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

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I. Justiciable Disputes and Original Jurisdiction

In this discourse, it is proposed to deal with the disputes justiciable by the Federal Court, *i.e.*, the disputes that will be taken cognisance of by that court. Unlike in the United States of America, under the Indian Federation the Federal Court does not work side by side with the state courts. Jurisdiction of the Federal Court in India is of a double nature. Upon the one side it is determined by the character of the parties to the suit; and upon the other by the character of the matter in controversy. It extends in the first place to all cases of disputes between the Federation on the one hand, and the Provinces or States on the other or between a Province and a State or between Provinces themselves or between States themselves. In this, only the character of the parties are relevant. "No question of Federal concern and no construction of Federal Law or constitutional problem need be involved. The subjects to be determined may and indeed usually, in this class of cases, do depend wholly upon the interpretation and application of laws of one or more of the States. The purpose in giving jurisdiction to the Federal courts is thus not the protection of Federal rights, privileges and immunities but the provision of tribunals presumably more impartial than would be state tribunals."

In the 2nd place, the dispute should relate to a "legal right" either in its extent or existence.

II. Provinces or States should be Real Parties

Attempts may be made by citizens of Provinces to circumvent the rule that only a constituent unit could sue in the Federal Court.

(1) Suits filed by Provinces or States as such against Provinces or States, but in behalf of their citizens, not in their own behalf are not maintainable at all in the Federal Court. Suppose the Province *A* passes an Act authorising any of its citizens owning a claim against Province *B*, arising upon a written obligation to pay money, to assign to Province *A* that obligation for payment. Suppose the Act enacts that the assignor of such claim is to be associated with the Advocate-General of the Province *A* in the prosecution of the case, and that the assignor is to pay all the expenses incurred by *A* and to receive the amount to which the assignor would be entitled after deducting the expense to which the Advocate-General of *A* would be put in the suit. Here it is clearly the claim of an individual subject that is sued upon by the State *A*. So it could not seek the aid of the Supreme Court to enforce it. In a case similar to the facts set out above it was decided by the Supreme Court of the United States in *New Hampshire and New York* v. *Louisiana* (108 U.S. 76) that such a suit is not maintainable.

(2) But a suit in which the Province or State has obtained legal title to the property in question by gift or assignment reserving no right in the donor or assignor and sues therefore in its own name is maintainable in the Federal Court. Suppose Province *B* issues certain bonds, secured by mortgage to a subject of Province *A*. The subject makes a gift of it to Province *A* to use it for some charity. It was held in the *State of South Dakota* v. *State of South Carolina* (192 U.S. 286) that a suit would lie in the Federal Court by the Province *A* against the Province *B*.

In the former case, the right vested in the assignors themselves and in the latter in the assignees. The above cases indicate the possibility of one Province adopting a quarrel of its citizens and it is an essential condition of the exercise of Federal Court's jurisdiction that citizens should not have any right or interest in the subject-matter of the quarrel. In *Osborn* v. *Bank of the United States* (9 Wheat. 738, 857), Chief Justice Marshall said:

> "It may, we think, be laid down as a rule which admits of no exception, that, in all cases where jurisdiction depends on the party, it is the party named in the record".

This statement is too broad and has not been followed. Even Marshall, C. J., himself departed from it, for in the *Governor of Georgia* v. *Madrazo* (Pet. 110), he says that where the Chief Magistrate of a State is sued, not by his name but by his style of office and the claim made upon him is essentially in his official character, the State itself may be considered as a party on the record. It is now well settled that whether a suit is one against a State is determined not by the names of the parties to the action, but by the essential nature and effect of the proceeding as they appear from the entire record. *Louisiana* v. *Jumel* (107 U.S. 711.) A suit to restrain a state officer from executing an unconstitutional statute is not a suit against the State. *Western Union Telegraph Co.* v. *Andrews* (216 U.S. 165). A suit to recover money or property wrongly taken and in the hands of such defendants or to enforce compensation in damages is not a suit against a State. A suit which a Province or State brings as *parens patriae* to protect the general health, comfort or the property right of its citizens when they are injured or threatened by the act of a neighbouring Province or State lies in the Federal Court because it is a suit by a State against a State. "In that capacity, the Province or State has an interest independent of and behind the titles of its citizens, in all earth and air within its dominions. *Georgia* v. *Tennessee Copper Co.* (206 U.S. 230) is a case involving the right of the State of Georgia to enjoin a Corporation in a neighbouring State from spreading noxious fumes to the detriment of her citizens and property.

Legal Rights

Secondly, *i.e.*, as regards the character of the matter in dispute, S. 204 of the Act says that the "disputes" should relate to the extent or existence of a "legal right". To attract the section, firstly, there should be a dispute. "In the constitution of the United States, the corresponding word is "controversy;" and "controversy" was held to include only suits of a "civil" nature, in *Chisholm* v. *Georgia* (2 Dall. 431). It is submitted that the term "dispute" in S. 204 contemplates only suits of a "civil" nature. Again, the dispute should relate to a "legal right". What is a legal right? Holland, while dealing with rights in his "Elements of Jurisprudence," (13th Edn., 1924, p. 86) says:

"If a man by his own force or persuasion can carry out his wishes either by his own acts or by influencing the acts of others, he has the "might" so to carry out his wishes. If irrespectively of having or not having this might, public opinion would view with approval, at least

with acquiescence his so carrying his wishes and with disapproval any resistance to his so doing, then he has a moral right so to carry out his wishes.

"If it is a question of might, all depends upon a man's own powers of force or persuasion. If it is a question of moral right, all depends upon the readiness of the State to express itself. It is hence obvious that a moral and a legal right are so far from being identical that they may easily be opposed to one another. Moral rights have, in general but a subjective support, legal right have the objective support of the physical force of the State. The whole purpose of laws is to announce in what cases that objective support will be granted and the manner in which it may be obtained. In other words, law exists for the definition and protection of rights."

Salmond in his jurisprudence, 6th Edn., 1919 at p. 185, says that

"In every legal right the five following elements are involved:—

(1) A person in whom it is vested; and who may be distinguished as the *owner* of the right, the *subject* of it, or the person *entitled*.

(2) A *person* against whom the right avails, and upon whom the correlative duty lies. He may be distinguished as the person *bound*, or as the *subject* of the duty.

(3) An *act* or *omission* which is obligatory on the person bound in favour of the person entitled. This may be termed the *content* of the right.

(4) Some *thing* to which the act or omission relates; and which may be termed the *object* or *subject-matter* of the right.

(5) A *title*, that is to say, certain facts or events by reason of which the right has become vested in its owner."

III. Justiciable Disputes Involve Legal Right.

The Federal Court takes note of only legal rights and every legal right involves the above five elements. And a right lacking in any one of such elements may not be recognised by the Court and a dispute involving the decision of such a right may not be cognisable by it. Disputes relating to a legal right are called justiciable disputes.

A legal right involves a corresponding legal obligation. The obligations are created by contract, custom and legislation. In the *Dominion of Canada* v. *Ontario* (1910 A.C. 637 at 647) it was held that the test of a matter being justiciable is "can it be sustained on any principle of law that can be invoked as applicable." It is said in *Warren* v. *Murray*, (1894) 2 Q.B. 648 at 651, per Esher, M.R., that "legal rights" may include equitable as well as common law rights. In Ex parte *State of New York No.* 1, (256) U.S. 490, it was held that not only suits in law and equity are included, but also cases of Admiralty and Maritime jurisdiction.

Not a Political Right

The right involved must not be a political right as in the case of *Cherokee Nation* v. *State of Georgia* (5 Peters 1) where

the dispute was between the Cherokee Nation and the State of Georgia which the Supreme Court of the United States was asked to decide. The bill was brought by the Cherokee nation, praying for an injunction restraining the State of Georgia from the execution of certain laws of the latter which go directly to annihilate the Cherokee Nation as a political society. The Supreme Court held that it is a political dispute and that it has no right to interfere.

The propriety of what may be done in the exercise of a political power is not subject to judicial decision. *Octyen* v. *Central Leather Company,* 246 U.S. 297. All questions touching the international relations of a country are within the political departments of the Government. The recognition of the belligerency or independence of a foreign community is a political question. *See* the *Three Friends,* 166 U.S. 1. What are the boundaries of a federation, 143 U.S. 472; who is the sovereign of a foreign territory, *Pearcy* v. *Stranaham,* 205 U.S. 257; whether a treaty is still in force, *Terlindon* v. *Ames,* 184 U.S. 270; the status of one claiming to be diplomatic representative of another country—all these are held to be political questions, not possessing a justiciable character. Who is the sovereign *de jure* or *de facto* of a territory is not a judicial but a political question, the determination of which by the legislature or executive department of any government conclusively binds the jndges. *Octyen* v. *Central Leather Co.,* 246 U.S. 297. So also in the recent case of *Aksionairnoye Obschestvo Dlia Mechaniches Koyi Obrabotky* (1) *A. M. Luther* v. *James Sagor and Company,* (1921) 3 K.B. 532 where the view that the validity of the acts of an independant sovereign government in relation to property and persons within its jurisdiction cannot be questioned in courts was upheld. See also *Bank of Ethiopia* v. *National Bank of Egypt and Lignori,* (1937) 1 Ch. 513. Acts done by the paramount power in the exercise of its authority in relation to the States are acts of State which are not cognisable by Court, *Secretary of State for India in Council* v. *Kamachi Boye Sahiba,* (1859) 13 Moo.P.C.C. 22. *Salaman* v. *Secretary of State for India in Council,* (1906) 1 K.B. 613.

Claim on a debt or contract

An action brought by one Province or State against another to enforce proprietary rights is a justiciable dispute. A claim to recover debts due by one unit to the other, *Virginia* v. *West Virginia,* 220 U.S. 1; a claim to recover interest due on bonds, *United States* v. *N. Carolina,* 136 U.S. 211; a suit for account-

ing and for recovery of money due, *United States* v. *Michigan,* 190 U.S. 370; a suit to enforce a contract entered into between two provinces, *Virginia* v. *West Virginia,* 265 U.S. 568; all these are disputes of a justiciable character. A claim by one state against another for the withdrawal of a natural product from an established current of commerce is a justiciable one. What is sought must not be an abstract ruling on a question of law. The attitude of the complainant must not be that of a mere volunteer attempting to vindicate an academical dispute or to redress a purely private grievance. Accordingly, a suit by a state whose public institutions have been supplied with natural gas produced in another state, to enjoin the latter state from enforcing a statute requiring the producing companies to supply domestic demands to the full extent of their supply the effect of which will be to interfere with the supply to complainant's institutions, is a justiciable controversy. See *Commonwealth of Pennsylvania* v. *State of West Virginia,* 262 U.S. 553. There should be an actual infringement of a right and not a possible infringement. In the *Commonwealth of Massachussetts* v. *Andrew W. Mellon, Secretary of Treasury,* 262 U. S. 447 an appeal was brought in the Supreme Court of the United States, challenging the constitutionality of the *Maternity Act of* 1921. The Act provided for the initial appropriation and thereupon annual appropriation for a period of 5 years, among such of the several states as shall accept and comply with its provisions, for the purpose of co-operating with them to reduce maternal and infant mortality and protect the health of mothers and infants. It is alleged that the plaintiff's rights and powers as a sovereign state and the rights of its citizens have been invaded by the expenditures and acts; and that although the State has not accepted the act, its constitutional rights are infringed by the passage thereof, and the imposition upon that state of an illegal and unconstitutional option to yield to the Federal Government a part of its reserved rights. The Supreme Court while holding that there is no justiciable dispute before them to exercise their jurisdiction expressed as follows:—

"In so far as the case depends upon the assertion of a right on the part of the State to sue in its own behalf we are without jurisdiction. In that aspect of the case we are called upon to adjudicate no rights of person or property not rights of dominion over physical domain, not quasi-sovereign rights actually invaded or threatened, but abstract questions of political power, of sovereignty, of Government. No rights of the State falling within the scope of the judicial power have been brought within the actual or threatened operation of the Statute, and this Court is without authority tn pass abstract opinions upon constitutionality of acts of Congress. . The party who invokes the power must be able to show not only that the Statute is invalid, but that he has sustained or is immediately in danger of sus-

taining some direct injury as the result of its enforcement and not merely that he suffers in some indefinite way in common with people generally. If a case for preventive relief be presented, the Court enjoins in effect, not the execution of the Statute, but the acts of the official, the statute notwithstanding. Here the plaintiff has no such case—''.

IV. Boundary Disputes

Boundary disputes often cause serious conflicts between nations which often result in very destructive wars. Students of history might be aware of how the long-standing unsettled disputes regarding the ownership to the Raichur Doab between the Tungabadra and the river Krishna, led to frequent boundary disputes and wars between the Vijayanagar and Bahmini Kingdoms, and to the ultimate defeat and downfall of the Vijayanagar Kingdom.

IV. (a) Mountain—as boundaries

Boundary disputes might come up before the Federal Court. It may be that a boundary between two states may be a mountain. In India, mountains form the natural boundaries between Provinces or States and the dispute might arise as to whether the boundary limit of a unit extends only to the base of the mountain or whether it takes in the whole slope of the mountain from the base to the summit. The correct solution seems to be that each unit is entitled to that half of the mountain as would fall to its share if dividing lines are drawn from the appex to the base perpendicularly and the mountain is cut right through its middle from the summit to the base. Therefore, if a mine is discovered on its slope belonging to one province of state, mining operations can be carried on by that province or state till the boring reaches the dividing line. The same rule holds good when a hill or hillock forms the dividing boundary between the two federal units. Oppenheim in his Public International Law, Vol. I, 4th Edn., p. 428, says that:

"failing special arrangements, the boundary line runs on the mountain ridge along with the water shed."

IV. (b) Water—as boundaries

The nature and kind of the questions that might arise before the Federal Court in its original and appellate jurisdiction regarding waters may be numerous. Disputes in land, in sea, in rivers, in lakes and in inland waterways may arise between riparian states on opposite sides or between states in the upper and lower reaches. Disputes about the ownership of gulfs and bays and territorial waters would be no less frequent.

The territory of a Province or State consists of lands within its boundaries. If it is one with a sea-coast the water that is touching its land, forms its boundary. These boundary waters are of two kinds, national waters and territorial waters. Territorial waters are ordinarily waters within the distance of 3 miles from the sea-coast. National waters are waters within lakes, canals and rivers together with their mouths whether they are ports, harbours, gulfs and bays. Suppose there are lakes, landlocked seas or harbours with territories of several provinces or states round them, say for instance the Gulf of Cutch or the Gulf of Cambay or the Harbour of Cochin or again lakes like those of Geneva in Europe, or lakes similar to Huron, Eric and Ontario in North America. It is likely that disputes might arise with respect to the ownership of such lakes and landlocked seas.

IV. (b1) Rivers—as boundaries.

Rivers are likely to give rise to disputes of various forms, both interstatal and interprovincial. Many rivers do not run through the lands of one and the same state or province. They may be (*a*) boundary rivers separating provinces or states at some stage of their course; or (*b*) they may run through more than one province or state. Most of the Indian rivers such as the Indus, the Ganges, the Brahmaputra, the Mahanadi, the Godavari, the Krishna and the Narmada share both features.

IV. (bb) Non-navigable boundary rivers

The boundary rivers have created many disputes between two states. Such rivers belong to the territory of the States or the Provinces they separate, the boundary line as a rule, running either through the middle of the river if it is non-navigable or through the middle of the middle channel of the river in the deepest stream if it is navigable river. Very often questions might arise for the decision of the Federal Court as to what happens to the boundary to the provinces or states when the boundary river gradually or suddenly changes its course. Sometimes in the course of such change an island or a portion of land belonging to one province or state may be separated from it, by the river running in altered course. In the case of a *sudden* change in the course of the river the boundary is the same as before; but in case of a slow, gradual, imperceptible change, the boundary is altered with it. An important case arose in the *State of Missouri* v. *State of Kentucky*, (11 Wallace, 395); there the question was whether the channel in

the Mississippi, admittedly the boundary between the two states followed the river in its wanderings or whether the boundary remained the same, although the river minded to change its channel. The possession of an island known as *Wolf Island* depended upon the question for, in 1820, when Missouri was as a State with its eastern boundary the middle of the river, Wolf Island lay to the east of the main channel of the river and therefore within the sovereignty of Kentucky, whereas at the time of the suit, the main channel of the river was to the east of the island which was therefore claimed by Missouri as within its sovereign jurisdiction. To determine the jurisdiction, the two states appeared before the bar of the Supreme Court, the State of Missouri bringing her bill claiming the island against the State of Kentucky. The question raised as to the justiciable character of the dispute was decided in favour of the Supreme Court jurisdiction and it was held that when Missouri was admitted as a State, the Wolf Island belonged to the State of Kentucky and the change in the channel of the river being sudden, the boundary must be taken to be as before and the State of Kentucky retained the sovereignty over the Wolf Island as before.

A case of a sudden change by avulsion within a year in the course of the Mississippi river, a boundary river, arose in the *State of Nebraska* v. *State of Iowa*, 143 U. S. 351; which was an original suit brought in the Supreme Court of the United States by the State of Nebraska against the State of Iowa, the object of which is to have the boundary line between the two states determined. In 1877 there were marked changes in the course of the channel of the Mississippi river so that in the latter year it occupied a very different bed from that through which it flowed in the former year. Out of these changes has come this litigation, the respective states claiming jurisdiction over the same tract of land. The Supreme Court held it was a case of avulsion and not accretion and that in 1877 the river suddenly made a new channel and that the boundary line between the two states does not follow the vagaries of the Missouri river but remained before as after, in the old channel and in the central line thereof. When land borders on running water, and the banks are changed by that gradual process known as accretion, the riparian owner's boundary line still remains the same, although during the years by this accretion, the actual area of his possession may vary. It is equally well settled that where a stream which is a boundary, from any cause suddenly abandons its old and seeks a new bed, such a change of channel works

no change of boundary; and that the boundary remains as it was, in the centre of the old channel, although no water may be flowing therein. This sudden and rapid change of channel is termed in law "avulsion". The same principles were applied in a boundary dispute again between the same two states in *Missouri* v. *State of Nebraska*, 196 U.S. 23, where there was a sudden change in the bed of the Missouri river in twenty-four hours and it was held to be a case of avulsion causing no change in the original boundary.

IV. (bb) (ii) Navigable Boundary Rivers.

In the case of Navigable boundary rivers, as in the case of Ganges, the Indus and the Brahmaputra running through various provinces or states, dispute might arise as to the boundary of such provinces or states. The middle of the navigable portion of the river, *i.e.*, the deepest depression in its bed will be the boundary. An exact case arose in the United States, the *State of Iowa* v. *State of Illinois*, 147 U.S. 1. The dispute was due to the conflicting claims of the two states as to the channel of the Mississippi river which separated the two states. Iowa insisted that the boundary line should be drawn in the middle of that river, equally distant from its banks, without regard to the channel of navigation. Illinois contended on the contrary, that it should be the main channel, the channel of commerce, or as it is called the steam boat channel of the river. The question arose in a very interesting way, because of a bridge spanning the Mississippi between Hamilton, on the Iowa side, and Keokuk, on the Illinois side of the river. Iowa claimed and taxed the bridge to the mathematical centre of the stream. Illinois claimed and taxed the bridge to the steam boat channel. The claims of the two states overlapped, Iowa taxing 225 ft. less of the bridge than it would be entitled to tax, taking the middle of the stream as its boundaries, and Illinois taxing 941 ft. including therein the 225 ft. of the bridge which Iowa, according to its claim, could but did not tax. To have the boundaries settled beyond dispute, Iowa filed its bill in the Supreme Court setting up these facts. The state of Illinois filed its answer. The Supreme Court held that where a navigable river separates two neighbouring states, the Thalweg, or middle of the navigable channel forms the line of separation. Formerly a line drawn along the middle of the river, the *medium filum acquae* was regarded as the boundary line; and still will be regarded *prima facie* as the boundary line, except as

to those parts of the river as to which it can be proved that the vessels which navigate those parts keep their course habitually along some channel different from the *medium filum*. When this is the case, the middle of the channel of traffic is now considered the line of demarcation of traffic. Mr. Justice Field gave his approval to a passage which Sir Edward Creasy had himself quoted from Sir Travers Twiss who observed that "Grotius and Vattel speak of the middle of the river as the line of demarcation between two jurisdictions, but modern publicists and statesmen the more accurate and more equitable boundary line of the navigable mid-channel. If there be more than one channel of a river, the deepest channel is the mid-channel for the purpose of territorial demarcation; and the boundary line will be the line drawn along the surface of the stream corresponding to the line of the deepest depression." Again in a recent case *New Jersey* v. *Delaware* (291 U.S. 361) decided by the United States Supreme Court, the question was as to where in the Delaware river which separates the States of New Jersey and Delaware, was located the true boundary line between them. As to this question there has been more or less controversy between the two states almost from the establishment of the Union. The Supreme Court held that the boundary line was the low water-mark of the Delaware river on the New Jersey side, the true boundary was the Thalweg or middle of the main channel of navigation in the river. In a learned judgment Mr. Justice Cardozo concluded that:

> "International law to-day divides the river boundaries between states by the middle of the main channel when there is one and not by the geographical centre half way between the banks. The underlying rationale of the 'Thalweg' is one of equity and justice. A 'river' in the words of Holmes, J. (*New Jersey* v. *New York*, 283 U.S. 336 at 342) is more than amenity, it is a treasure'. If the dividing line were to be placed in the centre of the stream rather than in the centre of the channel, the whole track of navigation might be thrown within the territory of one state to the exclusion of the other. Considerations such as these have less importance for commonwealths or states united under a general government than for states wholly independent. None the less the same test will be applied in the absence of usage or convention pointing to another. International law, or the law that governs between states, has at times, like the common law within states, a twilight existence during which it is hardly distinguishable from morality or justice, till at length the imprimatur of a court attests its jural quality."

A river must be navigable throughout the year if it is to be regarded as navigable. *Sannidhiraju Subbarayadu* v. *Secretary of State for India*, (1927) 53 M.L.J. 868: I.L.R. 50 Mad. 961. The gradual nature of the accretion causing the change of the river depends upon evidence. It would not be

presumed from the obliteration of all marks on the surface of the land accreting. *Pahalwan Singh* v. *Muhessur Buksh Singh,* (1871) 16 W.R. (P.C.) 5. Land formed by accretion to a bank of the river belongs to the owner of the bank. There is no difference whether the accretion is caused by natural or artificial means. *John Deo Dem Raja Subkristo* v. *The East India Company,* 6 M.I.A. 267.

There does not seem to be in Madras as the Reg. IX of 1825 in Bengal, an express law embodying the principle that gradual accretion enures to the land which attracts it; but the rule, though unwritten, is equally well established. *Sri Balusu Rama Lakshmamma* v. *The Collector of Godavari,* (1899) L. R. 26 I.A. 107: I.L.R. 22 Mad. 464 at 467 (P.C.). In the *Secretary of State for India* v. *Raja of Vizianagaram,* (1921) 42 M. L. J. 589: L. R. 49 I.A. 67: I. L. R. 45 Mad. 207 (P. C.), it was argued on behalf of the appellants that, even if the lands in question were accretions to Raja's lands by the settled law of England, which the appellant argued was the law applicable to Madras, land to be an accretion must be formed by gradual, slow and imperceptible degrees as laid down in *Rex* v. *Lord Yarborough* (1824, 3 B. & C. 91 affirmed in 1826, 2 Bli. N.S. 147) and other English authorities and he alleged that the accretion in the present case was not formed by "gradual, slow and imperceptible degrees." On the other hand, the Board were referred to S. 4 of Beng. Reg. 11 of 1825 which applied only to the Presidency of Fort William and the law in force in the Madras Presidency is the English law of accretion of 'gradual, slow and imperceptible'. But the Privy Council did not think it necessary to decide this point. The word 'gradual' with its qualifications 'slow and imperceptible' only defines a test relative to the conditions to which it is applied. In other words the exact rate of progress necessary to satisfy the rule when used in connection with English rivers is not necessarily the same when applied to the rivers of India. At p. 212, they observe that in dealing with the great rivers of India and comparing them with the rivers in England it is necessary to bear in mind the comparative rapidity with which formations and additions take place in the former.

"The Privy Council held that the accretions must be held to be slow, gradual and imperceptible."

In *Pahalwan Singh* v. *Maharaja Mohessur Buksh Singh Bahadur,* (1871) 16 W.R. (P.C.) 5, the Privy Council divided certain alluvial accretions which had formed at the junction of two riparian estates by a line drawn from the point of such junc-

tion perpendicular to the course of the river. It is submitted that the same principle will apply even if the two riparian owners are two units of the Indian Federation.

IV. (bb) (iii) Rivers abandon their usual course and dry up

Sometimes a river suddenly abandons its usual bed altogether and dries up completely. In such a case, the boundary remains the same as before, *i.e.*, a line running through the middle of the river in the case of non-navigable river, or a line passing through the middle of the old Thalweg in the case of navigable river, *i.e.*, the old deepest stream in the middle of the river. But if the place of the old deepest stream is not ascertainable, then through the middle of the river as in the case of non-navigable rivers. (Oppenheim, Public International Law, Vol. I, 4th Edn. p. 426 & foot note 9).

V. Injury to the lower riparian state by disposal of sewage

Disposal of sewage by an upper riparian Province or State to the detriment of a lower riparian Province or State is a dispute over which the Federal Court can exercise jurisdiction. In a case reported in the Supreme Court of the United States, in *State of Missouri* v. *State of Illinois,* 180 U.S. 208, the State of Missouri charged the state of Illinois and the District of Chicago with the commission of an intolerable nuisance by emptying the sewage of that city into the Mississippi river, thus polluting the river as it flowed past the State of Missouri, to the great detriment of the people of that State and to the State itself, and a prayer for injunction to restrain the acts complained of. The State of Illinois demurred *inter alia* that the Supreme Court of the United States has no jurisdiction because the matters complained of do not constitute any controversy between the State of Missouri and the State of Mississippi. Mr. Justice Shiras had no doubt as to the jurisdiction of the Supreme Court. He said:

"It is true that no question of boundary is involved, nor of direct property right belonging to the complainant state. But it must surely be conceded that, if the health and comfort of the inhabitants of the State are threatened, the State is the property party to prevent and defend them. If Missouri were an independent sovereign state, all must admit that she could seek a remedy by negotiation and that failing by force. Diplomatic powers and the right to make war having been surrendered to the General Government, it was to be expected that upon the latter would be devolved the duty of providing a remedy and that remedy, we think, is found in the constitutional provisions we are considering. The health and comfort of the large communities inhabiting those parts of the States situated on the Mississippi river are not alone concerned, but contagious and typhoidal diseases may spread themselves throughout the territory of the State.

Moreover substantial impairment of the health and property of the towns and cities of the State situated on the Mississippi river, including its commercial metropolis would injuriously affect the entire state. And therefore the jurisdiction of the Supreme Court was recognised to entertain such suit."

V. (a) The threatened invasion must be clear.

Before the Federal Court can be moved to exercise its power to control the conduct of one State at the suit of another, the threatened invasion of such rights must be established by clear and convincing evidence. *New York* v. *New Jersy*, 256 U.S. 296. Hence a suit in which the plaintiff state alleged that its citizens were injured by the administration of the laws of the defendant state was held not to present a controversy between states. *Louisiana* v. *Texas*, 176 U.S. 1. The jurisdiction of the Federal Court does not extend to a suit by a state to recover penalties for the breach of its own municipal laws. *Wisconsin* v. *Pelican Insurance Co.*, 197 U.S. 265.

VI. Disputes about Water-supply

The dispute out of water-supply that might arise between the various units of the Federation are numerous: and they would be justiciable by the Federal Court, except those that are excepted under Ss. 130, 131, 132 and 134 of the Government of India Act. Under the above sections, if a federal unit is affected with respect to the use, distribution or control of water from any natural source of supply by the executive or legislative action or by the failure of any authority to exercise any of their powers, then the aggrieved unit would be entitled to appeal to the Governor-General acting in his discretion, who, unless he rejects it summarily, would appoint an Advisory Tribunal to inquire into and recommend on the question, and would decide the dispute according to his discretion. But the powers of the Governor-General is not extended to a case where one unit is desirous of securing the right to make use of water-supplies in the territory of another unit, but only to a case of one unit using water to the detriment of another.

Disputes might arise regarding the regulation of water-supply of interstate or interprovincial rivers flowing through various states or provinces. The quantity of flow to the lower riparian state might be considerably reduced by the diversion of water of a river for lawful and unlawful purposes by the upper riparian state. In a suit brought by a State against another to prevent the latter from diverting from the citizens of the former, the water of an inter-state stream, the

Supreme Court of the United States held that it is a justiciable dispute and granted relief. Vide *Wyoming* v. *Colorado,* 259 U. S. 419, and *State of Kansas* v. *State of Colorado,* 185 U.S. 125. Under the Government of India Act of 1935, such disputes will be decided by the Governor-General in his discretion on the recommendation of the Committee.

Oppenheim in his "Public International Law" Vol. I, p. 381 (4th Edn.) says:—

"Apart from navigation of rivers, the question of utilisation of the flow of rivers is of . importance. With regard to national rivers, the question cannot indeed be raised, since the local State is absolutely unhindered in the utilisation of the flow. But the flow of non-national and international rivers is not within the power of one of the riparian states for it is a rule of international law that no state is allowed to alter the material conditions of the territory of a neighbouring State. For this reason a state is not only forbidden to stop or divert the flow of a river which runs from its own to a neighbouring state, but likewise to make such use of the water of the river as either causes danger to the neighbouring state or prevents it from making proper use of the flow of the river on its part."

VII. Canals—Boundary Disputes relating to

It is possible that a canal might belong to two or more states or provinces. Boundary disputes arising between the riparian owners will have to be decided by applying the same law as are applicable to boundary rivers and interstate rivers. For example, the backwaters on the Wese Coast of South India extending from Tirur to Trivandrum belong to the British India and the States of Cochin and Travancore, and many disputes are likely to arise which will have to be decided by the Federal Court.

VIII. Territorial Waters

The question as to which waters are within the territorial jurisdiction of a particular state or Province is one which the Federal Court will have to decide. *The Lockken,* (1918) 34 T.L.R. 594. Fishing and Fisheries beyond territorial waters form a Federal subject and the States or Provinces have no right over them. But fishing and fisheries within the territorial waters fall within the authority of Provinces or States and, often, disputes might arise between Federal Government and a State or a Province as to the limit of territorial waters.

Three miles limit

Those parts of the sea, lying between the low water mark and 3 miles from it into the sea are known as territorial waters

over which the riparian provinces or states have the right. Very often, disputes might arise as between the constituent units, and sometimes between the Federation and the units as to the right to fisheries, coastal trade (cabotage as it is called), etc., within the maritime belt. (*a*) The right to fisheries, whether fish, pearls, amber or products of the sea belong to the littoral states. The Presidencies of Madras and Bombay and also portion of the Chief Commissioner's province of Sind and the native states of Travancore, Cochin, Baroda, Cambay, and Cutch form the littoral provinces or states of the Arabian sea. Such Provinces or States are entitled to the products of the sea or coastal fishing within the territorial waters. Customs duties may be levied on the merchantmen entering the territorial waters of these provinces or states. (*b*) They may exclude foreign merchantmen. Each Province or State is exclusively entitled to its maritime belt and is entitled solely to its coastal trade and any interference with it will involve in disputes. (*c*) The littoral Provinces or States may exercise control within their maritime belt in the interest of customs duties. The Provincial list in Schedule VII of the Government of India Act specifically gives to Provinces the right to coastal fisheries. If an island were to arise within the maritime belt, that island should be treated as the land and the three mile limit should be measured from that island. In the case of *The Anna,* (1805) 5 C. Rob. 373, when a British Privateer captured a Spanish ship near the mouth of the Mississippi but beyond 3 miles from the mouth and when it was brought before the Prize Court, the United States laid claim to it on the ground that it was captured within its territorial waters, as the capture was within 3 miles from a small mud island within the Territorial waters of the United States, though it was beyond the three mile limit from the shore of the United States. See also *Secretary of State for India* v. *Chelikani Rama Rao,* (1916) 31 M.L.J. 324: L.R. 43 I.A. 192: I.L.R. 39 Mad. 617 (P.C.), where the island at the mouth of the Godavari was held to belong to the Government of India who was the owner of the territorial waters, and not to the Zamindar, the owner of the land adjacent. Conversely when an island within the territorial waters disappears by forces of nature, then the three mile limit of the territorial waters has to be counted from the main land. The disputes between the Federation and the units, or between the units themselves arising from the violation of the above rights are justiciable by the Federal Court.

VIII. (a) History of the territorial waters and its limit or extent

As regards the three mile limit of the territorial waters, in England, the common law was not prepared to recognise this jurisdiction over the three mile limit. *Harris* v. *Franconia,* (1877) C.P.D. 173 and *Reg* v. *Keyn,* (1876) 2 Ex.D. 63. In *Reg* v. *Keyn,* the question arose as to the extent of the criminal jurisdiction of the crown. The point at issue was whether a foreigner in command of a foreign ship and bound for a foreign port could be indicted for manslaughter of a passenger in a ship which he ran down within three miles of the English coast. It was held by a majority of the court 7 against 6 that the court had no jurisdiction to try the prisoner on the ground that prior to 28 Hen. 8, c. 15, the admiral had no jurisdiction to try offences by foreigners on board foreign ships, whether within or without the limit of three miles, from the shore of England; that that and the subsequent statutes only transferred to the common law court and the central criminal court the jurisdiction formerly possessed by the admiral and that, therefore, in the absence of statutory enactments, the central criminal court had no power to try such an offence.

VIII. (b) The Territorial Waters Jurisdiction Act

As a result of this refusal of the courts to recognise the jurisdiction over territorial waters, Parliament passed the Territorial Waters Jurisdiction Act, 1878 (41 and 42 Vict., c. 73) which extended to India, declaring the rightful jurisdiction of the crown to extend and to have always extended over the open sea adjacent to the coast of the United Kingdom and all other parts of Her Majesty's dominion to such a distance as is necessary for the defence and security of such dominions. It may be noted that no definite limit is given to this jurisdiction. S. 2 provides that an offence committed by a person, whether he is or is not a subject, on the open sea within the territorial waters is an offence within the jurisdiction of the admiral, although it may have been committed on board or by means of a foreign ship, and the person committing the offence tried and punished. In reference to the sea (S. 7), it means that part of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of Her Majesty's Dominions, as is deemed by international law to be within the territorial sovereignty of Her Majesty: and for the purpose of any offence declared by the Act to be within the jurisdiction of the Admiral, any part of the open sea within

one marine league of the coast measured from low water mark is deemed to be open sea within the territorial waters of His Majesty's Dominions. Thus the claim to territorial waters is referable to the purposes of defence and security of the realm to the extent to which international law will allow. But in regard to crime, the courts will have jurisdiction over crimes committed at sea within a marine league of the coast.

VIII. (c) Claim beyond the three mile limit

But in practice, the sovereign states have claimed jurisdiction beyond the three mile-limit seawards for certain definite purposes, those of police, revenue, public health and fisheries. Among these is to be included the right exercised by neutrals to prevent hostilities between belligerents in the neighbourhood of their coast. In the reign of George III, a series of "Hovering Acts" were passed to prevent smuggling, where in some cases, jurisdiction up to one hundred miles was given. But the law officers in 1850 expressed the opinion that that type of legislation could not be supported. The earlier Hovering Acts were repealed and in their place was a provision authorising the forfeiture of any ship belonging in whole or part to British subjects or having half the persons on Board subjects of Her Majesty if found with prohibited goods on board within the three leagues of the coast of the United Kingdom. *See* S. 179, Customs Consolidation Act, 1876. Legislation of the nature having extra-territorial effect is held recently to be within the legislative competence of a self-governing dominion. See *Croft* v. *Dunphy,* (1933) A.C. 156.

In 1916, in the *Secretary of State for India in Council* v. *Chelikani Rama Rao,* (1916) 31 M.L.J. 324: L.R. 43 I.A. 192: I.L.R. 39 Mad. 617 (P.C.), Lord Shaw approved of the dictum of Parker, J., in *Lord Fitzhardinge* v. *Purcell,* (1908) 2 Ch. 139 at 166, that the bed of the sea, at any rate, for some distance below low water-mark, and the beds of tidal navigable rivers vested in the crown. In *Lord Advocate* v. *Wemyss,* (1900) A.C. 48, the crown was treated as owner of minerals in the bed of the sea and below the low water-mark.

In the matter of the three-mile limit, the Privy Council, in *Attorney-General for British Columbia* v. *Attorney-General for Canada,* (1914) A.C. 153 at 174, expressed the opinion that the portion was one of uncertainty. It was said:

"The doctrine of the zones compromised in the former (three mile) limit owes its origin to comparatively modern authorities on public international law. Its meaning is still in controversy. The questions raised thereby affect not only the empire generally, but also the rights of foreign

nations as against the crown and of the subjects of the crown as against other nations in foreign territorial waters. Until the powers have adequately discussed and agreed on the meaning of the doctrine at a conference, it is not desirable to say that any municipal tribunal should pronounce on it. It is not probable that in connection with the subject of trawling the topic may be examined at such a conference. Until then, the conflict of judicial opinion which are in *Reg.* v. *Keyn*, (1876) 2 Ex.D. 63, is not likely to be settled, nor is the conclusion likely to be reached on the question whether the shore below low water-mark to within three miles of the coast forms part of the territory of the crown or is merely subject to special powers necessary for protective and police purposes. The obscurity of the whole topic is made plain in the judgment of Cockburn, C.J., in that case. But apart from these difficulties there is the decisive consideration that the question is not one which belongs to the domain of municipal law alone".

This opinion was approved in *A. G. for Canada* v. *A. G. for the Province of Quebec*, (1921) 1 A.C. 413. There the question raised for consideration related to the public right of fishing in tidal waters of Quebec. Viscount Haldane, in giving the opinion of the Council, said at p. 431:

"The Chief Justice, following their Lordships' view, expressed in the British Columbia case, declined to answer so much of any of the questions raised as related to the three-mile limit. As to this their Lordships agree with him. It is highly inexpedient in a controversy of a purely municipal character such as the present, to express an opinion on what is really a question of public international law."

The extent of the territorial waters, except for crimes committed within three miles of the coast is yet undefined and the court will not regard the three-mile limit as so definite a rule of international law as to be regarded as part of the law of the land.

IX. Ports, Harbours and Mouths of Rivers

Ports, Harbours and mouths of rivers are national. When foreign merchantmen enter them or when they cast anchor in the maritime belt, they and the persons therein fall within the jurisdiction of the littoral state in case peace and order outside the ship are disturbed, or persons other than the crew or passengers are affected. But this jurisdiction would be limited when the vessel is compelled to enter a port in distress, because the ship should then be regarded as ex-territorial. By an international regime of Maritime Ports convention held at Geneva on December 1923 (including Great Britain and other States) the contracting parties are to enjoy equality of treatment in and freedom of access, to their maritime ports in respect of their sea-going vessels used for foreign trade.

In the case of harbours, if one and the same littoral state or province enclose them, they belong to that state or Province. And if two or more littoral states enclose them, they belong to

those states or provinces, *ad medium filium aquae*. In the case of Bombay and Madras harbours, there is no chance of any disputes between the constituent units of the Federation. But as regards the Cochin harbour the chances of conflict between the Travancore, Cochin and the Federal Government are bound to be frequent and they will have to be decided by the Federal Court.

X. (a) Disputes relating to Gulfs and Bays

If Gulfs and Bays, such as the Gulf of Cutch, Gulf of Cambay, Gulf of Renn and Gulf of Mannar, are enclosed by one and the same littoral provinces or states such as Bombay, Sind, Cutch and Kathiawar, disputes might arise between them with respect to rights of fishery. Disputes as to the proprietary rights over them will have to be incidentally decided. Gulfs and Bays enclosed by one and the same littoral belong to that Province or State, if the width of the entrance from the sea does not extend more than six miles, *i.e.*, three miles from each side. But if the width exceeds more than six miles, *i.e.*, 3 miles from each side and they are enclosed by the land of one and the same littoral state, there is a difference of opinion amongst writers. Vide *The Fagernes*, (1927) P. 311.

Great Britain, Germany, Belgium, Holland and the United States seem to think that if the entrance of the gulfs and bays exceed ten miles, then they cannot belong to the territory of the littoral state. But the practice of other countries exceed this limit. The institute of International law has voted in favour of a twelve mile wide entrance.

But gulfs and bays surrounded by lands of more than one littoral state or province are non-territorial, even if their entrance is very narrow. They are parts of the open sea, the marginal belt inside the bays and gulfs excepted. They are open to vessels of all nations including men of war and foreign fishing vessels both in time of peace and war and those vessels are not bound to comply with the municipal regulations of the littoral State or Province in time of peace. Oppenheim in his Public International Law, Vol. I, 4th Edn. (1928), says at p. 411:

"As regards navigation, fishery and jurisdiction in territorial gulfs and bays, the majority of publicists contend that the same rules of the law of nations are valid as in the case of navigation and fishery within the territorial maritime belt. The right of fishery may, therefore, exclusively be reserved for subjects of the littoral state. And navigation, cabotage excepted, must be open to merchantmen of all nations, though foreign men of war need not be admitted, unless the gulfs or bays in question form part of the highways of international traffic."

X. (b) Disputes relating to Straits and channels

In India, there are not very many Straits, to create disputes to call for adjudication by Federal Courts. All Straits which are not more than 6 miles wide are territorial. If the Straits divide the land of one and the same province or state, it belongs to that province or state (*i.e.*, territorial). But when it divides the territory of two different provinces or states, it belongs to both, the dividing line being the mid-channel. When a Strait is more than 6 miles wide and enclosed by land of the same state and if it can be commanded by coastal batteries, then the majority of writers agree that it can be territorial. All rules of the law of nations concerning navigation, fishery and jurisdiction within the maritime belt apply likewise to navigation, fishery and jurisdiction within the Strait. Once Great Britain claimed the narrow seas, namely, St. George Channel, the Bristol Channel, the Irish Sea and the North Channel as territorial. A recent case, *The Fagernes,* (1927) P. 311, shows that Great Britain is giving up its claim to such an unlimited degree. In 1926, a collision occurred in Bristol Channel between an Italian vessel and a British vessel and as a result the Italian vessel was sunk. The plaintiff, the owner of the British vessel commenced an action for damage caused to the ship. The place of collision was 10 or 12 miles distant from the English coast and 9½ or 7½ miles from the Welsh coast. The defendant contended that the place where the collision took place was not within the jurisdiction of the Court. Hill, J., held that it was within the jurisdiction. It went upon appeal where the Attorney-General in consonance with the general trend of the more recent opinion informed the Court that the crown is not going to claim jurisdiction over the place where the collision occurred. But Bankes, L.J., said at p. 320, that the question has never been authoritatively answered, except in cases (1) where some effective occupation has been proved, or (2) some statutory recognition established, or (3) where the opening is so narrow as to admit of no doubt. The answer to the question can be sought in the domain of international law, or in the case of our own country, in our common law". In *Anna Kumaru Pillai* v. *Muthupayal,* (1903) 27 Mad. 551, we find an application of the principles that rights beyond 3 miles could be acquired by a province by user. It was held in this case that the right to collect shell-fish in the gulf of Mannar was acquired through user by the coastal population for centuries, by licences granted to collect shell-fish by the rulers of the littoral states. It may be noted that this gulf is so extensive as

to be bounded on the west by the Indian mainland, on the east by Ceylon, on the north by Adam's bridge, while to the south it is open to sea: and the shell-fish beds are beyond the three-mile limit. If, instead of the user by the coastal population, the user is by a constituent unit of the Federation, its right will have to be recognised by the Federal Court.

XI. Disputes over air—cujus et solum, usquae ad coelum, ad et inferos

The development of aerial navigation might give rise to various aerial disputes, consequent upon the assertion of right over the air by States or Provinces. Various units of the Federation may like to have an air-craft and may like to go from one end of the country to the other and will in the course of the journey, have to travel through several units. It is true that under the new constitution, to the Federal Legislature is given the power to enact laws for Air-craft, Air-navigation, the provision for aerodromes, regulation and organisation of Air-traffic and of aerodromes. Till the Federal legislature chooses to make laws of guidance for settling disputes between them, the Federal Court will have to call in aid the principles of Public International Law. In the words of Oppenheim, Vol. I, p. 424 (4th Edn.):

"The practice of states seems to accord with the theory of the sovereignty of the subjacent state in the air-space over its territory and waters, both national and territorial, unmitigated by any servitude or other right of innocent passage."

Grotius was of opinion that the air, like the open sea, was incapable of appropriation. But in modern times, this holds good only as regards the air over the open space and unoccupied territory.

XI. (a) Three theories

Various were the views entertained regarding the right to air superincumbent on land and territorial waters, namely, (1) that the air space is free to all nations, (2) that the air space of the lower zone is national, belonging to the state and of the higher zone is international belonging in common to all nations, (3) that the air space belongs to the subjacent state subject to a servitude of other nations, namely, a right of innocent passage for foreign civil but not military air-craft.

XI. (a-1) Three theories—examined

James Wilford Garner in his Tagore Law Lectures, (1922) on "Recent Developments in International Law" gives a detailed

history. The air space above a subjacent space may be divided into three zones, the remotest, the nearest and the middle. The remotest zone is closed to man on account of its temperature. The nearest zone immediately above the earth may be regarded as a sort of an appurtenance to the soil upon which it abuts. In this zone, buildings are erected, telegraph and telephone wires stretched, and in it take place many of the activities of man which the state regulates or prohibits. The height of it may be extended to that of the tallest buildings plus the height of any telegraphic or other installations which may be erected upon them. Professor Rolland places this height at 330 meters. The *middle* zone is available for international navigation and the transmission of wireless correspondence.

(*a*) There are those who maintain the general principle of the freedom of the air, but allow the subjacent state a certain right of control for purposes of protection and conservation without restriction as to height. The Institute of International Law at its meeting in Ghent declared in Art. 1 that

> "the air is free: states have over it in times of peace and in times of war only the right necessary for their preservation"

but in Art. 3 recognised the right of each state so far as is necessary for its security to prevent above its territory and territorial water, and "as high as need be", the passage of hertzian waves. This view was re-affirmed by the Institute at its Madrid meeting in 1911.

(*b*) There is also the view that the subjacent state is absolutely sovereign over the whole aerial space above its territory without regard to height, but that it is limited by the right of innocent passage by aviators of other states. This view was reached by an unofficial Congress of Jurists held at Verona in 1910. This is also the view enunciated in the convention relating to international navigation, agreed to by the representatives of the allied and associated powers at the Peace Conference at Paris in 1919.

The advocates of the theory of absolute freedom of the air were older jurists who wrote when aerial navigation and the use of air as a medium of telegraphic communication was unknown. In 1902, they claimed the absolute freedom of air upon the analogy of the freedom of the High Seas. But the analogy is fallacious, in that the sea abuts the riparian state horizontally,

while the air rests upon it vertically. There is no danger to the riparian state by acts resulting from the navigation of the High Seas, such as collision, etc., but such acts occurring in the air space above the subjacent state may directly affect it and prove a danger to its inhabitants below. Further, a limited control is essential for its national defence and self-preservation, and also for prevention of violation of its laws relating to criminal, revenue, immigration, health and neutrality, etc. On the above grounds, the principle of absolute freedom of the air space is not recognised to-day.

The opposite extreme, *i.e.,* the absolute sovereignty of the state below over air space above it, both in times of peace and war seems also hardly defensible, on the ground that in the case of landlocked states, which have no sea border, they would be entirely dependent upon the will of the states which lie across the path of voyage. To prevent the passage of air ships etc., which have no idea of landing on or causing injury to the subjacent state, except the possible falling of wrecked air-craft, without limitation as to height, would be pushing the doctrine of sovereignty too far. At the meeting of the Institute of International Law in 1906, Westlake advocated the solution which recognised the sovereignty of the subjacent state over the superincumbent air space without limitation as to height but subject to a servitude of innocent passage by aviators of other countries. He had few supporters to start with but his view gained more adherents and it was approved by the majority of the delegates at the International Conference of the Powers at Verona. The British Aerial Navigation Acts of 1911 under which the Home Secretary, for the purpose of protecting the public from dangers arising from the navigation of air-craft, was empowered by order to prohibit their navigation over areas prescribed by the order, and the Aerial Navigation Acts of 1913 under which the power of the Home Secretary was extended to include purposes for the defence and safety of the realm. By virtue of this the Secretary of State could prescribe the areas in which the air-craft coming from abroad must land. Under this newly acquired authority the Home Secretary, by order in Council (1st March, 1913) limited the entry to the country by certain strips of coast, specified compulsory landing grounds and described the procedure to be observed by visiting air-craft. By S. 1 (2) of the latter Act, the power of prescribing by order the areas within which air-craft coming from outside the United Kingdom were to land and other conditions to be complied with by them:

XI. (b) Peace Conference at Paris, 1919

This principle was agreed to by the allied powers at the Peace Conference at Paris 1919. Art. 1 of the Convention declared that:

"of the contracting states, every state has complete and exclusive sovereignty in the air space above its territory and territorial waters."

By Art. 2, each contracting party undertakes to accord in times of peace freedom of innocent passage above its territory and territorial waters provided that the conditions established in the Convention are observed. The undertaking to grant freedom of passage applies only in times of peace. By Art. 39, it is declared that in case of war the provisions of the convention do not affect the freedom of action of the contracting states either as belligerents or as neutrals. By an Act of 1920, Great Britain affirmed the full and absolute sovereignty and rightful jurisdiction of His Majesty over the superincumbent air space above his dominions and territorial waters. The 5th paragraph of Art. 34 of the Convention of Paris, by a Protocol dated in London, 30th June, 1923, was amended to read, that each state represented on the commission (Great Britain, the British Dominions and India counting for this purpose as one state) shall have one vote. With regard to the vote of Great Britain and the Dominions an important alteration was made to the Convention by a Protocol dated in Paris, 11th December, 1929, which entered into force on the 17th May, 1933. By this, each of the Dominions and India acquired equal voting rights with the other States. According to the Warsaw-Convention dated 12—10—1924, the unification of certain rules to international carriage by air, the United Kingdom passed Carriage by Air Act of 1932 to give effect to that: S. 4 of of which says that any liability imposed by Art. 17 of the said first schedule on a carrier in respect of the death of a passenger shall be in substitution for any liability of the carrier in respect of the death of that passenger either under any statute or at common law and the provisions set out in the second schedule to this Act shall have effect with respect to the persons for whose benefit the liability so imposed is unenforceable with respect to the manner in which it may be enforced. In 1933, a Convention took place at Rome known as the Rome Convention of 1933, to regulate the damage caused by air-craft to 3rd parties on the surface, signed by 26 countries including India. Subsequently the Air Navigation Act of 1936 was passed in England, amending in certain respects the Air Navigation Act of 1920. As stated above, from 1933, India had come to be recognised as a

separate unit entitled to a single vote and it has been provided in S. 106 of the Government of India Act of 1935, that the Federal Legislature has power to enact a law by way of implementing treaties and agreements with other countries, but it shall do so only with the previous consent of the Governor of a Province or of the ruler of a Federated State. In the Dominion of Canada, a conflict arose between the Dominion and the Provincial legislature as to the rights to legislate in matters of aerial navigation. An appeal was brought by way of a case stated to the Privy Council to decide whether the Parliament and the Government of the Dominion has the legislative and executive authority to perform obligations of Canada or any of its provinces under the Convention of Paris, 1919. The Privy Council regarded the subject of aerial navigation as of such national interest and importance to the Dominion of Canada and based its reasoning upon the obligations which the Dominion had undertaken as a signatory to the Paris Convention and held that the whole field of legislation in relation to aerial navigation in Canada belongs to the Dominion. *The Regulation and Control of Aeronautics in Canada*, In re, (1932) A.C. 54.

By the Indian Air-Craft Act 32 of 1934, the Governor-General in Council by notification in the Gazette may make rules regulating the manufacture, possession, use and operation of any air-craft or class of air-craft. By S. 100 of the Government of India Act of 1935, the Federal Legislature has and a Provincial Legislature has not power to make laws with respect to air-craft and air navigation the provision of aerodromes and the regulation and organisation of air traffic and of aerodromes.

XI. (c) (i) Private air-craft

The texts of the Paris Convention regulating the Aerial Navigation in 1919 modified by the International Commission for Air Navigation of 1934 may be accepted with necessary alterations as rules of guidance for settling disputes that might arise between the various constituent units of the Federation regarding Aerial Navigation. Air-craft must be registered in the State of which their owners are nationals and the nationality of the air-craft is that of the state in which they are registered. Every private air-craft must carry a certificate of its registration and air-worthiness, certificates of competency, licences of the operating crew, a list of passengers, and special licences for wireless equipment for wireless operators, etc. The establishment of international airways should be subject to the consent

of the state, flown over by an air-craft. Cabotage is reserved for the air-craft of the territorial state, and each state will have the right to reserve to itself the right to carry for hire persons between two points on the territory. With regard to the ships wrecked at sea, the rules applicable to the salvage of ships will govern. The authorities of the state have the right to examine every foreign private air-craft and verify its documents.

Each is to accord free innocent passage in time of peace to the air-craft of other states on observance of certain conditions laid down; and for military reason, a state can prohibit air-craft of other states from flying over certain areas of its territory and each state in times of peace in exceptional circumstances prohibit altogether flight over its territory by other states. Every air-craft used in public transport and capable of carrying ten or more persons shall be equipped with the sending and the receiving-wireless-apparatus. Every air-craft of a state has the right to cross the air space of another state without landing; but it shall follow the route prescribed by the state over which the flight takes place. But for reasons of general security, it will be obliged to land, if ordered to do so by means of signals. No air-craft capable of being flown without a pilot shall, except by special authorisation, fly without pilot over the territory of another contracting state. Every air-craft which passes from one state into another shall, if regulations of the latter state require it, land in one of the aerodromes fixed by the latter.

Prohibited Transport

The carriage, by air-craft, of explosives and of arms and munitions of war is forbidden in international navigation. No foreign air-craft shall be permitted to carry such articles between any two points in the same contracting state. A state may, in aerial navigation, prohibit or regulate the carriage or use of photographic apparatus.

XI. (c) (ii) State air-craft

State air-craft may be military air-craft commanded by men in military service, and non-military air-craft such as used for ports, police and customs. Military air-craft are not allowed to fly over land or water of a state, unless specially authorised. The states are to arrange for themselves as regards ports, police and customs.

XII. Radio Telegraphy

The space of the territorial atmosphere has become equally important as the territory, on account of wires for telegraphs

and on account of the wireless. Every state can prevent neighbouring states from putting up wires for telegraphs and telephones, passing through its air space. Since the use of the air space as a medium for the transmission of radio-telegraphic correspondence does not expose subjacent states to danger from falling objects used for purposes of navigation, there is no need of state-control over it. Nevertheless the transmission of dispatches through the air from stations in one country to another may interfere with local telegraphic communication in intervening states through the interruption which it may cause to the movement of the air waves. For this reason states are entitled to exercise some control over the sending of radio-telegrams through the air space over them. Oppenheim's view is that as regards the wireless, the principle of sovereignty in the air space over subjacent state applies with equal force to prohibit the disturbance of the air space over the State's territory by means of Hertzian waves caused for the purpose of wireless communications and emanating from a foreign source. The resolutions arrived at the International Radio-Telegraphic Convention of 1912 signed at London, superseded by the International Radio-Telegraphic Convention signed at Washington in 1927 will govern such questions. For fuller particulars, *vide* Hudson's International Legislation, Vol. III, pp. 2197 to 2276.

SUMMARY OF ENGLISH CASES.

BRITISH SUGAR MANUFACTURERS, LTD. *v.* HARRIS, (1938) 2 K. B. 220 (C.A.).

Income-tax—Profits or gains of business—Subsidiary companies—Payment of share of profits in lieu of services rendered—Reduction for income-tax purposes—Income-tax Act, 1918, Sch. D, r. 3 (a).

A company which was carrying on business as manufacturers of beet sugar agreed to pay two other bodies as between them for a period of four years "20 per cent. of the net profits of the company in consideration of their giving to the company the full benefit of their technical and financial knowledge and experience and giving to the company and its directors advise to the best of their ability respectively on all questions relating to manufacture and finance and disposal of the company's products."

Held, that the sums paid to the subsidiary companies in respect of the 20 per cent. of the profits payable to them was disbursement or expense "wholly and exclusively laid out or

expended for the purposes of the trade" of the company within r. 3 *(a)* of the Rules applicable to cases I and II of Sch. D of the Income-tax Act and that it should be deducted for arriving at the profits or gains of the company for income-tax purposes.

TUDOR-HART *v.* BRITISH UNION FOR THE ABOLITION OF VIVISECTION, (1938) 2 K.B. 329 (C.A.).

Practice—Action for libel—Plea of fair comment—Rolled up plea—Direction for particulars—Rule regarding.

A defendant pleading the rolled-up plea of fair comment as a defence to an action for libel cannot be ordered to deliver particulars stating which of the statements in the words complained of the defendant relies on as statements of fact and which as expressions of opinion; nor can the Court order such defendant to give particulars of the facts he relies on as being the basis of his comments if the plea limits those facts to the said facts.

Aga Khan v. *Times Publishing Co.*, (1924) 1 K.B. 675, followed.

HIBERNIAN BANK, LTD. *v.* GYSIN AND HANSON, (1938) 2 K.B. 384.

Bill of Exchange—Words "not transferable" across bill—Bill made payable only to named payee—Effect—Suit by transferee of bill—Maintainability—Bills of Exchange Act, 1882, S. 8 (1).

S. 8 (1) of the English Bills of Exchange Act provides as follows: "When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto but is not negotiable."

A Bill was in the following terms: "Three months after date pay against this first of Exchange to the order I. C. Co., Ltd., only the sum of . . . . effective value received". The bill which was crossed "not negotiable" was drawn upon the defendants and was accepted by them, and then indorsed by the drawers and transferred to the plaintiffs for value; the bill having been dishonoured on presentation the plaintiffs sued for the amount of the bill and interest.

Held, that the words "not negotiable" coupled with the words "to the order of I. C. Co. Ltd., only" in the bill were sufficient to prohibit the transfer of the bill and that the plaintiffs' action was not sustainable.

National Bank v. *Silke*, (1891) 1 Q.B. 435, considered.

HAILE SELASSIE *v.* CABLE AND WIRELESS, LTD., (1938) 1 Ch. 545.

International law—Ex-Emperor of Abyssinia — Suit for recovery of amounts due under contract—Rival claim by Italy—Jurisdiction of British Court.

The plaintiff, the ex-emperor of Abyssinia instituted an action for an account of what was due under a contract made between the Director-General of Ports, etc., of Ethiopia and the defendant company which was in Great Britain. It was ascertained from the Foreign Office that His Majesty's Government still recognised the plaintiff as the *de jure* Emperor of Ethiopia and that His Majesty's Government recognised the Italian Government as the Government *de facto* of virtually the whole of Ethiopia. The defendants proved that a claim to the moneys payable under the suit contract had been made by the Italian Government.

Held, that the Court had no jurisdiction to decide on the plaintiff's claim as there was a rival claim by another Sovereign State, namely, Italy.

Observations of *Scrutton, L.J.*, in (1921) 3 K.B. 532, relied on.

In re FROY (DECEASED) : FROY *v.* FROY, (1938) 1 Ch. 566.

Will—Construction — Gift to compound class — Whether grandchildren take as joint tenants or tenants in common—Double words of severance when necessary.

The rule stated in Jarman on Wills, 7th Ed., p. 1772, that, where there is a gift to a compound class, for example to *A* for life and at his death to be divided amongst his children then living and the issue of children then dead the issue to take their parents' share, only the children take as tenants-in-common, and double words of severance are required to enable the issue as well as the children to take as tenants-in-common and not as joint tenants, will not apply where the gift is in a very condensed form and it is practically impossible to insert double words of severance, and in such a case the words of division can be taken to apply to the original class of children as also to the substituted sharers, namely, the grandchildren.

In re HARWARD : NEWTON *v.* BANKES, (1938) 1 Ch. 632.

Will—Construction—Absolute legacy—Modification to life-estate by codicil—Death of legatee before testatrix—Effect—Legacy whether lapses.

A testatrix by her will after bequeathing certain specific legacies directed that her trustees should stand possessed of the residue of her real and personal estate in trust for a certain sum to her married daughter *G*. By a codicil of later date the testatrix directed that her trustees should hold the legacy given to *G* upon trust to invest the same and to pay the income thereof to her during her life without power of anticipation and after her death to hold both the capital and income in trust for the persons who would on the death of her daughter be the testatrix's own statutory next of kin under the Administration of Estates Act, 1925, as if the testatrix had died possessed thereof intestate and without having been married. *G* having predeceased the testatrix the question was raised whether the legacy bequeathed to her lapsed on her death.

Held, that the legacy was a settled legacy and the death of *G* the tenant for life did not cause a lapse.

In re *Pinhorne*, (1894) 2 Ch. 276 and In re *Powell*, (1900) 2 Ch. 525, relied on.

In re CLEADON TRUST, LIMITED, (1938) 1 Ch. 660.

Company—Advances to subsidiary companies—Secretary of company applying for loans—Legality—Ratification by Directors—No proper quorum—Liquidation of company—Application for recovery of loans—Maintainability.

The applicant from time to time made advances by way of loan to two subsidiary companies at the request of the Secretary of the main company. At a subsequent Board meeting of the company it was resolved that the several advances should be confirmed. But there was no independent quorum for the Board meeting and the action of the Board was not in any way approved by the shareholders. The company having gone into voluntary liquidation the applicant sought to recover his advances.

Held, that as the Secretary had no authority to borrow the company was not liable to repay the moneys paid for its benefit.

Held, further, that the company was not bound to repay the loan on the theory of ratification because there was no proof that a quorum of directors competent to act had knowledge that the payments were made and that the payer expected to be repaid by the company.

HUSSEIN OTHERWISE BLITZ *v.* HUSSEIN, (1938) P. 159.

Contract—Invalidity—Nullity of marriage—Marriage brought about by fear—Test.

It is not a correct statement of the law to say that in order to avoid a contract entered into through fear, the fear must be such as would impel a person of ordinary courage and resolution to yield to it. Whenever from natural weakness of intellect or from fear—whether reasonably entertained or not—either party is actually in a state of mental incompetence to resist pressure improperly brought to bear, there is no consent.

Observations of *Butt, J.*, in *Scott* v. *Sebright*, (1886) 12 P. D. 21, followed.

JOTTINGS AND CUTTINGS.

A Stipendiary on J.P.s and their Clerks.—At Leeds on June 15 at the Conference of the Magistrates' Association held in that place, Mr. J. Wellesley Orr, the Manchester stipendiary, made reference to some unpaid persons of his own occupation as "virtually deadheads," who "turned to the clerk at the end of a case, instead of applying their common sense to the facts, and asked: 'What would you do, Mr. Clerk?'" Magistrates should certainly allow the clerk to advise them as to law, but they should decide upon the facts for themselves." He also criticised the practice obtaining in some Courts of the clerk retiring with the bench of magistrates to consider a case. "I do not think," said he, "that the clerk should influence them in their decisions, for it is the magistrates' responsibility." He also made a remark which in the past has been pointedly directed to certain High Court Judges, that "the magisterial function is not the censorship of morals, but the administration of the law."

The just observations of Mr. Orr were supplemented by those of another stipendiary, Dr. Coddington of Bradford, touching a matter which has long called for adverse and fair comment: "The tendency, in matrimonial cases, to take so much from a man's weekly wages as represented his 'bacca, beer and pictures,' leaving him an automaton earning money and being left with nothing more than his lodgings and his keep. No wonder that the man chucked up his work and went on the dole"—preferring, no doubt, in such cases the prison to the treadmill.—*L.J.*, 1938, *p.* 450.

Distinguishing Law and Fact.—Such criticism was not, of course, directed and could not fairly be directed to all courts of summary jurisdiction; but those in respect of which it is fair comment are far too many.

In a letter to the *Times*, having read the comments of the stipendaries aforesaid, Mr. H. Ramsbotham wrote of "a case in point to the contrary." "I was then," he said, "a young magis-

trate, and was asked by the chairman of a certain bench to attend a meeting of that bench. The clerk, a most competent and highly respected man, certainly seemed to be taking too much on himself in the conduct of a case. I was very much struck by the chairman's remark, which was, to the best of my recollection: 'Mr. Clerk, on all questions of law this bench is glad to have your advice, but on matters of fact, leave them to the bench'."

One may sympathise with both; for magistrates must look down to the clerk for legal guidance, while in other courts a jury can for the like purpose look up at the judge. And there are so many matters of mixed law and fact that it must be difficult for clerk and bench to keep within their respective bounds.

Why not make the lawyer the chairman, and give him not more than two J.P.'s, one on either hand, selected in alphabetical or other order, one from the special and the other from the common jurors' list? This would be very democratic, and would give nearly all citizens a chance of assisting in the administration of the law, in addition to their present chances of receiving it in the dock for motoring or matrimonial offences.—*L.J., 1938, p. 450.*

Life, Joy and Expectation.—Expectation of life continues to be great fun in the Law Courts; and, one after another, the Judges are showing how various are the viewpoints from which you may regard it, how inexhaustible is the field it provides for judicial and philosophic speculation, and how illimitable the damages might be. I think perhaps the best contribution to the debate so far is that of Langton, J., who, in the Admiralty Court on Tuesday, had the opportunity of looking at the problem from the maritime aspect in the matter of expectation of lives lost in a collision accident at sea. And whereas Greaves-Lord, J., had relied chiefly on poetry, Charles, J., on his innate sense of what was fitting, and another judge on what is known as the Business Estimate, Langton, J., felt (and with respect I say quite properly) that 'he could not, in exploring the intangible, ignore arithmatic". He did not go so far as to say that arithmetic alone would get him anywhere, and after some references by O. L. Bateson to $x + y$ he felt that algebra could not be wholly ignored.

A certain Registrar had dealt with the case from the Joy of Living aspect, but the Judge had no difficulty in showing that *joie de vivre* was largely as a matter of temperament, and that an old dustman might have more of it in expectation and in fact than a young and blase millionaire. He saw, too, but little joy (in some cases) in the expectation (said to be valuable) of maintaining one's juvenile and adult dependants.

C. a. v., I look forward to the judgment of Langton, J.—*L.J., 1938, p. 450.*

No Royal Monster.—The Loch Ness monster having again, according to report, appeared in its home waters, big fish hunters are all agog, and deep laid schemes are being woven for the monster's undoing. It would appear, however, should the monster prove to be a fish, even of the mammalian order, that the successful fisherman or captor may send it with a clear conscience to Billingsgate, for it is not, to quote the words of the Dean of Durham, regarding Durham's Whale, a fish, either "by nature royal or by accident episcopal." Whales, sturgeons, lunatics and natural fools have their relation to royalty, and felons may have an episcopal as well as a royal connection; but the Loch Ness fish appears to be a wild thing, and unappropriated, insomuch that the catcher may be the lawful keeper, and is under no obligation to send it to Balmoral.

It was the 17 Ed. 2, c. 11 ("Of the King's Prerogative"), which enacted: ('Item habet warectum maris per totum regnum . . . . Wallenas et sturgiones captos in mari vel alibi infra regnum, exceptis quibusdam locis privilegiatis per Reges". That is to say, "Also the King shall have wreck of the sea throughout the realm, whales and sturgeons taken in the sea or elsewhere within the realm, except in certain places privileged by the King"—as in the Durham diocese.—*L.J., 1938, p. 451.*

Other Prerogatives.—It was by the same Act the sovereign was granted the custody of the lands of "natural fools", likewise the custody of lands of "lunatics"; he was to have "escheats of felons" where the felons held lands of an archbishop or a bishop; and he was to have "the goods of all felons attained and fugitives whersoever they may be found".—*L.J., 1938, p. 451.*

Law of the Crossings.—The belief that contributory negligence does not run against a pedestrian with the car that kills him on the crossings between Belisha Beacons received only a slight shock from Wrottesley, J., in *Knight* v. *Sampson,* for in that case, according to the findings, the driver of the car was not negligent at all. The injured party had been negligent in stepping out too suddenly from the pavement, giving the oncoming driver no chance to comply with the Regulations numbered 3 and 4, to which reference was made in *Bailey* v. *Geddes and Chisholm* v. *London Passenger Transport Board*. Mrs. Sampson's case as defendant was that the plaintiff had stepped off into the roadway without regard to the traffic, and thus came suddenly and immediately in the path of the defendant's car at a time when it was impossible for her to avoid a collision.

"I suppose," said Wrottesley, J., "that one reading of the earlier decision (as cited) might lead to the proposition that it was impossible to knock down a person on a pedestrian crossing by means of a motor-car without being liable for the result; but I do not think it was intended to lay down that proposition in *Bailey*

v. *Geddes*"; and he cited a passage from the judgment of Greer, L. J.

It is difficult not to agree with the words of the Judge, when he declared his belief that it was possible for a pedestrian so to step on to a pedestrian crossing as, in effect, to "commit suicide".—*L.J., 1938, p. 451.*

Defamatory Words about Libel?—I believe there are few lawyers who would withhold their approval of the words of what Mr. MacLaren, general secretary of the National Federation of Retail Newsagents, who, at Whitley Bay, described as "obnoxious, stupid and archaic", the law whereby distributors of books and newspapers could be joined as defendants in a libel action. The result of that law, in his opinion, amounted in effect to a press censorship.

He went on, and called that law "grotesque", and who will dare to say that it is not? But he did not confine himself to adjectives, epithets and destructive criticism. His constructive proposal was that the Bill promoted by the Empire Press Union should be altered or amended so as "to give newsagents complete immunity in respect of the contents of newspapers and magazines sold by them, so long as the publications are not obscene; for it is impossible that they can be aware of the contents of all the publications they handle. The principle that any libellous matter they may contain should be the sole responsibility of the producer, publisher and editor should be clearly defined if the injustices of the libel law are removed". He moved a resolution demanding "reform of this unjust law," and it was passed unanimously.

Some reform, something like that suggested, will in time occur; with, of course, the usual safeguards concerning the distributors who "knew or ought to have known".—*L.J., 1938, p. 451.*

Aftermath of the Woolsack.—It is not yet known whether Lord Maugham, L. C., finds the Imperial wool on which he now sits in the Upper House more comfortable than the Victorian horsehair which for so long made "the Woolsack" a misleading and fictitious name; and you may have noticed that Public Confidence, the European Situation, and British Prestige at Home and Abroad has sesnsibly improved from the moment the Keeper of the King's Conscience took his seat on a Woolsack that was a Woolsack indeed, truly filled with the best of British and Imperial fleece.

Some free thinkers may assert that this is mere coincidence or unrelated sequence, and not a cause and effect; but all honest men will have their doubts. I foretell, at least, that trade will also improve; for was not England's first commercial success found-

ed on wool, a staple; and did not the Commercial Judge of our nation of traders and shopkeepers take his judicial seat on a bale of it? I think it not unlikely that the Commercial Court, and even common law litigation, may also improve.—*L.J., 1938, p. 451.*

The Lord Chancellor's Ecclesiastical Patronage:—A year or two ago Viscount Hailsham, who then filled the office of Lord Chancellor, in his presidential address to the members of the Holdsworth Club of the Law Faculty at Birmingham University, gave a vivid account of the multifarious duties that fall to be discharged by the occupant of the Woolsack. Among those mentioned, and once again we are reminded of it by an announcement in *The Times* of last week, is that of presenting clergymen to certain vacant livings throughout the country. This apparently dates from the reign of Henry VIII when a book called "Liber Regis" was compiled in which all those Crown livings which were then of the value of £20 or less, and of which there would appear to be some 600 in number, were to be filled on the nomination of the Lord Chancellor. As some one has said, there is some thing peculiarly English or illogical in this arrangement, but like a good many other illogicalities to be found in the English Constitution it works fairly well, although this does not mean that in every case the appointee meets with the universal acceptance of the parishioners to whom he has been sent. Is it not on record that after the exercise of the patronage in one case a letter was received by the Lord Chancellor in which the writer, an old lady, complained that "we looked for a Cedar of Lebanon, and you have sent us a cabbage!" One who many years ago filled the office of Ecclesiastical Secretary to the Lord Chancellor said that at one time the notion that politics played a part in these appointments was common, as was illustrated in a letter he received from a candidate for a vacant living in which he stated that his "strenuous efforts in His Master's service did not prevent an unobtrusive devotion to the Conservative Club twice a week in the evenings". Others seeking appointment sought to gain the heart of the Secretary by presents of game; indeed, one postulant who did this mentioned in an accompanying letter that it was a good year for pheasants in his part of the country, but, as the Secretary noted with no little amusement, the donor had omitted to remove the label of the London poulterer who had supplied the carcases.—*S.J., 1938, p. 502.*

The Regulation of Cyclists.—Whatever views may be entertained concerning the recommendations contained in the recently issued report of the Transport Advisory Council on the subject of cyclists, there can be little room for difference of opinion on the soundness of two general propositions. The council strongly deprecates the recriminations which it finds occur between certain

inconsiderate sections of the cycling and motoring interests and expresses itself as satisfied that more respect for and understanding of each other's point of view would lead each class of road user to show that increased consideration on the road which, it is said, lies at the root of the problem of road safety. The resentment caused by the thrusting motorist or by other road users anxious to assert what they consider, not always erroneously, to be their rights only too often engenders a disposition inconsistent with sound driving practice, and must have been the remote, and of its nature unrecorded, cause of many accidents. The second proposition which should receive wide approbation is the desirability of segregating traffic moving at widely varying speeds. "We are convinced," the report states, "of the importance, from the point of view of reducing accidents, of providing separate tracks for classes of vehicles whose speeds differ considerably". Segregation of fast and comparatively slow moving motor traffic is in practice effected to a considerable extent by the modern four-lane highway with undoubted advantages to all concerned, and it seems to us that the further application of this principle should prove an important factor in road safety. The desirability of an ample provision of footpaths and cycle tracks appears to be thus clearly indicated. They should, however, be adequate. Pedestrians in the past have frequently been blamed for using the roadway when the path provided for them has been of the roughest character, and cyclists can hardly be expected to use an inadequate track if the road presents greater attractions. The Traffic Advisory Council was impressed with the extent to which cycle tracks are provided on the Continent and with the fact that cyclists are required to use them. It accordingly recommends that cycle tracks should be provided on both sides of new main roads, but only where it is practicable to construct a reasonably continuous and properly surfaced track of adequate width. If such conditions are duly complied with, much of the difficulty at present experienced in inducing cyclists to use the tracks should disappear.—*S.J., 1938, p. 502.*

Rear Lights.—The council was unable to agree on the question whether it should be made a statutory obligation on cyclists to carry a primary rear light. A minority report, signed by eleven members, considers that the onus should rest on the driver of an overtaking vehicle of providing sufficient light to distinguish the vehicles or persons he overtakes. The majority report, signed by thirty members, adverts to the reduction of the effectiveness of reflectors occasioned by the dipping of car headlights. The opinion is expressed that, when considering the cost and inconvenience to the cyclist of providing a rear light, weight must also be given to the uncertainty and nerve strain to all users of the highway created by the presence of large numbers of cyclists showing no light to the rear, and the conclusion is reached that the value to all of a rear

light on cycles is so great as to outweigh the consideration of trouble and cost to the cyclist. Other recommendations of the council which should be shortly noted are that two efficient brakes should be provided on freewheel machines, and at least one on fixed gear machines; that cyclists should be prohibited from riding more than two abreast except when overtaking, and that they should be required to carry identity discs and be placed under the same obligation as motorists to report accidents. On the other hand, no action is recommended as to the fixing of an age limit for cyclists; nor are riding tests or a system of third party insurance advocated.—*S.J., 1938, p. 503.*

The Woolsack.—The recent official disclosure that the Woolsack which, in popular parlance, has long been regarded as a synonym for the high office of Lord Chancellor is not now, and has not for many years been, padded with wool as most of us believed, and as its name would indicate, but with mere horse hair, came with something like a shock to those of us who clung to the notion that the Woolsack was placed in the House of Lords as a reminder to the peers of the importance of England's early staple trade in wool. It is true that Lord Chancellor Campbell was inclined to be sceptical regarding this explanation of the origin of the Woolsack, but till better grounds for abandoning the close association of the wool trade in the days of the Plantagenets with the seat of honour in the Upper House of Parliament are forthcoming, we prefer to retain our allegiance to the connection set out above. No one who turns over the statutes of the early Edwards can fail to realise the immense importance then given to the trade in wool—an intimate relationship which long prevailed, which in the reign of Charles II, was further accentuated by the Act of Parliament which provided that every Englishman should be buried in a woollen shroud—a legacy from the far past which we might have forgotten were it not for the lines of Pope in one of his Moral Essays:

> "Odious in woollen 'twould a saint provoke
> Were the last words that poor Narcissa spoke".
> —*L.T., 1938, p. 496.*

The Rule of Law.—Under the above caption a letter was published in *The Times* last week signed by Lord Macmillan, the Chairman of the Executive Council of the International Law Association, and by Dr. Van Hamel, the President of the Netherlands branch of the same body, calling attention to the forthcoming conference—the fortieth in the history of the Association—to be held at Amsterdam from 29th August to 3rd September, and making a strong appeal for the attendance of a large contingent from the different countries to be present at the discussion of such

very practical subjects as commercial arbitration, the protection of the civil population against new engines of war, neutrality, and business contracts with foreign Governments. During its forty years of existence, the Association, which has numbered among its staunch supporters many distinguished publicits and international lawyers of eminence, including, among its English members, the late Lord Phillimore, has been able to accomplish not a little in the shape of substituting the machinery of the law for the settlement of international disputes, and although its activities suffered a severe blow during the Great War, there is no reason now, indeed all the more reason in view of the tense relationships manifested during recent months, why, if we may borrow the words of Bishop Wilson, so much emphasised by Matthew Arnold in his "Culture and Anarchy", once again the aim of the Association to make "reason and the will of God prevail", should not be realised and made effective. In certain quarters since the War there has been a tendency to treat the practicability of solving international disagreements by moral suasion as hopeless—an attitude strongly to be deprecated, and it is to be hoped that the appeal by Lord Macmillan and Dr. Van Hamel for a large attendance at the forthcoming Conference will not fall on deaf ears so far as English lawyers are concerned.—*S.J., 1938, p. 533.*

The Rule of the Road.—A recent case, in which a summons against a motorist who was alleged to have driven for 1½ miles on the wrong side of the road was dismissed, affords an interesting reminder that the rule of the road whereby the vehicles keep to the left-hand or near side has never been formulated as a statutory obligation. The Highway Code directs drivers of motor vehicles and cyclists to keep as near to the left as practicable, while pedestrians are advised that where there is no footpath it is generally better to walk on the right of the carriageway so as to face the oncoming traffic. The Highway Code is silent concerning the propriety of the long-standing practice whereby those in charge of led horses kept to the right, and merely advises these persons and those in charge of other animals to keep themselves between the animals and the traffic and to keep the animal near the edge of the road. As readers know, a failure on the part of any person to observe any provision of the Highway Code does not, of itself, render that person liable to criminal proceedings of any kind, but such failure may in any proceedings—whether civil or criminal—be relied upon by any party thereto "as tending to establish or negative any liability which is in question in those proceedings". [Road Traffic Act, 1930, S. 45 (4).] The rules of the road have been described by Lord President Clyde in *Christie* v. *Glasgow Corporation*, (1927) S.C. 273, as "not rules of law at all, but rules of common sense". Whether a departure from them is culpable or not depends, it was said in the same case, upon the circumstances in

which the departure is made. Section 78 of the Highways Act, 1835, and S. 28 of the Towns Police Clauses Act, 1847, rendered a failure on the part of the driver of a carriage to keep to the left on meeting another an offence, and so long ago as 1798 it was intimated that, when driving at night, the rule of the road should never be departed from (*Cruden* v. *Fentham*, 2 Esp. 685). Moreover, if a driver does not keep to the left side on a clear road, it is evident from *Pluckwell* v. *Wilson*, (1832) 5 C. & P. 375, that he must use more care and diligence and keep a better look-out than if he were driving on the customary side, while drivers are required by statute to have regard to traffic which may reasonably be expected to be on the highway (Road Traffic Act, 1930, S. 11), and evidence as to hypothetical traffic or traffic which might reasonably be expected to be on the highway is admissible [see *Elwes* v. *Hopkins*, (1906) 2 K.B. 1; *Beresford* v. *Richardson*, (1921) 1 K.B. 243]. The right to depart from the customary procedure in keeping to the near side of the road is thus of a somewhat precarious character, though, as the case shows, a driver who elects to drive on the off side does not *ipso facto* commit an offence.—*S.J., 9138, p. 533.*

The Limitation Bill.—The Limitation Bill, the contents of which were briefly indicated in our last issue, was read a second time in the House of Lords on Monday. Lord Maugham, L.C., indicated that the proposed amendment and consolidation of the law which the measure is designed to effect concerned twenty Acts, six of which it was proposed wholly to repeal. The law in relation to the limitation of actions was, it was said, in a state of great confusion, and a great many provisions relating to the question were of a somewhat involved nature. The Lord Chancellor commended the Bill to the House as a very useful, sensible and clear consolidation of a branch of the law which had been sadly in need of it. Lord Romer described the law in regard to limitation of actions at the present time as a mass of anomalies and distinctions. It was better that there should be one period, and six years was proposed in the Bill. The learned Lord regarded the measure as a genuine attempt to produce some kind of order out of the present chaos.—*S.J., 1938, p. 534.*

A pronouncement on desertion, one of the new grounds for divorce, was made by Mr. Justice Goddard at Newcastle Assizes, on 18th June, says *The Times*: "People who have been living apart for a long time," he said, "are now rushing to the Courts for divorce on grounds of desertion. Desertion is a matrimonial offence and if there is desertion there must have been wrongful desertion on the part of either husband or wife. That is withdrawing co-habitation without the consent of the other. If a man and his wife quarrel, the wife takes herself off, and the man

says, 'Very well, go and good riddance,' that is not desertion". Finding these circumstances in a case before him, Mr. Justice Goddard refused to grant a decree.—*S.J., 1938, p. 538.*

The Week's Personality.—Lord Brougham, said of Lord Campbell that if he had been brought up to fiddling or tinkering, he would have been neither a first-rate fiddler nor tinker, but he would have made more money than any others who followed the same employment. Several of his contemporaries said the same thing in different words, and the rather mean ambition which made him judge most things by their bearing on his personal fortunes lowered both his character and his reputation. One of the most extraordinary incidents in his life was his first judicial appointment when he went to Ireland as Lord Chancellor. The choice was generally regarded as a job and the Irish Bar were furious and held a protest meeting. "What does this stranger know of equity?" cried one speaker. "What does he know of the peculiarity of Irish statute law? What does he know of the customs or things such as he would have daily to adjudicate upon? What right on earth has he to thrust himself upon a hostile Irish Bar? . . . . . What respect can the accomplished practitioners of our Chancery Bar feel towards a man whom they will have to school in the rudiments of equity practice before he can venture on the most ordinary decisions?" Public indignation penetrated even the insensitive skin of Campbell, who resigned after six weeks and returned to England, there to become Chief Justice and, finally, Lord Chancellor.—*S.J., 1938, p. 542.*

A Close Shave.—A short time ago, one of those inspectors to whom we owe the devotional quality of the English Sunday followed a seventy-year-old hair dresser five miles from Reading to Twyford and caught him red-handed cutting a farmer's hair in a farmyard contrary to the Sunday Trading Act. The magistrates who had to weigh the gravity of the offence dismissed the summons under the Probation of Offenders Act, the chairman warning the accused not to do it again, "not in the open anyway". The late Lord Birkenhead once came up against the same sort of law when he was told that he could not get a shave in Halifax on a Thursday afternoon, but a Yorkshire barber proving amenable to persuation told him: "Tha' can ef tha' kak's quart." "What's that you say?" said Birkenhead. "I don't understand a word". "I said you can have a shave if you keep it quiet", replied the barber changing to southern English. His customer was so amused at the original version that he jotted it down on his shirt cuff. When the shave was over he said: "As you are not allowed to shave me on a Thursday afternoon I am not going to pay you any money. But I will give you a good cigar". And he did. Only

next day from a photograph in a paper did the barber recognise whom he had shaved.—*S.J., 1938, p. 542.*

Reign of Terror.—Not long ago a defendant at Highgate suggested to the Bench: "Considering I have never been in Court before, I do not see why I should not be let off with a frightening". The particular method seemingly suggested is not very common, but its habitual employment was one of the reasons why Day, J., earned such a reputation for harshness. Once, a sentence of five years' penal servitude for the theft of an ordinary waistcoat aroused such deep indignation that a question was asked in the House of Commons by a barrister who had been in Court at the time. There was, therefore, profound amazement when the Home Secretary answered categorically: "It is *not* the fact that Ambrose Applejohn was sentenced at Carlisle Assizes to five years' penal servitude for stealing a waistcoat". He then proceeded: "I have in my hand the calendar and in that it appears that Ambrose Applejohn was sentenced to six months' imprisonment with hard labour." Day's method was to terrorise the lawbreaking section of the community with brutal sentences pronounced in open Court and to modify them privately when he signed the calendar.—*S.J., 1938, p. 542.*

Joint Tortfeasors.—A pretty problem in legal technique has been solved as a result of the misadventures of one of the most beautiful of our film stars. The statute concerned, of which the title Law Reform (Married Woman and Tortfeasors) Act, 1935, is not unsuggestive of Hollywood influence, provides machinery by which a tortfeasor may recover a contribution from his or her joint tortfeasor. It was held in *Croston* v. *Vaughan* (1937, 4 All.E. R. 249) that the trial Judge might properly be asked to apportion the loss. This was where drivers of different vehicles were concerned. Recently Tucker, J., at Liverpool Assizes, found himself faced with a different situation. There (*Ryan* v. *Fildes and Ors.*, unreported) it appeared that a schoolmistress, acting in excess of authority but within the scope of her employment, struck and injured a school boy. In an action for damages judgment was given against the lady and against her co-defendants the school managers, who were liable as master for servant. On an application for the managers asking for an order, it was contended that a principal or a master found "vicariously liable" was not a "joint tortfeasor", and that this was a case not of contribution but of indemnity (which is not within the statute). But the learned Judge found a precedent in the Merle Oberon case (*Thompson* v. *Bundy and Ors., Times,* May 5), where judgment was entered against Miss Oberon and her chauffeur. This enabled his Lordship to make an order in favour of the school managers against the schoolmistress.—*L.J., 1938, p. 2.*

Lord Justice Puisnes to come.—Parliament is about to give us three new L.J.s., and accordingly sub-S. (1) of S. 6 of the Supreme Court of Judicature (Consolidation) Act, 1925, shall have effect as if for the word "five" there were therein substituted the word "eight".

And so, instead of following the antique fashion of appointing more puisnes who might as required fortify the Court of Appeal when not more urgently engaged in their ordinary calling, Parliament has adopted the newer course of appointing L.J.s who will be liable for duty in the Courts below. "The duties of an ordinary Judge of the Court to Appeal", says S. 2 (1) of the Supreme Court of Judicature (Amendment) No. 2 Bill, "appointed after the commencement of this Act shall include the duties of sitting and acting as a Judge of the High Court when requested by the Lord Chancellor so to do, and of performing, when so requested, any other acts which a Judge of the Court of Appeal is empowered to perform by S. 3 of the principal Act".

So, though all be L.J.s the eight have not all the same rights and privileges; for there are the five L.J.s who may not be ordered by the L.C. to go on duty in the Courts below; and the coming three whose ordinary duty it will be to go below on request or demand.—*L.J., 1938, p. 9.*

Only Five Chancery Judges?—The legislators were no doubt not wholly uninfluenced by the fact that an L.J. costs the country no more (save in so far as his judgments are overruled and the judgment of the puisne restored by the House of Lords) than the puisne; and the device of appointing a Lord Justice whose ordinary duties include those of a puisne may be regarded as ingenious as well as inexpensive.

But while Parliament offers us three L.J.s, they threaten and appear to intend to take away, in the near future, one of the six Judges of the Chancery Division, if and when a vacancy occurs, and if there is then only work enough for five. The fear is that when the Bill becomes an Act (as it will almost immediately) a Judge of the Chancery Division may (if he is willing) be turned into one of the new L.J.s, thereby creating a vacancy at a time when it might be alleged that business in the Division was at a low ebb.

The words of the Bill before me are: "If after the occurrence of a vacancy among the puisne judges attached to the Chancery Division the number of those judges amounts to five, the vacancy shall not be filled unless and until the Lord Chancellor, with the concurrence of the Treasury, advises His Majesty that the state of business in that Division requires that the vacancy should be filled."—*L.J., 1938, p. 9.*

New Courts.—We know now that we are to have new Courts (in time) for our augmented judicial staff, and it is said that plans have already been submitted and are under consideration for the erection of a new wing as remote as possible from the Temple, in a north-north-westerly direction from the top of Middle Temple Lane. The position will not matter much; but it is devoutly to be hoped that the committee and the architects will not fall into the previous errors of design and equipment which made our present High Courts what they undoubtedly are; ill-lighted, ill-ventilated, often inaccessible to the practitioner whose business does not allow him to take a good place in the early morning queue; acoustically amongst the world's worst, and in many other respects as ill-adapted for the purposes of a Law Court as the ingenuity of man could devise. It is curious that the defects which were so apparent and the subject of much adverse and justifiable criticism in 1882 were by no means avoided, but were in many respects repeated when the new wing was built in the early years of the present century. Will the wise men of to-day, the new builders, avoid the old errors, and design and build these new courts with the single aim of making them as fit as modern architectural science and old common sense can make them for their purpose as courts of law; fit for the hearing and decision of cases; places where the demeanour of a witness may be observed without a magnifying glass or a search-light or a crick in the neck of the observer; where justice is neither inaudible nor invisible; and those good lawyers who are not good scrummagers, and even those of poor physique, may hope to get to their working place without injury or offence.—*L.J., 1938, p. 10.*

In the old days.—One writer treating of the ecclesiastical courts preserves the quaint, but as it might seem very practical, rule that advocates were only admitted to plead in those tribunals provided they did not talk too much. It is said that the Synod of Canterbury had, in an article "de puniendo advocatos garrulos", decided that prolix counsel should be debarred the right to appear in court. While the authorities thus sought to curb prolixity in others they were not blameless themselves. Readers of Boswell's great biography will recall that when Johnson read his tragedy of Irene to Gilbert Walmsley, the Registrar of the Lichfield Prerogative Court, the latter, objecting to his having brought his heroine into great distress, asked Johnson, "How can you possibly contrive to plunge her into deeper calamity?" To this Johnson, in sly allusion to the alleged oppressive proceedings of the court of which Walmsley was an official, replied: "Sir, I can put her into the Spiritual Court!" This from one so profoundly attached to the Church of England as was Johnson, was bold indeed, but with all his gravity the doctor had a vein of humour which emerged every now and again as we find recorded in the graphic pages of Boswell.—*L.T., 1938, p. 13.*

Diplomatic Privilege.—The withdrawal last week of a summons against a defendant on the ground of his immunity from prosecution by reason of diplomatic privilege, is a reminder of a famous incident which occurred in the reign of Queen Anne, and which has left its mark indelibly on our Statute Book. In 1708 the representative in this country of Peter the Great, spoken of as the Muscovite Ambassador, was arrested for debt in a London street at the instance of certain tradesmen, they being under the belief, erroneously as it turned out, that he was about to leave the country without discharging his liabilities, and he was carried to a sponging house, where he was detained till bailed out by the Earl of Faversham and a London merchant. Naturally the ambassador was very wroth at the insult thus inflicted upon him, and so was Peter the Great when the matter was reported to him; indeed, he wrote immediately requiring that the culprits should instantly be put to death, but as things are not so managed in this country he had to be placated in some other way, and this was accomplished by the most humble of apologies accompanied by an assurance that an Act of Parliament would immediately be passed which would carry a perpetual record of contrition for the untoward incident, and would also render the repetition of such a calamity impossible for the future. Such was the origin of the Statute 7, Anne c. 12, which, after reciting that "several turbulent and disorderly persons having in a most outrageous manner insulted the person of Andrew Artemonowits Mattueof, Ambassador of his Czarish Majesty Emperor of Great Russia, her Majesty's good friend and ally, by arresting him, and taking him by violence out of his coach in the public street, and detaining him in custody for several hours, in contempt of the protection granted by her Majesty, contrary to the law of nations, and in prejudice of the rights and privileges which ambassadors.....have at all times been thereby possessed of and ought to be kept sacred and inviolable," proceeded to declare all proceedings against the ambassador to be utterly null and void, and to enact that all suits, actions and proceedings against any ambassador were to be absolutely null and void. It is said that a copy of this Statute gorgeously bound was in solemn pomp conveyed to the Czar, but whether this placated him is not recorded. It has been held that the substantive part of the Act was only declaratory of the common law and of the law of nations. It may be added that Ss. 1 and 2 of the Act of Anne, those containing the narrative of the outrage on the Ambassador and vacating the proceedings against him, were in 1867 repealed by a Statute Law Revision Act of that year, but the substantive provisions preserving the privileges of ambassadors and other diplomatic persons continue in full force.—*S.J., 1938, p. 553.*

The Punishment of Young Offenders.—The large proportion of crime committed by persons under twenty-two years' of age is a

matter of common knowledge and concern. One of His Majesty's judges recently said at the opening of Assizes that he and his brother judges were much troubled at this fact and adverted to a method of correction which doubtless has its place among other forms of punishment as a factor calculated to bring the youthful offender to a better mind. "There is no man or woman in this country", the learned judge observed, "who would say I was guilty of inhuman ideas, but I know myself, looking back on my own youth which was not too good, that I became what I hope I am, and grew up what I believed my parents would hope me to be, because when I did wrong I was corrected not by being sent for years to an approved school, but by that manner of correction which is so valuable to youth and which prevents them again from doing wrong without any loss of self respect, and without loss of humanity in those who administered that correction". The learned judge expressed himself as well assured that the "wave of sentimentalism" which was passing over the country was not good for young people. If, he said, one could see a way of reasonable and yet impressive correction for misdoings by young people it might bring them back to the straight path again, whereas they wandered away and were found in a court of that sort at the ages of seventeen or sixteen and a half".

Another aspect of the problem was considered by the Court of Criminal Appeal (Branson, Hawke and Macnaghten, JJ.) on the following day when a number of applications by young men against sentences to Borstal detention were refused. According to the note on the matter in *The Times* a number of separate offences were committed in each case before the offender was captured. Macnaghten, J., observed that some young persons seemed to think that they were entitled to say: "However numerous the crimes I commit before I am caught, it is the law of England that I must be put on probation". It was, the learned judge said, time to dispel any such idea. Similar observations were made by Branson, J., in another case. In a third case Hawke, J., adverted to the reluctance on the part of judges to send young offenders to prison, and to the judicial appreciation of the value of probation. There were, however, the learned judge intimated, cases where a deterrent as well as a reformative element was necessary, and Borstal had the advantage in such cases that offenders did not like it.—*S.J., 1938, p. 553.*

Commercial Cases.—Some three years ago the London Chamber of Commerce urged in the course of a memorandum submitted to the Royal Commission on the Dispatch of Business at Common Law that judges in charge of special lists, such as those of the commercial court, were too frequently changed, with the result that the judge taking the interlocutory proceedings in a case frequently did not try it. According to a recently issued statement the Chamber is

given to understand that the frequent changes and lack of continuity in the judges taking the list of commercial cases has caused much dissatisfaction among litigants in the commercial court. When the commercial list and the commercial court were instituted, the intention, the Chamber understands, was that the judge sitting in that court should also deal with interlocutory applications in those cases before trial, and this was for many years carried out the judge of the commercial court sitting continuously for long periods. The Chamber also urges the importance of judges appointed to take the commercial lists being men who while at the Bar have practised regularly in the commercial court and so are completely familiar with this class of work. This is regarded as being especially important in cases where questions relating to charter-parties, bills of lading and marine insurance are involved, as otherwise unnecessary prolongation of trials with its attendant increased expense to litigants is likely to occur. It is stated, moreover, that in certain types of case commercial litigants might prefer to bring their disputes before the commercial court rather than arbitrate if they could be certain that their cases would be heard by a judge thoroughly familiar with the subject, and who would sit in the commercial court for a period of not less than, say, a year, so as to ensure that in the majority of cases tried by him he would also have heard the interlocutory applications. As readers are probably aware, the London Chamber of Commerce has during recent years had under consideration, from the point of view of the litigant, the whole subject of the state of business in the courts and the questions of delay and expense, and the subject was referred to a sub-committee consisting of two legal and four non-legal members. The matter referred to in the present paragraph was recently under the consideration of the Chamber's Parliamentary and Commercial Law Committee, and it is stated that a communication has been addressed to the Lord Chief Justice in the hope that it may be possible for the position to be remedied.—*S.J., 1938, p. 554.*

Poor Man's Lawyer.—In the course of a letter sent to a meeting of the London Council of Poorman's Lawyers, recently held at The Law Society's Hall, to receive the annual report of the Bentham Committee for Poor Litigants, the Lord Chancellor expressed his interest and sympathy in the work which he described as of great benefit to the poor litigant and to society at large. The total number of cases for the past year, 675, is very similar to those of recent years, but the proportion of cases sent to honorary solicitors was very much larger. It is of some interest to observe, and should, it is contended, afford a complete answer to certain criticisms which appear to have been directed against the committee, that out of the 283 cases sent to honorary solicitors, 226 were settled out of court. The cases dealt with are of an infinite variety, but tenants' difficulties, matrimonial differences, and

running down cases, form a large proportion of the whole. The least satisfactory side of the report appears to be the financial, a deficit of £339 having accumulated over the last five years. A garden party which was arranged by a committee of ladies, under the chairmanship of Lady Hewart, took place recently, with the object of raising funds to deal with the deficit.—*S.J., 1938, p. 554.*

BOOK REVIEWS.

THE HINDU CODE by Sir Hari Singh Gour, M.A., D. Litt., D.C.L., L.L.D., published by The Central Book Depot, Nagpur. (1V Edition: Revised and re-written). Price Rs. 20. Postage extra.

Sir Hari Singh Gour is a well-known and learned lawyer and his books on the various legal subjects have become recognised text books on those branches of law. The book under review is the fourth edition of his well known Hindu Code. The scheme of this book is familiar to Indian Lawyers and treats the whole subject of Hindu Law in the form of the sections of an enactment giving the statements of law as established by the decisions and otherwise in a succinct form and giving their exposition and the decided cases elaborately under each section. The task of the learned author in this respect has been rendered more difficult by the conflicts of decisions which are common where there are several superior courts of equal jurisdiction and by the fact that there are provincial differences in the matter of Hindu Law. That he has succeeded to this extent in presenting the comprehensive subject in the shape of an enactment is a matter for gratification. This mode of treatment is of special value at this time when " it is obvious that the age of legislation has now come " in the field of Hindu Law, in the words of a very learned and acute lawyer. When the legislature takes up the task of legislating on the branches of Hindu Law, Dr. Gour's book will form a basis to work upon. In the course of such vast work covering the whole field of Hindu Law, the slipping of a case here and there will not detract from the usefulness of the book. In this edition the learned author has omitted all obsolete principles and decisions. In many respects, the book has been re-written having regard to the more recent statements of the law and decisions. The legislature has recently passed some important enactments bearing on some branches of the Hindu Law modifying the pre-existing law. They have been incorporated and noticed in the book, though it cannot be said that all of them have been critically examined. We have every hope that this edition will fully maintain the reputation of its predecessors as an up to date text book on the subject of Hindu Law.

TRANSFER OF PROPERTY ACT (IV of 1882), by Darashaw Jivaji Vakil, B.A., LL.B., Bombay (First Edition 1938). Price Rs. 14. Postage extra.

This is the most upto date commentary on the Transfer of Property Act as amended upto 1st April, 1930. Besides being an upto date commentary on the enactment, the learned author has kept in view the difficulties of the conveyancer and has attempted to solve them. He has given information on matters not usually contained in a commentary on the Act, such as, a stock mortgage, power-of-attorney, income-tax payable by a mortgagor, broker's position in a transaction, conditions on a sale by auction, transfers by limited holders, etc. He has also given helpful suggestions on drafting and the various stages through which a draftsman has to pass in the preparation of a conveyance, a mortgage, a lease and other documents and also on requisitions on title. In other respects, such as giving an upto date statement of the law and noticing all the important decisions bearing on the subject, the learned author has given the fullest information. We hope that the book will be looked upon as a recognised text-book on the subject by all branches of the profession.

LECTURES ON COMPANY LAW by Shantilal M. Shah, Barrister-at-Law. Published by The Popular Book Depot, Bombay. (III Edition 1938).

This is a book of practical utility mainly intended for businessmen and students of law. This subject has not been dealt with as a commentary on the Indian Companies Act, but by a series of lectures on Company Law in logical manner which will be easily intelligible alike to the layman and to the student of law. It is not without its use to the practitioners in courts. Reference to all except the important cases has been omitted to enable the businessman and the beginner in law to follow the subject easily. We hope that the book will be widely appreciated by those for whom it is intended.

INDIAN COMPANY LAW by M. J. Sethna, Barrister-at-Law. Published by D.B. Taraporevala Sons & Co., Bombay, (1938). Price Rs. 4—8—0. Postage extra.

The object of the author in this book is to explain the principles underlying the Company Law embodied in the Indian Companies Act of 1913 and by the various Amendment Acts up to 1938, in the course of a number of chapters dealing with the various branches of the subject. The learned author has dealt with the subject in a lucid manner so as to be easily understood by

the students and the businessmen. The text of the Indian Companies Act and the rules and tables are given at the end of the book. The case-law has been referred to only wherever necessary to support the propositions so far as may be required for a beginner. We hope that the book will be found useful both by students and businessmen.

THE NAGPUR LAW NOTES, A fortnightly Legal Publication, Edited by P. S. Chiney, B.A., LL.M., Advocate, Nagpur. Annual subscription: For local Rs. 6, Mofussil. Rs. 6—6—0. Postage extra.

We have the honour to acknowledge receipt of the above publication with thanks.
