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PLANNING FOR THE PROFESSIONS : LAW—DISCUSSION *

Participants : (1) Hon'ble Mr. Justice V. Govindarajachari,
(2) Sir Alladi Krishnaswami Iyer, and
(3) Mr. S. Govindarajulu, *Vice-Principal, Law College, Madras.*

JUSTICE V. G.—Don't you, gentlemen, think that the impression which is generally prevalent that the Bar is over-crowded and that there is no scope for real talent is altogether wrong ? A distinguished judge of the Madras High Court was remarking to me a short time ago that he did not find a sufficient number of clever young men coming up, as they should, if the Bar is to retain its position. I said, I thought so too and I added that it is partly due to the discouraging talk which is indulged in very often by members of the Bar themselves, perhaps well meaningly. Sir Alladi may tell us how he feels about it.

SIR A.—I entirely agree with you, Judge. I have been of the same opinion myself for a considerable time. That, of course, is not to say that all is right with the Bar and that there are not several things which the Bar can do for itself, to improve its own position. I definitely hold that we should encourage bright young talent to take to law. For our expanding public life we will need a large number of young men of means with a good legal background. Our diplomatic and ambassadorial services will require and will absorb a fair number of lawyers with a good working knowledge of constitutional and international law, economics and political science. Professor Govindarajulu will be able to tell us whether our Law Colleges are manufacturing too many law graduates.

S. G.—The average number of persons obtaining a law degree, taking the figures for the last three years, is below 200 and I am informed that the average number of enrolments per year is about 160. If the total number of legal practitioners in this Province, advocates and pleaders included, is put at something between 7,800 and 7,900 which, I believe, is a fairly correct figure and assuming that the normal duration of a lawyer's professional career is 25 years, the number needed for replacement alone is 4 per cent. or about 315, which is nearly double the present number of enrolments. Further, there is an increasing volume of work for lawyers, before several kinds of administrative Tribunals like Textile Licensing Authorities, Road Boards and so on. There should, in my opinion, be no curtailment of opportunities in the matter of legal education and on the other hand, we should improve upon the present system of legal education and adjust it to suit the growing needs of society.

V. G.—There has been, Professor, considerable controversy in recent times as to the stage at which legal education may be imparted. Sir Alladi and myself

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have always held the view that the Intermediate examination is too early a stage for commencing law studies. I suppose you agree.

S. G.—I think so too, Judge. The boy's mind is not adequately mature at that stage. But I should think with a preparatory course of one year after the Intermediate examination, legal instruction can usefully start.

V. G.—I suppose you would leave it open to young men to join the law course after their graduation, if they like.

S. G.—Certainly. The mental discipline and culture acquired in preparing for a degree in arts or science will be of the greatest use to the lawyer. But it is not necessary to compel one to spend two or three years for taking a degree, before joining a law college. Many people take a degree in science, expecting to make a living thereby but since the country is not able to asborb all of them or find useful work for them I am not for placing any embargo against their taking to law at that stage, if they wish to. They would no doubt have lost a year or two, but that is their lookout.

SIR A.—Are you, Professor, for the continuance of the two year academic course in law or are you for a three year course? This again, as you know, has been the subject of acute controversy.

S. G.—I am for a three year course, particularly as the scope of studies has necessarily to be enlarged in view of the needs of the times. There need not be any serious objection to it on the ground of cost, because if the one year's preparatory course suggested by me is accepted, a student can, as at present, get his law degree four years after the Intermediate examination.

V. G.—If the course is to continue to be a two year course, do you suggest any material changes in the curriculum?

S. G.—No. I would not. There are no subjects which can be taken out and none can be added without making the course unreasonably heavy.

V. G.—If it is to be a three year course, what subjects would you add, assuming, as I suppose we must, that all the present subjects for the F.L. and B.L. studies are retained?

S. G.—I would include in the three year curriculum a general study of the Civil and Criminal Procedure Codes, and the attendant rules of practice and procedure and the law of limitation. This part of it, which you may call practitioners' subjects, would be compulsory but in addition to it, I would ask the student to select two out of four optional groups which would be somewhat on the following lines:

(1) International Law, public and private, principally public,

(2) Mercantile Law including Company Law and the Law of Income tax,

(3) Constitutions of specified countries other than India which is already included in the Law Course as a compulsory subject, and

(4) Law of Insolvency and Law of Wills and the Law of Intestate Succession among communities other than Hindu and Mahommedan.

V. G.—If we have a three year course, Professor, would it not be rather burdensome to have a University examination at the end of each year?

S. G.—It would be. Even now a University examination at the end of the first year law course and again at the end of the second year law course, coming as they do, after several University examinations at a prior stage, puts a great strain on our students.

V. G.—What would you suggest?

S. G.—I would not have any University examination at the end of the first year. There would be only two University examinations for the three year course, one at the end of the second year, and the other at the end of the third year.

SIR A.—Would you, Professor, retain the M.L. studies?

S. G.—I would, Sir Alladi. There must, I think, be adequate recognition of and support for a higher knowledge of law. Whether a M.L. Degree would have any remunerative value is more than I can say, but the Universities should, it seems to me, encourage higher studies in law by continuing to provide for a Master's degree and a Doct rate in law. The academic branch of the law has its part to play along with the Bench and the Bar. Don't you think so, Judge?

V. G.—I agree. In fact I have been wondering whether it is not high time that we have a University Law Chair.

S. G.—I am glad to tell you, Judge, that the idea is on the tapis and the Board of Studies in Law has put up proposals for a Department of Law in the University. It is proposed to make a start with Constitutional Law and International Law. But there is always the problem of Finance. I hope the Government and the public will help the University to achieve its object ere long.

V. G.—There is then, I suppose, the vexed question of making apprenticeship at law really useful and effective. I am sure Sir Alladi will have something enlightening to tell us.

SIR A.—This is one of those things which are mostly dependent upon the human factor. The problem can only be solved if masters and pupils are both enthusiastic, I would say particularly the masters. The problem can be satisfactorily solved only if there is a genuine enthusiasm among senior practitioners that our young men should get the best training during their apprenticeship, so that they may keep up the efficiency of the Bar.

V. G.—I do not know if the Professor could not help us.

S. G.—I am just thinking whether, apart from such benefits as they may get, by attending the master's chambers and the Courts, apprentices could not be given some practical coaching under properly selected tutors in Madras and a few moffusil stations in the matter of drafting pleadings and memoranda of appeals, preparing briefs and witness's proofs. What I mean is, a clever young lawyer with fair experience could make the apprentices do a certain number of draft plaints and so on and point out the defects and how they should be remedied. I do not, of course, deny that these have got to be learnt in the stern school of experience but the technique of a lawyer's professional work admits of a systematic preliminary instruction.

V. G.—It is a suggestion which should be seriously considered by the Bar Council. There is, of couse, the question of cost.

S. G.—This work of the Bar Council is entirely educational and Government should give a grant on that basis either from enrolment fees, which the Government is collecting or from general revenues. Also, if the teaching of the processual law is part of the University course, it would relieve the Bar Council of some of its present expenditure.

V. G.—What about the reconstitution of the Bar? There are particularly two questions so often discussed but on which no conclusions have ever been reached, tentative or otherwise. Firstly whether it is desirable to have the double agency and secondly whether we should not have differentiation between senior advocates and junior advocates somewhat on the lines of the silks and the stuff gownsmen in England.

Do you advise, Sir Alladi, the introduction of the double agency system in the moffusil?

SIR A.—I am definitely against it. The double agency which compels every litigant to engage two practitioners, an advocate and a solicitor, is in my opinion, too costly for our people having regard to their economic condition. It would be the height of oppression, for instance, to say that a litigant who has a criminal

case in the Magistrate's Court or a small cause suit in the District Munsiff's Court, should have to engage two legal men.

V. G.—I suppose your objection holds good even if we should have a fixed scale of fees for the solicitor also.

SIR A.—Yes it would.

V. G.—How about the High Court?

SIR A.—I am against the introduction of the double agency on the appellate side of the High Court or in the City Civil Courts or in the Small Cause Courts or in the Presidency Magistrate's Courts for the same reason. I am not however prepared to rule it out altogether, so far as the Original Side is concerned, but I would suggest that the Chambers of Commerce and other concerned bodies may first be consulted.

V. G.—Don't you think, a differentiation between senior and junior advocates would be salutary and helpful?

Sir A.—I agree. While a minimum standing of 10 years should be insisted upon for enrolment as a senior advocate, it should not be open to every practitioner of 10 years' standing to claim, as of right, that he should be enrolled as a senior advocate, as it happens for instance, in the Federal Court. The High Court must be satisfied that the advocate deserves to be so enrolled by the extent of his practice, and his ability and his integrity. In the case of moffusil practitioners also the High Court must be similarly satisfied though, it must for that purpose, depend to a certain extent upon the opinion of the District Judge.

V. G.—I presume you would recommend the differentiation of senior and junior practitioners both for Madras and the Moffusil.

SIR A.—Yes.

V. G.—Am I also right in thinking, Sir Alladi, that you would impose upon a senior advocate the disability of not being permitted to appear without being instructed by a junior advocate, just in the same way as a King's Counsel, who cannot appear without being supported by an utter barrister?

SIR A.—I would impose the same restriction. Don't you think, Judge, this differentiation between senior and junior advocates would put more money into the pockets, particularly of our junior advocates?

V. G.—I fully agree, Sir Alladi. But what would you say about the proportion between the senior's fee and the junior's fee. Don't you think—1/3rd is rather low?

SIR A.—You may perhaps put it at a half but more than that would press harshly upon the litigant and would only lead to evasion and friction.

V. G.—Have you, Sir Alladi, any suggestion to make about helping our young lawyers to develop into good advocates?

SIR A.—One thing I can immediately suggest. In very many cases it should be easy for a senior to open the case and map it out, so to say, and then do some specified portions himself, leaving the other points to his junior.

V. G.—I do not see why it could not be done, provided of course, there is no overlapping. It would certainly give many more opportunities of learning Court craft to our young men. I suppose, you suggest, in substance, that two counsel should be heard in support of the same side whenever they claim to be so heard.

SIR A.—Exactly. The difficulty as to repetition, which you suggested, Judge, may easily be avoided if the junior is present throughout the hearing, that is to say, even when his senior is arguing.

V. G.—I think what you suggested, Sir Alladi, is actually happening in some cases though certainly not so frequently as you would have it. But, I suppose, you would like to have it almost as an invariable practice.

Now, do you think, Sir Alladi, the State could be helpful to our legal men in any way?

SIR A.—I think it could. Recruitment for instance to the registration department or the magistracy or to any other department, for which a knowledge of law would be useful may be confined to law graduates.

V. G.—Is there not a good deal that the Bar can do for itself? I realise, of course, that that would mean a general change in the attitude and conduct of the several sections of the legal profession.

SIR A.—There too I agree with you, Judge. Junior lawyers must be more ambitious and hard-working, while senior lawyers must not only be more friendly and helpful to the junior lawyers but must, so to say, realise the duty that rests on them of seeing that the succeeding generation of lawyers is at least as good as themselves. The whole thing, of course, requires a fresh orientation.

V. G.—Is there not an impression for which, I think, there is substantial foundation that senior lawyers go on accepting briefs irrespective of their magnitude or the lack of it and that in the matter of fees a minimum worthy of their status is not insisted on? No doubt there have been and are others who rightly insist upon a proper fee.

SIR A.—I cannot deny that there is such an impression as you have outlined. Nor can I say that there is no foundation for it. But these are things which can only be remedied by the Bar generally adopting a proper attitude and there is no way of compelling them to do so.

V. G.—If seniors strictly adhere to their minimum fee, the opportunites of juniors will undoubtedly increase. There is no need to fear that the total earnings of a senior would suffer by this. But they will be relieved of a mass of miscellaneous work. It would be both enlightened self-interest and performance of a duty to the profession, if they adopt this course.

SIR A.—Quite so.

V. G.—Don't you think a sort of trade union spirit without its attendant evils should grow up in the Bar?

SIR A.—I agree it should.

V. G.—Could you account, Sir Alladi, for what, I suppose, is a fact that the Bar is taking less and less interest in public life?

SIR A.—Partly it is due to the present day conditions of public life. Public life, particularly in the political field is a whole time job and cannot therefore be clubbed with the practice of the lawyer's profession.

V. G.—But don't you think that lawyers could guide public opinion on important matters particularly on the several legislative measures that may be in contemplation.

SIR A.—I agree, Judge, that they could, but that would mean a thorough and painstaking study of the problems as they arise without starting with any partisan or preconceived notions. If questions are studied in the manner I suggest by our young lawyers in their study circles, I do agree with you they can play a quiet but important part in shaping public opinion without which democratic institutions will be a failure.

V. G.—The solution of some of the problems we have been discussing would require the co-operation of many persons and let us conclude with the hope that such co-operation will be forthcoming for the common good of the Bar and the Country.

SUMMARY OF ENGLISH CASES.

THE JULIA, (1947) 1 All.E.R. 118 (K.B.D.).

Sale of goods—C.I.F. Contract—Payment made against delivery order—Ship unable to reach destination owing to enemy occupation—Buyer if entitled to recover the price paid as on failure of consideration.

Where under a C.I.F. contract payment has been made against delivery order but the ship is unable to reach the destination owing to enemy occupation and had to be diverted elsewhere where the goods were sold at a lower price by the seller, the buyer is not entitled to recover as money paid on a consideration which had wholly failed. Though the goods were not appropriated and property in it did not pass to the buyer the risk passed to the buyer.

A. G. OF ONTARIO *v.* A. G. OF CANADA, (1947) 1 All.E.R. 137 (P.C.).

British North America Act (1867), *sections* 91, 92 *and* 101 *and Statute of Westminster*, 1931—*Power of Canadian Parliament to establish Supreme Court of Appeal with final jurisdiction—Legislation excluding appeals to Privy Council—Constitutional validity.*

The Canadian Parliament has since the Statute of Westminster 1931, power, to enact that the jurisdiction of its Supreme Court shall be ultimate. The Dominion Parliament is therefore competent to exclude appeals to His Majesty in Council in all cases which can be brought before any Provincial Court in Canada. A proposed Act to so amend the Supreme Court Act is *intra vires* of the Parliament of Canada. Section 101 of the British North America Act confers a legislative power on the Dominion Parliament which by its terms (notwithstanding anything in this Act) overrides any power conferred by section 92 on the Provinces or preserved by section 129 and since the Statute of Westminster, 1931, the power conferred by section 101 stands unqualified and absolute, even to the extent of abrogating the sovereign power of the Imperial Parliament.

R. *v.* COLLINS, (1947) 1 All.E.R. 147 (C.C.A.).

Criminal trial—Sentence—Conviction on two charges of receiving a stolen motor car and stolen suit case and its contents—Outstanding charge of driving a motor car while under the influence of drink—If can be taken into consideration in awarding sentence.

Offences under the Road Traffic Act (*e.g.*, driving a motor car while under the influence of drink) which on conviction might involve disqualification for driving or the indorsement of the licence are not proper cases to be taken into account when sentencing a prisoner for a different class of offence (*e.g.*, receiving a stolen motor car and suit case with its contents). Only if the outstanding charge is for the same class of offence, the Court might take that into account in passing sentence.

ROUTH *v.* JONES, (1947) 1 All.E.R. 179 (Ch.D.).

Contract—Covenant in restraint of trade when valid—Covenant by medical practitioner employed as assistant by a partnership (carrying on business of general medical practitioners) not to practice within 10 *miles for five years after termination of employment—If enforceable.*

A doctor employed as an assistant by a partnership carrying on business of general medical practitioners covenanted *inter alia* as follows :

" The assistant agrees with the principals that he will not during this contract of service save in the employ of the principal nor within the space of 5 years thereafter practice or cause or assist any other person to practise in any department of medicine, surgery or midwifery nor accept nor fill any professional appointment whether whole time or otherwise whether paid by fees, salary or otherwise or whether honorary within a radius of 10 miles from *X* (the business premises). And if the assistant shall so practise or cause or assist any other person to practise within the radius aforesaid or in any way violate this provision, he shall forthwith pay to the

principals or as they shall direct or to their successors in title the sum of £ 100 for every month or part of a month during which he shall violate or continue to violate this provision as ascertained as liquidated damages and not by way of penalty and without prejudice to the right of the principals, or their successors in title to obtain an injunction to restrain such violation . . . . . ."

The appointment was terminable at a month's notice. After the termination of the appointment the assistant who began to practice in the area was sought to be restrained by an injunction.

Held, (after stating the principles) that the covenant even if severable was too wide to be enforced and the restriction could not be justified.

WILLS *v.* BROOKS, (1947) 1 All.E.R. 191 (K.B.D.).

Tort—Defamation—Libel against Trade Union of "rigging" a ballot—Union if can sue.

An article appeared in a newspaper with regard to a ballot in a particular trade union headed, "True to Type? . . . . . Long and successful practice in the manipulation of the undemocratic "block vote" has made trade unions experts in devising ballots guaranteed always to give a desired result." In an action for damages for libel by the secretary of and by the Trade Union itself against the editor, publishers and printers of the newspaper it was contended that the Union as a whole had no cause of action since the article in question was an accusation not against the Union but against its officers.

Held, that the action by the trade union is sustainable. There is no difference between a trade union and a limited company in this respect and a trade union cannot be divided into different parts consisting of various of its members so as to deprive it of its right to sue if it is libelled.

Manchester Corporation v. *Williams*, (1891) 1 Q.B. 94, not followed. Fraser on Libel and Slander, 7th edition, p. 90, approved.

National Union of General and Municipal Workers v. *Gillian*, (1946) 1 K.B. 81, applied.

GODWIN *v.* STORRAR, (1947) 1 All.E.R. 203 (K.B.D.).

Costs—Consent order with provision for "Taxation as between solicitor and client" —Scope—R.S.C., Order 22, rule 14 (11).

"Taxation as between solicitor and client" means an inquiry as to the costs which a client ought properly to pay to his own solicitor as distinct from "taxation between party and party" which is an inquiry as to the costs which he should recover from the opposite side. It cannot be construed to mean only an inquiry as to the costs to be paid to the solicitor out of a common fund in which the client and others are interested, and is substantially a taxation between party and party but on a more generous scale.

WICKS *v.* DIRECTOR OF PUBLIC PROSECUTIONS, (1947) 1 All.E.R. 205 (H.L.).

Emergency Powers (Defence) Act (1939)—Offence under temporary statute—Provision that expiry of Act shall not affect the operation thereof as respects things previously done or omitted to be done—Effect on trial of offence after expiry of Act—Regulation validly made under Act—Scope.

The provision in section 11 (3) of the Emergency Powers (Defence) Act, 1939, providing "The expiry of this Act shall not affect the operation thereof as respects things previously done or omitted to be done" preserved the right to prosecute

for offences under the Act even after the date of the expiry of the Act. When a statute like the Emergency Powers (Defence) Act, 1939, enables an authority to make regulations a regulation, validly made under the Act should be regarded as though it were itself an enactment. *Willingdale* v. *Norris*, (1909) 1 K.B. 57, approved. (1946) 2 All.E.R. 529, affirmed.

APLEY ESTATES CO. *v.* DE BERNALES, (1947) 1 All.E.R. 213 (C.A.).

Tort—Joint tort-feasors—Agreement by plaintiff not to sue one—Effect on liability of others to be sued.

A release granted to one of two joint tort-feasors or joint debtor, operates as a discharge of the other joint tort-feasor or other joint debtor, the reason being that the cause of action, which is one and indivisible, having been released, all persons otherwise liable thereto are consequently released. But a covenant not to sue one of two joint debtors or joint tort-feasors does not operate as a release of the other.

WILKIE *v.* LONDON PASSENGER TRANSPORT BOARD, (1947) 1 All.E.R. 258 (C.A.).

Tort—Negligence of conductor—Injury to free pass holder attempting to board bus which started before he could get in—Clause in pass excluding liability for any damages—Effect on right of injured to damages—Road Traffic Act, section 97—Applicability.

The plaintiff was the holder of a free pass issued to him as an employee of the defendants, the London Transport Board. While attempting to board a bus he was thrown off because of the conductor who sounded the bell and thereby gave notice to the driver to proceed without taking due care to see that every intending passenger was safely on the bus. In an action for damages for injuries sustained,

Held : The giving or receiving of the pass will not constitute a contract for the conveyance of the plaintiff. It merely made the plaintiff a licensee and the condition in the pass excluding all liability for negligence, is a term or condition of the licence and if any one makes use of the licence he can only do so by being bound by the condition. Accordingly, section 97 of the Road Traffic Act will not apply to make the term invalid. By attempting to board the bus the plaintiff was using the pass and it cannot be said that he was an ordinary passenger till he showed the pass to the conductor or was seated in the bus.

LEAN *v.* ALSTON, (1947) 1 All.E.R. 261 (C.A.).

Practice—Collision between motor car and motor cycle causing death of motor cyclist and injury to pillion rider—Claim by pillion rider against car owner for damages—Claim to contribution from estate of deceased motor cyclist—Power of Court to appoint representative and implead him as third party—R.S.C. O. 16 *r.* 46.

In a collision between a motor cycle and a motor car the motor cyclist was killed and the pillion rider injured. In an action by the pillion rider for damages against the owner of the motor car who claimed right to contribution from the estate of the deceased motor cyclist,

Held, that the Court can appoint a representative of the deceased and add him as third party to the action though the deceased was not a party to the original action.

SUMMARY OF ENGLISH CASES.

BRIERLEY *v.* PHILIPS AND ANOTHER, (1947) 1 All.E.R. 269 (K.B.D.).

Control orders—Eggs (Control and Prices) Order, 1946—*Sale of eggs to "consumers" at above a maximum price made an offence—Purchaser for purpose of hatching—If "consumer"—Sale of eggs for hatching at above control prices—If offence—Necessity for clarity in the orders creating criminal offences pointed out.*

The scheduled price at which eggs could be sold to consumer was 2*s*. a dozen according to the Eggs (Control and Prices) Order, 1946. In a charge against the seller as well as purchaser in respect of sale of some eggs at 10*s*. a dozen for hatching it was contended that the purchaser was a "consumer" and both purchaser and seller were guilty of a criminal offence.

Held, that the ordinary meaning which would attach to the word "consumer" in relation to eggs is "a person who is going to eat the egg or to use the egg in the process of cooking in his own house". A person buying eggs to put a hen on it to hatch is not a "consumer" and the charge must therefore fail.

Courts will not be prepared to support orders and find people guilty of criminal offences when the orders which they are charged with violating are couched in language which is open to all sorts of meanings and causes all sorts of difficulties, so that the unfortunate people cannot know whether they are acting legally or not, unless possibly they get counsel's opinion or at any rate a solicitor's advice. It is desirable that orders creating offences should be stated in language which the persons who may commit the offences—in this case, humble people like cottagers—can understand.

Re DIXON, LTD., (1947) 1 All.E.R. 279 (Ch.D.).

Companies Act (1929), *section* 294—*Avoidance of dissolution—Form of order for revesting property in the company.*

The words in section 294 that the Court had power to declare "the dissolution to have been void" must be read as enacting that the Court is given power effectively to declare the dissolution to have been void. If the Court makes a declaration to the effect that the dissolution is void, the declaration is not that dissolution was void at the date of the order, or that it is to be deemed to be so void, or that it is to become void, or anything of that kind. The declaration is that the dissolution was void at the time when the company was supposed to have been dissolved and all the consequences under the statute or otherwise which flow from that arrest themselves and are avoided. Any property assumed to have vested under section 296, did not so vest, the vesting being avoided by the order.

CALVERT (INSPECTOR OF TAXES) *v.* WAINRIGHT, (1947) 1 All.E.R. 282 (K.B.D.).

Income-tax—Taxicab driver—Tips received by—If assessable to income-tax.

Tips received by a taxicab driver in the ordinary way are assessable to income-tax as such tips arose out of his employment and were given as a reward for services, though such payments may be voluntary.

[END OF (1947) I M.L.J.]