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One more year has passed since the last review. Memorable events have taken place in the history of India. The country has achieved Independence. The old order has changed and the old thoughts will no more be thought. Rule of law is however the ideal aimed at by all civilised societies. The continued maintenance of a strong and independent Judiciary is a pre-requisite to such rule of law. The decisions rendered by Courts justly enjoy in this context the highest respect and authority. A judicial decision is not merely evidence of the law. Often it is a source of it. A matter once decided is decided for all. That which has been delivered in judgment is taken to embody the correct position—*res judicata pro veritate accipitur*. Precedents lend authority to decisions. When a number of decisions follow one another on the same lines, even apart from anything else, they have the effect of crystallising as it were into a rule of law. In the course of the year there have been rendered 35 decisions of the Privy Council, 10 decisions of the Federal Court and 10 decisions of the Full Benches of the Madras High Court reported in our columns. An attempt is made here to review the more important of such decisions and other decisions of the Madras High Court in many of the important branches of the law.

THE HIGH COURT : ITS POWERS AND JURISDICTION :—It may be recalled that in *Ryots of Garabhandho* v. *Zamindar of Parlakimedi*[1], the Judicial Committee had held that the High Court had no jurisdiction to writ the prerogative writ of *certiorari* to any Court or officer in the moffussil dealing with disputes between Indians, independently of its jurisdiction over the Presidency Town and over British subjects or their servants, inasmuch as the Supreme Court whose jurisdiction had been inherited by the High Court had no general power or control over the Courts of the East India Company in the moffussil or over their officers acting judicially even though they were British subjects and there was no later enactment giving the High Court such a power. The decision of the Privy Council in *Moulvi Hamid Hasan Nomani* v. *Banwarilal Roy*[2] is a successor to and is in line with the ruling in the *Garabhandho case*[1] in so far as it holds that the High Court has no jurisdiction to grant an information in the nature of *quo warranto* where the public officer against whom the information is sought to be exhibited does not reside within the limits of the ordinary originial civil jurisdiction of the High Court. The decision is of special significance in that it is based on a point not touched in the earlier ruling. The ground of the decision is that assuming without deciding that the Supreme Court would have had the power to grant the information in the circumstances of the case, still the High Court has no such power because it has not inherited the *personal* jurisdiction of the Supreme Court over classes of persons residing outside the limits of its ordinary original civil jurisdiction, that the power to grant a writ of *quo warranto* arises in the exercise of ordinary original civil jurisdiction only and such jurisdiction is confined to the limits of the Presidency town. In *Kandaswami Mudaliar* v. *The Province of Madras*[3], it is decided that apart from section 306 (1) of the Government of India Act, 1935, it is clear from section 223 of that Act that

1. (1943) 2 M.L.J. 254 : L.R. 70 I.A. 129 : I.L.R. (1944) Mad. 457 (P.C.).
2. (1947) 2 M.L.J. 32 (P.C.).
3. (1947) 2 M.L.J. 146.

the jurisdiction of the High Court in relation to the Governor of a Province is the same as that which it has inherited from the Supreme Court, that the protection or exemption from process in the High Court in respect of acts counselled, ordered or done by a Governor in his public capacity which had been accorded to the Governor of Madras by the Government of India Act, 1800, is still extant and accordingly the High Court cannot issue a writ of *certiorari* against the Provincial Government calling for the records relating to the rejection of a revision petition to the Government under the Madras House Rent Control Order. The ruling in *Subramania Chettiar* v. *Navaneethakrishna Marudappa Tevar*[1], points out that where an appeal to the Privy Council has been admitted and, the records printed in India have been transmitted to the Privy Council and received there, the High Court will have no jurisdiction to entertain an application to be made parties in the appeal pending before the Privy Council. This is because even for the substitution of a legal representative of a deceased party after the records have been despatched to the Privy Council the application is not dealt with by the High Court; the latter merely enquires into and expresses findings of fact upon which it reports to the Judicial Committee for that tribunal to dispose of the application.

THE BAR: ITS PRIVILEGES, RIGHTS AND DUTIES.—In *Ramappayya* v. *Subbamma*[2], it is laid down that an advocate to whom a vakalat has been given has no power, in the absence of express authorisation, to compromise the suit on behalf of the party for whom he appears. He can only contest the suit but not compromise it. In regard to the restoration of a legal practitioner in the roll of advocates, two interesting pronouncements have been made. In In the matter of *An advocate*[3], a Full Bench has held that in applications for restoration it is not the practice of the High Court to act on mere certificates of character and integrity of the applicant subsequent to the removal of his name from the roll of advocates but that the contents of such certificates have to be placed in the form of affidavits and that when so presented the High Court will have regard only to what are statements of fact regarding the applicant's conduct as distinguished from mere expressions of opinion. In In re *A Pleader*[4], it is stated that if after ceasing to be qualified as a professional gentleman in legal matters, an individual nevertheless, to the utmost extent possible continues to act for reward in legal matters and advises in such matters that would be very strong ground to refuse his application for reinstatement.

CONSTITUTIONAL LAW.—In *Province of Bombay* v. *Municipal Corporation, Bombay*[5], the Privy Council points out that ordinarily no statute binds the Crown unless the Crown is expressly named therein, but the rule is subject to the exception that the Crown may be bound by necessary implication, that is, that if it is manifest from the very terms of the statute that it was the intention of the Legislature that the Crown should be bound the result is the same as if the Crown had been expressly named. The proposition that whenever a statute is enacted for the public good the Crown though not named, would be bound by its provisions cannot now be regarded as sound except in a limited sense and if it can be affirmed that at the time the statute was passed and received the royal sanction it was apparent from its terms that its beneficent purpose must be wholly frustrated unless the Crown were bound then it may be inferred that the Crown has agreed to be bound. The decision in *Mohammad Yakub Khan* v. *King-Emperor*[6] lays down that inasmuch as the jurisdiction of the Judicial Committee of the Privy Council is purely statutory, resting on the Judicial Committee Act of 1833 and the Amending Acts, where an appeal is sought to be brought from an order of a Court established under the provisions of an Act framed long after the Act of 1833, the question that will have to be considered is not whether there are express words taking away the sovereign's prerogative to entertain appeals but whether there ever was the intention of creating that tribunal with the ordinary incident of an appeal to the Crown. Inasmuch as the Indian Army Act intended the findings of a Court Martial to be final subject

1. (1947) 1 M.L.J. 357.
2. (1947) 2 M.L.J. 580.
3. (1947) 2 M.L.J. 213 (F.B.).
4. (1947) 2 M.L.J. 250.
5. (1947) 1 M.L.J. 45 (P.C.).
6. (1947) 1 M.L.J. 403 (P.C.).

only to the power of revision for which that Act provides there is no room for an appeal to the Privy Council consistently with the subject-matter and scheme of the Act. In *Kamakshya Narain Singh* v. *Commissioner of Income-tax, Bihar*[1], the Federal Court lays down that, in regard to pending appeals, when the appellate tribunal decides them, it has to do so according to the law then in operation and that if pending the litigation or pending the appeal some relevant legislation is enacted by the appropriate legislative authority the deciding tribunal must give effect to it. In *Messrs. Chatturam and others* v. *Commissioner of Income-tax, Bihar*[2], the Federal Court points out that it cannot be said that section 92 of the Constitution Act does not give legislative powers to the Governor in respect of excluded or partially excluded areas and that it is only a delegation of administrative authority. The Governor has been given the right to modify any Act of the Legislature and such a right is only legislative power and not administrative power ; hence any Regulation issued by the Governor under the power vested in him under section 92 (2) can override an Act of the Federal or Provincial Legislature in operation in the area in question. A practice point is elucidated in *Krishnaswami Pillai* v. *Governor-General in Council*[3], where it is held that for purposes of issuing a certificate under section 205 (1) of the Constitution Act no substantial question of law as to the interpretation of the Constitution Act should be deemed to be involved where guidance in respect of the interpretation of the particular section has already been furnished so far as the Federal Court is concerned by a prior decision of that Court. An exposition of the scope of section 240 of the Constitution Act and the rights of Government servants against the Crown is given in *Punjab Province* v. *Pandit Tara Chand*[4]. There the Federal Court has laid down that section 240 recognises that in the absence of express limitation a public servant holds office during His Majesty's pleasure and that sub-sections 2, 3 and 4 are statutory limitations upon the prerogative of the Crown to dismiss its servants at will. Accordingly it will follow that if any of those limitations is contravened the public servant concerned has a right to maintain an action against the Crown for appropriate relief and there is nothing in the section to suggest that the relief must be limited to a declaration and should not go beyond it. By reason of section 292, section 240 (1) must be read not merely with the other sub-sections of the section but also with the relevant provisions of the Civil Procedure Code with the result that a servant of the Crown in India has the right to maintain a suit for the recovery of arrears of pay which have become due to him. For such a suit Article 102 of the Limitation Act will apply. Even assuming that in England there is a prerogative that no servant could sue the Crown to recover arrears of pay and that the opening part of section 2 of the Constitution Act is intended to include the prerogatives of the Crown, it must be presumed that the prerogative has been abandoned in India. *Gill and Anil Lahiri* v. *King-Emperor*[5] holds that if consent is given by the Governor-General to the institution of criminal proceedings under section 270 (1) of the Constitution Act, the subsequent course of the proceedings would be controlled by the provisions of the Criminal Procedure Code and no further or fresh consent would be needed when the case is remanded by the High Court for trial on fresh charges. In *Kandaswami Mudaliar* v. *Province of Madras*[6], it is pointed out that section 306 (1) of the Constitution Act does not restrict the exemption enjoyed by the Governor under the old law from proceedings and processes of the High Court, that in fact the protection is now enlarged and it enures to a Governor not merely in respect of acts done by him in his public capacity but also in his personal capacity, so much so, all acts of whatever nature done by him in connection with and arising out of his appointment as Governor, that is, acts in relation to his Provincial Government are protected. Since a Provincial Government cannot do a thing unless there is participation by a Governor, the Governor must be deemed to be included in proceedings or processes against the Provincial Government with reference to the doing of an act by that

1. (1947) 2 M.L.J. 438 (F.C.).
2. (1947) 2 M.L.J. 432 (F.C.).
3. (1947) 2 M.L.J. 400.
4. (1947) 2 M.L.J. 389 (F.C.).
5. (1947) 1 M.L.J. 129 (F.C.).
6. (1947) 2 M.L.J. 146.

government. Section 223 of the Constitution Act also makes it clear that the protection from process in the High Court in respect of acts counselled, ordered or done by a Governor in his public capacity accorded to him under the Government of India Act, 1800 is still extant at the present time. The proper perspective as to the precedence accorded to the three lists in Schedule VII to the Constitution Act is indicated by the Privy Council in *P. K. Mukherjee* v. *Bank of Commerce, Ltd., Khulna*[1]. It points out that to say that the lists have a definite order of priority so that anything contained in list 1 is reserved solely for the Federal Legislature and that similarly an item in the Concurrent List if dealt with by the Federal Legislature is outside the power of the Provinces and it is only the matters mentioned in list 2 over which the Provinces have complete jurisdiction is to simplify unduly the task of distinguishing between the powers of divided jurisdictions. It is not possible to make so clear a cut and there is bound to be overlapping. Though the existence of the Concurrent List facilitates distinction between matters which are essential to determine to which list particular provisions should be attributed and those which are merely incidental, where there is overlapping, the test is what in pith and substance the effect of such overlapping is and in what list its true nature and character are to be found. The extent of invasion by Provinces into subjects enumerated in the Federal List has to be considered not because the validity of an impugned enactment can be determined by discriminating between degrees of invasion but for the purpose of determining what is the pith and substance of the impugned Act. The question is, is the trespass, whatever it be, such as to show that the pith and substance of the impugned Act is not a Provincial subject but a Federal one. Accordingly loans in respect of which promissory notes are taken, are in pith and substance money-lending transactions and hence the Bengal Moneylenders Act though making regulations in regard to banking or promissory notes would still be valid. The same position is revealed in *Bank of Commerce, Ltd., Khulna* v. *Amulya Krishna Basu*[2]. In the case of *Mst. Prakash Kaur* v. *Mst. Udham Kaur*[3], the Federal Court holds that "agricultural land" in entry 21 of list 2 will include rights in or over agricultural land and the interest of a mortgagee in possession is not therefore for purposes of succession within the scope of the Hindu Women's Rights to Property Act, 1937. In *Uday Chand Mahtab* v. *Samarendra Nath Mitra*[4], it has been held by the Federal Court that entry 21 in list 2 covers generally the relation of landlord and tenant and the collection of rents, that the jurisdiction and powers of Courts regarding collection of rents is covered by entry 2 in that list and accordingly section 168-A of the Bengal Tenancy Act which deals with the powers and jurisdiction of the Court to get money paid to a decree-holder in respect of his decree for arrears of rent of agricultural lands is *intra vires* the Provincial Legislature. In *Sripati Lal Khan* v. *Pasupati Modak*[5], it is held that the rights of a landlord and tenant under an anomalous mortgage in respect of agricultural lands are capable of being defined and, if so, altered by the Provincial Legislature and that a Provincial Act providing that a mortgagee who is in possession for 15 years and more shall be considered and treated as if the mortgage debt and interest were paid off is within the terms of entry 21. In *Megh Raj* v. *Allah Rakhia*[6] the Privy Council points out that the key to item 21 is the opening word "land" and that item 2 is sufficient to give express powers to the Provinces to create and determine the powers and jurisdiction of Courts in respect of land, as a matter ancillary to the subject of item 21. Mortgages of land would, as a matter of construction, fall within item 21 in so far as they are mortgages of land, though in certain aspects they include elements of transfer of property and contracts. Accordingly the Punjab Restitution of Mortgaged Lands Act, the main purpose of which is to give relief to mortgagors by enabling them to obtain restitution of the mortgaged lands on terms less onerous than the mortgage deeds require is *intra vires* the Provincial Legislature. *Punjab Flour Mills, Ltd.* v. *Corporation of Lahore*[7]

1. (1947) 2 M.L.J. 7 (P.C.).
2. (1947) 2 M.L.J. 14 (P.C.).
3. (1947) 1 M.L.J. 127 (F.C.).
4. (1947) 1 M.L.J. 258 (F.C.).
5. (1947) 1 M.L.J. 263 (F.C.).
6. (1947) 2 M.L.J. 1 (P.C.).
7. (1947) 1 M.L.J. 265 (F.C.).

brings out the distinction between terminal taxes in entry 58 of list 1 and taxes leviable as cesses on the entry of goods into a local area in entry 49 of list 2. The former taxes are (*i*) terminal and (*ii*) confined to goods and passengers carried by railway or air, chargeable at a railway or air terminus and referable to services rendered or to be rendered by some rail or air transport organisation. The cesses in entry 49 contemplate the entry of goods into a definite local area and for the purpose of consumption, use or sale therein. The wording of entry 20 in list 1 and that of entry 18 in list 2 does not justify a deduction that all taxation on rail and air borne goods must be imposed, if at all, by power drawn from entry 58 in list 1 and that the power of taxation conferred in entry 49 in list 2 is confined to goods that enter by road or internal waterway only. Accordingly so far as rail-borne goods are concerned the same goods may well be subjected to local taxation under entry 49 in list 2. Nor is it necessary that in the case of cesses imposed under that entry provision should be made for refunds. The existence or non-existence of such a provision cannot affect the tax being or not being a cess within entry 49? In In re *Thiagarajan Chettiar*[1], it is held that prosecution in respect of offences under different rules and orders made under the Defence of India Act committed before the date when the Act expired can be continued after that date by reason of section 102 (4) of the Government of India Act. In *J. K. Gas Plant Manufacturing Co. (Rampur), Ltd.* v. *King-Emperor*[2], the principle is laid down that no narrow construction such as might be applicable to a body or corporation created by statute for certain purposes is to be applied to an Act like the Defence of India Act, passed to ensure the peace, order and government of the country. Such an Act must be given a large and liberal construction. Section 40 (1) of the old Government of India Act which was in force as one of the transitional provisions of the Constitution Act cannot be said to be mandatory and an order of the Central Government not expressed to be made by the Governor-General in Council cannot on that account be held to be invalid as not complying with the requirements of section 40 (1). The Federal Court also points out that what section 205 of the Constitution Act requires is that the appeal should be from a judgment, decree or final order, that it is not enough that the case before the High Court should involve a substantial question of law as to the interpretation of the Constitution Act and that the Federal Court is at liberty to determine, if necessary, whether the appeal is really from a judgment, decree or final order so as to ensure that that Court has jurisdiction in the matter under section 205.

CRIMINAL LAW.—In *Srinivasa Mall Bairoliya* v. *King-Emperor*[3], the Privy Council makes it clear that Courts should always bear in mind that unless the statute either clearly or by necessary implication rules out *mens rea* as a constituent part of a crime the accused should not be found guilty of an offence against the Criminal law unless he has a guilty mind. In re *Munisami*[4] emphasises that although the fact of previous convictions is an element in determining the sentence, essential regard should be had to the facts of each case, the gravity of the offence, the circumstances in which it was committed, etc. And a sentence of solitary confinement, though legal, must be awarded, if ever, only in the most exceptional cases of unparalleled atrocity or brutality. The principle is reiterated in *Ramanjulu Naidu*, In re[5], where it is observed that the fact that the " sanctity of home life has become to the accused a mere mockery and the desire to take what he wants regardless of ownership is hot in him " is not a circumstance justifying the direction for solitary confinement. In *King-Emperor* v. *Sadashiv Narayan Bhalerao*[6], the Judicial Committee rejects the test of sedition suggested by Gwyer, C.J., in *Niharendu Dutt Mazumdar* v. *King-Emperor*[7]. According to the Privy Council, except as a marginal note to section 124-A the word " sedition " occurs nowhere in the section, that the contents of the section cannot be restricted by the marginal note, that the English

1. (1947) 1 M.L.J. 98.
2. (1947) 2 M.L.J. 402 (F.C.).
3. (1947) 2 M.L.J. 328 (P.C.).
4. (1947) 1 M.L.J. 336.
5. (1947) 1 M.L.J. 410.
6. (1947) 1 M.L.J. 343 (P.C.).
7. (1942) F.C.R. 38 : (1942) F.L.J. 47.

decisions on the subject could hardly be relevant to the construction of the section and there is nothing in the section to suggest that the acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is the intention or tendency. *Public Prosecutor* v. *Viswanathan*[1] points out that the offering of bribe is *per se* no offence under section 160 of the Penal Code. *Venkatasubbiah*, In re[2], holds that what is forbidden by section 161 generally is receiving any gratification as a motive to do or as a reward for having done any such thing as is described in the definition, that the phrase " motive or reward " covers a case where the payment is made in respect of past favours and section 161 will also apply to a person on leave. In *Lakshmanan Nadar*, In re[3], it is held that the elements constituing the offences under sections 395 and 205 are not identical, that the offence under section 395 is much graver and that it cannot be said that for the prosecution for such an offence the sanction of the Civil Court is necessary. In such a case prosecution for a more serious offence (one under section 395 when the case had originally been admitted under section 380) cannot according to *Manicka Mudaliar*, In re[4] be ordered by the appellate Court without notice to the accused and without hearing him. In *Govindaswami Chettiar*, In re[5], it is decided that where a charge against a person is on the alternative footing that the breach of trust was committed by him either as " a clerk or as an agent of the company " the alleged offence is one under section 409 which can be tried only by a First Class Magistrate, so much so, the trial of such an offence by a Second Class Magistrate is an illegality affecting jurisdiction. *Krishnan*, In re[6], points out how there are two ways in which the offence of cheating may be committed, namely, (*i*) by fraudulently inducing a person to deliver property, and (*ii*) by intentionally inducing a person to do anything which he would not do if he had not been so deceived and which act is likely to cause damage or harm to that person in body, mind, reputation or property, that fraud is committed if any advantage is expected to the person who causes the deceit and that taking money from applicants for motor car driving licences, promising to get the same without their undergoing any of the tests and paying the incidental fees and deceiving the licensing authorities and obtaining licences is a fraudulent act and amounts to cheating. In *Varadaraja Chettiar* v. *Swami Maistry*[7], it is held that a Criminal Court is not entitled to disregard the decree of a Civil Court declaring rights to the identical property in dispute in a case before it. *Venkataratnam*, In re[8], holds that to sustain a conviction under section 504 in respect of abusive words alleged to constitute the insult, it is necessary to know what those words are to decide whether they amount to insult, and a conviction without setting out those words merely on a finding of abuse by the accused will not be justified.

EVIDENCE.—The effect of marking a document by consent is examined in *Palaniappa Chettiar* v. *Bombay Life Assurance Co., Ltd.*[9]. It only means that the party consenting is willing to waive his right to have the document in question proved and not that the consenting party accepts the correctness of every statement made in the document. *Srinivasa Mall Bairoliya* v. *King-Emperor*[10], holds that evidence of similar transactions not the subject of any charge, relevant to the charge of abetting an offence as showing an intention to aid the commission of the offence and an intentional omission to put a stop to an illegal practice which was an illegal omission would be admissible to prove intention under section 14 of the Evidence Act. *Chinna Mallayya*, In re[11], points out that the mere fact that the person to whom a statement was made by the accused had asked him to tell the truth did not amount to a threat or inducement within the meaning of section 24. The decision in *Venkata Reddi*, In re[12], holds that a Prohibition Sub-Inspector under the Madras Prohibition Act cannot be deemed to be a police officer within the meaning of section 25. A

1. (1947) 1 M.L.J. 179.
2. (1947) 2 M.L.J. 160.
3. (1947) 2 M.L.J. 119.
4. (1947) 2 M.L.J. 137.
5. (1947) 2 M.L.J. 163.
6. (1947) 2 M.L.J. 380.
7. (1947) 2 M.L.J. 179.
8. (1947) 1 M.L.J. 359.
9. (1947) 2 M.L.J. 535.
10. (1947) 2 M.L.J. 328 (P.C.).
11. (1947) 2 M.L.J. 359.
12. (1947) 2 M.L.J. 218.

luminous exposition of section 27 is contained in *Pulukuri Kotayya* v. *King-Emperor*[1], overruling In re *Athappa Goundan*[2]. The Privy Council points out that section 27 is an exception to the prohibition imposed by the preceding section and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a police officer must be deposed to and thereupon so much of the information as relates distinctly to the fact discovered may be proved. The extent admissible must depend on the exact nature of the fact discovered to which such information is required to relate. It would be a fallacy to treat the "fact discovered" as equivalent to the object produced; it embraces the place from which the object is produced, and the knowledge of the accused as to this. It follows that information as to past user or the past history of the object produced is not related to the discovery in the setting in which it is discovered and so would not be admissible in evidence. Applying the test, it was held in *Nagappa*, In re[3], that where one of the accused in his confessional statement implicated himself as having decoyed the accused to a rick and assisted in his murder by holding his legs and having after the murder along with others carried the dead body and buried it in the burial ground, only the portion stating that the body was buried at a particular place could be admitted. In *Venkanna*, In re[4], it is explained that the fact discovered would be relevant only if the statement led to the discovery of the fact that the property is concealed in the particular place mentioned and is proved to have been connected with the offence. *Public Prosecutor* v. *Oor Goundan*[5] holds that where the accused had stated: "Before burying I had cut the belly asunder with the knife. There was a silver waist cord on the waist of the corpse. I removed it and gave it to my brother-in-law. I have buried in the margin of the eastern ridge of my sugarcane garden the knife with which Aran's neck was cut. If you come with me I shall take and give it." The only portion admissible would be: "I have buried in the margin of the eastern ridge of my sugarcane garden the knife. If you come with me I shall take and give it." *Ponnuswami Chettiar* v. *Kailasam Chettiar*[6] holds that when the execution of a document is admitted it need not be proved and this would be so even when the document in question is not admissible on account of any provision in the Stamp Act. In *Komirineni Rosayya* v. *Munnamgi Rosayya*[7], it is held that a recital in a document executed by a witness to which none of the parties to the suit were parties would be relevant as corroborative evidence under section 157 in a suit for ownership and possession of property as a statement made by the witness on a previous occasion.

TORTS.—A notable decision in the law of torts is that in *Mohamed Amin* v. *Jogendra Kumar Banerjee*[8]. The Privy Council explains how the foundation for an action for damages for malicious prosecution is the abuse of the process of the Court by wrongfully setting the law in motion, by perverting the machinery of justice to an improper use. The plaintiff should show that the proceedings instituted against him were malicious, without reasonable and proper cause, that they terminated in his favour and that he has suffered damage. To found an action based upon criminal proceedings the test is not whether they reached a stage at which they may be correctly described as a prosecution but whether they have reached a stage at which damage to the plaintiff results. It cannot be said that the mere presentation of a false complaint which first seeks to set the criminal law in motion will *per se* found an action for damages for malicious prosecution.

HINDU LAW.—In *Pemraj* v. *Chand Kunwar*[9], the Privy Council recognises it as settled that Hindu law generally applies to Jains in the absence of special custom and that if any such custom has been affirmed and upheld in a series of decisions it would become incorporated in the general law applicable to them. In *Kashi*

1. (1947) 2 M.L.J. 219 (P.C.).
2. (1937) 2 M.L.J. 60: I.L.R. 1937 Mad. 695 (F.B.).
3. (1947) 2 M.L.J. 295.
4. (1947) 2 M.L.J. 356.
5. (1947) 2 M.L.J. 429.
6. (1947) 2 M.L.J. 116.
7. (1947) 1 M.L.J. 60.
8. (1947) 2 M.L.J. 27 (P.C.).
9. (1947) 2 M.L.J. 516 (P.C.).

Nath v. *Bhagwan Das*[1], the Privy Council holds that where there is proof of the solemnisation of a marriage the presumption in favour of its being a valid marriage arises and it is in that light that Courts have to review the evidence when the legality of a duly solemnised marriage is challenged on the ground that the parties belonged to different sub-castes. In *Nagachari* v. *Butchayya*[2], it is pointed out that when a man and a woman were not merely living together but professed themselves to be husband and wife and were treated as such by the society in which they moved and this conduct and recognition extended over a sufficiently long period of time a presumption can well be drawn in favour of a marriage. Also, where it happens that the woman so living was a widow the presumption could none the less be drawn if the parties could have married each other. In *Ramasubbayya* v. *Chenchuramayya*[3], it is decided that cognates are not included within the ambit of the term 'kindred' whose consent is necessary for an adoption by a widow in Madras in the absence of husband's authorisation. It is the consent of the nearest male agnates that is needed as they are by virtue of the relationship her most competent advisers. Failure to consult the daughter's son is thus immaterial. *Kasiviswanathan Chettiar* v. *Somasundaram Chettiar*[4] recognises that a custom among Nattukottai Chettis permitting adoption to a person after his death and the death of his wife, by his father or other pangalis may be valid as a family custom, if proved. *Thippanna* v. *Venkataramanappa*[5] decides that in spite of an illatom adoption the father-in-law would have the right of disposing of his property by gift or will. *Seeyali Achari* v. *Doraiswami Achari*[6], reaffirms the view consistently held in Madras that a gift or bequest by a Hindu father of his self-acquired property in favour of his sons would impress it with the character of ancestral property in the absence of words indicating a contrary intention. In *Ramaswami Tevar* v. *Chinniah Tevar*[7] it is decided that, where the vendee from the father of joint family property has acted *bona fide* and after due inquiry as to the existence of necessity, he is not bound to see to the application of the purchase money and a sale cannot be set aside because the vendee is not able to prove conclusively as to how the surplus beyond the legal necessity was applied. *Isakku* v. *Seetharamaraju*[8], holds that where one of several co-sharers mortgages a specific item of property to which they are jointly entitled and afterwards there is a partition at which the mortgaged item falls to another co-sharer and other items are allotted to the mortgagor, the mortgagee can in the absence of fraud proceed only against the items allotted to the mortgagor and such right would be a right to a security though it may not amount to a mortgage and would fall within section 100 of the Transfer of Property Act. In *Ram Asra* v. *Official Receiver, South Kanara*[9], it is pointed out that where the share of a coparcener is attached and he dies thereafter his interest no doubt survives to the other members but subject to the attachment, so much so, if subsequently proceedings are taken in respect of the property and it is sold the rights of the members of the family cannot prevail, but if the attachment comes to an end the full benefit of survivorship would be available. *Chinna Venkata Reddi* v. *Sidda Reddi*[10] points out that a partition becomes complete when the title in the different shares has passed to the different sharers and in the case of immoveable properties the title passes either by the execution of a registered instrument or by an agreement to divide coupled with transfer of possession. Where the latter process has happened the fact that there was a subsequent modification of the division by a compromise only to the extent of giving to the branch of a son born after the partition a greater share than previously enjoyed does not give a right to such after-born son to challenge the partition which had become effective prior to his birth and was only subsequently modified to his own advantage. In *Bhagwat Ram* v. *Ramji Ram*[11], the Judicial Committee holds it as settled that a son begotten as well as born after partition, where a share has been allotted to the father, cannot

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1. (1947) 2 M.L.J. 301 (P.C.).
2. (1947) 2 M.L.J. 277.
3. (1947) 2 M.L.J. 39 (P.C.).
4. (1947) 1 M.L.J. 43 (P.C.).
5. (1947) 2 M.L.J. 245.
6. (1947) 2 M.L.J. 49.
7. (1947) 1 M.L.J. 398.
8. (1947) 2 M.L.J. 166 (F.B.).
9. (1947) 2 M.L.J. 509.
10. (1947) 1 M.L.J. 188.
11. (1947) 2 M.L.J. 67 (P.C.).

reopen the partition. He is only entitled to succeed to his father's share and to his separate and self-acquired property to the exclusion of the divided sons. The fact that the estate has not been divided by metes and bounds prior to the birth of the after-born son cannot affect the quantum of share to which the other members had already become entitled. *Papamma* v. *Narayana*[1] decides that where the terms of a partition have been reduced to writing but the latter has not been registered it is inadmissible to prove the partition and oral evidence to prove the terms is also precluded. If, however a party to such document is not the managing member of his branch the deed will not be operative against the other members who were not parties to it and as against them can be proved *aliunde*. The Privy Council decision in *Rajagopala Aiyar* v. *Venkataraman*[2] lays down that since the right of an unmarried daughter to maintenance and marriage expenses as against the family property is in lieu of a share on partition, provision must be made for her marriage expenses in any partition decree that may be passed and even if the marriage had already taken place and the money had been met by another that is no ground for refusing reimbursement. In *Appalaswami* v. *Suryanarayanamurti*[3], the Privy Council holds that a suit for partition on behalf of the minor sons against the father who had remarried on the death of the mother of the minors and had sons by the second wife cannot be said to be in the interest of the minors on the ground that their interest in the family property was liable to be diminished by the birth of further sons to the father; for it is of the essence of any coparcenary governed by the Mitakshara that the interest of each member is always fluctuating and the advantage of membership in the joint family is not to be measured merely by a consideration of the extent of his interest in the joint family property. The Privy Council also lays down that proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint. *Nagaraju* v. *Parvatamma*[4] points out that where pending an appeal in a maintenance action, time was given to the parties to find out whether they could live amicably and subsequently it was reported that they could not get on well, the fact that the parties tried to live together is only an attempt at settlement without prejudice and would not terminate the suit. *Vasuntharadevi* v. *Ramakrishna Naidu*[5] makes it clear that a mere diminution of physical comforts of the wife due to the disparity in the modes of life to which she was accustomed prior to her marriage in her parents' abode and the subsequent life in the husband's house is not a justifiable ground for claiming separate maintenance. Where however the husband subsequently takes a second wife, the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, will entitle the first wife to claim separate maintenance even if she had been living apart from him for no justifiable reason before the second marriage, provided it was not for an improper purpose. The decision also holds that no provision can be inserted in a maintenance decree for liberty to apply to vary the rate according to any change in circumstances. The remedy is by way of suit only. The ruling in *Commissioner of Income-tax (C. & U.P.)* v. *Mst. Bhagwati*[6] holds that the widow of a deceased coparcener has a right of maintenance against the surviving coparceners *quoad* the share of her deceased husband which they take by survivorship, that the right is an absolute right, that it does not form a charge on the properties but when necessary, it may be made into a charge on a specific portion of the joint family properties not exceeding her husband's share. In *Surayya* v. *Bala Gangadhara Ramakrishna Reddi*[7], the Privy Council points out that a maintenance grant to a female member of a Hindu family is ordinarily for the life of the grantee, that she will have no right to alienate the property and after her death the property will come back to the joint family out of whose assets it was carved. *Veeranna* v. *Satyam*[8] decides that when in Hindu law a daughter or son is referred to the law-givers contemplate only a legitimate child, that illegitimate children have no right at all

1. (1947) 1 M.L.J. 274.
2. (1947) 2 M.L.J. 37 (P.C.).
3. (1947) 2 M.L.J. 138 (P.C.).
4. (1947) 1 M.L.J. 81.
5. (1947) 2 M.L.J. 544.
6. (1947) 2 M.L.J. 574 (P.C.).
7. (1947) 2 M.L.J. 511.
8. (1947) 1 M.L.J. 301.

except in the specified special classes of cases and hence an illegitimate son of a daughter cannot be entitled to the rights and privileges of a daughter's son. In *Seshayya* v. *Venkatarathnam*[1] it is recognised that where a widow's alienation is questioned 50 years after it was made and the parties to the transaction and the witnesses were all dead and there is nevidence that the income from the property is inadequate for maintenance, the evidence is conclusive of the existence of legal necessity and presumptions are permissible to fill in the details obliterated by time. *Perireddi* v. *Venkataraju*[2] holds that though a widow cannot by a compromise entered into by her with a person claiming adversely to the estate enlarge her own rights in such properties as she obtains under the compromise it will not mean that the compromise which gives portion of the estate to the rival claimant to induce him to forbear from pursuing his claim and thereby avoids a contest which might possibly result in his getting the whole of it is not binding on the reversioners. In *Sankaranarayana Pillayan* v. *H. R. E. Board*[3], the Privy Council points out that a dedication is not invalid by reason that the members of the settlor's family are nominated shebaits or managers and given reasonable remuneration out of the income of the endowment as well as other rights like residence in the dedicated property.

MUHAMMADAN LAW.—In *Sahul Hamid* v. *Sultan*[4], it is held that Muslim law does not recognise a joint family as a legal entity, and heirship does not necessarily go with membership of the family. A custom may however be proved that a Muslim family has adopted the joint family mode of holding property. There is no fiduciary relationship between co-heirs in Muslim law as such and where the property of a co-heir is managed by others both during and after his minority the theory of a constructive trust is inapplicable for the period when such co-heir was not a minor. *Ramachandra Naidu* v. *Abdul Kadir Chisthi*[5] decides that a *de facto* guardian of a minor has no authority to deal with the property of the minor and any purported transactions effected by him are void as against the minor and the fact that the object of the transaction was to borrow money to pay a debt which was binding on the minor or to stave off litigation in respect of an earlier debt will not render the same binding on the minor.

INSOLVENCY LAW.—In *Kandaswami Pillai* v *Kandaswami Pillai*[6], it is held that the effect of section 28 (7) of the Provincial Insolvency Act is to vest the property of the insolvent in all cases in the Official Receiver from the date of adjudication. *Chengalraya Chetty* v. *Official Receiver, North Arcot*[7], points out that a claim by way of contribution arising by reason of the creditor paying a decree debt payable by the insolvent and others, does not fall within section 34 (1), that it cannot be said that the value of the debt is incapable of being estimated or that it is a demand in the nature of unliquidated damages and that the claim cannot be held to be one not provable under the Act. *Sadasivan* v. *Palaniappa Chettiar*[8], decides that before the amendment in 1935 section 39 made the composition scheme binding on all creditors so far as it related to a debt *entered* therein but now it expressly binds all creditors so far as debts *provable* under the Act are concerned. So until an order of discharge is passed a secured creditor can come in and prove the balance owing to him after the realisation of his security. The position would be different in the case of annulment. Where there is an annulment but no order discharging the insolvent, a secured creditor is bound by a composition of which the Court has approved in so far as the balance of his debt is concerned after the realisation of his security and the fact that he has taken no part in the composition proceedings makes no difference. In *Satyanarayana Rao* v. *Official Receiver, West Godavari*[9], it is pointed out that where matters of which the Court should have been apprised by the Official Receiver are not brought to its notice and the Court annuls the insolvency under section 43, the Court would have jurisdiction to entertain an

1. (1947) 1 M.L.J. 240.
2. (1947) 2 M.L.J. 87.
3. (1947) 2 M.L.J. 315 (P.C.).
4. (1947) 2 M.L.J. 366.
5. (1947) 2 M.L.J. 100.
6. (1947) 1 M.L.J. 203.
7. (1947) 1 M.L.J. 103.
8. (1947) 1 M.L.J. 134 (F.B.)..
9. (1947) 2 M.L.J. 425.

application for review of such an order when its attention is drawn to the facts which were not placed before it by the Official Receiver and which would justify a reconsideration of the previous order. *Venkata Reddi* v. *Suryanarayanamurthi*[1] recognises that an Official Receiver has no power to sell property which is not the sole property of the insolvent ; and he cannot convey the interest of all the members to the purchaser and hence where a father in a joint family composed of himself and his sons became an insolvent and the Official Receiver sold some immoveable property purporting thereby to sell the entire interest in the property, the sale could not affect the right, title and interest of the sons. In *Akkayya* v. *Appayya*[2], it is held that the order of annulment referred to in section 78 (2) means any order annulling the order of adjudication and the fact that an order had been passed under section 37 vesting the insolvent's assets in the Official Receiver has no bearing. *Manicka Nainar* v. *Murugesa Goundan*[3] holds that the operation of section 78 (2) is not confined to the narrow limits of section 49 but can be applied where there exists on the record of the Insolvency Court sufficient evidence to establish the debt due which the Insolvency Court was bound to accept. In *Samanna* v. *Ramachandra Chowdri*[4], it is pointed out that where a suit had been filed against an insolvent a day after the adjudication but without the leave of the Court and a decree was obtained without any objection by the insolvent and subsequently the adjudication was annulled, the effect of the annulment is to render the decree quite valid and as the debt was incurred prior to the adjudication the mere fact that the decree was passed after would not make it a debt incurred after adjudication and since it is a provable debt and was in fact proved there is no reason for denying to the decree-holder the benefit of section 78 (2).

PROPERTY LAW.—The decision in *Pavayammal* v. *Samiappa Goundan*[5] holds that section 39 of the Transfer of Property Act contemplates a claim based on the right to receive maintenance and notice of such claim and that without both there can be no charge on the properties with an alienee. *Ramamurthi* v. *Kanakarathnam*[6] points out that the amendment to section 39 by Act 20 of 1929 was not intended to create a charge where none existed previously and that its only effect is to make it unnecessary for the widow to prove that the transfer was made with the intention of defeating her right. If the transfer is gratuitous there is nothing for her to prove beyond her right to receive maintenance. If the transfer was for consideration she has only to prove besides her right to maintenance that the transferee had notice of the same. *Ponnia Pillai* v. *Sivanupandia Thevar*[7], decides that where a suit is filed averring a tenancy and there is nothing in the nature of a perpetual lease or an absolute title which could provide a foundation for a claim under section 51, the defendant has no claim to compensation for improvements. In *Viranna* v. *Pallayya*[8], it is held that a term under which the mortgagor agrees as part and parcel of the mortgage transaction to sell the mortgaged property to the mortgagee for a named price fetters the equity of redemption and is a clog and is prohibited by law. *Arunachala Mudaliar* v. *Jagannatha Mudaliar*[9], holds that in a suit on his mortgage by a puisne mortgagee against the mortgagor and the prior mortgagee who had after the date of the second mortgage purchased the mortgaged property from the mortgagor, the prior mortgagee will be accountable for the profits on the mortgaged property from the date of the sale in his favour. *Muthukaruppa Chettiar* v. *Sinnappa Goundan*[10] makes it clear that section 69 confers power of private sale only where the mortgagee is the Secretary of State for India in Council but every contract made by or on behalf of a local government or the Government of India cannot be deemed to be such a contract.

LAND TENURES AND IRRIGATION LAW.—In *Gopalkrishnayya* v. *Province of Madras*[11] it is held that where consequent on the introduction of a new system of irrigation

1. (1947) 2 M.L.J. 507.
2. (1947) 1 M.L.J. 4.
3. (1947) 1 M.L.J. 59.
4. (1947) 2 M.L.J. 57.
5. (1947) 1 M.L.J. 329.
6. (1947) 2 M.L.J. 281.
7. (1947) 1 M.L.J. 6.
8. (1947) 1 M.L.J. 244.
9. (1947) 1 M.L.J. 399.
10. (1947) 2 M.L.J. 157.
11. (1947) 2 M.L.J. 63 (P.C.).

after the Permanent Settlement the Government agreed to supply water free of charge for such of the lands as were under wet cultivation at the time of the change of source, but the new system could supply water only for the first crop due to the closing of the channels in February, and their opening in June, and in or about 1934 the zamindar who had knowledge of this started raising sugarcane instead of paddy on those lands which required water during both seasons, and in respect of the extra supply provided by Government water cess was levied, the levy is proper and does not contravene any engagement between the Government and the zamindar. *Venkataratnam* v. *Maharajah of Pithapuram*[1] decides that where there is a grant of a single field specified as wet, the absence of any indication that that wet land has a right to water for a double crop free of charge is no bar to an inference that water capable of being used on the land for a second crop free of charge can be taken and in any event a twenty years' enjoyment of that right is enough to confer a prescriptive right.

ESTATES LAND ACT.—In *Lakshminarasimhacharlu* v. *Ratnam*[2], it is pointed out that by reason of the amendment in 1945 it is now the law that a grant constitutes an " estate " if it is expressed to be of a named village irrespective of whether some of the lands in the village are held already under inam or service grants or whether there has been reservation of part of the village for communal purposes. Where the grant is of a named village the use of the words " exclusive of poramboke " in the grant will not take it out of the category of " estate ". A similar decision is *Bapiraju* v. *Vallayya*[3]; holding that merely because a grant did not include minor inams it cannot be said that it is not a grant of the whole village. In *Rudrappa Chetty* v. *Karvetnagar Trust Estate*[4], it is held that " improvement " under section 3 (4) does not mean something which must be of a permanent character and the digging of wells by a ryot in his holding to irrigate an adjoining land of his in another estate would be an improvement and where the water has been so utilised the ryot cannot be held liable to pay at a higher rate on account of any change in the nature of the crop raised. *Bandara Jogi* v. *Seetharamamurthi*[5] decides that by virtue of the former proviso to section 185 deleted in 1934 and added to section 3 (10) an irresistible presumption will arise that ryoti land becomes private land when and if it has been cultivated in conformity with the section ; but the reclamation of land which was ryoti till 1902 and its subsequent cultivation by the landholder for six years before the commencement of the Act and the letting of the land as private land thereafter will not confer that character on it. *Masenu* v. *Bhavaraju*[6] lays down that the purport of the Explanation introduced into section 3 (15) in 1934 is to give occupancy rights to a person who was able to prove occupation for 12 years where no one else had occupancy right in it and is not meant to affect the relationship between the ryot and his lessee so as to confer occupancy rights on a person who until then was not a ryot at all. *Natarajan* v. *Vellayyan Chettiar*[7] points out that where on tank beds and bunds the plaintiff had allowed shops and sheds to be erected, he had used it for a purpose different from that for which it was intended and was therefore liable to be evicted by the Collector under section 21. *Zamindar of Devarakota* v. *Jyoti Venkadu*[8] holds that if a valid and enforceable contract exists between a landholder and a ryot in respect of the rate of rent of a particular holding from before the passing of the Estates Land Act, such contract would be enforceable notwithstanding the passing of the latter Act, provided the landholder showed not merely an agreement which may be inferred from a long course of payment at a particular rate but an agreement supported by lawful consideration. If the latter element is not proved, the fact of payment of rent for long periods at a higher rate would not entitle the landholder to enforce payment at that rate after the passing of the Act.

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1. (1947) 2 M.L.J. 492.
2. (1947) 2 M.L.J. 289.
3. (1947) 2 M.L.J. 298.
4. (1947) 1 M.L.J. 248.
5. (1947) 2 M.L.J. 263 (F.B.).
6. (1947) 1 M.L.J. 296.
7. (1947) 1 M.L.J. 180.
8. (1947) 1 M.L.J. 57.

LAND ACQUISITION.—In *Associated Oil Mills, Ltd., Katpadi* v. *Provincial Government*[1], it is explained that in regard to requisition by Government, of property, under the Defence of India Act, 1939, the claimant is not entitled to interest on the compensation awarded in the absence of any agreement by Government, as there is no provision for the award of interest in section 23 of the Land Acquisition Act which is the only section made applicable to requisition cases under section 19 (*e*) (*i*) of the Defence of India Act.

LAW OF CONTRACTS.—In *Somasundaram Pillai* v. *Provincial Government of Madras*[2], it is held that an offeror can withdraw the offer before acceptance in the absence of a condition to the contrary supported by consideration, that provisional acceptance by itself will not make a binding contract, that a condition preventing the withdrawal of a provisionally accepted offer contained in the terms of an abkari sale not amounting to a notification under section 69 of the Madras Abkari Act is not valid and the ordinary law would apply and the bidder whose bid had been provisionally accepted could withdraw his bid. *Alfred William Ludditt* v. *Ginger Coote Airways, Ltd.*[3], holds that an express condition in the ticket issued to passengers carried in an aeroplane by a duly licensed company as passengers for reward, completely exonerating the company from all liability for loss, damage or injury to passengers or property caused by negligence or otherwise, is valid and enforceable having regard to the general law and the relevant conditions of the Transport Act (Canada Dominion) 1938 and the orders of the Board of Transport Commissioners. *Venkataswami Chetti* v. *Panchakshara Reddy*[4], decides that where an agreement remits a portion of the amount due under a promissory note and makes the balance payable by a fixed date and there is a failure to so pay, the remission being one *in praesenti*, under section 63 of the Contract Act the failure to pay the balance will not nullify the remission and make the entire amount payable. *Alagappa Corporation* v. *United Brokers*[5] lays down that where the agent does not disclose the name of his principal there is a presumption that the agent can personally enforce the contracts entered by him and is personally bound by them, that where the time for the purchase and sale of shares in a contract is prescribed in the contract notes as one week but the parties by mutual consent have extended it, the subsequent breach consisting in the failure to deliver the shares is really a continuing one, and that where a person sues for the specific performance of a contract by the defendant to sell certain shares and in the alternative for damages, the plaintiff can elect at the trial whichever of the remedies would be advantageous to him. *Siddique & Co.* v. *Rangiah Chettiar*[6] holds that where after the parties had entered into a contract for sale of yarn an Ordinance was passed by Government fixing the price limit but there was nothing in the Ordinance rendering the higher prices fixed in the earlier contract illegal and the seller insisted on the buyer taking delivery at the contract rate but the latter evaded and sought the benefit of the Ordinance it is the buyer that is in breach. *Meyyappa Chettiar* v. *Palaniappa Chettiar*[7] lays down that where one of the partners discharges the entire liability arising out of a partnership transaction he cannot sue for contribution but should sue for the dissolution of the partnership and for accounts. *Veeraswami* v. *Chitti Naidu*[8] points out that in a suit for dissolution and for accounts the plaintiff is entitled to interest on the amount decreed from the date of the final decree and not from the date of the plaint. *Shanmuga Mudaliar* v. *Rathina Mudaliar*[9] explains that there is no prohibition upon an unregistered partnership making contracts either with the partners *inter se* or with a stranger or upon acquiring property ; all that the Partnership Act does is to make a suit by such a partnership not maintainable. Relief from the disability can however be obtained if the partnership is registered before the suit is instituted even if the contracts sued on had been entered into prior to the registration. One of the partners of a dissolved unregistered partnership who by an arrangement

1. (1947) 2 M.L.J. 429.
2. (1947) 1 M.L.J. 123.
3. (1947) 2 M.L.J. 237 (P.C.).
4. (1947) 1 M.L.J. 226.
5. (1947) 2 M.L.J. 200.
6. (1947) 2 M.L.J. 79.
7. (1947) 2 M.L.J. 589.
8. (1947) 2 M.L.J. 450.
9. (1947) 2 M.L.J. 241.

with the other partners had become entitled to a debt from a third party can sue to recover it and it cannot be contended that the suit is not maintainable under section 69 (2).

COMPANY LAW.—In *Ramakrishna Rao* v. *Krishna Rao*[1], it is recognised that there is no provision in the Companies Act giving the Company Court exclusive jurisdiction in company matters and that many of the special remedies provided by the Act are equally enforceable in other Courts by suits. It also holds that there is no provision in the Act conferring any special rights in a Secretary in regard to the possession of the property of the company. *Vadilal Laldas Patel*, In re[2], decides that where a company is commercially insolvent and has never paid any dividend on its shares and no interest on the debentures issued and there is no opposition either from the trustee for the debenture-holders or the managing agents of the company, it would be a fit case for the appointment of a provisional liquidator, on the application of a creditor who has not been paid his debt in spite of a statutory notice served on the company ; and any objection by a shareholder on the ground that the company might be successful if suitably and properly managed is not a relevant matter in the consideration of the petition for the appointment of a provisional liquidator. *Official Receiver, High Court* v. *Rao & Co.*[3], lays down that where a company in liquidation turns out to be solvent, a creditor of the company whose debt does not carry interest by agreement or otherwise is not entitled in winding up to payment of interest on his debt. *Official Liquidator* v. *Krishnaswami Iyengar*[4] holds that the words of limitation in section 235 (1) must be regarded as governing all proceedings under the section and a defence of limitation which might have been available to a person charged if a suit had been filed will no longer be available to him. In *Subramania Iyer* v. *The Podanur Bank, Ltd.*[5], it is pointed out that section 237 (1) does not require the Court to make any particular enquiry or to give the person who is to be prosecuted an opportunity to show cause, before the Official Liquidator is directed to file a complaint, and there is nothing in the section requiring the Court to set forth its reasons when directing the liquidator to launch prosecutions and though it is desirable to give some indication that the Court has applied its mind to the questions which have to be decided in passing the order, the order is not to be vacated merely because the reasons are not set out.

NEGOTIABLE INSTRUMENTS.—In *Commissioner of Income-tax, Bengal* v. *Chowringhee Properties, Ltd.*[6], the Privy Council holds that the position of banks holding debentures as cover is well settled, that by virtue of the charge upon the debentures to secure the overdraft, the bank may subject to the terms of the charge realise the debentures by sale or may sue for and recover the principal and interest and otherwise enforce the debentures, but whatever is thereby received becomes part of the property charged to secure the overdraft and is not receivable or held by the bank otherwise than for that purpose. *Venkatakrishniah* v. *Manickyaram*[7] decides that where a promissory note is payable on demand and is not payable at any specified place, no presentment is necessary under section 64 of the Negotiable Instruments Act to charge the maker thereof nor is there any rule to determine the reasonable time for giving notice of any assignment of such a note.

SPECIFIC RELIEF.—In *Narayanamurthy* v. *Madhavayya*[8], it is pointed out that when a person sues for specific performance and it is found that he cannot obtain an order in respect of the whole but only of part of the property, it is at that stage that he must make up his mind as to what he will do if he considers the decision to be incorrect. He cannot call in aid section 15 of the Specific Relief Act and at the same time proceed in addition to obtain the remainder of the property or

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1. (1947) 1 M.L.J. 75.
2. (1947) 2 M.L.J. 563.
3. (1947) 1 M.L.J. 242.
4. (1947) 1 M.L.J. 234.
5. (1947) 1 M.L.J. 54.
6. (1947) 2 M.L.J. 61 (P.C.).
7. (1947) 2 M.L.J. 196.
8. (1947) 2 M.L.J. 366.

damages. If he takes what the section gives him he must abandon all further claim and all further rights including the right of appeal as a condition precedent. *Thirumalayandi Thevar* v. *Uthanda Thevar*[1] holds that section 39 covers both void as well as voidable agreements.

REGISTRATION LAW.—In *Lahore Central Co-operative Bank, Ltd.* v. *Qadir Baksh*[2], where an award in respect of a claim on a mortgage after fixing the amount due and making provision for its payment by instalments, stated that in default as to any instalment the whole amount shall become payable and may be realised through a Civil Court by the sale of all the property, it was held by the Privy Council, that the provision regarding realisation must be construed as stating as an existing fact the general consequences which by law were attached to non-payment of secured debts and has no operative effect in creating any interest in any immoveable property and hence section 17 (1) (*b*) of the Registration Act will have no application. In *Subbu Naidu* v. *Varadarajulu Naidu*[3] it is decided that an unregistered partition "koorchit" cannot be said to be inadmissible for any purpose whatever, that it would be admissible to prove the adverse character of the defendant's possession of the lands allotted to him though such allotment was ineffectual for want of registration, but as evidence of the partition it would be prohibited from admission by section 49 (*c*).

STAMP LAW.—In *Nallendra Konar* v. *Venkatachala Konar*[4], it is held that section 29 (*g*) of the Stamp Act makes it clear that it is the duty of the Court in respect of a decree for partition to direct the proportion of stamp to be borne by each party and where the Court did not do so and in consequence a party had to postpone furnishing the full amount of the stamp paper required, there can be said to be no delay on the part of the party in furnishing stamps and in computing limitation for filing an appeal against the decree the time so taken should be excluded.

COURT-FEES.—In *Thirumalayandi Thevar* v. *Uthanda Thevar*[1], it is decided that a suit to set aside a registered sale deed of immoveable property executed by the plaintiff in favour of the defendant and praying for a declaration that it is sham and nominal and for delivery of possession is governed by section 7 (*iv-A*) of the Court-Fees Act as the prayer for declaration is not a mere surplusage. *Nagendram* v. *Appayya*[5] holds that where pending a suit for partition the plaintiff transfers his rights to a stranger who is then added as additional plaintiff, extra court-fee is not payable; but if the original plaintiff does not prosecute the suit and allows himself to be transposed as a defendant the suit ceases to be one for partition by a coparcener but one for partition against the other members of the family by the alienee and the latter will as transferee-plaintiff have to pay *ad valorem* court-fee on the share of the properties he is claiming under section 7 (*v*). *Satyabhigna Theerthaswami* v. *Narasayya*[6] holds that in a suit for injunction to restrain defendant from cutting certain trees in a certain land, the relief by way of injunction should be valued at not less than half the value of the trees in the manner provided by section 7 (*v*), namely, that of taking their market value. *Kesanna* v. *Boya Bala Gangappa*[7] states that where a person sues for possession of specific immoveable property the court-fee must be paid on the market value of the land notwithstanding that it had formed part of an estate paying revenue to the Government. Where he asks to be put in possession of immoveable property which fell to him at partition the boundaries of which are indicated, he is not asking for a share but for possession of what has already fallen to him and section 7 (*v*) (*d*) will apply. It is only when he seeks possession as fractional share of a portion of an estate that the Madras Government Notification of 1932 directing the assessment of court-fee at 10 times the revenue on such lands would apply. In *Soundararaja Perumal Devasthanam* v. *Soundararaja Pillai*[8], it is held that a suit by the present trustees against previous

1. (1947) 1 M.L.J. 212.
2. (1947) 2 M.L.J. 304 (P.C.).
3. (1947) 1 M.L.J. 90.
4. (1947) 2 M.L.J. 201.
5. (1947) 1 M.L.J. 15.
6. (1947) 1 M.L.J. 182.
7. (1947) 1 M.L.J. 201 (F.B.).
8. (1947) 1 M.L.J. 148.

trustees to render a true and proper account with reference to transactions, collections, expenses, etc., and for the appointment of a Commissioner to examine the accounts is one for an account falling within section 7 (*iv*) (*f*) and *ad valorem* court-fee is not payable on the basis that the suit was for the recovery of specific sums. In *Anthony Salvador Dias* v. *Sivarama Rao*[1], where the suit was for redemption of a mortgage and for damages for delay by the respondent in paying the debts for which the consideration for the mortgage had been retained by him, it was held that the claim for damages was a separate relief and hence court-fee should be paid separately for it. *Devadas* v. *Sadasiva Reddiar*[2] holds that where the main relief is for redemption of a usufructuary mortgage but there is also a prayer for an account of surplus deficiencies the suit should be deemed as substantially one for redemption only and court-fee is payable under section 7 (*ix*). *Kallianikutti Amma* v. *Kunhilakshmi Amma*[3], decides that the appropriate article applicable to a suit by an attaching decree-holder under Order 21, rule 63, Civil Procedure Code, to set aside an order of the executing Court allowing a claim under Order 21, rule 58 and for a declaration that an assignment in favour of the claimant was void is Article 17 (*i*).

LIMITATION.—In *Kollegal Silk Filatures, Ltd.* v. *Province of Madras*[4], it is held that no bar of limitation is applicable to an appeal against the award of compensation by an arbitrator under section 19 of the Defence of India Act for compulsory acquisition of immoveable property since the words of exclusion in section 19 (*g*) of that Act are very wide and must cover the Limitation Act as to which there is no saving provision to be found in the section or in the rules. *Rajarajeswari Ammal* v. *Sankaranarayana Aiyar*[5] holds that under section 20, before the amendment of 1942, there should be a payment, it must be towards interest as such, it must be by a person liable to pay or his duly authorised agent and the acknowledgment of the payment should be in the writing of or signed by the person paying. There is no warrant for importing further conditions as that the interest should be for a particular period or that the acknowledgment itself should specify the period. *Sooryanarayana Rao* v. *Sarup Chand Rajaji*[6] holds that where the mortgagee purchased the equity of redemption but the sale was later annulled, the receipt of rents by the vendee in the interval is to be deemed as receipt *qua* mortgagee and therefore tantamount to payment within section 20 (2). *Kempamma* v. *Racha Setty*[7] lays down that so long as the mortgagor has not parted with his interest in the mortgaged properties and continues to be liable under the mortgage he can make a payment which will afford a fresh starting point under section 20. In *Venkatarama Aiyar* v. *Zamindar of Sivagiri*[8], it is held that the word "suit" in Article 84 is used in its ordinary and not in a technical sense and cannot be construed as including execution proceedings and appeal; hence a claim by an advocate for fees payable to him for services in the suit in which he was engaged should be filed within 3 years of the rendering of judgment in such suit. *Western India Oil Distributing Co.* v. *Ratnasabapathi*[9] decides that where a petrol pump and tank is provided by the principal to the agent for the sale of petrol, to be returned on termination of agency, the cause of action for the return arises on such termination and Article 89 applies. The cause of action and the right to sue first arose when the business between the parties ceased and not on the date when they were delivered to the agent. *Sankaralingam Pillai* v. *Thenpalaniandavar Temple*[10] holds that inasmuch as an application under section 44 of the Hindu Religious Endowments Act to enforce a charge created in favour of a temple under a settlement deed is filed as an application rather than as a suit by reason of the special procedure laid down in that section, the limitation applicable would be that applicable to a suit for the same relief, that is to say, the period provided by Article 132. *Veeraraghavayya* v. *Venkataraghava Reddy*[11] points out that though an application by a judgment-debtor to set aside an execution sale

1. (1947) 1 M.L.J. 231.
2. (1947) 1 M.L.J. 333.
3. (1947) 1 M.L.J. 1.
4. (1947) 2 M.L.J. 378.
5. (1947) 2 M.L.J. 93.
6. (1947) 1 M.L.J. 373.
7. (1947) 1 M.L.J. 153.
8. (1947) 1 M.L.J. 173.
9. (1947) 1 M.L.J. 360.
10. (1947) 2 M.L.J. 258.
11. (1947) 2 M.L.J. 468.

of his property on the ground that he had no saleable interest the property being a village service inam, is to be under section 47, Civil Procedure Code and not under Order 21, rule 91, it must be made within 30 days of the sale and Article 166 will apply. *Sankaralingam Pillai* v. *Thenpalaniandavar Temple*[1] holds that Article 181 does not apply to applications other than those under the Civil Procedure Code. *Kamakshi Ammal* v. *Ananthanarayanaswami Pillai*[2] decides that the *terminus a quo* under Article 181 has to be determined having regard to the nature of the particular case and the right to relief claimed therein. *Sivalinga Thevar* v. *Srinivasa Mudaliar*[3] holds that where there is a decree against both father and son, the decree against the son would become barred if an application is not made within the time prescribed by Article 182, notwithstanding that for some reason or other the execution of the decree against the father is not barred. *Nataraja Pillai* v. *Narayanaswami Iyer*[4] points out that where an execution petition is ordered to be returned for supplying certain information within the time specified but the decree-holder does not take the return from the court and thereupon the Court rejects the petition on a subsequent date, the order of rejection would be a "final order" within Article 182 (5) on a subsisting petition for the purpose of saving limitation. *Seetharama Chettiar* v. *Muthukrishna Chettiar*[5] takes a similar view. In *Lakshminarasimham* v. *Suryanarayana*[6] it is held that there is only one decree within the meaning of Article 182 notwithstanding that it includes several reliefs based upon distinct causes of action and the decree-holder can rely on clause (5) of the Article for limitation to be calculated from the dates of the final orders in previous execution applications notwithstanding that they sought execution of reliefs other than those sought in the later execution petition.

CIVIL PROCEDURE CODE.—In *Pedda Jiyyangarlu* v. *Venkatacharlu*[7], the Privy Council holds that a suit to establish the right to conduct the service in a temple in a particular manner is cognisable in a Civil Court. *Oor Nayakan* v. *Arunachala Chettiar*[8] holds that where a Court wrongly acts under an appealable provision of law and passes an order, a party is not deprived of the right of appeal though on the facts the order should not have been passed under that provision. So where a suit of a small cause nature is tried as an original suit an appeal is competent and the appeal Court will entertain the appeal and send the case back to be tried by the proper Court. *Kasi* v. *Ramanathan Chettiar*[9], states that the question whether an adjudication is a decree or not must be determined with reference to section 2 (2) and not with reference to implications, true or supposed, arising from the general provisions relating to judgments and decrees or to disposal of suits. Nor can any considerations of policy as to expeditious administration of justice or avoidance of delay and expense be imported. *Komarappa Goundan* v. *Ramaswami Goundan*[10] points out that as the words "the matter in issue" in section 10 should be taken to denote the entire subject in controversy, relief under that section would not be available where the facts in the two suits are not common except only with regard to one matter in issue. *Papamma* v. *Narayana*[11], recognises that the question of *res judicata* being one of law can be taken for the first time in second appeal. In *Brijlal Ramji Das* v. *Gobindram Gordhandas Saksaria*[12], the Privy Council holds that despite the definition of judgment in section 2 (2) the expression "foreign judgment" in section 13 means an adjudication by a foreign Court upon the matter before it. Not every step in the reasoning which led the foreign Court to its conclusion should have been directly adjudicated upon and "directly" does not mean "expressly"; hence where the "matter" which was "directly adjudicated upon" by the foreign Court was the validity of an award and the order of the Court in effect was that that it had been properly filed and that the objections to it must be dismissed, the order is a judgment within the meaning of section 13 which is conclusive between

1. (1947) 2 M.L.J. 258.
2. (1947) 1 M.L.J. 142.
3. (1947) 2 M.L.J. 583.
4. (1947) 1 M.L.J. 393.
5. (1947) 2 M.L.J. 553.
6. (1947) 2 M.L.J. 443.
7. (1947) 1 M.L.J. 159.
8. (1947) 2 M.L.J. 496.
9. (1947) 2 M.L.J. 523.
10. (1947) 1 M.L.J. 365.
11. (1947) 1 M.L.J. 274.
12. (1947) 2 M.L.J. 498 (P.C.).

the parties as to the validity of the award. *Srimanthu* v. *Venkatappayya*[1] holds that section 21 does not cover any objection going to the nullity of an order on the ground of want of jurisdiction and hence though an objection to the jurisdiction of the executing Court to order sale is not taken by the judgment-debtor it would be open to other judgment-creditors or the same judgment-debtor to proceed in execution against the property so sold as the sale is a nullity. *Nagi Reddy* v. *Kotamma*[2] points out that a Court to which a decree is sent for execution is the only Court which has seisin of the execution proceedings and it retains its jurisdiction to execute till it reports under section 41 to the decree Court the fact of execution or in case of failure to execute the circumstances attending such failure. In such a case the decree Court cannot entertain any execution application unless concurrent execution had been ordered or proceedings in the Court to which the decree has been sent has been stayed for purposes of executing the decree in the former Court. *Gopalaswami Mudaliar* v. *Thiagarajaswami Devasthanam*[3] decides that an order dismissing an application for amendment of an execution petition is a decision on a question relating to the execution of a decree and falls within section 47 and where the order definitely negatives the right of the decree-holder there is a final adjudication and the order is appealable. *Londa Abboyee* v. *Badam Suryanarayana*[4] holds that a recital of reasons for ordering arrest of judgment-debtor as required by section 51 is not necessary if the order eventually passed is not one that the judgment-debtor should be detained. *Sivaramiah* v. *Audi Reddy*[5] affirms that section 53 allows a decree to be passed against the separate assets of the father with the sons as well as the share of the father in the family properties. *Khaja Hasanulla Khan* v. *Royal Mosque Trust Board*[6] points out that a decree in a scheme suit under section 92 has the effect of precluding any one, whether a party to the suit in which the decree was passed or not, from asserting any rights vested in him which conflict with or attack the scheme. *Narasimhiah Chetty* v. *Sivaramiah Chetty*[7], holds that an appellate decision in a contribution suit remanding the case to the trial Court for passing a final decree in the light of the findings of the appellate Court (the liability having been decided and the working of the arithmetical result being only consequential) is a " decree " and as such appealable. *Chinnaswami* v. *Nallappa Reddiar*[8] points out that where the principles of law are well settled and the only question is as to their application to a certain set of facts there is no substantial question of law arising for purposes of section 110. *Tirumalai Tirupati Devasthanam Committee* v. *Chengama Naidu*[9] explains that the revisional jurisdiction under section 115 is only a variety of appellate jurisdiction and it will be competent to the High Court to issue a temporary injunction in its revisional side. *Brahamaramba* v. *Seetharamayya*[10] holds that as an application for leave to sue as pauper embodies a plaint, if the applicant dies during its pendency, his legal representative can come on the record and continue the suit on paying court-fee and limitation for the suit must be deemed to have stopped when the application to sue as pauper was filed, and section 149 will apply. *Bojjanna* v. *Kristappa*[11] states that the Court should not presume the existence of an inherent power to do that for which a statutory provision has been made and an execution sale cannot be cancelled after confirmation on the ground of fraud on Court in regard to the valuation of the property sold, such fraud not having been the subject of any application under O. 21, rule 90, within the prescribed time. *Ravu Venkata Mahipathi Surya Rao* v. *Chalamayya*[12] decides that there will be no justification to deny to the Court inherent jurisdiction to pass appropriate orders, revoking where the ends of justice so require its own wrong order based on assumptions which later have proved to be baseless. *Balaji Rao* v. *Natesa Chetty*[13] points out that the High Court can stay the trial of a suit out of which the proceedings

1. (1947) 1 M.L.J. 306 (F.B.).
2. (1947) 1 M.L.J. 156.
3. (1947) 1 M.L.J. 235.
4. (1947) 1 M.L.J. 246.
5. (1947) 1 M.L.J. 239.
6. (1947) 1 M.L.J. 395.
7. (1947) 2 M.L.J. 532.
8. (1947) 2 M.L.J. 194.
9. (1947) 1 M.L.J. 411.
10. (1947) 1 M.L.J. 119.
11. (1947) 1 M.L.J. 10.
12. (1947) 1 M.L.J. 87.
13. (1947) 1 M.L.J. 330.

in the High Court do not arise subject to the limitation that the applicant for stay has no other remedy open to him which he can seek in the Civil Court and that the ends of justice require such stay being given, to prevent abuse of process of Court. *Komarappa Goundan* v. *Ramaswami Goundan*[1] takes a similar view. *Chellappa Chettiar* v. *Manickam Pillai*[2] holds that an order setting aside a sale in execution consequent on the petitioner's omitting to abide by Court's previous order in another petition relating to the same property is justified under the Court's inherent powers as necessary to avoid abuse of process of Court. *Ankamma* v. *Raghavamma*[3] decides that once a preliminary decree has been passed in a suit for dissolution of partnership the Court has no jurisdiction thereafter to dismiss the suit for default as the Court has a duty to work out the details of the preliminary decree independently of the conduct of the parties and hence a wrong order dismissing the suit can be set aside under section 151. *Venkataramudu* v. *Krishnayya*[4] rules that merely because the Court has inherent power to dismiss, it cannot be said that it must also have the power to restore. *Pulla Madduletti Reddi* v. *Rahiman Bi*[5] lays down that a Court has no jurisdiction to re-open under section 151 a decree which has become final when there is neither any mistake nor accidental slip in the proceedings before it. *Ramakrishnan Chettiar* v. *Radhakrishnan Chettiar*[6] declares that section 152 which embodies the "slip rule" of the Supreme Court Rules enables correction only of errors, etc., in judgments, orders, etc., but gives no authority to correct errors in documents not directly involved in the proceedings themselves or to correct errors anterior to the proceedings. *Ramaswami Reddi* v. *Deivasigamani Pillai*[7] rules that where the dispute as to title to property is between *A* and *B*, it is not open to *C* to come in and insist on his title which is contrary to that set up by *A* being investigated and it would not be right to implead such a person as a defendant and then transpose him at the fag end of the trial as a co-plaintiff and pass a decree in his favour. *Kothandarama Reddi* v. *Lakshminarasimha Reddi*[8] points out that Order 2, rule 2 has no application to proceedings before the Hindu Religious Endowments Board. *Seshamma* v. *Seshadri Aiyangar*[9] lays down that where a claim is based on specific alternative titles an amendment relying on a third title cannot be permitted. *Bojjanna* v. *Kristappa*[10] holds that the principle of Order 7, rule 6 can be applied to an application to set aside an execution sale. *Vaithilinga Naidu* v. *Devanai Ammal*[11] points out that Order 9, rule 9 could be invoked on behalf of a minor plaintiff if the non-appearance of the next friend is *bona fide* but not where he has been negligent or deliberately obstructive. *Somasundaramma* v. *Seshagiri Rao*[12] decides that where on the refusal of an application for adjournment the plaintiff's pleader reports "no instructions" and the plaintiff though present during the defendant's arguments asks for time to engage another pleader which is refused, the trial Judge should in those circumstances pass an order dismissing the suit for default and not pass a decree on the merits against the plaintiff and where a decree on the merits has been in fact passed the plaintiff could still apply under Order 9, rule 9, for the restoration of the suit as if it had been dismissed for default. *Venkataratnam* v. *Appa Rao*[13] lays down that that Order 17, rule 3 applies only to cases where the parties are present. *Venkatarama Pillai* v. *Parusurama Pillai*[14] holds that Order 22, rule 10 must be read as providing only for cases of assignment, creation and devolution of interest other than those mentioned in rules 2, 3, 4, 7 and 8. *Murugappa Chettiar* v. *Thirumalai Nadar*[15] declares that an attachment could not be said to have been made, unless the provisions of both sub-rules of Order 21, rule 54 have been complied with; there must be both prohibition of transfer as also publicity by tom tom, etc. *Ponnuswami Mudaliar* v. *Subbaraya Mudaliar*[16] rules that an insolvent is a

1. (1947) 1 M.L.J. 365.
2. (1947) 2 M.L.J. 353.
3. (1947) 2 M.L.J. 233.
4. (1947) 2 M.L.J. 244.
5. (1947) 2 M.L.J. 587.
6. (1947) 2 M.L.J. 72.
7. (1947) 1 M.L.J. 371.
8. (1947) 2 M.L.J. 23.
9. (1947) 2 M.L.J. 183.
10. (1947) 1 M.L.J. 10.
11. (1947) 2 M.L.J. 566.
12. (1947) 1 M.L.J. 292.
13. (1947) 1 M.L.J. 271.
14. (1947) 1 M.L.J. 348.
15. (1947) 2 M.L.J. 310.
16. (1947) 1 M.L.J. 37.

"person interested" within the ordinary meaning of that term and can apply under Order 21, rule 90, and the amendment of Order 21, rule 22 does not affect the question. *Venkatarama Ayyar* v. *Sait Khialdass Topandass*[1] declares that there is nothing in Order 21, rule 90 to show that the auction purchaser should appear in the array of parties as a respondent and failure to implead the auction purchaser does not render an application under that rule incompetent and a petition for impleading him though made beyond 30 days should be allowed. *Kanagasabhai Pathar* v. *Pooranathammal*[2] states that in an application under Order 21, rule 100 the Court is not concerned with the title to the property but only with the factum of possession at the time when the applicant is alleged to have been dispossessed and the nature of such possession whether it was on his own account or on account of a person other than the judgment-debtor. *Arunachalam Aiyar* v. *Lakshminarasimham*[3] decides that while Order 22, rule 9 (2) limits an application to set aside an abatement to the legal representatives of a deceased plaintiff there is no similar limitation in respect of an application to bring on record the legal representatives of a deceased plaintiff or appellant. *Saradambal Ammal* v. *Kandaswami Goundan*[4] holds that the words "any interest" in Order 22, rule 10 include a transferable right to sue. *Namagiri Ammal* v. *Subba Rao*[5], declares that Order 39, rule 1 has no application to an appeal against a decree granting probate and in probate proceedings it is not correct to say that any property is in dispute. *Lakshmi Achi* v. *Subramania Pillai*[6], lays down that where a number of causes of action against separate defendants are joined together for reasons of convenience, and an order for security for costs passed in appeal in favour of some of the respondents is not complied with, it is not incumbent on the Court to dismiss the appeal in its entirety but to reject it only so far as it is against those respondents in whose favour the order for security for costs has been made leaving it to be prosecuted against the other respondents. *Gopalkrishna* v. *Narayana*[7], points out that under Order 47, rule 2 an application for review should be made only to the Judge who passed the decree and not to his successor but where the latter has entertained such an application without objection by the other party and disposed of it on the merits it is not open to that party, in appeal, to contest the entertainment of the application by the successor judge.

CRIMINAL PROCEDURE CODE.—The question of holding identification parades was considered in *Sangiah*, In re[8], which holds that the accused cannot demand that one should be held at or before the trial or enquiry. Nor is it that whenever the accused disputes the ability of witnesses to identify him, the Court should direct the holding of a parade. The test of the ability of a witness to identify should be decided in Court only. *Verghese Vaidyar* v. *Rex*[9] holds that section 54 of the Criminal Procedure Code does not require that the person arrested should be liable to be arrested without a warrant in case the offence had been committed in British India. *Krishnavataram*, In re[10], states that when an application under section 144 (4) is made and the applicant offers to show cause against the continuance of the *ex parte* order against him the Magistrate should hold an enquiry and cannot anticipate the nature of the evidence without doing so and confirm his order. *Munia Servai* v. *Thangayya Onturiyar*[11] holds that an application for stay of delivery of possession during the pendency of a revision petition against the final order in section 145 proceedings is incompetent. *Venkatasuryanarayanaraju* v. *Sundararamachandraraju*[12] lays down that possession of a fugitive, scrappy or recent character is not the possession contemplated in section 145 (4) as the possession to be maintained by the Magistrate subject to the result of the decision of the Civil Court. *Bheemavarappu Subba Reddi*, In re[13], holds that section 161 does not require the police officer to record individual statements though it is desirable that the statements should be recorded

1. (1947) 1 M.L.J. 355.
2. (1947) 2 M.L.J. 97.
3. (1947) 1 M.L.J. 276.
4. (1947) 2 M.L.J. 374.
5. (1947) 2 M.L.J. 364.
6. (1947) 2 M.L.J. 20.
7. (1947) 2 M.L.J. 585.
8. (1947) 2 M.L.J. 252.
9. (1947) 1 M.L.J. 2.
10. (1947) 2 M.L.J. 191.
11. (1947) 1 M.L.J. 171.
12. (1947) 2 M.L.J. 276.
13. (1947) 1 M.L.J. 193.

except where reasons of urgency or the exigencies of investigation make such recording undesirable. An important pronouncement on section 162 is made in *Pulukuri Kotayya* v. *King-Emperor*[1], which explains that the right conferred on the accused to copies of statements made by the prosecution witnesses during the investigation stage to the police is a valuable one as providing often important material for the cross-examination of those witnesses, and where the statements are not made available to the accused an inference, almost irresistible, will arise of prejudice to the accused. *Zahiruddin* v. *King-Emperor*[2] points out that the effect of a contravention of section 162 depends on the nature of the prohibition which has been contravened. If it consists in the signing of a statement made to the police and reduced to writing, the evidence of such a witness would not be inadmissible nor can allowing the witness to give evidence vitiate the proceedings. The use by the witness however, while giving evidence, of such a statement would raise different considerations. It is further stated by the Privy Council that a contravention of section 172 lays the evidence of the police officer open to adverse criticism but does not make it inadmissible. *Verghese*, In re[3], decides that section 188 as amended in 1923 is not controlled by sections 179 to 187 but controls them. *Ayamutty* v. *Baputty*[4] holds that section 203 confers ample jurisdiction on the Magistrate to dismiss a complaint if in his opinion no sufficient ground is made out for proceeding with the enquiry. In re *Ummal Hasanath*[5] states that section 205 applies only where the Magistrate has issued a summons in the first instance and not where the accused has been arrested without or after the issue of a warrant. It also holds that section 353 by necessary implication confers a power on the presiding officer, be he a Magistrate or a Sessions Judge or a Judge of the High Court to dispense with the personal attendance of an accused person. *Muppanna Appanna*, In re[6], holds that under section 238, the Sessions Judge can convict the accused of a minor offence even though the accused would have been tried by a jury and not by assessors in such a case. *Natesa Naicker* v. *Mari Gramani*[7], declares that section 247 requires the Magistrate to acquit the accused where in a summons case the complainant does not appear unless there is a proper reason for adjourning the hearing. An order thus passed is not revisable. *Miyala Narasimhacharya*, In re[8], points out that commencement of proceedings within the meaning of proviso (*a*) to section 350 (1) means an effective commencement and not a mere posting of the case from one date to another. Where a trial is effectively commenced the accused may demand that the witnesses or any of them may be resummoned and reheard. *Mahadevan*, In re[9], holds that where an appealable sentence has to be awarded in a case, the Magistrate is bound to take down the evidence of the witnesses and the evidence must form part of the record. The scope of section 411-A is explained by the Privy Council in *Thiagaraja Bhagavathar* v. *King-Emperor*[10]. An appeal under that section on a matter of fact can be brought only on a certificate of the trial Judge or with the leave of the Court of appeal. The Judge hearing an application for leave has a discretion, which however, should be exercised judicially, that is, after considering the special features of the case and without ignoring the effect which the grant of leave without due discrimination may have upon the whole system of trial by jury in the High Court. When once leave is given the entire matter is at large and the appellate Court must dispose of the appeal on the merits giving proper weight and consideration to the views of the jury implicit in their verdict as to the credibility of the witnesses, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt, etc. If the High Court thereupon concludes that the verdict of the jury is wrong it must allow the appeal and cannot uphold the verdict merely on the ground that it is not perverse or unreasonable This statement of the law is adopted in *Crown Prosecutor* v. *Krishnan*[11]. In *Godala Sanyasi*, In re[12], it is held that section 413 is really

1. (1947) 1 M.L.J. 219 (P.C.).
2. (1947) 1 M.L.J. 339 (P.C.).
3. (1947) 1 M.L.J. 277.
4. (1947) 2 M.L.J. 460.
5. (1947) 2 M.L.J. 142.
6. (1947) 2 M.L.J. 203.
7. (1947) 2 M.L.J. 156.
8. (1947) 1 M.L.J. 186.
9. (1947) 2 M.L.J. 307.
10. (1947) 1 M.L.J. 404 (P.C.).
11. (1947) 2 M.L.J. 128.
12. (1947) 2 M.L.J. 383.

in the nature of a limitation on the right of appeal given under section 408 to a convicted person and hence it should be seen in each case whether the Magistrate has passed a sentence of fine not exceeding Rs. 50 only. *Akbar Sheriff*, In re[1], holds that the tendering of a pardon by a Magistrate under section 337 is not revisable by the High Court under section 435. *Thanikachala Mudali* v. *Ponnappa Mudali*[2] decides that the proviso to section 436 requires notice only in the case of any person who has been discharged and not in the case of a person to whom no process has been issued and when the complaint has been dismissed without notice to him. *Tirumalraju*, In re[3], points out that under section 439 (3) the High Court as a Court of revision can inflict the same punishment which might have been inflicted by the First Class Magistrate. *Public Prosecutor* v. *Atchamma*[4] holds that where an order under section 476 is made to lay a complaint in respect of contradictory statements by a witness at different stages of the proceedings the absence of an express finding as to which of the statements is false does not vitiate the complaint, for even if it cannot be proved which of the statements is false a person may be charged and convicted in the alternative of intentionally giving false evidence at one stage or another. *Pakkirisami Pillai*, In re[5], makes it clear that the absence of a finding in such a case that the prosecution is expedient in the interests of justice is an incurable defect. *Kuppuswami Padayachi* v. *Jagadambal*[6] states that when once after the passing of an order for maintenance under section 488 the spouses have resumed co-habitation the order becomes automatically ineffective. Subsequent neglect can afford cause only for a fresh application. *Mohamed Rahimullah*, In re[7], holds that when a valid divorce under Muslim law has been given by a husband to his wife and the iddat maintenance is also paid he is no longer bound to pay the maintenance awarded under section 488 to the wife as the marriage has ceased. *Appayyamma* v. *Subba Rao*[8] holds that when once an order under section 488 is cancelled on an offer by the husband to take the wife back, the wife cannot resist the demand to live with him except by showing cruelty by the husband. *Grisilda Titus* v. *Louis Titus*[9] lays down that for purposes of section 489 (2) the Criminal Court should take the decision of the Civil Court as it stands and consider the effect of it on the order passed under section 488. *Venkataramaniah Chetty* v. *Pappamma*[10] decides that a husband seeking to recover the custody of his minor wife illegally detained by others can proceed under section 491 in spite of the fact that he may proceed under the Guardians and Wards Act. *Venkata Appala Naidu*, In re[11], points out that for restoration of possession of land under section 522 (3) it should appear to the Court that by criminal force or show of force or by criminal intimidation the complainant had been dispossessed. *Babakka* v. *Pedda Varadappa*[12], holds that failure to record under section 539-B a memorandum of the Magistrate's inspection will not lead to interference in revision if there has been no failure of justice. *Subbammal* v. *Alamelu Ammal*[13], states that under section 552 it has to be established that the detention of the child as well as the purpose of such detention were both unlawful. Detention by a step-mother of her step-daughter with a view to dispose of her in marriage as she pleases is an unlawful detention and for an unlawful purpose and in such a case the natural mother is entitled to ask for and obtain restoration of the custody of the child from the step-mother. *Thirumalraju*, In re[8], decides that section 545 empowers any Criminal Court which imposes any fine or any Criminal Court confirming in appeal that sentence of fine to make an order for compensation as comtemplated in that section.

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1. (1947) 2 M.L.J. 388.
2. (1947) 1 M.L.J. 368.
3. (1947) 1 M.L.J. 238.
4. (1947) 1 M.L.J. 197.
5. (1947) 2 M.L.J. 384.
6. (1947) 1 M.L.J. 34.
7. (1947) 1 M.L.J. 70.
8. (1947) 2 M.L.J. 288.
9. (1947) 1 M.L.J. 321.
10. (1947) 2 M.L.J. 153.
11. (1947) 1 M.L.J. 225.
12. (1947) 2 M.L.J. 306.
13. (1947) 2 M.L.J. 461.