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Rajagopalan and *Chandra Reddi, JJ.*
16*th October*, 1951.

Srinivasa Ayyangar *v.* Revenue Divisional Officer, Pollachi.
Appeal Nos. 588, etc., of 1947.

Land Acquisition Act (*I of* 1894)—*Acquisition of agricultural lands—Capitalisation of net income of, for purpose of fixing the quantum of compensation payable—Principles.*

Agricultural lands cannot be valued solely on the basis of the return from gilt-edged securities at the time of the acquisition, *i.e.*, the notification under section 4 of the Land Acquisition Act. To that extent agricultural lands differ from two of the other types of immovable property, melwaram interest even in agricultural lands and sites with buildings thereon situate in urban areas. The number of years of purchase should be fixed with reference to the return from gilt-edged securities on a uniform basis for all these three types of property. The years of purchase arrived at on the basis of gilt-edged securities should be fixed in the case of agricultural lands after making due allowance for normal expectations of seasonal failures.

If there is to be a rigid rule that the maximum to be permitted in the case of agricultural lands should be a twenty years' purchase, it should be achieved only by legislation. The Courts cannot and they have not laid down any such rigid and inflexible rule.

Case-law discussed.

G. Srinivasa Ayyangar and *S. Thiruvengadatha Ayyangar* in Appeal No. 588 of 1947; *V. C. Veeraraghavan* in Appeal No. 743 of 1947 ; The Government Pleader (*P. Satyanarayana Raju*) and *V. Balakrishna Eradi* in Appeal Nos. 760 to 764 of 1947 ; *D. Ramaswami Ayyangar* and *T. P. Kannabhiran* in Appeal No. 776 of 1947 ; *M. R. Narayanaswami* in Appeal No. 777 of 1947 ; *N. C. Vijayaraghavachari* and *N. C. Srinivasan* in Appeal No. 15 of 1948, for Appellants.

The Government Pleader (*P. Satyanarayana Raju*) and *V. Balakrishna Eradi* in Appeal Nos. 588, 743, 776, 777 of 1947 and Appeal No. 15 of 1948 ; *N. C. Vijayaraghavachari* and *N. C. Srinivasan* in Appeal No. 760 ; *M. R. Narayanaswami* in Appeal No. 761 ; *G. Srinivasa Ayyangar* and *S. Thiruvengadatha Ayyangar* in Appeal No. 762 ; *V. C. Veeraraghavan* in Appeal No. 763 ; *D. Ramaswami Ayyangar* and *T. P. Kannabiran* in Appeal No. 764, for Respondents.

K.S. ——— *Appeals dismissed.*

Subba Rao, J.
1*st November*, 1951.

Kalidas *v.* Fakir Mohammad Sahib.
S. A. No. 712 of 1948.

Civil Procedure Code (*V of* 1908), *Order* 34, *r.* 4 (4)—*Puisne mortgagee impleaded in first mortgagee's suit—Right to apply for final decree.*

A puisne mortgagee who has been impleaded in a suit by the first mortgagee and obtains a preliminary decree can (even if the mortgagor has paid off the first mortgagee) apply for a final decree in the same manner as the plaintiff might have done under clause (4) of rule 4 of Order 34 of the Code of Civil Procedure. Order 34, rule 4 (4) is not exhaustive of the terms to be embodied in a preliminary decree for the sub-rule provides for such variations as the circumstances of the case may

require. When there is a preliminary decree in favour of the puisne mortgagee, unless that decree is discharged by any of the ways known to law, the party in whose favour such a decree is made will be entitled to pursue the other and necessary steps to realise the amount decreed to be paid to him.

(Case-law considered).

P. Somasundaram and *P. Suryanarayana* for Appellant.

Respondent not represented.

K.S. ——— *Appeal allowed. Leave refused.*

[Full Bench]

Rajamannar, C.J., Raghava Rao and Venkatarama Ayyar, JJ.
9th November, 1951.

Dakshinamoorthy *v.* Thulija Bai.
C. M. P. No. 4955 of 1950.

Madras Buildings (Lease and Rent Control) Act (XV of 1946), *section* 7 (3) (a) (i) *—Premises suitable for residential purposes let out for non-residential purpose—Landlord if can claim the same for his own occupation as residential premises.*

What is at the inception a residential building may well become a non-residential building by force of the terms of the letting and any conversion after the letting, of a residential building into a non-residential one may well take place within and only within the limits which the statute prescribes. That, if prior to a letting, a building happens to have been of one character it must for ever keep that character irrespective of what the effect of the letting or of the acts of parties subsequent to the letting may be, seems to be difficult, if not, impossible position. The original design of the structure may have been one suitable to residence, but if by the letting it becomes non-residential in character, there is no reason why one may not take it as such for the purpose of section 7, sub-section (3). If a landlord has let out a building for a residential or non-residential purpose as the case may be it is only fair that when he seeks an order directing the tenant to put him in possession of the property, he has to show that he fulfils the requirements of sub-clauses (*i*) or (*ii*) of clause (*a*) of sub-section (3) of section 7. Having let out the building as for a non-residential purpose, it would be unfair if he were allowed to urge the requirement of the building for his own occupation which is really a condition of his seeking to recover a residential building let out by him. The purpose of the letting and the condition of the landlord's recovery have alike reference to a residential or non-residential purpose according as a given case falls under sub-clause (*i*) or sub-clause (*ii*) of sub-section (3) (*a*) of section 7.

R. Ramamoorthy Aiyar, A. Nagarajan and *A. Viswanathan* for Petitioner.

P. S. Panjatchara Mudaliar for 1st Respondent.

K.S. ——— *Application allowed.*

Subba Rao, J.
9th November, 1951.

Adinarayana and Brothers *v* The State of Madras.
W. P. No. 245 of 1951.

Madras General Sales Tax Act (IX of 1939)*—Petition for issue of* writ of certiorari *for setting aside orders of assessment by Commercial Tax officer confirmed on appeal and Revision by Board of Revenue—Not sustainable as other remedy by civil suit is available.*

A petition for the issue of a writ of *certiorari* for setting aside the order of the Board of Revenue, rejecting a revision petition against an appellate order confirming an order assessing sales tax, is not sustainable as the aggrieved assessee could have filed a suit in a civil Court for the relief.

T. S. Narasinga Rao and *N. Balachandrudu* for Petitioners.

The Government Pleader (*P. Satyanarayana Raju*) on behalf of the State.

K.S. ——— *Application dismissed.*

Rajamannar, C.J. and Venkatarama Ayyar, J.
13th November, 1951.

Sambandam *v.* General Manager, South Indian Railway.
C. M. P. No. 14078 of 1950.

Constitution of India (1950), *Articles* 310 *and* 311 —*Scope—Railway Safeguarding of National Security Rules—Dismissal of Railway servant under—Necessity to conform to the rules*

The Government has a right to terminate the services of a civil servant at will and the only restrictions on this power are those expressly enacted in the Constitution. Though a Railway administration has a right to terminate the services of an employee under rule 145 of the Indian Railway Establishment Code that rule does not apply to a case where an employee is dismissed under the Railway Safeguarding of National Security Rules. In such a case unless the procedure prescribed by those rules had been properly followed the dismissal is wrong. Whether in fact it was a case of termination of services or dismissal is a question of fact to be determined on the circumstances of the case. An order for compulsory retirement falling within rule 3 of the Railway Safeguarding of National Security Rules cannot be said to be one terminating the services. Where the procedure prescribed in rule 4 of the Rules have not been followed (in that no notice of the final order proposed to be taken was given to the employee) the order of dismissal is illegal and inoperative and must be quashed by a writ of *certiorari*.

The rule that the Court will not ordinarily interfere with an order where there is another adequate remedy available to the party is a rule of discretion for the guidance of the Court and not a limitation on its power.

K. V. Ventatasubramania Ayyar for *Row and Reddy* for Petitioner.

O. T. G. Nambiar for *King and Partridge* for Respondent.

K.S. ——— *Order quashed.*

Rajamannar, C.J. and Venkatarama Ayyar, J.
15th November, 1951.

Abdul Azeez *v.* Pathuma Bi.
C. R. P. No. 300 of 1951.

Civil Procedure Code (*V of* 1908), *Order* 32—*Muslim woman who is major according to her personal law but minor under the Majority Act—Cannot bring a suit for dissolution of marriage unless represented by a next friend.*

A Muslim woman who is a major according to her personal law but is a minor according to the provisions of the Indian Majority Act, is not entitled to bring a suit for dissolution of her marriage without being represented by a next friend. 3 Mad. 248, reaffirmed. 17 Luck. 572, approved. 55 Bom. 160 : A.I.R. 1948 Cal. 66, dissented from. Where such a suit is filed by a minor without next friend the proper course is to return the plaint as not having been properly presented and not to dismiss the same on account of the defect in the presentation.

C. S. Swaminatha Ayyar for Petitioner.

B. Pocker and *S. M. Mohideen* for Respondent.

K.S. ——— *Petition allowed.*

(Full Bench)

Satyanarayana Rao, Rajagopalan and Chandra Reddi, JJ.
19th November, 1951.

Venkataratnam *v.* Seshamma.
A. A. O. No. 460 of 1950.

Madras Agriculturists Relief (*Amendment*) *Act* (*XXIII of* 1948), *section* 16, *clauses* (ii) *and* (iii)—*Respective scope and application.*

Clause (*ii*) of section 16 of Madras Agriculturists Relief (Amendment) Act (XXIII of 1948) applies to pending proceedings, that is proceedings which were instituted before the commencement of the Act but which did not become final before such commencement. It implies therefore that if the decree or order passed in a suit or proceeding became final before the commencement of the Act the provisions of the Act cannot be applied to such suit or proceeding. But in

clause (*iii*) of section 16, the words "in which the decree or order passed has not become final" do not occur. It is quite general and applied to all suits and proceedings in which the decree or order passed has not been executed or satisfied in full before the commencement of this Act so that it seems to apply to decrees or orders even if they had become final before the commencement of this Act provided the decree or order has not been executed or fully satisfied. A reading of section 16 (*ii*) and (*iii*) would suggest that clause (*iii*) would apply exclusively to executable decrees or orders which though they have become final before the commencement of the Act are still in the stage of unfinished execution and at the stage at which satisfaction was not fully received.

The view taken by Subba Rao and Somasundaram, JJ., in C. M. A. Nos. 316 and 391 of 1947 held to be erroneous and overruled.

C. Rama Rao for Appellant.

E. Umamaheswaram, A. Kuppuswamy and *T. Ramachandra Rao* for Respondents.

K.S. *Appeal allowed and application remanded.*

Subba Rao, J.
21st November, 1951.

Krishnayya *v.* Subbarayudu
S. A. No. 1008 of 1948.

Madras Agriculturists Relief Act (IV of 1938), section 9—Not applicable to debts incurred after the Act came into force.

Where in respect of renewals of pronotes no portion of a debt has been incurred before 1st October, 1932, the debt cannot be traced back and the debtor is only entitled to get under section 9 of the Agriculturists Relief Act in respect of such debt the relief of reducing the rate of interest as provided therein. The Amending Act, XXIII of 1948, has not effected any change in this respect. (1943) 1 M.L.J. 231, relied on. (1945) 2 M.L.J. 565 and (1942) 2 M.L.J. 307, referred to.

M. S. Ramachandra Rao and *M. Krishna Rao* for Appellant.

U. Sethumadhava Rao for Respondent.

K. S. *Appeal dismissed. Leave refused.*

Subba Rao, J.
23rd November, 1951.

Khader Basha Sahib *v.* Kamalamma.
A. A. A. O. No. 204 of 1949.

Madras Agriculturists Relief Act (IV of 1938), section 4 (h)—Amendment of 1948 raising amount of value of property owned by woman creditor to Rupees 6,000 coming into operation when appeal was heard—Necessity to give opportunity to debtor to let in further evidence to show the value.

Where the amendment of section 4 (*h*) of the Madras Agriculturists Act in 1948 (raising the value of the property owned by a woman from Rs. 3,000 to 6,000 to exempt her from the operation of the Agriculturists Relief Act) came into operation at the time of hearing the appeal, it is but fair that another opportunity should be given to the parties to adduce evidence on the basis of the new amendment. The person who claims exemption under section 4 (*h*) will have to establish that she came under the provision. But when the entire evidence has been adduced in a case, the burden of proof is not really material.

K. Vallabeswara Rao for Appellant.

Messrs. Ramanujam and *Venkataseshayya* for Respondent.

K.S. *Application remanded.*

Rajagopalan, J.
23*rd November*, 1951.

Prabhakara Pattabi Rama Rao *v.* Venkata Subbamma.
A. A. A. O. No. 88 of 1950.

Civil Procedure Code (*V of* 1908), *section* 60 (1) (c)—*Scope—Agriculturist—Test—Woman not cultivating lands personally—If entitled to benefit of section* 60 (1) (c).

It is not one of the conditions that the person claiming the benefit of section 60 (1) (*c*), Civil Procedure Code, must himself or herself actually cultivate the land. Cultivation of the land through any agency in part or in whole would not be sufficient to take him or her outside the scope of section 60 (1) (*c*) of the Civil Procedure Code. If a debtor is dependent upon the cultivation of the lands and is unable to maintain herself otherwise will make her entitled to claim protection as an agriculturist. That the whole of the cultivation was carried on through paid servants does not make her any the less an agriculturist within the meaning of section 60 (1) (*c*) of the Civil Procedure Code. (1937) 2 M.L.J. 11 : I.L.R. (1937) Mad. 777 (F.B.), referred to.

M. P. Somasundaram for Appellant.

D. Narasaraju for Respondent.

K.S.

Appeal dismissed. Leave refused.

Ramaswami, J.
28*th November*, 1951.

Vepa Reddi, *In re.*
Cr. R. C. No. 1204 of 1951.
(Cr. R. P. No. 1173 of 1951.)

Cattle Trespass Act (*I of* 1871), *section* 10—*Specific finding that there has been damage—If essential to warrant seizure of trespassing cattle.*

A specific finding that there has been damage is not essential to warrant seizure of the trespassing cattle. The absence of such a finding will not vitiate the proceedings.

Narayanaswamy Mudaliar and *V. Sriramamurthy* for Petitioners.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S.

Conviction confirmed and sentence reduced.

Ramaswami, J.
28*th November*, 1951.

Narasimhulu Chetty, *In re.*
Cr. R. C. No. 1059 of 1951.
(Cr. R. P. No. 1040 of 1951.)

Cotton Textile Control Order (1948)—*Excess unaccounted for only four yards—Law should ignore such trifles—Penal Code* (*XLV of* 1860), *section* 95—*Applicable.*

Where the excess unaccounted for is only four yards, law should ignore such trifles. Section 95 of the Penal Code is applicable.

A. Subramaniam for Petitioner.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) on behalf of the State.

K.S.

Petitioner acquitted.

Ramaswami, J.
30*th November*, 1951.

Malliah, *In re.*
Crl. R. C. No. 373 of 1951.
(Crl. R. P. No. 372 of 1951).

Criminal Procedure Code (*V of* 1898), *section* 263—*Bench Court—Summary trial—Proper procedure.*

Where the records of a summary trial before a Bench of Magistrates does not show the nature of the accusation against the accused, the substance of the evidence

of the prosecution witnesses from which it can be inferred which such evidence was believed by the Magistrate and the defence of the accused if any, the conviction and sentence by the Bench Court must be set aside.

J. V. Suryanarayana Rao, M. S. Ramachandra Rao, M. Krishna Rao and *C. S. Govindaswami* for Petitioner.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S.

Petition allowed.

Ramaswami, J.
3rd December, 1951.

Periah *v.* Chendriah.
Crl. R. C. No. 684 of 1951.
(Crl. R. P. No. 678 of 1951.)

Penal Code (*XLV of* 1860), *section* 341—*Wrongful restraint—Gist of offence.*

The offence of wrongful restraint is linear in its scope, while wrongful confinement is circular in its character. Wrongful restraint is keeping a man out of a place where he wishes to be and has a right to be. Physical presence of the obstructor is not necessary ; nor is any actual assault necessary and fear of immediate harm restraining a man out of a place where he wishes to be and has a right to be is sufficient to constitute an offence under the section. The slightest unlawful obstruction to the liberty of the subject to go when and where he likes to go, provided he does so in a lawful manner, cannot be justified and is punishable.

B. Lakshminarayana for Petitioners.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

M. A. Narasappa Chowdhari for Respondent.

K.S.

Order modified.

Ramaswami, J.
3rd December, 1951.

Parthasarathy and others, *In re.*
Crl. R. C. No. 687 of 1951.
(Crl. R. P. No. 681 of 1951.)

Madras City Police Act (*III of* 1898), *sections* 45 *and* 46—*Scope.*

Where it is found that certain friends occupying the same premises and finding nothing more useful to employ their time than a friendly game of cards were found playing cards and that apparently on account of ill wishers to them the police have been tipped off and a raid had been arranged and search warrant had been granted without adequate care and attention and a wholly unnecessary prosecution had taken place and a wholly unwarranted conviction had followed, it must be set aside. Sections 45 and 46 of the Madras City Police Act is not applicable to such a case.

T. M. Venugopal Mudaliar for Petitioners.

The State Prosecutor (*S. Govind Swaminathan*) on behalf of the State.

K.S.

Order set aside.

Ramaswami, J.
5th December, 1951.

Narayanareddi and others, *In re.*
Cr. M. P. No. 2255 of 1951.

Criminal Procedure Code (*V of* 1898), *section* 437—*Interference—Point of law—Order of commitment rested on no acceptable and valid evidence—If point of law.*

The term point of law has been construed by High Courts in various decisions and includes an order of commitment rested upon no acceptable and valid evidence and the High Court can interfere and quash such a commitment.

V. C. Gopalaratnam and *L. V. Krishnaswami* for Petitioners.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) on behalf of the State.

R. V. Raghavan for 2nd Respondent.

K.S.

Commitment quashed.

Ramaswami, J.
5th December, 1951.

Malayandi Thevar, *In re.*
Cr. R. C. Nos. 989 to 991 and 1092 of 1951.
(Cr. R. P. Nos. 971 to 973 and 1070 of 1951.)

Madras Food Grains (Intensive Procurement) Order (1950), *clause* 3 (2) *and Essential Supplies (Temporary Powers) Act (XXIV of* 1946), *section* 7 (1)—*Notification by Collector for surrender of surplus food grains to the Government—Validity—Contravention—Offence.*

Section 3 (1) of Act XXIV of 1946 lays down that the Central Government so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices may by notified order provide for regulating or prohibiting the production, supply and distribution thereof, and trade and commerce therein. Sub-clause (2) provides that without prejudice to the generality of the powers conferred by sub-section (1) an order made thereunder may provide : ". . . . . (*f*) for requiring any person holding stock of an essential commodity to sell the whole or a specified part of the stock at such prices and to such persons or class of persons or in such circumstances, as may be specified in the order." Section 4 provides that the Central Government may by notified order direct that the power to make orders under section 7 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the directive, be exercised by (*a*) such officer or authority subordinate to the Central Government, or (*b*) such Provincial Government as may be specified in the direction. Section 2 (*d*) of the same Act defines a "notified order " to mean an order notified in the Official Gazette. The term Official Gazette has been construed in relation to Madras as the Madras *Fort St. George Gazette.* In exercise of the powers under section 3 of the Essential Supplies (Temporary Powers) Act, 1946, read with the notification of 21st October, 1946, by the Government of India, G. O. No. 1269, Food and Agriculture, dated 30th June, 1950, was published in the *Fort St. George Gazette*, by the Governor of Madras with the concurrence of Government of India, following Madras Food Grains (Intensive Procurement) Order, 1950. The State Government has in fact in exercise of its delegated powers passed various orders like the Food Grains (Intensive Procurement) Order, 1948, 1950, etc., comprehensively laying down the principles on which the categories of persons to whom these orders apply, the grounds on which the surplus should be determined, the mode of taking delivery and the payment against delivery and providing for removal of difficulties in the way of getting at undisclosed stocks, etc. The State Government has not empowered the Collectors of Districts to lay down the principle regulating or controlling but only to carry out the working of the principles and find out what the surplus is. The notification by a District Collector for surrender of surplus food grains to the Government cannot be said to be one in the exercise of a delegation of a delegated power. Accordingly such a notification by the District Collector is valid and contravention of it would be an offence.

T. R. Srinivasa Ayyar and *S. Krishnaswami* for Petitioners.

The Assistant Public Prosecutor (*A. C. Muthanna*) on behalf of the State.

K.S. *Petitions dismissed.*

Ramaswami, J.
6th December, 1951.

Public Prosecutor, Madras *v.* Kamalpasha.
Cr. A. No. 680 of 1951.

Cotton Textile Control Order (1948), *section* 3 (c)—"*Dealer*"—*Salesman or manager in charge of sales—Liability as "dealer" for selling mill cloth at price in excess of controlled one.*

The definition of a dealer, *viz.*, a person carrying on business of selling any article, whether wholesale or retail is sufficiently wide to include a salesman or a manager in charge of sales. A.I.R. 1945 Cal. 319 (Crl.), relied on. Such a person will

plainly be guilty of selling mill cloth in excess of the price as "dealer" within the meaning of section 3 (*c*) of the Cotton Textile Control Order, 1948.

(In the circumstances it was not deemed necessary to set aside the acquittal.)

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) the Appellant in person.

K.S. ——— *Subject to clarification of legal position appeal dismissed.*

Panchapakesa Ayyar, J.
10th December, 1951.

Karuppa Servai *v.* Kundaru.
Cr. M. P. No. 2437 of 1951.

Criminal Procedure Code (*V of* 1898), *section* 337 (3)—*Approver—Release on bail before he has deposed at the trial to matters within his knowledge—Propriety—Sections* 497 *and* 498—*If applicable to case of approver.*

Neither the inquiring Magistrate nor the Sessions Judge has got the right to set at naught the mandatory provisions of section 337 (3), Criminal Procedure Code, based on very salutary principles of public policy and public interest, and release an approver who is not on bail at the time of his acceptance of the tender of pardon, after the approver has deposed only in the committing Magistrate's Court, that is, in the course of the preliminary inquiry, and before the inquiry has ended, and, if committal ensues, before he has deposed at the trial in the Sessions Court truly and fully to matters within his knowledge. An approver cannot be placed in the same position as an accused and the provisions of sections 497 and 498, Criminal Procedure Code, cannot apply to him. Even if sections 497 and 498 apply it would not be a fit case for releasing an approver on bail in a murder case. Besides an approver has to be kept in safe custody till the conclusion of the trial or inquiry if no committal ensues.

V. Rajagopalachari and *K. Vaitheeswaran* for Petitioner.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) on behalf of the State.

C. K. Venkatanarasimham for Respondent (approver).

K.S. ——— *Petition allowed.*

Subba Rao, J.
14th December, 1951.

Shaik Abdul Khader & Co. *v.* Subramania Pillai.
W. P. No. 713 of 1951.

Imports and Exports (Control) Act, 1947—*Restrictions imposed by—If violates fundamental rights under Article* 19 *of Constitution.*

The Imports and Exports (Control) Act, 1947, was enacted for the purpose of continuing for a limited period powers to prohibit or control imports and exports. Under section 3, the Central Government was authorised to make an order prohibiting, restricting or otherwise controlling in all cases, or, in specified classes of cases, and subject to such exceptions, if any, as may be made by or under the order, the import, export, carriage coastwise or shipment by ships, stores of goods of any specified description. The policy was designed to conserve essential supplies for civilian consumption in this country. Provision is made for regulation by permits and appeal is provided as regards grant or refusal of permits. The restrictions imposed are reasonable within the meaning of Article 19 (6) of the Constitution and the machinery provided for the implementation of the policy is not unsatisfactory. The Act does not violate the fundamental rights under the Constitution.

M. K. Nambiyar, K. C. Jacob and *S. K. L. Rattan* for Petitioner.

N. Rajagopala Ayyangar for Respondents.

V. V. Raghavan for the Government Pleader (*P. Satyanarayana Raju*) on behalf of the State.

K.S. *Application dismissed.*

Chandra Reddi, J.
14th November, 1951.

Annamalai Ammal *v.* Sundarathammal.
S. A. No. 835 of 1948.

Hindu Law—Joint family—Gifts—Gift of immoveable property by a father to daughter —Validity.

A gift of immoveable property by a Hindu father to his daughter, if within reasonable limits, is valid and cannot be questioned by the sons even though such a gift was made before the marriage. A gift of moveable or immoveable property whether on the occasion of a marriage or before or after the marriage can be made by a father within reasonable limits to a daughter.

K. Veeraswami for Appellant.

V. Meenakshisundaram for *V. Ramaswami Aiyar* for Respondents.

K.S.

Appeal allowed. Leave granted.

Subba Rao, J.
27th November, 1951.

Appa Rao *v.* Veeranna.
S. A. No. 1007 of 1948.

Transfer of Property—Purchase with notice of prior agreement for sale to another—Effect—Rights of person under prior agreement.

An agreement to sell immoveable property does not create any interest in the said property unless a sale deed is executed conveying the said property. The vendor, who has not transferred his interest in the property, though he entered into an agreement with another to sell the same, can certainly confer title on a third party by executing a sale deed in his favour. As between the vendor and the subsequent purchaser, there can be little doubt that there is a transfer of ownership and therefore the title to the property vests in the latter. But the title of the subsequent purchaser with notice of the prior agreement in favour of another is subject to the obligation under section 91 of the Indian Trusts Act. He holds the property for the benefit of the latter to the extent necessary to give effect to the contract. The person in whose favour there was a prior agreement can specifically enforce his agreement under section 27 (2) of the Specific Relief Act and compel him to execute a sale deed in his favour. But till such a sale deed is executed by the subsequent purchaser, the person in whose favour there was a prior agreement cannot acquire any title to the same. If the contract for the purchase of immoveable property with the original owner does not create any interest in him, the subsequent sale by the owner to a third person cannot confer a better title on him. He can only acquire title to the property by getting a conveyance from the subsequent purchaser. The execution of a sale deed by the original owner without the subsequent purchaser joining the sale will not confer any title on the person in whose favour there was a prior agreement to sell.

K. Rajah Aiyar and *Bapiraju* for Appellants.

M. S. Ramachandra Rao and *K. V. Rangachari* for Respondent.

K.S.

Appeal dismissed. Leave refused.

Mack, J.
27th November, 1951.

Cosmopolitan Club, Madras *v.* Deputy Commercial Tax Officer, Triplicane Division.
C. M. P. Nos. 3414 and 3415 of 1951.

Constitution of India (1950), *Article* 226—*Scope of jurisdiction to issue writs—Other remedy—Existence of—Effect—Madras General Sales Tax Act* (IX of 1939), *section* 2 *—Supply of refreshments to members of social club—If liable to sales tax.*

The maintainability of writ petitions under Article 226 of the Constitution is extremely difficult if not impossible to circumscribe, define and restrict. The mere failure of the petitioner (The Cosmopolitan Club) to object to the payment of sales tax (on the supply of refreshments to its members) since 1939 and to explore the long and tedious avenue of appeal and revision provided by the Sales Tax Act is not an impediment in the way of issuing a writ if it be found that the sales tax levy is really illegal.

The writs under Article 226 (1) are all discretionary writs, which are dependent on the facts of each case and the nature of the illegality and wrong alleged.

The general principle would be that Government should have notice of the alleged illegality or wrong on which the writ petition is founded before it is filed

and given a reasonable opportunity of investigating the grievance and remedying it before such a step is taken. There is of course no provision in the Constitution requiring notice to Government before putting it on its defence as under section 80, Civil Procedure Code. There is no inflexible rule. The petitions in the instant case in the particular circumstances should not be rejected on the ground that the Government was not given previous notice. The legality of the levy of sales tax in the circumstances can only be properly investigated by the High Court on a petition under Article 226.

Where a social club being an association formed not for profit supplies refreshments to its members at a fixed rate the supply is not a transfer of property from the club as such to a member. The levy of sales tax on such supplies of refreshments by clubs to members must be held to be illegal.

K. S. Jayarama Aiyar, C. K. Venkatanarasimham and *Padmini Raghavan* for Petitioner.

The Government Pleader (*P. Satyanarayana Raju*) and *V. P. Sarathy* for the State Council on behalf of the Respondents.

K.S. ——— *Writ issued.*

Rajamannar, C.J. and Venkatarama Ayyar, J. Subbiah *v.* Raghavulu.
28th November, 1951. W. P. No. 343 of 1951.

Constitution of India (1950), *Article* 226—*Jurisdiction under—Cannot be exercised on an executive direction by the Magistrate to the Police to take a particular action under section* 107, *Criminal Procedure Code.*

The High Court cannot be called upon to exercise its jurisdiction under Article 226 of the Constitution simply on an executive direction by the Stationary Sub-Magistrate to the Police to take a particular action under section 107, Criminal Procedure Code. That order does not purport to decide finally the rights of the petitioner.

D. Munikanniah and *R. D. Indrasenan* for Petitioner.

A. Raghaviah for Respondents.

K.S. ——— *Application dismissed.*

Rajamannar, C.J. and Venkatarama Ayyar, J. Veerappa Chettiar *v.* State of Madras.
13th December, 1951. C. M. P. Nos. 6914 of 1950, etc.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948)—*Constitutional validity.*

On account of the passing of the Constitution (First Amendment) Act, 1951, and the recent decision of the Supreme Court in (1951) S.C.J. 775 which held that Act to be valid, it is no longer open to a party to contend that the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, has become void as being inconsistent with, or taking away, or abridging, any of the rights conferred by any of the provisions of Part III of the Constitution of India. Article 31 (6) of the Constitution would prevent the Court from calling into question a law (or Act like the impugned one) coming within the purview of that clause which is liable to be challenged only on the ground by that clause, *viz.*, that it contravenes provisions of clause (2) of Article 31 or has contravened section 299 (*a*) of the Government of India Act, 1935 and which must be held to be valid law because it cannot be called into question on that ground which renders it invalid. The words " any law of the State " mean any Act, Ordinance or order enacted by the State without any reference to its validity. Opinion of Das, J., in 29 Pat. 790 approved and that of Sinha, J., dissented from. A writ of *certiorari* cannot issue to declare the impugned Act invalid as repugnant to Article 31, clause (2). The impugned Act does relate to compulsory acquisition of interest in land and therefore falls within Entry 2 of List 2 of schedule VII of the Government of India Act, 1935.

The declaration in section 3 of the impugned Act only means that the vesting is for the purposes of the Province and there is no inconsistency with section 175 (2) of the Government of India Act, 1935.

Madras Act XXVI of 1948 is not invalid on the grounds urged.

R. Kesava Aiyangar for Petitioner.

The Advocate-General (*V. K. Thiruvenkatachari*) and *V. P. Sarathy* for the Government Pleader, instructed by the State Counsel (*John and Row*) on behalf of the Respondent.

K.S. ——— *Petitions dismissed.*

Panchapakesa Ayyar, J. Krishna Reddi, *In re.*

13*th December*, 1951. Cr. M. P. No. 2481 of 1951.

Criminal Procedure Code (*V of* 1898), *section* 337 (3)—*Approver—Cannot be let out on bail pending trial.*

An approver who has accepted tender of a pardon must be detained in custody under section 337 (3), Criminal Procedure Code, till the termination of the trial if committal ensues or till the termination of the inquiry if committal does not ensue. The fact that he is said to have turned hostile is immaterial. That the other accused have been let off on bail is immaterial. That the other witnesses are not detained in custody is also immaterial.

A. Ramachandran instructed by *Rao and Reddy* for Petitioner.

Santhanam for the Public Prosecutor (*V. T. Rangaswami Ayyangar*) on behalf of the State.

K. S. ——— *Petition dismissed.*

Subba Rao, J. Themmalapuram Bus Transport, Ltd. *v.* The State of Madras.

9*th January*, 1952. W. P. No. 602 of 1951.

Motor Vehicles Act (*IV of* 1939), *section* 43-*A—Power of Government to issue directions to Transport Authority—Limits—Direction to take into consideration need for rehabilitation of ex-servicemen—Validity.*

The Government cannot by issuing a notification under section 43-A of the Motor Vehicles Act direct the Regional Transport Authority in issuing a permit, to take into consideration matters not germane to the issue of permits. The need for the rehabilitation of ex-servicemen is obviously a consideration not germane to the issue of permits for motor buses. Rehabilitation of ex-servicemen may be a meritorious act ; but their rehabilitation is a circumstance absolutely unconnected with any matter relating to road transport. It is neither necessary nor advisable to attempt to particularise the valid notifications that can be issued by the Government under section 43-A of the Act. But a notification directing the Regional Transport Authority through the Central Road Traffic Board, to pay regard to the need for rehabilitation of ex-servicemen in dealing with applications for stage carriage permits is illegal. But the provisions of the Act do not preclude the Tribunals concerned from issuing a permit to a Motor Transport Co-operative Society, limited, for ex-servicemen if it is otherwise qualified to have a preferential right to the issue of a permit. The fact that the District Collector is the ex-officio President of the co-operative society does not disqualify him from being appointed as a member of the Regional Transport Authority. But the Transport Authority of which the District Collector as chairman took part in issuing a permit to the co-operative society of which the Collector was president exposes itself to the apprehension that there was bias. Such an issue of permit is opposed to the principles of natural justice and not valid.

M. K. Nambiar and *C. F. Louis for* Petitioner.

V. V. Raghavan for the Government Pleader (*P. Satyanarayana Raju*) on behalf of the State.

N. Sundaram Ayyar for 4th Respondent.

K.S. ——— *Orders of Respondents set aside.*

Subba Rao, J. Bangararaju *v.* Vishakapatnam Co-operative Motor Transport, Ltd.

9*th January*, 1952. C.M.P. Nos. 7184 and 7185 of 1951.

Motor Vehicles Act (*IV of* 1939), *Collector, Chairman Regional Transport Authority—issue of bus permit to Co-operative Society of which the Collector is President—Opposed to principles of natural justice.*

The Regional Transport Authority whose chairman is the Collector of the District cannot issue a bus permit to a Co-operative Society of which that Collector is also the President. Such issue of permit will be opposed to the principles of natural justice. Decision in W.P. No. 602 of 1951, followed.

K. Rajah Iyer and *K. Mangachari* for Petitioner.

V. P. Sarathi for the Advocate-General (*V. K. Thiruvenkatachari*), for the Government Pleader (*P. Satyanarayana Raju*), *D. V. Reddi Pantulu* and *D. Narasaraju* for Respondents.

K.S. *Order issuing permit to 1st Respondent quashed.*

Ramaswami, J.
17th January, 1952.

Public Prosecutor *v.* Kandaswami Mudali.
Cr.R.C. No. 118 of 1951.
(Cr.R.P. No. 117 of 1951.)

Criminal Procedure Code (V of 1898), section 471—Procedure to be followed where the accused guilty of murder is found to be lunatic at time of commission of offence.

Where the accused a lunatic is found to be guilty of murder the proper procedure to be followed is to order as follows :—" . . . having found the accused guilty under section 302, Indian Penal Code, but insane at the time of the commission of the act I acquit him and direct him to be detained in the Mental Hospital and the action taken by me will be reported to the State Government." (The detention should be in the Mental Hospital, Madras, because the State Government has prescribed in G.O. No. 1096 (Public) dated 29th August, 1913, the mental hospitals to which particular criminal lunatics of particular district should be sent namely the Mental Hospitals at Madras, Calicut and Vishakapatam ; and Salem criminal lunatics have to go to the Mental Hospital, Madras). After making such order the Sessions Judge should detain the criminal lunatic in the jail and address the Executive District Magistrate for making arrangements for the removal of the criminal lunatic to the Mental Hospital concerned. The subsequent responsibility for removal of the lunatic to the Mental Hospital lies with the Executive District Magistrate, the Medical officer of the Jail and the Police. The Court cannot decide to release the criminal lunatic and entrust him to the safe custody of his relatives. The privilege of deciding whether the accused shall be released or not lies with the State Government and not with the Court. On the removal of the lunatic to the Mental Hospital it will be open to his relatives to apply to the State Government for the release of the criminal lunatic on conditions.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) in person.

C. Desiadayalu for Respondent.

K.S. *Order varied.*

Krishnaswami Naidu, J.
24th January, 1952.

Ramabhadra Iyer *v.* Jagannatham.
Application No. 155 of 1952.
(C.S. No. 532 of 1949).

Practice—Mortgage decree—Application for execution by way of sale—Failure to bring on record—Receiver appointed in the meanwhile—Effect—Practice on the Original Side.

Where proceedings for execution of a mortgage decree to bring the hypotheca to sale are started earlier, and a Receiver is appointed some time later, further proceedings in execution should not be pursued or proceeded with, without impleading the Receiver as a party to the proceedings and giving notice to him.

Where the proclamation of sale was settled by the First Assistant Registrar on the Original Side and the sale was directed to be held by the Official Referee but without notice in the Receiver who had been appointed earlier, further proceedings are liable to be stayed, pending steps to bring the Receiver on record.

K. S. Ramabhadra Iyer Receiver Applicant.

N. K. Mohanarangam Pillai and *C. Loganatha Mudaliar* for Defendant.

T. K. Subramania Pillai for Plaintiff.

K.S. *Sale stayed.*

Rajamannar, C.J. and Venkatarama Ayyar, J.
3rd November, 1951.

Indian Metal and Metallurgical Corporation *v.* Industrial Tribunal, Madras.
Writ Petition No. 260 of 1951.

Constitution of India (1950), *Article* 19 (1) (g)—*Industrial Disputes Act* (*XIV of* 1947)—*Right of employer to close down his business—Jurisdiction of Tribunal to decide whether an employer is entitled to close down—Government has no jurisdiction to refer the question for decision of the tribunal.*

The right conferred by Article 19 (1) (*g*) to carry on any business is not absolute. Undeniably the State has got the right to regulate any business, and it is not confined to ' public utility ' business only. The freedom of contract can to a certain extent be curtailed if such curtailment is reasonable and in the general interests of the public. But if a citizen has got a right to carry on a business, it follows he must be at liberty not to carry it on if he so chooses.

The Industrial Tribunal has got the jurisdiction to adjudicate on the question whether a particular lockout was justified or not, but it cannot decide the question whether an employer can close down his business temporarily for an indefinite period or permanently.

The Government by their G. O., referred to the Industrial Tribunal an industrial dispute alleged to have arisen between the workers and the management of the petitioner (a factory) and one of the matters said to be in dispute was whether the closure of the factory from a particular date was justified. The Industrial Tribunal found that none of the reasons given by the management would have really justified the closing down of the factory, and directed the petitioner to carry on the business. On a petition to quash the order and award of the tribunal,

Held, (i) the award in so far as it directs the petitioner to continue to carry on the business is void as it is inconsistent with the Constitution.

(ii) Closing down a business even temporarily is distinct and different from lockout and Industrial Tribunal cannot decide the question whether an employer can close down his business. That question is completely outside the scope of the Industrial Disputes Act and the reference by the Government was without jurisdiction and consequently the award was bad.

K. V. Venkatasubramania Aiyar and *R. Vaidyanathan* for Petitioner.

The Advocate-General (*V. K. Thiruvenkatachari*) instructed by the State Counsel (*John and Row*) and *K. Bashyam* for *Messrs. Arunachalam* and *Jagannatha Das* for Respondents.

V.P.S.

Order quashed.

[Full Bench.]
Rajamannar, C.J., Raghava Rao and Venkatarama Ayyar, JJ.
16*th November*, 1951.

Radhakrishna Rao *v.* The Province of Madras.
Appeals Nos. 365, etc. of 1947.

Madras General Sales Tax Act (*IX of* 1939), *section* 2 (b)—*Commission agents—If and when "dealer" liable to sales tax.*

A broker is an agent employed to make a bargain for another and receives a commission on the transaction which is usually called brokerage. He has usually neither the custody nor the possession of the goods. It is the broker's duty to establish privity of contract between the principal and the third party. The broker cannot sell in his own name nor can he sue on the contract. A commission agent, on the other hand, to whom goods are entrusted by sellers with full authority to transfer property and title in the goods to buyers who obtain delivery from the commission agents themselves without even being aware of the identity of the seller principals, is not like a broker. He has, almost invariably,

custody or possession of the goods, actually or constructively. He often sells in his own name and in certain circumstances can sue the buyer himself. A commission agent is not bound to keep separate accounts at his bankers, for he is not a fiduciary agent and the monies he receives are his own ; and by the custom of the trade he is only liable as debtor to his employer for the amounts received. In spite of the parties supposing their relationship to be that of principal and agent, in point of law, it may be different.

In the Madras General Sales Tax Act "dealer" is defined as any person who carries on the business of buying or selling goods. "sale" is defined as a transfer of the property in goods by one person to another in the course of trade or business for consideration.

In the case of a commission agent the accepted mercantile practice is that he has control over or possession of the goods and he has the authority from the owner of the goods to pass the property in and title to the goods. If this is so, when a commission agent sells goods belonging to his principal with his authority and consent and without disclosing to the buyer the name of the owner, there is certainly a transfer of property in the goods from the commission agent to the buyer. A business which consists in such transactions can properly be described as a business of selling goods. A similar position would arise even in the case of a commission agent buying for an undisclosed principal. A commission agent doing this kind of business would fall within the definition of "dealer" in the Sales Tax Act. Neither the definition of "dealer" nor of "sale" contemplates as a necessary condition, that the goods sold should belong to the person selling or buying.

I.L.R. 1950 (Mad.) 421, considered and I.L.R. (1951) Mad. 257, distinguished and dissented from.

Accordingly the commision agents in the instant cases would be "dealers" within the meaning of that expression in the Act and liable to tax under section 3 but for the exemption given under section 8. The conditions of the licence are not infringed by the collection of *rusums* and commissions from both sellers and buyers, as the same was a recognised mercantile usage and therefore the commission agents will be entitled to the exemption.

P. Somasundaram and *N. C. V. Ramanujachari* for Appellants and the Government Pleader (*P. Satyanarayana Raju*) for Respondent in Appeal No. 365 of 1947.

N. C. V. Ramanujachari for Appellant and The Government Pleader (*P. Satyanarayana Raju*) and *C. Vasudeva Mannadiar* for Respondents in Appeal No. 447 of 1947.

The Government Pleader (*P. Satyanarayana Raju*) for Appellant and *G. V. Dikshitulu* for Respondents in Appeal No. 641 of 1947.

P. Somasundaram and *M. Nagaramayya* for Appellant and the Government Pleader (*P. Satyanarayana Raju*) and *K. N. Karunakaran* for Respondents in Appeal No. 468 of 1947.

P. Somasundaram and *N. C. V. Ramanujachari* for Appellant and the Government Pleader and *K. N. Karunakaran* for Respondent in Appeal No. 551 of 1947.

The Advocate-General (*V. K. Thiruvenkatachari*) appeared with the Government Pleader in all the cases.

K.S. *Appeals allowed.*

Subba Rao, J.
29th November, 1951.

Swaminatha Chettiar *v.* Megalingam Chettiar.
S. A. No. 1058 of 1948.

Partnership—Suit for dissolution—Interest—If and when can be allowed from date of suit—Practice—Costs—Appellate Court—When will interfere.

Though the ordinary rule in a suit for dissolution of partnership is to award interest only from the date when the amount due from the one to the other is ascertained, in a case where the suit is for an account in respect of a dissolved partnership, interest may be given even from the date of the filing of the plaint, if the circumstances in that case establish that the other partner was in possession of the assets or utilised them for the purposes of his business or was otherwise guilty of laches.

The appellate Court will not interfere with an order for costs unless the order of the subordinate Court is contrary to any well recognised principle of law.

R. Gopalaswami Aiyangar for Appellant.

T. K. Subramania Pillai for Respondent.

K.S. ——— *Appeal dismissed.*

Basheer Ahmad Sayeed, J.
4th December, 1951.

Lakshmana Prasad and sons *v.* Achuthan Nair.
C. C. C. A. No. 10 of 1950.

Contract Act (IX of 1872), section 72—Money paid under mistake—Right to recover—Purchaser of motor car paying amount in excess of controlled price believing it to be the controlled price—Right to recover difference in price.

A contract for purchase of a motor car from a dealer must be deemed to be to sell the vehicle at the controlled price because the vendors were not expected to commit an offence by selling it at a price other than the controlled price. When it was later on discovered that the transaction had taken place actually not on the basis of the controlled price but on something different therefrom certainly the vendors would be bound to return the difference in the price which they had received in excess of the controlled price.

K. Bashyam Aiyangar and *P. V. Subramaniam* for Appellant.

K. P. Raman Menon for Respondent.

K.S. ——— *Appeal dismissed.*

Govinda Menon, J.
10th December, 1951.

Abdul Kadir Haji *v.* Muhammad.
S. A. No. 1231 of 1948.

Malabar Compensation for Tenants Improvements Act (I of 1900), sections 10 and 15—Cashew-nut trees—If fruit bearing or timber trees for computing compensation.

The enumeration of fruit bearing trees in section 15 of the Malabar Compensation for Tenants Improvements Act is not exhaustive because in addition to the various kinds of trees mentioned in it there are other trees which are fruit bearing trees and which add to the value of the holding. Accordingly cashew-nut trees can come under the definition of fruit bearing trees, and though it might be that no table showing the method of valuation of cashew-nut trees has been prepared under section 15 of the Malabar Compensation for Tenants Improvements Act, that would not exclude the possibility of the trees other than the three categories mentioned in the section from being fruit bearing trees. Section 13 does not apply to cashew-nut trees which must be valued as fruit bearing trees.

M. K. Nambiar and *M. Sekhara Menon* for Appellant.

N. R. Sesha Aiyar for Respondents.

K.S. ——— *Appeal dismissed. Leave refused.*

Satyanarayana Rao, J. Arunachala Chettiar *v.* Vadla Koundan.
10*th December*, 1951. S. A. No. 1432 of 1948.

Execution—Sale—Death of defendant—Confirmation of sale without impleading legal representative—Effect.

The order confirming a sale in execution has a double operation of divesting the judgment-debtor of his title in the property and vesting it retrospectively in the auction-purchaser to take effect from the date of the sale. But where the confirmation is made after the death of the judgment-debtor without bringing his legal representatives on record, the confirmation made behind their back is a nullity and must be set aside. But the sale itself must stand and cannot be set aside.

A.I.R. 1929 Oudh 235 *dissented from.*

M. S. Venkatarama Aiyar for Appellant.

K. S. Desikan and *K. Raman* for Respondents.

K.S. ——— *Appeal dismissed. Leave refused.*

Basheer Ahmed Sayeed, J. Paramasivam Pillai *v.* Adilakshmi Ammal.
13*th December*, 1951. C. R. P. No. 576 of 1951.

Civil Procedure Code (*V of* 1908), *Order* 1, *rule* 10—*Third party claiming items of property in a suit for partition of joint family properties—If can be impleaded as party defendant.*

A third party claiming certain items of property in a suit for partition can be properly added as party defendant in a suit for partition of joint family properties on the application of such third party (claiming to be the real owner of those items) under Order 1, rule 10, Civil Procedure Code.

K. V. Ramachandra Aiyar for Petitioner.

G. R. Jagadisan for Respondent.

K.S. ——— *Petition dismissed.*

Mack and Somasundaram, JJ. Venkayya, *In re.*
8*th January*, 1952. Cr. R. C. No. 1483 of 1950.
Cr. R. P. No. 1407 of 1950.

Madras Maintenance of Public Order Act (*XXIII of* 1949), *section* 2-A (1)—*Daughter living separately in the same house as her father—Her husband for whose arrest a warrant was pending found in the house—Father if can be convicted for harbouring the wanted man.*

Where it is shown that the daughter of *V* was married to *X* (for whose arrest a warrant had been issued) and was living separately in the same house as *V* and was having separate cooking, *V* cannot be convicted for harbouring *X* who was arrested in the house especially when *V* was not even in the house when the arrest was made. Section 2-A (1) (3) of the Act specifically saves the husband or the wife from the penal orbit of section 2-A (1). It cannot be said that guilt of *V* was proved beyond all reasonable doubt.

Quaere.—Whether the section 2-A (1) contravenes Article 20 (1) of the Constitution.

A. Ramachandran and *P. Rama Rao* for Petitioner.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S. ——— *Petition allowed.*

Ramaswami, J. Narayana Reddiar *v.* Periaswami Odayar.
10*th January*, 1952. Cr. R. C. Nos. 1352 to 1355 of 1950.
Cr. R. P. Nos. 1278 to 1281 of 1950.

Penal Code (*XLV of* 1860), *section* 182—*Bribe-giver not sticking to previous statement—Prosecution for—Sustainability.*

Law deals with the bribe-givers and bribe-takers on the same par and treats them as accomplices of each other. Where it is not shown that the previous statements by bribe-givers were false or true and when those persons were not bound to incriminate themselves a prosecution against them for tergiversation (namely that they have not stuck to their previous statement) is misconceived.

G. Gopalaswami for Petitioners.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) on behalf of the State.

K.S. ——— *Convictions set aside.*

Subba Rao, J. Thathathiri Mudaliar *v.* The State of Madras.
10*th January*, 1952. W. P. No. 684 of 1951.

Motor Vehicles Act (*IV of* 1939), *section* 64-A—*Scope—Power of State Government to call for the records of any order passed—If discretionary or compulsory.*

It cannot be said that under section 64-A of the Motor Vehicles Act the discretion of the State Government (of its own motion or on an application made to it to call for the records of any order passed or proceedings taken by any authority or officer subordinate to it, for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceeding and making such order in reference thereto as it thinks fit) is coupled with duty and that the word "may" should be construed as "shall." Though in some circumstances the word "may" has been construed as "shall", in this case the word "may" means only "may." The Government is given discretion to call for the records for the purpose mentioned in the section. Unless the records are scrutinised and examined by it, the Government cannot set aside an order. But the section does not compel the Government to call for the records even if a frivolous application is filed. Accordingly, the Government will be within their rights to dismiss a revision petition if it is not satisfied that a *prima facie* case has been made out. But it has no power under section 64-A to set aside an order without calling for the records and examining them.

Miss Perween Aminuddin for Petitioner.

V. P. Sarathy for the Advocate-General (*V. K. Thiruvenkatachari*) for the Government Pleader (*P. Satyanarayana Raju*) on behalf of the State and *S. Swaminathan* for 4th Respondent.

K.S. ——— *Application dismissed.*

Mack and *Somasundaram, JJ.* Thimmaraya Goundan, *In re*.
17*th January*, 1952. R. T. No. 59 of 1951.
(Crl. App. No. 500 of 1951).

Penal Code (*XLV of* 1860), *section* 302—*Murder of woman by paramour on account of her infidelity—If legally extenuating circumstance justifying lesser sentence.*

Where her paramour murders under powerful sexual emotion a woman on account of her infidelity to him, it will not fall into the category of "legally extenuating" circumstance which would justify the passing of a lesser sentence. But having regard to the youth of the accused (25 years) and the sacrifices he had made for the worthless and immoral woman with whom he was madly infatuated the Government may consider commuting the sentence to one of transportation for life.

V. N. Srinivasa Rao for Accused.

The Assistant Public Prosecutor (*A. C. Muthanna*) on behalf of the State.

K.S. ——— *Sentence confirmed*

Subba Rao, J. Ananthasubramanyam *v.* The Director of Controlled
18*th January*, 1952. Commodities.
Writ Petition No. 428 of 1951.

Iron and Steel (*Scrap Control*) *Order* (1943), *Clause* 5-*A—Scope—Order under—If can be issued in respect of scrap acquired from a source other than controlled one.*

Under clause 3 of the Iron and Steel (Scrap Control) Order 1943, the scrap can be acquired (1) by a producer under the authority of and in accordance with the conditions contained or incorporated in a written order of the Controller; and (2) any person other than a producer can acquire the same from a controlled source under the authority of and in accordance with the conditions contained or incorporated in a written order of the controller. All other modes of acquisition of the scrap will not be in accordance with the provisions of the clause. Such acquisition may be by one or other of the following modes :—

(*a*) A producer may acquire any scrap without the written authority of the controller.

(*b*) Any person may acquire from a controlled source without such authority; and

(*c*) Any person may also acquire from a source other than a controlled source.

Under clause 5-A if a person acquires in any of the aforesaid modes, which is not in accordance with the provisions of clause 3 the controller is empowered to issue an order directing him to sell the whole, or any part, of the stock, to such person or class of persons and on such terms and conditions as may be specified in the order. The Iron and Steel (Scrap Control) Order 1943, was presumably issued to control, regulate and equitably distribute scrap iron.

Where it is found that some scrap iron has been consigned under a bogus name from Royapuram to the consignee at Kurnool after being presumably clandestinely obtained in Madras, the Director of Controlled Commodities can call upon the consignee to report to him the detailed specification of the total stock of material available with him and to supply the said stocks to persons in whose favour permits would be issued by him for acquiring at controlled rates. It is not open to such a person having the stock to contend that the stock was acquired from any other than controlled source and that the controller could not make an order under clause 5-A of the order.

K. S. Ramamurthi and *K. Vaitheeswaran* for Petitioner.

Vepa P. Sarathi for the Advocate-General (*V. K. Thiruvenkatachari*) for the Government Pleader (*P. Satyanarayana Raju*) for Respondents.

K.S. ——— *Petition dismissed.*

Ramaswami, J.
23rd January, 1952.

Saravana Pillai, *In re.*
Cr. R. C. No. 101 of 1951.
Cr. R. P. No. 100 of 1951.

Criminal Trial—Compromise resiled by one of the parties and denied—Magistrate's power to enquire into the factum of compromise.

When a compromise has been entered into between the parties and which is later resiled by one of the parties and denied, it is open to the Magistrate to enquire into the factum of compromise. I.L.R. 39 Mad. 946; I.L.R. 41 Mad. 685; 148 L.J. 292; 168 L.J. 81 and 45 M.L.J. 544, *relied on.*

V. Venkatesan for Petitioner.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) on behalf of the State.

K.S. ——— *Order set aside.*

Ramaswami, J.
25th January, 1952.

Devanugraham, *In re.*
Cr. R. C. No. 525 of 1951.
Cr. R. P. No. 520 of 1951.

Criminal Procedure Code (V of 1898), section 403—Second trial when barred—Constitution of India (1950)—Article 20 (2)—If prohibits such second trial.

Where the sanction or complaint by a particular person or authority is necessary under the law for the trial of a person, in the absence of such sanction or complaint a Court which tries him is not a Court of competent jurisdiction and where a conviction after such trial is set aside on appeal it will not operate as a bar to the institution of a fresh prosecution against the accused for the same offence on the same facts as in the former prosecution after rectifying the defect of absence of sanction. Even though in the appeal on prior conviction the word "acquittal" is used it must be construed as a "discharge" and will not bar a second prosecution. Clause (2) of Article 20 of the Constitution of India, 1950, uses the conjunction "and" and not the disjunction "or" between the words "prosecuted" and "punished" and this makes it clear that to bar a fresh prosecution for the same offence, the accused should have been both prosecuted and punished. So when an accused is discharged for want of sanction there is no punishment and when a man is punished departmentally there is no prosecution. Therefore, Article 20 (2) of the Constitution of India does not take away the right to institute a second prosecution when the first is found to be a nullity by reason of want of sanction—a prerequisite for the maintaining a prosecution.

V. Rajagopalachari and *R. V. Raghavan* for Petitioner.

The State Prosecutor (*V. T. Rangaswami* Ayyangar) on behalf of the State.

K.S. ——— *Petition dismissed.*

Govinda Menon and *Chandra Reddi, JJ.* Satyanarayanamurthi *v.* Gopalarao Naidu.
23rd November, 1951. Appeal No. 321 of 1947.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), *section* 56—*Scope—If bars jurisdiction of Civil Courts to decide questions already pending before them.*

Section 56 of Madras Estates Abolition Act has not the effect of depriving Civil Courts of their jurisdiction to decide questions relating to occupancy rights in respect of a holding in an estate, already pending before them.

P. Somasundaram and *S. Ramamurthi* for Appellants.

T. Venkatadri, U. Sethumadhava Rao, N. V. B Sankara Rao, R. Venkatasubba Rao and *P. Ramachandra Rao* for Respondents.

K.S. ——— *Appeal dismissed.*

Govinda Menon, J. Kandaswamy Nadar *v.* Province of Madras.
4th December, 1951. S. A. No. 1114 of 1948.

Madras Survey and Boundaries Act (VIII of 1923), *sections* 9, 11, 13 *and* 14—*Survey without notice to party concerned and adverse to him—Such party not bringing suit to set aside the survey within three years—Survey if binding on party not given notice.*

A party concerned by an adverse survey to whom no notice was given of the survey is not bound to file a suit within three years to set aside the order of the Survey Officer because he had no notice of the survey and the orders on it cannot be said to be correctly passed under section 13 of the Madras Survey and Boundaries Act and binding on that party.

T. V. Balakrishnan for Appellant.

The Government Pleader (*P. Satyanarayana Raju*), *Srinivasan* and *K. Kuttikrishna Menon* for Respondents.

K.S. ——— *Appeal allowed. Leave refused.*

Panchapakesa Ayyar, J. Karthiayani Amma *v.* Chathukutty Nambiar.
5th December, 1951. S. A. No. 1167 of 1948.

Malabar Law—Marumakkathayam—Bequest to wife and children excluding children by any future husband or husbands—Property if not tavazhi.

There is nothing in any ruling of this Court or of the Privy Council or Federal Court or Supreme Court, making it obligatory for a *Marumakkathayam* husband gifting or bequeathing or settling property on his wife and children to provide for the children of his wife by any imaginary future husband or husbands, after his death, divorce or abandonment. The bequeathed or gifted property will not cease to be *tavazhi* property in such a case and the donees will not take such property as tenants-in-common equally. I.L.R. 51 Mad. 574 ; I.L.R. 16 Mad. 201, referred to.

A. Achuthan Nambiar for Appellant.

O. T. G. Nambiar for Respondent.

K.S. ——— *Appeal allowed. Leave refused.*

Chandra Reddi and *Ramaswami, JJ.* Ramireddi *v.* Bichalu.
13th December, 1951. S. A. No. 2510 of 1947.

Res judicata—*Judgment rendered in earlier suit under Order* 21, *rule* 63, *Civil Procedure Code to which the claimant, the decree-holder and judgment-debtors were impleaded —If* res judicata *in subsequent suit between claimant and a representative in interest of the judgment-debtor.*

A judgment rendered in an earlier suit filed under Order 21, rule 63, of the Code of Civil Procedure, to which the claimant, the decree-holder, and judgment-debtors were impleaded as parties will operate as *res judicata* in a subsequent suit between the claimant and a representative in interest of the judgment-debtor.

(Case-law discussed).

P. Satyanarayana Raju and *M. B. Rama Sarma* for Appellants.

Ch. Suryanarayana Rao for Respondents.

K.S. ——— *Appeal allowed.*

Ramaswami, J.
9th January, 1952.

Public Prosecutor, Madras *v.* Hanumanthu.
Crl. Appeal No. 880 of 1951.

Criminal trial—Charge of "prohibition offence"—Evidence of prohibition officers who had investigated and put up case for trial—If can be disbelieved as interested evidence.

The fact that prohibition officers do their statutory duty (investigate cases) and put up cases for trial does not mean that they are interested in securing conviction by hook or crook and by uttering falsehoods. Whether a particular prosecutor or officer in the circumstances of the case can be believed or not has to be decided on its own merit in each case.

The Public Prosecutor (*V. T. Rangaswamy Aiyangar*) in person.

Notice to accused not given.

K.S. ——— *Appeal dismissed.*

Ramaswami, J.
17th January, 1952.

Appayya, *In re.*
Crl. R. C. No. 1019 of 1950, etc.
(Crl. R. P. No. 952, etc., of 1950).

Companies Act (VII of 1913), section 134—Managing director and other directors—Liability for not filing the first balance-sheet within 18 months of incorporation of company——Non-holding of general body meeting within that period—If a good defence.

It is not open to a managing director of a company to plead in answer to a charge under section 134 of the Companies Act of failure to file the first balance-sheet within 18 months of incorporation of the company his prior default in respect of the calling of the prescribed general meeting. It cannot be contended that as no general body meeting had been held within the period no offence has been committed of failing to file a balance-sheet as required by section 134.

I.L.R. 45 Cal. 486, relied on. A.I.R. 1948 Bom. 351 disapproved; (1941) 1 M.L.J. 419, referred to.

The other directors also are liable and cannot plead their inability or helplessness to call a general body meeting.

A.I.R. 1948 Cal. 42, relied on.

C. V. Dikshitulu and *N. Rajeswara Rao* for Petitioners.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S. ——— *Petitions dismissed.*

Mack and Somasundaram, JJ.
28th January, 1952.

Chalapatrao Patnaik, *In re.*
R. T. No. 62 of 1931.
(Crl. A. No. 452 of 1951.)

Madras Police Standing Order No. 157, based on G. O. No. 1098 dated 9th July, 1912, as modified by G. O. No. 2744 dated 15th July, 1929 and G. O. No. 1186 dated 21st March, 1942.—Scope and expediency of—Applicability to murder, etc., of person who is not in police custody.

Police Standing Order No. 157 is based on G. O. No. 1098 dated 9th July, 1912, as modified by two subsequent G. O.s, Nos. 2744 dated 15th July, 1929 and No. 1186 dated 21st March, 1942. Under that Order as it stands, there is a duty cast on Sub-Divisional Magistrates to investigate all offences of torture or causing death or grievous hurt alleged against Police personnel, whether within the scope of their official duties or in their private capacity. According to the Standing Order there is no objection to a Police Officer being associated with such an enquiry at the Sub-Divisional Magistrate's invitation, but there should be no preliminary enquiry by the Police and any information gathered by a Gazetted Police Officer should at once be reported to the Sub-Divisional Magistrate. The Standing Order is really an extension of section 176 (1), Criminal Procedure Code, to all offences alleged to have been committed by Police Officers, such as murder, torture or grievous hurt under any circumstances. The legality of the Standing Order, in so far as cases other than death in Police custody is concerned, is rested on section 159, Criminal Procedure Code, under which a Magistrate, on receving

a report under section 157, Criminal Procedure Code, may direct an investigation or hold a preliminary enquiry into the case himself at once. The holding of an enquiry or investigation by a Magistrate, independently in certain cases, shutting out a police investigation altogether, cannot be said to be illegal. The legality of the Standing Order cannot be raised in question on the ground that a Magistrate has no statutory power to hold an enquiry or himself cannot conduct an investigation.

Per *Mack, J.*—It is the nature of things extremely difficult and also often impracticable for a Magistrate to investigate a complicated murder case. The class of cases originally contemplated by the G. O. of 1912 related to torture, murder and grievous hurt committed on persons while in Police custody, where the range of enquiry and investigation is really limited both in space and time. But it is impracticable to cast on Magistrates the responsibility and burden of investigating all cases of murder and grievous hurt committed by Police Officers even on persons, who are not in Police custody. The Standing Order rests on the basis of distrust against the Police where one of the police personnel is alleged to have committed an offence. Only cases of grievous hurt or death caused by Police Officers in their public capacity should be enquired by a Magistrate, but offences committed by a Police Officer in his private capacity should be investigated only by a superior Officer of the Police. To enable the Police department to win the confidence of the public it is first necessary to remove the basis of distrust.

Per *Somasundaram, J.*—There may be cases where, the offence may, at first sight, appear to have been committed by the Police Officer in his public capacity, but during the course of the investigation may turn out to be one committed purely out of private grudge in his private capacity, or the converse cases also may arise. Considering these circumstances it is better to leave Police Standing Order No. 157 as it is for some more time. Prejudice against police is bound to wear out in course of time in independent India particularly when the people and the police begin to realise that the servants of Government are the servants of the people. Then there will be no need for the Police Standing Order No. 157 or for the retention of sections 25 and 26 of the Evidence Act or section 162 of the Code of Criminal Procedure.

P. Bari Reddi and *P. Ramachandra Reddi* for Appellant.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) on behalf of the State.

K.S. ——— *Accused acquitted.*

Mack and *Somasundaram, JJ.* Thukkudu alias Perumal, *In re.*

28*th January*, 1952. R. T. No. 75 of 1951.

Evidence Act (*I of* 1872), *section* 30—*Scope and applicability—Confession of co-accused —Admissibility and weight of as against other accused.*

Per Mack, J.—Section 30 of the Evidence Act, was intended to relieve judges and juries from an attempt to perform an intellectual impossibility by asking them to exclude altogether from their minds a confession by one accused implicating other accused along with him, which to be rendered intelligible has to be read out *in toto* when they consider the case of the other accused. The whole confession has to be brought to their notice and section 30 has been specially enacted to make such a confession admissible both against the confessor and his co-accused and places this material exactly on the same footing as regards admissibility as other evidence, the weight of which must vary with its nature and quality. The weight to be attached to the confession of a co-accused is an entirely different matter and must depend upon the facts of each case—in the majority of cases, it is very little if not negligible. The confession of a co-accused can be used only in support of other evidence and should not be made the foundation of a conviction.

Per *Somasundaram, J* : As it is not necessary to invoke section 30 of the Evidence Act in the case, a consideration of that section does not arise. In the circumstances, any expression of opinion about section 30 of the Evidence Act becomes *obiter*. I shall therefore refrain from expressing my views on section 30 of the Evidence Act.

L. J. A. Menezes, *Miss Nasreen Amiruddin* and *Y. Ram Reddi* amicus curiæ for Accused.

The Assistant Public Prosecutor (*A. C. Muthanna*) on behalf of the State.

K.S. ——— *Appeal dismissed.*

Subba Rao, J. Rangaswamy Raja *v.* The State of Madras.
31*st January*, 1952. W. P. No. 806 of 1951.

Motor Vehicles Act (*IV of* 1939), *section* 64-A—*Exercise of jurisdiction under—Scope.*

Under section 64-A of th Motor Vehicles Act the Government could exercise the jurisdiction either *suo motu* or on application filed before it, and in exercise of the jurisdiction if it came to the conclusion that the order of any subordinate authority was improper, irregular or illegal, it could set aside that order and pass such order which might be appropriate to the circumstances. The mere fact that a revision petition was pending against the order of the Central Road Traffic Board would not deprive the Government of the jurisdiction which it undoubtedly possessed under section 64-A. It may be that the pendency of such petition was the occasion for its calling for the records of the subordinate authorities, but after going through the records when it found that the order of the Regional Transport Authority was bad it can validly set aside such order.

M. K. Nambiar and *N. G. Krishnan Ayyangar* for Petitioner.

V. P. Sarathy for the Advocate-General, (*V. K. Thiruvenkatachari*) for the Government pleader (*P. Satyanarayana Raju*) on behalf of the first Respondent.

N. Rajagopala Ayyangar for second Respondent.

K.S. ——— *Application dismissed.*

Venkatarama Ayyar, J. Pallavam Pillai *v.* Ganapathy Ayyar.
1*st February*, 1952. S. A. No. 922 of 1947.

Public pathway—Right of members of public to take processions including funeral processions.

Members of the public have a right to take processions through public streets and pathways whether the processions be religious or social or political. No distinction can be made between religious processions and funeral processions. But such user must be reasonable and it would be subject to all the limitations to which all processions on the public streets are subject. *Authorities discussed.*

K. S. Desikan for Appellants.

S. V. Rama Aiyangar for Respondent.

K.S. ——— *Appeal allowed. Leave refused.*

Ramaswami, J. Sakuntala Bai *v.* Venkatakrishna Reddi.
6*th February*, 1952. Cr. R. C. No. 107 of 1951.
(Cr. R. P. No. 106 of 1951).

Sea Customs Act (*VIII of* 1878), *section* 198—*Customs Inspector abusing and assaulting person suspected of smuggling—Prosecution for—Accused if can say that it was an official act and a month's previous notice under section* 198 *was necessary—Criminal Procedure Code* (*V of* 1898), *section* 197—*Sanction of Central Government if essential for prosecution.*

It is no part of the duty of a Customs Inspector to lose his temper and abuse and assault a person suspected of smuggling who refuses to remove the gold ornaments worn by her. Such acts cannot be said to have been done or purported to be done in the discharge of official duties. Accordingly a month's previous notice to the accused is not necessary for the prosecution of the Customs Inspector. Such a prosecution does not require sanction under section 197, Criminal Procedure Code. Assuming such sanction is necessary, the sanction of the Central Government is not necessary because the Customs Inspector is removable by a delegated authority.

T. R. Srinivasan for Petitioner.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) on behalf of the State.

K.S. ——— *Petition allowed and discharge of accused set aside.*

Subba Rao, J. — Janakiramayya *v.* Ranganayakamma.
29th November, 1951. — C. R. P. No. 1326 of 1950.

Madras Agriculturists Relief Act (IV of 1938), section 4 (h)—Debt "due" to a woman as life estate holder—If exempted under section 4 (h) of the Act.

A debt is certainly payable to the life estate holder and she can claim to recover it as of right. She can file a suit and recover the amount. It is not open to the debtor to raise the plea that there is an outstanding vested remainder and therefore the entire debt is not due to the life estate holder. Where such debt is due to a life estate holder who is a woman on 1st October, 1937, if it did not exceed Rs. 6,000, it is not liable to scaling down under Madras Act IV of 1938. The value of her property for the purpose of exemption is the value only of her life interest in the property and if the value of such life estate does not exceed Rs. 6,000 the debt is not liable to be scaled down.

V. Subramanya and *M. Ramakrishna* for Petitioner.

K. Kotiah for Respondent.

K.S. — *Petition dismissed.*

Satyanarayana Rao and Rajagopalan, JJ. — The Municipal Council of Madurai *v.* The State of Madras.
13th December, 1951. — C. M. P. Nos. 6517, etc. of 1951.

Madras Electricity Supply Undertakings (Acquisition) Act (XLIII of 1949)—Contravenes Article 14 of the Constitution so far as it relates to local bodies and therefore ultra vires.

The Madras Electricity Supply Undertakings (Acquisition) Act (XLIII of 1949) in so far as it relates to local authorities contravenes Article 14 of the Constitution of India, and therefore is *ultra vires*. An order acquiring undertakings belonging to local bodies cannot be upheld as valid.

As the questions raised relate to the interpretation of the Constitution and the Government of India Act, 1935, certificates under Article 132 of the Constitution that the cases are fit for appeal to the Supreme Court were granted.

M. K. Nambiar and *P. S. Kailasam* for Petitioners.

The Advocate-General (*V. K. Thiruvenkatachari*) instructed by the State Counsel (*John and Row*) on behalf of the State.

K.S. — *Petitions allowed.*

Satyanarayana Rao and Rajagopalan, JJ. — Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt *v.* Commissioner, H. R. E. Board, Madras.
13th December, 1951. — C.M.P. No. 2591 of 1951 & W.P. Nos. 379 and 380 of 1951.

Madras Hindu Religious and Charitable Endowments Act (XIX of 1951), sections 20, 21, 25 (4), 26, 29, 30 (2), 31, 53, 54, 55 (2), 56, 58 (3), 59, 63 to 69, 70 (2), (3) and (4), 76, 89 and 90—*Are* ultra vires *the Madras State Legislature.*

Sections 20, 21, 25 (4), 26 (to the extent section 25 (4) is made applicable), section 28 (though it sounds innocuous, it is liable to abuse) sections 29, 30 (2), 31 (because Courts have ample powers to meet these contingencies) sections 54, 55 (2), 56, 58 (3), 59, 63 to 69 in chapter VI, section 70 (2), (3) and (4), section 76, section 89 and section 90 (to the extent it gives the Government virtually complete control over the Matathipathis and Mutts) are *ultra vires* the Madras State Legislature in so far as they relate to maths.

The sections of Madras Act II of 1927 which correspond to the sections of the new Act enumerated above as being *ultra vires* will also be *ultra vires*. Since section 5 of the New Act has repealed the earlier Act II of 1927 it is unnecessary to go into detail in examining which of the provisions of the earlier Act were *ultra vires* the State Legislature tested by the fundamental rights guaranteed by the Constitution of India, 1950.

The incidents and nature of Maths and Matathipathis discussed elaborately.

C.M.P. No. 2591 of 1951:

K. Bhashyam, T. Krishna Rao, K. R. Karanth and *S. Venkatakrishnan* for Petitioners.

The Advocate-General (*V. K. Thiruvenkatachari*), *M. Seshachalapathi* and *T. K. Rama Nambisan* for Respondents.

W.P.Nos. 379 and 380 of 1951 :

K. Umameswaram, Alladi Kuppuswami and *C. V. Srinivasachari* for Petitioners.

The Advocate-General (*V. K. Thiruvenkatachari*) with the Government Pleader (*P. Satyanarayana Raju*) for Respondent.

Rule Nisi *made absolute. Certified that it is a fit case for appeal to Supreme Court.*

K.S.

Subba Rao, J. — Krishnan Nambiar *v.* The State of Madras.
22nd January, 1952. — W.P. No. 655 of 1951.

Prevention of Cruelty to Animals Act (*XI of* 1890)—*Government grants to a society for prevention of cruelty to animals of amounts equal to fines realised in cases charged by agents of society—Stopping of by Government—Not a judicial act which can be interfered with by a writ.*

Payments of grants made by the Government to a society for prevention of cruelty to animals of amounts equal to fines realised in cases charged by agents of such society are only *ex gratia* payments to which the society has no manner of right. Stopping such payments does not affect the rights of parties nor does the Prevention of Cruelty to Animals Act or any other provision of law impose a duty on the Government to act judicially in withdrawing such payments. Order of Government withdrawing such grant or the police powers conferred on agents of such societies is not a judicial act. The conferring of police powers on the agents of the society, or the withdrawal of the same does not affect the rights of the subjects. In such a case an application for issuing a writ of *certiorari* for quashing the order of the Government is not maintainable.

A. Achuthan Nambiar for Petitioner.

V. P. Sarathi for The Advocate-General (*V. K. Thiruvenkatachari*) on behalf of the Respondent.

K.S. — *Petition dismissed.*

Mack and Somasundaram, JJ. — Balan, *In re.*
12th February, 1952. — R. T. No. 87 of 1951.
(Cr. A. No. 620 of 1951.)

Constitution of India (1950), *Part III—Fundamental rights—If includes right to use foreign flags on Indian soil.*

Per *Mack, J.*—The Constitution nowhere contemplates a divided allegiance or loyalty to the Constitution and the flag of the Indian Union and to the flag of any other foreign State. Merely because neither the Constitution nor any specific legislation forbids the use of the flags of foreign nations on Indian soil, they can in no sense be permitted to be so used in accordance with any fundamental right laid down in the Constitution. Such user on the contrary would be directed to the undermining of one of the main pillars on which the Constitution is founded. It will be increasingly embarrassing for Judges (who have taken the oath to uphold the Constitution) if they were to permit the free intrusion of foreign flags on the Indian soil for the propagation of any form of political doctrine or economic ideals. If such flags continue to be used by organisations throughout the country there would be no alternative for the Government to introduce legislation making such user an offence punishable compulsorily by substantial imprisonment.

Per *Somasundaram, J.*—" The observations regarding the use of flags are entirely foreign to and beyond the scope of the judgment in this case ".

V. Venkatraman for *Row and Reddy* and *Mohan Kumaramangalam* for Appellant.

The Assistant Public Prosecutor (*A. C. Muthanna*) on behalf of the State.

K.S. — *Sentence of death confirmed.*

Subba Rao, J.
14th November, 1951.

Natesa Mudaliar *v.* Secretary, Regional Transport Authority.
W.P. No. 351 of 1951.

Madras Motor Vehicles Rules, rule 136 *(as amended)—Limitation for filing appea within* 30 *days from date of despatch of order of secretary—Validity.*

The part of rule 136 of the Madras Motor Vehicles Rules prescribing the period of limitation from the date of despatch of the order is invalid. That rule is unreasonable and contrary to the principles of natural justice and works great hardship in certain circumstances. An appeal filed within 30 days from the date of the receipt of the order by the appellant must be held to be in time.

M. Natesan for Petitioner.

The Government Pleader (*P. Satyanarayana Raju*) on behalf of the Respondents.

K.S. *Petition allowed.*

Subba Rao, J.
9th January, 1952.

Kumaraswami Padayachi *v.* Govindaswami Padayachi.
A.A.A.O. No. 18 of 1950.

Madras Agriculturists Relief Act (IV of 1938)), *section 9-A—Applicability when mortgagee is in possession in pursuance of clause in mortgage that if debt is not redeemed within five years mortgagee was to become owner.*

Where in pursuance of a clause in a mortgage that if the mortgage debt is not redeemed within five years that mortgagee was to become owner the mortgagee claimed that he was in possession as vendee after the expiry of the five years, it must be held that the clause was a clog on the equity of redemption and that the possession of the creditor was only as mortgagee and therefore section 9-A of the Agriculturists Relief Act applied directly to the case and the mortgagor is entitled to redeem accordingly. The mortgagee's *animus* is not the decisive factor for the application of the provisions of section 9-A.

T. S. Krishnamurthi Aiyar for Appellant.

T. S. Kuppuswami Aiyar for Respondent.

K.S. *Appeal dismissed. Leave refused.*

Mack and Somasundaram, JJ.
4th February, 1952.

Rajarama Reddi, *In re.*
Cr. M. P. No. 2321 of 1950.

Constitution of India (1950), *Article* 228*—Petition under—Procedure.*

Where an entire Act is called in question as *ultra vires*, there is no obligation on the State Prosecutor on the criminal side to file an affidavit at all seeking to uphold its validity; the onus is on the petitioner to satisfy the High Court under Article 228 that there was a substantial question of law as to the interpretation of the Constitution, in other words, that the Act can for some *prima facie* substantial reasons be challenged in a Court of law.

V. V. Srinivasa Aiyangar, M. K. Nambiar and *V. Devarajan* for Petitioner.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S. *Petition dismissed.*

Mack and Somasundaram, JJ.
6th February, 1952.

Mara Naicken, *In re.*
R.T. No. 73 of 1951.
Cr. A. Nos. 491 and 492 of 1951.

Criminal Procedure Code (V of 1898), section 164—Scope and effect—Confession made to Magistrate—Essentials for admissibility in evidence—Confession by person voluntarily surrendering to warrant and expressing desire to make confession—Procedure.

Per *Mack, J.*—If an accused person surrenders to a warrant voluntarily and desires to make a confession, it is the duty of the Sub-Magistrate to proceed immediately under the provisions of section 164, Criminal Procedure Code and after giving him the necessary warnings, record what he wishes to say as soon as possible, before he falls in any way under police influence. The precaution of giving an accused person time to reflect is intended to protect persons, who are produced from police custody before Magistrates for the recording of confessions, and it is just and proper that they should be given time for reflection on removal altogether from any police influence before confessions, which can be used in evidence against them, are recorded. This precaution is not normally necessary in the case of persons, who voluntarily appear before a Magistrate and express their desire to make confessions. But as the difference of opinion on this point expressed by the other Judge Somasundaram, J., would otherwise increase the present uncertainty it must be resolved by reference to a Full Bench although it does not affect the final decision in the instant case.

Per *Somasundaram, J.*—The observations that a Magistrate can record a confession from an accused who comes to him even before the investigation starts does not arise in this case and are purely obiter. The Magistrate can function only under section 164 if he is to record a confession but where section 164 does not apply he cannot record any confession. The powers of a Magistrate are given in Schedule III of the Code of Criminal Procedure. The Magistrates have no other power than what is granted to them under this Schedule. What is not granted to them they cannot do. So confession made before Magistrates even before the investigation begins, will not be admissible.

P. S. Kailasam for Appellant.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S. ——— *Sentence varied.*

Govinda Menon and Krishnaswami Nayudu, JJ.
14th February, 1952.

Ramachandrudu *v.* Gulabchand Firm.
A. A. O. Nos. 212 and 337 of 1951.

Civil Procedure Code (V of 1908), sections 46 and 47—Order extending time for a precept to keep in attachment properties belonging to judgment-debtor—Not appealable.

An order directing a preceptor extending time for a precept to keep in attachment properties belonging to the judgment-debtor is not one relating to execution, discharge or satisfaction of the decree.

G. Balaparameswari Rao for Appellant.
P. V. Vallabhacharyulu for Respondents.

K.S. ——— *Appeals dismissed.*

Subba Rao, J.
15th February, 1952.

Bhagat Estates *v.* Accommodation Controller, Madras.
W. P. No. 805 of 1951.

Madras Buildings (Lease and Rent Control) Act (XV of 1946), section 3—Objection taken by house owner that rent of premises does not exceed Rs. 25 per month—Accommodation Controller must decide whether rent is more than Rs. 25 before exercising jurisdiction and demanding possession.

When a landlord after giving notice of vacancy takes the objection that the rent of the premises in question does not exceed Rs. 25 per month and that therefore the Accommodation Controller has no jurisdiction to demand possession of the house, the Accommodation Controller must first find on the materials furnished whether the rent exceeds Rs. 25 per month before he can exercise his jurisdiction

M. A. Ghatala and *C. Narasimhacharyulu* for Petitioner.

V. P. Sarathi for the Government Pleader (*P. Satyanarayana Raju*) for Respondent.

K.S. ——— *Petition allowed.*

Subba Rao, J. Rangamannar Chetty *v.* Rangiah.
15*th February*, 1952. C.M.P. No. 6445 of 1951.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 7 (2) (*ii*) *—Sub-letting which entails evictions—Essentials.*

There cannot be a sub-letting, unless the lessee parted with legal possession. The mere fact that another is allowed to use the premises while the lessee retains the legal possession is not enough to create a sub-lease. To create a lease or sub-lease a right to exclusive possession and enjoyment of the property should be conferred on another. Taking in other partners in his business by a lessee will not constitute sub-leasing and the lessee is not liable to eviction under the provisions of Madras Act XXV of 1949.

K. Umamaheswaram and *A. Subramanian* for Petitioner.

M. S. Ramachandra Rao and *M. Krishna Rao* for Respondents.

K.S. ——— *Application dismissed.*

Subba Rao, J. Sambasiva Reddy *v.* Central Road
18*th February*, 1952. Traffic Board, Madras.
W.P. No. 686 of 1951.

Motor Vehicles Act (IV of 1939), *section* 64-*A—Appeal to Road Traffic Board without impleading as respondent others whose applications for permit had been rejected—Person not made party—If entitled to writ to quash order in the appeal.*

A person who had not been made a party to an appeal to the Central Road Traffic Board which has made a final order may take appropriate action for getting that order set aside and a writ cannot be issued at the instance of such person who was not a party to the order sought to be quashed.

V. Venkataraman for *Row and Reddi* for Petitioner.

The Government Pleader (*P. Satyanarayana Raju*) on behalf of the Government and *C. A. Vaidyalingam* and *S. Gopalaratnam* for 2nd Respondent.

K.S. ——— *Application dismissed.*

Rajamannar, C.J. and Venkatarama Ayyar, J. Seshagiri Sarma *v.*
19*th February*, 1952. State of Madras.
C.M.P. No. 4360 of 1951.

Madras Hereditary Village Offices Act (III of 1895)*—Order of District Collector setting aside that of Revenue Divisional Officer removing a person and appointing another to discharge duties of the office during minority of holder—Government has no jurisdiction to interfere with it.*

Appointments, dismissals and other matters of and pertaining to the hereditary village officers mentioned in the Madras Hereditary Village Offices Act are governed entirely by the provisions of that Statute. There is no provision in that Act conferring any power on the Government to interfere with the orders of any of the subordinate revenue authorities entrusted with specified powers by the provisions of that Act. Under section 10 (5) of the Act it is the Collector who has got the power to appoint a qualified person to discharge the duties of the office when a minor is registered as heir. Ordinarily, this power is exercised by the Revenue Divisional Officer. This is because of the provisions of the Madras Subordinate Collectors Regulation. The proceedings of Subordinate and Assistant Collectors are made subject in all cases and in the fullest manner to the superintendence, control and revision of the Collector, who shall have power either to direct, generally, that the proceedings of any of his Subordinates or Assistants shall be regularly submitted to himself before the decision, order or sentence is carried into execution, and to confirm, modify or annul them, or issue any further orders in the case, as he may see fit; or in any particular case to direct that the decision, order or sentence of any of his Subordinates or Assistants shall not be carried into execution, and to pass such further orders as he may see fit.

Where there is an order of a Revenue Divisional Officer removing a person and appointing another as the person to discharge the duties of the office during the minority of the registered heir, the order is liable to be revised by the District Collector; and where the District Collector in the exercise of this power set aside the order of the Revenue Divisional Officer and restored the person who was removed to his original position, the order of the District Collector is not subject to any appeal or revision and neither the Board of Revenue nor the Government can interfere with his order. Where the Government interfered and set aside such order it must be quashed and the order of the District Collector restored.

C. Rama Rao and *D. V. Reddi Pantulu* for Petitioner.

T. Venkatadri for 3rd Respondent.

The Advocate-General (*V. K. Thiruvenkatachari*) for the Government Pleader (*P. Satyanarayana Raju*) for 1st and 2nd Respondents.

K.S. *Order quashed.*

Subba Rao, J.
19th February, 1952.

Raja Venkata Ramayya Appa Rao *v.*
Collector of Madras.
C.M.P. No. 6632 of 1951.

Revenue Recovery Act (*I of* 1890), *sections* 3 *and* 5—*Applicability to recovery of arrears of income-tax.*

Arrears of income-tax is recoverable by the Income-tax Officer but the *process of recovery* is entrusted to the Collector. Therefore as income-tax is recoverable by the Income-tax Officer as land revenue, under section 5 of the Revenue Recovery Act (I of 1890) the Collector of the district in which the office of the Income-tax Officer is situate has power to send a certificate of the amount to be recovered to the Collector of another district.

O. Chinnappa Reddi and *P. Ramakrishna* for Petitioner.

Vepa P. Sarathi for the Government Pleader (*P. Satyanarayana Raju*) on behalf of 1st Respondent.

C. S. Rama Rao Sahib for 2nd Respondent.

K.S. *Application for issue of mandamus dismissed.*

Rajamannar, C.J. and Venkatarama Ayyar, J. Varadachari *v.* State of Madras.
22*nd January*, 1952. C.M.P. No. 5590 of 1951.

Madras Manure Dealers Licensing Order, 1949—*Government Order providing for enhancement of licence fee from Rs.* 10 *to Rs.* 100 *per expeller in oil mills—Tests of validity—Licence fee and tax—Difference.*

There is a fundamental difference between a tax and a licence fee. The issue of licences to regulate particular branches of business or specified trades or occupations and other matters is part of what in American Constitutional law is called the "police power" of the State. For the grant of a licence a fee may be charged to cover probable expenses which may have to be incurred for the regulation of the particular trade or business or calling in respect of which the licence is required. The licence fee is not intended to raise revenues for the general purposes of the authority levying the fee. For such purposes the levy should be in the shape of a tax. The licence fee must be reasonable whereas a tax need not be.

Under the Madras Manure Dealers Licensing Order there is nothing which directly or indirectly provides for anything other than the regulation of the sale of manure. There is nothing in the order to indicate that the licence required from the dealers is for the purpose of ensuring the proper quality of manure being sold. There is not even a provision which makes a sale of adulterated or unwholesome manure punishable. An enhancement of the licence fee from a flat rate of Rs. 10 to Rs. 100 per expeller in an oil mill cannot be defended on the ground that the licensing authority had to incur expenses for staff to examine the manure and enforce proper quality being supplied. The enhancement in the case of millers only while ordinary dealers had to pay a flat rate of Rs. 20 would in any event be clearly discriminatory and would offend the provisions of Article 14 of the Constitution.

Accordingly the enhanced rates of licence fees under G.O. Ms. No. 2435 (Food and Agriculture), dated 29th December, 1950, published in the *Fort St. George Gazette*, dated 16th January, 1951, is unconstitutional and therefore invalid because it would amount to an unreasonable restriction on the exercise of the right to carry on business guaranteed by the constitution and also because the fee is discriminatory and in contravention of Article 14 of the Constitution.

K. V. Venkatasubramanyam and *Messrs. Row and Reddi* for Petitioner.

The Advocate-General (*V. K. Thiruvenkatachari*) for the Government Pleader (*P. Satyanarayana Raju*) on behalf of the Respondent.

K.S.

Application allowed and Rule nisi made absolute.

Subba Rao, J. Union of India *v.* Nataraja Sastrigal.
13*th February*, 1952. W.P. No. 731 of 1951.

Workmen's Compensation Act (*VIII of* 1923), *sections* 16 *and* 17—*Single application filed on behalf of a number of employed persons belonging to the same unpaid group—Right of employer to appeal where total amount directed to be paid in such application exceeds Rs.* 300 *—Writ of* certiorari *to quash order not maintainable as there is other remedy.*

As a single application can be filed on behalf of a number of employed persons belonging to the same unpaid group and an employer has the right to appeal to the Court of Small Causes if the amount directed to be paid in such single application exceeds Rs. 300, the employer thus having other adequate remedy by way of appeal to the Court of Small Causes, a writ of *certiorari* to quash the order of the Commissioner cannot issue.

S. S. Ramachandra Ayyar for Petitioner.

R. Desikan for Respondents 1 and 2.

The Government Pleader (*P. Satyanarayana Raju*) on behalf of 3rd Respondent.

K.S.

Application dismissed.

Subba Rao, J. Subba Rao *v.* Director of Town Planning, Madras.
18*th February*, 1952.

W.P. No. 736 of 1951.

Municipality—Establishment Rules, rule 19 (1)—*Scope—Order of abolition of a post mentioning that it should come into force on a specified date—If can be brought into operation*

before expiry of three months after notice has been given to the officer whose services are dispensed with.

Rule 19 (1) of the Establishment Rules reads "unless it contains an express statement to the contrary an order for the abolition of an appointment or for the reduction of the emoluments of an appointment, shall not be brought into operation before the expiry of three months after notice has been given to the officer or servant whose services are to be dispensed with, on such abolition or reduction".

The Town Planning and Building Inspector of the Narasaraopet Municipality who was in Grade III was served a notice on 23rd December, 1950, from the Commissioner of the Narasaraopet Municipality informing him that his services would not be required from 25th January, 1951, as the post of Grade III Building Inspector had been converted into Grade I Inspector by the Inspector of Local Boards. The Inspector whose services were thus terminated applied for a writ of *mandamus* claiming that that abolition of his appointment was illegal as that order was brought into force before the expiry of three months after notice had been given to the petitioner.

Held: As the Inspector of Local Boards specifically stated in his order that his order giving sanction for the conversion of the existing post of Town Planning and Building Inspector Grade III, into that of Grade I, should come into force on 6th December, 1950 (the date of his order) his order contained the express statement that it should come into force immediately and accordingly three months notice for the abolition of the appointment was not necessary and the order cannot be attacked.

P. Rama Rao and *K. V. Raghunatha Reddi* for Petitioner.

V. P. Sarathi for the Government Pleader (*P. Satyanarayana Raju*) on behalf of 1st Respondent.

M. B. Rama Sarma for 2nd Respondent.

K.S.

Application dismissed.

Rajamannar, C.J. and Venkatarama Ayyar, J.
27th February, 1952.

Rajashri Pictures, Ltd. *v.* Mahalingam.
O.S.A. No. 136 of 1951.

Madras High Court Original Side Rules, Order VII—Suit found to be one for specific performance of an agreement to advance certain amount—Plaintiff if can invoke Order VII of Original Side Rules—Right of defendant to leave to defend.

Where it is found that the suit is in the nature of a suit for specifically enforcing one of the terms of a contract between the parties, *viz.*, a promise to advance a sum of Rs. 22,500 out of which Rs. 7,500 had already been advanced (the said amount to be adjusted against the proceeds of the picture when distributed) Order VII of the Original Side Rules would not govern such suit. The defendant is entitled to raise defences open to one of the parties to a contract when the other party seeks to specifically enforce the contract. Accordingly the defendant is entitled to have leave to defend unconditionally.

D. Suryaprakasa Rao and *A. Satyanarayana Rao* for Appellant.

L. V. Krishnaswami for Respondent.

K.S.

Appeal allowed.

Ramaswami, J.
3rd March, 1952.

Seetharamayya *v.* Anjayya.
C.R.P. No. 1451 of 1951.

Civil Procedure Code (V of 1908), Order XXXVII, rule 3—Leave to defend a summary suit—Existence of triable issue—If sufficient to entitle defendant to grant of unconditional leave to defend.

It cannot be said that the moment a defendant had raised a triable issue unconditional leave to defend a summary suit should be granted to the defendant. (1949) 2 M.L.J. 70 and other case-law referred to. To entitle a defendant to unconditional leave he should satisfy the Court not only that there was a triable issue but also that his defence was *bona fide*. The only test to be applied is whether the defence raised a real issue and not a sham one.

K. Umamaheswaram and *V. Sethu Madhava Rao* for Petitioner.

P. R. Ramachandra Rao for Respondent.

K.S.

Order varied.

Subba Rao, J.
29*th January*, 1952.

Rahimansa Rowther *v.* Madras Islamia Educational Institution.
S. A. No. 1673 of 1948.

Transfer of Property Act (*IV of* 1882, *as amended in* 1929), *sections* 91, 92 *and* 95—*—Scope—Co-mortgagor redeeming mortgage—Rights of the other mortgagor to file suit for redemption.*

The co-mortgagor redeeming is merely an instance of subrogation. The redeeming mortgagor has not merely a charge, but the mortgage, as to his share, is extinguished, and as to the shares of the other mortgagors he stands in the shoes of the mortgagee. Where a co-mortgagor redeems the entire mortgage, his right as a mortgagee relates back to the date of the mortgage which he has redeemed for the benefit of priority over subsequent mortgages. The period of limitation for suit for redeeming by the other mortgagor against the redeeming co-mortgagor is the same as against the mortgagee. I L.R. 19 Pat. 398 and A.I.R. 1943 Bom. 191, approved. A suit filed within 60 years of an acknowledgment will be in time.

K. Venkataraman for Appellant.

R. Gopalaswami Aiyangar for Respondent.

K.S.

Appeal dismissed. Leave refused.

Ramaswami, J.
3*rd February*, 1952.

Deena Naidu, *In re.*
Cr. R. C. No. 184 of 1952.
(Cr. R. P. No. 170 of 1952).

Madras Food Grains (*Intensive Procurement*) *Order* (1950), *clause* 10 (1)—*Sanction for prosecution for contravention of provisions—Essentials for validity.*

Clause 10 (1) of Madras Food Grains (Intensive Procurement) Order, 1950, does not prescribe any type, design form or particular form of words for a sanction for prosecution for contravention of any of the provisions of the Food Grains Procurement Order. All that the sanction must show is that all relevant materials were placed before the authority sanctioning the prosecution and that the authority considered those materials and that the order sanctioning the prosecution resulted therefrom. The sanction need not set out the reasons for the sanction. The object of clause 10 (1) is nothing more than a discouragement of frivolous, doubtful and impolitic prosecutions by low paid subordinates who might be actuated by several motives other than the interests of the public and the due enforcement of control orders. Where the sanction order by its preamble sets out all the materials which were before the Collector (sanctioning authority) and the order recites that these papers have been read by the Collector and then the decision of the Collector according sanction with all requisite details are set out, it is a valid sanction on the strength of which a prosecution will be sustainable. (1948) 1 M.L.J. 243 (P.C.); (1949) 1 M.L.J. 600; (1950) 1 M.L.J. 341, considered.

T. R. A. Ghani and *S. S. Bharadwaj* for Petitioner.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S.

Conviction upheld and accused admonished.

Subba Rao, J.
5*th February*, 1952.

Thiruvaduthurai Adheenakartha *v.* Bojaraja Naicker.
S. A. No. 1452 of 1948.

Religious Endowment—Permanent lease of property by manager—Suit for setting aside by succeeding manager—Limitation—Limitation Act (*IX of* 1908), *section* 10, *Articles* 134-*B*, 139 *and* 144—*Applicability.*

Section 10 of the Limitation Act will enable the manager of a temple or any religious institution to recover property alienated by his predecessor not for valuable consideration without any limit of time. But if he transferred the property without any necessity and for valuable consideration, the suit to recover the same would be governed by Article 134-B of the Limitation Act. Article 134-B applies both to absolute transfers and also to permanent leases. Though a permanent lease or a sale without necessity is invalid and not binding on the succeeding manager, it will enure during the tenure of the manager, who alienated the property. The succeeding manager can create a new lease, which likewise will enure during his lifetime. In the absence of evidence, it may be presumed that if a succeeding manager with the knowledge of the invalidity of the alienation received rents

he accepted the tenant as his tenant during the tenure of his office. But there may be circumstances which may establish that a succeeding manager has not accepted the tenant as his tenant for his lifetime but as one holding under the permanent tenancy, in which case the starting point of limitation prescribed by Article 134-B would not be postponed till after his lifetime. But Article 134-B cannot apply to a case where a tenant had acquired a right by prescription prior to the amending Act. To such a case Article 144 of the Limitation Act would apply but even so the aforesaid principles govern the situation. The tenant's adverse possession would start after the term of the alienor (manager) came to an end, unless his successor is presumed to have created a new tenancy to enure during his lifetime. Article 139 cannot obviously apply if Article 134-B applies. Article 134-B will not apply to a case where the tenant acquires an adverse interest prior to the amending Act. (On the facts the suit was found to be barred by limitation.)

K. P. Mahadeva Aiyar for Appellant.

K. S. Desikan for Respondents.

K.S.

Appeal dismissed.

Rajamannar, C.J. and Venkatarama Ayyar, J.
8*th February*, 1952.

Gopala Rao *v.* Kantam.
Appeal No. 186 of 1948.

Minor—Decree against—Guardian's failure to advance and establish defences—When gross negligence entitling the minor to get the decree set aside.

The fact that certain defences were raised by the guardian coupled with the fact that eventually the guardian (mother in the present case) did not adduce any evidence to try to establish those defences is not itself proof of negligence on the part of the guardian entitling the minor to have the decree set aside. If the guardian raises frivolous defences and subsequently is convinced that it was not worthwhile proceeding with those defences, it cannot be said that the guardian would be guilty of negligence. Before it can be held that the failure to defend is gross negligence the Court must be convinced that there were substantial defences to the action and nevertheless, the guardian failed to advance and establish them.

P. Chenchiah and *M. A. Narasayya Chowdari* for Appellants.

A. Sambasiva Rao and *T. Venkatadri* for Respondents.

K.S.

Appeal dismissed.

Rajamannar, C.J. and Venkatarama Ayyar, J.
4*th March*, 1952.

Luis Caetano Menzes *v.* The State of Madras.
C. M. P. No. 9092 of 1950.

Madras Prohibition Act (*X of* 1937)—*Citizens of Portuguese settlements in India residing in Madras State—Right to issue of liquor permits.*

Portuguese settlements in India though geographically situated in India must be treated as part of the territory of Portugal. Foreign nationals would include nationals of every foreign country and it is for the Government of the country concerned to decide who belonged to a particular nationality. It is not open to the Madras State Government to classify citizens of Portuguese settlements in India resident in Madras State, along with Indian citizens for purposes of issue of liquor permits under the Madras Prohibition Act. The only classification which will not offend Article 14 of the Constitution would be classification between Indian citizens on the one hand and foreign nationals on the other. Any other classification would be discriminatory. It is not open to the State Government to exclude the citizens of the French and Portuguese settlements in India from the general category of foreign nationals on the ground that the grant of permits to them might lead to abuse. A Portuguese subject born at Sholapur of parents both of whom were born in Goa and residing at Madras is therefore entitled to the grant of a permit as a foreign national.

E. S. Vaz, *P. M. V. Srinivasan* and *R. Natarajan* for Petitioner.

The Advocate-General (*V. K. Thiruvenkatachari*) for the Government Pleader (*P. Satyanarayanaraju*) and *Narayanan Nair*, for the State Prosecutor on behalf of the Respondent.

K.S.

Directions given.

Ramaswami, J.
21st February, 1952.

Veera Raju *v.* Sundararamiah.
Cr.R.C. No. 1282 of 1950.
(Cr.R.P. No. 1211 of 1950.)

Criminal Procedure Code (*V of* 1898), *sections* 417, 423 *and* 439—*Scope—Powers of High Court in dealing with criminal revisions—Acquittal—Right to agitate against—Procedure.*

In regard to acquittal two remedies are open. Under section 417, Criminal Procedure Code, the State Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court. In such a case under section 423, Criminal Procedure Code, the High Court may in an appeal from an order of acquittal reverse such order and direct further enquiry to be made or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law. In such a case the Code makes no distinction between an appeal from an acquittal or an appeal from a conviction and in an appeal from an acquittal if the Court thinks that the lower Court has taken an erroneous view of the evidence it has jurisdiction to refuse to convict. The section gives full power to the High Court to review at large the evidence upon which an order of acquittal is founded and to reach the conclusion that upon that evidence an order of acquittal shall be reversed, the High Court has naturally to consider such matters as the view of the trial judge as to the credibility of the witnesses, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of the appellate Court in disturbing the findings of fact arrived at by a trial judge who had the advantage of seeing the witnesses.

But when the Local Government declines to appeal and a private party seeks to agitate against this acquittal it can only be under section 439, Criminal Procedure Code. Though sub-section (1) of section 439 authorises the High Court to exercise in its discretion, any of the powers conferred on a Court of appeal by section 423, sub-section (4) specifically excludes the power to convert a finding of acquittal into one of conviction. This does not mean that in dealing with a revision petition by a private party against an order of acquittal the High Court could in the absence of any error on a point of law reappraise the evidence and reverse the findings of fact on which the acquittal was based, provided only it stopped short of finding the accused guilty and passing sentence on him.

Logendranath Jha v. *Polai Lal*, (1951) S.C.J. 503 : (1951) 2 M.L.J. 288 (S.C.), relied on.

D. Narasaraju and *P. R. Surya Rao* for Petitioners.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) on behalf of the State.

S. Ramalinga Mudaliar for Respondent.

K.S. *Petition dismissed.*

Govinda Menon and Krishnaswami Naidu, JJ.
14th March, 1952.

Seethamma *v.* Annapurnamma.
A. S. No. 726 of 1947.

Arbitration Act (*X of* 1940), *sections* 31 *and* 32—*Scope—Award made decree of Court, if can be set aside in a regular suit on the ground that the reference was procured by fraud and misrepresentation.*

Plaintiff filed a suit to set aside an award which was made a decree of Court, on the ground that the agreement to refer the disputes to an arbitrator was procured by fraud and misrepresentation :

Held, that the provisions of sections 31 and 32 of the Arbitration Act are a bar to a suit and that all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement should be determined in an application filed before the Court where the award has been or may be filed.

(1946) 1 M.L.J. 185 : I.L.R. 1946 Mad. 840 ; 53 C.W.N. 410, Referred to.

P. Somasundaram and *P. Suryanarayana* for Appellant.

M. S. Ramachandra Rao and *A.L. Narayana Rao* for Respondent.

K.S. *Appeal dismissed.*

Subba Rao, J.
14th March, 1952.

Harischandrudu *v.* Jagannadharao.
S. A. No. 69 of 1951.

Madras Agriculturists Relief Act (IV of 1938)—*Section* 8—*Explanation IV introduced by the Madras Act XXIV of* 1950—*Interpretation of.*

A Hindu father incurred a debt before 1st October, 1932 and after his death it was split up into three equal parts among his sons who executed three separate promissory notes on 15th November, 1935, in favour of the creditor. The creditor sued on foot of one of the promissory notes, and the debtor pleaded that the debt should be scaled down under section 8 of the Act applying the provisions of Explanation IV to section 8 introduced by the Amending Act of 1950.

Held, that if the debt was a separate debt of the father, Explanation IV applies as the sons would be heirs and legal representatives among whom the debt was split up. Held also, that even if the debt was a family debt and the same was split up among the family members, Explanation IV applies as the sons who divided the debt would be "assigns" of the debtor, *viz.*, the family, though not the heirs and legal representatives of the debtor.

M. S. Ramachandra Rao and *M. Krishna Rao* for Appellants.

P. V. Chalapathirao and *A. Triyambakam* for Respondent.

K.S. *Appeal allowed.*

Ramaswami, J.
18th March, 1952.

Narayanarao *v.* Ramaswami Ayyangar.
C.M.P. No. 2267 and 1727 of 1951
in S.R. Nos. 36226 and 36227 of 1951.

Limitation Act (IX of 1908), *section* 12—*Scope of—Time requisite for obtaining "judgment"*.

Where a petition to file an award and an application to set aside the award are disposed of by a comprehensive judgment in the former petition, and the judgment in the latter petition merely refers to the reasons given in the former judgment:

Held, in an appeal sought to be filed against the latter, the two judgments are required for filing the appeal, and the appellant is entitled to deduct the time taken in obtaining copies of both the judgments.

19 M.L.J. 10. (Notes of Recent Cases) and A.I.R. 1926 Lah. 755, followed.

M. S. Ramachandra Rao and *M. Krishna Rao* for Petitioner.

K.S. *Petition allowed.*

Rajamannar, C. J. and Venkatarama Ayyar, J. — Ammennumma *v.* Beeviamma.
18th January, 1952. — App. No. 491 of 1948.

Transfer of Property Act (IV of 1882), sections 67 and 100—Second suit for sale on mortgage or to enforce a charge—If maintainable—Civil Procedure Code (V of 1908), section 11—If bar.

A mortgagee has a right under section 67 of the Transfer of Property Act to file a suit for sale subject only to the conditions prescribed therein and of course, subject to the law of limitation and such a suit is not barred under section 11 of the Code of Civil Procedure by reason of a decree for sale passed on the same mortgage in a prior suit and under section 100 of the Transfer of Property Act the same principle applies to a second suit for sale to enforce a charge.

K. Kuttikrishna Menon and *T. C. Raghavan* for Appellant.

N. Sivaramakrishna Ayyar for Respondent. (*Amicus curiæ*).

K.S. — *Appeal allowed.*

Chandra Reddi and Ramaswami, JJ. — Thirumaleshwara Bhatta *v.*
24th January, 1952. — Ganapayya.
S.A. Nos. 1823 and 2212 of 1947.

Hindu Law—Adoption by widower after he had re-married another woman—Deceased wife if can be nominated as adoptive mother to whose father the adopted boy can inherit.

It cannot be said that a Hindu has a right to name a non-existent deceased wife in preference to the existing living wife as the mother of the boy adopted by him, so as to entitle him to succeed to the estate of such predeceased wife's father.

65 M.L.J. 58 : 56 Mad. 759 (F.B.) *doubted.* (*Case-law discussed.*)

K. Bashyam and *M. L. Nayak* for Appellant in S.A. No. 1823 of 1947 and Respondent in S.A. No. 2212 of 1947.

K. Srinivasa Rao for Respondent in S.A. No. 1823 of 1947 and Appellant in S.A. No. 2212 of 1947.

K.S. — *S.A. No. 1823 of 1947 dismissed and S.A. No. 2212 of 1947 allowed.*

Satyanarayana Rao, J. — Thirumaleshwara Bhatta *v.* Govinda Bhatta.
4th February, 1952. — Appeal No. 426 of 1948.

Provincial Insolvency Act (V of 1920), Section 28-A—Sale of Hindu insolvent father's property by Official Receiver before Amending Act—If conveys son's interest in the property.

In the absence of any specific language in the deed of sale by the Official Receiver (on the insolvency of a Hindu father) conveying the interest of the son in the property or in the absence of any other indication in the deed from which the intention to convey the larger estate (including son's share before the Amendment of the Act) could be gathered it is impossible to uphold that the deed vested in the purchaser not merely the share of the father but also the share of the son as well. The mere fact that the order of adjudication vested in the Official Receiver not only the share of the father but also the power of disposition possessed by the father over the son's share would not by itself convey to the auction-purchaser the share of the son unless there is indication in the document or in the sale proceedings that the Official Receiver in fact purported to exercise that power of sale and did in fact sell the son's share as well.

T. Krishna Rao for Appellant.

K. Y. Adiga and *K. P. Adiga* for Respondent.

K.S. — *Appeal dismissed.*

Govinda Menon, J. — State of Madras *v.* Subbaraju.
22nd February, 1952. — S.A. No. 1691 of 1948.

Darkhast grant made by Collector as agent of Government—Finality—Government if can intervene—Board's Standing Orders—Scope.

The Government has not got any supervening power to interfere for whatever reason it may be, in the orders passed by the subordinate revenue authority in accordance with the provisions of Board's Standing Orders in the grant of darkhast.

Where the Collector has no power to cancel an order after it has become final, the Government itself has no power to cancel an order validly and duly made by the Collector. There is no provision for review or revision by the Government.

N. S. Srinivasan for the Government Pleader (*P. Satyanarayana Raju*) for the Appellant.

D. Narasaraju for the Respondent.

K.S. ——— *Appeal dismissed. Leave refused.*

Govinda Menon and Panchapakesa Ayyar, JJ. Suryanarayanamurthi *v.*
29th February, 1952. Venkata Syamala.
App. No. 463 of 1948.

Civil Procedure Code (*V of* 1908), *Order* 41, *rule* 22—*Memorandum of cross-objections—When sustainable against co-respondents.*

As a general rule, the respondent's right to urge in cross-objections should be limited to urging it against the appellant. But, in exceptional cases, a memorandum of cross-objections is maintainable even against the co-respondents, namely in cases where the questions in dispute cannot be disposed of completely without matters arising between co-respondents being reopened and reconsidered ; no memorandum of cross-objections can be filed where the appellant has no interest at all.

I.L.R. (1950) Mad. 874 : (1950) 1 M.L.J. 54 (F.B.) relied on and other case-law discussed.

B. V. Subrahmanyam for Appellant.

K. Bhimasankaram, D. Narasaraju, V. V. Sastri, K. B. Krishnamurthi, N. Srinivasan and *S. T. L. K. V. Narayanachari* for Respondents.

K.S. ——— *Decree modified.*

Ramaswami, J. Moyankutty *v.* Narayanan Nair.
29th February, 1952. C.R.P. No. 1039 of 1951.

Civil Procedure Code (*V of* 1908), *Order* 6, *rule* 17—*Amendment of plaint—Right to—Suit for recovery of possession of properties held under mortgage sued on and for arrears of purappad—Stay of suit on deposit of arrears of rent under Madras Act XVII of* 1946—*Application for amendment of plaint by giving up claim for recovery of possession and adding prayer for extinguishment of mortgage—Right to amendment.*

The plaintiff filed a suit for recovery of possession of the properties held under a mortgage sued on. There was also a claim for arrears of purappad. Defendants 3 to 7 were said to be tenants in possession under the mortgagees. Defendants 1 and 2 deposited the arrears of rent claimed in the suit and the suit was stayed under Madras Act XVII of 1946. The plaintiff thereupon filed an amendment petition giving up the claim for recovery of possession of the plaint property and adding a prayer for the extinguishment of the mortgage. The defendants objected to the amendment being allowed on the ground that it was a ruse to deny them the rights conferred under Madras Act XVII of 1946 and the application for amendment was not *bona fide*.

Held : The motive with which the plaintiff filed the amendment application is neither here nor there. The amendment has to be allowed so long as the plaintiff is within his rights and does not take away any valuable rights which had accrued to the opposite party. It is open to a plaintiff to give up a portion of his claim and after amendment the suit will cease to be one for the recovery of possession and will not prejudice rights conferred by Madras Act XVII of 1946 or the later Acts enacted for the protection of tenants. In considering the question of allowing or disallowing the amendment the fact that plaintiffs giving up the claim to possession may lead to some other result in regard to stay is not a matter which ought to weigh. Nor can the Court consider the *bona fides* or *mala fides* of a petition for amendment so long as the amendment claimed is within the right of a plaintiff.

C. S. Swaminathan for Petitioner.

Respondent not represented.

K.S. ——— *Petition allowed.*

Subba Rao, J. Mohammad Usan Tharaganar *v.* Abusali Tharaganar.
28th February, 1952. S. A. No. 1834 of 1948.

Practice—Appeal—Appellate tribunal interfering with finding of trial Court arrived at on an appreciation of oral evidence—If contrary to law and open to second appeal.

It cannot be said that if an appellate tribunal interferes with the finding of the trial Court arrived at on an appreciation of the oral evidence, it is contrary to law and therefore a second appeal will lie.

Konda Kotayya and *S. Sitharama Aiyar* for Appellants.

S. Thiagaraja Aiyar and *G. R. Jagadisan* for Respondents.

K.S. ——— *Appeal dismissed. Leave refused.*

Subba Rao, J. Hare Raujee Gore Shastry *v.* State of Madras.
4th March, 1952. W.P. No. 625 of 1951.

Land Acquisition Act (I of 1894)—Delegation of functions of Union Government (for acquisition of land for Union purposes) to the State Government—Validity—Constitution of India, 1950, *Article* 258.

In respect of acquisition of land for Union purposes (namely to house a Post office in the Madras State) a notification entrusting the functions of the Union Government to the State Government was held to be valid.

Obiter.—It is difficult to hold that the enquiry contemplated by section 5-A of the Land Acquisition Act is not of a quasi-judicial nature.

M. K. Nambiar and *C. F. Louis* for Petitioner.

Vepa P. Sarathi for the Government Pleader (*P. Satyanarayana Raju*) for Respondents.

K.S. ——— *Petition dismissed.*

Subba Rao, J. Purnama *v.* Venkata Subba Rao.
6th March, 1952. S. A. No. 1684 of 1948.

Licence—Defendant putting up boundary wall on plaintiff's site agreeing not to build over or project eaves over the wall—Acquiescence in the breach of the agreement and putting up of structures—Right of plaintiff to evict defendant.

A denial of title of the owner by the licensee did not entail forfeiture. Where the defendant has put up a boundary wall on plaintiff's site agreeing not to build over or project eaves over such wall but in breach of it built over the wall and the defendant acquiesced in it for over 25 years, the plaintiff is not entitled to the discretionary remedy of a mandatory injunction. The plaintiff can be ordered to be paid the value of the site giving defendant full rights in the site.

But the Court cannot compel the plaintiff to sell the site to the defendant and if plaintiff insisted on retaining title to the site the defendant should be liable to pay nominal damages for breaking one of the warranties in the agreement.

Ch. Suryanarayana and *Ch. Ramakrishna Rao* for Appellant.

G. Chandrasekhara Sastri for Respondent.

K.S. ——— *Appeal dismissed. Leave refused.*

Subba Rao, J. Narayana Chandrasekhara Shenoy and brothers *v.* Palaniappa Mudaliar.
7th March, 1952. S. A. No. 1907 of 1948.

Contract—Agreement to supply jaggery free on railway at Karur to buyer in Calicut—Notification by Board of Revenue controlling movement by rail of jaggery from any station in Trichy District to Calicut—Buyer not willing to bear additional charge for transport by other means—Seller not delivering goods—If liable for breach of contract.

An agreement was made by the seller to supply jaggery to buyer at Calicut free on railway at Karur. The Board of Revenue having issued a press note

controlling movement by rail of jaggery from any station in Trichinopoly District to Calicut, correspondence ensued between buyer and seller, but seller was not willing to bear the additional costs of alternative transport.

Held, in the circumstances there was no breach of contract in not delivering the goods.

Quaere : Whether there was frustration by reason of impossibility of performance.

K. Sanjeevi Kamath for Appellant.

M. C. Srinivasan for Respondent. *Appeal dismissed.*

K.S.

Subba Rao, J. Sri Adikesava Perumal *v.* Kumara Thathachariar.
11th March, 1952. S. A. No. 1644 of 1948.

Temple—Right to build—When can be restrained by injunction—Quia Timet *action.*

Every one whether a private individual or a representative institution, is entitled to put up any building on his or its own land provided it does not interfere with the rights of his or its neighbours. So also any person can build a temple on his land and can utilise it in any manner without creating a nuisance to his neighbours. The only limitation is that by so constructing he should not cause material annoyance to his neighbours. But there may be circumstances where a Court may issue an injunction in a *quia timet* action to prevent a prospective nuisance if the threatened injury is imminent.

Where a temple is put up by a rival sect on neighbouring land belonging to them worship in the two temples at the same time with different rituals would certainly disturb worship in the existing temple and cause annoyance to worshippers therein. In a case where causing annoyance is certainly there, an injunction has to be issued.

K. E. Rajagopalachari for Appellant.

D. Ramaswami Aiyangar and *P. S. Srinivasadesikan* for Respondent.

K.S. *Appeal allowed in part. Leave granted.*

Mack and *Basheer Ahmed Sayeed, JJ.* Sanappa, *In re.*
11th March, 1952. R. T. No. 100 of 1951.

Criminal Trial—Appeal to High Court—Desirability of transferring accused to Madras Penitentiary and enabling him to instruct counsel in their appeals—Murder case—Investigating officer—If should examine accused in jail.

Facilities should be afforded to condemned prisoners to be detained in the Madras Penitentiary during the pendency of their appeals before the High Court to afford reasonable opportunity and access, subject to jail rules to defending counsel to interview the prisoners and obtain instructions in the further conduct of their cases.

Per *Basheer Ahmed Sayeed, J.* (differing from Mack, J.).—In regard to any appeal petition sent by any appellant in a referred trial or criminal appeal from jail, the necessity or otherwise of being acquainted with or making any use of such a petition should be entirely left to the discretion of the counsel concerned and in view of the experience that such petitions most often than not, do not render any assistance to the defending counsel no hard and fast rule can be laid down for observance by the counsel appearing for the appellants. There is no need for any new provisions in the Criminal Procedure Code to compel the investigating officer to examine the accused. If the officer feels the necessity to examine the accused at any stage before the charge sheet is laid, nothing prevents him from doing so, provided the purpose of such interrogation is to secure information as to the facts of the case. It is not necessary that the investigating officer should also examine

the accused even after the charge sheet has been laid so that he may investigate and verify any defence he might set up. After the charge sheet has been filed any defence that the accused might have can be placed before the Magistrate and decided upon. If the police is to be given an opportunity to examine the defence story of the accused and come to a decision thereon, it will not only be embarrassing to the police but such an opportunity is also liable to be abused by the investigating officers themselves.

V. V. Ramadurai for Accused.

V. Rajagopalachari, amicus curiae.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S. *Sentence reversed and prisoner discharged.*

Somasundaram, J.
13*th March*, 1952.

Shanmugam, *In re.*
Cr.R.C. No. 909 of 1951.
(Cr.R.P. No. 894 of 1951.)

Madras Prohibition Act (*X of* 1937)—*Prosecution for consuming liquor—Smell of arrack—Duty of prosecution to prove—Inference of guilt—When permissible from proof of smell alone.*

In a prosecution for consuming arrack it is the duty of the prosecution to prove that the smell can come only from arrack, if the inference is to be drawn about consuming liquor from the smell alone. The other symptoms, like red eyes, talking at random, *et cetera* also must be proved to be due only to the effect of liquor. Where the evidence of the doctor shows that even if old sugar juice was taken, it may smell like arrack and the prosecution has not conclusively proved the smell to be that of arrack, a conviction and sentence will be unsustainable.

P. S. Chandrasekhara Iyer and *P. S. Ramachandran* for Petitioner.

The Assistant Public Prosecutor (*A. C. Muthanna*) on behalf of the State.

K.S. ——— *Petition allowed.*

Somasundaram, J.
13*th March*, 1952.

Ramaswami Udayar *v.* Raju Udayar.
Crl. R. C. No. 331 of 1951.
(Crl. R. P. No. 330 of 1951.)

Penal Code (*XLV of* 1860), *section* 498—*Gist of offence.*

Section 498 of the Penal Code is intended to protect the husband and not intended for the benefit of the wife. It cannot be said that in a case where a woman is unwilling to live with her husband, may be even for good reasons, and she comes and lives with another person as husband and wife, the other person should not be held to have taken the wife within the meaning of section 498 of the Penal Code. The wife's complicity in the transaction is no more material on a charge under this section than it is on a charge of adultery. (Case-law discussed).

G. Gopalaswami for Petitioner.

The Assistant Public Prosecutor (*A. C. Muthanna*) on behalf of the State.

K.S. ——— *Petition dismissed.*

Govinda Menon, J.
14*th March*, 1952.

Akhandala Kurup *v.* Damodara Kurup.
C.R.P. No. 1492 of 1951.

Court-Fees Act (*VII of* 1870), *Section* 7 (*IV-A*) *and Article* 17-*B* (*Mad.*)—*Suit by a person* eo nomine *party to an earlier partition ignoring that partition and asking for partition—Court-fee payable.*

In a suit for partition by a person who was *eo nomine* a party as minor represented by the guardian to an earlier partition deed ignoring such earlier partition,

the plaintiff if he had alleged in the plaint that he was in joint possession of any item of the joint family property along with other members, Article 17-B of the Court-Fees Act may be applicable. But where he makes no such allegation the plaintiff is not bound to set aside the earlier partition deed and section 7 (IV-A) of the Court-Fees Act is not an impediment to the valuing of the suit. (1943) 1 M.L.J. 249 and (1950) 1 M.L.J. 408 relied on ; I.L.R. 1941 Lah. 308 considered. Other cases discussed.

K. N. Karunakaran for Petitioner.

A. K. Balakrishnan, S. M. Mohiuddin and *K. P. Ramakrishna Ayyar* for Respondents.

K.S. *Petition dismissed.*

Subba Rao, J.
17th March, 1952.

Subramania Iyer *v.* State of Madras.
C. M. P. No. 8308 of 1950.

Madras Estates Land (Reduction of Rent) Act (XXX of 1947)—Proceedings under—Prior decision by a tribunal that an inam village was not an estate as it was not a whole inam in proceedings under Madras Estates (Abolition and Conversion into Ryotwari) Act—If binding in subsequent proceedings.

A finding by the Estates Abolition tribunal in proceedings under Madras Estates Abolition Act that a village was not a whole inam village and therefore not an "estate," is binding in subsequent proceedings under the Madras Estates Land (Reduction of Rent) Act of 1947. Accordingly the Government has no power to notify that village under Madras Act XXX of 1947.

R. Kesava Aiyangar for Petitioner.

The Government Pleader (*P. Satyanarayana Raju*) on behalf of the State.

K.S. *Order quashed.*

Ramaswami, J.
24th March, 1952.

Umanatha Rao, *In re.*
Crl. R. C. No. 302 of 1952.
(Crl. R. P. No. 292 of 1952).

Criminal trial—Warrant cases and Sessions cases—Accused before they are charged anticipating defence by raising preliminary points—If can be allowed.

In warrant cases and *a fortiori* in Sessions cases accused persons before they are charged and put upon their defence cannot be allowed to anticipate their defence by raising preliminary points. When the Court passes judgment on these points they are brought up on revision to the High Court pending which the trial of the case is adjourned. This practice must not be permitted. An accused person has no right to raise a preliminary point before he is charged. He must wait to defend himself till he is charged and if he is convicted, his first remedy is in most cases by way of appeal.

Messrs. Row and Reddy for *S. Mohan Kumaramangalam* for Petitioner.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S. *Petition dismissed.*

Subba Rao, J. Subrahmanya Ayyar *v.* Govindaswami Moopanar.
26th February, 1952. S. A. No. 1343 of 1948.

Civil Procedure Code (*V of* 1908), *Order* 47, *rule* 8—*Scope of enquiry under.*

The words of Order 47, rule 8, of the Civil Procedure Code "may at once hear the case or make such order in regard to the rehearing as it thinks fit" are rather wide. The Court may, in exercise of the powers conferred under that section, not only give directions in regard to procedural matters but also can define the scope of the enquiry. It may, for instance, confine the scope of the rehearing to that part of the appeal or suit which was vitiated by the defect found or affected by the new evidence discovered. The discretion is vested in the Court directing rehearing, as otherwise on the pretext of an error on the face of the record affecting an insignificant part of the decree the entire trial sometimes covering a wide field and involving an examination of innumerable witnesses and a scrutiny of countless documents will have to be reheard, though the trial was otherwise free from any defect. It is unnecessary to attribute that intention to the Legislature, unless the clear words compel that conclusion. If the Court allowing a review petition does not restrict the scope of enquiry, it may reasonably be held that it intended to reopen the entire case.

G. R. Jagadisan for Appellant.

D. Ramaswami Aiyangar and *P. S. Srinivasa Desikan* for Respondents.

K.S. ——— *Appeal dismissed. Leave refused.*

Rajamannar, C.J. and Venkatarama Ayyar, J. Ramayya *v.* Ramanna.
28th February, 1952. C. R. P. No. 1632 of 1948.

Madras Estates Land Act (*I of* 1908)—*Lands situated in a zeroyati village forming part of a permanently settled estate—If ceases to be such if obtained in exchange for lands in a pre-settlement minor inam—Suit to eject from—Jurisdiction.*

The character of lands which were situated in a zeroyati village forming part of a permanently settled estate, did not cease to be such even though they were obtained by the landholders in exchange for lands in a pre-settlement inam. Civil Courts have no jurisdiction to entertain a suit to eject tenants from such lands. The nature of the land did not change because of the exchange.

D. Narasaraju and *K. B. Krishnamurthi* for Petitioner.

P. Somasundaram and *P. Suryanarayana* for Respondent.

K.S. ——— *Petition dismissed.*

(Full Bench)

Rajamannar, C.J., Chandra Reddi and Venkatarama Ayyar, JJ. Subba Rao *v.* Chelamayya.
7th March, 1952. C. M. P. No. 7265 of 1951.

Civil Procedure Code (*V of* 1908), *sections* 109 *and* 110, *Order* 45, *rules* 2,3 *and* 8 *and Constitution of India, Article* 133—*Appeal to Supreme Court—If lies as of right where there is variation of decree on appeal by the High Court—Principles.*

If the judgment or decree of the High Court, varies the decision of the lower Court in respect of a matter in controversy in the proposed appeal to the Supreme Court, then there is a right of appeal not only to the person against whom the variation has been made, but even to the party in whose favour the variation has been made. But it is necessary that the matter in respect of which, there has been a variation should be the subject matter of the proposed appeal to the Supreme Court.

A matter in controversy cannot be split up or analysed or dissected into component parts or arbitrary divisions. The true test will be to determine the nature of the dispute or controversy.

If the matter in respect of which there has been a variation is not the subject-matter of the proposed appeal, then such variation would not confer a right of appeal. As regards matters unconnected with the matter in respect of which there

has been a variation *ex hypothesi* this will be the case when the variation has been completely in favour of the applicant.

If the requirements of pecuniary valuation are satisfied, an applicant is entitled as of right to leave to appeal to the Supreme Court if the decree of the Court of first instance is modified substantially by the decree of the High Court, where the matter in respect of which it has been modified is a matter in dispute before the Supreme Court, irrespective of the fact whether the modification is in favour of the applicant or not and although no substantial question of law is involved. But if the modification is in respect of a matter not comprised in the subject-matter still in dispute on appeal to the Supreme Court, the applicant is not entitled to leave as of right.

Ch. Sankara Sastri, Ch. Suryanarayana Rao and *Ch. Ramakrishna Rao* for Petitioner.

P. Satyanarayana Raju (The Government Pleader) for the Respondent.

K.S. ——— *Question answered.*

Somasundaram, J. Imam Sahib, *In re.*
14th March, 1952. Cr. R. C. No. 123 of 1951.
(Cr. R. P. No. 122 of 1951).

Criminal trial—Summons cases—Misjoinder—Vitiates trial.

The principle governing charges in warrant cases is equally applicable to summons cases. The provisions of section 233, Criminal Procedure Code, applies to summons cases also and misjoinder will vitiate the trial. Where however the offences were trivial and committed long ago, it was held that the ends of justice did not require that the accused should undergo separate trials for the offences.

G. Gopalaswamy for Petitioner.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S. ——— *Further proceedings quashed.*

Somasundaram, J. Behara Latchanna Patnaik, *In re.*
14th March, 1952. Crl. R. C. No. 1100 of 1951.
(Crl. R. P. No. 1078 of 1951).

Madras General Sales Tax Act (IX of 1939), *section* 15 (b)—*Assessment to tax of firms—Prosecution against partners individually for default—Unsustainable.*

A prosecution for failure to pay the sales tax assessed against a firm cannot lie against the partners individually. As the defaulter is the firm, the firm should be prosecuted. A complaint can be laid against all the partners of the firm as such and they can be prosecuted for non-payment of tax.

C. V. Dikshitulu for Petitioner.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) for the State.

K.S. ——— *Petition allowed.*

Somasundaram, J. Thirumalai Kolundu Thevar *v.* Subbiah Thevar.
18th March, 1952. Cr. R.C. No. 183 of 1951.
(Cr.R.P. No. 182 of 1951).

Penal Code (XLV of 1860), *section* 395—*Taluk Supply Officer taking bags of paddy suspecting them to be illicitly purchased by the accused—Accused believing* bona fide *that Taluk Supply Officer has no right to take them and getting the property back—If commits theft.*

Though the Taluk Supply Officer took certain bags of paddy suspecting them to be illicitly purchased by the accused in black market, still if the accused believed *bona fide* that the Taluk Supply Officer has no right to take them and got back the property in assertion of his *bona fide* rights, whatever offence he could have committed, he is not a thief and he cannot be convicted under section 395, Penal Code.

M. K. Nambiyar for Petitioners.

R. Santhanam for the Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S. ——— *Accused acquitted of offence of theft and convicted under S.* 450, *Penal Code.*

Rajamannar, C.J. and Venkatarama Ayyar, J. — The Management of Rajamani Transport, Ltd. *v.* The Workers employed in Rajamani Transport, Ltd.
18th March, 1952. — W. P. No. 594 of 1951.

Industrial Disputes Act (XIV of 1947)—Wages for different classes of workers—Criteria for fixing by Labour Appellate Tribunal and Industrial Tribunal.

Whether or not a particular employer is able to make profits has no bearing on the question as to what is the proper wage for the different classes of workers in the business carried on by the employer company. A comparison of the rates obtaining in similar business in the locality is extremely useful in arriving at a proper basic wage. If after paying such wages the company is unable to make any profit that may be a consideration for the company deciding to wind up. But the apprehension that the company may have to close the business cannot affect the question what is the proper scale of pay having regard to relevant factors like the nature of the work done, the capacity of the particular class of industry to pay and other similar factors.

K. Veeraswami and *G. Ramanujam* for Petitioners.
V. V. Raghavan for the Government Pleader on behalf of the State.
S. Viswanathan for first Respondent.
K.S. ——— *Application dismissed.*

Rajamannar, C.J. and Venkatarama Ayyar, J. — Venkatanarasayya *v.* The State of Madras.
20th March, 1952.
C.M.P. No. 5671 of 1951.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), section 9—Question whether particular grant comprises less than a village and outside the scope of Act—Right of suit of aggrieved party—Writ of mandamus—Cannot issue.

Where it is contended by a party that a grant in his favour comprised less than a village and therefore is not an "estate" still less an "under-tenure" within the meaning of the Madras Estates Land Act proceedings under section 9 of Madras Act XXVI of 1948 would not be strictly open to the aggrieved party. There is no other provision in that Act under which a special tribunal has been set up to decide such disputes. In such circumstances the aggrieved party will have a right of suit as he would have a good cause of action when proceedings are taken under colour of an Act which does not apply to the facts of the case. As the proper and adequate remedy is by way of a suit it is not necessary to invoke the jurisdiction of the High Court under Article 226 of the Constitution.

V. Vedantachari and *T. Rangaswami Aiyangar* for Petitioners.
The Advocate-General (*V. K. Thiruvenkatachari*) and the Government Pleader (*P. Satyanarayana Raju*) for Respondent.
K.S. ——— *Application dismissed.*

Subba Rao, J. — Gopalakrishnamurthi *v.* The Manager, Vuyyur Estate.
21st March, 1952.
W.P. No. 352 of 1951.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), section 57 (1) and (2) (c)—Power to decide whether ryot or landholder is prima facie *entitled to ryotwari patta or not—Delegation to manager—Power to be exercised judicially and after notice to party.*

The Government delegated their power to decide whether a *prima facie* case is made out for issuing ryotwari patta and the rules indicate that the said power should be exercised judicially. The word "Decide" and the right of appeal conferred against the order of the Manager of the estate are clear indications that the power should be exercised judicially. No judicial order could be passed without issuing notice to the parties affected. If no notice is given it is not possible for the aggrieved party to prefer an appeal within the prescribed time.

B. Manavala Chowdry for Petitioner.
The Government Pleader (*P. Satyanarayana Raju*) on behalf of Respondents.
K.S. ——— *Writ of mandamus issued.*

Somasundaram, J.
24th March, 1952.

Public Prosecutor *v.* Ponnu Kudumban.
Cr. R. C. No. 1175 of 1951.
(Cr. R. P. No. 1149 of 1951.)

Criminal trial—Case diary shown to Advocate for accused to enable him to cross-examine—Accused if can be compelled to apply for, furnish stamps and obtain copies—Criminal Rules of Practice (Madras), rule, 325—Scope.

Simply because the case diary was shown to the Advocate for the accused so that he can straightaway cross-examine the witnesses, without waiting for copies of it, it does not mean that the accused should be compelled to apply for it and furnish stamp papers or pay the prescribed charges. Whoever wants copies of any record, he must pay for it. If the accused do not want copies any more they cannot be compelled to pay for it and take those copies.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) in person.

S. Mohan Kumaramangalam for *Messrs. Row and Reddy* for Respondent.

K.S. ——— *Petition dismissed.*

Somasundaram, J.
25th March, 1952.

Ponnu Kudumban, *In re.*
C.M.P. No. 161 of 1952.

Criminal Procedure Code (V of 1898), section 196—Taking cognizance—What constitutes.

It is only when the Magistrate applies his mind for the purpose of proceeding in a particular way that is proceeding under section 200 and thereafter sending the case for inquiry and report under the subsequent sections he can be said to take cognizance of the offence. It is only when the final report as contemplated under section 173, Criminal Procedure Code, is made that is when a charge sheet is filed, it will be clear whether an offence has been committed or not, because by that time the investigation is completed and the entire material is disclosed by the particulars being mentioned in the charge sheet. Till then the Magistrate does not take cognizance. It cannot be said that when a preliminary charge sheet is filed the Magistrate takes cognizance. Only after final charge sheet was filed cognizance was really taken and if on that date sanction of the State Government as per the provisions of section 196, Criminal Procedure Code, was filed with the final charge sheet the committal on such charge cannot be quashed on the ground that the sanction was not filed with the preliminary charge.

S. Mohan Kumaramangalam for *Messrs. Row and Reddi* for Petitioners.

The Assistant Public Prosecutor (*A. C. Muthanna*) on behalf of the State.

K.S. ——— *Petition dismissed except as to accused Nos. 70 and 71.*

Somasundaram, J.
27th March, 1952.

Beyabani, *In re.*
Cr.M.P. Nos. 447 and 448 of 1952.

Madras District Police Act (V of 1861), section 53—Scope—Limitation for prosecutions under—When applicable—Prosecution for desertion—Section if applicable—Section 51—If applies—Dismissal of accused—If bar to prosecution on same facts.

What is contemplated under section 53 of the Madras District Police Act as a bar or limitation for the prosecution is the act done or intended to be done under the provisions of that Act or under the provisions of any other law. Where the complaint against an accused is not for anything done under the provisions of the Act or by virtue of any power conferred on him by the Act or any other Act, section 53 cannot apply and the question of limitation is not applicable to the case. It cannot be said that in view of the dismissal of the accused he ought not to be tried again for an offence and convicted. Section 51 of the Madras District Police Act will not apply to cases of dismissal made departmentally by the Police.

Neti Subramanyam for Petitioner.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) on behalf of the State.

K.S. ——— *Petitions dismissed.*

Subba Rao, J.
28*th March*, 1952.

Kumarappa Chettiar *v.* The State of Madras.
C. M. P. No. 9495 of 1950.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948)—*Enquiry by Settlement Officer and decision that a village is not an inam estate—If can be treated as an estate under section* 3 (2) *of Madras Act XXX of* 1947 *and rent fixed.*

Inam villages granted, confirmed or recognised by the British Government are one of the categories of estates mentioned in section 3 (2) of the Madras Estates Land Act. Before the Madras Estates Land (Third Amendment) Act, 1936, for a village to come within the definition of an estate, it should be a village of which the land revenue alone has been granted in inam to a person not owning the kudiwaram thereof. Under the said amending Act, however, every inam village, whether only melwaram was granted or both the warams were granted is an estate. The Government confirmed or enfranchised some of those inams and issued title deeds to the grantees. Government having conferred title on the grantees in respect of those inams cannot retrace their steps or revoke the grant, except when the conditions of the grant are violated. They are the properties of the grantees. The Legislature passed Act XXVI of 1948, vesting the inam estates, that is, estates under section 3 (2) (*d*) of the Madras Estates Land Act before it was amended by the Madras Estates Land (Third Amendment) Act, 1936, in the Government. Under that Act limited jurisdiction is conferred on the Settlement Officer to ascertain whether a village is an inam estate for the application of that Act. He cannot clutch at jurisdiction by deciding wrongly that the inam is of a whole village. His decision is subject to an appeal to the Tribunal. The decision of the Tribunal in respect of the subject-matter within its jurisdiction is final and cannot also be questioned in other proceedings. But under the Act no power, either express or by necessary implication, is given to the Settlement Officer to revoke the title deeds legally issued by the Government. The legality of the title deeds is assumed. But under the Act the inam statutorily vests in the Government subject to their paying compensation to the landholders.

Accordingly the Settlement Officer cannot revoke the orders confirming the grants and issuing title deeds to the grantees. He is statutorily functioning with a limited jurisdiction. The order of the Settlement Officer holding the inam "as part of a village and therefore not an estate" is not binding on the Government functioning under Act XXX of 1947. It cannot be said that a notification under Act XXX of 1947 by the Government fixing the rent of such village is illegal though it may be advisable to withdraw such notification which is at variance with the order of the Settlement Officer. There is also an effective remedy by way of suit to the party aggrieved by the notification.

V. Vedantachari and *T. Rangaswami Aiyangar* for Petitioner.

The Government Pleader (*P. Satyanarayana Raju*) on behalf of the State.

K.S. *Application dismissed.*

Subba Rao, J.
31*st March*, 1952.

Ramaswamy Gounder *v.* The State of Madras.
W. P. No. 116 of 1952.

Motor Vehicles Act (IV of 1939), *section* 43-*A—Scope—Notification by Government directing Regional Transport Authority to show preference to operators in the pre-war time—Validity.*

The Legislature enacted section 43-A of the Motor Vehicles Act empowering the Government to issue general directions in regard to matters relating to road

transport. The notification of the Madras Government directing the Regiona Transport Authority to show preference to operators in the pre-war time for grant of bus route permits falls within the purview of the provisions of section 43-A of the Act and is valid. The scope of the section cannot be curtailed only to administrative functions and not to quasi judicial functions.

Miss Perveen Amiruddin for Petitioner.

The Advocate-General (*V. K. Thiruvenkatachari*) for the Government Pleader and *M. K. Nambiar and N. G. Krishna Aiyangar* for Respondents.

K.S. *Application dismissed.*

Rajamannar, C.J. and Venkatarama Ayyar, J.
14*th April*, 1952.

Janardhana Krishna Ranga Rao *v.*
The State of Madras and others.
C.M.P. No. 6554 of 1951.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), *sections* 45, 47 *and* 50—*Notification and taking over of impartible estate and deposit of advance, compensation amount—Maintenance holder if entitled to claim as member of joint family treating the compensation amount as joint family property and not as impartible property.*

A junior member entitled to maintenance out of an impartible estate has no right to the estate or the compensation paid on Government taking over the estate under the Madras Estates (Abolition and Conversion into Ryotwari) Act. The right to maintenance is not attributable to any present interest in the estate. When the estate is converted into money the custom of impartibility and its incidents will not cease to apply.

The material time for the purpose of determining the rights of parties would be the date of the notification by virtue of which the estate is statutorily transferred to the Government under the Madras Estates Abolition Act and at that time a junior member in an impartible estate has no subsisting and real interest in the estate except his right to get maintenance in accordance with the custom embodied in section 9 of the Madras Impartible Estates Act. His right of succession in certain contingencies cannot be treated as a right to a share in the property during the lifetime of the holder for the time being. If at the time of the notification the junior member did not have any right to a share in the corpus of the estate, then he cannot contend that after the notification and after the estate had vested in the Government he will have such a right. The question raised as to the validity of sections 45, 47 and 50 of Madras Estates Abolition Act not dealt with as unnecessary in view of the above decision.

K. Rajah Aiyar, D. Srinivasa Sarma and *C. H. Suryanarayana Rao* for Petitioner.

The Advocate-General (*V. K. Thiruvenkatachari*) for the Government Pleader on behalf of the State.

N. Rajagopala Aiyangar and *Alladi Kuppuswami* for Respondents.

K.S. *Application dismissed.*

Subba Rao, J. Surya Rao Bahadur *v.* The Board of Revenue.
5th February, 1952. W. P. No. 796 of 1951.

Madras Estates Abolition Act (XXVI of 1948), section 18—Portion of building used for a purpose other than as office—If vests on taking over of estate in Government.

Building includes the site as well as the premises occupied as an appurtenance thereto, and the entire building so defined must have been used as an office. If any portion of the building was used immediately before the notified date for a purpose other than an office purpose, it would not vest in the Government.

Ch. Ramakrishna Rao for Petitioner.

The Government Pleader (*P. Satyanarayana Raju*) for Respondent.

K.S. ——— *Petition dismissed.*

Satyanarayana Rao, J. Kotrayyar *v.* Gangamma.
4th March, 1952. Appeal No. 27 of 1949.

Arbitration Act (X of 1940), sections 32 and 33—Scope—Plea raised in defence that it is barred by reason of the existence of arbitration award—If by itself renders suit unsustainable.

Where a defendant contends that the suit is barred by reason of the existence of an award but it is found that the original arbitration agreement which was unstamped was not produced and therefore secondary evidence was inadmissible, there is no provable award which the Court could take notice of. It can preclude the plaintiff from suing only if really there was a legally provable award. It is open to the Court when the defendant raises the question that there was an award in defence to the plaintiff's case to consider whether there was really an award. It cannot be said that the suit was incompetent.

V. T. Rangaswami Aiyangar (The Public Prosecutor) and *K. Kalyanasundaram* for Appellant.

B. V. Ramanarasu for Respondent.

K.S. ——— *Appeal dismissed.*

Satyanarayana Rao, J. Narayana Shetty *v.* Aisamma.
14th March, 1952. Appeal No. 261 of 1947.

Pardanashin lady—Tests—Transaction by—How far binding on her—Undue influence—Extent necessary to vitiate transaction.

The expression "pardanashin" is applied to cases where the lady is always kept in complete seclusion. It is not enough that she wears burkha and does not usually appear in the public. It is not enough for a lady who claims to be a pardanashin women to establish that there was some sort of seclusion. If a woman, though observing gosha, comes to Court, gives evidence, fixes the rents and carries on business, there is no reason to regard her as a pardanashin lady entitled to advantage and protection which the law recognises and confers upon pardanashin ladies. Even in the case of a purchase from a pardanashin lady the only burden which the vendee has to discharge is to establish that in transferring the property the lady was a free and independent agent whether there had been independent advice or not. It is not necessary to establish that there was independent advice, if the Court is satisfied that the lady fully understood what she was doing when she executed the document.

To have a sale set aside on the ground that it was executed under undue influence it must be established that the person in a position of domination has used that position to obtain unfair advantage for himself, and so to cause injury to the person relying upon his authority or aid.

M. K. Nambiar for Appellant.

K. Y. Adiga and *K. P. Adiga* for Respondent.

K.S. ——— *Appeal allowed.*

Raghava Rao, J.
24th March, 1952.

Subramanyam Chettiar *v.* Isakki Ammal.
C.R.P. Nos. 2027 and 2028 of 1951.

Civil Procedure Code (*V of* 1908), *section* 115—*Revision—Costs ordered on allowing amendment of written statement—Inadequacy—Interference in revision.*

Where having regard to the nature of the stake an order for payment of costs of Rs. 5 only as condition for allowing amendment of a written statement is inadequate the High Court can interfere in revision with the order as to payment of Rs. 5 only as costs. [An order for payment of Rs. 100 as costs was substituted by the High Court.]

G. R. Jagadisa Aiyar for Petitioner.
S. Ramachandra Aiyar for Respondent.

K.S. ——— *Order varied.*

Rajamannar, C.J. and Venkatarama Aiyar, J.
28th March, 1952.

Vakhan *v.* The Government of the Province of Madras.
Appeal No. 185 of 1950.

Madras General Sales Tax Act (*IX of* 1939), *before its amendment in* 1947 *and* 1949 *—Section* 2 (b)*—Dealer—Meaning—Person in Cochin State selling goods to residents in Cochin Fort—Liability to sales tax under the Madras Act.*

The plaintiff's principal place of business was in Palluruthy in the Cochin State and he was also a resident of that place. He had large dealings with European firms in Fort Cochin to whom he sold coir yarn. The contracts were mostly executed in Fort Cochin either by the plaintiff or his son. The goods were despatched from Palluruthy to Fort Cochin and delivered to the merchants in Fort Cochin. The plaintiff claimed that he was not a dealer assessable to sales tax in respect of his dealings as he had no place of business in British Cochin or the Province of India,

Held, (1) A person who is not a resident of a State cannot escape from or evade the imposition of taxes by the particular State if the necessary requirements are fulfilled which justify the levy of a tax.

(ii) On the facts the plaintiff must be held to be a person who carries on the business of buying or selling goods in the State of Madras and therefore a "dealer" within the meaning of section 2 (*b*) of the Madras General Sales Tax Act. The sales tax is a tax levied on the occasion of the sale of goods. The sales must in the instant case be deemed to have taken place in Fort Cochin which is a part of the State of Madras.

T. V. Muthukrishna Aiyar, N. R. Sesha Aiyar, C. T. Verghese and *A. V. Ramanatha Aiyar* for Appellant.

The Government Pleader (*P. Satyanarayana Raju*) and *V. Balakrishna Eradi* for Respondent.

K.S. ——— *Appeal dismissed.*

Govinda Menon and Krishnaswami Nayudu, JJ.
31*st March*, 1952.

Dhanam *v.* Varadarajan.
Appeal No. 732 of 1948.

Hindu Women's Right to Property Act (*XVIII of* 1937) *before enactment of Madras Act* (*XXVI of* 1947)*—Leasehold and mortgage interest in Agricultural land—Widows not entitled to share in as the Act cannot affect agricultural property.*

Leasehold and mortgage interest in agricultural land in Madras Province will not come within the purview of Hindu Women's Right to Property Act, 1937, before the enactment of Madras Act XXVI of 1947 and such interest cannot be divided between the widows and coparceners. The fact that a debt can be assigned apart from the security would not make the mortgage any the less an interest in agricultural land. (Case law discussed).

G. R. Jagadisa Aiyar for Appellants.
S. Thyagaraja Aiyar for Respondents.

K.S. ——— *Appeal dismissed*

Somasundaram, J.
1st April, 1952.

The Public Prosecutor *v.* Kuncham Venkateswaralu.
Crl. Appeal No. 459 of 1951.

Madras General Sales Tax Act (*IX of* 1939), *section* 13—*Offence under—Essentials to be proved.*

For an offence under section 13 of the Madras General Sales Tax Act the prosecution must prove that the accused is a "registered" dealer within the meaning of the Act. Every assessee has to be a registered dealer but the Legislature have overlooked to say "registered" dealer in section 9. If an assessee has not registered himself, he may be punishable for that but not for not maintaining correct accounts which is an obligation cast on registered dealers only.

Adavi Rama Rao for Accused.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S.

Appeal dismissed.

Mack and Basheer Ahmed Sayeed, JJ.
4th April, 1952.

Molagan and others, *In re.*
Crl. Appeals Nos. 363 and 366 of 1951.

Criminal Procedure Code (*V of* 1898), *section* 173 (2)—*Scope—Permitting defence counsel to see portions of Police diary for use in defence of case—Desirability.*

Though an accused person is not entitled as of right to see the case diary and his statement to the police recorded in it there is no prohibition contained in section 173 (2) of the Code of Criminal Procedure against the Court permitting in its discretion defending counsel to see any portion of the case diary, which the Court considers in the interests of justice he should see and use in the defence of the case. There is no legal impediment to the committing Court permitting in its discretion and in appropriate cases defending counsel at his request to look into a case diary to verify what the accused told the police as recorded there, before formulating his defence, under section 172 (2), Criminal Procedure Code to aid the Court in the enquiry or trial. Under the law as it now stands such a permission cannot be claimed by the accused as a matter of right. It is comparatively of little use for defending counsel being permitted to look at the diary by the Sessions Judge at a belated stage of the trial. Defending counsel should know what the accused told the police in the first instance.

There is a heavy responsibility on the Courts in the user of case diaries under section 172 (2), Criminal Procedure Code and on Public Prosecutors to bring to the notice of the trial Judge anything in the case diary favourable to the accused.

V. Rajagopalachari and *E. Subramaniam* for accused 2 and 3 and *S. Chellaswami* amicus curiae for accused 1.

The Assistant Public Prosecutor (*A. C. Muthanna*) on behalf of the State.

K.S.

Conviction of first accused confirmed and conviction of other accused set aside.

Rajamannar, C.J. and Venkatarama Aiyar, J.
7th April, 1952.

Ramamoorthy, *In re.*
W. P. No. 144 of 1952.

Constitution of India (1950), *Article* 226—*Powers under—Conditions necessary for exercise of.*

It is certainly not the province of the High Court to interfere *suo motu* or at the instance of any person whenever there is any disregard or violation of any of the provisions of the Constitution. The High Court's power under Article 226 of the Constitution can only be invoked at the instance of a person who has a personal grievance against any act of the State in its executive capacity which inflicts a legal injury on him. The right which is the foundation of a petition under Article 226 of the Constitution is a personal and individual right. The nomination of a member to the Madras Legislative Council by His Excellency the Governor of Madras in pursuance of Article 171, clauses (3) (*c*) and (5) of the Constitution

of India does not infringe the personal right of any elected member even in an indirect manner so as to entitle him to sustain an application for the issue of a writ of *certiorari* to quash the order of His Excellency the Governor. It cannot be said that it is incumbent on the Court to interfere *suo motu* in the matter and issue a writ of *certiorari*.

The Petitioner in person.

K.S. ——— *Application dismissed.*

Somasundaram, J. Subbayyamma *v.* Venkata Rao.
9*th April*, 1952. Crl. R. C. No. 1029 of 1951.
(Crl. R. P. No. 1010 of 1951.)

Criminal Procedure Code (*V of* 1898), *section* 488—*Claim by wife for maintenance—Allegation in defence that wife was living in adultery—Burden of proof—Party bound to begin the case.*

In a case of maintenance under section 488 of the Code of Criminal Procedure where the husband makes allegations that the wife was living in adultery and makes that his defence to refuse the claim of the wife for maintenance, the husband ought to begin the case and let in evidence of unchastity so that the wife may rebut it.

K. B. Krishnamoorthi for Petitioners.

C. V. Dikshitulu for Respondent.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) on behalf of the State.

K.S. ——— *Case remanded.*

Somasundaram, J. The Public Prosecutor *v.* Swami Chetty.
10*th April*, 1952. Crl. Appeals Nos. 910, etc., of 1951.

Companies Act (*VII of* 1913), *sections* 76 *and* 131—*Offences under—Complaint for—*Locus standi *to make.*

With regard to offences under the Companies Act, there is no provision that any offence should not be taken cognizance of unless the complaint is filed by any of the persons mentioned in the Act. In the absence of such a provision the normal rule, namely, that any person may set the criminal law in motion will apply. No doubt in cases under Companies Act, it has been considered desirable that either the Registrar or Joint Registrar or officer concerned in dealing with the Act should prefer the complaint. The Regulations framed assigned the duty of making investigations into these matters to the above officers and directing them to file the complaint in such matters. But these regulations do not take away the right of any citizen to file a complaint under the Companies Act. In the absence of a special provision requiring that the complaint should be filed by a particular person, a complaint either by any citizen or a member of the company or by Assistant Registrar will be a valid complaint.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) for Appellant.

P. C. Parthasarathi Aiyangar for Respondent.

K.S. ——— *Case remanded.*

Chandra Reddi, J. Chakkarai Chettiar, *In re.*
15*th May*, 1952. W. P. No. 430 of 1952.

Constitution of India (1950), *Article* 226—*Powers under*—Qua warranto—*Writ in the nature of*—Locus standi *to apply for issue of.*

The nomination of a member to the Madras Legislative Council by His Excellency the Governor of Madras in pursuance of Article 171, clauses (3) (*c*) and (5) of the Constitution of India does not infringe the personal right of any elected member and so long as such a member is not aggrieved by the nomination he is not entitled to question the validity of the nomination by a proceeding for information in the nature of a *quo warranto*.

S. Mohan Kumaramangalam for Petitioner.

K.S. ——— *Application dismissed.*

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