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APPLICATION OF HINDU LAW TO PROPERTY HELD BY A CONVERT AT THE TIME OF HIS CONVERSION.

WILLIAM MACNAGHTEN, in his *Precedents of Hindu Law*, Vol. II, at pp. 131-132, refers to a case in which the question related to the succession of a Hindu who became a Mahomedan and acquired property both before and after his conversion. He answers with reference to this question :—" Whatever property he, previously to his conversion, was possessed and seized of, will devolve on his nearest of kin who profess the Hindu religion, and whatever he acquired subsequently to his conversion will go to the person who, according to the Mahomedan Law, becomes his legal heir." The rule here stated is this : The heirs according to Hindu Law will take all the property which the deceased had at the time of his conversion, but his subsequently acquired property is governed by the Mahomedan Law. The rule is explicable on the assumption that the convert must be taken to be dead, so that the property which he had at that time must be taken to have devolved *eo instanti* on his heirs according to the Hindu Law. So understood, the rule would be applicable to whatever kind of property the convert might have possessed at the time, whether it be a share in joint family property or property which was acquired by his own exertions or which he would otherwise be entitled to absolutely. MR. MAYNE, however, in his book on *Hindu Law and Usage*, apparently understands the rule differently, although it is difficult to say what exactly his understanding of the rule is. In paragraph 37 of of his book he says :—" It has been stated that the property which he was possessed of at the time of his conversion will devolve upon those who were entitled to it at the time by the Hindu Law, but that the property which he

may subsequently acquire, will devolve according to Mahomedan Law. The former proposition, however, must, I should think, be limited to cases where by the Hindu Law, his heirs had acquired an interest which he could not defeat. If he was able to disinherit any of his relations by alienation, or by will, it is difficult to see why he should not disinherit them by adopting a law which gave him a different line of heirs." If MR. MAYNE understands the statement in MACNAGHTEN to relate to devolution of all the properties of the convert on his death, it is no doubt open to the criticism that as regards self-acquired property acquired by the convert before conversion there is no principle in holding that it should devolve upon the heirs according to Hindu Law. MR. MAYNE fails to notice that the statement or the rule according to MR. MACNAGHTEN which was cited and commented upon by the Judicial Committee in *Jowala* v. *Dharm*[1] relates to a time when Act XXI of 1850 (Freedom of Religion or, as familiarly known, the *Lex Loci* Act) was not in force.

According to the Hindu Law prior to the Act XXI of 1850 the moment a Hindu became a convert to a foreign faith, such as Mahomedanism, he became civilly dead, so that all his property, whether joint or self-acquired, passed either to the surviving coparceners or to his Hindu heirs. The consequences of apostacy prior to Act XXI of 1850 have been considered and discussed by the Allahabad High Court in *Gobind Krishna Narain* v. *Abdul Qayyum*, [2] and the principles therein stated have been reaffirmed in a later case before the same Court (*Gobind Krishna Narain* v. *Khunni Lal* [3].) In the former case it was observed :— " On the above authorities we cannot come to any other opinion than that Raja Ratan Singh (convert) must be considered, at least as far as the villages in Rohilkand, where the Hindu law prevailed, are concerned, to have become ' civilly dead ' on his conversion to Mahomedanism, and that all his property, whether ancestral or self-acquired, (if any), devolved on his son Daulat Singh. We are also of opinion that there is no foundation for the distinction which the learned advocate for respondents would have us draw between joint ancestral and self-acquired property. The authorities we have cited make no such distinction. The

1. (1866) 10 M.I.A. p. 511. 2. (1903) I.L.R. 25 A. 546.
3. (1907) I.L.R. 29 A. 487.

rule they lay down is that a person in Rajah Ratan Singh's position, an outcast by reason of his adoption of the Mahomedan faith, became civilly dead, and being dead all his property passed to the next Hindu heir."

The statement in MACNAGHTEN'S *Principles and Precedents of Hindu Law*, Vol. II, at pp. 131-132, related to this period of Hindu Law. If apostacy be regarded as a civil death which necessarily lets in the law of inheritance or the law of survivorship there can be no distinction between joint property and self-acquired property except with respect to the mode of devolution peculiar to these two kinds of properties under Hindu Law. If the convert is to be regarded as dead at the moment of conversion, all properties, whether acquired by him or held by him as a member of a joint Hindu family, must be taken as divested so that his right of ownership in the same must come to an end. The convert's Hindu heirs, *i. e.*, heirs according to Hindu Law, will take his property, *i. e.*, his self-acquired property will be taken by his heirs according to the Hindu Law of Inheritance and his share in the joint property will survive to his other co-parceners. Hence, from and after the date of conversion, he begins life anew and is governed by the Mahomedan Law and not by the Hindu Law. The property acquired after the conversion will, therefore, devolve according to Mahomedan Law.

After Act XXI of 1850 apostacy cannot have and has not the above effect. The convert's rights in all the property possessed by him are saved by the above statute, so that if, at the time of conversion, he had a share in the joint family property and was also possessed of self-acquired property, his share in the joint family property would not lapse to other members and he would not be divested of his rights in self-acquired property. The statement in 2 MACNAGHTEN, p. 131, above referred to, would no longer hold good after the passing of the statute, and to quote it as still applicable to a state of things prevailing after Act XXI of 1850 is entirely meaningless and groundless. The criticism, therefore, of MR. MAYNE in paragraph 57 of his book is quite beside the point. Further the criticism, or at any rate the limitation, which MR. MAYNE wants to place, is rather meaningless. He thinks that the proposition

enunciated in the case in MACNAGHTEN already referred to, that property at the time of his conversion would be taken by his Hindu heirs, should be limited to cases in which the Hindu heirs acquired an indefeasible interest in the property ; that in the case of self-acquired property which the convert had at the time of his conversion, there could be no indefeasible interest in the property; and that, by adopting a new religion, he must be taken to have disinherited his Hindu heirs and that, at any rate, as regards such self-acquired property, the heirs according to Mahomedan Law would take it. We think the limitation thus placed by MR. MAYNE is based upon a fundamental misconception and his explanation can hardly be regarded as correct. If the statement in MACNAGHTEN is, as said by MR. MAYNE, to be confined to property in which his Hindu heirs have acquired an indefeasible interest, MR. MAYNE apparently accepts the proposition that such property will be taken by the Hindu heirs and that the convert will have no rights in it. Such a proposition, however, can hardly be maintained as good law at the present day, for it must be taken that as regards the property in which an indefeasible right is possessed by others according to Hindu Law —for instance joint property in which the convert had a right to a share—there never was any doubt prior to Act XXI of 1850 that the rights of the members still remaining in the fold were in any way affected by the conversion (except it be that these members obtained a benefit by the lapse to them of the share of the convert.) The only question then was as to whether, according to the Hindu Law, the rights of the convert were affected by the conversion as by the lapse of his share to the other members and by his being divested of his rights in property. MACNAGHTEN'S statement already referred to had reference to this question of the rights of the convert. It is now conclusively settled by the Judicial Committee in *Abraham* v. *Abraham*[1] that after Act XXI of 1850 conversion effects a severance by operation of law of the interest of the convert so that the moment a member of a joint family becomes a convert there is a division by operation of law and the convert from that moment becomes a tenant-in-common of the joint family property. After Act XXI of 1850, therefore, the convert does not lose his interest in the joint family property

1. (1863) 9 M.I.A. 195.

and his share does not lapse to the members still remaining in the fold of his old religion. His share in the joint family property, therefore, must be regarded in the same position as the property acquired by him and held by him at the time of conversion.

Prior to Act XXI of 1850, therefore, apostacy according to Hindu Law had only one effect upon property held by him, whatever the nature of that property—joint or self-acquired. This effect has now been changed by Act XXI of 1850 but even according to this Act the effect is the same although different from that prior to Act XXI of 1850 as regards all property held by the convert. Before Act XXI of 1850 the ownership of the convert in both kinds of property held by him (*i.e.*, joint and self-acquired) ceased. After Act XXI of 1850 his ownership was not divested and he could hold his share in the joint family property just in the same way as he could hold his self-acquired proerty. We think MR. MAYNE has not quite borne in mind the provisions of Act XXI of 1850, and he seems to have been misled by the citation of the above statement in MACNAGHTEN by their Lordships of the Judicial Committee in *Jowala* v. *Dharm*[1] without express dissent. It may be observed that although this quotation was cited in the judgment of their Lordships in the above case, it was not cited with any approval by their Lordships. Their Lordships cite with approval the latter part of the proposition contained in that statement, *viz.*, that the property acquired after conversion was governed by Mahomedan Law. They did not consider the question, and indeed it was unnecessary for them to consider, whether the property acquired before or held by the convert as a member of a joint family was governed by the Hindu or the Mahomedan Law. If the convert can be regarded as possessing rights over such property even after conversion, and there can be no doubt that after Act XXI of 1850 his rights cannot be divested by conversion, such property can only be governed by the Mahomedan Law, and on his death after conversion the heirs must be determined by such law. The Hindu Law ceases to be applicable to him as that law is only a personal one and cannot have application to a convert or the property held by him.

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1. (1866) 10 M. I. A. p. 513.

NOTES OF INDIAN CASES.

Durga Prasad Singh *v.* **Rajendra Narain Bagchi.** —I. L. R. 37 C. 293.—Several questions have been raised and decided in this case. The facts are as follows. The defendents held under a *maurasi mokurari* lease granted by the plaintiff's predecessor in title. Apparently the lease was registered, although that fact does not appear from the judgment or the statement of facts. The lease purported to grant 400 bighas of land contained within certain specific boundaries and the rent reserved was Rs. 7 per bigha. It was found that the parties were under a common mistake as to the specific boundaries and the actual extent comprised within those boundaries was 275 and odd bighas. About 4 years after the lease, apparently when it was found that the extent was considerably less, the landlord gave an unregistered letter or *sanad* to the defendants, reducing the rent reserved from Rs. 7 to Rs. 5 and for two years he accepted this reduced rent from the defendants. Subsequently, however, he claimed the full rent reserved for the original lease and brought the suit out of which the present discussion arose. The first question considered was whether this letter was admissible in evidence. Mr. Justice *Doss* held, that a covenant by a lessor for abatement of rent affects an interest in land and that, therefore, the letter must be registered under S. 17, Cl. (*b*). This was concurred in by the other Judge (Mr. Justice *Richardson*). We are extremely doubtful about the soundness of this view. It has been held in the English cases that where there is a written lease there may be a valid oral (contemporaneous or subsequent) agreement to pay an additional sum, whether that sum be called rent or otherwise, if the landlord should do certain things —see *Hoby* v. *Roebuck* & *Palmer* [1]; *Donellan* v. *Read* [2]—and that this agreement does not come within the Statute of Frauds. If a liability can be created as against the lessee to pay the sum over and above that reserved by the lease, it does not appear why a liability against the lessor cannot be created for an abatement or reduction of rent or for agreeing to deduct something for certain matters without such liability conforming to the Statute of Frauds or other corresponding statutes. The case of

1. (1816-1817) 7 Taunt 157 S. C. 17 R. R.477.
2. (1832) 3 B. & A. 899 S. C. 27 R. R. 588.

O'Connor v. *Spaight* [1] is cited as an authority for this view. Assuming that the question was necessary for the decision in that case and assuming that the decision in that case placed a correct interpretation on the Statute of Frauds, we do not think the decision is any safe guide for the interpretation of the Registration Act in this country or should be followed in this country. *Doss* J., in the case under notice, does not say that the contents of the letter cannot be proved under S. 92 of the Evidence Act. He says the letter is inadmissible in evidence under the Registration Act as it has not been registered, although in the course of his remarks he seems to suggest that the provisions of the Transfer of Property Act also stand in the way. We do not see, however, what the Transfer of Property Act has to do in the matter. A letter by a landlord consenting to the abatement of rent cannot be considered as a lease under S. 105 of the Transfer of Property Act. Assuming that the lease was for non-agricultural purposes S. 107 of the Transfer of Property Act enacts that certain kinds of leases can only be made by registered instrument. The section does not enact that all the terms of a lease should be contained in a registered instrument. The terms of a lease, or rather the incidents of it, can be implied by law in cases where the parties have not chosen to come to an express understanding with reference to certain matters. If there is an express understanding the same should be looked to for the terms. There is nothing in the Transfer of Property Act prohibiting the execution of a registered document evidencing only the transfer of a right of enjoyment in immoveable property without containing reference to the consideration or to the terms. If the document states that the consideration or the terms are to be found in a document which is unregistered we do not see why such unregistered document should not be looked to for ascertaining the consideration or the terms. So also where the registered document itself makes no reference to the unregistered document but the regis-

1. (1804) 1 Sch. & Lef. 305, 306. [From the report at p. 306 it will appear that there is no decision on the question. The letter was not signed as required by the statute and when objection was taken the other side did not press for its admission and in fact the point was not argued. The report further states that there was no payment made in fact according to the lowest rate. There was no agreement to abate the rent as in the case under notice and it is strange to find the learned Judge citing this case as any authority :—ED.].

tered document does not contain the consideration for the lease there is nothing in law to prevent the unregistered document being looked at with reference to the consideration. We think the same principle will apply to the Registration Act.

Where lands described to be of a certain area are leased and it turns out that the extent is considerably less, the tenant will be entitled to an abatement of rent. Where the landlord gives a letter to the tenant describing the amount of abatement of rent, we fail to see how such an agreement is a lease requiring registration. The case in *O'Connor* v. *Spaight*[1] does not decide the point as erroneously assumed by the learned Judge, but even if it can be regarded as any authority, it is a decision on the Statute of Frauds, whose language is very difficult to construe. The Statute of Frauds, however, only required a writing, and the letter in this case, therefore, would sufficiently satisfy the requirements of the statute.

The Transfer of Property Act being therefore out of the way, the only question is whether the letter required to be registered under S. 17 of the Registration Act The letter contained a covenant for abatement of rent on the ground that the area demised under the lease was considerably less than the area which the lessor was entitled to and could place the lessee in possession of. Under S. 17 leases are separately provided for in Clause (*d*). As already stated a letter agreeing to reduce the rent is not a lease within the meaning of Clause (*d*). It does not also limit or extinguish any right, title or interest in immoveable property within the meaning of Clause (*b*), S. 17, rent not being a charge under the Indian Law.

The learned Judge, Mr. Justice *Doss*, says that his view is impliedly supported by the *ratio decidendi* of the judgment of the Privy Council in *Subramanian Chettiar v. Arunachellam Chettiar*.[2] There is no such implied adjudication, their Lordships not dealing with a case of reduction or abatement of rent.

Where the lessor is not able to put the lessee in possession of the whole of the lands demised under the lease and is able to put the lessee in possession only of a part, the lessee is, under the law, entitled to a reduction or abatement of rent. Where the

1. (1804) 1 Sch. & Lef. 305, 306. 2 (1902) I. L. R. 25 M. 663.

only he is able to give possession of, this is an independent contract standing by itself. The lessee impliedly waives his right to claim damages, and the lessor, in agreeing to accept rent only for the lands in actual occupation, is only discharging a liability imposed on him by the law, as even without the letter the lessor is bound to give the abatement, and we do not see how the position can be worse where there is a document carrying out this legal duty.

S. 92 of the Evidence Act can hardly apply to a case of discharge of the original contract. The liability under a registered or an unregistered written contract may be put an end to by a subsequent agreement, and this subsequent oral agreement is not required to be in writing under the Evidence Act. Even otherwise the section only requires a writing, and in this case, there being a writing, the provisions of the Evidence Act even if applicable have been amply satisfied.

Babbon Sheik *v.* **The Emperor.**—I. L. R. 37 C. 340.—The question in this case was as to the powers of a Magistrate to make a local inspection in a case tried by himself. Curiously enough there is no express provision in the Criminal Procedure Code authorising or empowering a Magistrate to make such local inspection. S. 556 of the present Code (Act V of 1898), by the explanation, provides that a Judge or a Magistrate shall not be deemed to be a party "by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case." From this provision it follows impliedly that the Judge or Magistrate may view the place in which an offence is alleged to have been committed or any other *locus in quo* although the explanation itself only purports to save the jurisdiction of the Magistrate to try the case. A distinction must be made between the powers of a Magistrate to make a local inspection and the powers of a Magistrate to make a local investigation, although the distinction is often lost sight of in the cases. The power to make a local investigation is admittedly a larger one than the power to make a local inspection and must be governed by the express provisions of the statute. But the power to make a local inspection need not rest upon the four corners of the Criminal Procedure Code but may rest upon

the inherent powers of the Court. The two differing Judges before whom the case was originally heard, and the third Judge to whom the reference was made were all apparently agreed that such a power existed. The learned Judges, however, differed as to the scope and extent of this power. S. 293 of the Criminal Procedure Code empowers the Court in a case tried with the aid of a Jury or with the aid of Assessors to permit the Jury or the Assessors, as the case may be, to make inspection of "the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred." Here a distinction is drawn between the Court and the Jury or the Assessors, and the section allows the inspection to be made by the Jury or the Assessors while no such power is given to the Court itself. Here again we must apparently take it that the Court has power to make inspection even in cases under S. 293 from the inherent powers of the Court. The question is whether a Magistrate may make a local inspection in a case to test the evidence which he has heard on a question of fact that has been raised before him. *Stephen* J. held that he had. The two other Judges, *Woodroffe* and *Chatterjee* JJ., held that he had the power only in order to enable him to understand the evidence and not for any other purpose. If in the case under notice, one party had asserted amongst others that a certain spot existed, while the other denied its existence, it would be rather too much to say that the Court need not inspect the place to ascertain the truth of the statement of the parties. To a native mind it would indeed be a perverse system of justice where the law did not allow the presiding Judge to take such a ready and practically safe and easy method of ascertaining the truth. We could not, indeed, believe that the law could be different under the English Criminal Jurisprudence or that one of its most cherished and salutary principles was to exclude the ascertainment of truth in this safe and expeditious manner.

That this is so and that an appeal to the principles of English Criminal Jurisprudence for the purpose of altogether excluding the power of the Court to make the local inspection is baseless will appear from the several paragraphs of TAYLOR on *Evidence* dealing with the subject. The English Jury Act of 1825 (6 Geo. IV, C. 50, Ss. 23 & 24) deals with the power of a Court in criminal cases to make a local inspection. "In cases

where the identity of articles is in question and in cases relating to disputed rights of way, light or water, or otherwise, involving some question which depends on the relative position of places, it is often desirable that the Jury should have an opportunity of *viewing the spot* in controversy, since the knowledge derived by these means is far more satisfactory than any obtainable by the mere examination of maps or plans, which are often inaccurate and obscure, and may perhaps have been prepared with an express view to mislead. The Act extends to criminal cases depending in the Superior Court. In civil actions it, however, extended only to such as those for trespass, *quare clausum fregit*, ejectment or waste. The Act, however, was superseded for civil causes by a later statute which in its turn has been repealed, and the law as regards these cases is governed by the rules of the Supreme Court". At the conclusion of the chapter dealing with this kind of evidence the author observes:—

"It is suggested that the most extensive power of directing a view ought to be extended to every Court of Record and also to all criminal proceedings, the practice in which respecting views still rests on the inadequate provisions of the Acts of 1825 and 1852. In short, the presiding Judge at *any* trial ought to be expressly empowered to order a view, even after the *evidence may have been heard*, if, in his opinion, such a step is necessary for the purposes of justice."

The author in a note adds:—"In one case where a question arose whether the general get-up of a defendant's omnibus was a colorable imitation of the plaintiff's omnibus, so as to be calculated to deceive, the Court held that some independent evidence must be given, and that the Judge who tried the case was not entitled to decide the question by merely viewing the rival omnibuses, for a view is for the purpose of enabling the tribunal to understand the questions that are being raised and apply the evidence; but some doubt has been expressed as to the correctness of this decision and it appears at all events not to apply in passing off actions, for where in such an action the question arises whether two trade marks or trade names are so alike as to be calculated to deceive, the Judge may, and in many cases must, decide the case on the evidence of his own senses alone."

The question becomes more complex where the dispute relates to matters of fact based upon inference and opinion. The learned Judge, Mr. *Chatterjee*, makes no distinction between the powers of a Court to make a local inspection and the powers of a Court to make local investigations, and applies the principles laid down in the cases relating to the latter class to the former class. The case in *Hari Kishore Mitra* v. *Abdul Babi Miah*[1] deals with the powers of a Court to make local investigation and the restrictions to be placed on the exercise of such powers. That case can afford no safe guide to a case where the power of a Court to make local inspection only is in question. It cannot, however, be gainsaid that the Magistrate in the case under notice has gone somewhat beyond his province, and one may safely accept the following statement of Mr. Justice *Chatterjee* as a correct exposition of the Law so far as it goes:—"When the law, however, allows a view of the locality, and it is in some cases not only convenient but necessary for the ends of justice, every possible precaution should be taken that such a view should be nothing but a view of the local features, and an immediate report of what issues should be placed on the record and laid open to the scrutiny of the parties." We take it that this language does not exclude the power of a Court to make local inspection under the circumstances suggested by us in the first part of this note.

De Rozario *v.* **Gulab Chand Anundjee**:—I. L. R. 37 C. 358:—The question raised and decided by Mr. Justice *Fletcher* in this case is one of importance to this country. For our present purpose we may assume that the point may be taken to have been set at rest under the English Law by the decision of the Court of Appeal in *Yates* v. *The Queen*.[2] Whether the same rule would apply in this country would depend partly on a consideration of the provisions of the Criminal Procedure Code. The question was left open by the Allahabad High Court in *Ishri* v. *Muhammed Hadi*[3]. The learned Judges, however, held in that case, and it was necessary for them to decide it, that a suit for malicious prosecution did not lie unless cognizance of the offence imputed had been taken by a Magistrate, and that, where no action was taken by a

1. (1894) I. L. R. 21 C. 920. 2. (1885) L. R. 14 Q. B. D. 641, 661.
3. (1902) I. L. R. 24 A. 368 at p. 370.

Magistrate against the plaintiff, any suit by the latter for damages could not be regarded as one for compensation for malicious prosecution. The only question is: when can a Magistrate be said to take cognizance of the offence within the meaning of the provisions of the Criminal Procedure Code so as to entitle a person against whom cognizance has been taken to bring a suit for compensation for malicious prosecution? S. 190 of the Criminal Procedure Code lays down the conditions requisite for a Magistrate taking cognizance of an offence. That, however, does not lay down what precise act of the Magistrate amounts to taking cognizance. Mr. Justice *Fletcher* is apparently inclined to take the view that unless a summons or process is issued there is no commencement of the prosecution and that, therefore, no action for malicious prosecution will lie and the mere filing of a complaint is not such as to entitle the plaintiff to bring a suit for malicious prosecution. A Magistrate, on receiving a complaint, has to examine the complainant on oath. He may then, if satisfied that the complaint is not true, dismiss it. That is also, we think, taking cognizance of the offence. It cannot be said that only in cases where the Magistrate issues a summons that he is taking action upon it or taking cognizance of it. A Magistrate has jurisdiction to dismiss a complaint in accordance with the provisions of the law as well as to direct process to be issued. By filing the complaint the complainant invites the Magistrate to take any of these actions and we think, whether the Magistrate dismisses the complaint or issues process, he is taking cognizance of the offence complained of under S. 190, Cr.P.C. There are two other ways in which a Magistrate can take cognizance of an offence. However, we are not concerned with them now. In a civil case the filing of a plaint by a suitor is instituting an action. In criminal cases the filing of a complaint must equally be taken to be the institution of criminal proceedings. The commencement of the prosecution is the filing of a complaint, and unless there is some technicality in actions for malicious prosecutions the *prima facie* view seems to be that the filing of a complaint will entitle a person to bring an action for malicious prosecution. The only question, therefore, is whether there is any technical meaning attached to the word 'prosecution' in the familiar action for malicious prosecution. Mr. Justice *Fletcher* says there is a

considered judgment of the Court of Appeal in *Yates* v. *The Queen*[1] to the effect that unless action has been taken upon the information no action for malicious prosecution will lie, and that will follow the same in preference to the *dictum* in *Clarke* v. *Postan.*[2] It must, however, be observed that what is said to be a considered judgment of a Court of Appeal can hardly be regarded as a decision. The question there was as to the construction of S. 3 of Newspaper. Libel and Registration Act, 1881 (44 and 45 Vic., C. 60) There was no question whether any action for malicious prosecution would not lie by the mere filing of information. An argument by analogy was suggested, and *Cotton* L. J. held that the analogy had no bearing upon the language of the statute which was the subject of construction in that case. The learned Judge of course added that the decision in *Clarke* v. *Postan*[2] was really no authority for the view that a prosecution must be said to have commenced by the filing of the information. This judgment of *Cotton* L. J., however, can only be at the most an *obiter dictum* and can hardly be said to be a considered judgment (cf. the language similar to that of *Cotton* L. J. in the judgment of Lord *Esher*, Master of the Rolls). *Cotton* L. J. explains the case of *Clarke* v. *Postan*[4] by saying there was some appearance of the accused in that case. It must, however, be said that the judgment did not proceed upon this ground even if the view of the facts taken by *Cotton* L. J. be assumed to be correct, and far from the judgment in that case being considered to be an *obiter dictum* it must be taken to be a decision upon a point directly raised in that case. The decision in that case was cited with approval by *Hawkins* J. in *The Queen* v. *Yates.*[3] Apparently a similar view is taken in the article on malicious prosecution in the *Encyclopædia of the Laws of England* by WOOD RENTON, Vol. VIII, p. 515. "A man prosecutes a charge who *lays an information* before a Magistrate accusing of the offence or makes an oral accusation before a Justice or takes any active proceedings in a prosecution at any stage including preferring a bill before the Grand Jury whether it is *ignored* or is found but is followed by acquittal on any ground." It cannot, therefore, be said that the question even under the

1. (1885) L.R. 14 Q.B.D. 648, 661. 2. (1834) 6 C. & P. 423.
3. (1883) 11 Q.B.D. 7 50.

English Law is free from doubt, and the decision of *Fletcher* J in this case, following this supposed rule of English Law, cannot be considered satisfactory. Under the Indian Law institution of criminal proceedings known to be false is itself an offence, and the civil action for malicious prosecution only corresponds to this.

SUMMARY OF ENGLISH CASES.

In re Columbian Fireproofing Company, Limited.

[1910] 2 Ch. 120.

Companies (Consolidation) Act, 1908, *Ss.* 93, 212—"*At the time of the creation of charge*"—*Meaning of.*

S. 93 of the Companies (Consolidation) Act, 1908, provides that a floating charge on the undertaking of a Company is void against the liquidator unless the instrument creating the charge is filed with the Registrar within 21 days of the creation of the charge. S. 212 provides that floating charges on the undertaking created within 3 months of the winding up are void except to the extent of the cash paid at the time of the creation of the charge.

In this case, a Company being in urgent need of funds, the directors accepted an offer for an advance of £ 1,000 on a floating charge, promising to execute an instrument at the next meeting of the Board. On the strength of the promise, a portion of the advance was also paid. The instrument was duly executed at the next meeting and registered within 21 days of the execution of the instrument but more than that period from the date of the advance. *Held*, first, that a charge was not created when the advance was made and, therefore, the registration was perfectly good; secondly, that "at the time of creation" in S. 212 does not necessarily mean contemporaneously with or immediately in exchange for the security; that it is a question of fact in all cases whether under the circumstances the payment could be said to have been made at the time of the creation of the charge, and that, in this case, the payment must be taken to have been so made.

In re Weir Hospital. [1910] 2 Ch. 124 (C. A.)

Cypres, when applicable—Powers of Court in drawing up a scheme.

Where the directions of a testator do not offend against either law or public policy, the application of the Cypres doctrine to the employment of his charitable bequest is permissible only where the administration of the trust fund in accordance with his directions either is, or has, through a supervening change of circumstances in the course of time, become practically impossible, or when the fund is, or has, become grossly in excess of any amount which could, without unreason, be expended in loyally fulfilling the express terms of the benefaction. Neither the fact that some other charity is likely to be more beneficial nor the fact that a margin is likely to be left after expending the funds in the manner indicated by the testator, is a justification for departing from the clear instructions of the testator. So long as there is no occasion for the application of the doctrine of Cypres, the Court, when called on to frame a scheme, has simply to provide a machinery for giving effect to the testator's will.

In re Evered: Molineux *v.* Evered.

[1910] 2 Ch. 147 (C. A.)

Powers of appointment—Covenant not to appoint, effect of—Principle of "ut res magis valeat", application of—Covenant to appoint by will.

(1) A power to appoint by a will cannot be executed by a deed. (2) A covenant to appoint by a will in a particular way cannot be the subject of specific performance or have any legal operation. (3) An exercise of the power by will is not invalid by reason only of the fact that the appointor has covenated to make such an appointment. (4) A release by the appointor or a covenant by the appointor not to exercise the power is not open to objection even though the effect of the release is for the benefit of the appointor. (5) Such a release or covenant may apply either to the whole of the settled property or to a part only. (6) The appointor may covenant not to exercise his power in favour of a particular object of the power, and in such a case, the power could, thereafter, be exercised only subject to the fetter or limitation thus imposed. (7) In so far as the whole or any part is released, it goes as unappointed to persons entitled in default of appointment. (8) If the power is to appoint by deed

or will, a deed by which the appointor purports to release a portion of the fund in favour of an object of the power may be construed *ut res magis valeat* as an appointment in favour of the object. But this cannot be so if the power is testamentary only.

Applying these principles, it was held that the effect of a covenant by a donee of a testamentary power with 3 of her 7 children to whom the fund was to go in equal shares in default of appointment, not to exercise the power of appointment so as to reduce their respective shares in the fund below £ 7,000 apiece, was to leave £49,000 unaffected by any appointment by her which does not leave them £7,000 apiece. The covenant, being by deed, could not be given the operation of making an appointment in favour of those children.

In re **Thursby's Settlement: Grant** *v.* **Littledale.**

[1910] 2 Ch. 181.

Power of revocation and power of appointment—"Trust-moneys, securities, &c.": meaning of—Real estate purchased out of, if included—Appointment, when implies revocation.

A power of revocation is not a power of appointment, but is a power, the exercise of which is a condition precedent to the exercise of the power of appointment. An appointment, therefore, in the exercise of a power of appointment and of every and any other power, does not *prima facie* refer to powers of revocation but only to powers of appointment. Otherwise, if there are other *indicia* besides reference to the power, shewing an intention to execute the power of revocation also, for instance, a reference to property which can only pass by means of an execution of both power of revocation and power of appointment.

The question in this case was whether there was such a reference to particular estate as to involve a revocation and a re-appointment. A marriage settlement conferred upon the husband and the wife a joint power to appoint the trust moneys, stocks, funds and securities comprised in the settlement amongst the children; it contained also a power to invest the trust funds in the purchase of real estate. The husband and wife appointed a real estate in favour of their eldest son, reserving power of revocation. Subsequently, they appointed the whole of the trust

moneys, stocks, funds and securities comprised in the settlement in favour of all their children equally. *Warrington* J. held that the term "trust moneys * * security" included the real estate purchased therewith, and therefore the subsequent appointment operated as a revocation of the earlier appointment. On appeal, it was held that that term did not include real estate, that if the real estate became subject to the trusts it was not because that term comprised real estate but because the trusts created by the settlement apply by necessary implication to the lands bought by the trustees out of the trust moneys in pursuance of the provisions in the trust deed and which the trustees must necessarily admit they hold on the trusts of the deed and that accordingly, the subsequent appointment did not affect the earlier one.

Stancomb *v.* Trowbridge Urban District Council.

[1910] 2 Ch. 190.

Corporation—Injunction—"Wilfully," meaning of—Sequestration order suspended.

Rule 31 of order XLII [Rules under the Judicature Act] provides that "any judgment or order against a corporation wilfully disobeyed may, by leave of the Court or a Judge, be enforced by sequestration against the corporate property &c." *Held*: the expression "wilfully" is intended to exclude only casual, or accidental and unintentional disobedience to an order of the Court. If an act prohibited is in fact done, it is no answer to plead that a servant did it and that he did it through carelessness, neglect or even in dereliction of his duty.

In this case, an order of sequestration was made but was directed to be kept in office for 6 months to give the defendant council time to obey the direction of the Court.

Hunte, Roope-Teague and Co., *v.* Ehrmann Brothers.

[1910] 2 Ch. 198.

Passing-off action—Essentials of—Definite class of goods to which description is applicable.

In all passing-off actions, two things are necessary to be proved if the plaintiff is to succeed; first, that the name, the get

up, or any other device by which the defendant seeks to describe his goods is the proper description of plaintiff's goods; secondly, a definite article or class of articles for which the incriminated articles are passed off. Though the defendant might be guilty of passing off even when the goods he sells are goods belonging to the plaintiff, if he passes them off as certain other goods belonging to the plaintiff, the plaintiff is not absolved from the necessity of proving that there are certain definite goods for which the incriminated goods are passed off. In this case, the defendants advertised certain wine as plaintiff's "wine, over 6 years in bottle, usually sold at 60 *s.* a dozen, reduced price 34 *s.* a dozen." As a matter of fact, the plaintiffs had no wine which was matured in bottles. Held accordingly that the plaintiff's action was unsustainable.

Measures Brothers, Limited *v.* Measures.

[1910] 2 Ch. 248.

Contract of service—Agreement in restraint of defendant's carrying on similar trade after termination of service—Termination of employment before stipulated period—Effect of.

Under a contract of employment, the defendant was entitled to serve for 7 years as director of the plaintiff company on a certain salary, and on the expiration of that term, he was bound for a further period of 7 years not to carry on any business in competition with the plaintiff company. The plaintiff company, having gone into liquidation, could no longer employ the defendant and the receiver gave him notice and terminated his employment. *Held*, under these circumstances, (*Buckley* L. J. dissenting) that the company was not entitled to an injunction restraining the defendant from carrying on trade in competition of the plaintiff company in breach of the covenant contained in the contract of service.

The decision of Joyce J. in [1910] 1 Ch. 336 **affirmed.**

Parliamentary franchise to run tramways—Not transferable unless authorised.

When a parliamentary franchise, like that of running tramways on public roads, is conferred upon a person, it is not competent to such person to confer upon other people similar powers,

unless expressly authorised so to do by the statute conferring the franchise.

Butler *v.* **Rice.** [1910] 2 Ch. 277.

Mortgage—Merger—Subrogation—Payment, by a third party, of the mortgage at the instance of a stranger on provision of legal mortgage of part of the property.

One Mrs. Rice had certain property in Bristol and another property in Cardiff; both these were mortgaged to a Bank. The plaintiff was asked by Mr. Rice to advance the amount of the mortgage, a portion of which was to be secured by a legal mortgage of the property in Cardiff, the other portion by a personal undertaking by the solicitor of the defendant, and the plaintiff agreed, stipulating that the deeds were to be with the solicitor till the mortgage was executed. Plaintiff was not aware at the time that the mortgage comprised also the property at Bristol. With the money advanced, the mortgage was paid off, the deeds being left with the solicitor. Mrs. Rice refused to give the mortgage as promised by Mr. Rice. In the action which was brought by the plaintiff for a declaration that he was entitled to a charge on the Bristol property:

Held: he was. The fact that the mortgage was paid without the concurrence of Mrs. Rice did not matter, as the question was not whether a new charge was created but whether an already existing charge had been extinguished. Nor did the fact that the property on which a legal mortgage was promised to be effected was only a part of the original security matter as there was no evidence that the plaintiff intended to give up, pending the execution of a proper mortgage, such security as the transfer of the deeds would give him.

Hudson *v.* **Spencer.** [1910] 2 Ch. 285.

Donatio mortis causa—Legacy to an equal amount—No presumption of satisfaction.

A legacy to the value of a *donatio mortis causa* does not raise the presumption of a satisfaction of the donation.

In re **Weniger's Policy.** [1910] 2 Ch. 291.

Priority as between equitable incumbrancers on choses in action —Order of time or notice.

It is clear that in the case of choses in action, such as policies of life assurance, the priority of equitable incumbrancers is determined, in default of their gaining priority by giving notice, by the order of dates. It is equally clear that where there is a trustee or other person to whom notice can be given which has the effect of restraining him from parting with the money in his hands priority is *prima facie* determined by the order of notice. But both on principle and on the authority of *Spencer* v. *Clarke*[1] the mortgagee who gives such notice cannot thereby gain priority over charges of which he has actual or constructive notice at the time he advances the money. This priority does not, however, extend to further advances made by the prior mortgagee, which he is under no obligation to make under his mortgage contract.

United Mining and Finance Corporation, Ltd.

[1910] 2 K. B. 296.

Solicitor—Undertaking to pay money, etc., to person not a client—Summary jurisdiction of High Court to compel performance.

The High Court has jurisdiction to summarily enforce undertakings (here to pay money) given by a solicitor *in that character*, and it matters not that they are not given (1) in an action, but in a mere mortgage or loan transaction, etc., or (2) to a client; nor need there be any question of misconduct or dishonourable conduct in issue to give the Court summary jurisdiction.

Kish *v.* **Taylor.** [1910] 2 K. B. 309.

Ship—Charter-party—Necessary deviation—"Dead freight"—Whether lien exists.

A ship-owner will lose his lien if there has been an improper deviation. But ordinarily, if a vessel, in the course of her voyage, puts into a port of refuge necessarily for the safety of the ship and the cargo, that is not a deviation, (even though the necessity to deviate was caused by the ship's unseaworthiness) and the effect of it (such deviation) is not in any way to interfere with the contractual rights of the parties under the bill of lading.

1. (1878) 9 Ch. D. 137.

If in the course of the voyage, there is some loss or damage which is occasioned or contributed to by the unseaworthiness of the vessel, then the ship-owner is liable for the loss even though it is a loss which is within the perils excepted by the bill of lading.

A lien for "dead freight" includes a lien even for *unliquidated* damages, in respect of the loss suffered by the shipowner in consequence of a full cargo not being shipped.

Compania Sansanena De Carves Cangeladas

v.

Houlder Brothers and Co., Ltd.

[1910] 2 K. B. 354 (C. A.)

Practice—Joinder of defendants on different contracts.

The 1st defendant having agreed to carry plaintiff's goods in his own ships or in the ships of others sent a vessel of the 2nd defendant which carried the goods under a bill of lading from the plaintiff. The vessel proving unseaworthy during the voyage the goods were damaged.

Held that the defendants were properly joined in one suit.

[Per *Vaughan-Williams* L. J.—The actual carrier was the principal and the original contractor was his agent.]

[Per *Fletcher-Moulton* L. J.—Rule No. 4 of the Supreme Court Rules provides for such a case.]

[*Buckley* L. J.—Plaintiff's cause of action is one though the contracts with the defendants were different.]

Kinahan and Co., Ltd. *v.* **Parry.** [1910] 2 K. B. 389.

Principal and Agent—Undisclosed Principal—Hotel—License in Manager's name—Limited authority of Manager—Acts of Manager in contravention of—Liability of owner of hotel.

The license for a hotel was taken out in the name of the Manager whose name appeared over the door as licensee. Though the owner of the hotel had ordered the Manager to buy liquor for the hotel only from a particular brewery, he bought it from the plaintiff who, in ignorance of the prohibition, was selling to him at the hotel on his credit. Subsequently on discovering the limited authority of the Manager the plaintiff sued the owner of the hotel for the price.

Held that the plaintiff was entitled to recover as the vendee's name appeared as licensee and as there was nothing to show that he was a mere manager and that too of a tied hotel.

Consolidated Tea and Lands Coy. *v.* Owler's Wharf.

[1910] 2 K. B. 395.

Wharfinger—Transport of goods of only some customers—Whether common carriers.

There is a distinction between willingness to serve every one who asks and willingness to serve only particular favoured persons. There is also a distinction between the carrying on of public employment of carriers and the mere occasional rendering to the customer of the warehouse the subsidiary service of collecting and carrying his goods from the import steamer. The latter class of persons in each of the above cases are not public carriers, and are, therefore, not subject to the liabilities incidental to such a position.

Grover and Grover, Ltd. *v.* Mathews. [1910] 2 K. B. 401.

Fire Insurance—Contract by agent without authority—Loss by fire—No ratification possible after, and with knowledge of, loss.

A contract of fire insurance effected by an agent without authority cannot, after, and with knowledge of loss by, fire, be ratified by the principal. The law is otherwise in marine insurance whose principles, only so far as they are incidental to a contract of indemnity as such and not to the special business of marine insurance, are applicable to both classes of transactions.

Wilson & Coventry, Ltd. *v.* Otto Thoresens Line.

[1910] 2 K. B. 405.

Ship—Charter-party—Fixed number of demurrage days—Dead freight—Reasonable time.

If a charter-party provides a fixed number of demurrage days the ship must wait for those days if the charterer requires it and there is ground for believing that further cargo will be loaded. Where no time is fixed, the ship, if not fully loaded, must wait a reasonable time and the charterers are entitled to keep it on demurrage till then; for otherwise the charterer will

have to incur a very heavy penalty; he will lose his profit on the carriage of a part of his cargo and, in addition, he may have to pay a large sum to the ship-owner for dead freight, whereas if the ship is detained for some time both parties will be gainers.

The King *v.* Surrey County Judge. [1910] 2 K. B. 410.

Right to sport and shoot—Right relating to land.

A suit to contest the validity of certain acts of the defendant done to preserve the defendant's right to sport and shoot over plaintiff's land is a suit relating to land.

Hobbs *v.* Winchester Corporation.

[1910] 2 K. B. 471. (C. A.)

Public Health Act, 1871 (38 & 39 *Vic.*, *C.* 55) *Ss.* 116, 117, 308—*Sale of unsound meat—Prosecution—Acquittal—Mens rea not necessary—Compensation—No right to.*

Under the Public Health Act which imposed a penalty upon persons selling unsound meat the plaintiff in the case was complained against as having kept for sale unsound meat but the complaint was dismissed. The plaintiff thereupon claimed compensation provided by S. 308 of the Act for "damages sustained by reason of the exercise of the powers of the Act in relation," as the section said, "to any matter as to which he is not himself in default."

Held by the Court of Appeal that as the policy of the Act was to make penal the keeping for sale of unsound meat, whether the vendor or his agents had any knowledge of the unsound character of the meat or not, the plaintiff cannot be said to be one who is not himself in default so as to entitle him to claim compensation, notwithstanding the dismissal of the complaint, the unsoundness of the meat having been proved according to the provisions of the Act.

Sopwell *v.* Bass. [1910] 2 K. B. 486.

Damages—Remoteness.—Contract, breach of—Contingent profits.

A contract was entered into between the plaintiff, who was a breeder of race horses, and the defendant, who was the owner

of a stallion, that the defendant's stallion should serve in 1909 one of the plaintiff's brood mares for £ 315 to be paid by plaintiff to defendant at the time of the service. The defendant sold the horse in 1898 to a purchaser in South America and thus precluded himself from performing the contract. Plaintiff sued for damages, assessing the damages at £ 700.

Held that the damage was too remote and that the plaintiff was entitled only to nominal damages.

The King *v.* **Norton.** [1910] 2 K. B. 496. (C. Cr. A.)

Evidence—Statements made in the presence of accused—When evidence.

Statements made by persons in the presence of the accused, relevant to the crime, are not in themselves evidence of the facts stated in them, but they are admissible only as introductory to, or explanatory of, the answer given to them by the person in whose presence they are made. Such answers may of course be given either by words or by conduct, *e.g.*, by remaining silent on an occasion which demanded an answer. If the answer given amount to an admission of the statements or some part of them, they or that part become relevant as showing what facts are admitted. If the answer be not such an admission, the statements are irrelevant to the matter under consideration and should be disregarded. The fact of a statement having been made in the prisoner's presence may be given in evidence but not the contents, and the question asked, what the prisoner said or did on such a statement being made. If his answer, given either by words or conduct, be such as to be evidence from which an acknowledgment may be inferred, then the contents of the statement may be given and the question of admission or not in fact left to the Jury. If it be not evidence from which such an acknowledgment may be inferred, then the contents of the statement should be excluded. To allow the contents of the statement to be given before it is ascertained that there is evidence of their being acknowledged to be true, must be most prejudicial to the prisoner, as, whatever directions be given to the Jury, it is almost impossible for them to dismiss such evidence entirely from their minds.

Mordaunt Brothers *v.* **The British Oil and Cake Mills, Ltd.** [1910] 2 K. B. 502.

Sale of goods—Unascertained goods—Delivery orders—Unpaid vendor's lien—Assent to sale.

The assent which affects the unpaid seller's right of lien must be such an assent as in the circumstances shows that the seller intends to renounce his rights against the goods. It is not enough to show that the fact of a sub-contract has been brought to his notice and that he has assented to it merely in the sense of acknowledging the receipt of the information. His assent to the sub-contract in that sense would simply mean that he acknowledged the right of the purchaser under the sub-contract to have the goods subject to his own paramount right under the contract with his original purchaser to hold the goods until he is paid the purchase-money. Such an assent would imply no intention of making delivery to a sub-purchaser until payment was made under the original contract.

JOTTINGS AND CUTTINGS.

The Tirupati Temple Scheme Case.—We invite the attention of the readers to the arguments of Counsel before the Privy Council in the Tirupati Temple Scheme Case which will be found printed as a supplement to this part. When the judgment of the Judicial Committee was reported it was thought that the Privy Council had entirely upset the judgment of the High Court. It was assumed by many, although there was no foundation for it, and the arguments now published would show how completely this assumption was erroneous, that the direction of the High Court regarding the application of the surplus funds on the *cypres* principle was completely ignored as unwarranted in law and that a person who was not a trustee, such as the treasurer appointed in the scheme framed by the Privy Council, could not be given powers of management and could not be allowed to deal with questions relating to the budget. As questions relating to the framing of a proper scheme are important for the proper management of many of our religious and charitable institutions and as there is an evident misconception as to the effect of the judgment of the Privy Council in the Tirupati Temple Case we think the report of the arguments although somewhat late (as we were able to secure them only now) will be found useful. It will be seen from the arguments that the Judicial Committee rightly point out that the Advocate-General is entitled to intervene in these suits and that courts are entitled to know the opinion of the Advocate-General on the scheme submitted by the parties. This is the commonest procedure in England. Until the advent, however, of the present Advocate-General

even suits relating to charities instituted by an Advocate-General were rare, at any rate, in the Madras Presidency when that was the case the intervention of the Advocate-General after the filing of the suit or the seeking of his opinion in respect of schemes must even be a greater rarity. We are glad that the present Advocate-General is more active in these matters and is exercising what is only his proper and legitimate function in the interests of these institutions which, as representing the Crown, he is entitled to supervise. We hope even in suits filed by private parties, where the question is one of a scheme, his opinion will be sought after if not by the parties at any rate by the Courts in the future.

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The Photographing of Witnesses.—Everybody with a proper regard for the dignity of the administration of justice must be gratified that Sir Albert de Rutzen has prohibited the taking of photographs of the witnesses in the proceedings in the Crippen case at the Bow Street Police Court. The time has come, indeed, when the Judges of the High Court and the various criminal Judges of the metropolis ought to agree to forbid the use of the camera in the Courts in which they preside. It is a scandal that a witness in a sensational case, whether he desires the publicity or not, should have his portrait reproduced in a public print to gratify the vulgar curiosity of the multitude. The practice of taking portraits in our Courts of Justice, so far as it irritates or unnerves a witness, interferes with the due administration of the law, and the Judges ought promptly to exercise their power to suppress it. Nor is there the slightest reason why witnesses alone should be protected from the growing nuisance. It has become a common thing for prisoners to be photographed in the dock. We can conceive of nothing more calculated to cause an innocent man and his relatives additional suffering than the knowledge that his portrait is being circulated in this way throughout the land. This is a matter to which the institute of journalists, which has been holding its annual conference in London this week, might profitably have devoted its attention, for any question which affects the connection of the Press with the Law must be of moment to both, but the institute has been engaged in considering topics either more domestic or academic in their interest. It remains for the administrators of the law to combine to deal effectively with an evil which threatens to degrade our Courts in the eyes of all right-thinking men.—*The Law Journal.*

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The Institute of Journalists.—Sir Edward Clarke, speaking at the annual conference of the Institute of Journalists on Monday, said his friend Sir Douglas Straight and himself were two of the oldest journalists present, though, speaking directly for his friend, they did not look it. A great many years ago they were both engaged in journalistic work, Sir Douglas, he thought, writing manuals of instruction on swimming, cricket, and all the other arts in which he excelled, and he himself (Sir Edward) reporting for the *Standard* cases in the Law Courts, with the privilege, which he well remembered once enjoying, of being offered half a sovereign by a solicitor to put his name in the paper. Some years afterwards came the work of the Press Gallery, and years after that, again, his great pleasure in having as Solictor-General to settle the Charter of the Institute.—*The Law Journal.*

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Lord Loreburn and the Bench:—Lord Loreburn, who has been on the woolsack less than five years, has appointed nearly one-third of the High Court Judges. As many as ten Judges —Sir S. F. T. Evans, Mr. Justice Neville, Mr. Justice Parker, Mr. Justice Eve, Mr. Justice Pickford, Mr. Justice Coleridge, Mr. Justice Hamilton, Mr. Justice Scrutton, Mr. Justice Avory, and Mr. Justice Horridge—have been appointed during his comparatively brief tenure of office. Though four of these appointments were perhaps not wholly unaffected by political considerations they can all be justified on professional grounds. The Lord Chancellor, in the exercise of his legal patronage, has, indeed, maintained a high standard of excellence, from which, it may confidently be expected, he will not depart in filling up the further vacancy on the Bench created by the death of Mr. Justice Walton. In the County Courts, as well as in the High Court, there have been many changes during the past four years and a half. No fewer than fourteen County Court Judges have been appointed since Lord Loreburn came to the woolsack, and his County Court selections have shown, scarcely less conspicuously than his High Court appointments, a fitting regard for the importance and dignity of the Judicial office.—*Ibid.*

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County Court Judges and High Court Judgeships:—Though the expectation that one of the two newly created King's Bench Judgeships would be filled by one of the most conspicuously able of the County Court Judges was not fulfilled, yet

we trust that Lord Loreburn will avail himself of the present opportunity of recognising the principle that a County Court Judge should occasionally be promoted to the High Court. There are several men on the County Court Bench who, in point of legal learning and judicial temperament, are not inferior to their High Court brethren. The occasional promotion of a County Court Judge to the higher judicial sphere would be advantageous in several ways. It would, by destroying the feeling that a County Court Judgeship is the final stage in its occupant's career, make the office more attractive to the most capable men at the Bar; it would, by making available for the Divisional Courts the services of a Judge with a practical experience of the County Courts, tend to facilitate the hearing of appeals from those tribunals; and it would, by bringing into closer union the County Court and High Court systems, do something to render our legal system less anomalous. The adoption of the principle would not be without precedent. Mr. Justice Ridley was an Official Referee when Lord Halsbury appointed him a King's Bench Judge in 1897, and Sir M. D. Chalmers was the County Court Judge for Birmingham when the late Lord Herschell appointed him a Commissioner of Assize in 1895. If an Official Referee be qualified for a High Court Judgeship, and if a County Court Judge be competent to act as a Commissioner of Assize, certainly the reasonableness of the suggestion that a County Court Judge should sometimes be promoted to the King's Bench cannot be questioned. And there would be something peculiarly fitting in the departure being made by Lord Loreburn, who, by his proposals for increased Jurisdiction in the ill-fated County Courts Bill of last year, showed his appreciation of the marked ability with which, as a whole, the County Court Judges do their work.—*The Law Journal.*

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Jurisdiction in the Long Vacation.—The refusal of the Long Vacation Judge last week to grant a rule *nisi* for a writ of attachment for contempt of Court raises the interesting question of the powers of the Court out of term. The division of the legal year into terms and vacations is, says Reeves in his 'History of English Law,' 'the joint work of the Church and necessity.' The Church forbade forensic work during certain holy seasons; necessity compelled its cessation during harvest time. But the institution of fixed terms into the business of the Common Law Courts did not affect the Court of Chancery in its

capacity of *officina justitiae*. The original Jurisdiction of the Chancellor had been not to try cases, but to issue writs returnable in term time to the other Courts, so that 'the Chancery was always open.' To-day, of course, equity follows the law in respect of dealing with causes during the Long Vacation. But the Vacation Judge, sitting with all the powers of a Judge of the High Court of Justice, can still exercise any ordinary equity jurisdiction. His powers in matters of Common Law are, it is true, more restricted. He has inherently all the extensive jurisdiction which the Judges possess in Chambers to interfere and relieve from the consequences of abuse of process of the Court, or of irregularities, as by illegal arrest or execution, and he has by statute certain powers in connection with the great remedial writs. Thus the Habeas Corpus Act of 1816 allows a writ of habeas corpus to be returnable in vacation, and the writ itself could always be issued out of the King's Bench Court during vacation (*Rex* v. *Shebbeare*, 1758, and *Regina* v. *Batcheldor*, 1839). But neither the writ of prohibition nor the writ of *certiorari* can be granted by the Vacation Judge, nor, in ordinary cases, the writ of attachment for contempt, although, of course, where the Judge is invested with power to grant an injunction, the grant of the power carries with it as an incident the power to punish for disregard of the order. The two Vacation Judges can, however, always constitue themselves a Divisional Court for any of these purposes (Rule 12, Order 63). And the power given by the Court of Criminal Appeal Act for that Court to meet and hear cases during vacation enables a Divisional Court to be formed out of that body, and any Divisional Court can give the relief sought for by issuing a rule to show cause, which operates as a stay in the meantime.—*The Law Journal.*

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The Late Mr. Justice Walton:—The Lord Chief Justice, at the sitting of the Court of Criminal Appeal on August 19, said that since the Courts had adjourned the profession had sustained the loss of one (Mr. Justice Walton) who had occupied a great position. Many of those present in Court would know how great that position was. His call to the Bench some years ago was received with universal approval by every member of both branches of the profession. Unhappily, his occupation of that position was limited to a very few years, but during that time he had shown that he possessed the highest qualifications for judicial work. He was always most anxious to hear both

sides, and, when trying an accused person, to hear all that could be said on his behalf. When they had the privilege of his assistance in the Court of Criminal Appeal that side of his character was strongly brought out. He was a man of conspicuous modesty and the greatest devotion to duty, and it was to this which, under Providence, he had probably sacrificed himself. Only a fortnight ago he was engaged in the preparation of a considered paper on the interference by the Government with the freedom of contract, which he finished within two hours of its delivery. He could not allow this occasion to pass without giving this expression to the great sorrow they all felt at the loss they had sustained.

Mr. John H. Cooke, of Winsford, writes:—'The following is an interesting statement in connection with the life of the late Mr. Justice Walton. In the year 1894 I had a case in which I acted for the plaintiff against the Cheshire County Council. I instructed Mr. Joseph Walton, K. C., and the present Mr. Elden Bankes, K. C., as Junior. It was heard before Mr. Justice Day, who summed up dead against us; but the jury thought there was something in the plaintiff's case, and were about an hour arriving at their verdict, which was ultimately in favour of the defendants, the County Council. Mr. Walton was not able to give that attention to the case which he thought he ought to have given because he was engaged very largely in the Court of Appeal during the hearing of our trial. After the case was over he called me on one side, and, addressing me by name, said: "I have not been able to attend to this case as I feel I ought to have done. I shall not take the fee." Of course, I was absolutely astonished at such a remark, as I had not complained in any way whatever of his absence, knowing that we were in very good hands with Mr. Eldon Bankes as Junior. We ultimately succeeded in maintaining the plaintiff's position in the matter. I have mentioned the incident to a large number of the members of the Bar and have been repeatedly told they have never heard of such an instance of great kindness occurring before.'—*The Law Journal.*

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Lord Halsbury :—Lord Halsbury completes to-day his eighty-fifth year, and every member of the profession will cordially wish him many happy returns of the day. So sure is his possession of the secret of perennial youth that he remains, despite his eighty-five years, one of the youngest men in the profession. His seventeen years on the woolsack—a record of service

excelled only by Hardwicke and Eldon—left his energy so unexhausted that, in addition to adding to his long series of notable decisions in the House of Lords, he has undertaken the editorship of a great digest of English law. Two Chancellors of the Victorian era died nonagenarians; Lord Lyndhurst was ninety-one when he passed away, and Lord St. Leonards reached the age of ninety-three. The mental and physical vigour which Lord Halsbury continues to display, in his character as a statesman as well as in his capacity as a lawyer, encourages the hope that his years will be at least as many as those of any of his predecessors. Lord Alverstone lately described the ex-Lord Chancellor as 'the best president of any Court before whom he had ever argued.' Lord Halsbury will not, perhaps, rank among the most erudite of the lawyers who have held the Great Seal, but none of his predecessors has excelled him either in his quickness of perception or his judicial willingness to listen. —*The Law Journal.*

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Women Lawyers:—The recent death of Mrs. Judith Foster, the well-known American woman lawyer and Republican campaign orator, who was admitted to the Iowa Bar as long ago as 1872, draws attention, says the *Manchester Guardian*, to the advance women all over the world have made in this profession. It is only natural that America should be the first country to allow women to practise as barristers. In 1869 Mrs. Myra Bradwell, of Chicago, was refused admission to the Bar in Illinois. Finally the Legislature of the State of Illinois passed a law making women eligible for admission to the Bar. This was in 1872. Mrs. Bradwell founded a legal newspaper, and was in legal partnership with her husband. Their daughter is now Chairman of the Legal News Publishing Company. Since 1879 women lawyers have been admitted to practise in the Supreme Court of the United States. Among the official positions held by them are Assistant Attorney-General of the Philippine Islands, Examiner in Chancery to the United States Supreme Court, and Assistant Counsel to the Corporation of Chicago.

New Zealand was the first of our colonies to admit women to practise law, where Miss Ethel Benjamin was admitted to the Bar of the Supreme Court of the colony. She took the LL. B. degree with honours. Miss Clara Martin followed in Canada, after a three years' fight against conventional prejudice. Miss Greta Greig was the first woman-barrister admitted at the Law Courts at Melbourne.

Compensation Cases and Professional Misconduct.— A Proclamation has recently been issued by the New York Bar Association against the touting for clients "on Court-house steps, in corridors, and on the stairs leading to the Court-room." In this country, happily, this is a form of professional misconduct which does not exist to any appreciable extent, in, at any rate, the precincts of the more important Courts. Among, however, a very limited class of solicitors there are practices in the earlier stages of litigation which are equally to be condemned. This is what Sir John Gray Hill said in a paper he read on the Workmen's Compensation Act at the Birmingham meeting of the Law Society two years ago:—

> I am told that arrangement is often made between a solicitor of a certain class and a surgeon of a like class that the latter is only to be paid in case the claimant succeeds in getting an award. As this offers an inducement to the witness to give false evidence, I think that any solicitor who is known to be a party to such an arrangement deserves to be brought before the Discipline Committee of the Society and to have his misconduct reported to the Court, while the surgeon would deserve the correction of the Medical Council; and I trust that some of these persons will meet with their reward. There are, I have reason to know, some members of our profession who in other respects conduct claims under the Act in a most unscrupulous manner, and who resort to such tricks the devices as are deserving of the severest censure. I am also informed on good authority that touts are employed by these persons, who obtain from the hospital porter or lodging-house keeper the names and addresses of injured workmen, and induce them to place their cases in the hands of the solicitors in question.

The collection of opinions on questions of professional conduct lately published by the Council of the Law Society, under the title of "Practice and Usage in the Solicitors' Profession," may be searched in vain for any pronouncement against the pernicious practice of touting, but the authority of the Discipline Committee to deal with the practice does not admit of doubt. A case of Police Court touting was reported by the Committee to the Court in 1902, and the offending solicitor, against whom a graver charge was established, was suspended from practice for twelve months. "With reference to the touting," said the Lord Chief Justice, "it is quite possible that if there is nothing but touting, the matter may have to be cosidered as to what class of touting constitutes professional misconduct."

This makes it perfectly clear that there are some forms of touting which do constitute an offence sufficiently serious to justify the condemnation of the Court, and it may be hoped that the Law Society will do its utmost to suppress the objectionable practices which a certain class of solicitors, in their desire to promote disputes under the Workmen's Compensation Act, are known to adopt.—*The Law Journal.*

The Bar and Advertisement.—The Bar Council, though it has never made any pronouncement as to the baser forms of touting, has been required on not a few occasions to deal with the more subtle methods of securing business by advertisement. Here, for instance, are some of the resolutions at which the Council has arrived in its capacity as guardian of the etiquette of the Bar: An English Barrister ought not to allow his name and address to appear in a legal directory published abroad; the clients to whom a member of the Bar is entitled to send a notice of his change of address do not include "every solicitor from whom he may have at any time received a set of papers"; a barrister who gives any commission or present to any one introducing business to him is guilty of most unprofessional misconduct; members of the Bar ought not to furnish "signed photographs of themselves for publication in legal newspapers." Against none of these resolutions, perhaps, can any reasonable objection be urged; but the last-named regulation is certainly open to comment because of its limitations. Why should the prohibition be confined to legal newspapers, and why should any difference be made between the furnishing of a signed portrait and that of an unsigned one? Legal journalism has not yet fallen a prey to the popular love of illustration. If it be an offence for a member of the Bar to supply his photograph for public reproduction, it is much more likely to be committed at the request of the editor of a daily paper or a monthly magazine than at the instance of the conductor of a legal journal.—*Ibid.*

Lord Halsbury. — Lord Halsbury, who celebrated his eighty-fifth birthday on Saturday last, has only three predecessors among the Lord Chancellors of the Victorian era who attained a greater number of years. Lord St. Leonards

died at ninety-three, Lord Lyndhurst at ninety-one, and Lord Brougham at eighty-nine. Though the Law is supposed to be peculiarly favourable to longevity, the occupants of the woolsack (says the *Globe*) do not, as a rule, strikingly support the pleasing theory. Of the other occupants of the woolsack in Queen Victoria's reign, Lord Chelmsford died at eighty-four, Lord Selborne at eighty-three, Lord Campbell at eighty-two, Lord Cranworth at seventy-eight, Lord Hatherley at seventy-seven, Lord Truro and Lord Westbury at seventy-three, Lord Cottenham at seventy, Lord Cairns at sixty-six, and Lord Herschell at sixty-two.—*The Law Journal.*

Prophecy relating to Lord Halsbury's future greatness:—Even in Lord Halsbury's earlier days at the Bar, when his chief forensic triumphs were achieved at the Old Bailey, his future greatness (says the *Globe*) "lay slumbering in prophetic light." Mr. Montagu Williams relates how one of his contemporaries bet "that within twelve years Hardinge Giffard would become Attorney-General, and that before he ended his career he would become Lord Chancellor. The first part of this prophecy was not fulfilled, for, like the late Lord Herschell, he passed from the Solicitor-Generalship to the woolsack. There were staid lawyers in Lincoln's Inn who, remembering his associations with the Old Bailey, shook their learned heads when Lord Halsbury was appointed Lord Chancellor in 1885. Their fears were quickly seen to be unjustified. Few of his predecessors on the woolsack have excelled him in legal learning and judicial temperament, and to his long series of notable decisions in the House of Lords he has made many an addition since he went out of office.—*Ibid.*

Council not able to bestow sufficient attention and Return of Fee:—A Solicitor has recorded that the late Mr. Justice Walton, while at the Bar, voluntarily returned his fees in an action in which he had briefed him, because "he was not able to give that attention to the case which he thought he ought to have given." "I have," he adds, "mentioned the incident to a large number of members of the Bar, and have been repeatedly told they have never heard of such an instance of great kindness occurring before." As a matter of fact, a similar instance is recorded of

Lord Halsbury. "His last appearance in Court at the Old Bailey," writes Mr. Atlay, in his 'Victorian Chancellors,' "was in November 1884, under curious circumstances. He had acted as Counsel in a probate action arising out of the testamentary dispositions of an eccentric citizen of Leominster. His clients were not only unsuccessful, but were committed for trial on the charge of perjury. Rightly or wrongly, Sir Hardinge Giffard believed that he had not done them full justice in the hearing before Sir James Hannen, and he insisted on defending them, devoting to the task, as I have been told by one of his juniors, his whole time and attention during a trial which lasted eight days, and eventually returning his fees."—*The Law Journal.*

MEMORIAL RULES.

Notification of the Government of India, Foreign Department; No. 1,606-G., dated Simla, the 29th July 1910.

The following rules regarding the submission or withholding by Local Governments or Administrations and by officers of the Political Department of the Government of India, of petitions, memorials, and other papers of the same class, relating to matters affecting persons or places under their political charge, when such petitions or other papers are addressed to the Government of India, to His Majesty the King, Emperor of India, or to the Right Honourable the Secretary of State for India, are published for general information.—

I. MEMORIALS, ETC., ADDRESSED TO THE GOVERNMENT OF INDIA.

1. Every memorial must be submitted to the Political Officer of the State, within whose jurisdiction the subject-matter has arisen, accompanied by a copy of the order appealed against and by a letter requesting its transmission to the authority to which it is addressed.

2. Memorials may be transmitted either in manuscript or in print, but must, with all accompanying documents, be properly authenticated by the signature of the memorialist on each sheet.

3. Subject to the exceptions hereinafter contained, every memorial received which conforms to the above rules should be forwarded by the Political Officer through the usual official channel, with a concise statement of material facts, and, unless there be special reasons to the contrary, an expression of opinion.

4. Memorials, together with their accompanying documents, should be in English. If the accompanying documents must necessarily be forwarded in the vernacular, an English translation should be appended, which should be attested by the signature of the memorialist on each sheet.

N.B.—The transmitting officer should examine such translations and, if they are found to be incorrect or faulty, notice the fact in sending on the memorial.

5. Every memorial should be accompanied by copies of all the orders passed in the case by the authorities who have dealt with it in India.

6. Local Governments, Adminstrations, and Political Officers in direct subordination to the Foreign department of the Government of India, are vested with discretionary power to withhold memorial addressed to the Government of India in the following cases:

(1) When the memorial is illegible or unintelligible.

(2) When the memorial contains language which, in the opinion of the authority who would otherwise forward it, is disloyal, disrespectful, or improper.

(3) When a previous petition of the memorialist (which term includes a rejoinder submitted by the memorialist in answer to a previous petition of some other party) has been disposed of by the Secretary of State or the Governor-General in Council, and the petition discloses no new facts or circumstances which afford grounds for a reconsideration of the case.

(4) When the memorial relates to a matter which is within the competence of the Local Government, Administration, or Political Officer to dispose of, and no application has previously been made to such Government, Administration, or Political Officer for redress.

(5) When the memorial is an appeal preferred more than six months after the date on which the memorialist was informed of the orders against which he appeals, provided that the Local Government, Administration, or Political Officer as the case may be, may, at their or his discretion, extend the period to twelve months, if the delay will facilitate a settlement of the dispute, or other good cause is shown.

(6) When the memorial refers to matters in which the memorialist is not personally interested.

7. Provided they do not contravene the conditions specified in the preceding section, memorials which are appeals against orders passed by Local Governments, Administrations, and Political Officers in direct subordination to the Foreign department of the Government of India, in the exercise of political control in territories not included in British India, shall be forwarded, except in the following cases in which a discretionary power to withhold the memorials may be exercised :—

*(1) When the order appealed against has been passed by the Local Government, Administration, or Political Officer as a recognised Court of Appeal in regard to a judgment or order of any Court of civil or criminal jurisdiction established or continued by the Governor-General in Council in such territories.

(2) When the order appealed against is a mere refusal to exercise political control in regard to a judgment or order of any special Court established by the Governor-General in Council in such territories, from which Court there is, by its constitution, no appeal, though a general political control over it is declared or understood to exist.

(3) When the order appealed against is a mere refusal to interfere in a matter of purely internal policy with the action or orders of the Ruler of a Native State, of which the memorialist is a subject: provided that the State is one in which it is not customary for the British Government to intervene in matters of internal policy, and that the matter complained of does not disclose a state of misrule so gross that the Paramount Power would be called upon to interfere.

N.B.—This rule applies to a temporary Administration established in a Native State by the Governor-General in Council when the temporary Administration is appointed to exercise the same powers and occupy the same position as the Native Administration which it supersedes.

* *Note to Rule 7 (1) of Sections I and II.*—Memorials which are practically appeals for mercy or pardon must be transmitted. But their transmission will not affect the discretion in regard to capital sentences allowed to Local Governments and Administrations by the Home Department Resolution No. 20—1403-13, dated the 14th October 1885, as modified by Foreign Department Circular No. 3,2891-B., dated the 30th August 1901.

† *e.g.*, petitions from Government servants about dismissal, pensions, etc.

8. Memorials from persons † in such territories which are not covered by these rules may be treated under the Memorial Rules of the Home Department when they are applicable.

9. The following special rules apply to the case of appeals against the orders of the Government of Bombay:—

(1) In the following cases the decision of the Local Government shall ordinarily be considered as final, and no appeal shall lie to the Government of India, an appeal to the Secretary of State for India only being admissible with the permission of the Local Government, which should be previously obtained:

(*a*) Giras cases in States of classes I to IV in Kathiawar, which would have been tried by the Rajasthanik Court when it existed, but are now tried by the States Huzur Courts from whose decision an appeal lies to the Agency and to the Local Government.

(*b*) Giras cases in States below class IV in which the decision of the Agent to the Governor, Kathiawar, is at present final under the rules sanctioned in Government Resolution No. 6511, dated the 18th November 1898, subject to the general political control of the Local Government.

(*c*) Cutch Jadeja Court cases.

(2) Memorialists who desire to appeal against the orders of the Government of Bombay in political cases shall have the option of addressing such appeals either to the Government of India or to the Secretary of State and such appeals shall be forwarded subject to the provisions of rules 6 and 7. This rule shall not apply to—

(*a*) appeals in Giras cases or in those which are specially covered by any of the foregoing rules;

(*b*) memorials of the class specially reserved in rule IV of the rules published with Home Department Notification No. 148 (Public), dated the 19th January 1905;

(*c*) memorials which involve questions affecting the status, dignity or powers of a Ruling Chief or his relations with the Paramount Power (including questions of succession or adoption) and with other chiefs.

II. MEMORIALS, ETC., ADDRESSED TO HIS MAJESTY THE KING, EMPEROR OF INDIA, OR TO THE SECRETARY OF STATE FOR INDIA.

1. Every memorial must be submitted to the Political Officer of the State within whose jurisdiction the subject-matter has arisen, accompanied by a copy of the order appealed against and by a letter requesting its transmission to the authority to which it is addressed.

2. Memorials may be transmitted either in manuscript or in print, but must, with all accompanying documents, be properly authenticated by the signature of the memorialist on each sheet.

3. Subject to the exceptions hereinafter contained, every memorial received which conforms to the above rules should be forwarded by the Political Officer through the usual official channel with a concise statement of material facts, and, unless there be special reasons to the contrary, an expression of opinion.

4. Memorials, together with their accompanying documents, should be in English. If the accompanying documents must necessarily be forwarded in the vernacular, an English translation should be appended, which should be attested by the signature of the memorialist on each sheet.

N.B.—The transmitting officer should examine such translations, and if they are found to be incorrect or faulty, notice the fact in sending on the memorial.

5. Every memorial should be accompanied by copies of all the orders passed in the case by the authorities who have dealt with it in India.

6. Local Governments, Administrations, and Political Officers in direct subordination to the Foreign department of the Government of India, are vested with discretionary power to withhold memorials addressed to His Majesty or to the Secretary of State in the following cases:—

1. When the memorial is illegible or unintelligible.

(2) When the memorial contains language which, in the opinion of the authority who would otherwise forward it, is disloyal, disrespectful, or improper.

(3) When a previous petition of the memoralist (which term includes a rejoinder submitted by the memorialist in answer

to a previous petition of some other party) has been disposed of by the Secretary of State, and the petition discloses no new facts or circumstances which afford grounds for a reconsideration of the case.

(4) When the memorialist has not previously appealed to the Government of India (or the Government of Madras or Bombay, as the case may be), and received the decision of the Governor-General (or Governor) in Council upon it.

(5) When the memorial is an appeal preferred more than six months after the date on which the memorialist was informed of the orders against which he appeals, provided that the Local Government, Administration, or Political Officer, as the case may be, may, at their or his discretion, extend the period to twelve months, if the delay will facilitate a settlement of the dispute, or other good cause is shown.

(6) When the memorial refers to matters in which the memorialist is not personally interested.

7. Provided they do not contravene the conditions specified in the preceding section, memorials which are appeals against orders passed by the Governor-General in Council (or Governor in Council in Madras or Bombay, as the case may be), in the exercise of political control in territories not included in British India, shall be forwarded, except in the following cases, ni which a discretionary power to withhold the memorials may be exercised :—

* (1) When the order appealed against has been passed by the Government of India, Madras or Bombay (as the case may be) as a recognised Court of Appeal in regard to a judgment or order of any Court of civil or criminal jurisdiction established or continued by the Governor-General in Council in such territories.

(2) When the order appealed against is a mere refusal to exercise political control in regard to a judgment or order of any special Court established by the Governor-General in Council in such territories, from which Court there is, by its constitution, no appeal, though a general political control over it is declared or understood to exist.

* *Note to Rule* 7 (1) *of Sections I and II.*—Memorials which are practically appeals for mercy or pardon, must be transmitted. But their transmission will not affect the discretion in regard to capital sentences allowed to Local Governments and Administrationns by the Home Department Resolution No. 20—1403—12, dated the 14th October 1885, as modified by Foreign Department Circular letter No. 3289-I-B., dated the 30th August 1901.

(3) When the order appealed against is a mere refusal to interfere in a matter of purely internal policy with the action or orders of the Ruler of a Native State, of which the memorialist is a subject: provided that the State is one in which it is not customary for the British Government to intervene in matters of internal policy, and that the matter complained of does not disclose a state of misrule so gross that the Paramount Power would be called upon to interfere.

N.B.—This rule applies to a temporary Administration established in a Native State by the Governor-General in Council when the temporary Administration is appointed to exercise the same powers and occupy the same position as the Native Administration which it supersedes.

8. Memorials from persons † in such territories which are not covered by these rules may be treated under the Memorial rules of the Home Department when they are applicable.

† *e.g.*, petitions from Government servants about dismissal, pensions, etc.

9. The following special rules apply to the case of appeals against the orders of the Government of Bombay:—

(1) In the following cases the decision of the Local Government shall ordinarily be considered as final, an appeal to the Secretary of State for India only being admissible with the permission of the Local Government, which should be previously obtained:

(*a*) Giras cases in States of classes I to IV in Kathiawar, which would have been tried by the Rajasthanik Court when it existed, but are now tried by the States Huzur Courts from whose decision an appeal lies to the Agency and to the Local Government.

(*b*) Giras cases in States below class IV in which the decision of the Agent to the Governor, Kathiawar, is at present final under the rules sanctioned in Government Resolution No. 6511, dated the 18th November 1898, subject to the general political control of the Local Government.

(*c*) Cutch Jadeja Court cases.

(2) Memorialists who desire to appeal against the orders of the Government of Bombay in political cases shall have the option of addressing such appeals either to the Government of India or to the Secretary of State and such appeal shall be forwarded subject to the provisions of rules 6 and 7. When in the exercise of this option an appeal has been presented to the

Government of India, no further appeal shall lie to the Secretary of State. This rule shall not apply to—

(*a*) appeals in Giras cases or in those which are specially covered by any of the foregoing rules;

(*b*) memorials of the class specially reserved in rule IV of the Rules published with Home Department Notification No. 148 (Public), dated the 19th January 1905;

(*c*) memorials which involve questions affecting the status, dignity or powers of a Ruling Chief or his relations with the Paramount Power (including questions of succession or adoption) and with other Chiefs.

III.—List of memorials to the Secretary of State and of petitions to the Government of India withheld under the discretionary powers conferred by the above rules will be forwarded quarterly to the Government of India in the Foreign department.

IV. When a petition or memorial is withheld, the writer should be informed of the fact and of the reason for withholding it.

BOOK REVIEWS.

Handbook of Administration Law in India: By Mr. Alexander Kinney, *Officiating Administrator-General, Bengal*: Messrs. Thacker Spink and Co., Calcutta. Price Rs. 8.—This book gives in a compendious form the various points in connection with the execution, revocation, etc., of Wills, the duties and powers of Executors, etc., and other matters connected with the administration of estates. The author also adds Appendices containing the forms in use in different High Courts and the rules framed by them. We trust the book will be found useful by the profession and others connected with the administration of estates.

The Indian Penal Code: By R. A. Nelson, M.A., L.L.M., *Barrister-at-Law*, Principal of the Law College, Madras. Fifth Edition, 1910. Messrs. Srinivasa Varadachari and Co., Madras:—The necessity for a fresh edition in less than 2½ years is a sufficient proof of the utility and popularity of this work. The book is specially useful to students, but in the last as well as the present edition the author has tried to make the book useful also to practitioners and others concerned in the administration of criminal law. The unofficial reports have been utilized and all cases up the end of 1909 noted under proper headings. The author has also given the recent Acts passed by the Government

of India such as (1) The Seditious Meetings Act, (2) The Explosive Substances Act, (3) Newspapers (Incitement to Offences) Act, 1908, (4) Indian Press Act, 1910. He would have however done well if he had noted the decisions under these Acts.

Hayes and Jarman's Concise Forms of Wills: By J. B. MATHEWS, *Barrister-at-Law*. Thirteenth Edition. Messrs. Sweet and Maxwell, Limited, London, W. C. Price 21 s:—No introduction is necessary for a work which has undergone so many as thirteen editions. The book is essentially useful to a conveyancer, and the notes appended to the forms are of immense utility. When reviewing the former edition about five years ago a hope was expressed that a work on similar lines adapted to the Indian Law would be undertaken by some member of the bar in this country. This hope has not yet been realized. We commend the book to the profession in this country.

Acknowledgments.

We beg to acknowledge receipt of the following publications :—

(1). Mr. Henderson's *Criminal Procedure Code* by Hari Bhusan Mukerjee. Eighth edition. Messrs. Thacker Spink & Co., Calcutta. Price Rs. 22-8-0.

(2). *Index of Cases Judicially Noticed* (1811-1909) by Mr. B. R. Desai. Third Edition.

(3)- *Indian Appeals* (Comparative Table of Cases in the Law Reports) by Lal Mohan Mukhopadhya. Price Rs.2.

Allahabad Law Journal for	September 1910.
Bombay Law Reporter	Do.
Burma Law Reporter	Do.
Calcutta Law Journal	Do
Calcutta Weekly Notes	Do.
Canada Law Journal	Do.
Canada Law Times	Do
Central Law Journal	Do.
Chicago Legal News	Do.
Criminal Law Journal	Do.
Green Bag	Do.
Harvard Law Review	Do.
Hindustan Review	Do.
Kathiawar Law Reports	Do.
Law Magazine and Review	Do.
Law Notes	Do.
Law Students' Helper	Do.
Law Students' Journal	Do
Michigan Law Review	Do.
Police Service Magazine	Do.
Punjab Law Reporter	Do
The Law Journal	Do
The Lawyer	Do