THE
MADRAS LAW JOURNAL.

I] MARCH [1944

THE WAR AND LITIGATION.

The war seems to have brought about in England a slump in litigation generally, though in particular directions cases have shown a tendency to increase. Cases arising out of factory accidents, divorce cases, and petty crimes, have increased but not cases arising out of contracts, shipping, mercantile transactions, etc. A contribution to the columns of the "Spectator," under the caption "Courts and the War", appearing in its issue of the 31st December, 1943, on p. 617, by Ambrose Hoopington which is extracted below, explains the reasons for the slump. The causes are chiefly the changed conditions of English life and the psychological effect of the war on the average citizen. Mr. Hoopington attributes the fall in litigation to the war being fought on "deflationary lines", to the imposition of state control in various directions very early in the war, to the absence of any rapid rise in prices and to the realisation by the lawyers that the war is not something alien to them leaving them free to carry on their business as usual regarding it as a sort of boom like any other boom out of which they can make a profit and that it was not very far from their doors and as such required every man's serious attention. How the war conditions have affected lawyers in regard to their professional work in this country is yet to be correctly assessed. Even before the outbreak of the war, litigation in this Presidency seems to have shown a tendency to decline, a tendency which is being kept up according to the statistics recently published in a local newspaper, though as far as the High Court is concerned the year 1943, showed the heaviest filing for the last decade. In our country also, state control has been at work in several directions. Prices have however risen heavily in certain cases and it is only comparatively lately that a restricted system of price control has begun to operate. Conditions in India may not afford an exact parallel to what they are in England; albeit, Mr. Hoopington's analysis may not be without value in studying the effect of the war on litigation in countries directly involved in fighting.

Mr. Hoopington wrote :

"Some twenty years ago men who had just been called to the bar were apt to say cynically that nothing but another war would ever get them a practice. The remark was prompted by seeing most of the work in the hands of youngish men who had conspicuously not served in the Forces and had flourished accordingly. It is fair to barristers to say that the present war, when it came, was not hailed by them with enthusiasm, and anyone who looked forward to it as a means of enriching himself must have been disappointed. The war has brought a slump rather than a boom in litigation. Though the number of barristers available is greatly reduced, not many of them are flourishing, and the few who are busy are mostly engaged in cases of no great magnitude. It is true that some branches of the law are still fairly active. It is generally said that there is plenty of work on circuit, though not in London. It may be that the evacuation of London early in the war * * * * had

some effect in moving work out, but for the most part the work which keeps the Judges of Assize busy is not high-grade litigation. It is the kind of business which is bound to arise when numbers of young soldiers are encamped in a strange locality with time on their hands. * * * * There are also criminal cases arising out of the home front—particularly black market prosecutions and other breaches of the Defence Regulations. Similar work is to be had in London also, but as legal work there is more specialised, it does not affect the ordinary common law barrister or fill the ordinary law Courts. * * * * In all factory areas there is a distressingly large number of cases arising out of factory accidents, for in war-time conditions machinery is old and the operators are new to it.

It is easy to account for the absence of many types of work. The Prize Court which was a feature of the last war is non-existent, partly from changes in policy, partly because there are no neutral countries between England and Germany. Running down cases, which provided a large portion of pre-war litigation, have decreased with the number of cars on the roads. Breach of promise and libel actions are also at a discount; they flourished largely on newspaper publicity, so there is less reason now for bringing them, and the absence of a jury has also a damping effect. * * * Cases between landlord and tenant, at any rate so far as the County Court is concerned, have almost come to an end. And, of course, all cases are impeded by the difficulty of securing witnesses; who may be fighting in Italy or prisoners of war in the Far East.

But something beyond these partial causes is required to explain the present slump. The main fact is that this war, unlike the last, is being fought on deflationary lines. So far as the direct effect on the law is concerned, the military service tribunals which provided so much legal work in the last war never came into being; enemy aliens also were not allowed to be legally represented at their tribunals; and the whole 18-B procedure is designed to cut out lawyers. The same applies to Government action under other Defence Regulations. It is all part of a process by which the State—one hopes, only temporarily—has gone totalitarian. The cases in which an attempt has been made to question State control have been comparatively few and ineffective. The same process is at work higher up, to nip litigation in the bud. It is irrelevant that actions may still be brought on contracts if contracts are so strictly controlled by the State that there is nothing to litigate about. In other words, for the lawyers, as for many other classes who flourished twenty-five years ago, State control was in this war imposed too soon. There has not been the same rapid rise in prices encouraging everyone to break his contract and trust that the war provides him with an excuse for doing so. Those who try to make a real profit out of it become not mere profiteers but black marketers, and find themselves in the dock if they are caught.

Solicitors are extremely busy. This is not inconsistent with an absence of litigation. To some extent it is even a cause of it. The average respectable solicitor only lets his client go to law when it is inevitable. A case in Court is a casual interlude in a business which consists of conveying property and drafting deeds, winding-up estates and managing trusts. This kind of work is not lessened by the war, and it has to be carried on with a greatly reduced staff. Many solicitors now carrying on fairly good practices, with no one but girl typists to help them, find themselves compelled to refuse to undertake work, particularly if it means conducting litigation. In some cases their client may go elsewhere, but more probably the action is dropped or is settled on any terms to avoid the trouble.

And that brings one to what is perhaps, after all, the principal reason for the dearth of litigation—the psychological one. In the last war the majority of solicitors and most of their important clients had been brought up in the Victorian tradition to think of war as something utterly alien to them. Moreover, the fighting was at some distance from their doors. Their natural instinct was to carry on much as they had done in peace-time and treat the war-time boom, just like any other boom, as an opportunity for making money. Nowadays the average solicitor is a man who served in the first German war or, even if he was exempted from the actual fighting, has grown up with the idea that a war is an event which interferes with normal life and is more important even than legal business. He may quite well have given up practice altogether and taken some government job. But even if he has not done this, he accepts the fact that conditions are not normal; he makes no great effort to stop his employees going to this war, as he himself went to the last war; and he is prepared to advise his clients that in war conditions they must expect to put up with some injustice, and, indeed, he will feel some patriotic hesitation in starting litigation with the war going on.

It may be added that there is probably less litigation now than there was a year ago. This is easily intelligible. A year ago people had got used to the war, and were beginning to carry on their affairs on an accepted war basis. Now victory seems at last to be within sight, and everyone is letting his cases wait till after it is all over."—*Spectator, 31st December, 1943, p. 617.*

LAW OF INSURANCE

BY

C. UNIKANDA MENON, ADVOCATE, MADRAS.

I

Ancient origin.—Insurance is of ancient origin. It dates back to the 4th century B.C. Insurance is closely connected with commerce and civilization. It gives stimulus to commerce and industry, and all civilized and industrial countries, whether ancient, mediæval or modern have adopted insurance of some form or other.

Controversial subject.—"Insurance is a controversial subject[1] in economic literature." Does insurance really contribute to the economic prosperity of a nation or does it tend only to profit enterprising adventurers who float insurance companies to dupe the credulous public? In companies started under strict state control, as under the Indian Insurance Act (IV of 1938), the scope for public fraud is reduced to a minimum, as the provision for deposit sufficiently guarantees the stability of the company.

Necessity for insurance.—In one sense, it might seem that insurance is a superfluity to the prudent. But the most prudent and the most cautious are overtaken by the inevitable incident of death, perhaps at a time when his life would be most useful. Unexpected calamities such as fire or cyclone might damage a factory or wreck a ship.

The advance in scientific knowledge has contributed not a little to the increase of risks in every department of human activity which in turn increases the need for insurance. The risk in business is greatly increased by the development of modern technology. The risk to life is increased by the dangerous speed in modern forms of conveyance.

Capitalism has made specialisation the order of the day, for capital necessitates the employment of machinery for getting the fullest benefit out of the capital.

"The application of machine to industry leads to specialisation of human workers. A machine is a specialised tool. It is confined to a single process or a narrow range of processes. . . . By being forced to specialisation, he is forced to incur the risk of specialisation. The highly specialised workman is in the same position as the capitalist who has invested his capital in a highly specialised machinery. His skill has only a limited field for employment and loses its value outside that field."[2]

But insurance has created in the specialist a sense of security and has thus enhanced the productive energy.

Kinds of risks.—Risks the effect of which is considerably alleviated by insurance may be divided into three groups: (1) Natural, created by the play of natural forces, such as death, cyclone, *vis major*, etc.; (2) Business risks arising out of the existing conditions of capitalist society such as strikes, etc.; (3) Artificial risks, created as the expression of gambling, lotteries, etc. With the third kind of risks, insurance has no concern and all countries have now declared unlawful, insurance on any kind of gambling.

Guiding principles.—There are certain guiding principles for the determination of the liability of risks. The risk and loss must not be in the power of the insured to hasten, in which case the temptation to earn the premium himself or to give the benefit of it to the persons entitled will tempt him to hasten it. Secondly, a large number of cases must be exposed to risk, otherwise there will be only few persons tempted to insure and the premia paid by them will not be sufficient to pay all the sufferers. Thirdly, the probability of the occurrence must be regular and common. It will not do if it happens once in a way. Fourthly, the loss must be important enough to be provided against, as otherwise the loss may be ignored and no attempt

---

1. *Vide* "Co-operative Insurance" by N. Barou.

2. Economics by Henry Clay (1930); pp. 26 and 46.

to recoup it by insurance will be attempted. Lastly, the cost of the cover must not be prohibitive. If that be so, that is, if the premium that has to be paid is much more than the amount insured for, there may not be many willing to insure.

There is not a single branch of human activity that may not be insured, provided the assured has an interest in it. There are, for example, Marine Insurance, Life Insurance, Fire Insurance, Property Insurance, Business Insurance, Fidelity Guarantee, Burglary Insurance, Workmen's Compensation Insurance, Co-operative Insurance, Live-stock Insurance, Motor Insurance, Aviation Insurance, etc. An attempt to classify them is difficult. The classification may be according to (*a*) the object of insurance (personal or property), (*b*) conditions of participation (voluntary or compulsory), (*c*) status (public or private), (*d*) legal form (limited company, mutual or co-operative, (*e*) aim (public interest or profit making), (*f*) unit insured (individual or group), (*g*) method of premium payment (fixed or levy system).

History of insurance.[1]—The law of insurance begins its history from remote antiquity. Traces of it existed amongst the ancients, the Greeks, the Romans, the Babylonians and the Hindus. That Romans employed some system of insurance between 300 B.C. to 1000 A.D. is evident from certain references in Latin authors and in the *Corpus Juris Civilis*. In Livy XXIII 48 and 49, there is a reference to scipios in Spain applying in 215 B.C. to the Senate to send food and clothing as otherwise neither the army nor the province could be retained. The Senate applied to the farmers of revenue to arrange a contract for the supply. Three companies agreed to supply on condition that all risks of loss arising from the attacks of enemies or from storms, of supplies which they placed in the ship should be borne by the state. This demand was agreed to by the Republic and the goods supplied.

The next reference is about 160 years later and is found in the letter of Cicero to Caninus Sallust. Cicero after conquering the rebellious tribes in Cilicia, says that he expects to receive guarantees at Laodicea for all the public money (or treasure) in order that both he and the state may be protected from danger of loss in transit. (*Ciceronis Epistolae Ed. Christianus Godoir, Schutz, Hala,* 1808, Vol. III, p. 267). This passage renders it clear that there existed certain men in Laodicea willing to guarantee the state and Cicero against loss of the public money arising from dangers *en route.*

Next, in the life of the Emperor Claudius by Suetonius, there is a reference to passages to the effect that there was famine in Rome, and there was popular agitation against the Emperor and the Emperor in order to persuade the importers to render a most necessary service to the state offered to pay a fixed bounty on all the corn they imported and further agreed to be personally responsible for all losses arising from storms.

In all the above contracts, the payment of premium has to be necessarily inferred, since there could be no contract in Rome without consideration.

There are in the Digest certain decisions indicating that contracts were made for the insurance of valuable property. For example, Digest XLV Lit. I, Frag. 67.

There are indications to show that life insurance was also known to the Greeks and the Romans, the latter copying it from the former. Romans knew some form of Life Insurance Societies. Life Insurance Societies, as known in the ancient and mediaeval times, may be divided into two classes (1) mutual and (2) non-mutual or proprietary, the former being much older and probably the direct ancestor of the latter.

Mutual insurance societies.—Every Roman, if he is to have the privileges of a citizen, should have a particular sacra, that is, he should be within a particular gens, worshipping a particular deity. If he happens to fall outside the gens, he is not entitled to the sacra of the Roman; he is a social ostracist, without even getting a burial in the common burial ground. In the early days of the Republic, foreigners,

1. *Vide* Early History of Insurance by Dr. Trennery.

freed-men, slaves or persons expelled from the family did not belong to any particular gens and they formed societies to worship a particular deity, to hold festivals in its honour, and to acquire and possess a common burial ground for the members of the society. To provide funds for expenses, monthly subscriptions were levied from the members. Later on they drifted from the religious beliefs of earlier days and developed these societies into line with mutual no-profit assurance companies and introduced the custom of paying the relations of the deceased a sum of money known as *funeraticum*, instead of providing him with a funeral, that is, these funeral clubs became practically a mutual insurance business concern. These mutual insurance societies were divided into three classes: (1) civilian, (2) veteran and (3) military.

It has now been found that these Roman societies were modelled after the earlier Greek societies, namely, Thiasoi, Orgeones and Erenoi—the first two being strictly religious and the third combining with its religious observances provisions for loans for members on exceptionally favourable terms, all the three having been carried on for mutual co-operation.

There is evidence to show that the Babylonians and Phoenicians used the Respondensia and Bottomry Bonds as a sort of insurance to goods and ships sent by the sea. That the ancient Hindus also knew of a form of insurance is evident from the Manava Dharma Sastra. Its date of compilation is considered to be between 200 B.C. to 200 A.D. *vide* Numbers 156 and 158 of Book VIII.

During the mediaeval times, in the records of the Flemings, Manapians and West Germans, there is evidence of the growth of mutual insurance against loss from fire, ship-wreck, misfortune, captivity, and damage to livestock. There is also evidence of the origin and development of non-mutual insurance of property of merchants, of non-mutual marine insurance and of life insurance, between the twelfth and the sixteenth centuries.

In Holland contracts of insurance had become very general during the sixteenth century. In Antiquis, Title XXIX it is stated that it has been the custom from "all old times" to make contracts of insurance on ships, merchandise sent by land or by sea and also on the lives of persons and further that this making of insurance is authorised.

In Italy, there are traces of marine insurance from the fourteenth century. In 1442 Ussano, the Florentine merchant quotes rates of insurance for goods during transit from London to Pisa by sea and land.

In Portugal, according to the chronicles of king Ferdinand about 1375, reciprocal insurance was well known at that date. There is also a record of the existence at Oporto of a chamber of insurance against charges, etc., on Portuguese shipping in the latter part of the fourteenth century.

In Spain, ordinances were issued by the Magistrates of Barcelona in 1435.

In England, it is evident, from the rates quoted by Ussano in 1442 for the insurance of goods between London and other ports that the London merchants must have known the practice. This is supported by the fact that the greater part of the London banking business was in the hands of the Italian bankers and that there were many Italian merchants trading in London during the fifteenth century. Lord Keeper Bacon is reported to have said in 1558: "Doth not a wise merchant in every adventure of danger give part to have the rest assured?" The first English statute of insurance appeared in 1601. Its language contains evidence of antiquity of the custom: *Vide,* "Whereas it hath been time out of mind an usage amongst merchants both of this realm and foreign nations . . ." In respect of the practice of insurance in England, there is no evidence of its existence at an earlier date than that quoted above with the exception of a reference to the mutual obligation of the provision for *wergild* in the time of the Anglo-Saxons, and a reference

contained in the laws of Athelstane to a form of mutual insurance against loss of cattle which was practically equivalent to that known as *Hamelinghe* which provided that each one shall pay one penny into the common fund within twelve months in order to repay the owner for the animal.

According to the law of England and the usage of merchants any person might be an insurer, however unable he might be to make up the loss insured against, provided the assured was weak enough to trust him. Many traders were deceived of their premia by many an insurer with a show of great wealth but in really insolvent circumstances. So Parliament passed an Act, statute, 6 Geo. I, c. 18, by which it authorised His Majesty to grant the charter to two distinct companies or corporations for insurance of ships and goods going to sea, with a common seal, capable of suing and being sued, directing that they should keep a sufficient stock of ready money to satisfy and discharge all just demands. By virtue of that Act, two offices under the names of the Royal Exchange Assurance Office and the London Assurance Office were created by the charter of George I. The Act did not deprive the private under-writer of the liberty of insuring to any amount with those who were prepared to trust to their private securities only. The first Joint Stock Companies Act was passed in England in 1844. A Joint Stock Company under statute 7 and 8 Vict., c. 110, Section 2 included every insurance company or association (including Friendly Societies making insurances to an amount not exceeding £200), whether such companies, associations or societies be joint or not. In 1862, the English Companies Act[1] was passed and that Act applied to all companies including insurance companies. In 1868, two big insurance companies, the Albert Life Insurance Company and the European Assurance Society failed and the confidence of the public in insurance was rudely shaken. To safeguard the interest of the policy-holders, the first Life Assurance Companies Act was passed in 1870[2], followed by Amending Acts in 1871[3] and 1872[4]. By these statutes, every company carrying on life insurance business in the United Kingdom had to deposit a sum of £20,000 in the Court of Chancery as a security for policy-holders. By the Assurance Companies Act, 1909[5], the earlier insurance companies Acts were consolidated and applied to all persons whether corporate or incorporate not being registered under the Act, relating to friendly societies or trade unions, whether, established before or after the commencement of the Act and whether established within or without the United Kingdom and doing business of all or any of the following classes: (*a*) Life Insurance, (*b*) Fire Insurance, (*c*) Accident Insurance, (*d*) Employers' Liability Insurance, (*e*) Bond Investment Insurance and (*f*) Motor Vehicle Insurance. Every insurance company was required to deposit or keep deposited with the Post-master General for and on behalf of the Supreme Court £20,000 for every insurance business as a condition precedent to the Registrar issuing a certificate of incorporation.

Insurance in India.—In India, the provisions of the Indian Companies Act (VI of 1882) governed insurance companies till the Indian Life Insurance Companies Acts V and VII of 1912 were passed. The latter applied to all Life Insurance Companies operating in British India. The provisions of those Acts followed as closely as possible those of the English Assurance Companies Act of 1909, the only deviation from that Act being that no provision was made to regulate companies other than Life Insurance Companies, as at that time very few Indian concerns carried on business other than Life Insurance business.

With the growth of insurance habits, there had grown up Indian concerns formed with the object of carrying on business in Fire, Marine, and other kinds of insurance and the incentive came after the Great War of 1914-18. It then became necessary to bring in the law of the country in line with the law in force in other countries and provide for the classes of insurance businesses which had been omitted

1. Stat. 25 & 26 Vict. C. 89.
2. Stat. 33 & 34, Vict. C. 61.
3. Stat. 34 & 35, Vict. C. 58.
4. Stat. 35 & 36, Vict. C. 41.
5. Stat. 9 Edw. 7 C. 49.

from the Act. The experience gathered from the working of the Indian Life Assurance Act also showed that amendments were required in the existing statute in several directions.

The Insurance Act of 1938 neither adopted the English principle of minimum control, nor the Canadian practice of direct control by the State. It increased the supervision exercised over all concerns transacting insurance business in British India, whether indigenous concerns or foreign companies represented in India by branches or agencies. The Act did not deal with the substantive law of insurance. It only dealt with the law of procedure.

Indian Insurance Companies under Act IV of 1938 *as amended by Act XIII of* 1941.—The Insurance Act (IV of 1938) effected considerable improvement on the old law and gave great stability to insurance companies and much security to policy-holders.

Criticism of the Act.—It has been observed : "The whole Act bears the stamp of amateurish handling of a technical subject ; there are many imperfections in the actual drafting of the clauses ; we can only say that it is far from being satisfactory."[1] There are in fact many glaring defects which militate against the real interest of Indian insurance.

(1) One great mistake that has been made is in not keeping General Insurance distinct from Life Insurance. (2) The second glaring provision is that the post of superintendent should be occupied by a qualified actuary. There is no real reason for such a provision, as the superintendent's duty will be mostly executive and the person who occupied it should be a person with great executive abilities. An actuary has nothing to do with General Insurance, and very often, actuaries are persons with specialised knowledge of certain departments of Life Insurance and do not concern themselves with the executive or administrative side, or the side concerning the organisation of Life Insurance Companies. (3) Another great defect is the absence of any provision for giving any sort of protection to the General Insurance companies, against Foreign Insurance companies in India. (4) Another great defect is the provision regarding the investment of funds, contained in sections 27 and 85, that 55 per cent. as regards Life Insurance Companies and 50 per cent. as regards provident societies should be invested in Government or other approved securities. The approved securities are defined to include Provincial loans, Port Trust, and Municipal debentures of the four major Port towns. The Government securities are not a desirable investment, for, during a war (as is the case in the present war) and other national crises the Government securities drop enormously in value, meaning thereby a great loss of capital. In all the leading countries of the world, the investments of an insurance company are distributed among government securities, mortgages on real properties, stocks and debentures of Railways, Agricultural and Land Mortgage Banks, buildings, and other real property and shares of approved public utility companies. Spreading the investments on such a broad basis can be the only way in which security can be given to the policy-holder. The narrow margin for investment as permitted under the Act will necessarily reduce the yield of interest which would mean a corresponding reduction of bonus to the policy-holder. The companies are faced with this alternative, that either they will have to increase their rates of premium or do away with the bonus altogether. Further this provision of compulsory investment makes it almost impossible for insurance companies for any help being given to the starting of new industries. The insurance companies all over the world have been largely instrumental in developing various industries. They are custodians of the surplus wealth of a country and thus they are in a position to make long term investments with no fear of a run being made on them.

---

1. *Vide* Presidential Address of K. Santanam delivered at the 10th annual general meeting of the Indian Life Assurance Offices Association held at Lahore on 15th March, 1938, in Indian Insurance Manual, March 1938, p. 531 at 532.

All the same the present Act is a great improvement on the Act of 1912 in constituting a department of the Government for insurance under a superintendent, in making regulation for registration of companies and in providing for deposits to forbid the formation of insufficiently financed companies, in compelling the British and foreign companies to file periodical returns, in prohibiting loans to directors, etc., and in granting powers of inspection and investigation to the superintendent.

Suggested amendments to the Act.—As long as insurance companies remain private, conducted for individual profit, the safeguards under the new Act will be insufficient to protect the interest of the policy-holders. Further it is possible that during national or international crises, the value of "securities" on which the assets of the company are invested might fall in value, or "deposits" made in the Reserve Bank might prove insufficient to meet too many sudden simultaneous claims. To avoid ruin of the policy-holders and the local insurance companies, the Act should be so amended as to render help to those local companies by other insurance companies in India, carrying on the same kind of insurance business, making provision in the amendment Act for giving the latter companies a percentage of the premia of the former from the dates of their foundation.

Also, nationalisation of insurance companies is the only sure and certain way of saving the policy-holder from loss or ruin. Nationalisation of insurance is not unknown to India. An instance of it is found in British India in the Government Postal Insurance, confined only to Government servants, voluntary in character. In the Indian States of Mysore and Travancore, National Insurance is tried and exists and is only voluntary in nature. Every labourer should be encouraged and compelled to take out an insurance policy, the state also contributing a portion towards it.

II

The general principles of insurance law.—The Indian Insurance Act of 1938 does not purport to deal with substantive law; and it has to be ascertained from English law. The general principles of insurance law apply, with few exceptions, equally to all kinds of insurance and such differences as exist are to be attributed, as a rule, not to a difference in principles to be applied, but rather to a difference in their mode of application.[1] Except in life insurance and accident insurance indemnity is the controlling principle in insurance law.[2]

Contract.—A contract may be concluded between the parties or their agents duly authorised. A proposal form is issued by the insurers. The name, age, occupation of the assured, description of the subject-matter stating its particulars, the sum insured and answers to specific questions should be inserted in the form. The proposal is complete when the form is filled up, signed and transmitted by the proposer to the insurers or his agent. Very often to give interim protection to prospective insurers during the time taken to decide whether they are to accept or reject the policy, what is called a "cover note" in Fire Insurance or "slip," in Marine Insurance is issued to them. Insurers might indicate the acceptance of the proposal either by issuing the policy or by accepting the premium or by other conduct. It was held in *Xenos* v. *Wickham*[3] that a policy 'signed, sealed, and delivered" is complete and binding on the party executing it, though, in fact, it remains in his possession, unless there is some particular act required to be done by the other party to declare his adoption of it and that it is not necessary that the assured should formally accept or take away a policy in order to make the delivery complete. It was further held that it is no part of the ordinary duty or power of a broker to cancel agreements once validly and completely entered into.

The terms of the contract are generally embodied in the policy. There is no magic in the word "policy". In substance, the term seems to cover a contract

1. Otto Barry's Fire Insurance, p. 5; *vide* also *Thomson* v. *Weems*, (1884) 9 A.C. 671, per Lord Blackburn.

2. *Wilson* v. *Jones*, (1867) L.R. 2 Ex. 139, 150. *Per* Blackburn, J.

3. 2 Eng. and Irish App. 296.

of insurance.[1] "A policy ought to be so framed that he who runs can read. It ought to be framed with such deliberate care, that no form of expression by which, on the one hand, the party assured can be caught or by which, on the other, the company can be cheated, shall be found on the face of it."[2]

Rules of construction.—The rules of construction of a policy are the same as those that govern the construction of a deed. Terms are to be understood in their ordinary popular sense, unless they have acquired a technical meaning. The policy should be construed in a liberal sense for the benefit of trade and the insured.[3] In case of ambiguity, the policy should be construed against the company. A policy should be construed in accordance with the law of the domicile of the insured.[4] The policy is to be governed by the law of the place where the contract is made.

Rectification and cancellation.—If the policy is discovered not to set forth the real terms agreed upon by the parties, it may be rectified by act of parties or order of Court. Policies induced by misrepresentation, fraud, non-disclosure or concealment may be cancelled like any other contract. Material alterations in the policy when it is in the control of the assured avoids the policy.

Condition and warranty.—"All policies contain a certain number of conditions declaratory of the terms and limitations under which the policy is granted and the duties of the assured and to some extent imposing duties on him in excess of those implied by law. Some such conditions are conditions precedent to the effectual making of the contract and if they are not satisfied, the policy does not take effect at all. Others presuppose the contract but are precedent to the accrual of a right to sue thereon. Others declare events on the happening of which all rights under the contract are forfeited. Others deal with the mode of settling disputes; others limit the period for bringing a claim."[5] Lord Blackburn said, in *Thomson* v. *Weems*[6]: "In policies of Marine Insurance any statement of fact bearing upon the risk introduced in the written policy is to be construed as a warranty and compliance with that warranty is a condition precedent to the attaching of the risk."

Description as to the use to which a vehicle was to be put is more of a description of the character of the risk than a warranty that that particular use and no other is the one to which the vehicle is confined[7]. *Vide* the recent case, *Provincial Insurance Co.* v. *Morgan*[8]. In a recent case in *Palatine Insurance Co., Ltd.* v. *Gregory*[9], timber belonging to the respondent was insured by the appellants against fire while in a timber yard. The policy contained a clause: "Warranted by the assured that a continuous clear space of 50 feet shall be maintained between the timber hereby insured and any saw mill . . . and 300 feet between any refuse burner." This clause was not one of the conditions in the policies provided by the New Brunswick Fire Insurance Act 1913 and did not appear in the distinctive manner which that Act requires for any variation from these conditions. The timber was set on fire by a spark from an open refuse-burner which was only 80 feet from the timber. The Judicial Committee held that the clause was inoperative, as it was a condition, not a description or limitation of the timber covered by the policy and was not expressed in the required manner.

Onus of proof.—The assured must prove that the loss was caused by the event insured against,[10] and if that is proved the onus shifts to the insurers to show that the loss is of such a nature that it comes within the exceptions[11]. But the onus of proof that by reason of the existence of any condition in a policy, the loss or damage is covered by the policy, shall be agreed upon between the parties. In a recent

1. *Foriskringsaktieselskabet National of Copenhagen* v. *Attorney-General*, (1925) A.C. 639.
2. *Anderson* v. *Fitzgerald*, (1853) 4 H. L. C. 485 at 510, *per* Lord St. Leonards.
3. *Pelly* v. *Royal Exchange Assurance Co.*, (1757) 1 Bur. 341, 349: 97 E.R. 342, 347.
4. *Crosland* v. *Wrigly*, (1895) 43 W.R. 673.
5. Porter on insurance, 1933 edn., p. 171.
6. (1884) 9 A.C. 671.
7. *Far* v. *Motor Trades Mutual Insurance Society* (1920) 3 K.B. 669, *Roberts* v. *Anglo-American Insurance, Association*, (1927) 96 L.J. (K.B.) 590.
8. (1933) A.C. 240.
9. (1926) A.C. 90.
10. *British and Foreign Marine Insurance Co.* v. *Gaunt*, (1921) 2 A.C. 41.
11. *South British Fire and Marine Insurance Co.* v. *Broja Nath Shah*, (1909) 36 Cal. 516.

case, *Levy* v. *Assicurazi Generalli*[1], it was held that as a matter of agreement between the parties, the onus of proof of any particular fact or of its non-existence may be placed on either party in accordance with the agreement made between them.

Insurable interest.—Any person who has an insurable interest in life or property may effect an insurance on it. The existence of an insurable interest on life was made necessary by the Life Assurance Act, 1774.[2] A like provision with regard to Marine Insurance was made by the Marine Insurance Act of 1906.[3] One has an insurable interest in an event when, if the event happens, he will gain an advantage or if it is frustrated he will suffer a loss[4], for example, an owner of a thing or one having an equitable or beneficial interest in a thing, a person whose right to insure depends upon the existence of a contract relating to the subject-matter of insurance such as all kinds of tenants, mortgagees and persons liable such as insurers.

It has to be remembered that neither a shareholder nor a simple creditor of a company has any insurable interest in any particular asset of the company. In a recent case known as the one man company case, *Macaura* v. *Northern Assurance Co., Ltd., and others,*[5] the owner of a rubber estate sold the whole of the timber therein to a timber company, in consideration of fully paid up shares in the company. Subsequently by policies effected in his own name with several insurance companies, he insured the timber against fire. The greater part of the timber having been destroyed by fire, he sued the insurance companies to recover the loss, but the actions were stayed and the matter was referred to arbitration in pursuance of the conditions contained in the policies. The claimant was the sole shareholder in the company and was also a creditor of the company to a large extent. The arbitrator held that the claimant had no insurable interest in the goods insured and disallowed the claim. The House of Lords held that the claimant had not either as shareholder or creditor any insurable interest in the goods. Lord Wrenbury at page 633 said that the corporation, even if he holds all the shares, is not the corporator and neither he nor any creditor of the company has any property legal or equitable in the assets of the corporation.

Competency.—The assured should be competent to contract at the time.

Premium.—Premium is the consideration received by the insurer from the assured in exchange for his undertaking to indemnify the assured against loss of subject-matter in turn. The amount of premium is fixed by considering all matters affecting the risk. Premium may be fixed by the insured or his agent. Payment of the premium is not always a condition precedent to the completion of the contract, though the universal practice of insurers other than marine is to make it so. The premium is returnable if, for sufficient reasons, the policy never takes effect as in the case of policies void *ab initio*, or if after taking effect the policy ceases to be operative as in the case of policies voidable at the election of the insurers for innocent misrepresentation or concealment or as in the case of insurance effected in expectation of interest and it turns out that the assured has no interest, or as in the case of over-insurance or as in the case of insurers going into liquidation.[6] The premium is not returnable in the case of illegal insurance where parties are in *pari delicto*, or when there is a clause "lost or not lost."

Days of grace.—When an insurance extends over a period of time, during which more than one premium will become payable, a certain number of days called "days of grace" are allowed beyond the due day for the payment of the premium. If a loss occurs during the days of grace and before the renewal and if premium has been paid, before the end of the days of grace but after loss the insurers are liable.[7] In *Stuart* v. *Freeman*, where the policy was for a year with premium payable quarterly, the policy was to be of no effect, if at the death of the assured any quarterly

1. (1940) A.C. 791 (Fire).
2. 14, Geo. III, Ch. 48.
3. 6 Edw. 7 Ch. 11.
4. *Wilson* v. *Jones*, (1867) L.R. 2 Exch. 139.
5. (1925) A.C. 619 (H.L.), (I.R.).
6. *Tanjore Life Insurance Co.* v. *Kuppanna Rao*, I.L.R. 43 Mad. 333.
7. *Tarleton* v. *Staniforth*, (1794) 5 Term Rep. 695, 700 : 101 E.R 386 at 389.

payment should be thirty days in arrears. The assured died after one of the days fixed for the payment of the instalment but it was held that the payment of premium within the days of grace saved the policy from lapsing. Mathew, L.J., observed : "In my opinion, the correct view as to the days of grace allowed by the terms of this policy is that, if payment is made within the time mentioned it is to be taken to have been made on that day appointed for payment and is to be taken to have the same effect as if it had been made on that day."

Risks.—The assured should provide the insurer with all the data to estimate the nature of the risk. Elements of the risk are all facts increasing or diminishing the likelihood that the event insured against will happen sooner or later ; for example, in the case of fire insurance where the house is insured its character, construction or locality, etc., or the nature of the subject-matter, for example, articles like petroleum and gunpowder or in the case of life insurance, the health, the character, ancestry, etc., of the assured. Policies are mostly of two kinds: time policies, and voyage policies. Most policies other than marine are time policies, that is, for a fixed and certain period of time ; they expire at the last moment of the last day therein named. Where a contract is to insure "at" and "from" or "from one place to another or others," the policy is called a voyage policy.[1] In time policies, risk begins when goods start or get into the carrier's hands and continues until arrival in the consignee's hands, but does not continue during a deviation[2].

The commencement of the risk is not conditional on the delivery to the assured of the policy, provided usually that the first premium is paid and the contract is complete in all other respects and even death before delivery of policy is no bar to recovery. Material alteration of the risk avoids the policy, unless the policy expressly states that any alteration avoids it, in which case no loss need occur to avoid the policy. If any material change occurs in the risk between the time of proposal and the time of acceptance the insurers are not bound, for example, where a man was free from disease when he made the proposal for insurance on his life but before the company accepted it he was attacked by pneumonia and the notice of the proposer's illness was not communicated to the insurer, it was held that the proposer's representatives could not recover.[3]

Public policy.—As in the case of all contracts, a policy of insurance will not be enforced by Courts if it is contrary to public policy. In a recent case in *Beresford* v. *Royal Insurance Co.*[4], the House of Lords held that the personal representatives of a person, who having insured his life, committed suicide while sane, cannot recover the policy money from the insurance company, for it would be contrary to public policy to assist a personal representative to recover the fruits of a crime committed by the assured. The contract was held to be contrary to public policy, following *Fender* v. *St. John Mildmay*[5] and dissenting from the American case *North-western Mutual Life Insurance Co.* v. *Johnson*[6]. In *Fender's case*[5], the principle was held to be that no Court ought to assist a criminal to derive benefit from his crime.

Exemption clause.—Policies might exclude insurer's liability for loss in particular cases. For example, a clause in a motor insurance policy[7], that the motor car, when driven will be in safe condition ; a clause in a jewellery insurance policy[8] that the insurer will not be liable for loss caused by theft or dishonesty of a customer; or in the case of burglary insurance policy[9], a clause exempting insurers from liability for theft happening through rioting. In such cases the insurers are exempted from liability for losses so caused.

[To be continued.]

1. *Isaacs v. Royal Insurance Co.*, (1870) L.R. 5 Ex. 296. See section 25, of the Marine Insurance Act, 1906 (6 Edw. 7, C. 41).
2. *Pearson* v. *Commercial Union Assurance, Co.*, (1876) 1 A.C. 498.
3. *Looker* v. *Law Union and Rock Insurance Co.*, (1928) 1 K.B. 554.
4. (1938) A.C. 586.
5. (1938) A.C. 1.
6. (1920) 254 U.S. Rep. 96.
7. *Trickett* v. *Queensland Insurance, Co.*, (1936) A.C. 159.
8. *Lake* v. *Simons*, (1927) A.C. 487.
9. *London and Lancashire Fire Insurance cCo., Ltd.* v. *Bolands, Ltd.*, (1924) A.C. 836.

SUMMARY OF ENGLISH CASES.

BLUNT *v.* BLUNT, (1943) A.C. 517 (H.L.).

Practice—Appeal—Exercise of discretion by trial Court—If can be interfered with on appeal.

An appeal against the exercise of the Court's discretion may succeed on the ground that the discretion was exercised on wrong or inadequate materials, if it can be shown that the Court acted under misapprehension of fact in that it either gave weight to irrelevant or unproved matters or omitted to take relevant matters into account, but the appeal is not from the discretion of the Court to the discretion of the appellate tribunal.

Matters to be considered by the Court in exercise of the discretion conferred by section 4 of the Matrimonial Causes Act, 1937, to dismiss or allow a petition for divorce where the petitioner has during the marriage been guilty of adultery indicated.

ABITIBI POWER AND PAPER CO. *v.* MONTREAL TRUST CO., (1943) A.C. 536.

Constitutional Law—British North America Act, 1867—Section 72 (13)—Moratorium Act staying proceedings against a company in liquidation—One regulating property and civil rights within the province and intra vires *the provincial legislature.*

The Abitibi Power and Paper Company Limited Moratorium Acts, 1941 and 1942 (Ontario) which provided that no new action should be brought for the purpose of realising dues on a mortgage by the company and no further steps taken in the action then pending without the consent of the Attorney-General is *intra vires* the Ontario provincial legislature as the pith and substance of the Act was to regulate " property and civil rights" within the province. The Act did not relate to " bankruptcy and insolvency " which were matters within the exclusive legislative competence of the Dominion Parliament under section 91 (21) of the British North America Act.

TRITONIA, LIMITED *v.* EQUITY AND LAW LIFE ASSURANCE SOCIETY, (1943) A.C. 584 (H.L.).

Practice—House of Lords—Right of audience—Limited to counsel instructed on behalf of party or to the party in person—Artificial person like a company can be represented only by a counsel instructed on its behalf.

When an appeal is argued before the House of Lords, no one has any right of audience except counsel instructed on behalf of a party or when the litigant is a natural person the party himself. In the case of a corporation, inasmuch as the artificial entity cannot attend and argue personally, the right of audience is necessarily limited to counsel instructed on the corporation's behalf. *Nairn* v. *University of St. Andrews*, (1909) A.C. 147, explained. The rule limiting the right of audience on behalf of others before the House of Lords to members of the English or Scottish or Northern Irish Bars, secures that the House will be served by barristers or advocates who observe the rules of their profession, who are subject to a disciplinary code, and who are familiar with the methods and scope of advocacy, which are followed in presenting arguments to the House of Lords. Accordingly one of the appellants though authorised by resolution of his co-appellant companies to appear on their behalf will have no right to represent the companies in the appeal before the House of Lords and the companies must appear only by counsel.

MATTOUK *v.* MASSAD, (1943) A.C. 588 (P.C.).

Tort—Action by father for damages for loss of service caused by seduction of his daughter—Proof of rape—If inconsistent with seduction.

The father's or master's cause of action is for the loss of the girl's service and it is illogical to suppose that he could recover if the girl yielded but not recover if he lost the service because the girl was forced into intercourse with the defendant. In the case of rape, the master would have precisely the same action, basing it on the wrong done to his servant, as in the case of any tort to the servant by which the master was deprived of her service. The action can be brought for seduction whether based on the special wrong done to the master by persuading the girl to have intercourse, or on the wrong done to the girl by the felony of rape by which the master suffered damage. The fact that the wrong to the servant was a felony has no bearing on the master's cause of action.

GENERAL MEDICAL COUNCIL *v.* SPACKMAN, (1943) A.C. 627 (H.L.).

Medical Council Act, (1858), section 29—Scope of " due inquiry under "—Decision of divorce Court that a practitioner was guilty of adultery with client—Proceedings by Medical Council for removal of such member for infamous conduct—Other evidence tendered to rebut charge of adultery—Duty to hear.

The legislature has not made in section 29 of the Medical Act, a decree of the Divorce Court conclusive on the question of adulterous conduct in the same way as it has made a conviction of felony or misdemeanour conclusive, so that, in such a case, all that the counsel has to decide on proof of the decree and of the identity of the party is whether the adultery amounts to infamous conduct in a professional respect. Though the decree is *prima facie* evidence of the adultery and very strong evidence too (especially where the person charged did not appeal but paid the damages awarded against him) that is no reason for refusing him the full and fair opportunity of stating his case before the Council

and adduce other evidence in rebuttal if he contests the justness of the decision of the Divorce Court. The Council is not a Court of Appeal but an independent body before whom the practitioner charged appears for the first time and the Council is bound to hold a " due inquiry " on its own responsibility and make its own decision on the evidence before it. If the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision. Meaning of " natural justice " discussed, (1942) 2 K.B. 261, affirmed.

DENNIS & SONS, LTD. *v.* WEST NORFOLK FARMERS' MANURE AND CHEMICAL CO-OPERATIVE CO., LTD., (1943) 1 Ch. 220.

Practice—Discovery—Privilege—Action between share-holders and company—Reports on effect of articles—How far privileged.

Where a report from Chartered Accountants on the effect of certain of the articles of association was not obtained by the company, for the purpose of defending themselves against any hostile litigation, no privilege from discovery can be claimed in an action by a share-holder against the company; it is only where a document is obtained by a company for that purpose that privilege can be claimed. The shareholders by instituting proceedings two days before the report was received did not lose their right as shareholders to see that which they otherwise would have been entitled to. It must never be forgotten that the rules as to privilege are strict, and, as has so often been said, privilege is not to be extended.

DALZIEL. *In re*: MIDLAND BANK EXECUTOR AND TRUSTEE COMPANY, LTD. *v.* BARTHOLOMEW'S HOSPITAL, (1943) 1 Ch. 277.

Will—Gift for maintenance and rebuilding of tomb—Validity—Gift over to charity—If effective.

A clause in a will made the following dispositions : I give to the Governors of St. Bartholomew's Hospital the sum of £ 20,000 free of all death duties to be added to and form part of the existing Dalziel and Wooler Discretionary Fund and I give this legacy upon and subject to the condition that the said Governors of the Hospital shall use the income to arise from this legacy as far as is necessary for the upkeep of the mausoleum in Highgate Cemetery and the garden surrounding the same, that they shall keep the same in good repair and the inscriptions thereon legible and to rebuild the same when requisite, and if they shall fail to carry out this request I give the said sum of £ 20,000 to such other of the charities named in this my will as my trustees may select and as shall be willing to accept the legacy subject to the above conditions." On a construction of the will,

Held, that the maintenance of the mausoleum is clearly not a charitable object and therefore both the gift and the gift over failed.

KENNEDY *v.* D'ANDRICK, (1943) 1 Ch. 291.

Practice—Suit to set aside a judgment on the ground of fraud—Payment of costs and depositing into Court amount of judgment impeached—If can be imposed as a condition on the plaintiff—R. S. C. O. XXVII, rule 15—Not applicable.

In a suit by *D* for damages for conversion of certain chattels sold, the two defendants *R* and *K* entered appearance and put in defence. At the trial after the close of the plaintiff's case the defendants elected not to call any evidence and plaintiff was given judgment and an inquiry as to damages ordered. The inquiry was referred to an Official Referee who made a report that the value of the chattels in question was £ 14,000 and the plaintiff was ultimately given a decree for that amount and costs. The defendants did not attend the further proceedings when the report of the Referee was adopted by the Court and decree given. One of the defendants, *K*. subsequently brought an action alleging that he had been induced by the false and fraudulent promises of *D* that he would not enforce any judgment which he obtained, to absent himself from the inquiry into damages and the hearing on further consideration and claiming that the judgment awarding damages and costs and the report of the Official Referee were obtained by the fraud of *D* and ought to be set aside. *D* then took out a summons asking for an order that *K* be put on terms as a condition of proceeding with the action namely, that he should pay him the costs and bring into Court £ 7,000, part of the damages awarded against him.

Held, that *prima facie*, in the absence of any enactment or rule containing some special provision to the contrary, any person is entitled to issue a writ and to proceed with his action without being put on terms to pay money into Court or to pay costs of any previous proceedings. Order XXVII rule 15 of the Rules of the Supreme Court has no application to such a case. Observations to the contrary at page 470, Annual Practice (1943), disapproved.

HUGHES, *In re*: REA *v.* BLACK, (1943) 1 Ch. 296.

Will—Gift over on neglect to take name and arms of testator—Neglect because of absence of knowledge of existence of the condition—Effect—" Fail " and " Neglect "—Construction.

A clause in a will provided for a gift over on neglect to take the name and arms of the testator. A legatee living abroad received information that he was entitled to an interest in the property but

it was not until more than twelve months later that he received the further information that the will contained the name and arms clause. On a question of construction,

Held, that "neglect" does not cover every case of failure but only that case where the person acting consciously, omits to do that which he ought to do as a condition of receiving the testator's bounty. "Neglect" imports failure to do something which the person under the obligation knows or ought to know to be a condition. Accordingly the legatee in the case cannot be said to have neglected to assume and take the "name and arms" as required in the will.

In re D (AN INFANT), (1943) 1 Ch. 305.

Guardianship—Infant alien without property—Appointment of guardian by Court.

The jurisdiction to appoint a guardian of an infant is based not on the existence of property but on the infant's need of protection. Accordingly the Court can appoint a guardian for an infant alien though there is no property within its jurisdiction.

JOEL, *In re*: ROGERSON *v.* JOEL, (1943) 1 Ch. 311 (C.A.).

Will—House together with contents—Bequest—Single gift and not separate gifts—Gift of house cannot be disclaimed by donee retaining the contents of the house.

A bequest of a leasehold house "together with its contents" is a single gift and not two separate gifts, and the legatee may not disclaim the gift of the house and retain its contents.

Hotchkys, In re, (1886) 32 Ch.D. 408, not followed.

HODGE, *In re*: MIDLAND BANK EXECUTOR AND TRUSTEE, CO. *v.* MORRISON, (1943) 1 Ch. 300.

Will—Annuity—Provision for payment after death of tenant for life—Acceleration of annuity on disclaimer by tenant for life.

A will provided for annuities payable after the death of the tenant for life. On a disclaimer by the tenant for life,

Held, the annuities were accelerated and took effect from the date of the testator's death. There is no reason why the principle of acceleration should not be appropriate in the case of any interest whether partial, such as an annuity, or residuary. The principle is the same. An interest is postponed that a prior interest may be enjoyed. If that prior interest is determined, whether by the death of a prior beneficiary or for any other cause, the reason for postponement disappears and there is no reason why there should not be acceleration.

CORRELLI, *In re*: WATT *v.* BRIDGES, (1943) 1 Ch. 332.

Will—Bequest to charity—Establishment in perpetuity of a hotel for the entertainment of distinguished foreigners visiting the place—Not a valid charitable bequest—Provision that premises were to be available for annual and provincial meetings of scientists—Not sufficient to save such bequest.

Whether or not the establishment of breathing spaces and air zones or the promotion of science, literature and music is apart from the association of these purposes with a particular locality, valid charitable objects, a bequest for the carrying out of these purposes in Stafford-on-Avon would be a valid charitable bequest.

But the establishment in perpetuity of a hotel for the entertainment of distinguished foreigners would not be a valid charitable bequest, and the fact that the premises were also to be available for the annual and provincial meetings of scientists connected with the Royal Institution would not suffice to save the bequest and the gift for such a purpose will fail.

POLLOCK, *In re*: PUGSLEY *v.* POLLOCK, (1943) 1 Ch. 338.

Will—Administration—Legacy—Interest on pecuniary legacies—Right to—Principles.

A testator bequeathed several pecuniary legacies including £ 1,000 to his wife "to be paid to her immediately after my death for her immediate requirements" and £ 10,000 "to my trustees" . . . . upon trust for my said son . . if he shall attain the age of 25 years absolutely but if he shall die under that age then I direct that the same shall fall into and form part of my residuary estate." On the question as to interest on the legacies,

Held, the rules with regard to the payment of interest on pecuniary legacies are technical. In the ordinary case of a pecuniary legacy without direction as to payment of interest on it, the legacy, being vested, carries interest at the expiration of one year from the death of the testator. A contingent pecuniary legacy carries no interest until the contingency happens, but to that rule there is the exception that a contingent pecuniary legacy either to a child of the testator or to a person to whom the testator stands in *loco parentis* carries with it interest from the date of the death of the testator, if there is no other provision in the will for maintenance.

If a legacy is to trustees of the will it carries interest at the expiration of one year from the testators' death. Such interest is regarded as part of the income produced by the legacy. Any such incom-

produced by the investment representing the legacy follows the principal, and if the event happens the income, or the interest, as the case may be, goes to the person to whom, in that event, the capital of the legacy goes. Meantime the interest may be used for the maintenance of the legatee, if in the interval, he requires to be maintained.

SCHEBSMAN, *In re*: OFFICIAL RECEIVER, THE TRUSTEE *v.* CARGO SUPERINTENDENTS (LONDON), LTD., (1943) 1 Ch. 366.

Bankruptcy—Contract with debtor for payment of certain amounts to his wife and daughter—If can be avoided by the trustee in bankruptcy—Payment to wife and daughter—Sufficient performance.

An agreement between an employee and employer after the termination of such employment provided for certain payments being made by the employer company over a period of years, so long during that period as he was living and, after his death within a certain period which happened to his widow and in an event which at the date of the motion, might or might not happen, to his daughter. The consideration for the agreement was that the employee agreed not to engage in any competing business for 10 years from 31st March, 1940. The agreement further provided that if he died on or before 31st March, 1941, the company would pay his widow £ 500 for each of the four years ending 31st March, 1941, 1942, 1943 and 1944. and £ 375 for each of those ending on March, 1945 and that if he died during the conventional years 1941-42, 1942-43, 1943-44 each ending on 5th March, the payments should extend over the period ending 5th March, 1948 and there were further provisions for payments to the daughter if the widow should be dead. The employee was adjudicated bankrupt on 5th March, 1942 and died on 12th May, 1942.

The Official Receiver as trustee in bankruptcy by a motion asked for a declaration that all sums payable under the agreement to the widow and possibly to the daughter after the receiving order formed part of the estate of the debtor on the ground that although the sums were by the agreement, to be paid to the widow or the daughter, the debtor always had the right to intercept them, which right was at the date of the motion, in the trustee, and secondly, that if the debtor had not that right, the provision for the widow and daughter was a voluntary settlement avoided under section 42 (1) of the Bankruptcy Act, 1914, because of his bankruptcy within two years of making it.

Held, (1) under the agreement no term can be implied that the debtor or his sequels in title would have a right to intercept the payments to the widow and daughter. (2) The payment to the wife and daughter (though they were third parties who may not be entitled to sue for it) was due performance of the agreement and the debtor or his trustee cannot change the mode of performance and (3) The agreement did not constitute a settlement within the meaning of section 42 (1) of the Bankruptcy Act which can be avoided by the trustee.

HANSEL *v.* SPINK, (1943) 1 Ch. 396.

Practice—Fund in Court—Application for payment out—Principle of permissive distribution not applicable—Court must take responsibility for payment out.

With a fund in Court, there is no room for the application of the principle of permissive distribution, as for instance where the Court without making any positive order declaring rights, protects personal representatives or trustees by giving them liberty to distribute on a particular footing based on probable inferences. In respect of a fund in Court, the Court must take the responsibility of deciding whether to make or to refuse an order for payment out. The Court will order payment out if the applicant establishes his title.

VISCOUNT FURNESS, *In re*: WILSON *v.* KENMARE, (1943) 1 Ch. 415.

Will—Administration—Decree for general administration—Powers of the trustees to sell property etc.—Cannot be exercised without leave of Court.

After an order for general administration has been made, a trustee is not at liberty to sell, deal with or distribute the assets of the testator's estate without obtaining the sanction of the Court.

Daniels Chancery Practice 8th edition, Volume I, page 916, and Williams on Executors 12th Edition page 1278, disapproved. Lewin on Trusts, 14th Edition, page 313, approved. *Berry* v. *Jibbons*, 8 Ch. 747 and In re *Mansel*, 33 W.R. 727, considered.

REX *v.* CARR-BRIANT, (1943) 1 K.B. 607 (C.C.A.).

Criminal trial—Offence "unless the contrary is proved"—Burden of proof.

In any case, where, either by statute or at common law, some matter is presumed against an accused person "unless the contrary is proved" the jury should be directed that it is for them to decide whether the contrary is proved, that the burden of proof required is less than that required at the hands of the prosecution in proving the case beyond a reasonable doubt, and that the burden may be discharged by evidence satisfying the jury of the probability of that which the accused is called upon to establish.

Lyon v. The Daily Telegraph, Ltd., (1943) 1 K.B. 746 (C.A.).

Tort—Defamation—Libel—Newspaper—Publication of letter criticising item of entertainment in B.B.C.—Action for libel by the artist against newspaper—Fictitious name and address of writer of letter—Does not take away defence of fair comment.

It cannot be accepted that there is a general rule of law making it the duty of every newspaper to verify the signature and address of the writer of a letter before publishing it, although it may be desirable on public grounds that, so far as is practicable, the newspaper should take such steps. The absence of such verification will not of itself destroy the newspaper's plea of fair comment in an action for libel contained in such letter. The fact that the writer of the letter gave a false name and address does not deprive the newspaper of the defence of fair comment.

The publishers of a newspaper, will not lose the protection of the defence of fair comment by reason of any oblique motive on the part of the writer of the letter. The fairness of the comment contained in the newspaper's correspondence columns must be judged by its tenor, subject only to the proviso that the statement of facts on which the comment is based is not untrue. The Court may, as private individuals, agree or disagree with the opinions expressed. Indeed, it may disagree very much and yet hold that there is nothing in the language used which exceeds the limits of public criticism so as to become mere personal defamation. It is wrong to think that in a case of libel or slander a judicial pronouncement that what the defendant wrote or said was within his right of fair comment means that the Court accepts and endorses his opinions.

Lomax v. Peter Dixon and Sons, Ltd., (1943) 1 K.B. 671 (C.A.).

Income-tax—Loan advanced by assessee secured on notes—Issue of notes at discount and redemption at premium—Discount and premium—If capital or interest receipts—Assessability to income-tax.

Where a loan is made at or above such a reasonable commercial rate of interest as is applicable to a reasonably sound security there is no presumption that a " discount " at which the loan is made or a premium at which it is payable is in the nature of interest. The true nature of the " discount " or premium (as the case may be) is to be ascertained from all the circumstances, of the case, and apart from any matter of law which may bear on the question (such as the interpretation of the contract), will fall to be determined as a matter of fact by the Inland Revenue Commissioners. In deciding the true nature of the " discount " or premium in so far as it is not conclusively determined by the contract, the following matters together with any other relevant circumstances are important to be considered, namely, the term of the loan, the rate of interest expressly stipulated for, the nature of the capital risk, and the extent to which, if at all, the parties expressly took or may reasonably be supported to have taken the capital risk into account in fixing the terms of the contract. Where no interest is payable as such, different considerations will of course apply. In such a case, a " discount " will normally, if not always, be a discount chargeable under para (*b*) of rule (1) to case III, Income-tax Act. Similarly a " premium " will normally, if not always, be interest.

Holdman v. Hamlyn, (1943) 1 K.B. 664 (C.A.).

Tort—Master and servant—Infant invitee—Injury to—Defence of common employment—Not applicable—Doctrine of common employment—Principles.

In an action for damages by an infant invitee injured by a corn-threshing machine, the defence of common employment was set up.

Held, that a defendant who has lured an invitee into a forbidden area cannot thereafter treat him as a trespasser. If the plaintiff was engaged or requested to help, on the authority of the master, then he becomes a fellow servant with the other servant of the master. If on the other hand, he was engaged to help without any authority at all from the master, then he is in legal strictness a trespasser. In most cases such a plaintiff can find no escape from the dilemma.

The doctrine of common employment is based on an implied undertaking by the workman of the risk of the negligence of those working within that service and can never be applicable when there is no relation between the parties from which such an undertaking can be implied for instance by the absence of capacity to contract by reason of infancy.

A child incapable of taking care of himself and in need of protection against the dangers attendant on his own childish propensities, cannot be taken to have agreed that an undertaking can be implied, that if he were allowed to work for the defendant he would take care of himself from the negligence of his fellow workmen. Even if such an undertaking could have been implied in the contract it would be the duty of the Court to consider whether the contract as a whole was for the infant's benefit. The plaintiff in the circumstances is entitled to succeed.

Rex v. Thompson, (1943) 1 K.B. 650 (C.C.A.).

Gaming—Poker—Unlawful game—Card game—Question of lawfulness—One of fact.

Any one who keeps premises for playing cards for money, is guilty of unlawful gaming unless the game is one of mere skill. If the element of chance is so slight as to make the game one of mere skill, then it is not unlawful. The question, whether or not a game is one of mere skill, is a question

of fact. Except in a case where the game in question is one which is specifically made illegal by statute, before a judge can rule that a card game is unlawful, a question of fact has to be decided, namely, is the game one of mere skill or not.

BUDD *v.* ANDERSON, (1943) 1 K.B. 642.

Defence (General) Regulations, 1939, Regulation 18-B (I-A)—Ground of detention wrongly stated in copy of order served on detenue—Release on writ of Habeas Corpus *and subsequent re-arrest—Detenue—If can claim damages for false imprisonment in respect of first detention.*

On June 1, 1940, Sir John Anderson, the then Home Secretary made an order under regulation 18-B (I-A) the Defence (General) Regulations, 1939, for the detention of the plaintiff and twenty-four other persons, the ground of detention being that he had been a member of the BritishUnion of Fascists, an organisation of the kind specified in the regulation. In making out a copy or summary of the order, it was stated inaccurately, that the ground of the plaintiff's detention was that he was a person of hostile associations, a ground for detention under regulation 18-B (1), and accurately that the Home Secretary made the order in pursuance of regulation 18-B (1-A). The plaintiff was handed this document when he was arrested. On July, 25, 1940, the advisory committee appointed under regulation 18-B (5) informed the plaintiff in writing correctly that he was detained because he had been a member of an organisation specified in regulation 18-B (1-A). On May 27, 1941, *habeas corpus* proceedings were brought by the plaintiff and ultimately the Divisional Court held that the plaintiff's detention was illegal and his release was ordered. He was afterwards re-arrested under regulation 18-B but was released in May, 1943. He then brought the present action claiming damages for false imprisonment in respect of his first period of detention against Sir John Anderson, the Home Secretary, as having caused the original detention, Herbert Morrison, his successor in office for having continued the detention and the officials in the Home Office.

Held, that the decision in the *habeas corpus* proceedings was not *res judicata* in the present action. The plaintiff was not prejudiced by the deprivation of his rights as the original order for his detention was not invalidated, by the inaccurate copy. The production by the Secretary of State of an order of detention by him *ex facie* regular and duly authenticated constitutes a peremptory defence to any action of false imprisonment and places on the plaintiff the burden of establishing that the order is unwarranted, defective, or otherwise invalid. It being conceded in the present case that the order of June, 11, 1940, was neither unwarranted nor defective nor otherwise invalid, the action must fail. *Liversidge* v. *Sir John Anderson*, (1942) A.C. 206, and *Greene* v. *Home Secretary*, (1942) A.C. 284, applied.

GRIFFITHS *v.* DAVIES, (1943) 1 K.B. 618.

Practice—Estoppel—Rent restriction—Earlier action by landlord for possession—No objection taken to conventional rent—Subsequent action for rent for different period—Objection that rent is too high—Not barred by estoppel.

If two actions are brought by a landlord in respect of two different rent periods, and in the first action judgment is given for the conventional rent and in the second it is shown that the conventional rent is too high, the Court is bound in such second action to give effect to the provisions of section 1 of the Increase of Rent and Mortgage Interest (Restrictions) Act, (1920) in an application by the tenant to fix the standard rent and current lawful rent. The tenant is not estopped. If in proceedings where the point is not taken, judgment for an amount of conventional rent which is excessive is given against a tenant and later an action is brought against the tenant for the conventional rent at the same rate, in which later proceedings it is shown that the rent is excessive, the earlier judgment cannot give to the Court a jurisdiction which section 1 of the Act of 1920 has denied to it.

Bradshaw. M'Mullan, (1920) 2 I.R. 412, relied on.

COLE *v.* BLACKSTONE AND COMPANY, LTD., (1943) 1 K.B. 615.

Factories Act (1937), section 25 (4)—Duty to maintain ladders in proper condition—Absolute.

To reach the driving cab of his crane the deceased workman had to use a ladder some twenty feet high. On the morning of the accident he was found on the floor at the foot of the ladder, and close beside him was lying one of the rungs. It was obvious that the rung had given way while he was ascending the ladder, with the result, that he fell to the ground and suffered the injuries from which he died. In an action by the widow for damages,

Held, that the statutory duty under section 25 (4) of the Factories Act to keep all ladders in an efficient state and in good repair is as absolute as the duty imposed by the Factories Act to fence all dangerous parts of machinery. The defendants are accordingly liable as the ladder was not in fact in an efficient state or in good repair on the morning of the accident.

KING *v.* KING, (1943) P. 91 (C.A.).

Divorce—Dismissal of husband's petition—Appeal —Security for wife's costs—Jurisdiction to order.

Security for the wife's costs in an appeal against the dismissal of the husband's petition for divorce will not be ordered as a matter of course merely because the wife has no means of her own for financing her costs of the appeal. The Court has jurisdiction to make such an order and will do so in appropriate circumstances. The wife has authority to employ legal help at the expense of the husband in such a case as the present. Where however the judge exercising divorcej urisdiction makes a

decree of dissolution on the ground of the wife's adultery the doctrine of a common law agency of necessity would deem to be excluded. On the other hand, if a decree which terminates the married status excludes the rule, a solicitor might hesitate to undertake the conduct of an impecunious wife's case if he had only the common law principle of agency on which to rely to get his costs and were driven to sue the husband and it may be that, for the sake of public policy, in relation to the protection of the married status, the rule of ordinary security should be regarded as for that very reason, equally enforceable in the case of a wife seeking to appeal from a decision against her (The question was left open).

JOTTINGS AND CUTTINGS.

The Guillotine Goes.—It is reported that the use of the guillotine has been suspended in France and that it has been replaced by the firing squad. As the last word of the French criminal law it has become so established an institution that people are apt to forget that it was only an adopted child. Dr. Guillotine is supposed to have found the idea in the description of an execution at Milan, in 1702 in an anonymous book of travels. He made experiments on corpses at a hospital and his machine was erected in the Place De Greve to behead a highwayman in 1792, just in good time to popularise it as the instrument of the mass executions of the French Revolutions. During the Middle Ages a similar instrument had been well known in Germany under the name of *Diele* and in Italy under the name of *Mannaia.* It was introduced into Scotland by the Regent Morton and remained in use till 1716, when the last head which fell to it was that of Mr. John Hamilton in 1716. In England a machine of the same kind was in use at Halifax, where custom had established a form of summary justice which did not lapse till after the middle of the seventeenth century. Felons caught with stolen cattle or goods within the liberty of the Forest of Hardwicke were tried before the lord's bailiff at Halifax sitting with four free-holders as a jury and if found guilty they were beheaded. The manner of it was that " the prisoner being brought to the scaffold by the bailiff, the axe being drawn up by a pulley and fastened with a pin to the side of the scaffold ; the bailiff, the jurors and the minister chosen by the prisoner being always upon the scaffold with the prisoner in the most solemn manner . . . If it was a horse, an ox or cow, etc., that was taken with the prisoner, it was thither brought along with him to the place of execution and fastened by a cord to the pin that stayed the block so that when the time of the execution came . . . the bailiff or his servant whipping the beast, the pin was plucked out and execution done. But if there be no beast in the felon's case, then the bailiff or his servant cut the rope " The base of the machine still stands in Gibbet Street.—*S.J. 1943, p. 438.*

Judge Parry.—Sir Edward Parry has died at the age of eighty. During the thirty-three years that he sat as a county court Judge, first at Manchester and afterwards in London, he penetrated the consciousness of the public as well as the legal world. It was in 1927, that he retired, when he noticed " that though I listened in to all that was said to me as attentively as hitherto, I did not pick up sounds as well as I used to do. Now, a deaf judge is an abomination and 'daily increaseth lies and desolation'". He consulted an aural surgeon, who assured him " that I was a very interesting individual—as an aural specimen—that as a matter of fact since my left ear drum had been blown in in 1898, he considered it had always been more or less out of action ; but that I had adopted a very cunning method of imperceptibly bringing my right ear into action, with intent to deceive people into the belief that I was hearing them with my left . . I was tiring my remaining ear and he strongly advised me not to continue to do so." His ear was injured when he was shot in Court in Manchester by a bailiff whose certificate he had been obliged to withdraw. A barrister on his right hand just made an application and he had turned his head. The movement probably saved his life, for at that moment he heard a terrific explosion. The bullet fired, which would have smashed his face had he not turned, only ran along the side of his jaw. A second shot entered the back of his ear. The surgeon who attended him consoled him, saying : " Don't worry about it, judge, its only the left ear, and in the Manchester Court that's the defendant's side and you never listen to him, you know." " That may be," said Parry, " but there is all the difference between not listening and not hearing when you do listen." Some time after, a doctor, laying down the law on the subject of neurasthenia in relation to malingering, said to him : " I really believe you think you could teach me something about a subject which has been my life study." "I could teach you all about it," he replied. " I should empty a revolver into the back of your head when you were not expecting it. If you got well again you would know all there is to be known about neurasthenia." A son of the famous Serjeant Parry he spent his childhood in the region of Baker Street and Regent's Park. He liked to recall the fascinating world it was then with its four wheelers, its broughams, its smart hansoms, its beautiful gold and green omnibuses. " The selfish noisy bustle of modern traffic with its wearisome failure of movement and cumbersome stoppages, is a poor achievement of modern science ; and the machines of to-day will never recapture the charms of ambling coaches, cabs and omnibuses."—*S.J., 1943, p. 445.*

Profitable Disability.—In the course of the hearing of a recent workmen's compensation case in the House of Lords counsel made the point that an accident might actually cause a man to adopt a more remunerative employment, and Lord Simon thereupon recalled the fact that had Sir Walter Scott not been lame he would have been a soldier instead of a lawyer and a novelist. Lord Thankerton remarked that, in a sense, he did become a soldier. Indeed, Napoleon's threatened invasion of this island gave his martial ardour ample outlet, for, though his disability debarred him from joining the majority of his brethren in the ranks of the Edinburgh Volunteers, he helped to raise a body of

volunteer cavalry in 1797—the Midlothian Yeomanry—and he became the life and soul of the Edinburgh troop, drilling at five in the morning before going to court, dining in the mess, making songs, riding at a turnip stuck on a pole to represent a Frenchman's head and slicing it with his sabre, muttering as he did so : " Cut them down, the villains, cut them down!" Though even on horseback his lameness was a handicap, he rode 100 miles to Dalkeith in a single day on the occasion of the false alarm of invasion in 1805. He had been appointed quartermaster " that he might be spared the rough usage of the ranks," but there could be no reflection on his zeal. Another spoilt soldier who attained eminence through the law was Mr. Baron Cleasby, whose intended military career was frustrated by an illness in 1819 which left him lame for life. Again Mr. Justice Grove would hardly have become so eminent as a scientist had not his career as a lawyer been retarded by ill-health. The respite thus afforded to him enabled him to follow his natural bent towards scientific investigation and the reputation thereby achieved brought him work in patent cases so that as his health improved he was able to go forward into practice.—*S.J., 1943, p. 413.*

Law, History and Microphotography.—The Master of the Rolls, giving his presidential address on 16th November, to the British Records Association at their annual meeting at Vintners' Hall, referred to a scheme for the microphotography of probate registers, which, thanks to a generous grant by the Pilgrim Trust, had become a practical possibility. His Lordship said that since the beginning of the present year, the whole of the registers of wills in the Prerogative Courts of Canterbury and York down to the year 1,700, and a substantial part of the like registers from district Courts to the year 1,600, had been reproduced in this way, and over 200 rolls of film,—altogether more than 20,000 feet in length and containing about 250,000 photographs—had been deposited in a place of safety. His Lordship added that that was not only a considerable contribution to the safeguarding of the country's records, but also a provision of material for research which ought to be of very great benefit to the students of this and other countries when happier times arrived. Apart from its value to students this piece of work was important because of the opportunity it gave to investigate the technique of microphotography in its special relation to records. His Lordship said that he had nominated, at the request of the association, a new committee to consider the post-war problems of English archives. Starting with the practical question of the dangers of destruction and dispersal which, in that period, might be expected to threaten many records with a new gravity, the committee had gone on to survey—taking a wide and long view—the possibilities of what should be not only a post-war but a reconstruction period ; and had formulated proposals affecting the welfare of every category of archives outside the Public Record Office. So long as the war continues, and even for some time after peace comes, the danger of loss of valuable records, whether owing to enemy action or well-intentioned salvage, is very real. The work done by Lord Greene and all those others who have saved and discovered documents of legal or historical value during the present war gives some comfort to those who have lived to see the lamps of civilisation burn low.—*S.J., 1943, p. 417.*

BOOK REVIEWS.

ANALYTICAL SURVEY OF BENGAL REGULATIONS (and Acts of Parliament relating to India, upto 1833) with a Foreword by the Hon'ble Mr. Justice C. C. Biswas: By Rai M. N. Gupta Bahadur, M.A., B.L., published by the University of Calcutta, 1943.

The book constitutes an attempt to deal with the entire body of Regulations, 675 in number, passed by the United East India Company's Government during the period 1793 to 1834, on a systematised plan so as to present a complete picture of the whole field of administration during the early stages of the growth of British power in India. The Regulations are examined under twelve chapters, each chapter being confined to a subject, a critical and chronological summary of the Regulations being first given followed up later by a synopsis of the Regulations themselves.

It is well known that the East India Company came to this country as traders but stayed to make an empire. The process, though gradual forms one of the most romantic chapters in the history of the British Empire. Till 1833, when the Charter Act declared that the East India Company were to hold the territories in India as " in trust for the Crown of Great Britain and Ireland," neither political quidnuncs nor lawyers could define with precision the constitutional position of the Company with reference to its territorial acquisitions. What with the principle that no subjects of the Crown could acquire sovereignty of any territory for themselves, and the fact that in respect of some areas the company were only lessees from the Moghul administration while in respect of other areas they were holders in jagir, and the further fact that in administering Bengal, Behar and Orissa the Company purported to act as the Dewan of the Moghul Emperor, a precise clarification of their position was then neither possible nor desirable. How from mere traders the company developed into administrators, how from a policy of eliminating Indians from all key posts the company gradually reversed their policy in course of time, how from regarding the *dewani* as a means of enabling them as merchants to make vast profits oblivious altogether to their duty by the inhabitants of the soil resulting in an unparalleled famine in 1769-70, the company thereafter became alive to their duties as administrators, are all expounded in an interesting manner by the author. It is a distinct service to the public that the Calcutta University has rendered by sponsoring this publication. A perusal of it is sure to be highly profitable and instructive to students, lawyers and politicians alike.

COMMENTARIES ON THE CODE OF CIVIL PROCEDURE, by V. V. Chitaley and K. N. Annaji Rao, 4th edition: Published by the All India Reporter, Ltd., Nagpur, Volume II,

This volume deals with the first schedule, Orders 1 to 30. It fully conforms to the plan which the authors have adopted in the first volume relative to the treatment of the subject. If the function of a text book includes the giving of an exhaustive review of the case law the volume under notice constitutes a successful achievement in that direction. One remark in this connection may not be without point, namely, that in any attempt to give the entire case law it may sometimes happen that what are considered leading cases fail to get distinguished from other decisions which merely apply the principles, though in the present work the authors have taken care to indicate the leading decisions by affixing an asterisk mark against them. The commentaries given under each section are full, lucid and helpful. The citation of authorities without the names of the parties being always given and being confined to the A. I. R. references with the addition of the corresponding I. L. R. references where they exist but without references to the other journals is a feature that has come in for criticism in the past. Certainly it would have been much more satisfactory if the authors had been able to take note of the point in the present edition. On the whole the book will be a welcome addition to the library of every busy lawyer.

INDIAN INCOME-TAX ACT, 1922, by A. N. Aiyar, 1944: Published by the Company Law Institute, Thyagarayanagar, Madras.

This elaborate treatise on Indian income-tax law is sure to cater to the needs of the profession and be of great help to the lawyers in regard to a complicated branch of the law. The author who is also the editior of the Indian Income-tax Reports is well qualified by reason of that fact to bring about a publication of this kind. All the relevant English and Indian authorities are marshalled in their appropriate places with a wealth of fact and dicta to augment their utility. On the question whether the fact, that shareholders are given an option to receive their dividend in cash or in bonus shares, would make it amount to a release of the company's assets, the author has pertinently drawn attention to *Wright's case* (11 T.C. 181). It would be interesting to speculate whether the decision would hold good under section 6-A (*a*) of the Indian Income-tax Act. The case of *Byramjee* v. *Province of Bombay*, 7 I.T.R. 670 discussing whether a tax on immovable property based on its annual rental value is in the nature of income-tax and as such is within the competence of the provincial legislature, etc., though mentioned in the index which refers to p. 242 is not to be found in that page. The case of *Raleigh Investment Co.* v. *Governor-General*, 11 I.T.R. 393 might have come in for a fuller notice having regard to the important issue, namely, the extra-territorial powers of the Indian Legislature, which fell to be considered. It is strange that the case of *Wallace Bros.* v. *Commissioner of Income-tax, Bombay* 1943 Com. Cases 315 reported next to the *Raleigh case* in the November-December part of the Company cases, 1943 does not come in for any notice particularly as the Bombay High Court expressed, though obiter, their view that *Raleigh's case* was not a correct exposition of the legal position regarding extra-territorial powers of the central legislature. Cases like *Commissioner of Stamp Duties* v. *Millar*, 48 Com.L.R. 618 and *Trustees Executors Agency* v. *Federal Commissioner of Taxation*, 49 Com.L.R. 220, might also have been noticed in that context. The residence of companies for purposes of taxation always presents a conundrum and one has only to compare the two cases of *Swedish Railway Co.* v *Thompson*, 1925 A.C. 495 and *Egyptian Delta Land Investment Co.* v. *Todd*, 1929 A.C. 1, to realise the difficulties attendant on this topic, for in these two cases on somewhat similar facts the House of Lords has reached different conclusions ; yet, the topic has not come in for adequate notice. The recent decision in *Dinshaw Darabshaw* v. *Commissioner of Income-tax* A. I. R. 1943 Bom. 77 holding that certiorari does not lie against decisions of the Commissioner has also not been mentioned.

Despite these, the book will be of great utility to the profession and will also serve as a handy vade mecum to the asessees who can consult it with profit whenever any knotty question of income-tax law crops up. We cordially welcome this publication.

COMMENTARIES ON THE CODE OF CIVIL PROCEDURE by V. V. Chitaley and K. N. Annaji Rao. Published by the All India Reporter, Ltd., Nagpur, 4th edition 1944 volume III.

This volume deals with Orders 31 to 51 of the first schedule and schedules 2 to 5 of the Civil Procedure Code. It also gives in a number of appendices the text of the Indian High Courts Act, 1861; the provisions of the Government of India Acts, 1915, and 1935 relating to Courts ; the Letters Patent and the despatch from the Secretary of State for India accompanying the first Letters Patent ; the Privy Council Rules, 1920 ; the Judicial Committee Rules, 1925 ; the Federal Court Rules, 1942 ; the Notifications issued under sections 29, 44, 45, and 60 and under Order 5, rule 26, Order 21, rule 48, and Order 21, rules 1, 2, 8 and 8-B ; the Report of the Special Committee appointed to consider the amendment of the Civil Procedure Code, 1907, etc.; the texts of the Decrees and Orders Validating Act (V of 1936) ; the Contempt of Courts Act (XII of 1926) ; the Arbitration Act (X of 1940) ; the Indian Soldiers Litigation Act (IV of 1925), etc. A vast mass of materials of a highly useful character has thus been brought together in this volume and made available to the practitioners thereby adding to the completeness of the book. The table of cases occupies about 307 pages in close print, the A. I. R. references alone covering about 137 pages taking in something like 25,000 cases, indicating the enormous number of decisions the authors had to take note of and the exhaustive character of the citations making the volumes veritable case-books. The comments on the various orders and rules conform to the lines adopted by the authors in the first two volumes and the annotations are full and lucid. These features make it apparent that the book is primarily intended for practising lawyers who need detailed references to many applications of the specific law annotated, though conversely the book may not be of much value as presenting an easy over-all summary of the law in distilled form. Together with the first two volumes the book will prove a useful addition to the library of every busy lawyer.