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DOCTRINE OF PRIORITY OF CROWN DEBTS.

Doctrine, one of great antiquity

The doctrine of priority of Crown debts has been recognised from ancient times and is to be found in almost every system of law. The Hindu Dharma Shastras refer to it in more than one place. Yagnavalkya has stated[1]:

गृहीतानुक्रमादाप्यो धनिनामधमर्णिकः ।
दत्त्वा तु ब्राह्मणायैव नृपतेस्तदनन्तरम् ॥

"A debtor shall be forced to pay his creditors in the order in which the debts were contracted, after first discharging those of a Brahmin or the King."

According to Katyayana[2]:

"If there be many debts at once, that which was first contracted shall be first paid, after those of a King or of a priest learned in the Vedas."

Land revenue had always been regarded as a paramount charge upon the land and if the subject did not pay it, the King may even grant the land to another[3].

The doctrine in English common law

The rule of English common law was contained in the maxim —*Quando jus domini regis et subditi concurrunt jus regis proeferri debet*: where the King's and the subject's title concur the King's title must be preferred[4]. By the common law the King had a prerogative of preference in payment to all his subjects and to be first satisfied[5]. The prerogative could be enforced in two different ways and by two different methods. The Crown may assert its

1. II, 41
2. Cit., in Vyavahara Mayukha, Ch. v, s. iv, pl. ix.
3. Cole. Dig, Book ii, ch. ii, pl. xiii.
4. Broom's Legal Maxims, 10th edn., p. 35; Quick's case, 9 Coke's Reports, 129-b; *R* v. *Wells*, 16 East 278 at 282.
5. *Parker, C. B.*, in *Rex* v. *Curtis*, Parker R. 95, 100: 145 E. R. 724.

right by seizing under a writ of extent, if need be, all the assets of the debtor where there has been no *cessio bonorum* and satisfy out of these assets the debts due, or the Crown may come into a proceeding in bankruptcy or to the winding up of an insolvent company or such like, prove its debt claimed and insist upon payment of this debt in priority to the claims of other creditors[1]. Formerly the theory of the priority of Crown debts was based on the personal pre-eminence of the sovereign. The King was the King and obviously took precedence over the subject. In modern law, however, the rights of the Crown are equated with the rights of the mass of the King's subjects and hence the doctrine has been propounded that it is right and just that the claims of the community as a whole should prevail over that of individuals.[2] The doctrine is one of universal application except where the legislature has thought fit to interfere.[3] There are two distinct prerogatives of which the Crown may avail itself regarding this matter, namely, (1) that it is not bound by a statute in which it is not expressly named, and (2) that it has a right to be paid in priority to all other creditors of equal degree.[4] The former prerogative as explained by Lord Coke in the *Magdalene College case*[5], was defined as follows by the Master of the Rolls in Ex parte *Post Master-General*[6]:

"Where an Act of Parliament is made for the public good, the advancement of religion and justice and to prevent injury and wrong, the King shall be bound by such Act though not particularly named therein; but where a statute is general and any prerogative, right, title or interest is thereby devested or taken from the King, in such case the King shall not be bound unless the statute is made by express terms to extend to him."

In England after the Bankruptcy Act of 1883 and the Companies (Consolidation) Act of 1908 it has been held that both in bankruptcy as well as in winding up proceedings the Crown's prerogative rights stand controlled by the provisions of these statutes and as such Crown debts have no priority other than that given by the statutes in regard to payment[7], though in a case under the Colonial Bankruptcy Act, 1898 a different view was taken and the Crown was held

1. *Food Controller* v. *Cork*, (1923) A.C. 647, 661.
2. In the matter of *Subramaniam Chetty & Co.*, (1922) I.L.R. 45 Mad. 156, 165.
3. Per *Lord Macnaghten* in *New South Wales Taxation Commissioners* v. *Palmer*, (1907) A.C. 179.
4. *Re Henley & Co.*, (1878) 9 Ch. D. 469, 481, 482; see also *New South Wales Taxation Commissioners* v. *Palmer*, supra and *Food Controller* v. *Cork*, supra.
5. 11 Coke's Reports. 74-b.
6. L. R. 10 Ch. D. 595, 601.
7. *Food Controller* v. *Cork*, supra.

entitled to preferential payment over all other creditors of equal degree unaffected by that statute.[1]

Ever since the Indian Councils Act, 1861 the Legislature in India has been competent to make laws which may trench upon the prerogative of the Crown. This is clear from S. 24 of that Act which provided that

"no law or regulation made by the Governor-General in Council shall be deemed invalid by reason only that it affects the prerogatives of the Crown".

In so far as there is no specific statutory abridgment the principles of the English common law relating to Crown debts will be applicable in India also. Excepting for a doubt expressed in *Ramachandra* v. *Pichaikanni*[2], the authorities are uniform in favour of such applicability[3].

The Crown's right to precedence stands mentioned variously. In some statutes the Crown is expressly given a first charge over properties in respect of payments due to it from any person and methods of working out the right are also specified. In the statutes relating to insolvency there are provisions postulating the priority of Crown debts.[4] What precisely constitute the liabilities regarding which the Crown enjoys a preference and whether the prescription of specific modes of realisation of Crown dues deprives the Crown of the prerogative remedies are matters which have been the subject of numerous decisions.

Meaning of Crown debts

It was the view of Chief Baron Comyn that,

"every person who by any means is chargeable to the King, shall be debtor to the King; for it shall be taken extensive; as where he is answerable to the King for debt, damage, duty, rent, arrears etc"[5],

Wherever the destination of the debt when realised was the state treasury the debt was to be regarded as a Crown debt[6]. The expression "Crown debt" has been characterised[7] as an unfortunate expression as likely to suggest that

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1. *New South Wales Taxation Commissioners* v. *Palmer*, (1907) A.C. 179.
2. (1884) I.L.R 7 Mad. 434.
3. See *Manikkam Chettiar* v. *Income-Tax Officer*, I.L.R. 1938 Mad. 744: (1938) 1 M.L J 351, (F B.).
4. Ss. 49 and 45, Presidency Towns Insolvency Act; Ss. 61 and 44, Provincial Insolvency Act. *See also* Ss. 229 and 230 of the Indian Companies Act.
5. Digest, Title Debt G-1. *See* Godbolt, 293.
6. *Ex parte*, Usher, 1 Ball & Beatty 199; *Keily* v. *Murphy*, S. & Sc. 479; *Re* Dalton, 2 Molloy 442; *Judah* v. *Secretary of State*, (1886) I.L.R. 12 Cal. 445
7. *per* Lord Shaw in *Food Controller* v. *Cork*. (1923) A.C. 647, 665.

"under the name of prerogative, something is being claimed higher than that justice which is distributed among the subjects of the Crown, and this even under ordinary contracts, the construction of which among such subjects would not permit of the operation of preference".

Where a debt arises purely in *commercio* and does not spring out of a power vested in the Crown by way of the imposition of a duty or a tax the debt ought not with propriety be regarded as a Crown debt[1]. *Apropos* this question Lort Williams, J., has observed in *In re Northern Bengal Company Limited*[2]:

"The priority exercised regarding Crown debts by reason of the royal prerogative originally applied in practice only to debts arising out of questions of revenue and taxation, because those were the only debts which in former times were likely to arise in favour of the Crown as against the subject. In later days the Crown has become engaged to an increasing degree, both in England and in India, in trading and other activities in addition to those arising out of revenue and taxation, and consequently the modern tendency has been to restrict such prerogative rights by means of legislation to those matters such as revenue and taxation to which such prerogative rights originally applied".

Whether for a debt to constitute a Crown debt, in addition to its falling into the coffers of the state on recovery, it is further necessary that it should result only from an act done "for purposes of revenue" came up for consideration before the Madras High Court in *In the matter of Subramaniam Chetty & Co.*[3]. The question there was whether in a case where the Government engages in undertakings in fields of industry, not to bring accretions to revenue, but to serve by way of industrial instruction to the people of the country, a debt payable to Government would be a Crown debt. Coutts Trotter, J., pointed out that while debts accruing through a sale of opium or trading in the Salt and Abkari departments would directly be Crown debts, such trade being "for purposes of revenue" within the meaning of 3 & 4 William IV, c. 85, the debts becoming due in industries started for demonstration purposes are also to be deemed Crown debts inasmuch as they result from carrying on *authorised trades* which can be regarded as acts done "for purposes of the Government of India" within the meaning of S. 20 (1) of the Government of India Act, 1919. In that view, the learned Judge held that the Government was entitled to precedence under S. 49 of the Presidency Towns Insolvency Act in respect of sums due to it for supply of soaps to the insolvent by the Kerala Soap Institute, Calicut, an institution run by Government for demonstration purposes.

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1. *Food Controller* v. *Cork*, (1923) A. C. 647 at 667.
2. I.L.R. (1937) 1 Cal. 684: 41 C.W.N 458.
3. (1922) I.L.R. 45 Mad. 156.

Court-fee recoverable by the Crown under decrees in suits filed *in forma pauperis*[1], arrears of abkari revenue[2], arrears of income-tax[3], arrears of tax payable under the Madras Motor Vehicles Taxation Act[4], amount due in respect of kudimaramath under the Madras Compulsory Labour Act[5], amount due on sale of opium by Government[6], amount due for work done[7], have all been regarded as Crown debts. A debt does not cease to be a Crown debt merely because the person ultimately intended to be benefited was a private person[8]. Thus a fine imposed on conviction for criminal breach of trust though directed to be paid on recovery as compensation to the injured party will be deemed to be a Crown debt for purposes of preferential payment[9]. Where however there was a recognisance by a guardian in the matter of a minor it was held that the liability arising thereunder, though nominally in favour of the state was not a Crown debt.[10]

Remedies available to the Crown

The fact that certain Acts of the legislature specifically set out the priority of Crown debts in circumstances arising under those Acts cannot derogate from the general right of priority which the Crown has and the enactments should be ordinarily understood as merely making clear the particular application of the rule[11]. The remedies open to the Crown will remain unaffected despite the

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1. *Ganpat Putaya* v *The Collector of Kanara*, (1876) I.L.R. 1 Bom. 7; *Ram Das* v. *Secretary of State*, (1896) I.L.R. 18 All. 419; *Puthia Valappil Barga* v. *Veloth Assenar*, (1902) 12 M L.J. 41: I.L.R. 25 Mad. 733; *Gayanoda Bala Dassee* v. *Butto Kristo Bairagge*, (1906) I. L. R. 33 Cal. 1040; *Ragho Prasad* v. *Mewa Lal*, (1912) 22 M L.J. 457: I L.R. 34 All. 223 (P C.); *Babui Girija Kuer* v. *Secretary of State*, (1919) 50 I.C. 315; *Collector of Akyab* v. *Paw Tun U*, (1927) I.L R. 5 Rang 806; *Varadachari* v. *Secretary of State*, (1935) 70 M L.J. 601: I.L.R. 59 Mad. 872

2. *Ramachandra* v. *Pichaikanni*, (1884) I.L.R. 7 Mad. 484; *Ibrahim Khan* v. *Rangaswami Naicken*, (1905) I.L.R. 28 Mad. 420.

3. *Kadir Mohideen Marakkayar* v. *Muthukrishna Aiyar*, (1902) 12 M. L. J. 368: I.L.R. 26 Mad. 230; *Soniram Rameshur* v *Mary Pinto*, (1933) I. L. R. 11 Rang. 467; *Secretary of State* v. *Maw Nyein Me*, 1937 Rang L. R. 344; *Manikkam Chettiyar* v. *Income Tax Officer*, (1938) 1 M.L.J. 351: I.L.R. 1938 Mad. 744 (F.B.)

4. *Deputy Commissioner of Police* v. *Vedantam*, (1935) 69 M. L. J. 832: I. L. R. 59 Mad. 428.

5. *Sambasivan Chettiyar* v. *Secretary of State*, (1940) 1 M.L.J. 429.

6. *Judah* v. *Secretary of State*, (1886) I L R. 12 Cal. 445.

7. *Secretary of State* v. *Bombay Landing and Shipping Co.*, (1868) 5 Bom.H.C. 23.

8. In re *Smith*, (1876) 2 Exch. D. 47.

9. *Pichu Vadhiar* v. *Secretary of State*, (1917) I.L.R. 40 Mad. 767.

10. *Ex parte Usher*, 1 Ball & Beatty 199.

11. *Secretary of State* v. *Ma Nyein Me*, 1937 Rang.L R. 344.

indication of particular methods of realisation by the statutes concerned. S. 411 of the Civil Procedure Code, 1877 (corresponding to O. 33, r. 10) had provided that Court-fees shall be a first charge on the subject matter of the suit and shall also be recoverable by the Government from any party ordered by the decree to pay the same in the same manner as the costs of a suit recoverable under the Code. It was held that though the section indicated the manner in which the Crown may proceed to realise the amount due to it, still it will not preclude the Crown or its representatives from urging its prerogative and insisting on its rights of precedence over all other creditors, as for example, by applying to Court for payment from funds in Court belonging to the defaulter[1]. In *Soniram Rameshur* v. *Mary Pinto*[2], a receiver appointed in a mortgage action had collected the rents accrued *pendente lite* and deposited them in Court. The Commissioner of Income-Tax applied to the Court for payment out of that fund of arrears of income-tax due from the person entitled to the fund in preference to others, without any formal prior attachment. It was held that the application was competent. Similarly where money was due to the Crown by way of arrears of vehicle tax, it was held that it was open to the Deputy Commissioner of Police to apply to the Court for payment of the same out of the sale proceeds in Court realised by sale of the vehicle in execution by another creditor.[3] The fact that sections 8 and 9 of the Madras Motor Vehicles Taxation Act provided methods for recovering arrears of vehicle tax was held not to affect the remedies open to the Crown otherwise by way of prerogative. The question has now been considered by a Full Bench of the Madras High Court in *Manikkam Chettiyar* v. *Income-tax Officer*[4]. In that case the petitioner had obtained a money decree against one *G* and in execution attached and brought to sale some movable properties of *G*. Income-tax due by *G* to Government being in arrear, the Income-tax Officer applied to the executing Court under S. 151, Civil Procedure Code, for an order directing the payment out to him from the sale proceeds of the amount due from *G* as arrear of income-tax. Objection was taken that the application would not lie inasmuch as S. 46 of the Income Tax Act, 1922 had prescribed the modes of recovery of the tax It was held that the section was no bar to the maintain-

1. *Gayanoda Bala Dassee* v. *Butto Kristo Bairagee*, (1906) I.L.R. 33 Cal. 1040: see also *Ram Das* v. *Secretary of State*, (1896) 18 All. 419; *Babui Girija Kuer* v. *Secretary of State*, (1919) 50 I.C, 315 and *Varadachari* v. *Secretary of State*, (1935) 70 M.L.J. 601: I.L.R. 59 Mad. 872.

2. (1933) I.L.R. 11 Rang. 467.

3. *Deputy Commissioner of Police* v. *Vedantam*, (1935) 69 M.L.J. 832: I.L.R. 59 Mad. 428.

4. (1938) 1 M.L.J. 351: I.L.R. 1938 Mad 744 (F.B.).

ability of the application by the Income-tax Officer under S. 151, Civil Procedure Code, and that both justice and convenience justified such conclusion. The same view was taken in *Sambasiva Chettiar* v. *Secretary of State for India in Council*[1]. In that case a receiver had been appointed pending a suit on a simple mortgage. A certain amount being due to the Government from the mortgagor in respect of kudimaramath the Collector preferred a claim to the Court for directions to the receiver under O. 40, r. 1 to pay the money due to the Crown out of the amount realised by the receiver and deposited in Court. It was held that such a direction could be given.

The Crown's prerogative of preference operates only where the debts are equal in degree. In other words even a Crown debt cannot take precedence over an earlier mortgage or lien created by the defaulter.

"A mortgagee is liable to have his security postponed to certain claims of the Crown, which by virtue of its prerogative, has the right to issue an extent or execution against all the lands of its debtors except copyholds and to follow such lands into the hands of *subsequent* mortgagees or purchasers though without notice"[2].

It is only when claims of the Crown and claims of common persons concur or come into competition that the Crown is preferred. A prior mortgagee or lienholder will not be prejudiced[3].

SUMMARY OF ENGLISH CASES.

In re A DEBTOR (No. 13 OF 1939), (1940) 1 Ch. 157.

Bankruptcy—Notice served on debtor before war—Failure to comply with—If debtor entitled to have stay under Courts (Emergency Powers) Act 1939, on ground of inability to pay his debts owing to the war—Onus.

The bankruptcy notice was served on the debtor in May, 1939, and the debtor failed to comply with it; accordingly she was at that date unable to pay her debts and that inability was not and could not be suggested to be in any way the result, directly or indirectly of the war. The fact that the debtor has since found difficulty in realizing the property the sale of which might have enabled her to satisfy the judgment-creditor at a later date is an irrelevant

1. (1940) 1 M.L.J. 429.
2. Coote's Mortgages, 9th edn., p. 1366.
3. *Chinnasami Mudali* v. *Tirumalai Pillai*, (1901) I.L.R. 25 Mad. 572; *Kadir Mohideen Marakkayar* v. *Muthukrishna Ayyar*, (1902) I.L.R. 26 Mad. 230; *Ibrahim Khan Sahib* v. *Rangasami Naicken*, (1905) I.L.R. 28 Mad. 420; *Dost Muhammad Khan* v. *Mani Ram*, (1902) I.L.R. 29 All. 537 (F.B.); *Ragho Prasad* v. *Mewa Lal*, (1912) 22 M.L.J. 457: I.L.R. 34 All. 223 (P.C.); *Bank of Upper India* v. *Administrator-General of Bengal*, (1917) I.L.R. 45 Cal. 653.

consideration and the stay of proceedings cannot be granted. The onus is on the debtor to prove that inability to pay debts is due to the war, directly or indirectly.

CARPENTERS ESTATES, LTD. *v.* DAVIES, (1940) 1 Ch. 160.

Specific performance—Contract by vendor of building sites to construct roads and sewers on land in his possession—Specific performance—When can be granted.

Defendant who sold some building land to the plaintiffs covenanted to make roads and sewers. Defendant did not carry out the covenant with regard to sewers and the plaintiffs though they had not commenced building operations claimed specific performance.

Held, the plaintiffs were entitled to a decree for specific performance as they had a substantial interest in the performance of the contract and could not have been properly compensated for breach of the covenant by award of damages. The nature of the work which the defendant had undertaken to do is sufficiently clearly defined. The mere fact that the defendant has not got possession by the contract of land on which the work is contracted to be done is not necessarily a complete bar to granting specific performance. It is sufficient if it is established that the defendant is in possession of the land on which the work is contracted to be done. *Wolverhampton Corpn.* v. *Emmons*, (1901) 1 K.B. 515, observation of *Romer, L.J.*, held not strictly accurate.

WILSON *v.* LONDON MIDLAND AND SCOTTISH RAILWAY, (1940) 1 Ch. 169.

Companies Clauses (Consolidation) Act, 1845, S. 85—Directors—Directors also directors or shareholders of other companies trading with the defendant company—If precluded from acting as directors of the defendant company.

The plaintiff a stockholder in the company claimed a declaration that directors of the defendant company who are directors and trustees of other incorporated joint stock companies trading directly and indirectly with the defendant company are precluded from acting as directors of the defendant company and their office has become vacant. The directors were not made defendants to the action.

Held, (1) the declaration cannot be made in the absence of the directors and without giving them an opportunity of being heard in their own defence.

(2) What the Act contemplates in S. 85 is that it is only persons who are concerned in contracts with the defendant com-

pany in the sense of having a commercial interest in contracts with the defendant company who are aimed at by this section, and that, if and so far as the commercial interest consists only in a shareholding in a company which enters into a contract with the defendant company such shareholder may nevertheless continue to be a director of the defendant company. It is immaterial, in addition to being a shareholder, he is also a director of the contracting company. It is only his commercial interest that is aimed at.

Decision in *Lapish* v. *Braithwaite*, (1926) A.C. 275 under similar provisions of Municipal Corporations Act applied.

HODGES (G. T.) & SONS *v.* HACKBRIDGE PARK HOTEL, LTD., (1940) 1 K.B. 404.

Principal and agent—Compulsory sale of property to Government—Agent previously employed to find a purchaser if entitled to commission.

The plaintiffs, a firm of house agents had been asked in 1933 by the defendants to find a purchaser of their premises. The attempt to sell came to nothing. The defendant was not willing to sell at less than £12,000 to a Colonel (introduced by plaintiffs' another agent) who was really investigating directly or indirectly on behalf of the war office. Later, the war office requisitioned the whole estate under statutory powers and the arbitrators fixed the price for such purchase between £7,000 and £8,000. In a claim by plaintiff's firm for commission,

Held, (reversing the decision of *Lewis, J.*)

Per *Scott, L.J.*—In the absence of a voluntary sale, there was no contractual relationship between what the plaintiffs did and the transfer of the estate under compulsory purchase and the plaintiffs were not entitled to any commission.

Per *Goddard, L. J.*—"You employ an agent to effect a transaction which is of service to you, and in the circumstances which ended in the defendants being expropriated from their premises and land and having to accept a price, at which they were not willing to sell, it is impossible to say that the plaintiffs have earned any commission out of any employment which was conferred upon them by the defendants." *Toulmin* v. *Miller*, 12 A.C. 746, applied.

SMITH *v.* MOSS AND ANOTHER, (1940) 1 All. E.R. 469 (K.B. D.): (1940) 1 K.B. 424 (K.B.).

Tort—Negligence—Immunity of husband from liability for tort to wife—Extent—Negligence of husband in driving car as agent of owner—Claim by wife for damages against such owner—Sustainability.

The defendant *R* was the registered owner of a motor car. There was no driver for the car and whenever she wanted to use the car, her son, and he alone was allowed to drive it. One day the car was being used to convey *R*, her son and his wife from a party. The son was driving. The mother was taken to her house and while taking the car back to the garage in the son's house there was a collision with another car due to the son's negligence. The wife sustained injuries and claimed damages against her mother-in-law. It was contended that the wife cannot recover damages against her mother-in-law, because the accident was caused by the negligence of her husband and a husband can commit no tort against his wife.

Held, the mere fact that the husband is acting as an agent for some one else, and, while acting as such agent, happens to commit a tort, such as negligence in the driving of a motor car in which his wife is a passenger does not deprive his wife of her right to recover against his employer.

SMITH (R. M.) *v.* SMITH (A.E.), (1940) P. 49.

Divorce—Desertion—Husband and wife living separate in parts of same house (without physical separation between the parts) —Refusal by husband of suggestion for reconciliation—If constitutes desertion.

Where the only element of living together is that husband and wife were actually existing in one house though there was no physical separation between the parts of the house in which they were living, the case is one of desertion and is not one in which the wife is precluded from asserting desertion by the mere fact that they were residing in the same house. The refusal by husband to have reconciliation and persisting in withholding cohabitation with his wife affords a starting point for desertion and a decree *nisi* ought to be granted.

NASH OTHERWISE LISTER *v.* NASH, (1940) P. 60.

Petition for decree of nullity on the ground of husband's impotence—Defence of lack of sincerity—Limits.

In a petition by a wife for declaration of nullity on the ground of the impotency of her husband, the husband contended that the petitioner was guilty of want of sincerity in presenting the petition.

Held, that the "sincerity" with which the Court is concerned has reference only to the sincerity of the plea and has nothing whatever to do with either (*a*) the general character of the

petitioner as a sincere or insincere person or (*b*) the conduct of the petitioner before her marriage or the motives which prompted her to enter into the marriage. Previous knowledge of impotency is only evidence and not an acid test of insincerity. The Court is concerned only with the question whether since her marriage the petitioner has been guilty of any conduct which ought to estop her from having the remedy she seeks.

JOTTINGS AND CUTTINGS.

BLACKMAIL*

A sketch by the Hon'ble Mr. Justice Wadsworth broadcast from the Madras Station of the All India Radio, on the 11th April, 1940.

SCENE I

Subramaniam : Good morning, Mr Shanmugam. I don't think I have had the pleasure of meeting you before, have I?

Shanmugam : No, Mr. Subramaniam, I don't think you have met me, but you used to know my uncle well in years gone by. He was Puniakoti Mudaliar, the contractor at Kachipur.

Subramaniam : O! You are the nephew of old Puniakoti, are you? Splendid old chap he was and one of the best contractors I ever knew. I hope he is still thriving?

Shanmugam : No I regret to say that he died last year.

Subramaniam : Dear me! I am very sorry to hear it

Shanmugam : I am sure you are. And I have no doubt you will be more sorry still when I tell you that on his death all his account books came into my hands

Subramaniam : His account books? What have I got to do with his account books? I don't understand what you mean, Mr. Shanmugam

Shanmugam : O! You don't understand! Well I had better explain myself. Perhaps you know that Puniakoti was my guardian and that the money with which he financed the contract business was my money

Subramaniam : I didn't know it. But I still don't see what that has got to do with me.

Shanmugam : No? I think I am right in saying that in 1925 you were Assistant Engineer at Kachipur and my uncle was working as a contractor under you Isn't that so?

Subramaniam : Quite correct The best contractor I ever had. A splendid fellow.

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*Published by courtesy of the All India Radio.

Shanmugam : Your enthusiasm is perhaps not entirely gratuitous, Mr Subramaniam! I find from my uncle's accounts that on 8th July, 1925, he paid you a sum of five thousand rupees at a time when he was executing extensive contracts under your control. What have you got to say about that?

Subramaniam : I.....I don't see what it has got to do with you even if he did

Shanmugam : O! Don't you? Well, I'll tell you. That money was my money and it was paid to you as a bribe and I intend to get it back again

Subramaniam : You are an optimist! If you think that you can claim back money paid by your uncle fifteen years ago, merely by making scurrilous charges against one of your dead uncle's best friends, you're making a grave mistake.

Shanmugam : We'll see about that. Somehow I can't quite imagine how you will defend a suit for the recovery of a big bribe without rather blotting your official copy-book and spoiling your chance of becoming a Superintending Engineer next year

Subramaniam : O—so it's blackmail you are after, is it? You had better be careful or you'll find yourself doing two years in the Penitentiary.

Shanmugam : Come now, Subramaniam. It's no use bluffing. You know as well as I do that no one can be sent to jail for threatening to file a civil suit for a just claim And you know perfectly well why that money was paid to you and who it belonged to Moreover, even if you had got a defence, which you haven't, you wouldn't dare to let the case go to Court and ruin your prospects in the service. So you might as well face the facts and pay back the money which you never ought to have taken.

Subramaniam : The money never went into my pocket and I don't see why I should pay it—especially after all these years.

Shanmugam : You needn't think you can plead limitation. It is trust money and my lawyer tells me that I shall have no legal difficulty in making out my claim Anyhow I will give you one month in which to make up your mind whether you will pay up like a sensible man or face the music If you prefer to fight the matter, I have no objection, but I warn you that it will be your ruin, whichever way the suit goes. So I wish you good morning, Mr. Subramaniam. You can send your cheque to me care of the Co-operative Bank at Kachipur.

(*Steps receding. Pause*).

Subramaniam : You nasty little bit of work! I'll get even with you somehow (*Pause*) Ramayyar!

Ramayyar : (*In distance*) Hello! (*Steps approaching*) Who is that nasty-looking little chap you have been hobnobbing with?

Subramaniam : You may well call him a nasty little chap It is a young man called Shanmugam, from Kachipur, who has been trying to blackmail me for five thousand rupees

Ramayyar : Five thousand! Phew! You must have a pretty lurid past to be worth as much as that to a blackmailer. And I always thought you such a steady old bird!

Subramaniam : It's no joking matter, Ramayyar. This fellow has got a real pull over me and I don't know how to deal with him.

Ramayyar : But how on earth have you landed yourself in such a mess?

Subramaniam : It's rather an ancient story. When I was a young assistant at Kachipur in 1925, my boss was that corrupt old blighter Loganathan. He had worked out a system for milking the contractors which was really rather masterly. The contractor paid five per cent. of every contract to the local Assistant Engineer. The assistant paid the amount, less a small commission, to Loganathan's brother-in-law. Loganathan had nothing to do with it and if there was any trouble, it was the assistant who would stand the racket. If the assistant was foolish enough to object, every job of work he did was officially damned and his confidential reports were unfit for publication. I thought I would avoid trouble by sending the money on, and I salved my conscience by not deducting any commission. And this is the result! Loganathan's dead and gone, so it's no good blaming him. I threatened Shanmugam with prosecution, but he's cunning enough to see that you can't send a man to jail for threatening to file a civil suit.

Ramayyar : But what about limitation? Surely he can't get a decree for money paid in 1925?

Subramaniam : He says he was a minor and that the money was his money held in trust, so limitation will be no use to me. And anyhow, as he points out, how can I defend the suit without ruining my official reputation for ever? We must find some other way out.

Ramayyar : Well the only thing I can suggest is that you should call in Ganesha Iyer.

Subramaniam : Ganesha Iyer? You mean the funny little old lawyer man who is said to be such an expert at getting into the Court by the back door?

Ramayyar : That's the man. He's up to all the tricks of the trade, but he never lets a client down and he won't stir a hand to help you unless he thinks the cause a good one. Once he is con-

vinced that his client has a real grievance, he is a perfect marvel at finding a crooked way out of a tight corner. He's your man

Subramaniam : Well you know that I don't think much of lawyers as a class; but if your Mr. Ganesha Iyer can get me out of this mess, I'll endow a scholarship at the Law College.

SCENE II.

[*In the office of Mr. Ganesha Iyer.*]

Subramaniam : You see the position, Mr. Ganesha Iyer. I never touched an anna of this money, except to pass it on. Shanmugam probably knows that quite well, but he thinks he is safe from prosecution, and he thinks I can't defend the suit Now what do you suggest?

Ganesha Ayyar : Hm!.....I don't think a prosecution for extortion would stand much chance, even if you were willing to prosecute, which, I take it, you aren't The suit is a different matter. He would have to prove his case—that the money was his and not his uncle's, that you knew the money was trust money, that you not only received the money, but kept it and that the money was not paid for a legitimate purpose. Rather hard to establish all these points and I can imagine that a searching cross-examination might land him in difficulties.

Subramaniam : But you don't seem to realise my difficulty, Mr Ganesha Iyer. It is no good telling me how I can defend this suit, when I daren't defend it. He is throwing mud and the mud will stick, even if he fails to prove his facts He knows well enough that there will be a vacancy as Superintending Engineer next year and what will be my chance of promotion with a bribery case hanging over my head? No. You must find some way of stopping the suit, or I shall be ruined. I was told that you are very expert at the .....er.....side lines of legal work.

Ganesha Ayyar : I hope, Mr. Subramaniam, that you don't think me an expert in unprofessional practices?

Subramaniam : O no! Mr Ganesa Iyer, I wouldn't suggest anything of the kind. Still, I had hopes that you might be able to devise some way of keeping this case out of the Courts

Ganesha Ayyar : Well we will see what can be done about it. But I hope you realise that it is at least as expensive to fight a case outside the Courts as it is to defend it in the ordinary way?

Subramaniam : You need have no fear that I shall grudge you the money This case means a lot to me and I don't mind paying anything in reason.

Ganesha Ayyar : That is the sensible way of looking at it and I will try and keep the cost as low as I can Now if this case went into Court I should charge you a fee of hundred and fifty rupees

for defending it and it would cost you as much again in incidental expenses—to say nothing of the probable cost of an appeal. I suggest that you should pay me five hundred rupees to cover all fees and expenses. Do you think that is too much?

Subramaniam : No, I will pay it gladly if only you can get me out of the mess.

Ganesha Ayyar : Well, I can't guarantee success, but I have an idea that I know how to deal with friend Shanmugam and it is better that you shouldn't know anything about it at present. There is one other matter; I would ask you to give me your word not to ask for any details of the costs—there are certain expenses which are necessary, but must be kept confidential

Subramaniam : I quite understand and am most grateful to you for your help.

Ganesha Ayyar : That's settled then. As you are going out, would you mind telling my clerk Natesan that I want to speak to him?

Subramaniam : Certainly Good morning.

Ganesha Ayyar : Good morning.

(*Steps retreating;*

Door bangs;

Steps advancing.)

Natesan : You sent for me, sir?

Ganesha Ayyar : Yes, I have got a job of work for you First I want to know what friends and relations you have got in the municipal office, the police station and the local revenue department.

Natesan : Well, there is my cousin, Gurusami, who is a sanitary inspector. And there is the head constable of the town police station who was my class-mate. I haven't any relation in the revenue department, but there is a clerk in the taluk office who owes me twenty-five rupees and might be willing to help for a consideration.

Ganesha Ayyar : Splendid Get into touch with them all at once. Here's twenty rupees for preliminary expenses and you might tell them that anything they do will be well paid for and no stories told Now do you know Shanmugam of Kachipur?

Natesan : Yes, I know him—and a nasty little fellow he is too.

Ganesha Ayyar : I dare say. But what I want you to do is to go round the bazaar and find out who he owes money to. Then get into touch with his creditors and see how many of them are willing to file small cause suits at the expense of someone whom you

had better describe as a political opponent You see, this Mr. Shanmugam has been making a nuisance of himself and I want to send him a shower of greetings—in the form of suit notices, prosecution summonses and any other forms of legal unpleasantness that you can think of Then when we have got him into a sufficiently chastened frame of mind, it will be your job to go and see him and convince him that nastiness doesn't pay. You see the idea? Moral uplift and prevention of anti-social activities. That's the great work!

Natesan : I get the idea, sir. Give me two days and I'll have his morals uplifted as they've never been uplifted before!

SCENE III.

[*In the bangalow of Mr. Shanmugam.*]

Shanmugam : Hell's bells! Here's another! That makes five suit notices, two prosecution summonses and two encroachment eviction notices, all served on me in the last 48 hours. (*Shuffles papers*) Listen to this one. Abdul Karim. . retail shop... . amount of 20 rupees 3 annas 5 pies. .. the old devil knows perfectly well that he'll be paid if he's patient. I wonder what makes him so anxious to rush to Court and lose a good customer! Then what about this.....summons to appear before the Bench Court.....committing nuisance in a public place! And I expect every man in the Court does the same thing every day of his life! Why have they pitched on me? I've got no quarrel with the police. Then there's the municipality threatening to prosecute me unless I fill up the insanitary pit in my backyard! It's been there for the last fifty years and nobody ever called it insanitary before: and it'll cost me five hundred rupees to fill it up. Then there's the Tahsildar joining in .. . . ..encroachment in survey number 216.....penalty of ten rupees! What the blazes has started them all off? (*Noise of door. Steps approaching*).

Hello! Who are you?

Natesan : My name is Natesan. I'm a .....a law agent and I heard that you might want help with a case.

Shanmugam : A case! A dozen cases, you mean And if they keep coming in for another week as fast as they have done for the last two days, we'll need a special Court to try them What I want to know is who is at the bottom of it all and how I am to deal with him.

Natesan : Ah! Perhaps I can help you there. You see, I have great experience of legal matters and am in touch with all the chief litigants. I heard that you were threatening to file a suit against a P.W.D. gentleman called Subramaniam :

Shanmugam : The devil you did! And who told you that, I wonder?

Natesan : I am afraid that I cannot answer that question. But I am in a position to assure you that if you will give me a receipt for the amount of your claim against Subramaniam and a written undertaking not to take any legal proceedings against him, all the notices you have received during the last two days will be withdrawn.

Shanmugam : What! all the suits and the prosecutions and the encroachment proceedings?

Natesan : Yes, all of them. And in order that there might be no beating about the bush, I have brought the receipt and the undertaking typed out for you to sign.

(*Shuffling of paper.*)

Shanmugam : You.....You.....infernal old scoundrel! Why that's blackmail!

THE RULE OF LAW AND LAW REFORM.

Speech delivered by Sir Alladi Krishnaswami Iyer, *Kt.*, Advocate-General of Madras while presiding over the Golden Jubilee Celebration of the Nellore Bar Association on 13th April, 1940.

"The profession is passing through a crisis on account of the severe economic depression which has its repercussions in every sphere of our national life During these difficult times it is possible that, here and there, there may be temptations to stray from the right path and relax the high standard of rectitude and integrity which are expected of every member of the Bar It is all the more necessary for us to make a determined effort to keep up the highest traditions of the Bar and to see that cases of professional delinquency, which I regret to say now and then come up before the courts, do not recur.

There is no reason to suppose that the influence for good of the profession will wane with the growth of democratic institutions. The lawyer will have to play a more important part in the future than even in the past The ringing words of Burke about the legal profession on the eve of the American Declaration of Independence are as true to-day as when they were uttered.

Much as I doubt whether a festive gathering like the one in which we are all assembled is a proper one for discussing any serious subject, I cannot resist the temptation of referring briefly

to one or two topics in which I happen to take some interest and in which I have no doubt most of you are interested The subject of the Rule of Law is of absorbing interest to any student of jurisprudence. There is, I feel, a certain appropriateness in choosing it as the theme of my address as, at this juncture, Great Britain is engaged in a mighty struggle against a power which is flouting all rules of International Law and is attempting to introduce into the relations between nations the law of the jungle. Whatever might be India's differences with Great Britain, there is no shade of opinion which does not recognize that Britain's cause is right and just and that she is fighting for the establishment of liberty and the Rule of Law Any student of British Institutions knows that the foundations of the British Commonwealth are laid on the Rule of Law.

It may be of interest to you to note that the concept of the Rule of Law forms the basis of even ancient Hindu jurisprudence, though the expression may not have had precisely the same significance. In the Vedic and Upanishadic texts, there is frequent reference to the monarch being under the sway of law. By upholding the law, says the Arthāšastra, the king becomes a realm-sustainer or Rāshtrabhṛth The Brihadaranyakopanishad emphasises the idea of the law being the king of kings Professor Jayaswal and Mr Ramachandra Dikshitar in their recent and very instructive treatises have thrown considerable light on the subject. Our ancients had a very high conception of justice in the scheme of administration.

While there was no rigid rule of selection to the village courts, the central judiciary was appointed by the monarch and great professional qualities were expected of a judge. According to Yājnavalkya, the qualities in a lawyer that marked him out to occupy judicial offices were independence of character, great learning in the various branches of law, and impartiality.

श्रुताध्ययनसंपन्ना धर्मज्ञाः सत्यवादिनः ।
राज्ञा सभासदः कार्या रिपौ मित्रे च ये समाः ॥

The Mrichchakatika describes the qualities of a Judge in these terms: "A Judge should be learned, sagacious, eloquent, dispassionate, impartial; he should pronounce judgment only after due deliberation and enquiry; he should be a guardian of the weak, a terror to the wicked; his heart should covet nothing, his mind intent on nothing but equity and truth." Equality before the law was the ideal of Hindu administration, though on account of the existence of caste as an institution, with due regard to the habits of the different castes, differential punishment was countenanced.

While it cannot be asserted that the separation of the executive from the judicial functions was insisted up on as a matter of pure constitutional theory, Professor Jayaswal remarks: "The adminis-

tration of justice under Hindu monarchy remained always separate from the executive and generally dependent in form and ever independent in spirit." It may be of interest to note that the legal profession is not entirely of British Indian origin There are passages in Sukranithisāra, which are extracted in a learned editorial in the Madras Law Journal, 1909, which point to the existence of the legal profession as an indispensable part of the machinery of administration of justice, though curiously enough legal assistance seems to have been denied in certain criminal cases as distinguished from civil cases.

From the point of view of English Constitutional Law and legal theory, students of Dicey are familiar with what the expression 'Rule of Law' normally connotes. Leaving aside its relation to the development of the British constitution, according to Professor Dicey, the Rule of Law in the first place means the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness, of prerogative or even of wide discretionary authority on the part of the Government Englishmen are ruled by the law and by the law alone; a man may be punished for a breach of the law but he can be punished for nothing else. It means again equality before the law or the equal subjection of all classes to the ordinary law courts and excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals, there being nothing really corresponding to the 'Administrative Law' or the 'Administrative Tribunals' of France. There have been criticisms by recent writers of Professor Dicey's exposition of the subject on the ground that the Professor had not clearly appreciated the system of the Administrative Law in France and in Germany and that, in some respects, subject aggrieved against the action of the executive authority has better redress under the administrative system obtaining in France than under the English system of administration of justice. And, in this connection, it has been forcibly pointed out that the English doctrine of the immunity of the Crown from action has the result of affording no effective or adequate remedy for an aggrieved subject in several cases.

The criticisms that have been offered against the views of Dicey may be formulated under different heads:

I. Professor Dicey overstresses the point in that he ignores that even in what are termed as Totalitarian States the acts of the executive are done under the authority conceded by the sovereign legislative power. Such a criticism, as is pointed out in his recent book, *The Constitution of England from Queen Victoria to George, VI*, 1940, by Professor Keith, misses the real point of Dicey's claim, namely, that the spirit of English law utterly repudiates the state

of affairs that prevails in Germany to-day, the executive being armed with authority over the lives and fortunes of citizens and in the result is not subject to any judicial control. The distinction lies not so much in an act being under colour of law under the one system and not so under the other system, as it is inconceivable that any act in a civilized state has not some kind of sanction under the law of the land but in the spirit that underlies the working of the institutions and in the machinery available for the review of the acts of the Executive. There is no reason to suppose that what is done in a country like England under the stress and strain of war may not, in some respects, resemble acts countenanced in a Totalitarian State. But it is one thing to suspend the writ of *habeas corpus* in an emergency and quite another thing to have an authoritarian administration as the normal condition.

II There is no special merit in the acts of officials being in the last resort reviewable by the ordinary civil courts in the land, as the Administrative Courts in France with a right of appeal to an ultimate Court of Appeal afford better redress to an aggrieved subject as against the state than in England In connection with the relative merits of the British and Continental systems, stress has also been laid by these critics on certain features in the constitutional development of the 19th century, namely, the recognition by Parliament that ordinary types of courts were not well adapted to deal with certain classes of questions. The increased sphere of functions of the modern state has rendered inevitable the creation of various administrative bodies and tribunals, some exercising judicial and quasi-judicial functions and the consequent restriction, if not the complete abrogation in certain instances, of the jurisdiction of the ordinary courts.

After a careful examination of the various points of view, the Committee on Ministers' Powers, appointed in England some years ago to examine the whole position, came to the conclusion that British opinion was not prepared to accept the argument that the French system for the obtaining of redress against official conduct affords better results and that the essential principle of English jurisprudence, *viz.*, the doctrine of equality before the law, is better secured by a citizen having recourse to a Judiciary which is entirely independent of the Executive The Committee on Minister's Powers, while recognizing the modern trends in administrative methods, suggested the remedy of recourse to the ordinary courts of the land at least by an appropriate reference where a purely justiciable issue was involved and recommended the observance of certain rules of procedure for hearing by administrative bodies, as also the simplification of the procedure in regard to Prerogative Writs in cases where there is an error or defect of jurisdiction on the part of these administrative bodies or tribunals. Professor Keith is inclined to take the view that the Committee in its recommenda-

tions has not offered any constructive suggestions to give the proceedings of these administrative bodies a more judicial character, thereby making them better instruments of justice than now

III. Dealing with the subject of the Rule of Law, the critics of the English system have laid stress on the English contitutional doctrine of the immunity of the Crown from civil proceedings and the denial to a subject of any effective remedy for wrongs suffered by him. It is also pointed out by these critics that the only remedy available to a subject, under the English law, *viz*, the right of recourse against the offending official, is hedged in either by various statutory restrictions or seriously curtailed by enactments giving a statutory protection or indemnity to the official concerned.

The rigour of the rule as to the immunity of the Crown from actions by the subject is to some extent modified by various recent enactments in the Dominions, by recoure, in certain instances to the machinery of incorporation and by special provisions in constitutional enactments like the Government of India Act recognizing a right of suit But even if we take into account the legislative provisions referred to above, the law relating to proceedings against the Crown or Crown Departments cannot by any means be said to be in a satisfactory state in England or the countries governed by British jurisprudence.

I shall say a few words regarding the connected subject of Delegated Legislation. The grant by the British Parliament of authority to legislate to the executive is not of recent origin. We have instances of such delegation even as early as the 17th and 18th centuries and Delegated Legislation became a common feature of the 19th century. The practice of delegating legislative powers received a special impetus during the last war and is of daily occurrence at the present day In the Colonies and the Dominions, it is of special interest to the constitutional lawyer and historian to note that the Judicial Committee gave an impetus to a large scale delegation by the leading decisions in *The Queen* v. *Burah* and *Hodge* v. *The Queen* by holding that the Colonial and Dominion legislatures have plenary authority to provide for the extension of an Act by an executive fiat or to clothe the executive with a rule-making power to carry out the puropses of the Act and that such an exercise of the sovereign power of the legislature is not open to the attack of *delegatus non potest delegare*. "How far it shall seek the aid of subordinate agencies and how long it shall continue them are matters for each legislature and not for the Courts of law to decide." The only effective check on Delegated Legislation is the judicial jurisdiction to test the *vires* of the rules enacted with reference to the scope and intendment of the main enactment. In recent times even this power of judicial review has been sought to be curtailed by various parliamentary devices such as a provision that

the publication in a Gazette shall be conclusive evidence that certain requirements of an Act have been complied with or that a rule shall not be liable to be questioned before a court or a provision that a rule shall have the same effect as an Act of Parliament In spite of the danger attending such a legislative procedure, *viz.*, the danger of passing Acts in too summary a manner and leaving undue freedom to the Executive to interfere, it cannot be gainsaid that there are also certain obvious advantages in such a procedure. The reasons for such a delegation are discussed very fully in Professor Carr's admirable analysis:

(*a*) The great demands made on the time of Parliament by modern social and international problems forbid the discussion in detail of any legislation and to attempt to do so may mean Parliament neglecting essential duties

(*b*) The limited inclination for technical knowledge of any miscellaneous body like the modern legislature; many measures may be so technical that they cannot be effectively discussed by members

(*c*) The happening of events which require immediate attention when the legislature is not in session or is otherwise incapable of giving immediate attention to the problem.

If the problem is examined from an unbiassed standpoint, it looks as if Governments in the present era cannot go on without delegation of wide legislative authority to the Executive Lord Donoughmore's Committee recognized this, as also English writers on the subject, like Professors Carr and Willis

To meet the objection as to large-scale delegation being inconsistent with parliamentary or legislative sovereignty, various safeguards and devices have been suggested, but they are all in the stage of experimentation The safeguards suggested are as follows:

(1) Placing the regulations before the legislature. [The effectiveness of this method of control was discussed at length by the Lord Donoughmore Committee and the conclusion which may be gathered from the evidence and the report is that this procedure is unsatisfactory.]

(2) A suggestion as to the creation of standing committees of the legislature to scrutinize legislation for the purpose of drawing the attention of the members to anything out of the ordinary course.

(3) The setting up of temporary committees of various sorts to consult with the Government in regard to the issue of any suggested regulations. It is very doubtful whether any of the steps suggested above will be an effective or appropriate check on Delegated Legislation. Such a necessity is not of course to overlook the attendant dangers of a widespread delegation.

The subject of Delegated Legislation has given rise to a very interesting discussion in recent years as to the full scope of the decision in *The Queen* v *Burah,* (1878) L.R 5 I.A 178 The theory has been put forward that it may be ***intra vires*** of a Colonial or Dominion Legislature to delegate power to make regulations "ancillary to legislation." There is no power, it has been suggested, "to pass skeleton legislation and empower the Government to clothe the bare bones " Such a process, it has been argued, is not delegation but abdication, *i e.*, it cannot create and endow with its own capacity a new legislative power not created by the Act to which it owes its own existence. The Privy Council gave some countenance to this doctrine in what is familiarly known as the Referendum case in the following passage: "It does not follow that it can create and endow with its own capacity a new legislative power not created by the Act to which it owes its own existence". The recent decision of the Privy Council in *Shannon* v. *Lower Mainland Dairy Products Board,* L.R. (1938) A C. 708 while reiterating the general doctrine that "within its appointed sphere the Provincial legislature is as supreme as any other Parliament and that it is unnecessary to try to enumerate the innumerable occasions on which legislatures, Provincial, Dominion and Imperial have entrusted various persons and bodies with similar powers to those contained in the Act under consideration by their Lordships," cannot be said to have given a quietus to the theory or doctrine of abdication.

I have taken up more time than I intended in trying to speak to you on the subject of the Rule of Law and Administrative and Legislative Delegation. But I shall close my observation with this remark, that, even if full weight is given to the criticisms of foreign and recent English Constitutional writers on the subject of Rule of Law and the recent tendencies in British administrative system, there is no doubt whatsoever that the concept of the Rule of Law continues to be the governing factor in the adjustment of legal relations and the determination of legal rights in the British Commonwealth as also in the American Continent, whose legal system is permeated with and governed by the British jurisprudence.

Before I close I should like to touch on another topic of absorbing interest to the profession. You are aware of the usual criticism that is levelled against the practising lawyer that he is an ultra-conservative and that he seldom ranges himself on the side of law-reform The profession in England has seriously taken up the subject of law-reform and various important changes have been effected in recent times in the Common law of England and antiquated rules out of tune with modern conditions have been done away with. A large scale reform of Hindu law is an imperative necessity at the present day in order to bring the law in line with the social consciousness of the community and to prevent courts

of law becoming the battleground for the settlement of simple questions of succession and family law. Even in the field of economic and social legislation the lawyer can render distinct service to the community by offering constructive suggestions As Lord Macmillan recently remarked in the Rede Lecture he delivered: "We must not sacrifice social benefit because the methods of realisation do not move along the lines of our traditional legal systems or hallowed juristic principles " The duty of the lawyer is all the greater in the field of normal private law.

I would urge upon every Bar Association to take up the question of law-reform and to set up Committees for a detailed consideration of the subject. Let me conclude with the fervent hope and prayer that the members of the profession here will continue to maintain their high traditions with the following reflection of Hanuman, in the Ramayana, on the dignity of law and order which is quoted *in extenso* in Mr. Dikshitar's book on Hindu Administration and Institution: "When a king confers favours truly and awards punishments justly, then only the order of the world becomes well established. He must bestow favours on well-behaved persons who seek his aid prudently On the other hand he must punish those who transgress law and order When the king duly prescribes and shows proper regard to the deserving, then law is well preserved, and good order is maintained."

निग्रहानुग्रहैः सम्यग्यदा नेता प्रवर्तते ।
तदा भवन्ति लोकस्य मर्यादाः सुव्यवस्थिताः ॥ १ ॥
बुद्धया स्वप्रतिपन्नेषु कुर्यात् साधुष्वनुग्रहम् ।
निग्रहं चाप्यशिष्टेषु निर्मर्यादेषु कारयेत् ॥ २ ॥
निग्रहे प्रग्रहे सम्यग्यदा राजा प्रवर्तते ।
तदा भवति लोकस्य मर्यादा सुव्यवस्थिता ॥ ३ ॥"

Captain Kidd at the Microphone.—The B.B.C. recently made a very realistic job of their reconstruction of the trial of Captain Kidd at the Old Bailey in 1701 on charges of piracy and murder. Perhaps for dramatic effect the stress was rather too much on his truculence. One hardly got the impression that here was a man who had honourably followed his calling on the sea till middle age, prosperous, respected and trusted, and that only after that did opportunity turn him into a rather half-hearted pirate. He was no illiterate salt-water thief but could write a letter with style and clarity which compared very favourably with the productions of Lord Bellomont, Governor of New England, who arrested him. To

modern ears the form of the indictment for the murder of his gunner probably sounded most strangely over the other. It declared "that the aforesaid William Kidd, with a certain wooden bucket bound with iron hoops of the value of eightpence which he, the said William Kidd, then and there had and held in his right hand, did violently, feloniously, voluntarily and of his malice aforethought beat and strike the aforesaid William Moore in and upon the right part of the head of him the said William Moore, a little above the right ear of the said William Moore, then and there upon the high sea, in the ship aforesaid and within the jurisdiction of the Admiralty of England aforesaid," and so on for a good deal more.—*S.J. 1940, p. 75.*

Maxims.—Maxims admittedly do not hold the place that they once held in the vocabulary of the practitioner, and indeed have by some writers been severely frowned upon, as, for example, by Tennyson, who in "Locksley Hall" speaks of some one "with a little hoard of maxims preaching down a daughter's heart." Coleridge, too, in his extremely attractive little book, "Table Talk," has something to say regarding them and not altogether to their advantage. This book of his is packed with many quaint stories, including that of the man who, during imperfect sleep, listened to the clock as it was striking four, and as it struck, he counted the four, one, one, one, one, and then exclaimed, "Why, the clock is out of its wits; it has struck one four times"! But now revenons a nos moutons, namely, the subject of maxims. After premising that a maxim is a conclusion upon observation of matters of fact, and is merely retrospective, he adds that "a man of maxims only is like a Cyclops with one eye, and that eye placed in the back of his head". This, to be sure, is scarcely complimentary to maxims. Yet something is to be advanced in their favour. For example, their crystallisation of some legal doctrine is eminently useful, seeing that it can be easily memorised. Hence the fact that a work like Broom's Legal Maxims first published in 1845 and which recently attained its tenth edition, has been found of considerable value by the lawyer and student in conveniently memorising for them some of the great principles of our law. Broom stressed their value for this purpose, but he likewise stressed the caution to be exercised in their application.—*L.T., 1940, p. 87.*

BOOK REVIEWS.

INSURANCE LAW AND PRACTICE IN INDIA, by B. N. Singh. Published by the University Book Agency, Lahore. Price Rs. 20.

The Law of Insurance is a subject which is growing in interest to the lawyer. But the layman also has necessarily to understand

something, if not all, about the Insurance Law in view of the fact that insurance as a method of saving is becoming almost the only one to him nowadays. With the coming into force of the Insurance Act of 1938, public interest in India, has become more attracted to the subject. Moreover, the mushroom growth of insurance companies in this country with no adequate basis or provision for funds to meet demands, makes it incumbent upon the lawyer and the layman to view with favour any such strict legislation as the bill introduced in the Legislative Assembly in January, 1937, which has now become law, thanks to the endeavours of the far-sighted legislators.

The volume under review has distinct merits, in that it has not only analysed without flaw the subject under relevant headings such as Premiums, Warranties, Risk Policy, Married Women's Property Act, Accident and Motor Insurance, but has carefully given brief notes under each of the provisions of the Insurance Act of 1938. With the text of the Insurance Act of 1938 and the table of Insurance Rules given *in extenso*, the book is rendered very useful as a compendium of knowledge upon the subject. The exhaustive references to case-law brought up-to-date adds to the immense practical usefulness of a book, which bears the marks of ability and erudition of a high degree.

[END OF VOLUME]