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PREAMBLES OF CONSTITUTIONS AND CONSTITUENT ASSEMBLY

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Meaning of the word "preamble"

The word "preamble" is derived from the root "proe", before and "ambulare" to go and means a preceding or introductory fact or circumstance, a preliminary, especially, one betokening that which follows, a presage, a prognostic. In its special sense it signifies an introductory paragraph or part in a statute, deed or formal document, setting forth the grounds and the intent of it.

Preambles in conveyancing

In a conveyance, after the names of the parties between whom the indenture is made are mentioned, there comes the preamble of the deed setting forth the intent of the document in the following words:

"Whereas the said *A.B.* hath agreed with the said *C D.* for the absolute sale to him of the premises, lands, and hereditaments described in schedule hereto annexed at or for the price, etc."

These words determine the nature of the whole document. In case of ambiguity, it is this introductory part that furnishes the key to the construction of the whole document.

Preambles in the Acts of Legislatures

In regard to statutes, the term preamble is particularly applied to the opening paragraph, which summarises the intention of the legislature in passing the measure. A preamble is not a part of the Act itself but a mere recital. It may legitimately be consulted, for the purpose of solving any ambiguity, or of fixing the meaning of words, or of keeping the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to

doubt. The preamble cannot either restrict or extend the enacting part, where the language and the object and the scope of the Act are not open to doubt. It is a settled rule, that the preamble cannot be made use of to control the enactments themselves when they are expressed in clear and unambiguous terms. In discussing the question whether a preamble is at all necessary, Halsbury[1] has stated:

"An ancient philosopher thought he could make the law clear by a preparatory account of what it was intended to effect; but modern ideas rather point to plain enactment and desire to omit preamble altogether. Bacon undoubtedly favours the modern view that law should commence with enactment..... It may be that Bacon had in his mind what another judge expressly said: that the preamble might act as the "key" of the statute to explain its object, and thereby elucidate its meaning. . . . The difference was between the speculative Greek philosopher and the practical lawyer and man of the world, but the controversy whether the laws should *incipere a jussione* or whether they should have an expository, though not perhaps a hortatory, preamble is not settled yet."

Generally the practice of prefacing every Act of legislature with a preamble has however, continued till now.[2]

Language of the preamble

A statute as well as its preamble are usually in the mother tongue. The Irish Free State, while framing its present constitution together with the preamble, employed both the Irish and the English languages.

Parliamentary practice of discussing the preambles of some bills last and not first

The parliamentary practice of discussing the preamble differs according to the nature of the bill—public, hybrid or private.[3]

As regards public bills in the Lords, the first proceeding of the Committee is to postpone discussion of the title which is there treated as a part of the bill. The preamble is postponed next. In the Commons, by Standing Order No. 35, the preamble stands postponed until after the consideration of the clauses without question put. This practice is adopted because the House has already affirmed the principle of the bill on second reading, and it is therefore the province of the Committee to settle the clauses first and then to consider the preamble in reference to the clauses. The preamble is thus made subordinate to the clauses instead of governing them. It is only after all the clauses and schedules have

1. Halsbury's Laws of England, Vol. 1, Introduction, pp. ccxci-ccxcii.
2. Maxwell on the "Interpretation of Statutes", 6th Edition, Ch. 1, p. 77, foot-note (*c*).
3. May on "Parliamentary Practice", 13th Edition 1924, pp. 402, 411, 417, 388, 767, 784, 787, 792, 794.

been agreed to and any new clauses or schedules added, that the preamble is considered and if necessary is amended. And the Chairman puts the question "that this be the preamble of the bill." In the Lords, the title of the bill is considered last and agreed to. And in the Commons, any amendment that may be necessary is then made to the title. Where a bill has no preamble, it will be out of order to move one. If an amendment is proposed to the bill to leave out the preamble or any clause of the bill, the question is put that "the preamble or such clause stand part of the bill." Under Standing Order No. 40, when a bill is brought up on report, the House should proceed at once to consider the clauses of the bill, without general discussion of the bill as a whole. The preamble should therefore be considered as a clause and the discussion thereon should be as much confined to it, as if the clause was under discussion.

A Select Committee on a *hybrid bill* differs from one on a public bill, as the former has the same power over the bill as a committee on private bills has and decides the question whether the preamble of the bill is proved before proceeding with the clauses.

The Committee on *unopposed private bills* consider the preamble and all the provisions of a bill referred to them and take care that they conform to the Standing Orders. Even if there are no opponents of the bill before the Committee, the promoters have to prove the preamble to the satisfaction of the Committee by the production of necessary evidence and by such explanation as may be required of them. If it should appear that the bill ought to be treated as an opposed bill the Chairman reports his opinion and the bill is dealt with accordingly. Unlike the practice in regard to the public bills, the preamble of a private bill is first considered; and if the *preamble (to the Private Bill) be opposed* counsel addresses the Committee more particularly upon the expediency therefor and then calls witnesses to prove every matter which will establish the allegations contained in the preamble. The witnesses may be cross-examined by counsel appearing in support of the several petitions against the preamble. When the arguments and evidence upon the preamble have been heard, the room is cleared and a question is put "that the preamble has been proved" which is resolved in the affirmative or the negative as the case may be. In the case of an omnibus bill or a bill for the authorisation of several separate undertakings, it is usual to prove the preamble in sections. After hearing the evidence the Committee may announce that they consider the finance of the bill so unsatisfactory that on grounds of public policy, the preamble should be held not proved. The Committee will then report to the House that the preamble

has not been proved; or the Committee may make alterations in the preamble, subject to the same restrictions as in the case of other amendments, *viz.*, that nothing be introduced inconsistent with "the order of law" or with the Standing Order of the House applicable to the bill. Such amendments are to be specially reported.

Preambles of Constitutions

The term 'Constitution' has been defined as a system or body of fundamental principles according to which a nation, a state or body politic is constituted and governed. It may be embodied in successive concessions on the part of the sovereign power implied in long-accepted statutes or established gradually by precedents as in the British constitution, or it may be formally set forth in a document framed and adopted on particular occasions by the various orders or members of the Commonwealth or their representatives as in the constitution of the United States of America. Constitutions may be rigid or flexible. They may also be written or unwritten. In the case of written Constitutions, the name is sometimes applied to the document embodying it. In either case it is assumed or specifically provided that the constitution is more fundamental than any particular law and contains the principles with which the preamble on the one hand and all legislation on the other must be in complete harmony.

Relation of preambles to Constitutions

Preambles and statutes are closely knit together for the fulfilment of the ideals of good government or self-government as the case may be. Coke has said that the preambles of statutes are as it were the keys to the understanding thereof.

So if one wants to approach the study of statutes one has first to make a close acquaintance with their preambles. A study of the latter is rendered necessary to reveal to us the true nature of their constant companions, the constitutions.

There can never be a constitution of one kind having a preamble of a different kind. Manu has very aptly described the above principle in the following lines:—

"अन्यदुप्तम् जातमन्यदित्येतन्नोपपद्यते
उप्यते यद्धि यद्बीजं तत्तदेव प्ररोहति ।[1]

"It is never found that one thing is sown and another grown; the seed that is sown puts forth its own offshoots."

Preambles as ideals

The preambles of constitutions represent the ideals set forth by the nations that seek to achieve their purpose through the

1. Manu Smruti, Chapter 9, Verse 346.

enactment of the various statutes. The ideals though often similar are expressed in different words in different countries. Some preambles are for securing the blessings of liberty (as in America); some for maintaining the honour of the country (as in Switzerland); some for restoring national life and unity (as in Ireland); others are for establishing a realm of justice and freedom and for furthering the cause of peace and social progress (as in Germany); still others for the inclusion in Union under the Crown. A few are actuated by the spirit of democracy while others stand for the dignity of labour and still others (as in Russia) aim at abolishing for ever the division of society into classes and suppressing all exploitation of man by man.

Preambles of the constitutions of the republican countries:

Esthonian republic

After the armistice of November, 1918, the Provisional Government functioning in Esthonia proceeded to arrange for the election of a Constituent Assembly in the place of the National Council which had come into being then. On May 19th the Constituent Assembly confirmed the National Council's decision that Esthonia should be an independent Republic and on June 4th it adopted a provisional constitution pending the framing of the final constitution. The task of drafting was entrusted to a committee of the members of the Constituent Assembly. This Constituent Assembly was dissolved in December, 1920 and according to the new constitution the State Assembly met on 4th January, 1921. The constitution of the Esthonian Republic is remarkable alike for its simplicity and brevity. The preamble to the constitution adopted by the Constituent Assembly on 15—6—1920, is as follows:—

"The Esthonian people with unshaken faith, and the resolute will to create a state based on justice, law and liberty, to maintain internal and external peace for the general well being and to guarantee the social progress of the present and future generations, has framed the following constitution which has been adopted by the Constituent Assembly."

In *Czechoslovak Republic*, the Constituent Assembly met for the first time on November 14th, 1918 and immediately declared the Czechoslovak State as a democratic Republic. An executive was also created responsible to the Assembly. During the following year this Constituent Assembly was occupied with the task of debating the constitution put before it by the executive. The task of framing the constitution was accomplished on 20th February, 1920. The preamble ran as follows:—

" We, the Czechoslovak Nation, desiring to consolidate the perfect unity of our people, to establish the reign of justice in the Republic, to assure the peaceful development of our native Czechlosovak land, to contribute to the common welfare of all citizens of this State and to secure the blessings of

freedom to coming generations, have in our National Assembly this 29th day of February, 1920, adopted the following constitution for the Czechoslovak Republic; and in doing so we declare that it will be our endeavour to see that this constitution, together with all the laws of our land, be carried out in the spirit of our history as well as in the spirit of those modern principles embodied in the idea of self-determination, for we desire to take our place in the family of Nations as a member at once cultured, peace-loving, democratic and progressive."

The present Constitution of the United States of America was first drafted in a convention held on 25th May 1787 of which George Washington was the President. It was decided that this constitution should be referred to the people themselves in each of the States and not to the Congress or to the legislatures of the Colonies. This Convention thereupon became a Constituent Convention distinguished from a Constituent Assembly, for the purpose of convenience, by the fact that it would not of its sovereign right, prescribe a constitution, but would only refer it when drafted to the sovereign bodies or the sovereign peoples which it represented. The convention consisted of 55 delegates. It continued to sit until September 17th, 1787, when 39 delegates signed the constitution which had been drafted and sent it forward to the Congress. The Congress on September 28th, 1787, directed the constitution so drafted together with the resolution and a covering letter from the President:

"To be transmitted to the several legislatures in order to be submitted to a convention of Delegates chosen in each State by the people thereof, in conformity to the resolves of this Convention."

The preamble of the Constitution of the United States of America, 1787, is as follows:—

"We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish the Constitution for the United States of America."

In the Swiss Confederation, the two chambers of the legislature in 1874, caused the earlier Constitution of 1848 to be revised. A new draft Constitution was passed by them for submission to a referendum of the people. The preamble of the Federal Constitution of the Swiss Confederation of the 29th May, 1874, as revised up to the end of June, 1921, is as follows:—

"In the name of Almighty God, the Swiss Confederation resolved to consolidate the alliance of the confederated members and to maintain and increase the unity, strength and honour of the Swiss nation has adopted the Federal Constitution."

In the Act framing a constitution for the *Irish Free State* (*Saorstat Eireann*) and implementing the Treaty between Great Britain and Ireland signed at London on the 6th day o

December, 1921—The Constitution of the Irish Free State (Saorstat Eireann) Act, 1922 (No. I of 1922)—the preamble runs as follows:—

"Dail Eireann sitting as a Constituent Assembly in this Provisional Parliament, acknowledging that all lawful authority comes from God to the people and in the confidence that the National life and unity of Ireland shall thus be restored hereby proclaims the establishment of the Irish Free State (otherwise called "Saorstat Eireann").

and in the exercise of undoubted right, decrees and enacts as follows.

In Germany, the National Assembly, or Reichsversammlung, by which the Weimar Constitution was devised, met on 6th February, 1919, in the historic threatre at Weimar. Its first act was to create a temporary constitution of the Reich. The Provisional Government, resigned all authority to the National Assembly, acknowledging it as the highest and only Sovereign in Germany. Thus the way for the creation of the permanent Constitution by the National Assembly was made clear. A new draft was submitted to the National Assembly as a Ministerial Bill. This draft so revised was placed before the National Assembly for its consideration on 21—2—1919. It was referred to a special committee of 28 members who were appointed for the purpose of examining it in detail and reporting to the Constitutent Reichstag. Ultimately the new Reich Constitution was adopted on the 31st July, 1919. It was decided that instead of dissolving the Constituent Assembly it should itself become the first Reichstag under the Constitution both to save the confusion of further election and to enable legislation consequent upon the Constitution to be proceeded with without delay. With characteristic industry all the Constitutions of the world were ransacked, particularly constitutions such as the Swiss, which were both republican and federal. It proved, in the result, that the drafters had to look not abroad, but within the country; and they turned to the valuable work done by the Assembly that met in Frankfort in 1849.

The Weimar Constitution is in great part based upon, and indebted to the work of, these original founders of unity, who had to wait long before it could bear fruit. The preamble of the Constitution of the German Reich of 11th August, 1919, ran as follows:—

"The German people, united in every branch and inspired by the determination to renew and establish the realm in freedom and justice, to be of service to the cause of peace at home and abroad, and to further social progress has given itself this Constitution."

The first Constituent Assembly in Russia was dissolved on 18th January, 1918, on the very day when it first assembled. In spite of

the attacks from within and without the Bolsheviks remained in control of the country. They arranged to substitute their own Constituent Assembly for the Assembly which they had dissolved. On 18th January, 1918, the Third All-Russian Congress of Soviets met and adopted "the declaration of the rights of the working classes" which forms Part 1 of the present Constitution. The Fifth Congress, at its sitting on 10th July, 1918, adopted the present full Constitution. The preamble of the Constitution (Fundamental Law) of the Russian Socialist Federal Soviet Republic Decree of the Fifth All-Russian Congress of Soviets, adopted on July 10th, 1918, runs as follows:—

"With a fundamental aim of suppressing all exploitation of man by man, of abolishing for ever the division of society into classes, of ruthlessly suppressing all exploiters and of establishing the triumph of socialism in all countries, the Third All-Russian Congress of Soviets further decrees etc.

One of the epigrams of Naschokin, who was the Chancellor in the reign of Emperor Alexis of Russia in year 1600, was "Better than strength is thought; let us sell our soldiers and buy a man of thought."[1] The Russians would have very little thought then, that the man of thought whom their *descendants* would follow would be a man from Germany—Karl Marx—who like several other prophets has been honoured in countries other than his own.[2]

Preambles relating to the Constitutions of Monarchies: Belgium

The preamble of the Constitution of the Kingdom of Belgium, 1921, is as follows:—

1. Wigmore's Panorama of the World's Legal Systems, Vol. 2, pp. 786-787.

2. Following is a table, giving at a glance the year of the Constitutions of various countries prepared by the Constituent Assemblies or The National Assemblies:—

Country.	Year.	
1. The Union of South Africa,	1909.	Constituent Convention.
2. The United States of America	.. 1787.	
3. The Commonwealth of Australia	.. 1909.	
4. The Kingdom of Belgium	.. 1830.	
5. The Kingdom of Denmark	.. 1849, 1915.	
6. The Esthonion Republic	.. 1920.	
7. The French Republic	.. 1871, 1875.	
8. The German Reich	.. 1919.	"Reichsversammlung."
9. The Irish Free State	.. 1922.	
10. The United States of Mexico	.. 1856, 1917.	
11. The Russian Socialist Federal Soviet Republic	.. 1918,	
12. The Kingdom of the Serbs, Croats, and Slovenes	.. 1835, 1920.	"Skupshtina."

"In the name of the Belgian people the National Congress enacts this Constitution."

Sweden:—The following is the preamble of the Constitution of the Kingdom of Sweden:

"We, the estates of the Swedish kingdom, counts, barons, bishops, nobles, clergy, burghers, and peasants, assembled in general session on our own behalf and on behalf of our brethren at home, publicly declare that, whereas we the deputies of the Swedish people have gained the opportunity of improving the condition of our country through the establishment of a revised Constitution in consequence of the recent change of government to which we have given our unanimous consent, we do hereby repeal the fundamental laws which have been more or less in force up to this time, *viz.*, the Constitution of August 21, 1772, the Act of Union and Securities of February 21st and April 3rd, 1789, the Riksdag ordinance of January 24, 1617, and all other such old or new laws, acts, ordinances, enactments or resolutions as have heretofore gone under the name of fundamental laws; and we do hereby make known the adoption of the following Constitution for the Swedish Kingdom and its dependencies, which from henceforth shall be the foremost fundamental law of the land, reserving to this Diet the right to adopt in the manner herein prescribed, the other fundamental laws mentioned in Art. 85 of this Constitution."

England:—*The preamble to the Statute of Westminster*, 1931 (*22 Geo. V.*, c, 4) has assumed importance now-a-days from the Indian point of view. It runs as follows:—

"Whereas it is meet and proper to set out by way of preamble to this Act that in as much as the Crown is the Symbol of the free association of the members of the British Commonwealth of Nations as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom.

And whereas it is in accord with the established constitutional position thot no law hereafter made by the Parliament of the United Kingdom shall extend to any of the Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion.

And whereas it is necessary for the ratifying, confirming, and establishing of certain of the said declarations and resolutions of the said conferences that a law be made and enacted in due form by authority of the Parliament of the United Kingdom.

And whereas the Dominion of Canada, the Commonwealth of Australia the Dominion of New Zeland, the Union of South Africa, the Irish Free State and Newfoundland have severally requested and consented to the submission of a measure to the Parliament of the United Kingdom for making such provision with regard to the matters aforesaid as is hereafter in this Act contained.

Now, therefore, be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows:—"

This statute is a very important document in the constitutional history of the British Empire. The recitals in the first part of the preamble do not find a place in the enacting clauses of the Act. In other respects also this preamble is rather unique.[1] The statute was passed in 1931 to give effect to the resolutions of the Imperial Conferences of 1926 and 1930. The Imperial Conference of 1926 described the position and mutual relations of the group of self-governing countries composed of Great Britain and the Dominions. It said:

"They are autonomous countries within the British Empire, equal in status, in no way subordinate one to another in any aspect of domestic and external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations."

Progress in constitutional development has been rapid in the Dominions since Lord Durham made his famous report on Canada nearly a century ago and enunciated the principles of responsible Government. In introducing the Federal scheme for Canada in 1865, Sir John MacDonald observed in the course of his speech:

"One argument, but not a strong one, has been used for the Federation that it is an advance towards complete independence. Some are apprehensive that the very fact of our forming this Union will hasten the time when we shall have severed ourselves from the Mother Country. I have no apprehension of that kind. I believe it will have the contrary effect."

The report of the Inter-Imperial Relations Committee in 1926 showed that there still remained, both in practice and in law, certain forms and machinery forming part of the old system of centralised control over the Dominions which had become obsolete. In 1929, the Special Commmittee on the operation of Dominion legislation completed the work of investigation and its report was adopted by the Imperial Conference of 1930. The recommendations were designed both to carry into full effect the root principle of equality of status and to indicate measures for maintaining and strengthening the system of free co-operation. The Bill which resulted in the Statute of Westminster came forward with the express approval of all the Dominion Parliaments. Thus the above preamble has to be read in the light of the above historical facts.

Preambles of the Constitutions of the Dominions

The South Africa Act, by which the Imperial Parliament prescribed the South African Constitution, was passed in 1909. This constitution granted all powers, save in one or two small matters, to the Dominion, and so reduced the federating

1. "The Law of Indian Constitution" (by M. Ramaswamy, Advocate, Mysore High Court) Introduction, p. 23.

states to the position of administrative provinces. *The preamble of South Africa Act,* (9 Edwad vii, Ch. 9) runs as follows:—

"Whereas it is desirable for the welfare and future progress of South Africa that the several British Colonies therein should be united under one Government in a legislative union under the Crown of Great Britain and Ireland; And whereas it is expedient to make provision for the Union of the Colonies of the Cape of Good Hope, Natal, the Transvaal and the Orange River Colony on terms and conditions to which they agreed by resolution of their respective Parliaments, and to define the executive, legislative, and judicial powers to be exercised in the government of the Union; And whereas it is expedient to make provision for the establishment of provinces with powers of legislation and administration in local matters and in such other matters as may be specially reserved for provincial legislation and administration; And whereas it is expedient to provide for the eventual admission into the Union or transfer to the Union of such parts of South Africa as are not originally included therein: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—"

The Commonwealth of Australia was created by a Constitution passed by the Imperial Parliament in 1900. The preamble to the Commonwealth of Australia Constitution Act (63 & 64 Vic., Ch. 12) is as follows:—

"Whereas the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established: And whereas it is expedient to provide for the admission into the Commonwealth of other Australian Colonies and possessions of the Queen: Be it therefore, etc."

The British North America Act enacts the Canadian Constitution. It provided not only a Federal Constitution for the Dominion of Canada, but made constitutional provision for the government of the Provinces which came into the Federation. Under the Constitution specific legislative powers were given to the Constituent States, and the residuary powers were left to the Federal Parliament. In many matters Canada had reacted from the procedure of the United States. In 1867 Canada was given the constitutional status of a colony, whereas at the present time she exercises the constitutional usage of sovereign nationhood. The preamble of the British North America Act, 1867, is as follows:—

"Whereas the Provinces of Canada, Nova Scotia and New Brunswick have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in principle to that of the United Kingdom; And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire; And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Con-

stitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared; And whereas it is expedient that Provision be made for the eventual admission into the Union of other Parts of British North America; Be it therefore enacted, etc."

Preamble of the Government of India Act, 1935.

The present Government of India Act is the lengthiest of all the Government of India Acts. The Act has no preamble but it is to be read with the preamble of the Government of India Act of 1919, as laid down in S. 321, proviso (*a*) of the present Government of India Act. It runs as follows:—

"Whereas it is the declared policy of the Parliament to provide for the increasing association of the Indians in every branch of Indian Administration and for the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in British India as an integral part of the Empire; And whereas progress in giving effect to the policy can only be achieved by successive stages and it is expedient that substantial steps in this direction should be taken; And whereas the time and manner of each advance can be determined only by the Parliament upon whom responsibility lies for the welfare and advancement of the Indian people; And whereas the action of the Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility; And whereas concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those provinces in Provincial matters the largest measure of independence of the Government of India which is compatible with due discharge by the latter of its own responsibilities; Be it therefore enacted by the King's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows:—"

The preamble of the future constitution of India will depend upon whether dominion status or independence is to be the goal. In the former case, in view of the recent declaration of the Viceroy, we will have to look to and study the preamble of the Statute of Westminster, 1931. If necessary the preamble will have to be improved upon and made use of. Lord Zetland has quite recently announced that India's secession from England will not be allowed though according to the Viceroy's declaration India will be given a constitution in the terms of the Statute of Westminster, 1931.

If independence is taken as the goal, a preamble of the following type will suffice:

"We believe that it is an inalienable right of the Indian people as of any other people, to have freedom and to enjoy the fruits of their toil and have the necessities of life, so that they may have full opportunities of growth."

Demand for Constituent Assembly

The question as to who is to determine the future Constitution of India has become a matter of very great importance. On the one hand it is said that it is the British Parliament alone that can authoritatively decide the question, while the Congress insists upon its being decided by the Indian people. And for that, the machinery of the Constituent Assembly is proposed. It is urged by the Viceroy that there should be a Representative Committee for the present as a provisional measure. Mr. Patel has suggested a body composed of all the members of legislatures in the provinces. Others have improved upon it and suggested that Representatives selected from the members of the legislatures would very well serve the purpose; while Mr. Gandhi is satisfied with any "Representative Assembly". A valid objection is however raised to the scheme of the members of all legislatures forming the Representative Assembly on the ground that those members cannot be truly representative as they had been elected on the basis of the present defective electoral system. Sir Maurice Gwyer on his part discounts the procedure of Constituent Assembly elected on a wide franchise, and advocates a meeting of a small number of delegates. Really speaking a Constitution based on general agreement and drafted by a few experts is the best. But who are to be these delegates forming a small meeting is a very difficult question to be solved. Mr. P. Kodanda Rao, in an article in the "Hitawada" (of Nagpur), supports the view of compulsory partnership and comes to the conclusion that even in the British Dominions, the Constitutions were the impositions of majorities on minorities and not agreed settlements and that the dissenting minorities ultimately reconciled themselves to the imposition of majority decisions. Mr. P. Kodanda Rao rightly remarks:

'To the extent that an imposed Constitution embodies a moral principle, such as democracy, to that extent the opposition to it will be weakened and the stronger the majority imposing the Constitution, the greater the chances of the minority reconciling to it."

From what has been written above, the importance of the study of preambles will be apparent. When every thing is in the melting pot, let us pray in the words of our Ancients.

* "पुरा प्रातरनुवाकस्योपाकरणाज्जघनेन गार्हपत्यस्योदङ्मुख उपविश्य स वासवम् सामाभिगायति ॥

* Cchandogyopanishad, Adhyaya 2, Khanda 24, Shloka 4; Hume's Translation of the Upanishads.

लोकद्वारमपावार्णु
पश्येमत्वाधयम्
रा (ङम्) आज्यायो आ इति ॥ ४ ॥

Before the commencement of the morning litany, he sits down behind the Garhapatya Fire, facing the north, and sings forth the Saman to the Vasus:

"Open the door to thy people,
And let us see thee,
For the obtaining of,
The Sovereignty."

SUMMARY OF ENGLISH CASES.

CASWELL *v.* POWELL DUFFERYN ASSOCIATED COLLIERIES, LTD., (1940) A.C. 152 (H.L.).

Dangerous Machinery—Statutory duty to fence—Death of workman due to breach of statutory duty—Liability of employer—What employer should prove to escape liability.

Plaintiff as administratrix of her deceased son's estate sued to recover damages on the ground that his death was caused by a breach of a statutory duty imposed upon the defendants to keep securely fenced dangerous parts of the machinery in the mine. The defendant to escape liability will have to prove *(i)* that it was not reasonably practicable to avoid or prevent the breach or *(ii)* that a contributory cause of death was the negligence of the deceased workman and on the facts the defendants having failed to prove either of these were liable for damages to the plaintiff.

Decision of the Court of Appeal in (1938) 3 All.E.R. 21 reversed.

DOVER NAVIGATION CO. *v.* ISABELLA CRAIG, (1940) A.C. 190 (H.L.).

Workmen's Compensation—Sailor dying of yellow fever while working in mosquito infested area—How far accident arising out of employment—Tests.

To hold that an accident *(death due to yellow fever while working in mosquito infested area)* arose out of the employment a certain degree of casual relation between that accident and the employment must exist. It is impossible exactly to define in positive terms the degree of that casual connection, but certain negative propositions may be laid down, for example, the fact that the risk is common to all mankind does not prove that the accident does not arise out of the employment. Nor can it be held that death or

injury from the forces of nature (for example, earthquake and lightning) is not, merely because the accident is due to the forces of nature, an accident arising out of employment. However it has to be shown that the workman was especially exposed by reason of his employment to the incidence of such force.

4 British Workmen's Compensation Cases 295 overruled.

MORRISON'S WILL TRUSTS, *In re*: WALSINGHAM *v.* BLATHWAYT, (1940) 1 Ch. 102.

Will—Clause for forfeiture of benefits in case legatee shall become or marry a Roman Catholic—If void as offending rule against perpetuities.

A clause in the will provided as follows:—"If either during my lifetime or after my death any legatee under my will including any person who shall benefit under this present clause shall be or become Roman Catholic or shall marry a Roman Catholic or shall give any promise or come under any obligation to bring up as a Roman Catholic any child of such legatee then and in every such case and as from the occurrence of such event such legatee shall absolutely forfeit and lose all benefits and powers given to him or her by my will.....and such interests shall fall into and form part of the residuary estate." Some legatees having become Roman Catholics, it was contended on their behalf that the clause of the will is void because it may operate at a point of time outside the period of time allowed by the rule against perpetuities.

Held, upon a true construction of the clause upon the hypothesis that the word 'legatee" includes every person who takes a benefit in legacy under the will, the clause is capable of being applied separately to the interests of that legatee and upon that footing if he is one of the persons who has done the prohibited act, and could only have done it within the perpetuity period, then as regards that person the condition is valid. On the facts there was held to be forfeiture.

EAVES, *In re*: EAVES *v.* EAVES, (1940) 1 Ch. 109 (C.A.).

Wills—Gifts to wife during widowhood—Remarriage of widow decreed a nullity—Effect.

The testator gave his wife a legacy and gave to her the use of a certain house and an annuity of £600 during her life or widowhood to be paid by the trustees. The testator died in 1919 and his widow remarried on September 24, 1925. A decree *nisi* of

nullity of that marriage was made on 24th May, 1937, and that decree was made absolute on 15th November, 1937, on the ground of incapacity of the husband to consummate the marriage. She then claimed the life interests as widow.

Held [affirming (1939) Ch. 1000], the material transaction in the present case was the handing over of the fund to the defendant as his own in anticipation that on 24th September, 1925, the widow would acquire the status of a married woman. When she married the transaction became complete and effectual and could not have been questioned in any Court at any time before the decree of annulment, and the annulment cannot have the effect of undoing or reopening such a transaction. In the circumstances of the present case the defendant was left by the widow to act and did in fact act on the view that the winding up of the trust was a completely legal transaction, leaving the funds in his hand as his own to spend and the plaintiff cannot subsequently question the legality of the transaction.

PROVENDER MILLERS (WINCHESTER), LTD. *v.* SOUTHAMPTON COUNTY COUNCIL, (1940) 1 Ch. 131 (C.A.).

Riparian owners—Alteration by County Council (under statutory powers) of a culvert over a river to provide outlet for flood-water—Liability for interference with and damage to right of millowner deriving water-power from river—Onus—Right of riparian owners to protect themselves against flooding—Extent.

The appellants, a County Council under their statutory powers, in altering a culvert over a river increased the size of the alveus of that portion of stream and also made an entirely new alveus to carry the water which had been running in the old stream. This had the effect not merely of protecting the appellant's land from flooding but also of diminishing the flow of water in the main stream thereby affecting the rights of the respondent a millowner deriving water-power from the river. In a claim by the respondent for injunction and damages,

Held, whether the stream be natural or artificial, the appellants are liable. The alteration cannot be described as the removal of an obstruction in a water course. As the appellants really made no attempt to discharge the burden upon them of showing that the statutory object of repairing the bridge and protecting the highway against flood could not reasonably have been achieved without permanently altering the normal flow of the river to the prejudice of riparian owners the appellants were liable.

Decision of Farwell, J., (1939) 3 All.E.R. 882 affirmed.

CAPON, *In re*, (1940) 1 Ch. 151.

Sale of goods—Auctioneers providing funds for purchase of pigs—Purchaser removing pigs after signing note acknowledging receipt of the pigs, that the pigs were auctioneers' property and could be removed and sold by them—Arrangement not registered as a bill of sale—Seizure and sale by auctioneers after bankruptcy of purchaser—Effect.

Auctioneers who had provided funds for purchase of pigs by a farmer (who before removing them signed a note acknowledging receipt of the pigs and stating that the pigs were the auctioneers' property and could be removed and sold by them,) on the bankruptcy of the farmer seized and sold the pigs and claimed to retain the sale proceeds against the trustees in bankruptcy. They contended that the farmer was an agent in the purchases at the auctions and the arrangement was to give them a security.

Held, as between the vendors and the farmer the farmer was not an agent of the auctioneers and the property in the pigs passed to him and the arrangement not being registered as a bill of sale created no charge and the auctioneers must account to the trustee in bankruptcy for the proceeds of sale.

SELWOOD *v.* TOWNLEY COAL AND FIRECLAY CO., (1940) 1 K.B. 180 (C.A.):

Workmen's compensation—Receipt of half wages during disablement under the statute—Effect on right to damages under common law.

Where a workman has received half wages during his period of disablement as compensation under the statute,

Held, following (1940) 1 K.B. 56, a judgment for damages in a commen law action in respect of the same accident cannot be passed against an employer who has paid compensation under the statute. The result is the same even where the workman has not received the whole compensation and has received only a small portion.

HEWITT *v.* BONVIN, (1940) 1 K.B. 188 (C.A.).

Negligence—Father's motor car driven by son for latter's purposes—Death of passenger on account of negligent driving—Father whether liable as master or principal.

The son wanted to use his father's car solely for his own purposes—to drive *H* and two girl friends of theirs. He took the car with the permission of his mother who however did not know the purpose. The mother had authority from the father who was absent from town to give permission. When returning, through

negligent driving the car was overturned and *H* was killed. In an action by the administrator of the deceased for damages,

Held, on the facts that the son was not the agent or servant of the father. It is merely the loan of a chattel to be used for the son's own purposes and the father is not liable.

GRIGGS *v.* PETTS, (1940) 1 K.B. 198 (C.A.).

Practice—Costs—Payment of money by defendant into Court—Plaintiff asking for leave to take out money in satisfaction of claim at the time of hearing—Proper order as to costs—Discretion of Court—Appealability—R.S.C., O. 22, R. 3.

Plaintiffs claimed damages for injuries sustained by reason of the negligent driving by defendant of a motor car. Defendant paid into Court a certain amount, but, denying liability. When the case was taken up for trial, plaintiff said he would take out the money which was in Court and asked for the usual order. The order was made without providing for costs of defendant after the payment into Court. On an appeal by defendant,

Held, the order under appeal was not one for costs only and the appeal was competent. The Judge has a discretion which is subject to appeal. The order for payment out, should not have been made without providing for costs incurred by defendant after the date of payment into Court.

STEVENS *v.* TIRARD, (1940) 1 K. B. 204 (C.A.).

Income-tax—Finance Act (1920), S. 21—Payment of money to wife on condition that she is only bound properly to maintain the children—If income of child in his own interest.

By an order of the Divorce Court the husband was ordered to pay his wife who divorced him certain sums in excess of £50 per annum for maintenance and education of the three children.

Held, it cannot be said that the child is entitled in his own right to money paid to his guardian for his maintenance. The money is not impressed with a trust, but is paid upon a condition and it is the mother's income.

(1939) 2 K. B. 410 affirmed.

WRINGE *v.* COHEN, (1940) 1 K. B. 229 (C.A.).

Nuisance—Premises adjoining highway—Passer by injured by collapse of wall—Liability of owner or occupier.

If owing to want of repair premises on a highway become dangerous and, therefore, a nuisance, and a passer-by or an adjoin-

ing owner suffers damage by their collapse, the occupier or the owner if he has undertaken the duty of repair, is answerable whether he knew or ought to have known of the danger or not. On the other hand if the nuisance is created not by want of repair, but, for example, by the act of a trespasser, or by a secret and unobservable operation of nature, such as a subsidence under or near the foundations, neither an occupier nor an owner responsible for repair is answerable, unless with knowledge or means of knowledge he allows the danger to continue.

HAILE *v.* WEST, (1940) 1 K. B. 250 (C.A.).

Practice—Costs—Exercise of discretion contrary to the rules which have statutory sanction—Power of appellate Court to deal with the matter.

If the trial Judge has exercised his discretion as to costs contrary to the rules which have statutory sanction, then according to *Campbell* v. *Pollak*, [(1927) A. C. 732] and other well-known authorities, the Court of Appeal has ample powers to deal with the matter.

PETRIE *v.* MAC FISHERIES, LTD., (1940) 1 K. B. 258 (C.A.).

Master and servant—Right of servant to wages for period of absence during illness—Implied term excluding right.

Before the period of employment, a notice was put up by the employers in the place where the man worked, to the effect: "……the under-mentioned allowances will be made when men are absent:—During sickness: Half pay commencing from the first day's absence up to a total of 21 days per annum. No allowance after…These allowances are purely an "act of grace" and cannot be claimed as a "right"." In 1933, 1936 and 1937 the employee while sick and away from work did in fact receive this gratuity of half pay. In 1938 he was again ill and claimed full wages as of right.

Held, that the arrangement that when ill he was to take half pay, whether as of right or whether as a gratuity, negatives any presumption that he was working on the terms that he was to get full wages while he was temporarily sick.

Morrison v. *Bell*, (1939) 2 K.B. 187: (1939) 1 All. E. R. 145, explained.

SOWLER *v.* POTTER, (1940) 1 K. B. 271.

Lease—Lessee with previous conviction for allowing disorderly behaviour taking lease in a name to which she had hers changed

later—If lease can be terminated as void ab initio *on the ground of mistaken identity and concealment*

One Anna Robinson was convicted for allowing disorderly behaviour in her premises. As Ann Potter (to which her name was subsequently changed by deed poll), she took a lease of certain other premises for conducting a restaurant therein. The lessors on discovering her identity started proceedings to recover the premises and to have the lease declared void on the ground of mistaken identity and concealment.

Held, the case of a landlord and tenant is clearly a case where the consideration of the person with whom the contract was made is a vital element in the contract and therefore if there is a mistake with regard to the identity of the person with whom one is contracting the contract is void *ab initio* and the lessee is liable as if she was a trespasser.

AYRES *v.* MOORE, (1940) 1 K.B. 278.

Bills of exchange—Acceptance under mistake of fact—Effect on liability of acceptor—Fraud in procuring acceptance—Effect on rights of plaintiff who is not a holder in due course.

In a defence (by the acceptor) which seeks to repudiate liability upon a contract in a bill of exchange by reliance upon the allegation that such a contract was entered into under a mistake of fact it is necessary to show that the mistake was as to a fact affecting the liability, or at any rate fundamental to the transaction.

Aikin v. *Short*, (1856) 1 H. & N. 210 and *Morgan* v. *Ashcroft*, (1938) 1 K.B. 49, applied.

Where the bills when taken by the plaintiff were incomplete (as no name of drawer was inserted) and also the plaintiff was the original payee (in this case the drawer) the plaintiff is not a holder in due course and is not protected from the effects of the fraud in making defendant accept the bill and the defendant, having repudiated the obligation as soon as might be after the discovery of the fraud, is entitled to succeed.

THE KING *v.* THE RECORDER OF BOLTON: *Ex parte*, MC VITTIE, (1940) 1 K.B. 290 (C.A.).

Public Health Act (1936), S. 58—Order to execute works of repair or restoration—Specification of works if essential for validity of order.

Under the Public Health Act, 1936, S. 58 the owner of certain structures was ordered by the justices for the County Borough to execute such works of repair or restoration or if he so elected to demolish the structure and remove the rubbish as may be necessary for remedying the cause of the complaint;

The order was confirmed by the quarter sessions. On an order *nisi* for a writ of *certiorari* for quashing the order it was argued that the order was bad as it did not specify the works of restoration or repair.

Held, affirming [1939] 2 K.B. 98, S. 58 did not require specifications of the works to be given and the order was valid.

KENT *v.* EAST SUFFOLK RIVERS CATCHMENT BOARD, (1940) 1 K.B. 319 (C.A.).

Sea wall—Repair by statutory authority—Negligent delay in repairing—Damage to plaintiff's land by salt water—Liability.

In a claim for damages by the owner of pasture land which had been damaged by salt water owing to the negligence and delay of the statutory authority in carrying out the repairs to a sea wall,

Held (Slesser and MacKinnon, L. JJ., du Parcq, L. J., dissenting) a body having powers but no duties conferred by statute can be under no liability if damages arise to a person by the mere failure to exercise that power. But where such a body undertook and attempted to do that work under their powers and damage is caused by their incompetent exercise they are liable for damages for misfeasance as the plaintiffs were induced, to their detriment to rely upon the board's undertaking to do the work and themselves to abstain from doing it.

Per *du Parcq, L. J.*—A catchment board which is under no statutory duty to landowners within its area, is never liable to one of them either for a total neglect to exercise its statutory powers (or if no more is proved) for exercising them with a lack of efficiency or with too little zeal or dispatch.

STIMPSON *v* STANDARD TELEPHONES AND CABLES, LTD., (1940) 1 K.B. 342 (C.A.).

Master and servant—Dangerous machine—Employer failing to fence machine properly—Breach of statutory duty—Injury to infant workman—Receipt of compensation under Workmen's Compensation Act—When bar to common law right to damages.

The employers did not carry out their statutory obligation to fence a dangerous machinery and the plaintiff, an infant workman whose hand was caught in the machine suffered injury which would not have been caused, if the statutory duty had been performed. The father of the infant plaintiff had claimed and received compensation under the Workmen's Compensation Act. In a subsequent action under common law,

Held, the necessary casual connection is established between the negligence of the employer and the injury suffered by the plaintiff. The burden of proving contributory negligence was on the defendants.

In order that the payment under the Workmen's Compensation Act may have the necessary quality to operate as a discharge of the liability of the employer it must be paid and received as compensation under the Act. In the case of an infant the question as to the mental operation on the part of the recipient is to be decided on the test whether the receipt is for the infant's benefit. On the facts the receipt of compensation by the father was not for the infant's benefit and that cannot bar any action at common law.

COMPAGNIE PRIMERA DE NAVAGAZIONA PANAMA *v.* COMPANIA ARRENDATARIA DE MONOPOLIO DE PETROLEOS S. A. (1940) 1 K.B. 362 (C.A.).

Shipping—Charterparty for two consecutive voyages—Deviation in first voyage—Effect on charterer's liability to fulfil the contract.

A ship chartered for two consecutive voyages, in its first voyage made a deviation from the agreed course.

Held, that contract was an entire contract for two voyages and the deviation in the first voyage relieved the charterers from implementing the contract with regard to the second voyage if they elected to repudiate the contract.

(1939) 2 K. B. 117: (1939) 2 All. E. R. 240 reversed.

NEWSTEAD *v.* LONDON EXPRESS NEWSPAPER, LTD., (1940) 1 K. B. 377 (C.A.).

Defamation—Libel—Statement complained of true about existing person of same name as plaintiff—Absence of intention to defame—Effect.

The defendants, a newspaper published an account of a bigamy trial referring to the prisoner as "Harold Newstead, thirty-year-old Camberwell man". The account was true of a barman of that age and name. The plaintiff also was of the same name and age but in the hairdressing business. In an action for damages for libel,

Held, if there is a risk of coincidence it ought in reason to be borne not by the innocent party to whom the words are held to refer, but by the party who puts them into circulation.

BUTLER *v.* STANDARD TELEPHONES AND CABLES LTD., (1940) 1 K.B. 399.

Tort—Nuisance and trespass—Damage caused to plaintiff's building by action of the roots of trees on defendant's ground—Remedy of plaintiff.

Where by the action of the roots of poplar trees planted in the defendant's ground there was draining of the clay beneath plaintiff's house and subsidence of the plaintiff's building, the plaintiff has a right to cut the roots of the offending trees and is also entitled to recover damages, if damages has accrued to him or been suffered by him owing to the action of the roots.

RUSHBROOK *v.* RUSHBROOK, (1940) P. 24.

Divorce —Desertion — Deserting spouse certified lunatic— Effect on animus deserendi*—Presumption.*

Where a person is proved to be a lunatic accepted in law by certification as a lunatic it is impossible to make any inference at all that the lunatic is capable of having the *animus deserendi* and a petition for divorce based on mere factum of desertion during such period cannot succeed.

REEVES *v.* REEVES, (1940) P. 28.

Divorce—Period of six months between decree nisi *and decree absolute—Adultery of petitioner in such period—Effect.*

The six months interval between the decree *nisi* and the decree absolute is not in any way intended as a test of morality for the petitioner and it is not right to impose a test of that kind. The object is to enable the King's Proctor to make inquiries as to the *bona fides* of the petitioner's case. So adultery committed by the petitioner subsequent to the decree *nisi* cannot by itself stand in the way of the decree being made absolute.

JOTTINGS AND CUTTINGS.

Dramatic Strokes in Advocacy.—Whether occurring on the stage or in real life, sensational effects invariably appeal to the generality of people, and in a great trial nothing excites the interest of the spectator or reader so much as some dramatic coup by a master in the art of advocacy. In some cases the coup, like many another "impromptu," may have been carefully prepared beforehand, but in others it arises unexpectedly and spontaneously out of the turn which the trial may have taken; but whether rehearsed or not the effect on the spectator is the same, for to him it comes with the shock of surprise, and on that account excites his admiration of the tactical skill of its author. An excellent illustration of such a dramatic episode occurred, it will be remembered, in the Parnell Commission, when Sir Charles Russell fully exposed the forgeries of Pigott by asking that wretched man when

in the witness box to write down various words on a slip of paper, these on examination being found to be misspelt in precisely the same way as in the letters the subject of inquiry. No one will readily forget the effect of this dramatic stroke, and the collapse which followed. Striking though it was it was not without precedent for exactly the same method of exposing a forgery had been followed in a Scots court. There the forger when trapped by his faulty orthography, confessed his guilt, and this, too, after half a dozen engravers had given it as their opinion that the document in question was genuine. So much for expert evidence!—*L. T., 1940, p. 26.*

O'Connell and the Hat Trick.—The expression "the hat trick" so familiar with us in connection with our national game, had a very different meaning in the hands of Daniel O'Connell who, it will be recalled, was a master of the art of advocacy, and indeed second to none. Many anecdotes testify to his amazing skill in this sphere, and two of them may be recalled. In a murder trial at Cork the principal witness for the prosecution gave most damaging evidence against the accused, being especially emphatic about a hat found near the place of the murder, which, he swore, belonged to the prisoner whose first name was James and for whom O'Connell appeared. The hat being in court, O'Connell picked it up and said to the witness, "Are you sure that this is the same hat?" "Yes", was the reply. "Did you examine it carefully before you swore in your information that it was the prisoner's?" "I did." "Now, let me see," continued O'Connell, who began to examine the inside of the hat carefully, and then, still keeping his eyes on the interior of the hat he spelt very slowly the letters "J.A.M.E.S." He then inquired of the witness whether the hat contained that name. "It did," promptly replied the witness. "Then", said O'Connell handing up the hat to the bench, "there's an end of the case my Lord, there is no name inside the hat!" An acquittal followed as a matter of course. The second anecdote admirably illustrates his power of penetration and deduction. A suit was instituted regarding the validity of a will. O'Connell was engaged on behalf of those who sought to have it set aside, and he put several questions to one of the witnesses to ascertain whether or not the testator was actually alive when the will was said to have been signed. To these the unvarying answer was that "there was life in Mr. So-and-So when the will was signed." Struck by the form of this reply O'Connell thus addressed the witness. "Now, by the solemn oath you have taken, and as you will one day answer for the truth, was there not a live fly in the

dead man's mouth when his hand was put to the will?" In the greatest alarm, the witness confessed that this was so, thus accounting for the peculiar form of the answer.—*L. T., 1940, p. 26.*

An Arithmetical Test.—Duncan M'Neill, afterwards ennobled with the title of Lord Colonsay, a distinguished judge of the Scots bench, also exhibited remarkable skill in the conduct of the cases in which he was briefed. In one of these he administered a well-merited reproof to a medical witness who had too hastily formed an opinion adverse to the sanity of his—M'Neill's—client. The latter, a poor recluse named Yoolow, deformed in body as well as undoubtedly somewhat eccentric in his habits, was alleged by certain of his relatives who apparently had an eye to his belongings, to be incapable of managing his affairs, and accordingly they took proceedings to have this judicially established. At the trial one of the medical witnesses detailed the tests which had been applied to ascertain the mental capacity of Yoolow, among these being an arithmetical one. It came out in evidence that Yoolow had a sum of £1,200 in the bank on which he received the yearly interest of £20. Being asked at what rate per cent. this was, he replied that he was unable to say, never having been taught arithmetic. When it came to M'Neill's turn to cross-examine the witness, he said, "You may take time to answer this question. If £1,200 is laid out at interest and yields £20 yearly, how much is it per cent. by the year?" "I am not able to calculate that without pen and ink, not being conversant with such matters," answered the witness. "If you had pen and ink" continued M'Neill, "could you calculate it? Here are pen and ink." Thus faced with the problem the witness answered reluctantly, "I cannot say I could calculate it with pen and ink." So much, said M'Neill in effect for "the test by which you would adjudge this man an idiot, a test which you, an educated man, cannot yourself satisfy." The jury were very naturally much impressed by this cross-examination of the medical gentleman, which taken in conjunction with other points adroitly made by the skilful advocate, contributed to a verdict favourable to poor Yoolow.—*L.T., 1940, p. 26.*

Canadian Appeals.—If, as a consequence of the majority decision last week of the Supreme Court of Canada that it is constitutionally competent for the Parliament of the Dominion, should it deem it expedient, to abolish altogether the right of appeal from the Canadian courts to the Judicial Committee of the Privy Council in both civil and criminal cases, it will involve a serious

diminution in the work of the Committee, whose headquarters in somewhat commonplace surroundings in Downing Street have never seemed worthy of the place which the Committee holds in the sphere of the administration of justice. To the Board, as it is sometimes called, there has come a steady flow of appeals, and Canada has been fortunate in finding the members of the Committee so eminently qualified to deal with the many difficult questions that have been submitted to it; but it has to be quite frankly recognised that the great Dominions naturally desire to be in greater measure self-contained in legal as in other matters. Appeals from the High Court of Australia have been seriously restricted in recent years, the view being held there as in other Dominions that appeals to a court sitting in England and composed predominantly of English judges is a serious limitation upon Dominion autonomy. In 1926 the Imperial Conference placed it upon record "that it was no part of His Majesty's Government in Great Britain that questions affecting judicial appeals should be determined otherwise than in accordance with the wishes of the part of the Empire primarily affected", although isolated action was deprecated We may expect, therefore, ere long a cessation of that flow of appeals from the great western Dominion whose tribunals will be regarded as self-contained and self-sufficient. —*S.J., 1940, p. 49.*

Stopping the Case.—One of the Court of Appeal's reported decisions last term ruled against the right of counsel in civil matters to invite the jury to stop a case, since none should interfere in this respect between the judge and the twelve men. The Court expressly abstained from dealing with the practice in criminal trials, though in these the judge is more often faced with the question of asking the jury whether they have heard enough. Once in Ireland, at Listowel, however, the position was reversed. Judge Shaw was trying a case of rape in which the prosecutrix gave her evidence with remarkable boldness and baldness. At last in disgust he said to the jury: "Ah! gentlemen, you daren't hang a dog upon evidence like this. Just put your heads together and see if you want to go any further before acquitting the prisoner." After a whispered consultation the foreman spoke up: "Your Honour, we're unanimously of opinion that the boy didn't do it, but should your Honour be wishful to hear any more evidence, we wouldn't be stopping you".—*S. J., 1940, p. 58.*

The Wrong Case.—At Marylebone Police Court recently a special constable, referring to his notebook, began his evidence:

"At 7-30 p.m. on the 8th December, your worship . . . ." "But the summons says it occurred on the 15th," interrupted the clerk. "No, sir, it was the 8th," said the constable. At last it was discovered that he had lost his way in his notebook and was looking at the wrong case. Such mistakes have sometimes been carried further in higher places. Once in Ireland when a case was called on two counsel rose. The senior of them impatiently waved the younger down, and he, being newly called, imagined that the other had been brought in at the last moment to lead him. The opening obviously puzzled the court, and the reading of the affidavits only introduced further confusion. At last the presiding judge intervened: "What case do you think you are arguing, Mr. Bartley?" "I'm arguing *M'Carron* v. *Quaid*, of course," was the reply. "Ah! that explains it," said the judge. "The case that was called on was *O'Carroll* v. *Lane*." Bartley turned to the young man he had interrupted, saying indignantly: "Why don't you get up and argue your own case?"—*S.J., 1940, p. 58.*

Blaming the Law.—Sometimes transgressors of the law make the law itself their excuse. Thus, two respectable middle-aged East End mothers who were recently charged before Mr. Metcalfe with stealing twenty-two pairs of mittens from a shop pleaded that on the fatal day they had met in that very court to listen to a case involving some friends of theirs, that afterwards they had gone away and had some drinks and then more drinks and that they were still dazed by the effect of these refreshments when they did the deed. A little while ago Sir Robert Dummett had a delightful case before him at Bow Street. A man had been seen leaning against a horse outside the Law Courts. When the animal had shifted its position he had crashed to the ground and now he was charged with being drunk. When asked why he had been leaning against the horse he replied, unsmiling, in a small precise voice: "I was very worried, your worship. I had to appear in a case at the Law Courts and it worried me. I think the exitement of the Law Courts and the cold outside were responsible". When pressed he admitted that he had had a pint of ale but the magistrate genially discharged him under the Probation of Offenders Act, warning him not to get so worried in the future.—*S.J., 1940, p. 75.*

BOOK REVIEWS.

A TEXT-BOOK OF MEDICAL JURISPRUDENCE AND TOXICOLOGY, by Rai Bahadur Jaising P. Modi, L.R.C.P. & S. (Edin.), L.R.F.P.S. (Glasgow), Sixth Edition, Revised and Enlarged. Published by Messrs. Butterworth & Co. (India), Ltd., Bombay.

A text-book on Medical Jurisprudence and Toxicology which has passed through six editions in a comparatively short period does not require an introduction to the medical man or the lawyer. Dr. Modi has filled several important posts in many universities and has practical experience of teaching the subject to students of medicine and knows their requirements and difficulties. A text-book from his pen is bound to be of value to the students and practitioners alike. In the present edition of the book, he has introduced the necessary alterations and additions and new cases have been added with a view to illustrating important and interesting medico legal points. It is needless to say that the essentials of the offences have been clearly set out and explained and the application of the principles and knowledge of medicine in finding them out fully stated. A number of plates and illustrations have been given to explain and illustrate the statements of the author. We have every hope that with the added matter, this edition will receive an increasing measure of popularity than even the earlier ones.

THE MADRAS HINDU RELIGIOUS ENDOWMENTS ACT, 1926, by Y. V. Ramanarao Patnaik, M.A., B.L., Seniormost Superintendent, Office of the Board of Commissioners for Hindu Religious Endowments, Madras (Volume I). Published by Messrs. Janakiram & Co., No. 12, Buchi Babu Naidu Street, Triplicane, Madras. Price Wrapper Rs. 5 net, Full Calico Rs. 5-8 net

Ever since the Madras Hindu Religious Endowments Act was first passed, the legislature has been adding to and altering its provisions to a very large extent, that a publication giving the Act as amended up-to-date is almost a necessity for all those having to deal with the subject. The Local Government has also been making rules on an extensive scale and a collection of them is indispensable for the working of the enactment. This book which is edited by the Senior Superintendent of the Office of the Madras Hindu Religious Endowments Board and gives the text of the Act as amended up-to-date and the rules framed under it by the Government as also the bye-laws, the forms and all other useful information, will be found of great value. The book also gives the texts of the Malabar Temple Entry Act, 1938, the Madras Temple Entry Authorisation and Indemnity Act, 1939 and the Tirumalai-Tirupati Devasthanams Act of 1932. One might say that the book is almost an authorised edition of the enactments and will be found invaluable to all those having to deal with the subjects concerned.
