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INTRODUCTION: Language plays great tricks with the human mind, and there is no doubt that words of a mixed and wavering content are the greatest of all tricksters. The Judge, even when he is free is not wholly free. He cannot innovate at pleasure for he is not a knight-errant roaming at will in pursuit of his own ideal of beauty or goodness. He has to draw inspiration from "consecrated principles and must not yield to spasmodic sentiment, to vague and unregulated benevolence." The only subordination which a Judge knows in his judicial capacity is that which he owes to the existing body of legal doctrine enunciated in years past by his brethren on the Bench, past and present, and to the laws passed by Parliament."[1] In our country, it has been recognised[2]: "The primary function of the Courts is to interpret and apply the laws according to the will of those who made them and not to transgress into the legislative domain of policy-making. 'The job of a Judge is judging and not laws-making'. In Lord Devlin's words: 'Judges are the keepers of the law and the keepers of these boundaries cannot also be among outsiders'[2]." It has also been stated[3], that: "Semantic luxuries are misplaced in the interpretation of 'bread and butter statutes'. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions". Mr. Krishna Iyer in his book "Social Mission of Law", somewhat, wistfully observes[4]: "If Judges were activist not traditionalistic, if precedents did not freeze and legalism did not stultify the legal process, the Court could have introduced interstitial legislation and transformed the legal ethos and become the *avant garde* not the laggard among national institutions". Whether the superior Courts should play such a role and to what extent has been debated often and it still continues to be a controversial matter. It is, however, a well-settled canon of construction that in construing the provisions of a beneficent legislation, the Court should adopt that construction which advances, fulfils and furthers the object of the Act rather than the one which would defeat the same and render the protection illusory[1].

Even if Courts should not go beyond their role as interpreters of the law, on two matters there seems to be general agreement. One is that in extraordinary situations the Supreme Court must have the necessary power to prevent manifest injustice. Apropos of this, it is interesting to read the observations of A. N. Sen, J., in *Harbans Singh* v. *State of Uttar Pradesh*[2]: "Very wide powers have been conferred on the Supreme Court for the due and proper administration of justice apart from the jurisdiction and powers conferred on it under Articles 32 and 136 of the Constitution. The Supreme Court retains and must retain an inherent power and jurisdiction for dealing with any extraordinary situation in the larger interests of administration of justice and for preventing manifest injustice. This power must necessarily be sparingly used only in exceptional circumstances, for furthering the ends of justice". The other point on which

1. Sir Winston Churchill.
2. *Bachan Singh* v. *State of Punjab*, (1980) 2 S.C.J. 493.
3. *Surendra Kumar Verma* v. *Central Government Industrial Tribunal*, (1981) 1 S.C.J. (N.R.C.) 2.
4. Page 14.

1. *Chinnamarkathian* v. *Ayyavoo*, (1982) 1 S.C.J. 142, 144: (1982) 1 M.L.J. (S.C.) 17.
2. (1982) 1 S.C.J. 340.

there is a consensus is that half the difficulties in construing statutes is due to defective drafting. Even in England such a feeling seems to be rife as is seen from a jingle on Parliamentary drafting.

"I am the Parliamentary draftsman,
I compose the country's laws,
And of half the litigation
I am undoubtedly the cause."

Another relevant factor influencing the march of law, apart from the principles governing interpretation of laws is the doctrine of precedent. As to precedents it is said *validiora sunt exempla quam verba* (Precedents are more efficacious than arguments). They are like torches which light the path through patches of darkness. According to Judge Cooley: "All judgments are supposed to apply the existing law to the facts of the case and the reasons which are sufficient to influence the Court in a particular conclusion in one case ought to be sufficient to bring it or any other Court to the same conclusion in all other like cases where no modification of the law has intervened." The discipline of precedent should not, however, become a mere tyranny. Though a precedent affords some measure of certainty in regard to law, its weight should not become unduly burdensome. Sir William Markby has given a balanced assessment of the relative advantages of precedents as follows[1]: "They (Justinian and opponents of judge-made law) wished to stop all extension of the law except by direct legislation and to bind down the Judges by inflexible rules, proposing to make provision by future legislation for all unforeseen cases as they arise. But an active legislature is not even now popular; nor do legislative assemblies deal by any means successfully with matters of detail; judicial legislation, on the other hand, is generally popular, and I have very great doubt whether the extension of the law by judicial interpretation is so great an evil as has been alleged". Yet another relevant consideration is the suggestion of Bhagwati, J.[2] that the Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning; that the High Courts of the country should also adopt this pro-active, goal-oriented approach, and that it is only by liberalising the rule of *locus standi* that it is possible to effectively police the corridors of power and prevent violations of law." It is in this backgrouñd that the question of march of law during a year whether progressive or retrograde, real or illusory, falls to be assessed. The following review considers the march of law through the decisions rendered by our High Court during the year 1982 and a few decisions of the Supreme Court under some of the more important titles of the law.

High Court's powers and jurisdiction.— In *Muniappan* v. *State of Tamil Nadu*[1], the Supreme Court points out that it is not the normal function of the High Court to pass judgment on the conduct of lawyers who appear before the lower Courts; a guarded observation on the conduct of lawyers before it may be permissible. *Soundarapandian* v. *Industrial Finance Corporation*[2], holds that the discretion vested in the Court under Order 34, rule 7 of the Original Side Rules in the matter of granting commission to a Receiver on the value realised by him is a judicial discretion and it cannot be said that the discretion vested in the Judge could only be exercised for the purpose of variation of the percentage and should not be exercised as giving a power to fix the remuneration at a fixed figure or on a monthly rate basis. Once the remuneration is not fixed at the time of the appointment of the Receiver, the power is always vested in the Court to fix the remuneration either at a percentage of the collections or at a fixed amount or at a fixed monthly remuneration according to the circumstances of each case. Of course the Judge would be guided by the quantum of work and the other circumstances in each case. In all such matters the Court must fix the remuneration with refe-

1. Elements of Law, 1889, 4th Edition, p. 43.
2. *S. P. Gupta* v. *Union of India,* 1981 (Supp.) S.C.C. 87, paras. 17 and 20; A.I.R. 1982 S.C. 149.

1. (1982) 1 M.L.J. (S.C.) 1.
2. (1982) 1 M.L.J. 233.

rence to the period for which the receiver worked and the quantum of work turned out by him. *Karayandi Kousalya* v. *Kunhayi Saha*[1], lays down that the High Court of Judicature at Madras exercising jurisdiction over the territory of Pondicherry has got jurisdiction to revise further the revisional orders of the District Judge who had exercised his jurisdiction under section 25 of the Pondicherry Buildings (Lease and Rent Control) Act, 1969. *Kannan* v. *Registrar, High Court*[2], decides that on the basis of the rules relating to disciplinary proceedings in the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules the High Court also had jurisdiction to initate disciplinary proceedings, hold an inquiry and give a finding even in respect of a person who had already been reverted to the parent department provided the allegations were in respect of his work and conduct while he was in service as Judicial Second Class Magistrate before such reversion.

The Bar: *Its rights and duties*:—In *Khalil* v. *State of U. P.*[3], the Supreme Court makes it clear that it must be remembered by every advocate that he owes a duty to the Court, particularly in a criminal case involving the liberty of the citizen, and even if he has not been paid his fees or expenses, he must argue the case and assist the Court in reaching the correct decision. An advocate may be unable to argue the case in the absence of instructions from the client, but non-receipt of fees and expenses can never be a ground for refusing to argue the case. For, however, diligent the Judge might have been and however careful and anxious to protect the interests of the appellants, his efforts could not take the place of an argument by an advocate appearing on behalf of the appellants. [*N.B.* In regard to trials the position of the advocate may be somewhat different.] *Natarajan* v. *Gnanambal Ammal*[4], states that counsel appearing for a party has implied authority to enter into a compromise on behalf of the party the only restriction being that if there was any written prohibition or limitation he will have to act within the prohibition or limitation. Though a vakalath does not state that a power is given to the advocate concerned to compromise, it carries an implied authority to enter into a compromise on behalf of the party. In *S. P. Gupta* v. *Union of India*[1], the Supreme Court recognises that advocates have a vital interest in the independence of the judiciary, and if any unconstitutional or illegal action is taken by the State or any public authority which has the effect of impairing the independence of the judiciary they would certainly be interested in challenging the constitutionality or legality of such action; the profession of lawyers is an essential and integral part of the judicial system; they cannot be regarded as mere bystanders or meddlesome interlopers in filing a writ petition, and the same consideration applies to other cases as well.

Constitutional Law: In *Kuppuswamy* v. *State of Tamil Nadu*[2], it is pointed out that equality before the law under Article 14 of the Constitution means that among equals or among persons facing same and similar contingencies law should be equal and equally administered, it does not mean that things that are differently placed shall be treated as though they were the same. *Sri Ram Chit Fund* v. *State of Tamil Nadu*[3], holds that the declaration in section 2 of the Tamil Nadu Debt Relief Act, 1976, as amended in 1979 and 1980 that the Act is intended to carry out the objectives of Article 46 of the Constitution may not afford constitutional protection against a challenge to the validity of the Act as violative of Article 14 or 19; nevertheless the Court can consider whether the Act is intended to carry out the object and purpose of Article 39 (*b*) and (*c*) and sustain the Act if it comes within the avowed purpose contained in that Article. So considered the Tamil Nadu Debt Relief Act, 1976 is constitutionally valid and enforceable. *Bapalal and Co.* v. *Thakurdas*[4], decides that the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, is a valid piece of legislation not voilative of Articles 14 and 19, that the State legislature has legislative competency to enact the law under Entries 6 and 7 in List III and not under Entry 18 of List II

1. (1982) 1 M.L.J. 273.
2. (1982) 1 M.L.J. 372.
3. 1981 (Supp.) S.C.C. 75.
4. (1982) 2 M.L.J. 327.

1. 1981 (Supp.) S.C.C. 87: A.I.R. 1982 S.C. 149.
2. (1982) 2 M.L.J. 278.
3. (1982) 2 M.L.J. 62.
4. (1982) 2 M.L.J. 174.

and merely because the State Government when seeking the assent of the President does not indicate the exact provisions which are repugnant to the earlier Central law under the Concurrent List, the assent given by the President cannot be said to be invalid. *Gurumurthy* v. *Simpson and Co.*[1], expresses the view that section 25-M of the Industrial Disputes Act, 1947 is constitutionally invalid for violation of Article 19 since no guidelines are available from the statute and there is no provision for scrutiny of the order passed by the authority by any higher authority or tribunal in appeal or revision. In *S. P. Gupta* v. *Union of India*[2], a landmark decision of the year, the Supreme Court lays down *inter alia*: (*i*) In respect of legal wrong or legal injury caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or imposition of any burden in contravention of any constitutional or legal provision or without authority of law, or threatening of any such injury, if such person or determinate class of persons is on account of poverty, helplessness or disability or socially or economically disadvantaged position unable to approach the Court for appropriate relief, then, any member of the public can maintain an application for relief under Article 226, and in the case of violation of any constitutional right under Article 32 provided the person moving the High Court or the Supreme Court acts *bona fide* with a view to vindicate the cause of justice. The Supreme Court will not insist on a regular writ petition by the public-spirited citizen but will respond even to a letter addressed by such individual acting *pro bono publico* notwithstanding the rules for filing petitions under Article 32. Yet again, in case of a public wrong or public injury caused by an act or omission of the State or a public authority contrary to the Constitution or the law, any member of the public and having sufficient interest can move the Court for redressal of such public injury or enforcing public duty, protecting social, collective or diffused rights and interests or vindicating public interest acting *bona fide*. (*ii*) The concept of an open Government stems from "the right to know" which seems to be implicit in the right of free speech and expression guaranteed under Article 19 (1) (*a*). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only when the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest. (*iii*) The power to appoint Judges under Article 217 (1) is one executive in nature and the President is bound by the advice of the Cabinet by virtue of Article 74. (*iv*). The power of appointment of Judges to the High Court is solely and exclusively in the Central Government subject to full and effective consultation with the Constitutional functionaries mentioned in Article 217 (1). (*v*) Consultation in Article 217 (1) has the same meaning as in Article 222 (1), that is, full and effective consultation after placing full and identical material before such functionaries. Consultation does not mean concurrence. (*vi*) The opinion of the Chief Justice of India cannot have primacy over the opinion of the State Government and the Chief Justice of the High Court. (*vii*) The seeking of willingness to transfer by the circular letter issued by the Law Minister is neither unconstitutional being violative of Article 217 (1) or 222 (1), nor illegal nor any abuse or misuse of authority. (*viii*) The expression "every Judge" in Article 217 (1) covers the case of an additional Judge also. (*ix*) The transfer of a Judge from one High Court to another must be in public interest and not by way of punishment; prior consent of such Judge is not necessary. *Fernandes* v. *Stanes Motors Ltd.*[1], lays down that a decision relating to the status of a workman which touches the jurisdiction of the Labour Court can be reviewed by the High Court under Article 226 if the error is an error apparent on the face of the record. *State of Tamil Nadu* v. *Vadiappan*[2], states that where the reason for the Government's refusal to grant appro-

(*To be continued*)

1. (1982) 1 M.L.J. 394.
2. 1981 (Supp.) S.C.C. 87; A.I.R. 1982 S.C. 149.

1. (1982) 1 M.L.J. 406.
2. (1982) 2 M.L.J. 30.

val to the Prohibition Commissioner's recommendation for the grant of a licence for supply of arrack by wholesale was irrelevant and arbitrary, the order of rejection, even if it is an administrative order has to be set aside; and since in the instant case even if a licence was granted the fruits of the licence could be enjoyed for less than a fourth of the term expiring on 31st March, it is a fit case in which a direction in the nature of a *mandamus* is perfectly justified. *Ponnuswamy* v. *District Revenue Officer*[1], makes it clear that in the absence of any clinching evidence rendering the finding of fact given by an Authority, the jurisdiction under Article 226 cannot be invoked to interfere with the order. *Chief Engineer* v. *Chengalvarayan*[2], makes it clear that in relation to disciplinary matters, a civil servant has both a constitutional guarantee and a right to the adherence of the principles of natural justice; under Article 311 (1) he could not be dismissed or removed by an authority subordinate to that by which he was appointed; the principles of natural justice require a report or paper to be furnished to a delinquent officer only if the report or recommendation contained any material against such officer and that was to be taken into account in which case his explanation was to be called for; and the reasonable opportunity contemplated under Article 311 does not cover the furnishing of the advice of the Service Commission to the delinquent officer for furnishing his remarks since the advice is only recommendatory in nature and no right could flow to the officer on the basis of such advice. *Govindarajulu* v. *Superintendent of Police*[3], expresses the view that if an order *ex facie* is termination of service simpliciter the Court cannot be invited to go into the motive behind the order by claiming protection under Article 311 (2). *Udayappan* v. *Government of Tamil Nadu*[4], points out that if a procedure is contrary to the rules framed is adopted there is a transgression of the ordained procedure that should be scrupulously followed. Not only an omission to follow but also a deviation from the rules would result in illegality being committed while taking disciplinary proceedings. When the opinion of the Public Service Commission alone has to be taken under a Regulation it would not be open to the Government to consult any other forum under any circumstances unless the rules enable such a consultation. Where a stand is taken that there is a convention to consult Heads of Department, it, by itself, means that the opinions rendered by such authorities are taken into account and if the opinion of an authority not contemplated under the Rules to be called for is also considered while passing final orders it would only result in the finding being influenced by such a consultation. Whatever be the convention adopted it cannot override the Rules framed under Article 309 of the Constitution.

Industrial and Labour Law.—In *Fernandes* v. *Stanes Motors Ltd.*[1], it is held that for the purpose of finding out as to in which classification a person would fall it has to be seen what is the main or substantial work which a person is employed to do; if it is supervisory work, the person would be held to be employed to do supervisory work even though he may also be doing some technical, clerical or manual work. A person employed in a supervisory capacity drawing wages exceeding Rs. 500 per mensem at the relevant point of time would be hit by the exemption under section 2 (*s*) (iv) of the Industrial Disputes Act and hence he could not characterise himself as a 'workman' within the meaning of section 2 (*s*) and agitate for reliefs by way of an industrial dispute under the Act. *Madras District Co-operative Supply & Marketing Society Ltd.* v. *Sankaranarayanan*[2], states that a dispute concerning the employment or non-employment of a workman as between a co-operative society and its workman must be regarded as an industrial dispute within the meaning of section 2-A of the Industrial Disputes Act, whether the non-employment can be treated as a discharge, dismissal, retrenchment or termination of employment. Nevertheless where the dispute does not touch any right conferred or liability imposed peculiarly by the Industrial Disputes Act but arises out of a contro-

1. (1982) 2 M.L.J. 378.
2. (1982) 2 M.L.J. 250.
3. (1982) 1 M.L.J. 117.
4. (1982) 2 M.L.J. 439.

1. (1982) 1 M.L.J. 406.
2. (1982) 1 M.L.J. 140.

versy regarding a right or liability under the general law or common law, then the jurisdiction of the civil Court is not impliedly ousted but survives as an alternative forum. In such a case it is a matter for the election of the party concerned to choose his remedy either by way of a suit before a civil Court or by way of reference before the Labour Court or Industrial Tribunal under the Industrial Disputes Act. Where the cause of action is the dismissal of the employee concerned, the employee has under the law relating to master and servant has a remedy to sue his employer in a civil Court. The dispute between the employer and employee must be regarded as one which does not arise out of a right conferred or liability imposed for the first time by the Industrial Disputes Act. The right has existed ever since the law relating to master and servant became part of our common law and the present suit filed by the dismissed employee against the Co-operative Society is maintainable and not barred by the Industrial Disputes Act. *Kanyakumari Automobiles (P.) Ltd.* v. *Natarajan*[1], lays down that to grant relief under section 11-A, a finding is necessary that the discharge or dismissal was not justified. In the absence of such a finding the Labour Court has no power to grant any other relief contemplated under the section such as an award of lesser punishment in lieu of discharge or dismissal as the circumstances of the case might require or any other relief. The Labour Court cannot therefore award compensation treating it as a case of retrenchment. *Gurumurthy* v. *Simpson & Co.*[2], expresses the view that two main defects, namely, (1) absence of guidelines in the statute, and (2) absence of provision for scrutiny of an order passed by the Authority or by any higher Authority or Tribunal in appeal or in revision are present in section 25-M and the section is constitutionally invalid as violative of Article 19 (1) (*f*) and (*g*) of the Constitution.

Contracts and ancillary laws.—In *Maheswari Metals and Metal Refinery* v. *T. N. Small Industries Corporation*[3], it is pointed out that when once a contract has been broken, it is dead, and there is nothing that can keep it alive thereafter. Where the concerned contract had been broken by the appellant on 21st June, 1967 and the breach had been accepted by the respondent and thereafter the respondent had not attempted to keep the contract alive for the benefit of both the parties, in so far as the claim for damages against the appellant is concerned the cause of action arose on the date of the breach, *i.e.*, 21st June, 1967. The power of resale under section 54 (2) of the Sale of Goods Act, will arise only if the property in the goods had passed to the buyer subject to the lien of the unpaid seller but not otherwise. *Chainraj Ramchand* v. *Narayanaswamy*[1], reminds us that under section 19 (2) of the Partnership Act unless there was an express authority given to a partner by all the partners, that partner could not compromise a claim or withdraw a suit; to file a suit and conduct the same on behalf a firm does not however, require any express authority. *Ramiah Thevar* v. *Balasundaram*[2], holds that the inchoate stamped instrument referred to in section 20 of the Negotiable Instruments Act is the very negation of a negotiable instrument since all that it contains is the signature of the maker on a stamp paper. The mere implied *prima facie* authority conferred by the section on the person to whom such a paper is delivered to write out the instrument or to complete the instrument is not enough by itself to clothe the instrument with all the characteristics of a full-fledged negotiable instrument. The section does not say that by the very act of filling up the blanks the person to whom the paper is delivered acquires the right of a promisee under a promissory note. A person who makes himself the payee of an inchoate document by writing up or completing the negotiable instrument in a blank paper cannot be regarded as a holder-in-due course of the document and he cannot render liable the maker or the person who is liable under the Negotiable Instruments Act within the meaning of the second part of section 20. *Cheventhipaul Nadar* v. *Srinivasa Nadar*[3], states that where though the plaintiff had proceeded on the basis that he was in possession of the

1. (1982) 2 M.L.J. 303.
2. (1982) 1 M.L.J. 394.
3. (1982) 1 M.L.J. 35.

1. (1982) 1 M.L.J. 368.
2. (1982) 1 M.L.J. 431.
3. (1982) 2 M.L.J. 348.

suit properties and claimed the relief of injunction, but the evidence had disproved such possession and the plaintiff had not sought recovery of possession as a consequential relief for the main relief of declaration of title and injunction, the suit could not be maintained under section 42 of the Specific Relief Act.

Property law and Land and Tenancy legislation.—In *Mohamed Ali* v. *Abdul Salam Saheb*[1], it is made clear that the conferment of a power of sale without intervention of Court in a mortgage deed by itself will not deprive the mortgagor of his right to redemption. The mortgagor's right to redeem will survive until there has been completion of the sale by the mortgagee by a mortgage deed. Only on such completion by execution and registration the mortgage could be said to have been extinguished or discharged and so long as the mortgage is not so extinguished the right of redemption is always available to the mortgagor. Where subsequent to the dismissal of a suit for redemption on 22nd July, 1975, the sale deed was in fact executed and registered in pursuance of the auction sale held earlier on 13th February, 1969, inasmuch as at the time, when the appellate Court considered the question of the right of redemption of the plaintiff the sale had been completed and the conveyance had been effected the mortgage itself had become extinguished leaving nothing to the plaintiff to redeem. Nor could the doctrine of *lis pendens* apply in the case of a mortgage executed prior to the suit wherein the right of private sale was conferred on the mortgagee. *Saravanan* v. *Sri Vedaranyeswaraswami Devasthanam*[2], decides that the right to pluck cocoanuts will amount to a lease of immovable property having regard to the definition of land in the General Clauses Act. *Rajan* v. *Devi Cine Proprietor*[3], expresses the view, that where the tenant was fully aware that the lease period expired on a particular day, the question of giving a further notice to vacate under section 106 of the Transfer of Property Act does not arise; further in construing the notice given in such a case one cannot revel in technicalities so as to defeat the very purpose and object of the notice which is given only for the convenience of the parties and to put the parties on guard.

1. (1982) 1 M.L.J. 425.
2. (1982) 2 M.L.J. 290.
3. (1982) 1 M.L.J. 79.

Estates Land Act.—*State of Tamil Nadu* v. *Pichai Ammal*[1], points out that if at the time of assignment of lands in an estate they were not ryoti lands but forest lands, the landholder had no right to assign the lands; the fact that after some reclamation a portion of the lands had been subsequently brought under cultivation cannot mean that on the date of assignment the lands were cultivable; the relevant date for considering whether the lands were forest lands or ryoti lands was the date of assignment. Though the order of assignment in the instant case was in 1945, for determining the character of the land, the definition of forest land occurring in the Madras Estates Communal Forest and Private Lands (Prohibition of Alienation) Act, 1947, is material; though the Act came into force on 27th June, 1947, section 4 (1) (3) of the Act invalidates any transaction in relation to forest land exceeding 20 acres entered into before that date.

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act.—*Arulandu Udayar* v. *Palaniappa Ambalam*[2], holds that the decision as to the nature of land in an estate notified and taken over by the Government under the Tamil Nadu Act XXVI of 1948, and the person entitled to patta under section 11 or a similar finding that it is ryoti land and not private land and that a claimant was entitled to a ryotwari patta in proceedings under section 15 are final and not liable to be questioned in a civil Court. Hence where there is a claim by a person other than the landholder for a ryotwari patta under section 11 and the claim is resisted by another who claims the right in himself, the decision given by the Settlement Officer is final and binding on the parties when the same dispute is to be decided in a civil Court. Likewise the order of the Settlement Officer relating to the grant of a miscellaneous patta under section 18 (4) of the Act in respect of buildings is final as between the parties and not liable to be questioned.

1. (1982) 1 M.L.J. 173.
2. (1982) 1 M.L.J. 257.

Tamil Nadu Land Reforms (Fixation of Ceiling on Lands) Act.—Uthirapathi Servai v. *Thirumalai Iyengar*[1], expresses the view that when the statutory tenant could hold only five acres, the limit could not by his death be enlarged, there being no provision made by the Legislature to that effect. The tenant could not by his death enable his heirs to derive benefits beyond what had been contemplated under the Act. If proceedings had been initiated during his lifetime he would have lost the right to the excess extent. Hence the heirs would have to be treated as statutory tenants only in respect of the extent of lands which the father was entitled to hold on the notified date under the Tamil Nadu Act LVIII of 1961. Beyond the ceiling limit whatever be the manner in which they had enjoyed the lands, they would be bound to surrender the excess extent to the State. Under section 71 of the Ceilings Act, the provisions of Act XXV of 1955, Act XXIV of 1956 and Act XXXVI of 1958 and any other law relating to tenancy shall, except in so far as they are inconsistent with the provisions of Chapter VIII continue in force. Hence the determination of ceiling limit cannot be prevented by reliance on any rights claimable under those Acts. When there is a right to take over excess lands, to that extent the right to claim the benefits under Act LVIII of 1961 would not be available. *Munuswami Mudaliar* v. *The Authorised Officer*[2], states that section 23 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) (Amendment) Act, 1970 is subject to section 20 of the Act under which, if, as a result of any transfer of land either by sale gift, exchange, surrender, agreement, settlement or otherwise effected on or after the notified date the extent of land held by the transferee exceeds the ceiling area, then the right, title or interest accrued in his favour by virtue of such transfer of land in excess of the ceiling area shall, as a penalty for contravention of the provisions of section 7 of the Act be deemed to have been transferred to the Government with effect from the date of such transfer, on a declaration made by the authorised Officer within whose jurisdiction such excess land or the major part thereof is situated. This provision is intended to strike against the avoidance of the provisions of the Act by subsequent transactions effected after the notified date. In such a case the transferee or settlee will lose the excess land on the declaration made by the authorised Officer. Section 23 applies only for the purpose of fixing the ceiling for the first time. It avoids transactions entered into between the notified date and before the publication of the notification, that is between 15th February, 1970 and 2nd October, 1970. It is the intervening transactions that are sought to be avoided by section 23 of the Act. In *State of Tamil Nadu* v. *Padmavathi Ammal*[1], the Supreme Court makes it clear that the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act provides for determining the compensation payable to the original owner of the land for taking over his land declared surplus according to the formula prescribed in Schedule III; to determine the market value of the land as if it was a case under the Land Acquisition Act is impermissible and contrary to the statute. *Ayyee Muthuswami Goundar* v. *Land Commissioner, Madras*[2], expresses the view that the *suo motu* powers of revision of the Board of Revenue under section 82 of the Act in respect of orders passed under section 50 (5) is not intended to be exercised arbitrarily without taking note of consequences which have followed pursuant to orders already passed under the Act. Where the amount payable for the surplus land acquired was determined at Rs. 6,916 and the amount was disbursed and the surplus lands had also been assigned to third parties, the value for the lands so assigned having also been determined on the basis of the determination of the amount payable for the acquired lands it is not open after the lapse of four years to the Board of Revenue to exercise its powers under section 82 in respect of the draft assessment roll, to hold that the amount payable for the lands is nil and direct amendment of the final assessment roll. Any power vested with a public authority is not intended to be exercised unreasonably and unfairly. Caprice or arbitrari-

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1. (1982) 2 M.L.J. 2.
2. (1982) 1 M.L.J. 343.

1. (1982) 1 M.L.J. (S.C.) 16.
2. (1982) 1 M.L.J. 133.

ness in the exercise of the power will not be tolerated by Courts when it is brought to their notice by citizens who are put to prejudice and loss by the exercise of such power, compelling interference in writ proceedings. *Devaraja Padayachi* v. *District Revenue Officer*[1], states that under the Tamil Nadu Land Reforms (Disposal of Surplus Lands) Rules, 1965 in such of those cases where the appellate power had been exercised by the appellate authority he would be excluded from exercising *suo motu* powers and in such of those cases where District Revenue Officers come across any irregularity or inequitable orders passed it is for the concerned. Authorised Officer or the District Revenue Officer to immediately bring to the notice of the Land Commissioner or the Government which has the power to take *suo motu* action and pass suitable orders thereon.

Tamil Nadu Agricultural Lands Record of Tenancy Rights Act.—Krishnamoorthy Thondaman v. *Ramanathan*[2], holds that the matters within the exclusive jurisdiction of the authorities constituted under the Act are limited by the provisions contained in section 3 (2) because those were the particulars which are directed to be included in the approved record to be prepared under the Act. The determination of the question as to whether the lands were let out to the tenant so that he got protection of the provisions of the Act is not within the exclusive jurisdiction of the statutory authorities and the jurisdiction of the civil Court to determine such a matter has not been ousted. In case it is determined that he was a cultivating tenant, the civil Court will lose its jurisdiction and the matter will have to be considered only by the statutory authorities. *Sellappan* v. *District Revenue Officer*[3], lays down that the Revisional Authority under section 7 cannot dismiss the petition without going into the points taken and it has to render its final decision both on facts and law. Under section 7 it is open to the Authority to pass order as 'he may think fit'. It is not an arbitrary power. The order must be considered an order both on facts and on law.

1. (1982) 1 M.L.J. 404.
2. (1982) 2 M.L.J. 57.
3. (1982) 2 M.L.J. 378.

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Tamil Nadu Cultivating Tenants Protection Act.—In *Ponnuswamy* v. *District Revenue Officer*[1], it is pointed out that where the plaintiff in his suit prays for a declaration that he is a cultivating tenant and for an injunction restraining the defendant from disturbing his possession, the suit is not maintainable. The primary relief being one of declaration as to his status as a cultivating tenant, the other relief being merely consequential the civil Court has no jurisdiction to decide the controversy with reference to which the primary relief is prayed for. *Ramar Thevar* v. *Kannikaparameswari Devasthanam*[2], expresses the view that under section 3 of the Tamil Nadu Cultivating Tenants Protection Act in default of payment of rent within the time fixed or the extended time if granted, the Revenue Court is statutorily bound to direct an order of eviction. A tenant who claims the protection guaranteed under the Act shall observe his duties *vis a vis* the landlord as prescribed under the Act. Where even after the initiation of the proceedings for eviction the tenant did not choose to tender the rent, no help can be lent by the High Court to such an incorrigible and defiant tenant. *Seshier* v. *Ayyachi Ambalam*[3], holds that in an application for eviction of the tenant for failure to pay the fair rent fixed, the Authorised Officer cannot reduce the fair rent fixed and direct the tenant to pay proportionate rate of rent as per his finding of only 40% yield due to damage to the crops by rain and pests. The Authorised Officer has no jurisdiction to grant remission of rent fixed in other proceedings. *Baluchamy* v. *Thayammal*[4], decides that where at the time of admitting a revision petition against an order of eviction for non-payment of arrears of rent, the tenant was directed to deposit the arrears and he complied with it, by reason merely of such compliance, the order of eviction could not be set aside. *Ayyammal* v. *Venkataraman*[5], points out that there are at least two distinct and separate stages which the Authorised Officer must pass through in the determination of an eviction petition. At the initial stage he

1. (1982) 2 M.L.J. 381.
2. (1982) 2 M.L.J. 236.
3. (1982) 1 M.L.J. 83.
4. (1982) 2 M.L.J. 1.
5. (1982) 2 M.L.J. 432.

must give the tenant an opportunity to pay up the arrears by giving a reasonable time—The second stage will come only after the time fixed by the Court for deposit expires without the tenant having made the deposit. Where the Authorised Officer had rolled the two-stage proceedings into one and had predetermined the question of eviction irrespective of deposit or no deposit by making the eviction order self-operative, it was not the proper way of administering section 3 (4) (*b*). The Authorised Officer has to comply with the statutory provisions to the letter. In *Chinnamarkathian* v. *Ayyavoo*[1], the Supreme Court makes it clear that if the ground of eviction is non-payment of rent, the Revenue Divisional Officer has power under section 3 (4) (*b*) to allow the cultivating tenant to deposit the arrears and costs as directed. The power is discretionary. In exercising the power it is not incumbent on the Revenue Divisional Officer to grant time. The word "may" occurring in section 3 (4) (*b*) is not to be equated with "shall" so as to make it obligatory on him to grant time to the cultivating tenant. When the Revenue Divisional Officer grants time to the tenant to deposit the arrears he cannot simultaneously pass a conditional order of eviction which is to take effect on a default to occur *in futuro*. An order of eviction can be passed only on the cultivating tenant failing to deposit the sum as directed. *Srinivasaraghavan* v. *Muthukaruppa Muthiriar*[2], lays down that in matters where special rights are given to parties under special enactments, a judicial body or any quasi-judicial authority should not be over-indulgent or lightly interfere with the rights of parties which deprive them of the valuable rights of limitation. The Revenue Court would not be justified in the absence of sufficient grounds to condone the delay in presenting a petition by the tenant under section 7 for restoration of possession.

Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act.—In *Alamelu* v. *Subash Chandra Bose*[3], it is observed that under section 14 of the Act, a petition for fixation of fair rent must be accompanied by a certified extract of the tenancy record. If it is not so accompanied the Court can only grant time for its production. If it is not produced in spite of the time given the Rent Court has to reject the application. A fresh application will not be barred. It is not open to the Rent Tribunal on appeal to receive the extract.

Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act.—In *Kalayanasundaram Udayar* v. *Pazhaniayya Udayar*[1], it is laid down that a conjoint reading of sections 4 and 23 of the Act indicates that if an agriculturist or agricultural labourer raises a dispute that he is in possession of a kudiyiruppu on the relevant date he has to approach the Authorised Officer concerned for a decision on that point and cannot go before a civil Court. Hence where the plaintiff files a suit for an injunction asserting that he is an agriculturist in possession of a kudiyiruppu and as such his possession should be profected by issue of an injunction, such a suit will be barred under section 23. Where however, one party proceeds on the basis that the Act does not apply and sues for recovery of possession, but the other party contends that he is an agriculturist in possession of the suit land as a kudiyiruppu and therefore cannot be evicted, the Court cannot dismiss the suit merely on the basis of the defence put forward unless the Court finds the defence to be *prima facie* established.

Hindu Law and related legislation.—In *Pandurangan* v. *Sarangapani*[2], it is held that under the Hindu law in force in the territory of Pondicherry, the sons do not acquire any interest in the father's property by birth whether the property be the self-acquired property of the father or his ancestral property. The plea of survivorship embodied in section 6 of the Hindu Succession Act is not available in such cases. The term 'coparcenary property' cannot be applied to the absolute property held by the deceased. *H.H. Sri La Sri Ambalavana Pandara Sannathy* v. *State of Tamil Nadu*[3], makes it clear that the choice of a successor is a religious function of the head of the Mutt and it can never be construed as a purely administrative act. The

1. (1982) 1 M.L.J. (S.C.) 17.
2. (1982) 1 M.L.J. 135.
3. (1982) 2 M.L.J. 344.

1. (1982) 2 M.L.J. 394.
2. (1982) 1 M.L.J. 143.
3. (1982) 2 M.L.J. 221.

fact of a person being legally nominated as Junior having a peculiar relationship with the senior is "status" and the capacity to succeed is an incident of that status. Since the basic purpose and feature of nomination is designed to perpetuate a line of acharyas to function as preceptor in a wholly spiritual brotherhood and associates in holiness, the installation ceremonies and the management of the properties are only incidental and merely the effect of the choice which is the prerogative of the head of the mutt. Section 105 (*b*) of the Madras Hindu Religious and Charitable Endowments Act, 1959, affords protection to the mutts in respect of religious and civil functions which obviously include nominations and customary ceremonies or ordainment.

Insolvency law.—In *Mara Naicken* v. *Saradhambal*[1], it is pointed out that there is no law which compels a debtor to sell his assets to pay his debts excepting that relating to the execution of money decrees. Therefore where a debtor announces that it is his intention to hold his property intact but to utilise the income therefrom to pay off his creditors, that cannot be regarded as delaying the creditors. In any case that cannot fall under section 6 of the Provincial Insolvency Act. Mere delay in the payment to the creditors is not *per se* an act of insolvency. Under section 6 (*b*) the sale of the debtor's property must be with intent to delay the creditors and the act of sale is itself the method by which the debtor carries out his intention to delay the creditors. So where a debtor does not want to dispose of his properties, but wishes to retain them, earn income therefrom and then pay the creditors, the process may involve delay in the payment of creditors but that would not bring the case under section 6 (*b*) of the Act. *Thangaraju Pillai* v. *Periaswamy Pillai*[2], states that the provisions of section 10 read with the proviso to section 24 (1) (*a*) steer a middle course as to enquiry into an insolvency petition. While the debtor cannot have an order of adjudication for the mere asking, at the same time the Act does not contemplate that the Court should conduct a full-fledged or all-out enquiry on the debtor's petition before rendering its finding one way or the other, whether the petition should be allowed or rejected. If the Court exceeds the bounds of a limited *prima facie* enquiry it would be exceeding its jurisdiction and the order is liable to be set aside on that ground. Though section 24 (2) requires the debtor to be examined by the Court and it also confers a right on the creditors to question the debtor independent testimoney from them at that stage has got to be completely eschewed. In the exercise of its jurisdiction under the first proviso to section 75, it is not open to the High Court to re-examine the findings of fact of the Courts, below. *Sakuntala Ammal* v. *Seetharama Reddiar*[1], expresses the view that, where in a petition under sections 4 and 5 to release certain items of properties from the custody of the official receiver on the ground that his step-mother had purchased the properties from the insolvent to which the insolvent and the receiver were made parties, but the insolvent remained *ex parte* and the receiver stated that the creditors had not taken any interest and thereafter three creditors applied to be impleaded as parties to the petition but the application was dismissed by the trial Court and on appeal the order was confirmed, there was no legal bar under section 28 for allowing the creditors to be impleaded as parties. *Official Receiver* v. *Krishnaier*[2], decides that in spite of the order of annulment the official receiver is bound to carry on the administration of the estate for the period for which the estate vested with the official receiver to its logical end. He will have to realise the amount due to the estate during the period and account for the same to the persons concerned. Where the rent in Court deposit relates to the period during which the property vested with the official receiver, he has the right to receive the rent lying in deposit with the Court.

Law of Evidence.—In *Manicka Mudaliar* v. *Shanmugasundara Mudaliar*[3], it is held that when documents are inducted in a suit by way of proof the same have to be proved with reference to the Evidence Act so that the contents of the documents may be taken as

1. (1982) 1 M.L.J. 268.
2. (1982) 1 M.L.J. 274.

1. (1982) 1 M.L.J. 312.
2. (1982) 2 M.L.J. 460.
3. (1982) 2 M.L.J. 301.

evidence. Mere marking of the documents by consent does not oblige the Court to look into the contents. The Evidence Act contemplates only certain documents that can be taken judicial note of and when they are enumerated, apart from those documents no others can be taken judicial note of by a Court. *Sella Pillai* v. *Balaraman*[1], decides that where in the face of an actual threat of eviction or imminent danger thereof by the Government under the Madras Land Encroachment Act, the tenant denied the title of the landlord, it will constitute an exception to section 116 of the Evidence Act. In *S. P. Gupta* v. *Union of India*[2], the Supreme Court makes it clear that the doctrine of 'candour' or 'confidentiality' propounded by the U. S. Supreme Court does not apply in India nor has the rule of protection against self-incrimination as prevalent in the U.K. or U.S.A. been accepted in India. Public interest lies at the foundation of the claim for protection against disclosure enacted in section 123 of the Evidence Act. The meaning and content of section 123 cannot remain static. It must be interpreted keeping in view our new democratic society wedded to the basic values enshrined in the Constitution. The final decision in regard to the validity of an objection against disclosure raised under section 123 will always be with the Court under section 162, Criminal Procedure Code. The emphasis now is more on the right of the citizen to know than on his need to know the contents of official documents because ours is an open society, which has a Government of the people which has to be run according to the Constitution and the law. The expression "affairs of the State" in section 123 should therefore receive a very narrow meaning. Any claim to interpret it with a wider connotation may expose section 123 to the risk of unconstitutionality. Even when a claim for immunity against disclosure of a document is made under section 123, the Court may, in an appropriate case inspect the document in order to satisfy itself whether its disclosure would, in the particular case before it, be injurious to public interest and the claim for immunity must therefore be upheld. What is impermissible under section 123 is giving evidence from unpublished records relating to affairs of State.

Limitation Act.—In *Balakrishnan* v. *Ayyasami*[1], it is pointed out that the Schedule to the Limitation Act considered in itself is no respecter of persons. The time-limits apply to one and all. Section 5 however provides for exceptions being made by the Court in individual cases where appeals are filed beyond the period prescribed by the schedule on the Court being satisfied that the party seeking its indulgence had sufficient cause for not preferring the appeal or application within the time limited. The provision does not lay any standard test nor even provide that the reason adduced by the party for the delay must be capable of being accepted by the Court as a sufficient cause by the application of any objective standard. The section clearly contemplates that the Court should place itself in the position of the person concerned and find out if the delay can be said to have resulted from the cause which he has adduced and whether that cause can in the peculiar circumstances of the case be regarded as sufficient. The test of sufficient cause is a purely individualistic test and not an objective test. Hence no two cases can be treated alike. The requests for condonation in most sases are based on personal equation such as illness of the party, death in the family and the like. This does not mean that sufficient cause can be considered to exist only in such kind of cases. Nor can the operation of the section be restricted only to those cases where the party is prevented by forces beyond his control from filing the appeal or application in time. The statute of limitations has left the concept of sufficient cause delightfully undefined, thereby leaving to the Court a well-intended latitude of mind and discretion to decide in individual cases whether circumstances exist establishing sufficient cause. In one sense the categories of sufficient cause are never closed; but in another sense there are no categories of sufficient cause. The very pendency of the proceedings under Order 41, rule 21 of the Civil Procedure Code, was held in the instant case to furnish sufficient cause for the delay in filing the second appeal.

1. (1982) 2 M.L.J. 282.

2. 1981 S.C.C. (Supp.) 87: A. I. R. 1982 S.C. 149.

1. (1982) 1 M.L.J. 148.

Chengalvarayan v. *Muthialpet High School*[1], decides that section 5 is inapplicable to an appeal where the proceedings are not before a Court. Where there was no provision in the service agreement for applicability of section 5 to appeals against orders of school management delay in filing an appeal to the Appellate Authority beyond the period prescribed in the service agreement cannot attract section 5. *Rathinaswamy* v. *Komalavalli*[2], expresses the view that section 5 is not applicable to specified Courts and Tribunals alone. If the intention of Parliament was to restrict it to civil Courts alone it would have defined the term 'Court'. For the purpose of sections 3, 5 and 29 (2) the Appellate Authority under Act XVIII of 1960, is a Court and section 5 is applicable to an appeal preferred before such Authority under section 23 (1) (*b*) of the Rent Control Act. Section 5 cannot however be invoked as regards a revision petition under section 25 of the Rent Control Act because the application of section 5 is impliedly excluded by prescribing a special period of extension of time for limitation. *Ganesan* v. *Pandurangan*[3], holds that the concept of explaining each day's delay under section 5 of the Limitation Act is entirely different and alien in the context of the Motor Vehicles Act. In a petition to excuse delay in filing a claim petition under section 110-A (3) of the Motor Vehicles Act together with the proviso to the section the Tribunal has to exercise judicial discretion. Where the reason for delay was mental shock to the claimant on account of the death of the only son, it is not length of time that matters; it is the mental feeling of the aggrieved party that has to be actually entertained in the mind of the judicial forum which no doubt has to be guided only by legal principles. *Rajarathnam* v. *Rajammal*[4], states that the time taken by the revision-petitioner to obtain certified copies of the Appellate Authority's order must be excluded in calculating the period of limitation under section 25 (1) of the Rent Control Act. In view of the express provision in section 23 (1) (*b*) of the latter Act as well as the provisions in the Rules for applying for and obtaining certified copies of the order, one cannot read into the scheme of the Act any intention to exclude the provision of section 12 (3) of the Limitation Act from being operative for the purpose of limitation under section 25 of the Act. *Indian Bank* v. *Kothandapani*[1], explains that the proper way to apply section 15 (1) of the Limitation Act is to compute the period of limitation with the time running till the date on which the injunction is issued, for that marks the date on which the running of time will stop. The time will stop running and remain suspended till the day on which the order of injunction is withdrawn. It is on the day after that, that the time will again begin to run its course. In practical terms the time during which the injunction is in force is a slice of time which has got to be completely cut out, removed out of reckoning, and excluded in the computation of the period of twelve years limitation for the filing of the execution petition. The statute does not impose any requirement that on the date on which the limitation would have normally expired, but for the imposition of an injunction, an injunction should actually subsist in order that section 15 (1) might apply. *Sudarsan Chit Funds* v. *Jagadambal*[2], points out that under Article 36 in the case of a promissory note or bond payable by instalments the suit can be filed beyond three years for the remaining instalments which are within the period of three years and no suit can be filed for the recovery of the whole of the instalments within three years when a default is committed in the payment of any one instalment. But under Article 37 it is not so. The suit has to be filed for the recovery of the whole of the future instalments as soon as default is committed in the payment of any one instalment. *Maheswari Metals and Metal Refinery* v. *T. N. Small Industries Corporation*[3], states that under Article 55, a suit for compensation for breach of any contract, express or implied, has to be instituted within three years from the date of breach or where there are successive breaches, when the breach in respect of which the suit is instituted occurs or where the breach is continuing when it ceases. When once a cause of action for a suit had arisen on breach of contract, the running of

1. (1982) 2 M.L.J. 378.
2. (1982) 2 M.L.J. 406.
3. (1982) 1 M.L.J. 313.
4. (1982) 1 M.L.J. 294.

1. (1982) 1 M.L.J. 367.
2. (1982) 2 M.L.J. 169.
3. (1982) 1 M.L.J. 35.

time could not be arrested nor could such a cause of action be kept in a state of suspension as it were till such time as the damages were ascertained after a leisurely re-sale of the goods at the convenience of one of the parties. *Pugal* v. *Asoka*[1], decides that where there has been no proper service of summons on the defendant the period of limitation for setting aside an *ex parte* decree passed against him will commence only from the date when he had knowledge of the decree. *Perumal* v. *Ramachandra Padayachi*[2], holds that Article 134 only applied to an application for delivery of the property. It does not apply where that application had already been ordered and something had to be done with that order and pursuant to that order. Article 136 will apply because that Article applied not only to a decree but also to an order of a Court which was executable as an order. An order for delivery passed by an executing Court in favour of a Court-auction-purchaser is executable as an order within the time prescribed by Article 136. *Amirthammal* v. *Mani Iyer*[3], lays down that the period of limitation under Article 136 will begin to run only when the decree becomes enforceable. Where a decree is a preliminary decree and not executable straightway the application for passing a final decree is not barred. There is no time limit for filing an application for passing a final decree. *Thavasimuthu Nadar* v. *Ramasami Pillai*[4], states that under Article 136, when default in making payment takes place the execution petition should be filed within 12 years from that date. To construe the Article to mean that the execution petition should be filed within twelve years from the date when the first default took place or when the earliest default occurred is not warranted. On the occasion of each default, the right to execute the decree and claim recovery of possession is conferred under the decree. The fact that on earlier occasions when there were similar defaults no execution petition was filed for recovery of possession will not take away the right of the plaintiff to ask for recovery of possession with reference to subsequent defaults. *Muthuswami Udayar* v. *Samina-tha Udayar*[1], decides with reference to the question whether in computing limitation for an application for execution of a decree the date found at the top of the certified copy in its preamble portion or the date on which the Court officer signed the decree should be considered, that it is only the former date, that ought to be taken into consideration and not the date when the decree was signed by the officer *Janakirama Iyer* v. *Meenakshiammal*[2], points out that under Article 137, the starting point is the date when the right to apply accrues. Where the right to apply for mesne profits accrued to the plaintiff even on the date when the properties covered in the suit were taken possession of by him and he had failed to move within three years claiming mesne profits an application filed beyond three years will be barred by limitation of the Court.

Civil Procedure Code.—In *Muniandi Kone* v. *Arulmigu Mangalanathaswami Temple*[3], it is pointed out that suits relating to rites and rituals in a temple are not of a civil nature; however the right to worship is a civil right which can be agitated in a civil Court. Where the exercise of a customary right to take a deity in procession on a particular occasion during an annual festival was conditioned on a payment and the payment cannot be divorced from the right, then if the payment is not made the temple authorities would be justified in not permitting the deity to be carried out, but this does not mean that the temple authorities can refuse to receive the amount and prevent the plaintiff's community from exercising the right. Since the plaintiffs had established a customary right to worship the concerned deity by taking it from the main temple to another temple on the tenth day of a particular festival the matter pertains to a civil right and the jurisdiction of the Court to grant a declaration of the plaintiffs' right is not excluded. *Krishnan* v. *Krishnamurthy*[4], expresses the view that the civil Court has jurisdiction to stay the trial of a suit pending before it invoking its inherent

1. (1982) 1 M.L.J. 303.
2. (1982) 1 M.L.J. 65.
3. (1982) 1 M.L.J. 326.
4. (1982) 2 M.L.J. 51.

1. (1982) 2 M.L.J. 132.
2. (1982) 2 M.L.J. 461.
3. (1982) 1 M.L.J. 20.
4. (1982) 1 M.L.J. 4.

powers under the Civil Procedure Code, during the pendency of a proceeding by the tenants before the Record Officer under the Tamil Nadu Agricultural Tenants Record of Tenancy Rights Act, 1960, but the exercise of the power would depend on the facts and circumstances of each case and on this finding whether the ends of justice called for such a stay or in order to prevent the abuse of the process of the Court the stay should be granted. *Hazarimal Panaji* v. *Trilokchand Deepaji*[1], holds that where a suit for recovery of Rs. 500 filed in the Court of Small Causes alleged to be taken by the defendant but not returned mentioning also the execution of a promissory note by him for the amount which, however, was insufficiently stamped, was dismissed on that ground but on appeal the New Trial Bench of the Presidency Court of Small Causes, holding that though the promissory note was insufficiently stamped the suit had been laid on the original cause of action, remitted it to the Trial Court for trial on merits, and on such remittal the suit was decreed, but, when again taken on appeal to the New Trial Bench the latter, while affirming that the defendant had not repaid the advance, held that the suit was not maintainable in view of the insufficiently stamped promissory note; that this last decision was in excess of its jurisdiction. There was a decision *inter partes* in the same suit on the same issue as to the maintainability of the suit which had also become final between the parties and the right or wrong of the decision could not be reagitated by the defendant either in the same or in any other forum, so much so the later Bench had no jurisdiction to sit in judgment over the earlier Bench much less to proceed to a different conclusion. The principle involved is more fundamental than the principle of *res judicata*; for at the stage when the defendant raised up the question of maintainability of the suit before the High Court in revision it had become a non-issue between the parties and not merely one on which there was already a concluded adjudication. *Sambandam* v. *Sirkali Co-operative Urban Bank Ltd.*[2], holds that the Arbitrator of Co-operative Societies can invoke section 34 of the Civil Procedure Code, for awarding interest. If the interest awarded is in excess the aggrieved party may agitate it before the appropriate forum but not at the execution stage without trying to set aside the same through appropriate proceedings. *Perumal* v. *Ramachandra Padayachi*[3], states that a decree-holder-purchaser is no better than a third party auction-purchaser and *Explanation* 2 (*s*) to section 47 of the Code taken along with section 47 (1) shows that an auction-purchaser whether he was a decree-holder or not, is inextricably forced to agitate his rights and pursue his remedies only in execution proceedings. *Mohammed Ali Sahib* v. *Naina Mohammed Maracair*[4], points out that in regard to proceedings under section 47, the words 'Court executing the decree' occurring in that section do not mean only a Court which is seized of an application for execution of a decree at the instance of a decree-holder. A question relating to the execution, discharge or satisfaction of a decree may be raised by the decree-holder or by the judgment-debtor in the execution department and the pendency of an application by a decree-holder is not a condition precedent for exercise of the Court's power under section 47. Hence an application in the lower Court by a judgment-debtor under section 47 of the Civil Procedure Code, for the wiping-out of the decree as per Tamil Nadu Debt Relief Act (XIII of 1980) is competent and will have to be disposed of on merits. *Panduranga Chettiar* v. *Ezumalai*[3], expresses the view that section 50 of the Code clearly states that in a case where the judgment-debtor dies before the decree has been fully satisfied, the holder of the decree is entitled to apply to the Court which passed the decree to execute the same against the legal representatives of the deceased. An application to implead the legal representatives is quite competent. *Pushpanathan* v. *Sree Devi Financiers*[4], makes it clear that under section 51 proviso clause (*b*) of the Code, the Court must be satisfied for reasons to be recorded in writing, that the judgment-debtor had not only the means to pay the amount of the decree or a substantial part thereof but it

1. (1982) 2 M.L.J. 115.
2. (1982) 2 M.L.J. 227.

1. (1982) 1 M.L.J. 65.
2. (1982) 2 M.L.J. 300.
3. (1982) 1 M.L.J. 333.
4. (1982) 2 M.L.J. 332.

must also be able to record a finding to the effect that possessing such means the judgment-debtor yet refuses or neglects or refused or neglected to pay the same. *Satyamurthy* v. *Sri Vasan Finance Corporation*[1], states that an admission of a claim to a share in immovable property is not enough to hold the judgment-debtor liable to arrest under section 51 and Order 21, rules 37 and 38 read with rule 40 of the Code. Section 51 provides that the Court's satisfaction must be entered for good reasons to be recorded in writing in the order. *Doom Doma Tea Co. Ltd.* v. *Union of India*[2], elucidates that where a claim is made by two plaintiffs and the claim is not severable, the failure on the part of one plaintiff to give a notice under section 80 of the Code would entail the rejection of the plaint as a whole and the plaint cannot be entertained in part with reference to the plaintiff who had given the notice under section 80 and rejected in part with reference to the other plaintiff who had not issued the notice under section 80. The duty of the Court in such cases would be to pass an order rejecting the plaint under Order 7, rule 13, enabling the plaintiffs to present a fresh plaint on the same cause of action. *Melur Panchayat Union* v. *Sundararajan*[3], holds that the provisions of section 92 (1) (*h*) of the Code do not contemplate the change of the original character of the original trust into a different one; all that the sub-section contemplates is granting such further or other relief as the nature of the case may require and these words do not mean and include a change or alteration of the very object with which the trust has been created by its author. *Rama Reddiar* v. *Raja Reddiar*[4], decides that the High Court can interfere in its revisional jurisdiction against an order erroneously denying relief by failing to exercise jurisdiction under section 16 of the Tamil Nadu Debt Relief Act, 1979. *Venkatarama Gounder* v. *Rangathai*[5], expresses the view that where two properties had been directed to be sold and there was no indication to show that the lower Court had applied its mind to the aspect whether the sale of one of the two items of properties alone could satisfy the claim of the petitioner, the order becomes revisable under section 115 in view of section 2 of the Partition Act contemplating application of the mind of the Court to which an application is made for sale of the properties. *Pugal* v. *Asoka*[1], states that where the application by the petitioner under section 151 of the Code was in effect and substance one to set aside an *ex parte* preliminary decree and against the dismissal of that petition an appeal will lie to the High Court and not a revision, the petition filed by the petitioner will have to be converted into a civil miscellaneous appeal by exercising the inherent powers of the High Court. As to the effect of service of summons not in accordance with Order 5, rule 2, a statutory provision can be construed as a mandatory provision only when a penalty or disability is provided for non-compliance of it. No penalty or disability is attached for non-compliance of Order 5, rule 2. The provision is only directory and would not make the subsequent proceeding a nullity. It results only in an irregularity which is curable. *Kuttayyan Chettiar* v. *Surendranathachary*[2], points out that Order 7, rule 10 states that the plaint shall, at any stage of the suit be returned for presentation to the proper Court. The question is whether the power of the Court to return the plaint for want of territorial jurisdiction can be extended to cases where there is a bar to the institution of suits. Though plaints which cannot be entertained on account of such a bar cannot be brought directly under Order 7, rule 10 yet, under the inherent powers to meet the ends of justice, the Court has jurisdiction under section 151 to return the plaint which cannot under the law be entertained by the Court. *Zaiburnissa Bivi* v. *Madras State Wakf Board*[3], declares that service of summons by affixture at the place of residence is one of the recognised modes of service of summons on a defendant. If the Court records show that there has been service of summons on the petitioner by affixture at his residence it must be presumed that all the requirements necessary for service by affix-

1. (1982) 1 M.L.J. 242.
2. (1982) 1 M.L.J. 85.
3. (1982) 1 M.L.J. 285.
4. (1982) 1 M.L.J. 288.
5. (1982) 1 M.L.J. 346.

1. (1982) 1 M.L.J. 303.
2. (1982) 2 M.L.J. 443.
3. (1982) 1 M.L.J. 301.

ture existed and there was compliance of all the statutory requirements for effecting such service on the petitioner, and thereafter it is for the petitioner to rebut the presumption. *Srinathi Ammal* v. *Chellammal*[1], makes it clear that Order 7, rule 11 of the Code providing for rejection of a plaint will not apply where the bar which affects the suit, namely, under section 3 of Tamil Nadu Act XV of 1976 is not the kind of bar which is spoken of under section 9 of the Code and which is referred to under Order 7, rule 11 (*d*) of the Code.* *Palayan* v. *Chandra Mohan*[2], lays down that inasmuch as the Small Causes Court has no pecuniary jurisdiction under section 15 of the Provincial Small Causes Court Act and the Notification under the Act to consider a claim of over Rs. 500, there cannot be a counter-claim under Order 8, rule 6-A of the Civil Procedure Code for any amount in excess of the pecuniary jurisdiction of that Court. *Victory Laminations* v. *Plastolite Industries*[3], states that it is clear that under Order 8-A, a defendant in the suit can get the leave of the Court to issue a notice to a third person and notwithstanding slight delay in the case the right of the petitioner to invoke the procedure laid down under Order 8-A can be safeguarded provided a *prima facie* case is made out for the issue of such notice. *Rajagopal* v. *Sankaran*[4], points out that rule 2 of Order 8-A enables the third party to raise all grounds in the action as would be available to him as against the party defendant who seeks to bring him on record. If the party-defendant sued the third party in a separate action, such third party would be entitled to raise the question of jurisdiction of the Court in defence; such a defence would also be open to a third party in the application to implead him as a party. If the third party wants to dispute the jurisdiction of the lower Court on any other ground after his appearance it is open to him to do so.

* Views expressed in this case as to the effect of section 3 of the Tamil Nadu Act, XV of 1976, that the suit shall be stayed and not dismissed have been disapproved in *Kuttayyan Chettiar* v. *Surendranathachary*, (1982) 2 M.L.J. 443.

1. (1982) 1 M.L.J. 315.
2. (1982) 1 M.L.J. 160.
3. (1982) 1 M.L.J. 105.
4. (1982) 2 M.L.J. 296.

Guna Kumar v. *Ramamurthy Metal Decorating Industries*[1], holds that the expression 'indemnity' in Order 8-A is not to be understood as confined to an indemnity arising out of a contract contemplated by section 124 of the Contract Act. It may arise from a contract express or implied but liability to indemnity need not arise from contract. A right to indemnity exists where there is an obligation either in law or in equity upon one party to indemnify the other. *Vyapuri Mudaliar* v. *Valliammal*[2], points out that there is no express provision either in Order 21 or elsewhere in the Code which expressly provides for the filing or for the continuation of execution proceedings by the legal representatives of a deceased decree-holder. They can however do so on the general principle that they, in law, represent the estate of the deceased decree holder. The term estate cannot be equated to a persona; at the same time the estate of the deceased person cannot be regarded as a mere abstraction. The definition of legal representative under the Code is such that it is the 'estate' of the deceased which would be the legal representative. All the heirs of a deceased need not be brought on record in order that his estate may properly be represented in further proceedings. It is enough if one or some of the legal representatives, who may reasonably be regarded as sufficiently representing the estate are brought on record. The fact that one of the three legal representatives of the decree-holder in the case had made peace with the judgment-debtor and retired from the proceedings does not render the representative capacity of the remaining two legal representatives any the less comprehensive so as to represent and bind the estate. *Venkatavaradan* v. *Lakshmi Ammal*[3], states that under Order 21, rule 15, where there is a joint decree in favour of joint plaintiffs and one of them seeks to execute it and the others are not made parties to the execution proceedings the Court has jurisdiction to pass appropriate orders to protect their interests as well. If the Court is under that rule empowered to have concern for absent decree-holders equity must certainly operate *a fortiori* in favour of such joint decree-holders when

1. (1982) 1 M.L.J. 203.
2. (1982) 1 M.L.J. 309.
3. (1982) 2 M.L.J. 24.

they actually figure as parties. 'Protection' within the contemplation of the rule may be given to the rest of the joint decree-holders in various ways. For instance the execution petitioner may be prevented from drawing out the moneys in deposit in excess of his share leaving the balance to be paid out to the other decree-holders; or he may be permitted to realise the fruits of his execution subject only to the right of contribution of others. The execution chapter in the Civil Procedure Code not being exhaustive the Court can draw upon its inherent power to render relief in cases not strictly covered by the express provisions of the Code and more particularly that even where set-off is not strictly available under Order 21, rule 15 the Court may grant equitable set-off in respect of cross-decrees. *Subramanian* v. *Vellaiya Chetty*[1], holds that Order 21, rule 21 enables the Court while dismissing an execution petition to order the continuance of attachment. The attachment cannot however be continued indefinitely. *Rakkayi Ammal* v. *Murugaiyyan Pillai*[2], makes it clear that Order 21, rule 72-A inserted in the Code in 1976 is designed for purposes of Court-auction by a mortgagee of the property. He will have to obtain leave for purchase. The Court will fix the reserve price, while granting the leave not less than the amount then due for principal, interest and costs in respect of the mortgage and when the property is sold in different lots the Court will fix the reserve price as to fit the amount of decree. *Palaniappa Gounder* v. *Nallamuthu Gounder*[3], points out that after the introduction in 1972 of Order 21, rule 66 (*d*) (*i*) in the Civil Procedure Code, by the Tamil Nadu Amendment and the amendment of rule 196 of the Civil Rules of Practice thereafter, it is not open to the Court to reduce the upset price already fixed without notice to the judgment-debtor. If the judgment-debtor shows that the property sold had not fetched a proper price he can apply to set aside the sale and succeed if he can establish substantial injury arising out of the inadequacy of the price as a result of the material irregularity owing to the reduction of the upset price without notice to him. The omission to issue a notice to the judgment-debtor in the application for the reduction of the upset price relates to one of the steps taken in the matter of publishing and conducting the sale and has therefore to be placed on a par with an irregularity in the publication itself. An irregularity of this type would be clearly one which would fall within the scope of Order 21, rule 90. *Chinna Vaira Thevar* v. *Vaira Thevar*[1], lays down that the failure or inability of the plaintiff to secure necessary evidence to support his case will not be a ground contemplated by Order 23, rule 1 (3) (*b*). The expression 'sufficient cause' will not take in the dismissal of a suit on the ground that the plaintiff had not established his case. The mere fact that the plaintiff was not able to secure the necessary evidence at the trial stage to prove his case is no ground for invoking Order 23, rule 1 (3). *Natarajan* v. *Gnanambal Ammal*[2], states that where the decree is a nullity the executing Court cannot go behind the decree. Where the proceedings had started much earlier to the amendment of Order 23, rule 3, the amendment will not apply to such proceedings.

Criminal Law and Procedure.—In *Muniappan* v. *State of Tamil Nadu*[3], the Supreme Court elucidates that the obligation to hear the accused on the question of sentence which is imposed by section 235 (2), Criminal Procedure Code, is not discharged by putting a formal question to the accused as to what he has to say on the question of sentence. The Judge must make a genuine effort to elicit from the accused all the information which will eventually bear on the question of sentence. It is the bounden duty of the Judge to cast aside the formalities of the Court-scene and approach the question of sentence from a broad sociological point of view. The occasion to apply the provisions of section 235 (2) arises only after the conviction is recorded. Questions which the Judge can put to the accused under the sections and the answers which the accused makes to those questions are beyond the narrow constraints of the Evidence Act. The Court, while on the question of sentence is in an altogether different domain in which facts and factors which operate are of an entirely different order than those which come into play on the question of conviction. All murders are terrific and if the fact of the murder being terrific is an adequate reason for imposing the death sentence, then every murder will have to be visited with that sentence. In that event, death sentence will become the rule, not an exception and section 354 (3) will become a dead letter.

1. (1982) 2 M.L.J. 67.
2. (1982) 1 M.L.J. 255.
3. (1982) 2 M.L.J. 258

1. (1982) 2 M.L.J. 400.
2. (1982) 2 M.L.J. 327.
3. (1982) 1 M.L.J. (S.C.) 1