal Court under the Government of India Act, 1935

The Government of India Act of 1935 marks the change in the Constitution of India from Unitary to Federal. "A Federal form of Government is found when communities, which possess for certain definite purposes a distinct political existence, join together to form a common whole without losing their separate organisation." The component parts of a federal system must, in the words of Professor Dicey, 'desire union but not desire unity'. *See* Egerton's Book on Federation and Unions within the British Empire, p. 8. In all Federal Constitutions, one of two things occur. Either the central sovereign government parts with a portion of its powers essentially dealing with all local or provincial subjects, to the provinces or states; or the provinces or states that are sovereign part with a portion of their powers in favour of the central government, essentially dealing with matters of common concern.

I. The need for a Federal Court in Federal Constitutions

After the establishment of a federal legislature whose laws are to bind directly the citizens, the need for the existence of a federal court would evidently be felt to interpret and apply those laws and to compel obedience to them. The alternative would have been to entrust the enforcement of the laws to the provincial or state courts. But they are not fitted to deal with matters of a quasi-international character. They supply no means for determining questions between different pro-

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Lecture I.

vinces or states. They could not be trusted to do complete justice between their own citizens and those of another state. Being under the control of their own provincial or state governments, they might be forced to disregard any federal law which they disapprove. And they being authorities co-ordinate with and independent of one another with no court of appeal placed over them to correct their errors or harmonise their views, they would be likely to interpret the federal constitution and statutes in different senses and make the law uncertain by the variety of their decisions. These reasons point imperatively to the establishment of a new tribunal altogether detached from Provinces or States, as part of the machinery of the new Government. *See* Bryce's American Commonwealth, Vol. I, p. 229. As regards the need for a federal judiciary Poley says in his book on the Federal Systems of the United States and British Empire, p. 2:

"In all Federal Constitutions, there are special characteristics. Among them will be found elaborate distribution of powers for the most part capable of exercise directly on the citizens of the Federation by the Federal or State authorities independently of each other; a recognition of the part played by the states in creating the union acknowledged as a rule in the composition of one branch of the Federal Legislature; the extent of a judiciary to decide the extent of the Federal and State powers and the State powers *inter se*; and a supreme law embodied in a written constitution giving effect to these principles".

Burgess in his Political Science and Comparative Constitutional Law, Vol. II, p. 326, sums up the reasons for conferring the judicial power upon the courts of the central government as follows:—

"The preservation of the supremacy and uniformity of the Federal law; the defence of International responsibility; the vindication of the sovereign dignity; the prevention of self-help between the commonwealths; the attainment of impartial decisions—these are all the commanding reasons."

Any failure in the preservation of the equilibrium of the powers of the constituent units and their integrity would involve either in the disruption of the Federation or in the development of an Imperialism. The ancient federal constitutions of the world bear clear traces of this safeguard, namely, a Federal Judiciary, in however crude a form, to regulate and settle inter-state disputes.

II: Judiciary in such Federations (Ancient, Mediaeval and Modern).

The Amphictyonic Council, the members of which retained the character of independent sovereign states possessed the right to decide all controversies between the members, to fine the aggressive party and to employ the whole force of the

confederacy against the disobedient. So too the Achaian League which flourished between B.C. 281-146. So also in the Lycian Federation. In the Germanic Federation, a confederation of sovereign states, an Imperial Chamber and an Aulic Council were the two judicial bodies having supreme jurisdiction in controversies concerning the Empire or happenings among its members. In the Swiss Confederation, whenever there was a dispute between the cantons provision is made that the parties at variance shall each choose four judges out of the neutral cantons, who, in case of disagreement choose an umpire. The tribunal under the oath of impartiality pronounces definite sentences which all the cantons are bound to enforce. In the United States of America, the judicial power is vested in the Supreme Court and such other inferior courts as Congress might establish and the decision of all federal disputes is vested in the Federal Court. Section 2 of Article III of the Constitution declares that:

> "the judicial power of the United States shall extend to all cases arising under this constitution; the laws of the United States and Treaties made or which shall be made under their authority to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states; and between a state or the citizens thereof and foreign states, citizens or subjects."

In consequence of an early decision of the supreme court that a state could be sued by a citizen of another state (*Chisholm* v. *Georgia* 2 Dall U.S. Reports 419) the eleventh amendment was passed which enacted that the judicial power of the United States should not be construed to extend to any suit in law or equity against one of the United States by citizens of another state, or by citizens or subjects of any foreign state. The Supreme Court is the final court of appeal both in civil and criminal matters. The Congress has established as inferior courts (1) Circuit court of appeals. (2) District court, the former of which heard appeals from the latter. The claims of private persons against Federal Government are dealt with by a Court of Claims.

In Canada in 1875, a Supreme Court was established by the Parliament of Canada as authorised by the Dominion Act. In addition to its appellate jurisdiction, the Supreme Court decides important questions of law or fact touching—

(*a*) The interpretation of the British North America Acts 1867 to 1886.

(*b*) The constitutionality or interpretation of any Dominion or Provincial legislation.

(*c*) The appellate jurisdiction as to educational matters by the British North America Act, 1867, or by other act or law vested in the Governor-General in Council; or

(*d*) The powers of the Parliament of Canada, or of the legislatures of the provinces, or of the respective governments thereof, whether or not the particular power in question has been or is proposed to be executed.

(*e*) Any other matter, whether or not in the opinion of the court *ejusdem generis* with the foregoing enumerations, with reference to which the Governor in Council seems to submit any such questions.

The Governor-General in Canada is empowered to refer any questions coming within the above category to the court to hear and consider it. The court certifies to him its opinion on each question with liberty for a judge to write a dissenting judgment. Notice is given to the interested parties before they are heard. The opinion, though advisory is treated as final for purposes of an appeal to the Privy Council.

The Supreme Court also exercises a jurisdiction to determine disputes—

(*a*) Where the parties have raised the question of the validity of an Act of the Parliament of Canada when in the opinion of the judge of the court in which the proceeding is pending the question is material.

(*b*) Where the parties have raised the question of the validity of an act of the legislature of the Province, where in the opinion of the judge of the court in which the proceeding is pending such question is material.

In such cases the proceeding is removed to the Supreme Court for decision whatever be the value of the matter in dispute.

These particular provisions apply to civil cases and only exist where a province has passed an Act giving the jurisdiction to the Supreme Court to hear it, thus submitting itself to the jurisdiction. The Supreme Court will in all such cases decide the validity of a Provincial as well as a Dominion or Federal Statute.

In the Commonwealth of Australia, the High Court is a Supreme Court of Federal Jurisdiction and is also a general court of final appeal for Australia. In the United States, the

Supreme Court is the highest Federal Court but is not a court of final appeal in other matters; and although the Supreme Court of Canada exercise Federal Jurisdiction, it is in its nature a general court of final appeal for Canada. Under S. 75 of the Commonwealth Act, the High Court possesses original jurisdiction in all matters, (1) arising under any treaty, (2) affecting consuls or other representatives of other countries, (3) in which the commonwealth, or a person suing or being sued on behalf of the Commonwealth is a party, (4) between states or between residents of different states, or between a state and a resident of another state, (5) in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth. Under S. 76, the Parliament of the Commonwealth may make laws conferring original jurisdiction on the High Court in any matter—

(1) Under the constitution or involving its interpretation.

(2) Arising under any laws made by Parliament.

(3) Of Admiralty and Maritime jurisdiction.

(4) Relating to the same subject-matter claimed under the laws of different states.

The High Court has jurisdiction to hear and determine appeals from all judgments, decrees, orders and sentences—

(1) Of any justice or justices exercising the original jurisdiction of the High Court.

(2) Of any other Federal Court or court exercising federal jurisdiction or of the Supreme Court of any state, of any other court of any such state from which at the establishment of the Commonwealth an appeal lies to the King in Council.

(3) Of the inter-state commission, but as to questions of law only and the judgment of the High Court in all such cases shall be final only. The constitution of South Africa under the South Africa Act (1909) is in no sense federal. The field of legislation left open to the Provincial legislature amounts to little more than "Gas and Water Government." *See* Journal of Comparative Legislation, Vol. XV (1933), p. 209. And so no reference is made to its Federal Court and its jurisdiction.

It will be seen from the above that in the United States a complete system of the Federal Courts was established, ramifying all over the Union and exercising exclusive jurisdiction in all cases arising under Federation statutes, the state courts remaining independent in state matters with no appeal from their decisions. In Canada the same courts deal with federal and

provincial questions. The Australian High Court follows a course between these extremes.

III. Indian Federal Court—(a) Its purpose

In regard to the Federation under the Government of India Act of 1935 what was said by Munro regarding the American Supreme Court in his book on the "Constitution of the United States" might well be applied to the Indian Federal Court.

"The Supreme Court is often called the Guardian of the Constitution. It has the right to declare the unconstitutionality of any law, whether passed by Congress or by a State Legislature if the court feels the law to be in conflict with the national constitution. This power to declare laws unconstitutional is not given to the Supreme Court in express terms. The court merely assumed this power in early days and has continued to exercise it. It has been beneficial in its exercise. It has held both Congress and the State Legislatures to a strict observance of the national constitution."

The same view is expressed much more tersely in the Joint Select Committee Report that:

"The Federal Court is at once the interpreter and guardian of the constitution and a tribunal for the determination of disputes between the constituent units of the Federation."

Upon the grit, the independence and the impartiality of the Federal Court depends the success of the Federation.

The Native States that join the Federation and part with a portion of their powers under the Instruments of Accession are also sovereign bodies except to the extent of the powers surrendered to the Federal Government, keeping apart considerations of paramountcy which has nothing to do with the federation under the Act. Inter-disputes between the constituent units or between any unit and the federation might arise, either constitutional regarding the interpretation of the Government of India Act of 1935 or laws passed thereunder, or regarding other disputes such as disputes over boundaries, water-rights, fisheries, etc. These disputes will await for solution either in the original or appellate jurisdiction of the Federal Court as the case may be.

III. (b) Federal Judges

Such a Federal Court is constituted under the Government of India Act of 1935. It is to be a court of record, sitting at Delhi or in such other places as the Chief Justice with the approval of the Governor-General may appoint. It consists of a Chief Justice and such number of puisne judges to start with, as His Majesty thinks fit (now the total number is fixed at three), subject to the number of puisne judges not being increased to more than six except on an address being presented by the

Federal Legislature to the Governor-General for submission to His Majesty. The Supreme Court of America has 9 judges, that of Canada 6 and the High Court of Commonwealth of Australia 7. Only a Judge of a High Court in British India or a Federated State of 5 years' standing, a Barrister of England or Northern Ireland or an Advocate of Scotland of ten years' standing or a pleader, of a minimum standing of ten years practising in British India or in a Federated State—should be a Judge of the Federal Court provided in the case of Chief Justice, he should be of fifteen years' standing. In calculating the years of standing, his tenure of judicial office after he became such barrister, advocate or pleader should be included. The age limit of the judges is fixed at sixty-five. The judges sit during good behaviour and not for pleasure of His Majesty as before and are removable by warrant under sign-manual only on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council on reference being made by His Majesty, report that he should be removed on such ground. The report of the Joint Committee on Indian Constitutional Reform, 1933-34, Vol. I, Part I, para. 322, says about the Federal Court:

"The Judges are to hold office during good behaviour and not as is at present the case with Judges of the Indian High Courts at pleasure." *See also* Chairman's Draft Report, in the Report of the Joint Committee on the Indian Constitutional Reform (1933-34), Vol. I, Part. I, para. 310.

The view expressed in Hamilton's Federalist, p. 395 about the tenure of judges is deserving of notice:

"The standard of 'good behaviour' for the continuance in office of the judicial magistracy is certainly one of the most valuable of modern improvements in the practice of Government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is no less an excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any Government to secure a steady, upright and impartial administration of the laws."

During the temporary absence of the Chief Justice his vacancy is to be filled up by one of the other judges of the Federal Court as the Governor-General may appoint in his discretion. How is the vacancy of a puisne Judge so caused to be filled up? The Act makes no provision for such an emergency. But the Act (S. 214, cl. 2) fixes the minimum of three judges for the decision of a case and the present number of judges is only three. What is to happen if, for the temporary vacancy of a Chief Justice, a puisne Judge is promoted and no fresh puisne Judge is created, seeing the absence of such a provision in the Act. It is submitted in such case the judiciary will cease

to function. But this could be avoided by a temporary Judge being appointed by His Majesty, as he could appoint a permanent one. The judges are entitled to such salaries and allowances as may be fixed from time to time by His Majesty. By an order in Council dated 18th December 1936, the salary of a Chief Justice is fixed at Rs. 7,000 and that of a puisne Judge at Rs. 5,500 per month. S. 201 proviso says that:

> "Neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."

Note the corresponding proviso in S. 221 regarding the salary of a Judge of the High Court. This section is intended to preserve the independence of the judiciary. It shall not be cut or it shall not be diminished. Is a cut or diminution valid with his consent? If the word "shall" is imperative, it suggests a negative answer. The words "after his appointment" are suggestive. Can it be varied just before his appointment? The Federal Legislature is incompetent to touch the salary of a Judge and nothing short of a Parliamentary Act can alter. The view of the Federalist by Hamilton at p. 402 as to the idea behind such proviso is worth quoting:

> "Next to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support."

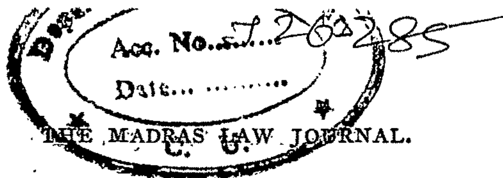
This prohibition against diminution holds good if his salary is sought to be reduced even by an Income-tax Act. But the judicial opinion does not seem to be uniform and to this we shall advert later in the fourth discourse.

S. 318 of the Government of India Act lays down that the Federal Court should begin to function even before the Federation is established, as it is possible for disputes to arise between the constituent units, or with respect to the powers of the various legislatures to enact a particular law.

III. (c) (i) Jurisdiction of the Federal Court—Original.

The jurisdiction of the Federal Court is original, appellate, advisory and miscellaneous. The original jurisdiction is exercised in the settlement of disputes between the Federation on the one hand and the provinces or Federated States on the other, or between such states and provinces or between provinces *inter se* or such states *inter se*, provided that,—

(*a*) A dispute to which a State is a party should concern itself (1) with the interpretation of the Government of India Act of 1935 or of an Order in Council made under it, or with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the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State; or (2) a dispute arises under an agreement under S. 125 by which the administration of any Federal Law in a Federated State is entrusted to the ruler thereof, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State; or (3) arises under an agreement entered into after the establishment of the Federation, with the approval of His Majesty's representative for the exercise of the functions of the Crown in its relations with the Indian States, between that State and the Federation or a Province, the agreement being one expressly providing that the said jurisdiction shall extend to such dispute. The original jurisdiction will not apply to disputes arising under an agreement expressly excluding such jurisdiction. The Federal Court will pronounce only declaratory judgments.

Inter-State and Inter-Provincial disputes would come up before the Federal Court in its original jurisdiction. Boundary disputes between the various constituent units, water disputes, disputes relating to the ownerships of rivers, ferries and fishery rights, questions relating to *intra vires* or *ultra vires* character of Acts passed by legislatures under the Government of India Act, or, other questions requiring for solution the aid of the Local Law, the Federal Law and Public International Law may arise. Financial disputes, questions of bankruptcy and insolvency, of citizenship, of trade and commerce-interstate, federal and foreign—of impairment of contracts, of corporations, of labour, of insurance, of maritime law and of aviation, of taxation and the fulfilment of treaty obligations—in fact all disputes arising out of enactments pertaining to subjects mentioned in the three lists of Schedule VII of the Act, will have to be decided in its original jurisdiction. In the case of a Federated State the original jurisdiction of the Federal Court is limited by the extent of the powers surrendered under the Instrument of Accession. But it is not competent for the Federal Legislature to give to the Federal Court original jurisdiction in subjects other than those specially enumerated. *See* Willoughby's Constitutional Law of the United States, Vol. II, 2nd edition (1924), s. 794, p. 1262.

III. (c) (ii) Appellate Jurisdiction of the Federal Court—Civil and Criminal

An appeal shall lie from every judgment or decree or final order of a High Court, if the High Court certifies that it involves a substantial question of law, on the interpretation of

the Government of India Act, 1935 or any order in Council made thereunder. And in every case, the High Court is enjoined to consider of its own motion whether there is or not such question and then to grant or refuse certificate. On the grant of the certificate, any party may appeal to the Federal Court on the ground that such question of law was wrongly decided, and on any ground on which that party could have appealed without such leave to the Privy Council, and with the leave of the Federal Court on any other grounds.

The Federal Legislature may provide for appeal from the High Court to the Federal Court without such certificate (*a*) in all civil cases in which the amount or value of the subject-matter of the suit or appeal is not less than Rs. 50,000, or such other sum not less than Rs. 15,000 as may be specified by the Act; or (*b*) in civil cases where the Federal Court gives special leave to appeal.

If such a law is made, the Federal Legislature may abolish direct appeals from High Courts in British India to the Privy Council in civil cases, wholly or in part either with or without special leave. The introduction of the above legislation and its amendment will require the previous sanction of the Governor-General.

Appeals to Federal Courts from State High Courts

An appeal shall lie to the Federal Court from a High Court of a Federated State—

(*a*) on an erroneous decision of a question of law arising from an interpretation of the Government of India Act of 1935 or of any orders in Council made thereunder;

(*b*) on a question arising from the extent of the legislative or executive authority vested in the Federation under the Instrument of Accession of that State;

(*c*) on a question arising under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature. The appeal shall be by way of special case to be stated by the High Court, and the Federal Court may require a case to be stated in order that further facts may be stated therein. (*See* S. 207.) Whenever the Federal Court wants a special case to be stated or re-stated or orders stay of execution in a case from a High Court in a Federated State or requires the aid of judicial authorities in that State, the Federal Courts shall cause letters of request to be sent in that behalf to

the ruler of that State. There cannot be any more typical example of the formal observance of nominal sovereignty of the Federated States. Though sovereignty in the Austinian sense has no place in Native States that have to recognise the paramountcy of Great Britain yet the Federated States exercises a semi-sovereignty and hence the dignified names of "Letters of Request" and "Appeals by way of special cases" in place of "orders" and "appeals". The judgment of the Federal Court shall be the opinion of the majority, the dissenting judge being at liberty to write his dissenting judgment as in the Supreme Court of United States. The Federal Court when allowing the appeal shall send it down to the lower court to give effect to its decision. All authorities, civil and criminal throughout the Federation, shall help in enforcement of the orders of the Federal Court. The Federal Court in India is not the ultimate judicial tribunal to decide all federal questions.

Has the Federal Court criminal appellate jurisdiction?

S. 205, cl. (1) says that an appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court in British India. The word *any* and not *a* seems to be advisedly used to indicate that the Federal Court has criminal appellate jurisdiction. S. 41 of the chartered High Courts of India is specially intended to confer appellate jurisdiction on the chartered High Court and does not help. Nor does S. 73 of the Australia Constitution Act, for there the word "sentences" is specifically used. It may be noted that the Supreme Court Act of Canada of 1875 confers upon the Supreme Court appellate criminal jurisdiction. Having regard to the fact that there is no criminal court of appeal to hear appeals from sentences in criminal cases on the original side of the various High Courts in India, it might be suggested that the Legislature intended to confer criminal appellate jurisdiction on the Federal Court. But there is nothing in the Select Committee Report to warrant this. Order XVI of the Federal Court rules proceeds on the basis that it has such appellate criminal jurisdiction. That rule says that:

"where any High Court in British India makes any final order in the exercise of its criminal jurisdiction whether original, appellate or revisional, and gives such certificate as is mentioned in S. 205 of the Act, any party in the case may appeal to the Federal Court within 30 days from the date of the order."

Judicial Power to suspend Sentences

Supposing the Federal Court has criminal appellate jurisdiction, the question whether it may in a criminal appeal suspend

sentence during good behaviour, so as to permanently exempt from punishment is a difficult one to answer. The right has been recently pronounced upon in the negative by the Supreme Court of the United States, as far as Federal Courts are concerned. (Ex parte *United State,* (1916) 242 U. S. 27.) That tribunal declared that there is no such right inherent in a court of law, but that the right to create crimes and establish punishments is under the Federal Constitution a legislative right. The English courts under the Common Law never exercised such a right; the farthest that they went was to suspend sentence temporarily if justice deemed to demand further legal proceeding or an appeal to executive clemency. *See also Burdick's* The Law of the American Constitution, p. 142.

III. (c) (iii) Advisory Jurisdiction of the Federal Court.

The Federal Court exercises an advisory jurisdiction under S. 213, whenever the Governor-General refers to it a question of law of public importance which has arisen or is likely to arise. This advisory jurisdiction of the Federal Court is similar to the one conferred upon the Privy Council by S. 4 of the Judicial Committee Act of 1833 which provides that His Majesty may refer to the Committee for hearing or consideration any matter whatsoever as His Majesty thinks fit and the Committee shall thereupon hear and consider the same and shall advise his Majesty thereon. This method was adopted in Re *Piracy jure gentium,* (1936) A.C. 586. From very early times the Crown and the House of Lords have called upon the English judges for advisory or consultative 'opinion'. (*See* Thayer Legal Essays, p. 46). In the Dominion of Canada the Governor-General has the right to refer such questions to the Supreme Court to find out whether an enactment is *ultra vires* or *intra vires* of the powers of the enacting legislature. Upon such reference all the parties in interest are heard, and from the decisions arrived at, an appeal lies to the Privy Council. This is practically a declaratory judgment. In Australia, the judiciary is not under a duty to give advisory opinion. In the United States of America in 1793, President Washington inquired of the Supreme Court whether their advice would be available to the executive on matters with regard to the interpretation of treaties and laws. The judges declined their advice in view of the separation of the departments of government into three, *i.e.,* the Legislature, the Judiciary and the Executive, and in view of their being judges of a court of last resort. According to article 13 of the German Constitution of 1919,

"if there is a doubt or difference of opinion the State authorities may appeal for decision to the Supreme Federal Court in accordance with the more detailed provisions to be prescribed by a Federal Law."

The Indian Federal Court might, in case of such a reference, hear the parties interested. As in the Dominion of Canada notices might be given to the Advocate-General of the Province interested. The whole court will have to sit and the opinion of the majority will be treated as the opinion of the court. The dissenting judge may write out his opinion and may send the same along with the opinion of the majority. Amongst the occasions that might arise for calling for such opinions may be included the one when the Federal or the Provincial Legislature is enacting a law which is likely to be *ultra vires* of its powers. The Governor-General might refer the question to the Federal Court before the act proposed, formed part of the Statute Book. But how far such an opinion is binding on the Federal Court when a case is brought before it in the ordinary way is a difficult question to be answered. Sir Shafa'at Ahmad Khan in his book on "The Indian Federation'' (1937), p. 243, thinks that it does not preclude the Federal Court from reversing its opinion. It may be noted that the word used in S. 213 is "opinion" and not "judgment." Though there is nothing illegal in reversing its opinion, it is not likely.

Certain mischiefs are likely to arise from the exercise of this advisory jurisdiction. Questions referred may be of a kind which it is impossible to answer satisfactorily as the whole records and evidence in the case are not before them. Secondly the right of future litigants may be prejudiced by the abstract proposition laid down by the Court without reference to facts. Thirdly, it might afford a convenient opportunity for the Governor-General to shift his responsibility. Fourthly, it may prevent the Federal Court from keeping aloof from all political or administrative controversies. A case came for consideration before the Privy Council in *Attorney-General for British Columbia* v. *Attorney-General for Canada*, (1914) A.C. 153, on appeal by the Government of British Columbia against answers given by the Supreme Court of Canada on a question of the fishery rights of the Province. The question did not arise in litigation. The Privy Council observed:

"The practice is now well established and its validity was affirmed by this Board in the recent case of *Attorney-General of Ontario* v. *Attorney-General of the Dominion*, (1912) A.C. 571. It is at times attended with inconveniences, and it is not surprising that the Supreme Court of the United States should have steadily refused to adopt a similar procedure and should have confined itself to adjudication on the legal rights of litigants

in actual controversies. But this refusal is based on the position of that Court in the Constitution of the United States, a position which is different from that of any Canadian Court, or of the Judicial Committee under the Statute of William IV. The business of the Supreme Court of Canada is to do what is laid down as its duty by the Dominion Parliament, and the duty of the Judicial Committee, although not bound by any Canadian Statute, is to give to it as a Court of review such assistance as is within its power. Nevertheless, under this procedure questions may be put of a kind which it is impossible to answer satisfactorily. Not only may the question of future litigants be prejudiced by the Court laying down principles in an abstract form without any reference or relation to actual facts, but it may turn out to be practically impossible to define a principle adequately and safely without previous ascertainment of the exact facts to which it is to be applied."

Advisory Jurisdiction of the High Court

A question might arise whether in view of the fact that the Governor-General is given such a right of reference to the Federal Court, can Provinces pass laws authorising the Governor also to refer important questions of law to the Provincial High Court. Evidently such a power is not conferred by the Government of India Act of 1935. Such a case arose in the Dominion of Canada. In 1875, 1891 and 1906, acts were passed by the Dominion Parliament authorising the executive authority of the Dominions to obtain by direct request answers from the Supreme Court of Canada on questions both of law and of fact; and nearly all Provinces have passed acts in similar terms authorising their own Courts to answer questions put by the Provincial Government. It was held that it was *intra vires* of the respective legislatures to impose this duty on the Courts. Though powers to that effect were not granted in express terms by the British North America Act of 1867, they were not repugnant thereto but incidental to the complete Self-Government of Canada which was contemplated by that Act. [See *The Attorney-General for Ontario* v. *Attorney-General for Canada*, (1912) A.C. 571.] The same kind of legislation might be made by the Legislature of the Provinces in India.

III. (c) (iv) Miscellaneous Powers

The Federal Court and the Judges have other duties of a miscellaneous character to discharge. When, under Part VI of the Act, the Governor-General under S. 124 (1) entrusts a Province or a State to carry on the Federal administration of a Province or State, if no sum has been agreed upon to be paid, then the Chief Justice may appoint one arbitrator to determine the costs of the administration incurred. (*Vide*, S. 124, cl. 4.) Again if any questions were to arise as to the existence and extent of the executive authority exercisable by a State under

the Constitution, the question may be referred to the Federal Court at the instance of the Federation or the State. Again in cases of water disputes regarding any natural source of supply between the various units forming the Federation, the Governor-General may appoint a commission for their settlement. The Federal Court if requested by the Commission shall issue such orders and letters of request in the exercise of its jurisdiction, to help the Commission in carrying on its investigation. Again, if after ten years of the formation of the Federation, a corporation tax is levied on a Federated State and if the ruler of that State is dissatisfied with the determination as to the amount payable by it in any year, he may appeal to the Federal Court, which, if satisfied with the excessive character of the amount shall reduce it; and no appeal shall lie from that decision. Again in a Railway Tribunal of three persons to be constituted to decide disputes relating to the disputes under the Federation, the President of the Tribunal is to be chosen from the Judges of the Federal Court, by the Governor-General in his discretion after consultation with the Chief Justice of India. And an appeal shall lie to the Federal Court on a question of law against any decision of the Railway Tribunal.

III. (d) Practice and Procedure.

Rules of practice and procedure may be framed and are being framed by the Chief Justice for settling periods of limitation for preferring appeals, for settling the costs of proceedings and fees chargeable on them and for summary dismissal of frivolous and vexatious appeals. The minimum number of Judges for the decision of a case shall be three; provided that when the Federal Legislature chooses to enlarge the appellate jurisdiction of the Federal Court the rules shall provide for the constitution of a special division of the Court for dealing with cases within its jurisdiction. The Chief Justice shall decide upon the sittings of Judges. The judgment shall be delivered in open Court with the concurrence of the majority, the dissenting Judge delivering separate judgment if he likes. The Government of India Act, 1935, has not conferred on the Federal Court any express power of transfer to itself of cases involving the question of the validity of any Federal or Provincial Law. But S. 225 confers on the High Court on the motion of the Advocate-General for the Federation the right to transfer from the lower courts cases involving questions relating to a Federal Act. Similarly the Advocate-General for the Federation or a Province has got the power to apply for transfer from the lower court to

the High Court if they involve questions relating to a Provincial Law. This section is evidently intended to minimise the inconvenience caused by the possibility of such acts being challenged as *ultra vires*. The Federal Court possesses, by necessary implication, the powers necessary to maintain its dignity and order, including the power to punish for contempt. The Federal Legislature may under S. 215 confer such ancilliary powers on the Federal Court to enable it to exercise more effectively the jurisdiction conferred upon it. It has to be remembered that the Federal Court is a court of limited jurisdiction and in cases brought before it, the records must show the grounds upon which the Federal jurisdiction is claimed. By the Federal Court Act 25 of 1937, the Federal Court is empowered to make rules for regulating the service of process issued by the court, including rules requiring a High Court from which an appeal has been preferred to the Federal Court to serve any process issued by the Federal Court in connection with that appeal.

IV. Appeals to Privy Council

S. 208 provides for an appeal to the Privy Council from the decision of the Federal Court, (*a*) without any leave of the Federal Court from a judgment given in the exercise of its original jurisdiction (1) on a dispute involving the interpretation of this Act or any Order in Council, (2) on a dispute relating to the extent of executive or legislative authority vested in the Federation by virtue of the Instrument of Accession of any State, or, (3) on a dispute arising under an agreement under Part VI of this Act relating to the administration in any State of a law of the Federal Legislation, (*b*) by leave of the Federal Court or of His Majesty in Council in any other case.

In *Prince* v. *Gagnon*, (1882) 8 A.C. 103, the Privy Council laid down the principles under which it acted in granting special leave, as follows:

"Their Lordships are not prepared to advise Her Majesty to exercise her prerogative by admitting an appeal to Her Majesty in Council from the Supreme Court of the Dominion, save where the case is of gravity involving matter of public interest or some important question of law, or affecting property of considerable amount, or where the case is otherwise of some public importance or of a very substantial character". See also *Clergue* v. *Murray*, (1903) A.C. 459.

When a suitor, having his choice whether to appeal to the Supreme Court or to His Majesty in Council, elects the former remedy it is not the practice to give him special leave, except in a very strong case. (*Clergue* v. *Murray*: Ex parte *Clergue*, (1903)

A.C. 521. See also *Canadian Pacific Ry.* v. *Blain,* (1904) A.C. 453 and *Victorian Ry. Commissioners* v. *Brown,* (1906) A.C. 381).

V. Punishment for contempts

"The power to punish for contempts is inherent in all courts: its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, writs of the court, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power." (*See* Ex parte *Robinson,* (1873) 19 Wallace 505 at 510. *See* The Law of the American Constitution by Burdick, p. 140.) It is submitted that the Indian Federal court possesses similar powers of punishment for contempt.

VI. Appointment of Staff

The Governor-General may direct that all appointments to the Federal Court may be made only after consultation with the Federal Public Service Commission and all rules framed by the Chief Justice relating to salaries, allowances, leave or pensions require the approval of the Governor-General. The expenses of the Federal Court shall be a charge on the Federation.

VII. Interpretation

The Government of India Act of 1935 being a Parliamentary Act, the English Interpretation Act of 1889 was made applicable by an Order in Council, dated 18th December 1937. The General Clauses Act of 1897 which is the corresponding Indian Interpretation Statute was modified by an Order in Council, dated 17th March 1937. It may be remarked that the English Interpretation Act keeps in view only the wording of the section for constructing the Act, unlike the continental method of interpretation which goes to the root to understand the meaning, *i.e.,* to the debates, reports, etc.

VIII. The Federal Court and the Common Law

There is no Federal Common Law, in other words, the law which the Federal Courts apply consists wholly and exclusively of the Federal Constitution, namely, its statutes, treaties and the laws common and statutory of the several Provinces or States. The Federal Court has no Common Law jurisdiction and there is no Federal Common Law, as distinguished from Federal Statute Law. Each Province or State may have its

local usages, customs and common law; but there is no principle which pervades the federation and has the authority of law that is not embodied in the constitution or laws of the federation. The common law could be made a part of the Federal system only by legislative action.

IX. Laws administered by the Federal Court

The law declared by the Federal Court and the Privy Council shall be binding on all courts. But what is the law that would guide the Federal Court? They are the State Law, the Federal Law and the principles of International Law.

(*a*) *State Law*.—The Federal Court will follow generally the construction put on provincial or statal statutes by local courts. The following rules are laid down in Willoughby's Constitution of the United States, Vol. II (2nd Edition), p. 1306, for guidance of Federal Courts (1) when administrating State Laws (and provincial laws), and determining rights accruing under those laws; the jurisdiction of the Federal Court is an independent one, not subordinate to but co-ordinate and concurrent with the jurisdiction of the Province or State Courts.

(2) Where before the rights are accrued, certain rules relating to real estate have been so established by decisions of Provinces or States as to become rules of property and action in the Provinces or States, those rules will be accepted by the Federal Court as authoritative declarations of the law of the Province or State.

To put in other words, (1) The Federal Court has to follow the interpretation given to it by the local courts of the Province or the State that enacted it.

(2) Where a State Court has changed its former construction of a law, the Federal Court upon a subsequent case coming before it should do likewise and thus keep ever in accord with latest decision of the State Courts.

(3) But when the case before it depends upon the doctrines of commercial law and general jurisprudence and where the law of the Provinces or States has not been settled, on those points, it is not only right, but the duty of the Federal Court to exercise its own judgment.

(*b*) *Federal Law*.—The Federal Court may apply the law passed by the Federal Legislature on subjects covered by the Federal and concurrent lists.

(c) *International Law.*—The Federal Court may apply also established doctrines of international law. In *Hilton* v. *Guyot,* 159 U.S. 113, the Supreme Court said:

"International Law in its widest and most comprehensive sense—including not only questions of right between nations governed by what has been appropriately called the law of nations but also questions arising under what is usually called private international law, or the conflict of laws, and concerning the rights of persons within the territory and dominion of one nation, by reason of acts, private or public; done within the dominion of another nation—is part of our law, and must be ascertained and administered by the courts of justice, as often as such questions are presented in litigation between man and man duly submitted to their determination."

These principles of international law need not be proved by means of experts as in the case of foreign municipal law, but may be taken judicial notice of by the federal court and if they are not already known to the court, they may be ascertained by the court of its own study of the proper sources of information.

X. Execution

The judgments of the Federal Court are only declaratory in form. The duty of executing the decree is left to the lower courts. The act binds the civil and judicial authorities in the federation to aid in the enforcement of its declaratory judgments.

The Indian Federation like the German and the Swiss Federations, stand in striking contrast to the Federations of Canada and the Commonwealth of Australia. In the latter in all matters which fall within the sphere of federal courts the central government executes by means of its officials. In the former, the federal courts must depend for their execution upon Provincial, State and Canton officials.

XI. Habeas Corpus: Power of Federal Courts to Issue

In the United States of America, the Congress has provided in express terms that the Supreme Court, its several justices, the circuit courts of appeal and their several judges and the district courts have power to issue writs of *habeas corpus.*

Has the Federal Court such power under the Government of India Act, 1935? No such power is expressly given by the Act, though S. 215 authorises the Federal Legislature to grant some subsidiary powers to give full effect to the jurisdiction conferred by the Act. The High Court in England derives such power under the common law. The date of the origin of the writ is unknown, but it is supposed to have been in use from the date of Magna Carta. *See Short and Mellor* Crown Practice (2nd Edn., 1908, p. 306). The right to a *Habeas Corpus* is

by the common law, and is not created by statute. *See Besset, In re,* (1844) 6 Q.B. 481.

"The powers of the King's Bench to issue writs of *habeas corpus* and *certiorari* were not given by any statute, for the first time, but belonged to them as representing the high prerogative powers of the King. The *habeas corpus* Act 31 of Charles II, ch. 2, did not create the power in the Court of the King's Bench for the first time and as Norman, J., remarked during the course of the argument in *Ameer Khan's case,* (1870) 6 Beng. L. R. 392, the Statute assumes the power of the judges to issue writs of *habeas corpus* at common law." *Per* Sadasiva Ayyar, J., in In re *Nataraja Iyer*, (1912) 23 M.L.J. 393: 36 Mad. 72.

Where the Federal Court is constituted by Statute, and powers of limited jurisdiction are conferred upon it, no question of any such rights under the common law arises. So it is submitted that the Federal Court possesses no right to issue the writ of *habeas corpus* under common law or under S. 215 which is only intended to clothe the Federal Legislature with authority to pass laws conferring ancillary powers on the Federal Court. That the Federal Court should be vested with powers of issuing writs such as *habeas corpus,* etc., is imperative. The glaring instances in the United States of America which rendered the vesting of the Supreme Court with the rights to issue *habeas corpus* writ are likely to arise in India. What will happen to a foreigner committed to jail in a Province or State for an alleged offence committed by him under the authority of his foreign sovereign, where the validity of his offence depend upon the law of nations; or to a federal officer committed to jail in a Province or a State while acting under Federal authority.

The development of the law of *Habeas Corpus* in the Supreme Court of the United States given in In re. *Neagle* (135 U.S. 1) is worthy of quotation here, as the law would have to be developed on similar lines in India. "The enactments now found in the Revised Statutes of the United States on the subject of the writ of *habeas corpus* are the result of a long course of legislation forced upon the Congress by the attempts of the States of the Union to exercise the power of imprisonment over officers and other persons asserting rights under the Federal Government or foreign Governments, which the States denied. The original act of the Congress on the subject of the writ of *habeas corpus,* by its 14th section, authorised the judges and courts of the United States, in the case of prisoners in jail or in custody under or by colour of the authority of the United States, or committed for trial before some court of the same, or when necessary to be brought into court to testify, to issue the writ, and the judge or court before whom they were brought was directed to make enquiry into the cause of commitment, 1

Stat. 81, c. 20, S. 14. This did not present the question, or, at least, it gave rise to no questions which came before the courts, as to releasing by this writ parties held in custody under the laws of the State. But when, during the controversy growing out of the unification laws of South Carolina, officers of the United States were arrested and imprisoned for the performance of their duties in collecting the revenue of the United States in that State, and held by the same authorities, it became necessary for the Congress of the United States to take some action for their relief. Accordingly the Act of Congress of March 2, 1833, 4 Stat. 634, c. 57, S. 7, among other remedies for such condition of affairs, provided by the 7th section, that the Federal Judges should grant writs of *habeas corpus* in all cases of a prisoner in jail or confinement, where he should be committed or confined on or before any authority or law, for any act done or omitted to be done, in pursuance of a law of the United States, or any order, process or decree of any judge or court thereof.

"The next extension of the circumstances on which a writ of *habeas corpus* might issue by the Federal judges arose out of the celebrated *McLeod case,* in which McLeod, charged with murder in a State court of New York, pleaded that he was a British subject, and that what he had done was under and by the authority of his Government, and should be a matter of international adjustment, and that he was not subject to be tried by a court of New York under the laws of that State. The Federal Government acknowledged the force of this reasoning and undertook to obtain from the Government of the State of New York the release of the prisoner but failed. He was, however, tried, and acquitted and afterwards released by the State of New York. This led to an extension of the powers of the Federal judges under the writ of *habeas corpus,* by the Act of Aug. 29, 1842, 5 Stat. 539, c. 257, entitled:

"An Act to provide further remedial justice in the courts of the United States. It conferred upon them the power to issue a writ of *habeas corpus* in all cases where the prisoner claimed that the act for which he was held in custody was done under the sanction of any foreign power, and where the validity and effect of this plea depended upon the law of nations. The plea must show that it has reference to the laws or treaties of the United States or the Law of Nations, and showing this, the writ of *habeas corpus* is awarded to try that issue.

"The next extension of the powers of the Court under the writ of *habeas corpus* was the act of February 5, 1867, 14 Stat. 385, c. 28, and this contains the broad ground of the present revised statutes, under which the relief is sought in the case before us, and includes all cases of restraint of liberty in violation of the constitution or a law or treaty of the United States and declares that the said Court or Judge shall proceed in a summary

way to determine the facts of the case by hearing testimony and the arguments of the parties interested, and if it shall appear that the petitioner is deprived of his or her liberty in contravention of the constitution or laws of the United States, he or she shall forthwith be discharged at liberty."

XII. Two questions of importance

While considering the powers of the Federal Court two questions of greatest importance to political science and comparative constitutional law have to be noted. They are (1) whether the constitution has conferred upon the Judiciary a power to stand between the constitution and legislature and to impose its interpretation of the constitution upon the legislature; and (2) whether the constitution has conferred upon the Federal Court the power of independent interpretation in all the branches of their jurisdiction.

The Federal Court has power or can assume the power to stand between the constitution and the legislature and pronounce an act of the legislature null and void, whenever it comes into conflict with such private rights as, according to the interpretation to be placed upon the constitution by the Judiciary, are guaranteed in that instrument. Secondly such pronouncements of nullity could be made only when concrete cases come before it for decision.

XIII. The duty of the Federal Court onerous

The duty of the Federal Court is found to be very onerous in Federal Constitutions where Legislatures have divided their powers into Federal and Provincial. In infant Federations where the sense of civic life is not fully developed, the temptation for the party in power, to consolidate its strength, is greater. On account of this temptation, the legislatures of even such full fledged constitutions are viewed with great distrust. Much more so would it be the case of infant federations where under the guise of Cabinet Government, both the executive and legislative functions are centred in one and the same hands. In the wielding of such powers concrete instances of glaring *ultra vires* enactments are bound to arise and it will then be time for the Federal Court to exercise its chastening influence and pronounce on their validity or otherwise and keep the Provincial Legislature within bounds.

SUMMARY OF ENGLISH CASES.

GEORGE LEGGE AND SON, LIMITED *v.* WENLOCK CORPORATION, (1938) A.C. 204.

Public Health Act, 1875—*Rivers Pollution Prevention Act,* 1876—*Natural stream—Later sewage water discharged into it—If status changed to a sewer.*

The plaintiffs are the owners of certain lands situated in the borough of Wenlock and they carried on brick and tile works at Blest Hill, Madeley. There was a watercourse running through their property. The watercourse began as a natural stream and flowed through Madeley, passing by a culvert through part of the plaintiffs' property. The culvert had been made by plaintiffs' predecessors-in-title and then this was a natural stream not vested in or repairable by the local authority. For several years past about 20 houses in Madeley town discharged sewage into the watercourse and later there were 44 more houses discharging sewage likewise. The defendant is the corporation of Wenlock liable to repair all sewers vested in them and to prevent sewers becoming a nuisance. The plaintiffs sued the defendants for a declaration that the watercourse was a sewer and that the defendants were liable to repair it.

Held, that it is not in law possible to say that a flowing watercourse could change its status as a natural stream and become a sewer within the meaning of the Public Health Act, 1875, by the discharge into it of sewage water after the coming into operation of the Rivers Pollution Prevention Act, 1876. Such discharge is illegal as offending the Rivers Pollution Act and cannot have the effect of changing the status of the channel.

SOLLOWAY *v.* MCLAUGHLIN, (1938) A.C. 247.

Broker—Stocks and shares—Shares bought for the customer and shares deposited by customer sold out by brokers—Subsequent purchase of the same by brokers at profit—Nature of transactions—Fraud—Nature of the brokers' transactions kept secret from customer—Rights of customer—Conversion—Damages.

O. Company carried on business as stock brokers. In October 1929, the plaintiff instructed the company to buy for him 7,000 shares in a particular company S. on margin at market price, then 7$ a share. At the same time he deposited 3,500 shares of the S. Co. as margin. He duly received a contract note purporting to show that the transaction had been carried out in accordance with the rules of the appropriate stock exchange. The shares speedily declined in value and requests were made from time to time by the O. company for further margin or cash. The plaintiff duly complied with these requests and as a result between October and December he deposited with O. company a further 10,500 shares of

S. Co. and paid $8,000 cash. He received monthly statements showing the shares as being carried for him. In January the plaintiff decided to close the account. He paid the balance that was shown against him and got 21,000 shares (7,000 originally bought, 3,500 originally deposited and 10,500 subsequently deposited). It was found that O. company was doing this business as a scheme of fraud. The company purporting to buy and in fact making valid contracts of purchase for their clients, contemporaneously sold shares of the same company and used their clients' shares to complete these sales. When the client closed his account, the brokers O. company went into the market and bought the required shares at the then market price which was very much lower than the rate at the date of the original order by the client.

Held, that the transactions as far as the company were concerned were part of a fraudulent system of business, and were themselves fraudulent in their inception, continuance and completion. A broker is not under an obligation to retain for his client the specific shares which may be delivered to him under the contract made for his client. But he has to get into his possession and retain an equivalent number of shares. The company were employed as agents but as the agents had engaged in a scheme of fraud to defraud their principal they forfeited the right to an indemnity in respect of transactions which form part of the fraud. The principal on discovering the fraud is entitled to recover back the money paid on the footing of an honest transaction, giving credit for any benefit which he has received. As to the deposited shares, in the circumstances of the case the company never had any right to deal with them. If the transaction had been originally honest, the company would only have had a special property which, on the facts of the case, even had the transaction been honest throughout, would not have given them the right to dispose of the shares, for there never had been default. On the actual facts the disposal of the deposited shares amounted to nothing short of conversion and the client on each occasion on which the shares were sold had vested in him a right to damages for conversion which would be measured by the value of the shares at the date of the conversion.

BYNOE *v*. GENERAL FEDERATION OF TRADE UNIONS APPROVED SOCIETY, (1938) 1 Ch. 164.

Insurance (National Health)—Dentist treating a patient—Claim from patient's society approved under the National Health Insurance Act—Dentist not one registered under the Dentists' Acts of 1878 *to* 1923*—Claim against society not maintainable.*

Dr. B. was a duly qualified and registered medical practitioner under the Medical Acts who has practised for many, many years. For the last 39 years of his life, he had been confining himself to the practice of dentistry and under the law now in England one is entitled to practice dentistry though he is not a dentist regis-

tered in the Dentists' register kept under the Dentists' Acts of 1878 onwards. Under the National Health Insurance Acts of 1924 to 1928, certain benefits are secured for insured persons but those benefits are to be administered through approved societies and a medical man who treats a patient who is a member of those approved societies is entitled to obtain his remuneration not from the patient but from the society to which he belongs. Dr. B. supplied dental treatment to one *E* and applied to the defendant society of which *E* was a member for the regulation charges for such treatment. But the society declined to pay the charges on the ground that Dr. B was not on the Dentists' register.

Held, that a 'dentist' under the Dentists' Acts of 1878 to 1923 means a person who is duly registered in the Dentists' register kept under the Dentists' Acts of 1878 to 1923 or any Act amending those Acts and does not take in a person who is entitled to use the name dentist and to practise dentistry. To claim the charges from the society and not from the patient treated, the dentist must be such a dentist under the Dentists' Acts and the plaintiff Dr. B. not being one registered under those Acts would be entitled to recover from the patient but not from the society.

SUTHERLAND PUBLISHING COMPANY, LIMITED *v.* CAXTON PUBLISHING COMPANY, LIMITED, (1938) 1 Ch. 174.

Copyright—Infringement—Conversion—If cumulative or alternative damages—Limitation of time for commencement of action for conversion—Limitation Act, 1623—*Copyright Act,* 1911 *S.* 10 —*Act of conversion—Whether order to bind or sale.*

The plaintiffs, publishers of a book, sued the defendants for damages for infringement of copyright and for conversion, in that the defendants incorporated into his book part of the plaintiffs' book. The question arose as to the period of limitation, nature of the damages, etc. It was held that the damages were cumulative and not alternative. On the question of limitation,

Held, by the Court of Appeal (MacKinnon, J, dissenting) that in respect of the claim in conversion the period is six years running from the date of conversion under the Limitation Act, 1623 and not three years under S. 10 of the Copyright Act, 1911, as this is not a claim for infringement but an additional claim based on conversion.

Held, by the Court of Appeal that the act of conversion as at the date of which the value of infringing copies ought to be ascertained is not the order to the binders to bind the sheets which contained the infringing matter but the delivery by the defendant of the bound copies to the purchasers. The delivery is the first clear evidence of an intention on the part of the defendant to deal with the infringing copies in a way adverse to the plaintiff.

In re BRIDGEN: CHAYTOR *v.* EDWIN, (1938) 1 Ch. 205.

Will—Construction—Will of 1930—Bequest of "all my possessions to be......divided equally amongst all my relations"—Testatrix a spinster—Ascertainment of beneficiaries—If whole estate disposed of—Administration of Estates Act, 1925.

A testatrix *B*, a spinster, died in 1930 having executed a will a few days before. The will provided that she wished "Ethel and Hilda Harding to take possession of all my possessions to be held in trust after my death and divided equally amongst all my relations". The testatrix had no nearer relations than her sister's children, her sisters also having predeceased her. There were also remoter issue. The question was (*i*) if the estate was divisible in equal shares *per capita* amongst those who would have been entitled thereto under Part IV of the Administration of Estates Act, 1925, if the testatrix had died intestate, or (*ii*) if it was divisible as on an intestacy on the footing that the will contained no effective disposition.

Held, that it was not a case of intestacy, but a general universal gift of all that the testatrix could bequeath or devise by will.

Held, further, that before the 1925 Act the expression "all my relations" would not take in any more extensive class than would the words "my relations" and they would have been persons, other than a husband or wife, who would have been entitled to the personal estate of the deceased by virtue of the Statute of Distributions, had there been an intestacy. If the court were to read a gift to "relations" as covering everybody between whom and the testatrix there was a nexus of blood, the result would be to embark upon an inquiry which would be infinite. The result of the direction in the will that the relations should take equally is that the persons entitled under the statute having been ascertained, they would not have taken in the shares indicated by the statute, but would have taken equally.

The 1925 Act has not made any change in this respect. Only the persons to take will be the persons under the Administration of Estates Act, 1925 and not under the Statute of Distributions. It does not take in all the relations recognised by the 1925 Act as potential beneficiaries.

TRIPLEX SAFETY GLASS COMPANY *v.* SCORAH, (1938) 1 Ch. 211.

Employer and employee—Contract of employment—Express terms in contract regarding inventions, etc., by employee—Contract unenforceable as being in restraint of trade—Invention by employee in the course of employment—Cessation of employment—If employee can use the invention for his own benefit after leaving the employment—Implied term of such contracts—Employee a trustee for employers.

Under a written agreement the plaintiff company agreed to employ the defendant as an assistant chemist for three years. In 1932, in the course of his employment he discovered a method of producing acrylic acid. This discovery he made in the course of his employment, during the company's hours and using the company's materials. The company took no steps to patent the discovery or do anything in the matter while the defendant was in their employ. In 1934 the defendant left the employment and set up on his own account as a manufacturer of laboratory glass and as he discovered that acrylic acid could be used for that manufacture also he applied for a patent to protect the discovery he made in 1932. The plaintiff company thereupon sued for a declaration that the patent was held by the defendant as trustee for them, etc. It was contended for the defendant that as the contract of employment contained express provisions relating to the duties of the defendant as regards discoveries and inventions by him, the implied term implied by law was excluded and as the express terms were unenforceable as far too wide, the suit must fail.

Held, that *prima facie*, every contract made between an employer and an employee which is in restraint of trade is illegal as against public policy and not enforceable and the onus is on the employer to show that it is a contract which can be enforced because the restraint imposed is not more than is reasonably necessary for the protection of himself and his business and is not injurious to the public as a whole. But whether restrained by express contract or not, no employee is entitled to filch his employer's *property* in whatsoever form that property may be, whether it is in the form of a secret process or in some other form. On the other hand, no employer is entitled to prevent his employee from making use, in the service of any persons or on his own account, of any experience or skill which that employee has gained during his term of service with the employer.

In a case of this sort, it is a term of such employment, apart altogether from any express covenant, that any invention or discovery made in the course of the employment of the employee in doing that which he was engaged and instructed to do during the time of his employment, and during working hours, and using the materials of his employers, is the *property* of the employers and not of the employee, and that, having made a discovery or invention in course of such work, the employee becomes a trustee for the employer of that invention or discovery and he is therefore as a trustee bound to give the benefit of any such discovery or invention to his employer.

In re. BRITISH GAMES, LIMITED, (1938) 1 Ch. 240.

Company—Borrowing money by—Memorandum and promissory note signed by a director and secretary—Seal of company not

affixed—If signed personally by borrower as required by S. 6 of Moneylenders Act, 1927—Note indicating that borrowing was in consolidation of prior loans—Sufficient memorandum.

A company B.G., Ltd., borrowed money from time to time after 1931 from a money-lending company G.I.F., Ltd., and on 1st December, 1936, entered into a contract with G.I.F., Ltd., under which G.I.F., Ltd., agreed to advance 4,950*l*. upon the security of a promissory note and B.G., Ltd., agreed to pay interest at 27½ per cent. per annum thereon and pay the amount in certain instalments. This was the sum that was then owing to G.I.F., Ltd., on previous borrowings by B.G., Ltd., as for principal and accrued interest. In default of payment the whole amount became payable. A memorandum of the contract and the promissory note were executed and signed by a director and secretary of the B.G., Ltd., "for and on behalf of B.G., Ltd." But they were not sealed with the company's seal. The B.G. Co. defaulted in payment of the instalments and G.I.F. thereupon applied for the amount due in the liquidation of B.G., Ltd. It was contended by the liquidators that the contract was unenforceable as (*i*) the memorandum was not signed by the company personally and was not sealed; and (*ii*) that the memorandum was bad as it did not specify full particulars.

Held, that the contract was duly executed in accordance with S. 29 of the Companies Act, 1929 and was therefore signed "personally by the borrower" within the requirement of Moneylenders Act, 1927. It was not necessary that it should be under seal. The memorandum was sufficiently full in particulars as it indicated that it was in consolidation of previous loans.

MUSSEN *v.* VAN DIEMEN'S LAND COMPANY, (1938) 1 Ch. 253.

Contract—Vendor and purchaser—Contract to sell land—Payment to be by instalments—Failure in payment of certain instalments—Clause providing for forfeiture of instalments paid if default in payment of further instalments—If in the nature of a penalty—Court, if can relieve, against it and direct return of instalments paid.

By an agreement in writing dated 2nd November, 1927, it was agreed that the defendant company would sell and the plaintiff would purchase for 321,000*l*. the lands, etc., belonging to the defendant company in Tasmania. Of this 4,000*l*. was paid by the date of the agreement and the balance was made payable in certain instalments on the dates specified in the agreement. Cl. (12) of the agreement provided that "if the purchaser shall make default in the payment of any of the other instalments mentioned in cl. (2) hereof or any part thereof on the due dates as provided in the said clause the land company may......by notice in writing......rescind

this agreement and may either enter into possession of any lands, etc., remaining unsold whereupon all moneys already paid by the purchaser shall be absolutely forfeited to the Land company and this contract shall subject as aforesaid thereupon become absolutely null and void......" Certain sums were paid by the plaintiff in instalments as provided in the agreement but subsequently he failed to pay an instalment that fell due in May, 1931. Thereupon the defendants gave him notice that they rescinded the contract under cl. (12) of the agreement and forfeited the amounts already paid. In an action to recover the instalments already paid,

Held, that though cl. (12) provided that on rescission the contract became null and void, it did not mean that the contract became void *ab initio* in the sense of treating the contract as though it had never existed at all. The claim to refund could not be as for recovery of money had and received because the money was rightly paid under the contract and thereon it became the money of the defendants. The provision in the contract that if the plaintiff should fail to pay any of the instalments the defendant should be entitled to retain the money paid is not in the nature of a penalty as there is nothing unconscionable in the stipulation. There is nothing unconscionable on the part of the vendor, who has contracted to part with his land on agreed terms, to enforce the contract if he so desires. This is not a case where the plaintiff says that he is now willing to carry out the contract and wants relief on that basis.

Steadman v. *Drinkle,* (1916) 1 A.C. 275, distinguished.

In re NICHOLSON'S SETTLEMENT: MOLONY *v.* NICHOLSON, (1938) 1 Ch. 308.

Power of appointment—Settlement—Power to appoint in favour of one—Prior attempt with trustees of settlement to secure a benefit for appointer—Failure of—Later exercise of power in favour of the object of the power—Motive to defeat the trustees—If exercise of power fraud on the power.

A woman had a power of appointment which she could exercise in favour of any husband that may survive her for his life or for any less period and upon such conditions and with such restrictions as she shall think fit. In 1933 when she was over 80 years of age she wanted to make a provision for certain relations with whom she was living and she therefore negotiated with her relations and trustees of the settlement that if she should release her power of appointment, they should give her half of the capital to enable her to dispose of it as she pleased. Since they did not agree, she married one N.Q. in 1934 and by a deed of later date she exercised the power of appointment in favour of that husband. She died in 1936. It was contended that the appointment was bad as a fraud on the power of appointment.

Held, the question of a fraud on a power of appointment where there is one object and one object only of the power, differs widely from the question of a fraud on a power by which the fund can be given to one or more of several objects. Where there is one object only of the power it is impossible to establish a fraud unless there is evidence of some arrangement between the appointor and the appointee, not necessarily a legal bargain, but some arrangement under which the appointee is to give effect to the purpose of the appointor to benefit some one other than himself.

In re WYLES: FOSTER *v*. WYLES, (1938) 1 Ch. 313.

Will—Construction—Legacies—Provision that certain legacies shall abate if estate insufficient for paying all—Estate found insufficient—Delay in paying legacies—Interest on legacies—If also to be taken from the abated legacies and paid to the benefiting legatees.

By his will a testator bequeathed a large number of pecuniary legacies. Among them were two legacies to W.N.W. and C.D. W. two of his nephews. The will contained a clause that in the event of the estate not being sufficient to pay all the funeral and testamentary expenses, etc., and legacies in full, then "in such case the pecuniary legacies hereinbefore given to my nephews, W.N. W. and C. D. W. (they being otherwise provided for) shall abate equally......" The legacies were not paid within one year after the death of the testator. The estate also proved insufficient for payment of all legacies. Interest became payable on the other legacies under the law as the legacies were not paid within one year. The question arose whether interest should be added to the respective legacies entitled to the benefit of the direction as to abatement so as to be payable in priority to the pecuniary legacies subject to the burden of that direction.

Held, that where the estate is sufficient to pay the whole of the legacies in full, and there is a residue, it may be unjust that the residuary legatees, who are entitled to nothing until all the legacies have been paid, should benefit by the delay in paying them which they would do if the interest which the money has been earning in the meantime was paid to them and therefore the legatees will be entitled to interest on their legacies. But interests payable to a legatee is not a legacy given by the testator. It is a sum given in the course of administration to the legatee because justice requires that owing to the failure to pay his legacy in due time he should be put in the position in which he would have been had it been so paid. But here the interest cannot be taken out of the nephew's legacies.

In re LAWRY: ANDREW *v*. COAD, (1938) 1 Ch. 318.

Will—Construction—Bequest to A for life—Superadded power to deal with property as if it were her own—If the power exercisable by will or only inter vivos.

By his will a testator provided as to the residue of his estate after certain bequests as follows:—"All the remainder of my property......I give and bequeath unto and equally between my said two sisters (C.L. and A.L.) for their respective lives with full power to deal therewith as if it were their own and on the death of either of them or in the event of either or both of them predeceasing me then I give and bequeath her or their share or shares to my said nephew W.B.A. absolutely". The testator died. His sister A.L. predeceased him and the other sister C.L. died after having made a will and the question was raised if C.L. had an absolute power because if she has a general power of appointment over the property given to her by her brother's will, the will will operate as an exercise of that power.

Held, that the power was not merely an administrative power but a beneficial power which gives the donee power to deal with the property in which the testator has given her a life interest as if it were her own. There was given in this will a power to the donee of disposing of the property both during her life and after her life by a testamentary power of appointment.

HOLDEN *v*. HOWARD, (1938) 1 K.B. 442.

Landlord and tenant—Rent Restriction Acts—Rent and Mortgage Interest Restrictions Act, 1923, *S.* 2, *sub-ss,* (1) *and* (3)—*Tenant of controlled premises—Death of—Trespasser entering into possession—If landlord entered into possession thereby within the meaning of sub-s.* (1) *and sub-s.* (3).

Until her death in 1931, one Mrs. F was the tenant of a house and had sublet three rooms therein to the defendant retaining two rooms in her occupation. On her death the defendant entered into and occupied also the two rooms which were before in Mrs. F's occupation without any tenancy agreement with the landlord plaintiff. Later the landlord's agent called on him to collect rent and finding the defendant there as a trespasser with regard to the two rooms of Mrs. F, he agreed to let them to him on a rent of 22*s*. 6*d*. a week. That offer was accepted by the defendant, who paid rent on that basis for some years also. In 1936 he stopped payment on the ground that all the five rooms were controlled premises under the Rent Restriction Acts and only proper rent can be claimed. It was found that the three rooms occupied by him were *controlled* rooms but with regard to the other two, the County Court Judge held that on the death of Mrs. F they became decontrolled under S. 2, sub-s. (1) of Rent and Mortgage Interest Restrictions Act, 1923, as on the death of Mrs. F, the landlord

must be deemed to have come into possession: inasmuch as the defendants' possession was only as trespasser.

Sub-s. (1) of S. 2 of the Rent and Mortgage Interest Restrictions Act of 1923 provides that "Where the landlord of a dwelling house to which the principal Act applies is in possession of the whole of the dwelling house at the passing of this Act, or comes into possession of the whole of the dwelling house at any time after the passing of this Act," then as from certain dates set out therein "the principal Act shall cease to apply to the dwelling house". Sub-s. (3) defines possession as meaning "actual possession" and that a "landlord shall not be deemed to have come into possession by reason only of a change of tenancy made with his consent".

Held, by the Court of Appeal, that the words "actual possession" meant the actual taking of possession by the landlord by his entering on the land by himself or by his agent. It is a misconception to treat a landlord who is excluded from possession by a trespasser as being himself in possession. He is not. His proper procedure if he wants to eject the trespasser is to proceed against him for recovery of possession. After the agreement of tenancy the relationship became one of landlord and tenant. So there was no point of time after Mrs. F's death when the landlord was in possession and the premises had not therefore been decontrolled.

Observations of Scrutton, L.J., in *Gowdge* v. *Broughton*, (1929) 1 K.B. 103 discussed and distinguished.

MURRAY *v*. REDPATH, BROWN & COMPANY, (1938) 1 K.B. 449.

Costs—County Court Rules, 1936—Scale of costs—Jurisdiction of Judge to increase the scale of costs—O. XLVII of the County Court Rules.

O. XLVII of the County Court Rules, 1936, provides as follows:—R. 1. "Subject to the provisions of any Act or Rule, the costs of proceedings in a county court shall be in the discretion of the court".

R. 2. "The Scales of Costs in Appendix B shall have effect for the purpose of regulating the costs of proceedings in a County Court subject to and in accordance with the Rules of this Order and the directions contained in the Scales of Costs".

Rule 5 provides for certain scales. R. 13 provides for power in the Judge to award costs on such scale as he thinks fit where he certifies that the question in dispute was of importance to a class or body of persons or involved a difficult question of law or that the decision of the court affects issues between the parties beyond those directly in the proceedings. There were certain other rules providing for fees beyond the maximum prescribed.

Held, that under these rules no discretion is conferred on the County Court Judge to award costs over and above the maximum allowed by the scale of costs except in the cases where power is given to him to certify for higher costs as under r. 13.

MERCANTILE UNION GUARANTEE CORPORATION, LIMITED *v.* WHEATLEY, (1938) 1 K.B. 490.

Hire purchase contract—Vendor not owning the article on date of agreement—Purchase by vendor later—Delivery of same to hirer—Hirer accepting it—Hire in arrear—Vendor taking possession terminating the contract—Hirer if can plead that vendor showed no title—Date when vendor should show title.

At the end of 1935 *W* (defendant) entered into negotiations with D. Co. (plaintiffs) for the purchase of a motor lorry. *W* could not pay cash for it and he entered into a hire purchase agreement on February 7. The plaintiffs bought a lorry some days later and delivered it to the defendant. The defendant having got into arrears of hire amount, the plaintiffs exercised the right which they had under the hire purchase agreement of terminating the hiring and possessed themselves of the lorry. In an action by D. Co. for the balance of agreed depreciation money and arrears of instalments due, the defendant pleaded that it was an implied condition of the agreement that the plaintiffs owned the lorry on the date of the agreement, that as the plaintiffs admittedly did not own it on that date but only some days later, they had no title to hire and the contract was bad.

Held, that the material time when the implied condition as to warranty of title arises is the date when the bailment or delivery takes place and not the actual moment of signing of the agreement. On the date of delivery the plaintiffs were the owners and therefore the agreement was satisfied.

Karflex, Ltd. v. *Poole*, (1933) 2 K.B. 251, explained.

CHAJUTIN *v.* WHITEHEAD, (1938) 1 K.B. 506.

Aliens Order, 1920, *Art.* 18, *para.* 4 (*d*)—*Alien—Possession of an altered passport—Alien ignorant of the fact of alteration—If a valid defence.*

The Aliens Order, 1920., Art. 18, para. 4 provides that "any person shall be guilty of an offence against this order if, in reply or in relation to any immigration officer, ... or other person lawfully acting in the execution of the provisions of this order he ....cl. (*d*) without lawful authority uses or has in his possession any forged, altered or irregular certificate, passport, or other document, or any passport or document on which any visa or endorsement has been altered or forged".

The appellant C was convicted of being in possession of a certain altered passport contrary to Art. 18, para. 4 (*d*) of the Aliens Order, 1920. It was proved that the appellant's passport was altered and it was found by the Quarter sessions that the appellant did not know that the passport had been altered and honestly believed on reasonable grounds that it had been issued to him in the ordinary course by the proper authority.

Held, that the article would be reduced almost to waste paper if the offence could not be established unless the prosecution proved that the person having in his possession the forged passport had guilty knowledge of the fact that it is forged. The words of the article do not put any such burden upon the prosecution and the words of the article negative the view that the prosecution is required to carry such a burden.

JOTTINGS AND CUTTINGS.

MARRIAGE UNDER SPECIAL MARRIAGE ACT (III OF 1872) :—

Two Hindus who do not disavow their religion, get married before the Registrar of Marriages in England. Can S. 22 (as amended in 1923 by Indian Act XXX of 1923) of the Indian Special Marriage Act (III of 1872) be deemed to apply to the case to effect "a severance from such family"? That this is not merely a hypothetical question will be clear from the increase of such marriages in England.

One principle is clear in private international law that whether a marriage is monogamous or polygamous depends solely upon the *lex loci celebrationis;* [*Hyde* v. *Hyde*, (1866) L.R. 1 P. & D. 1307; *Chetti* v. *Chetti*, (1909) P. 67; Ex parte *Mir Anwaruddin*, (1917) 1 K.B. 634; *Lendrum* v. *Chakravarti*, (1929) Scots. Law Times Report 96; and *Nachimson* v. *Nachimson*, (1930) P. 217.]

Thus, a marriage valid according to English law would be treated as valid in India also, subject to this restriction that the Indian Courts would not enforce rights arising under such a marriage in India. In *Jnanendra Nath Ray*, In re, (1922) I. L. R. 49 C. 1069; it has been held by the Calcutta High Court that a Hindu married under the Special Marriage Act (III of 1872) even after the declaration made by him (it is no longer necessary after the amendment, XXX of 1923) does not cease to be a Hindu. The Lahore High Court has held in *Sainapatti* v. *Sainapatti and another*, A.I.R. 1932 Lah. 116, that even where the marriage is in the English form, the Hindu husband would not thereby lose his right to take another wife in India according to Hindu law, though such an action by him may enable the first wife to obtain a dissolution of marriage in Indian Courts on the ground of "marriage with another woman with adultery", while the first marriage is subsisting. This case also serves to reinforce the doctrine that despite

the marriage contracted in England, the parties would retain their original status and would in India be subject to the rights as well as liabilities flowing therefrom.

The provision in the Indian Special Marriage Act (III of 1872) regarding compulsory severance in joint family status is of no avail to the question raised herein. For, alteration in status is the result of a specific provision in S. 22 (III of 1872)—an exception to the general rule that a valid marriage in a form other than the one contemplated by the *Shastras* will not destroy the status of the parties.—The husband in the problem mooted will continue to be a member of the joint-family, subject to all the liabilities arising thereunder. *K.R.K. Sastry.*

Citations.—Judgments delivered in the early nineteenth century appear to be characterised by an outstanding brevity in their summary of facts and exposition of law. Would it not be true to observe—with becoming respect—that the judgments of their successors tend towards a greater detail in analysis and juristic argumentation? Judges there are, to be sure, even in recent times, whose utterances gained in clarity and vigour from a nice economy in their choice of words: Lord Halsbury was one. The speeches of Lord Loreburn rarely cover more than two or three pages; the citations are few, short and nothing if not completely apposite. The judgments of Horridge, J., do not contain many quotations; those, too, illuminate the dark places. See, for instance, ***Phillips*** v. *Brooks*, (1919) 2 K.B. 243. Avory, J., was a master of terseness and precision; nor does the learned Lord Chief Justice waste his words in prolixity or undue citation. After all, an authority is an authority for what it decides alone; no two actions can be precisely similar in their facts: the reasoning's the thing. No doubt the unusual circumstances in *Lloyd* v. *Lloyd & Leggeri*, (1938 2 All. E.R. 480, 487)—what was "connivance"? demanded a lengthy review of the cases. But this was the exception to the admirable rule proposed by Langton, J.: "I endeavour to avoid lengthy citations from authorities in dealing with matters of this kind, because a little further study very often enables one to condense one's citations, and makes the matter easier for a Court of review."—*L.J., 1938, p. 373.*

The Briton and the Foreshore.—Another illusion of the sea-girt Briton is that he would be committing no trespass if he walked or played anywhere on the foreshore of his native land. Such ignorance rebuts the presumption that he is acquainted with the legal Scriptures of his country. Had he referred, for example, to Halsbury's Laws of England relating to waters and water-courses he would have known how very limited is the ***jus publicum***

on the seashore apart from the restricted common law rights of navigation and fishing.

There is no common law right to use the shore as a promenade, to pick shells thereon or seaweed; to hold thereon a public meeting, or to bathe.—*L J., 1938, p. 383.*

A Good Cause.—Nevertheless the law, under our elastic Constitution, can be changed, and existing rights may by statute be preserved. All well-disposed Britons whose heritage is the sea will (it is thought) approve and help in their present arduous task the Coastal Preservation Committee, being a Committee appointed by the Commons, open spaces and Footpaths Preservation Society, the National Trust, and the Council for the Preservation of Rural England.

They urge that the enjoyment of the foreshore by the public should be made a statutory right irrespective of whether it is owned by the Crown, a local authority or a private person. They call attention to the increase of Holidays with Pay, to the growing annual exodus of workers from inland areas to the sea; and they say that "unless control can be exercised over the disastrous exploitation now proceeding, very little of the coast will remain unspoiled."

The Committee is engaged in collecting statistics and other facts relating to the problem, and has considered in some detail the remedies as well as the difficulties. The chief obstacle, as usual, is financial: "the cost of compensation, actually claimed or anticipated". "Either the rules governing compensation under planning schemes should be modified with respect to areas where development is not likely to occur to any great extent, or some financial assistance should be made available to the poorer authorities to enable them to meet it, which on the present basis they cannot do".—*L.J., 1938, p. 383.*

Lord Macmillan and Lord Jeffrey.—In his speech recently on the occasion of receiving the freedom of the City of Edinburgh, where he achieved his first forensic successes, Lord Macmillan declared with sturdy patriotism that he had avoided acquiring "that most dangerous thing, an English veneer," contrasting himself in this respect with an earlier distinguished advocate of the Scots Bar, Francis Jeffrey, who, later, became one of the Judges of the Court of Session with the title of Lord Jeffrey. In his youth Jeffrey spent some time at Oxford, where, according to Lord Cockburn, his biographer, he succeeded in the abandonment of his habitual Scotch and only gained, according to another friend, "the narrow English". Lord Macmillan's version of the change

effected in his pronunciation, however, is the best we have met with. According to the noble Lord, Jeffrey, on regaining Edinburgh, thought he was to carry everything before him in the Parliament House, and so, when he got a brief, he went into the Division and delivered himself in the best Oxford manner of an hour's address to the four judges, and then sat down waiting for applause. There ensued a dreadful pause, until one of the old judges said in a little voice: "Can any body tell me what the laddie's wanting? Lord Braxfield, the prototype of Weir of Hermiston, is said to have declared on hearing Jeffrey that "the laddie had clean tint (lost) his Scotch and found nae English". That he had not altogether escaped from his native tongue, however, is clear from a letter of Macaulay's dated the 15th April, 1828, in which, describing Jeffrey, he said that "he possesses considerable power of mimicry, and rarely tells a story without imitating several different accents . . . . Sometimes Scotch predominates in his pronunciation; sometimes it is imperceptible."—*L.T., 1938, p. 418.*

Jeffrey and Boswell.—One of the many interesting incidents in Jeffrey's career is that which connects him with James Boswell, who, like himself, was a member of the Faculty of Advocates. The link between them dates, however, from long before Jeffrey was admitted to the Bar; indeed, he was only a boy at the material time, namely, about 1790 or 1791, when he had the honour, as Cockburn puts it, of assisting to carry the biographer of Johnson, in a state of intoxication, home to bed. Next morning we are told that Jeffrey was rewarded for thus playing the part of the good Samaritan, by being patted on the head by Boswell and being told that he was a very promising lad, and that "If you go on as you've begun, you may live to be a Bozzy yourself yet". Jeffrey must, one would think, have told Macaulay this interesting reminiscence, but, if so, it has been omitted from the review in which the historian lashed poor Croker to his very heart's content. In this connection is it generally remembered how Croker took his revenge? In one of the later issues of his edition of Boswell he stoutly defends himself from the attack made on him by Macaulay for expurgating certain passages in the Life on the alleged ground of their indelicacy if not indecency, and then he has a Parthian shot at his antagonist in the index where may be found this entry: "Indecency and indelicacy, see Macaulay, T. B." *L.T., 1938, p. 418.*

Jeffrey at the Bar.—Despite his supposed handicap by reason of his alleged fantastic pronunciation, Jeffrey before long made considerable headway at the bar. Like Henry Erskine he

acquired a considerable practice in the General Assembly of the Church of Scotland in defending bibulous clergymen when arraigned for conduct unworthy of the cloth. As illustrating how even a skilful advocate may occasionally make a *faux pas* in the heat of his eloquence and in his championship of his client, mention may be made of an early effort of Jeffrey's to obtain the acquittal of his clerical client on the charge of drunkenness. In the course of his impassioned address he asked rhetorically "if there was a single reverend gentleman in that house who could lay his hand on his heart and say that he had never been overtaken by the same infirmity". For grave and reverend seniors, and clergymen to boot, to be as a class roundly accused of so gross an impropriety was more than they could stomach, and so, immediate cries of "Order!" and demands for an apology sounded in his ears. Regaining his self-possession, Jeffrey thus sought to make amends: "I beg your pardon, Mr. Moderator it was entirely my ignorance of the habits of the church"—a sally which evoked a peal of laughter and smoothed away all acerbity.—*L.T., 1938, p. 418.*

Jeffrey's Wig.—Francis Horner, who was reputed to have the Ten Commandments written on his countenance, but for whom Sir Walter Scott had little patience, declaring that he always reminded him of Obadiah's bull, one who, although, as Father Shandy observed, he never produced a calf, went through his business with such a grave demeanour that he always maintained his credit in the parish, was, like Jeffrey, a member of the Scots Bar, and we are told that when he migrated from Edinburgh for London he bequeathed his forensic wig to Jeffrey, who afterwards wrote to the donor: "Your wig attracts great admiration, and I hope in time it will attract great fees also. But in spite of the addition it makes to my honour and beauty, I must confess that the Parliament House appears duller and more ridiculous this season than usual". Commenting on this bequest, Cockburn says that the hairdresser who made one wig fit those two ought to have been elevated to the deaconship of the craft, for nature never produced two heads less alike either in form or bulk. But all wigs, we are told, were anathema to Jeffrey, and it is added that throughout the last fifteen or twenty years of his practice he very seldom wore one. When engaged in appeals from Scotland to the House of Lords he had perforce to be equipped with a wig, and in one of his letters he bemoans being obliged to "sit six hours silent, in a wig".—*L.T., 1938, p. 418.*

As Dean of Faculty and Judge.—In 1829 Jeffrey was elected to the highest honour that can be conferred on a practising mem-

ber of the Scots Bar, namely, election as Dean of the Faculty of Advocates, that is, head of the bar, for, whereas here in England the Attorney-General is the head of the Bar, his Scottish counterpart, if that term is permissible, namely, the Lord Advocate, does not have this pre-eminence outside the Court. Meetings of the Faculty are presided over by the Dean, and it is always accounted a very great distinction to be elected by his confreres to this exalted position. In 1830 Jeffrey exchanged this office for that of Lord Advocate, on the accession to power of the Whig party, and this occasioned him to write to a friend thus: "You will find me glorious in a flounced silk gown and long cravat. I wish my father had lived to see this". The next stage in his legal career came in 1834 when he was appointed a Judge, in which capacity he was said to exhibit that very common failing of members of the Bench, namely, of being too talkative, a foible which in his case was aptly characterised by one of his colleagues, who said that whereas the normal form of an interlocutor ran thus: "The Lord Ordinary having heard parties' procurators, etc.," those of Jeffrey should run: "Parties' procurators having heard the Lord Ordinary, etc."—*L.T., 1938, p. 419.*

His Posthumous Fame.—It might have been thought that his long editorship of the *Edinburgh Review* and the fact that he attracted Macaulay to be its most distinguished or at least most read contributor, would have been Jeffrey's best title to fame, but it is to be feared that his own articles in the pages of that once all-important but now defunct periodical are now never read; indeed, only Macaulay's have enjoyed the fame of diuturnity; but to lawyers, Jeffrey's career has a very great attraction. He was a consummate advocate. His defence of, among others, one Nell Kennedy, whom he saved from the gallows by a fine display of advocacy, was long talked of, and, as Carlyle described it, so bewildered the poor jury into temporary deliquium or loss of wits that their foreman, Scottice Chancellor, on whose casting vote the question turned, said at last with the sweat bursting from his brow: "Mercy, then mercy". On awaking next morning the foreman it is added in Carlyle's dramatic account, smote his now dry brow with a gesture of despair, and exclaimed: "Was I mad?".—*L.T. 1938, p. 419.*

The Lord Chancellorship.—The statement by Lord Maugham last week in the House of Lords, in the course of a political debate on mining royalties, that he had occupied his present office for a very short time and—to use his own words—"It may be that I

shall not very much longer continue to occupy it", has naturally aroused not a little speculation, both in political and legal circles whether this forbodes an early demission of his high office. Adverting to this, the usually well-informed writer of the political notes in *The Times* says that while it is known that Lord Maugham much prefers the legal to the governmental work of his department, finding the latter in some ways a burden, it is nevertheless not necessary to take the words he used in the course of the debate *au pied de la lettre*, and to assume an early resignation. In the past history of the office of Lord Chancellor there have been several instances both of long and short tenure. The Earl of Hardwicke, one of the greatest masters of equity, occupied the woolsack for something like twenty years; Lord Eldon, like the provost in the old Scotch song, seemed to be perpetual, going on for a quarter of a century and filling by the decisions volume after volume of "Vesey's Reports"; while, nearer our own times, Lord Halsbury held the Great Seal for sixteen years. Since he passed away from the legal scene, his successors in office have enjoyed a much less extended period: Lord Buckmaster little over a year; Lord Haldane about four years; Lord Finlay two; Lord Cave six; Lord Sankey about four; Lord Birkenhead four; and Lord Hailsham the same. Of ex-Lord Chancellors two only survive, Lord Sankey and Lord Hailsham.—*S.J., 1938, p. 421.*

Art and Charity.—The encouragement of useful arts has, in several cases, been held to be an object of charity. Even in 1850 good domestic service was not universal, and in that year a gift for the increase and encouragement of good servants was upheld. But the fine arts are not as a rule regarded as objects of charity though such cases as Re *Alsop* (1884) show that if the element of instruction is introduced they may be supported. In that case a gift for an art school was held to be good. In Re *Murray; Cooper* v. *Llewellyn*, which was disposed of by Mr. Justice Simonds on Tuesday last, the facts were very shortly these: Sir David Murray, the gifted painter, who died in 1933, by his will gave his residue to the trustees of the Royal Academy upon trust that "if the sum should prove in itself enough to found and carry into effect for the future that method of landscape painting with an out-of-door residence where students could live and receive in the neighbourhood where schools were such direct training from landscape visitors of members or associates of the Royal Academy." The value of the residue was about £40,000, and the trustees of the will asked, *inter alia*, whether the residue was held on valid and

effective charitable trusts, and, if so, how those trusts were to be carried out.—*L.T., 1938, p. 428.*

The Judgment.—Mr. Justice Simonds, in giving judgment, said that he found the words quoted above "rather obscure", and readers accustomed to something more definite may think that the expressions used have more in common with a misty landscape than with a strong architectural drawing. But, his Lordship continued, it was clear in the first place that the testator had a general purpose, charitable in law, of encouraging education in the art of landscape painting, and, secondly, of doing this where the landscapes were being studied. The particular method might be difficult to carry out, but the general purpose was clear, and there was no reason to say that the gift failed for uncertainty. As there was a good charitable intention shown, he (his Lordship) would direct a scheme to be settled in chambers, and it would be more convenient if such scheme were brought in by the trustees of the Royal Academy than by the trustees of the will. In the course of the hearing counsel for the Academy trustees read an affidavit by the President, Sir William Llewellyn, in which it was said that schools of art gave no direct instruction in landscape painting, and that students who wished to take it up were left very much on their own. The testator was fully aware of this state of things, and strongly advocated that instruction should be given to students by members of the Royal Academy. Although the Academy has recently been subjected to a certain amount of criticism many will consider that, in the case at any rate of average students, the study of the appearances which nature offers us would be better undertaken with the guidance of experienced academicians than with that of votaries of the latest artistic craze or caprice. Apart altogether from any question of law most readers will find the decision satisfactory.—*L.T., 1938, p. 428.*

Puisne Judges and the Judicial Committee.—In several recent issues of *The Times Literary Supplement* some correspondence has appeared regarding puisne judges of the past, who, during their tenure of office, have been appointed members of the Judicial Committee of the Privy Council. Several of those thus honoured have been mentioned—Mr. Justice Bosanquet in September, 1833, and in more recent time Mr. Justice Kekewich and Mr. Justice Darling; but apparently it has been overlooked that of the original members on the reconstitution of the Committee in its present form in August, 1833, one of the most notable was Baron Parke, afterwards Lord Wensleydale, around whose name has grown quite

an accretion of stories all illustrative of his passion for strict compliance with regularity of form and love of the old style of pleading. Is it not told that on one occasion he took what he called a "beautiful demurrer" to the bedside of a sick friend to cheer him in his illness. While there were those who regarded him, as Mathew Arnold regarded Professor Freemen, as a "ferocious pedant", there can be no gainsaying his greatness as a master of the common law, and the wonder is that so far no substantive life of him has been published. It is rumoured, however, that a very learned lawyer of our time is at work on a memoir of the Baron, which is sure of a very hearty welcome as filling a conspicuous gap in English legal biography.—*S.J., 1938, p. 441.*

Birthday Honours.—In view of the exigencies of publication, we can only make reference to some of those included in the list of honours conferred by His Majesty in celebration of his birthday. First, we note, with much satisfaction, that Sir Donald Somervell, of whom it can truly be said that he has adorned his high office of Attorney-General, has been created a Privy Councillor—a well-merited distinction. Time was, and that not so very long ago, that the Attorney-General of the day was never sworn of the Privy Council; and it may be recalled that Sir Henry James, afterwards Lord James of Hereford, while holding office as Attorney-General, on being sounded on the question of being made a Privy Councillor, refused to accept the proffered honour on the ground that it might preclude him, as he thought, from practising before the Judicial Committee. In this he was believed to be mistaken; and certainly several of his successors in office before Sir Donald Somervell saw no incompatibility in conjoining their function as chief law officer of the Crown with that of membership of the Privy Council—not, of course, with the Judicial Committee of that body. Of others connected with the law who are included in the list is Sir William Prescott, who now becomes a Baronet. He is a member of the Bar, although the greater part of his activities has been in connection with his other profession, that of engineering, and his public work as chairman of the Metropolitan Water Board. Also Mr. Stephen Philpot Low, a son of the late Mr. Justice Low, and himself Solicitor to the Board of Trade, who has received a knighthood; as have also Mr. Francis Edward James Smith, President of the Council of the Law Society; Colonel Edward Geoffrey Hippisley-Cox, Secretary of the Parliamentary Agents' Society; and Mr. Frank Henry Cufaude Wiltshire, Town Clerk of Birmingham, and Vice-President of the Society of Town Clerks. The full list of legal honours will appear in our next issue.—*S. J., 1938, p. 461.*

The Woolsack.—While we are all familiar with the fact that many words in our language have, in the course of the centuries, become divorced from their original signification or explanation of their formation, it must have come with something of a shock to be told, as we were last week, that the Woolsack, which has been regarded as a working synonym for the highest office in the law, is not, and apparently has not been for a long time, as generally it was supposed to be, stuffed with wool at all, but with horsehair. Happily, as we learn, this departure from ancient usage is now to be corrected, for the Lord Great Chamberlain has given his sanction for the Woolsack to be re-stuffed, this time with a blend of British Dominion, and English, Scottish and Welsh wool. The commonly accepted explanation of the name of the crimson-covered backless sofa on which the Lord Chancellor sits while presiding in the House of Lords is that compendiously given in that very useful work of reference, the Oxford Companion to English Literature, namely, "to serve as a reminder to the Lords of the importance to England of the wool trade," but Lord Campbell, who occupied the Woolsack for some years, was inclined to the more prosaic view that in the rude simplicity of early times a sack of wool was frequently used as a sofa, and such a seat was provided for the Chancellor, while the ordinary judges had to be content with a hard wooden bench, and the advocates had to stand behind a rough wooden rail called the Bar. Whatever be the real origin of the name, the Woolsack has for centuries carried with it its present association with the office of the Lord High Chancellor. It is curious to note, however, as the late Sir William Anson pointed out in his treatise on the Law and Custom of the Constitution, that "the Woolsack on which the Speaker of the House of Lords sits is outside the limits of the House, so that the office may be discharged, and has been so discharged when a commoner has been Lord Keeper of the Great Seal, or when the Great Seal has been in commission." Thus, we find under date 22nd November, 1830, in the list of those present in the Upper House this entry: " Henricus Brougham Cancellarius," but on that date he had no right to debate or vote. On the following day, however, we find this entry: "Dominus Brougham et Vaux, Cancellarius," the meaning of which is that he had now received his peerage, and as a peer he could intervene in debate and vote.—*S. J., 1938, p. 461.*

Legal Careers.—The *Spectator* in the course of a series of articles on "The Choice of a Career" dealt last week with "The Bar". In the previous week it had dealt with Local Government service, and in due course, we presume, it will outline the

prospects for a solicitor. These are the three careers which require legal aptitude and training, though elsewhere, too—for instance, in certain appointments in the Civil Service—the same qualities are required. For an assured prospect a youth with an inclination to the law could not, save under special circumstances, be advised to choose the Bar. As between a solicitor's office and local government service, there is much to be said for the latter. Its advantages were forcibly described in a paper read at the Law Society's Provincial Meeting at Hastings in 1935. At the top is a town clerkship, and that should satisfy any reasonable ambition. And a boy entering a solicitor's office, and having the necessary character, ability and industry, should ordinarily be confident of a livelihood and something more. But the Bar, save under favourable circumstances, is the least certain of careers. The writer in the *Spectator* describes these circumstances as relation to one or more influential solicitors and capacity to seize the opportunities offered. The union of these is safe to bring success, but "influence", unless accompanied by capacity to take advantage of it, does not go far. Influence, however, is not essential. What is essential is ability and the resolve to take advantage of every opening. This, indeed, will mean waiting. The *Spectator* article gives four or five years as the time before a living can be made: at the Chancery Bar somewhat longer. These are moderate estimates. The waiting time may run to many years. So only those who are prepared to stay the course should go to the Bar.—*L. J., 1938, p. 406.*

Judges and the Current Conscience.—Lord Wright was, I believe, the true originator of all the recent controversy regarding the Judicial Office; and whether the judges should interpret the law—written or otherwise—in accordance with the Conscience of the Day. His address on the Study of Law, published in the April *Law Quarterly*, was delivered to the Law Society of London University as long ago as October of last year.

His view was that in the matter of interpreting statutes it was the judge's duty, and his sole duty, to ascertain and give effect to the intention of the Legislature. His disagreed with the view that a statute must be construed so as to depart as little as possible from the rules of common law or equity—"to make as little change as possible". "An unsafe guide", he called it, "in these days of modern legislation, often or perhaps generally based on objects and policies alien to the common law". He had in mind chiefly, I believe, modern legislation; but he might have told us more of what the judicial attitude should be to an antique statute, unrepealed by oversight, if invoked and applied to a

modern situation. I have a feeling that the Lords would find a way out, if the application of the old Act would be grotesque or flagrantly out of harmony with the Conscience of the Day.—*L. J., 1938, p. 415.*

Lord Wright and Judicial Legislation.—In matters of common law Lord Wright appeared to admit and even to declare that the judges did rightly "legislate" and change the law, causing it to conform, if not to the Conscience of the Day, at least to the Conscience of Yesterday.

English law, he said, has reacted to the moral, social and political ideas and features of the time, which have profoundly and persistently affected not merely the Legislature but the judges. "If we compare the tone of judgments delivered (say) in 1870 it is impossible not to observe the effect of changes in prevailing ideas."

How is such a position consistent with the doctrine of *stare decisis*? "The answer is", said Lord Wright, "that the English law in fact is always growing . . . . . A decision is only an authority for what it actually decides, and the same set of facts seldom repeat themselves. There is generally, though not always, enough difference to justify a strong and liberal-minded judge, if he feels that justice so requires, to distinguish the case before him from the authority of the earlier cases cited as binding him. . . . What has been called a constant erosion of the existing authorities goes on . . . ."—*L.J., 1938, p. 416.*

Eavesdroppers.—English law "recognises" the easement of eavesdropping, and Scotland accords the same consideration to the urban servitude of eavesdrop or stillicide. These rights may be found discussed in pleasant text-books on real property, but eavesdropping as a legal offence must be sought in the grimmer volumes dealing with criminal law and practice. According to Russell on Crimes, the offences of eavesdroppers, like those of common scolds and night-walkers, are referred to in ancient books as forms of public nuisance. "They were dealt with in Courts Leet at the Sheriff's Tourn, but there is no modern precedent of indictment for any of them in England." Eavesdroppers are said to comprise "such as listen under walls or windows, or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales." In the issue of *The Times* of the 3rd inst., there appeared a particularly good "fourth"—or rather, in this case, fifth—article under the heading "The Eavesdroppers," in which reference was made to a conviction for eavesdropping in the West London Police Court, a few days earlier.

The eavesdropper, the writer of the article notes, must do his work out of doors, within the eavesdrop, or eavesdrip, which receives the rainwater thrown off the eaves—or which would be thrown off but for modern gutters. In America, a note in Russell tells us, a person who hangs about the Grand Jury room in order to hear the remarks of the Grand Jury is indictable for eavesdropping. In this country, having regard to an Englishman's love of home, however humble, and preference for the privacy of his "castle", however unbattlemented, it is difficult to imagine an offence more likely to lead to a breach of the peace, and one is grateful for the numberless forecourts and "front gardens" which, by making the offence less facile and so much more noticeable, must deter many from its commission.—*L.T., 1938, p. 448.*

Academic Honours for the Judiciary.—Last week we read that Lord Baldwin received a hearty welcome when he returned to Cambridge as Chancellor of the University in order to confer the various honorary degrees upon those whom the University had decided thus to honour. Among the recipients of the degree of Doctor of Law were the Lord Chancellor—Lord Maugham of Hartfield, and Lord Wright of Durley, both of whom had achieved academic as well as professional distinction. In presenting the Lord Chancellor for the degree, the Orator, Mr. T. R. Glover, spoke of Lord Maugham as one who had not only become supremely eminent in the sphere of law, but also as one who in his younger days achieved renown by rowing in two victorious University crews, and, further, had been President of the Union—the latter post, we may well imagine, proving an excellent training ground the for more arduous tasks now falling to him in the House of Lords, both when sitting in its legislative as well as in its judicial capacity. With regard to Lord Wright, the Orator seems to have fallen into a slight error by referring to him as Master of the Rolls as well as Deputy High Steward of the University. The noble lord, as we all remember, filled for a time the office of Master of the Rolls but vacated it not so long ago in order to return to the work falling to him as a Lord of Appeal in Ordinary. Like the Lord Chancellor, Lord Wright has shown himself a profound lawyer, but whereas the former, as befitted one who was destined to reach the Woolsack, practised almost exclusively on the equity side of the Courts, Lord Wright specialised in shipping law, of which in its various branches he became a profound expositor as he showed in the Commercial Court both as a junior and, later, as a leader, but likewise by the edition he prepared of Carver's classic on "Carriage by Sea", which he was enabled to

enrich by his practical familiarity with each of the topics there dealt with. In a sense it may seem akin to gilding the lily to bestow honorary degrees on two such notable members of the judiciary whose eminence it might be thought was attested by the positions they occupy, but those in authority in the University are naturally and justifiably proud of the distinction won by its alumni and have thus sought to record the fact by the conferring of this mark of their esteem and pride in the recipients' achievement in the judicial sphere.—*S.J., 1938, p. 481.*

Chancellors and Literature.—The speech of the Lord Chancellor at the recent anniversary dinner of the Royal Literary Fund in proposing the toast of "Literature", in which, as he truly said, the one true test of literature is when they felt inclined to kneel at her feet, was of interest as a marked tribute to the potency of letters, but also as provoking a good-humoured jest from Mr. Desmond McCarthy at the expense of lawyers when he declared that "the legal profession was a most excellent training for story-telling". Incidentally, however, the prominent part taken by the Lord Chancellor in seeking to further the claims of the Royal Literary Fund, is a reminder not only that he himself is a master of literary expression which has found an outlet in one or two volumes, but, further, that several of his immediate predecessors on the Woolsack have well-founded claim to literary, as well as to legal, fame. For instance, Lord Haldane and Lord Birkenhead; but the most prolific writer among former occupants of the Woolsack was Lord Campbell, who enriched the department of legal biography by his serried row of volumes on the Lord Chancellors and the Chief Justices, works of great value, but which, by reason of their contents not invariably being of a flattering character, provoked the jibe of Sir Charles Wetherell when he referred to Campbell as "my noble and biographical friend who has added a new terror to death". Purely legal treatises can scarcely be termed "literature", but it is worth remembering for their practical utility the numerous works dealing with various branches of the law which have come from the pens of those who have reached the highest places in the law: for example, Lord St. Leonards was an indefatigable worker in the domain of real property law, and his volumes on the subject had at one time a great vogue, and in more recent times we need hardly recall the immense boon that stately row of volumes planned and sponsored by Lord Halsbury, have proved to members of the profession.—*S.J., 1938, p. 481.*

Legacy stated in Words and Figures which did not agree.—There is an interesting case in the current *Weekly Notes*. Re *Hammond*: *Hammond* v. *Treherne*, (1938) W.N. 236.

A testator bequeathed a legacy of "the sum of one hundred pounds (£500)" and the question was whether the words or the figures should prevail. It was pointed out to Simonds, J., before whom the matter came, that there was authority to the effect that in a bill of exchange the words prevailed over the figures, reference being made to *Saunderson* v. *Piper*, (1839) 5 Bing. (N.C.) 425 and *Garrard* v. *Lewis*, (1882) 10 Q.B.D. 30.

Simonds, J., held that the maxim "*Cum duo inter se pugnantia reperiuntur in testamento ultimum ratum est*" (Co. Litt. 112-*b*) applied. Consequently the legatee was entitled to £500.—*S.J., 1938, p. 487.*

BOOK REVIEWS.

THE LAW OF LIMITATION by K. J. Rustomji, Volumes I & II (5th Edition); 1938, published by Messrs. Butterworth & Co. Price Rs. **30.**

It is with great pleasure that we welcome the appearance of the fifth edition of Mr. Rustomji's Limitation Act. It was a matter for regret that a new edition had not appeared earlier. Even in the first edition Rustomji's Law of Limitation got into popularity with the lawyers and judges in this country by its intrinsic worth. It was also helped to a certain extent by the fact that Mitra's treatise on the subject had become somewhat out of date at that time. The chief merit of Mr. Rustomji's treatment is his thought-provoking and trenchant criticisms of the decisions and his clear and concise statements of the law on all the points dealt with in the course of the book. Since the appearance of the last edition of the book many important legislative changes have been made in the enactment and the learned author has dealt with them in the present edition. The case-law on the subject has grown vastly during the last few years and it has been critically noticed by the learned author in the appropriate places. A wholesome feature introduced in this edition is that the table of cases at the opening of the first volume gives the names of the cases as well which will facilitate the picking up of the cases from the other non-official reports in which the cases may be reported. The book has appeared in two volumes in this edition, as its size could not be compressed in a single handy volume. We are sure that this edition fully justifies the expectations of the bench and the bar and will therefore take its rightful place among the leading treatises on the subject.

HINDU WOMEN'S RIGHTS TO PROPERTY ACT by Rishindra Nath Sirkar, M.A., B.L., published by S. C. Sirkar & Sons, Ltd., Calcutta, 1938 Edn. Price Re. 1.

This small book of less than fifty pages is a commentary on the Hindu Women's Rights to Property Act, Act XVIII of 1937 as amended by the amending Act of 1938. The enactment is a beneficient piece of legislation conferring right of property on Hindu women who did not enjoy it before and who had only in some instances a right to maintenance. The enactment though only consisting of five sections is a complicated one giving rise to numerous difficuties in the interpretation of its provisions. The learned author has attempted to solve the difficulties and the questions that are likely to arise under the Act. He has given reasons for the construction that he would adopt. As there has been no case-law yet under the Act, the discussions of the learned author will be found interesting and instructive. The author has previous acquaintance with this branch of law having edited Golap Chandra Sarkar Sastri's well-known book on Hindu Law where the latter expressed some views on the rights of women not generally upheld by the courts.

THE MADRAS AGRICULTURISTS' RELIEF ACT (Madras Act IV of 1938), by Sri B. Vaikunta Baliga, B.A., B.L., Pleader, Mangalore. Published by K. Bhoja Rao & Co., Mangalore. Price As. 12.

In this pamphlet, the learned author has written not a commentary but considered some of the difficult questions which are bound to arise in the course of the administration of the Madras Agriculturists' Relief Act. He has stated the pros and cons on those points and given his opinions on them. A good portion of the book is taken up with examining the question whether the Act is *intra vires* the legislative power of the provincial legislature in respect of its provisions regarding banking and the negotiable instruments. The learned author has expressed the view that the provisions of the Act are *ultra vires* in so far as they affect the banks. He is inclined to take a similar view with regard to the provisions which affect promissory notes, bills of exchange and cheques also, though he does not say so in terms and whatever may be the ultimate view that will prevail in these questions, his arguments are entitled to serious consideration. We hope that his book will be widely read and appreciated by those who have to deal with the enactment.

THE LAW OF TORTS by L. B. Bhopatkar, M.A., LL.B., New Delhi, 1938, Fourth Edition. (Re-written and Enlarged). Published by Kokate Brothers, Poona 2. Price Rs. 4.

Mr. Bhopatkar has considerable experience of the difficulties of students in mastering legal subjects and he has therefore dealt

with the subject of the Law of Torts in a manner most suited to their needs. He has analysed the various topics and stated the propositions of law in the form of sections giving their exceptions clearly. The propositions are illustrated by the cases which are noticed as illustrations under the statement of the propositions. The case-law has been brought thoroughly up to date. There are not scholarly discussions of abstruse topics as they will only embarrass the student. The recent Law Reform Acts in England are given towards the end of the book. The questions set on the subject in the LL.B. Examination of the Bombay University are also given. In devoting his attention mainly to the needs of students, the author has not overlooked the requirements of the practitioner. We therefore hope that this edition of the book will enjoy the popularity which it richly deserves.

THE INDIAN LIMITATION ACT (IX of 1908). by V. V. Chitaley, B.A., LL.B. and K. N. Annaji Rao, B.A., B.L. (Volume II). Published by All India Reporter, Ltd., Nagpur.

We had occasion to review the first volume of this book in the pages of this journal. This is the second volume and it deals with articles 1 to 140 of the first schedule to the Indian Limitation Act with exhaustive commentaries without omitting any decision of any importance, if any decision has been omitted at all. As we said elsewhere, this book collects all the information on the subject and will be found to be a useful book of reference on the Indian Limitation Law.

THE PAYMENT OF WAGES ACT (IV of 1936) by Govindlal D. Shah, B.A., LL.B., published by Messrs. N. M. Tripathi & Co., Bombay. Price Rs. 1-14-0.

This is a useful piece of legislation intended to safeguard the rights of certain classes of persons employed in industry of their regular payment of wages. So far as we are aware, there is no other commentary on the Act and the Act itself is so recent in date that no decided cases could have grown about its provisions. Under these circumstances the comments of the learned author which are in themselves very lucid will be appreciated. He has also given in the book the rules of payment of wages framed under the Act by the Bombay Government and also the Payment of Wages (Federal Railways) Rules, 1937, the various appendices give all other useful information bearing on the subject including the report of the Select Committee and the minutes of dissent. The reader will thus find collected in the book all relevant information on the subject.