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VILLAGE OFFICES IN THE STATE OF MADRAS—SEX IF A DISQUALIFICATION.

By

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The earliest provision in the Madras State as to village officers was the Madras Karnams Regulation (XXIX of 1802).

Section 7 of that Regulation provided as follows :—

" In filling vacancies of the office of Karnam the heirs of the preceding Karnam shall be chosen by the landholders concerned except in the case of incapacity on proof of which before the Judge of the Zilla the said landholders shall be free to exercise their discretion in the nomination of persons to fill vacancies."

This Regulation XXIX of 1802 ceased to be in force after the passing of the Madras Hereditary Village Offices Act and the Madras Proprietary Estates Village Service Act. These two Acts repealed the Madras Regulation (VI of 1831) which was the law governing the village officers in the Madras State formerly. Regulation VI of 1831 did not prohibit the appointment of women to any hereditary village office.

The Board's Standing Order 154 (24) runs as follows :—" Appointments made under Regulation VI of 1831—Appointments to village offices properly made prior to the introduction of the Madras Proprietary Estates Village Service Act (II of 1894) or the Madras Hereditary Village Offices Act (III of 1895) can be questioned only on the ground of inferior title and not on that of sex or other disability for the first time removed or created by those Acts."

The oldest reported decision regarding women as village officers is *Alymalammal* v. *Venkataramanayya*[1], wherein it is held that women were not entitled to the office of Karnam, though they have been, and sometimes are allowed to fill the office nominally.

In *Venkataratnamma* v. *Ramanujasami*[2], their Lordships of the Madras High Court followed the above decision and held that sex has been regarded as incapacitating women from office. Their Lordships were not prepared to reverse the above decision so long regarded as authoritative and so obviously reasonable and expedient on public grounds.

1. S.D.A. Decisions (Madras), 1844, page 85. 2. (1880) I.L.R. 2 Mad. 312.

The two above decisions were confirmed by a Full Bench of the Madras High Court in *Venkata* v. *Rama*[1] in a case under Regulation VI of 1831 and Madras Act IV of 1866. Referring to *Venkataratnamma* v. *Ramanujasami*[2], the Chief Justice observed that it must be taken until those decisions are overruled, that in the case of permanently settled estates inability by reason of age or sex to discharge personally the duties of the office is a sufficient disqualification. The Board of Revenue properly considered that hereditary claims should be recognized to the extent to which Regulation XXIX of 1802 had allowed them.

In *Chandramma* v. *Venkataraju*[3], a case under section 7 of Regulation XXIX of 1802, their Lordships followed *Venkataratnamma* v. *Ramanujasami*[2] and *Venkata* v. *Rama*[1]. Their Lordships held in this case that a woman could not hold the office of a Karnam and that when the immediate heir was incapacitated the nearest Sapinda of the deceased Karnam was entitled to succeed to the office.

Abdukuri Venkataramadas v. *Pachigolla Gavarraju*[4] is an authority for the proposition that enfranchisement of service inams in the name of a widow makes those inams her Stridhana property. This decision is important for the reason it throws much light on the question of women as village officers.

Regulation VI of 1831 did not actually prohibit the appointment of women. But the Board's Standing Orders which guide the proceedings of Collectors in making a proper selection declared that females should be excluded from the succession on the ground that they were obviously incapable of performing those duties. But they did not exclude persons claiming through females.

According to sections 10 and 11 of the Madras Hereditary Village Offices Act, no person is eligible for a village office of Class I if such person is not of the male sex.

The President of India exercised his powers under Article 372 (2) of the Constitution of India and passed the Adaptation of Laws (Amendment) Order, 1950, dated 5th June, 1950, in his Constitution Order, No. 17 whereby the words "*is not of the male sex*" in sections 10 and 11 of the Act were omitted with retrospective effect from the 26th January, 1950. Thus there has been no sex disability since the 26th January, 1950, for a woman to hold a village office of Class I.

The Board of Revenue ought to have amended the relevant Standing Orders and issued necessary instructions to the Revenue Courts and Revenue Officers to implement the above fundamental right of women.

But the Board of Revenue seems to have taken the view that women are still barred from succeeding to such offices on account of section 10 (2) of the Act—

"The succession shall devolve on a single heir according to the general custom and rule of primogeniture governing succession to impartible Zamindaries in South India."

Though Articles 14 and 15 of the Constitution recognise the right of equality and prohibit discrimination on the ground of sex, this discrimination is still continuing in the Law of impartible estates, and consequently under this Act also, in spite of the above, Constitution Order.

If two sections of the same Act are repugnant to each other the cardinal principle of interpretation of statutes is to give a harmonious construction of both the sections, but the present case is not such.

Hence it may be pointed out that the Legislature should amend section 10 (2) of the Act suitably at a very early date so as to give full effect to this fundamental right of women. Until then the remedy of aggrieved women is only by way of petitions to the High Court under Article 226 of the Constitution.

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1. (1884) I.L.R. 8 Mad. 249 (F.B.).
2. (1880) I.L.R. 2 Mad. 312.
3. (1887) I.L.R. 10 Mad. 226.
4. (1922) 43 M.L.J. 153.

LEGAL PRACTICE BY EX-JUDGES.

By

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The recent resolution by the Executive Committee of the Provincial Bar Federation that the Judges should not be allowed to practice in any of the Courts after their tenure of office is quite welcome and would, I hope, be properly appreciated by all concerned. To allow the Judges to practice again in the Courts after their tenure of office, would not only militate against the high dignity of office of a Judge, but would also embarrass the other Judges and the members of the Bar, and I fear, the retired Judge himself may not feel his position very happy and comfortable and may have to form a category by himself. If the principle is to attract the best talent from the Bar, this would be a poor solace. Best talent would always be available if it is flavoured with a sense of sacrifice and service to the country, and if the age limit is extended to sixty five years and if the dignity of the office is well maintained. Many of our revered leaders are between sixty and seventy years and they are serving our country, most efficiently and with youthful vigour. It looks as though they become young again after sixty. There can be no objection therefore to the age limit being extended to sixty-five years.

REVISION AGAINST AN ORDER OF DISCHARGE—WHEN TO BE MOVED.

By

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In the latest decision on the subject by His Lordship Justice Govinda Menon the desirability is suggested of waiting till the final disposal of the case, in the matter of moving a revision against what may be called a partial discharge. The said pronouncement of the Madras High Court in the case reported in *Jayaram, In re*[1], is a short one, and at the relevant parts of the *dictum* His Lordship has laid down thus: " . . . . . In my opinion, the proper time at which the propriety of a discharge like the one in question here, can be agitated in revision is only after the Court of enquiry or trial has finally disposed of the matter . . . . . " " . . . . . As a matter of practice and convenience it would always be better if the applications by the prosecution for setting aside orders of discharge in cases where charges have been framed against some of the accused alone, or against all the accused under some sections alone, were made only after the Court finally disposes of the matter . . . . . " How far this suggestion can be supported in law, and the consequence, in practice of following the suggestion may be worth while to be considered on a few out of several aspects of the matter.

(1) This suggestion is not supported by any reasoning to show that it is made or given in accordance with the existing law of Criminal Procedure or in the interests of justice according to law. Yet it seems to lay down what it could not have done except by means of or with the help of an express provision of law to that effect. It provides on the one hand a legal basis or authority for the delay—that could not have been otherwise condoned—, of a varying period for each case, in filing a revision petition with regard to a specified class of criminal cases as distinguished and discriminated from the others, while all are subject to the same procedure in law. On the other hand it also provides a legal authority or basis for an objection—that could not otherwise be raised—against filing a revision peti-

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1. (1948) 1 M.L.J. 341 : 49 Cr.L.J. 597.

tion during the pendency of the rest of the case or of the case against the rest of the accused.

(2) This ruling relies on a former pronouncement of the same High Court in *Govindaraju* v. *Emperor*[1]. That former decision however had only considered about the need of reasons for an order at the stage of discharging some of the accused or omitting to frame some of the charges against them. The legal necessity or desirability for the prosecution to wait till the final disposal of the case, in questioning such a discharge order, was not considered by his Lordship Justice Venkataramanarao in that decision.

(3) The relevant provisions of the Criminal Procedure Code—sections 435 to 437—do not prohibit, and no other provision in the Code is calculated to discourage, moving a revision against a discharge order—or of any order of a subordinate Criminal Court—as soon as it is passed. On the other hand the revision by the District Courts has been specifically and specially—I think, in a safe and salutary manner—provided for, in respect of discharge and dismissal orders passed by the Courts subordinate to them. Even the Court of the Sub-Divisional Magistrate under section 435, Criminal Procedure Code, is empowered to call for the records of any proceeding before a Court subordinate to it in order to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such inferior Court. The nature and extent of relief that may be ordered by the District Magistrate, or Sessions Judge in such matters with respect to cases pending in lower Courts is clearly stated in sections 436 and 437, Criminal Procedure Code, only to be availed of, asked for and obtained. There is no need or desirability indicated in law to wait for the final disposal of the case, in order to move for the kind of relief that may be suitable or proper to obtain, during pendency of the proceedings in the lower Court. The relief to be effective, just and useful for the State or the party concerned in the criminal proceedings, has got to be sought and obtained not only properly and legally, but also promptly and at proper time.

(4) In waiting for the result of the rest of the case or the case against the rest of the accused, the accused who is (or are) discharged, and the prosecution too are needlessly left in suspense about the prospects of that part of the case ending in discharge. The accused so discharged is likely to be prejudiced for no fault of his if prosecuted after the case against the other accused is finally disposed of, not only on account of the needless delay, but also due to the competence of his co-accused then to depose against him as witnesses, and fixing up of further evidence for prosecution in his absence so as to be of some use or abuse against him later on —as would not have been normally available—when further inquiry may be ordered in respect of the discharge order, passed by the lower Court in his favour. On the other hand the prosecution has the disadvantage of allowing such accused the competence of his co-accused to depose in his favour, and the time as well as material that would not have been available for him in the normal course if his discharge order was set aside in time, and proceedings continued along with him.

(5) Even considering the interests of the accused who is so discharged while his co-accused continue to be tried, it would be unfair to him that the discharge order remains to be considered and may be revised only after the rest of the case is (or accused are) conclusively dealt with. This may be clear when such an accused is sought to be examined for prosecution or for defence or by Court—and nothing in law prevents such examination—during the rest of the proceedings in the case continued against the other accused. It would place him in an unenviable position of deposing on oath as a witness in a matter which may be judicially considered, later on, againat him when he appears as an accused.

(6) The difficulty may also arise of having to ignore the legal advantage (or disadvantage) of a joint trial (as effected by sections 10, 30 of the Indian

1. (1938) M.W.N. 38 : 39 Cr.L.J. 335.

Evidence Act, etc.) in suitable cases, for no fault of the parties concerned, and entirely on account of this suggested desirability of waiting.

(7) In cases wherein section 437, Criminal Procedure Code is applicable this suggestion to wait would expect the Sessions Court also to wait for its own disposal in the rest of the case, which naturally leads to prejudice—not intended in law or fact—in the hearing of the revision petition and in the commitment that may have to be ordered in respect of the accused improperly discharged.

(8) In effect, again the ruling seems now to deprive the prosecution of its former freedom and facility or to restrict its responsibility, of being guided by its own good sense and best interests in accordance with law in the matter of moving a revision against a discharge order.

In waiting for the result of the rest of the case, therefore, there is no sanction or support of law, while there is possibility of acquiring anomalous and prejudicial attributes for the further proceedings of the case. On the other hand the free and timely access, for what it is worth, to a competent Court may not be discouraged by means of a weighty pronouncement of the High Court, which naturally exercises much legal authority for influencing the filing and disposal of revision petitions under sections 436 and 437, Criminal Procedure Code. It is so, even as a desirability of procedure suggested by the High Court for our guidance, in addition to and apart from the concerned provisions of law. It is humbly submitted therefore that the pronouncement in question in *Jayaram* In re[1] requires reconsideration.

BOOK REVIEWS.

MULLA'S INDIAN CONTRACT ACT (Students' edition) Fifth Edition, 1953: Published by N. M. Tripathi, Ltd., Bombay. Price Rs. 10.

This excellent little commentary on the Indian Contract Act needs no introduction to those in law and commerce. In a short compass the law relating to contracts is expounded so clearly and well and in such an analytical fashion that its utility to students (and lawyers too to a certain extent) cannot be overemphasised. Though the present edition does not contain the commentaries on the Sale of Goods Act and the Partnership Act, it is exhaustive on the Contract Act. It is well also that the two Acts are separately published as they are now independent Acts and no longer part of the Contract Act.

The paragraph heading is quite useful. The table of cases and index are exhaustive. Printing and get-up is all that is desirable. The synopsis is an useful addition.

CONVEYANCING—PRECEDENTS AND FORMS (WITH NOTES) by Shiva Gopal, M.Sc., LL.B., Advocate. Published by Eastern Book Company, Lucknow. Price Rs. 8.

The utility of a book of forms and precedents to a practitioner needs no introduction. Troublesome questions of interpretation of doubtful terms and the intention of parties are avoided by a proper drafting of a deed at the inception. Such precise drafting is attained by conforming to standard forms and precedents which have stood the test of time and have been subject to judicial scrutiny.

This little book contains over two hundred and fifty model forms, arranged under proper subject headings divided into several chapters. A chapter is added giving forms of certain petitions before courts in respect of proceedings arising under Writs, Dvorce, Guardian and wards, Insolvency, etc. Though strictly speaking these forms are not part of a book on Conveyancing, still their inclusion

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1. (1948) 1 M.L.J. 341 : 1948 M.W.N. 367 : 49 Cr.L.J. 597.

will be found a useful guide to beginners in the profession. The inclusion of the schedule to the Stamp Act, may not be of lasting value as the book itself, as the stamp duties are often subject to variation in the states.

But it must be added that the value of a book of Forms and Precedents in Conveyancing lies, not in its condensation but in its exhaustiveness. As a guide to students and beginners the book is a useful addition to the existing works on the subject.

PREM'S LAW OF CRIMINAL APPEALS AND REVISIONS by Daulat Ram Prem, Senior Advocate, Supreme Court of India. Arora Law House, Simla. Price Rs. 20.

The author is known to the profession by a number of his publications already in the field. Some of his previous publications have received the good opinion of eminent Advocates and Judges. The present book is without a preface and leaves undisclosed the author's mind in bringing out the book or the back-ground on which it is set.

The first two chapters are obviously intended to be an introduction to the subject dealt with in the book. The remarks of the author on a wide range of a variety of subjects are not beyond controversy. Their utility in a book relating to Criminal Appeal and Revision is not also clear.

Be it as it may, the body of the book relating to Appeals and Revisions in criminal cases are divided into several convenient chapters. The subject dealt with in each chapter is divided into several headings and the relevant case-law is also cited under each subject. The printing and get-up of the book is excellent. Though the subject dealt with in this book is nothing new and is covered by any standard commentary on Criminal Procedure, still the present book as a separate handy volume will be of use to practitioners on this branch of the law.

SUMMARY OF ENGLISH CASES.

GENERAL CLEANING CONTRACTORS, LTD. *v.* CHRISTMAS, (1952) 2 All E.R. 1110 (H.L.).

Master and Servant—Duty to provide safe system of working—Scope of.

If employers employ men on dangerous work for their own profit, they must take proper steps to protect them, even if they are expensive. If they cannot afford to provide adequate safeguards, they should not ask them to do the work at all.

It is the duty of an employer to give such general safety instructions as a reasonably careful employer who has considered the problem presented by the work would give to his workmen.

Common law demands that employers should take reasonable care to lay down a reasonably safe system of work. Employers are not exempted from this duty by the fact that their men are experienced and might, if they were in the position of an employer, be able to lay down a reasonably safe system of work themselves. Workmen are not in the position of employers. Their duties are not performed in the calm atmosphere of a board room with the advice of experts.

The problem is one for the employer to solve and should not be left to the workman. It can be solved by general orders and the provision of appropriate appliances. (*Earl Jowitt, Lord Oaksey, Lord Reid and Lord Tucker*).

(Decision of Court of Appeal in (1952) 1 All. E.R. 39, affirmed.