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MUSINGS ON 1975.

by

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It is wistful thinking that one should be like the ancient Roman God Janus which is credited with two heads one looking back into the old year and one forward into the new commanding both hindsight as well as foresight, so that warned about the shoals and rocks of the immediate future one might use the experiences and wisdom of the immediate past in meeting them. Each year has its own momentous events involving as they do individuals and countries which matter. Judged by any standard the expiring year has been an eventful year.

Helsinki.— In the international scene, heralding, as it is hoped, a new era of efforts to preserve peace in Europe torn by a millenium of war and turmoil, the leaders of 35 European and North American countries signed a historic document pledging to promote better relations among them and making the post-world War II borders inviolable. The venue of the Conference was Helsinki; hence the agreement has come to be known as the Helsinki charter and its underlying spirit has come to be hailed as the "Helsinki spirit". The document was signed on 1st August, 1975.

The first section titled, "questions relating to security in Europe" consists of 10 principles which should govern relations among participating countries. The 10 principles are: 1. Sovereign equality for the rights inherent in sovereignty; (2) Refraining from the threat or use of force; (3) In violability of frontiers; (4) Territorial integrity of States ; (5) Peaceful settlement of disputes; (6) Non-intervention in internal affairs; (7) Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief; (8) Equal rights and self-determination of peoples; (9) Co-operation among States; and (10) Fulfilment in good faith of obligations under international law.

In addition to the 10 principles, the first section provides for the convocation for a conference to draw up a treaty on the peaceful settlement of differences. Switzerland is charged with calling this conference at an opportune time. The treaty will imply that the peaceful settlement of differences is obligatory.

The first section also calls for each signatory to voluntarily notify others 21 days in advance of military manoeuvres involving more than 25,000 ground, air and naval forces, excluding strictly air and naval manoeuvres.

One passage protects the quadripartite rights in Germany.

The second section is titled, "Co-operation in the field of economics, of science and technology and of the environment." The participating States "consider that the volume and structure of trade among the participating States do not in all cases correspond to the possibilities."

"They are resolved to promote, on the basis of the modalities of their economic co-operation, the expansion of their mutual trade in goods and services, and to ensure conditions favourable to such development.

They recognise the beneficial effects which can result for the development of trade from the application of most favoured nation treatment.

They will endeavour to reduce or progressively eliminate all kinds of obstacles to the development of trade and will foster a steady growth of trade while avoiding as far as possible abrupt fluctuations in their trade."

They have also included a clause on the defence of internal markets against disorganisation by imports of cheap goods, declaring that they "consider it appropriate to create favourable conditions for the participation of firms, organisations and enterprises in the development of trade."

The Helsinki agreement has been hailed as a Magna Carta for Europe, but whether the signatories, particularly the Great Powers, are going to honour it in spirit and letter remains to be seen. A welcome feature of it has been that the communist and non-communist blocks have for the moment ceased to emphasise ideological differences. With the muting of ideology the climate has improved for following pragmatic policies avoiding rigid postures and for the slowing down of the arms race. The agreement states *inter alia* that while expanding co-operation among themselves the 35 nations will take into account the developing countries throughout the world. The proof of the pudding is in the eating. It has been remarked that there were a number of apostles of peace at Helsinki but that it really means nothing. It is pointed out that the United Nations also harbours apostles but they are not prominent usually; they are selling books or stamps or doing modest volunteer work of some kind, the moral being that there were really few at Helsinki who saw any point in working for peace except by preparing for war.

International law of the sea.—1975 was supposed to be the year of decision for drawing up an international law of the sea. But the Geneva Conference on the law of the sea concluded an eight-week session on 9th May, with the 150 participating States still far apart on framing laws to govern the use of the world's oceans. The participants decided to hold another eight-week meeting on 29th March, next year. This failure only underlines the difficulties in drawing up any convention likely to satisfy the many conflicting interests involved, the industrial and developing nations, the coastal and land-locked countries, the fishermen and the oil companies, the naval powers and the environmentalists. Apart from the vast resources of oil and natural gas in the offshore area, the sea-bed in also estimated to contain fabulous riches in metals. According to one United States study, the Pacific Ocean alone is supposed to hold 358 billion tons of manganese, 14.7 billion tons of nickel, 7.9 billion tons of copper and 5.2 billion tons of cobalt. The developing nations, which were kept out by the western countries in the race for exploiting the natural resources of the world's land mass during the last two centuries, are now determined not to get cheated out of their due share of the sea's wealth. They are pressing for an international convention which will give them full control of as wide and deep an area of the sea along their coasts as possible besides a fair share of the riches of the sea beyond their territorial limits. They want an international agency which will regulate

or itself exploit the "open" sea's mineral riches and allocate the proceeds equitably among all the countries of the world. The leading advanced countries are willing to accept a 12-mile territorial limit but this should not curtail the right of free passage for the ships of all countries. There are numerous straits like Malacca and Gibraltar which are less than 24 miles wide and the two States on either side of such a strait could close it to shipping by exercising their 12-mile territorial jurisdiction. Similarly the advanced countries are willing to accept a 200-mile "economic zone" for coastal countries where the latter can have preferential claims but not exclusive rights to exploit the zone.

The United Nations General Assembly has declared the sea's riches "the common heritage of mankind." It is up to the nations of the world to come to an understanding on how "this common heritage" is to be shared. Failure to do so soon will make the sea-bed a free-for-all, with the prize going to the strongest and the least scrupulous, as happened to the natural resources on land in the past. It will not be the developing countries alone that will suffer in that event but the advanced countries too, as witness the cut-throat rivalries that have developed among the latter during the last two centuries.

The International Women's Year—1975 has been the International Women's Year, the year of Eve's quest for equality. Women desire to come into their own, to what they believe they are entitled to, in a serious and organised manner. Not all women know what these things are. Nor are all women the world over in the same condition. Approaches to the problems of women vary from country, whether they are social butterflies or are equal toilers along with men or are virtual slaves of men. It is not just a matter of women wearing pants or pants-like contraptions by whatever name called, slacks, bell-bottoms or flares. It is a challenge much more serious. A recent United Nations Study states that the image of women fits one of two stereotypes-woman as a sex idol obsessed with the need for masculine approval, and woman the home-maker with a cleanliness compulsion, forever sniffing the kitchen floor or the family wash. The Study also points out that advertising is the most insidious form of mass-media perpetuation of the derogatory image of women as sex symbols and as an inferior class of human beings.

For the "International Women's Year 1975", three objectives were laid down by the United Nations Organisation. These are: The promotion of equality between men and women, full integration of women in development and involvement of women in the promotion of world peace.

The achievement of these objectives called for concerted and intensified action:

(*a*) To ensure the full integration of women in the total development effort, especially by emphasising women's responsibility and important role in economic, social and cultural development at the national, regional and international levels, particularly during the second United Nations Development decade;

(*b*) To recognise the importance of women's increasing contribution to the development of friendly relations and co-operation among States and to the strengthening of world peace;

In our country, it is admitted that during the Vedic period women were held in high esteem, enjoying a high status both at home and outside, many of them becoming poetesses, mathematicians and even theologians. They had also a certain amount of freedom and an effective say

in the selection of husbands was is evident from the practice of holding "swayamvara". In later times, for various reasons, the position of women suffered deterioration and practices like polygamy, purda, sati, child-marriage came vogue and reduced women to a position of liability. After centuries of travail and obscurity, with the advent of Independence, a new impetus was given for the amelioration of women's position. The Constitution provided for them equality of status and opportunity and the Directive Principles of State Policy have enjoined the States to make special provisions for women's progress. Legal inequalities and disabilities in the fields of marriage, guardianship, adoption and inheritance have mostly been removed. As if to emphasise equality of a wife with her husband law has gone to the length of providing liability by a better-circumstanced wife to pay permanent alimony and maintenance to her husband on dissolution of their marriage. Indian women have better legislative protection than their counterparts in many other countries. In fact most of the assurances asked for in the United Nations Declaration on the Elimination of Discrimination against women have been enshrined in the Indian Constitution. If the benefits expected from them are still to flow to the majority of women it cannot be because of official policy. The real explanation lies in the contradictions of Indian society. During the past two decades and a half spectacular strides have been taken in promoting women's cause. Nevertheless, there are gaps in the opportunities and facilities available to women as compared with men. The percentage of women in Parliament even in 1971 was only about 5.5 per cent. of the total strength of both the Houses. There are a number of moribund customs, regulations and practices discriminating against women as accounts in newspapers show from time to time. The omission in respect of equal pay for equal work with men has now been corrected. Yet a wide gulf exists between the privileges which the law guarantees and what are actually enjoyed. Between the many illiterate women who are employed in agriculture or ancillary rural occupations or construction works and the literate women working in offices and factories, there is a growing difference in social outlook. While both groups are subject to many of the conventional taboos of conservatism which have been accepted by Indian women through the ages, higher education is helping to widen the horizon of the modern woman and is enabling her to compete with men in every field. The Government recognising the rural base of the majority of women workers, is working on a scheme to give them special farm training as the means to improve the productivity of their work, besides inducing an understanding of their deserts, occupational as well as social. To a very large extent, the intensification of the family planning drive and the applied nutrition and health care programmes in the villages have exposed rural women to the winds of social change blowing around them. If, along with this, the campaign for universal education (inclusive of adult education) is mounted with greater vigour with the support of the powerful audio-visual aid which television offers in the sphere of mass communication, there can be the requisite opening of minds to provoke forward thinking. It is such a change which has got to be worked for devotedly. In the organised and urban sectors, the position is no doubt a great deal better. In these sectors, women are becoming more and more alive to their interests, and the application of the doctrine of equal pay or equal rights should produce quick results for them.

Also women ought not to treat everything that comes from the west as gospel.

They should take care to see that personal liberty does not go too far, as Indian culture and tradition are different and in no other country women were respected and treated in the same way as here. The problems of Indian women have to be solved from the sociological and economic angle.

A significant step in the emancipation of women to keep up the tempo of the activities organised during 1975 was taken on 7th December, by the United Nations when its Social and Humanitarian Committee unanimously adopted a resolution proclaiming the decade 1976-1985 as "United Nations Decade for Women" to be devoted in particular to a world plan of action to ensure their equality in society.

Sikkim.—In the domestic sphere, a noteworthy event was Sikkim becoming the 22nd State of the Indian Union. The 333-year old institution of Chogyal thereby came to an end and marked Sikkim's final break with centuries of feudal rule. The Himalayan territory thus joined the family of Indian States as a full-fledged unit of India.

Emergency:—Perhaps the most important event in the history of the Indian Republic was the declaration of national emergency. One admitted good effect that has flowed from this Emergency is the trend towards toning up of efficiency and a keener sense of discipline in some spheres of daily human activity. Discipline is a pre-requisite to the accomplishment of the many development tasks the country has set for itself in the economic and social fields. There can be no doubt that if the present atmosphere stabilises itself into an era of sustained and conscientious work by all sections and segments of society it can only be for the good of the nation.

Abolition of Bonded Labour:—The Presidential Ordinance abolishing bonded labour has been welcomed all round. The ban on bonded labour, one of the twenty points in the economic programme of the Prime Minister, was a form of contractual slavery which has been a part of our rural society for quite a long time. One form of it was the pledging by indigent labour of his or family's labour without wages or at nominal wages to the lender. Another form was to render free labour for some days in the year in consideration of occupying hutment. The latter form has been eradicated by the conferment of ownership rights to the hutment-dwellers. Penalty of imprisonment and fine for violation of the Ordinance provisions against the practice of bonded labour may deter many. A repercussion of it may be the drying up of the labourer's credit. It is therefore desirable that extension of credit for consumption needs (as apart from those for productive purposes) should be made available as a follow-up action. The large number of under-privileged who are compelled by dire poverty even to sell their personal freedom for the sake of getting a bare subsistence can hope to derive the full benefit of the legal prohibition of bonded labour by the Presidential Ordinance only if more abiding solutions for their rehabilitation are forthcoming.

Court-fees:—It is saddening to learn that the States which replied to a Union Government circular on the matter of Court-fees were not in favour of reducing the Court-fees as recommended by the Law Commission. That litigation must be brought down as also their cost is accepted. That the Court-fees in many States are high is also admitted. Nevertheless the fact that it is an easy method of adding to the revenues of the State whatever the Courts of law may say has induced reluctance in the States to reduce the same. That high Court-fees

tend to discourage false and frivolous claims is debatable. Though in principle administration of justice must be treated on the same lines as providing education or health services, their expenses being met out of the general revenue, and this is not disputed, many States recover through Court-fees even the cost of administering criminal justice, an absolutely unethical action. The proper thing will be to charge the salaries of judicial officers on the tax-revenue and only the other costs of the judicial establishment should be recovered through fees. High rates of Court-fees are in effect a tax on justice. In Tamil Nadu there is provision for refund of half the Court-fees only in cases where a suit is dismissed as settled out of Court before any evidence is taken on the merits of the claim. Would it not be proper if at least the provision is extended to cases where suits are decreed *ex parte* or on admission or on compromise?

Practice of torture:—It was welcome news that a hundred nations including India have approved of a declaration of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders that all States should see that torture is not practised within their jurisdiction. The declaration said that all acts of torture are offences under criminal law and criminal proceedings shall be instituted against a person if investigation established that he committed an act of torture. Torture is the deliberate infliction of pain used to extort confessions of guilt from persons seized by the police or the army or militant political groups. Some nations and individuals have held that even if torture is outdated in relation to ordinary crimes, it is justifiable to use it against political offenders. In recent times two countries practised torture of this kind, namely, Greece under the dictatorial regime it had sometime ago and in Chile after the overthrow of the Allende regime. There is also prevalent an impression that torture is permissible during war time, to extract information from the captives. In Algeria, during the period of military activities by France, torture was employed according to a former French Commander-in-chief. In the Vietnam conflict also many cases of torture came to light. Torture need not take the form of physical violence. There are various types of it described by Solzhenitzin in his book. "The Gulag Archipelago". Mere passing of resolutions against torture may not go far. Police chiefs must change their methods and police training should include the subjects of ethics, human rights and social socience. Private organisations for prison reform may also expose cases of maltreatment of prisoners.

Role of lawyers:—The role of lawyers at the present tme, the code of conduct and ethics they should observe and practice in their professional life, the ways in which they could help in the cause of the poor and in the achievement of justice, social and economic, have often been discussed. One thing is clear. The evolution of the legal profession took place in the matrix of an individualistic society in which the lawyers and clients were mainly the landowner, the farmer, the employer and company-promoter, when property and freedom of contract were paramount. In such atmosphere the lawyer was concerned with those rights and his profession took its tone and outlook from the wealthy and middle classes. But times have now very much changed. The old social order based on wealth and privileges has crumbled yielding place to socialism and in some instances to communism. Sanctity of private property is vanishing and it is the community whose rights are coming

in for emphasis. Law as well as lawyers have to respond to this change. A wind of change may not be roaring down the ancient corridors. But there is a distinct current of fresh air. Adaptation is called for not as a shrewd response but as reflecting the growth of an intelligent realisation and real conviction that we cannot fashion a closing 20th century service from a 19th century mould. Law should not get smothered in the *status quo* which is a part of the lawyer's mental equipment.

The Bar, by and large, is an autonomous institution. The Bar Council looks after its rights and privileges and sets down the norms and rules to be observed in the practice of the profession. Within a State, under section 35 of the Advocates Act, when on complaint or otherwise the State Bar Council has reason to believe that any advocate on its rolls has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee. A person aggrieved by an order of the Disciplinary Committee of a State Bar Council can appeal to the Bar Council of India under section 37. Any person aggrieved by an order made by the Disciplinary Committee of the Bar Council of India may appeal to the Supreme Court under section 38. In one such appeal, the Supreme Court points out that professional misconduct of lawyers must be understood in the setting of a calling to which Lincoln, Gandhi, Lenin and a galaxy of great men belonged; that the high moral tone and the considerable public service the Bar is associated with and its key-role in the development and dispute-processing activities and above all in the building up of a just society and constitutional order has earned for it a monopoly to practise law and to an autonomy to regulate its own internal discipline; that this heavy public trust should not be forfeited by legalising or licensing fights for briefs, affrays in the rush towards clients, under-cutting and wrangling among members; and, that the legal profession must live up to its reputation as a branch of the administration of justice and live down any impression as a money making trade and that an attorney, solicitor, barrister or advocate will be suspended or disbarred for soliciting legal business.

Legal aid:—1975 has brought up the subject of legal aid as one to be urgently tackled. Though it is more than two years since the Krishna Iyer Committee made its recommendations on the subject no action has so for been taken on it. An Indian Council of Legal Aid and Advice with the Union Law Minister at its head and composed of jurists, law ministers, law teachers and lawyers has has been inaugurated to render free legal service to the weaker sections of the people. A learned Judge has suggested that such an authority should be set up under a Central statute and be broad-based in which judges, lawyers, law teachers, social scientists and social workers are associated. Legal aid and advice boards for each State was also to be organised. Another suggestion made in this behalf is that a national legal services authority also should be set up at the Centre and legal aid and advice boards at the State level under a central statute. The society's duty will be to advance the knowledge of law among members of the general public and institutions, to act in an advisory capacity to social agencies relative to legal problems, and to receive bequests, gifts, grants and donations of both movable and immovable properties. With respect, it may be said that none of the suggestions gives a complete solution to the problem. No one disputes that equality before the law and equal protection of the laws would be unreal if the

poor were not able to secure competent legal assistance for want of resources. At a Seminar held at Bangalore recently, a learned Judge observed that the cause of the poor has always suffered in the Indian Courts because a large number of them went undefended and it was a tragedy of the Indian legal system that lawyers did not come forward to help the poor. He also suggested that while retired judges should be used it was really the junior lawyers who could help. These observations provide food for serious thought. At the same time it may be mentioned that many of the lawyers at least during their early years at the Bar are hard pressed for money. Both in the High Court and elsewhere most of the briefs are held by reputed and experienced lawyers and are beyond the reach of the junior members of the Bar. It will be a good thing if the more fortunately placed lawyers are persuaded to do a specified percentage of the cases free and the junior lawyers whose services are requisitioned for legal aid also receive an adequate payment. As to the scope of legal aid, Mr. Gokhale, the Union Law Minister observed that if the poor man was to be helped it would not be enough to give him legal aid and advice only; necessary and oppressive laws which sapped his energy and robbed him of his resources should also be changed. Further whatever scheme was drawn up for rendering legal aid should be eminently practical and useful starting point would be the lowest Court where most of the small cases were instituted. Another learned Judge has suggested that small-claims Courts, Harijan Tribunals and a host of other agencies doing mobile summary simple hearings should be set up. There will be general agreement with what the Prime Minister said in the course of one of her speeches that legal aid to the poor was not a mere constitutional obligation but a social imperative, that it should not be viewed as charity but conceived as an integral part of the legal system.

One or two other relevant considerations may also be stated. If justice is costly -why is it so? Is not exorbitant Court-fees a burden on the weaker sections of the community keeping them out of the Courts? If the administration is such that the weaker sections seeking justice are unable to do so because of lack of resources, the judiciary is of no use to them. Most socialistic countries have no Court-fees at all. In some others, the Court-fees are next to nothing. Though it may not be possible to go to this extent, it is quite necessary in India to make a drastic reduction in Court-fees. The fear that there will be a spate of cases because of the reduction or abolition of the Court-fees is a bogey. May be in the first flush this will happen but in course of time it will settle down to comfortable working.

Again if justice is dilatory and therefore poor people have lost faith in Courts who or what is responsible for the delay? 'Justice delayed is justice denied' is a catchy slogan as much as 'justice hurried is justice buried'. Delay is mainly due to the highly technical character of the procedural laws. Though brave words are spoken even the revised code like the Code of Criminal Procedure (Act II of 1974) has not been able to jettison altogether technicalities. Mobile Courts, summary trials, provision for rendering popular justice etc., may help in cutting delay. Whatever system of legal aid finally emerges it must be eminently practical and practicable.

Restructuring the Judicial System:—

Time was when the Judicial System in this country was regarded as one of the greatest benefactions of the British and an institution to be cherished. With

the passage of time a different and critical outlook has come to the fore. In her speech in inaugurating the Indian Council of Legal aid and advice at Delhi on 4th October, the Prime Minister remarked that the legal system must shake off the inhibiting legacy of its colonial past and assume a dynamic role in the processes of transformation, that it should assist in the liberation of the human spirit and the human institutions from the strait-jacket of outdated customs, and that if we allow the impression to grow that legal pronouncements tend to frustrate the aspirations of the weaker sections who form the vast majority then their faith in the entire system will be eroded. The implication seems to be that the judicial approach based on the technical rules of interpretation favoured in England without reckoning with the spirit and objectives of a statute had become outmoded and outdated in view of the Preamble to the Constitution and the Directive Principles of State Policy and adoption of the "welfare state" ideal. The Punjab and Haryana Democratic Lawyers Conference, in which many Judges also participated in the early days of December, expressed the view that "the present system of administration of justice is unsuited to the genius of the people of the country". At the Karnataka State Lawyers' Conference organised by the Karnataka Unit of the National Committee for Legal Aid and the Karnataka Unit of the National Forum of Lawyers, held early in November, Justice Bhagwati advocated overhauling the country's legal and judicial systems to secure socio-economic justice to the poor. He seems to have felt that the present system of administration of justice was archaic, was not responsive to the new norms and values and was not suited to the national genius. Among the points listed were: (*i*) disharmony between law and justice; (*ii*) air of formalism in Courts which was a mystery to the common man; (*iii*) inadequacy of the present system to suit social needs; (*iv*) non-involvement of the common man in the administration of justice. These are not observations of mere politicians but of persons who are vitally concerned with the administration of justice. Few concrete proposals for reform were put forth. To remove the disharmony between law and justice, the learned Judge suggested the establishment of nyaya panchayats in the rural areas with a professional Judge and two lay Judges. If in sophisticated civilisation like the Soviet Union we can have people's Judges drawn from workers and peasants disposing of even heavy cases there can be no objection to our making an attempt here in that direction. It may tone up the professional judges and give training to the popular elements in the art of dispensing justice. It is noteworthy that the panchayat system is not foreign to this country but worked satisfactorily and with vigour during the pre-British days. Nor can there be any objection to lay judges being elected for a term by the people of the locality. The system of "nattanmaikar" is even now found in many villages to deal with the domestic affairs of the community. Another useful suggestion made by the learned Judge was that a system of legal service to the community of a dynamic and comprehensive character should be set up. The scheme however cannot be on the traditional western model which, according to him, was litigation-oriented. Because for the western model to succeed, the people should be aware of their rights and also able to assert them; whereas these requirements were absent in India. Legal literacy is yet to spread among the masses though litigious spirit as such is very much prevalent. The legal service scheme was to be in the form of mobile legal aid offices which would visit the villages and

take legal service to the door-step to make the people aware of their rights and of the social welfare legislations by the use of mass media and literature on the subject. This object is already in a measure being achieved through community radio propaganda and the vernacular journals. The Punjab and Haryana Democratic Lawyers' Conference has stated that radical reorganisation of the judicial system was necessary up to the stage of "finding of fact". According to the Conference the final finding of fact at present is often the direct opposite of the realities of the life process of the community which undermines the confidence of the people in the administration of justice. Whatever form the overhauling of the judicial system may take it must be thrown open for discussion by judges, lawyers and the public before it is finalised.

Thus ends 1975, an eventful year both at home and abroad. And now, on to 1976.

RETIREMENT OF JUSTICE KRISHNASWAMI REDDY

In the retirement of Justice Nelavai Krishnaswami Reddy just before the Christmas recess, the High Court has lost the services of perhaps the most popular Judge in recent years. Endowed with amiable manners and a humane outlook coupled with a flair to render justice and an utter absence of any consciousness of superiority, he had won in large measure the esteem and affection of the Bar. No wonder therefore that on the eve of his retirement, his portrait was presented to the portrait gallery of the High Court and later unveiled by the Chief Justice.

Justice Krishnaswami Reddy is an alumnus of the Madras Christian College. Enrolled in 1939 as a member of the Bar, he set up practice at Chingleput where he continued till he moved over to Madras. An outstanding performance on his part in the " Muthuramalinga Thevar case " brought him recognition leading to his appointment as Public Prosecutor in December, 1960. In that capacity, he acquired the reputation of being scrupulously fair, fair to perfection, looking upon his office as one to assist the Court in discovering the truth. He became Advocate-General in April, 1964 and a Judge of the High Court in July, 1966.

As a Judge, he sat mostly on the Criminal Bench. He brought to his work robust commonsense and good insight into human problems. His approach in criminal cases was essentially human. Punishment should serve to correct and not to harden. Distinction must be made between those who committed offences out of need and those who did them out of greed. Justice Reddy felt that the former deserved sympathy, whereas the latter required firm treatment.

Justice Reddy's views on criminal justice expressed on the occasion of his retirement are refreshing. His advocacy of a voice for the victims in criminal cases in respect of the punishment to be awarded to the offenders, of arbitration in criminal cases taking note of the sufferings of the victim and need for adequate compensation for the loss caused, etc., provide food for thought to penologists and law reformers alike.

Justice Krishnaswami Reddy is a great believer in Hindu culture. At a time when militant attitudes and intolerant postures are apt to confuse, Justice Reddy has stood out as one who had much respect for the ancient values and traditions. We wish him in his retirement sound health, happiness and many more years of useful life.

COLLECTION OF COURT-FEE UNDER THE NEW SCHEDULE TO THE TAMIL NADU RENT CONTROL ACT

By

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Schedule III of the Tamil Nadu Rent Control Act, 1960 has been recently amended which has enhanced exorbitantly the Court-fee payable for different reliefs. That itself is felt expensive by the parties. To add to this Courts give yet another construction to the Schedule demanding multiples of the already enhanced rate. For example the present schedule prescribes a Court fee of Rs. 15 payable for the reliefs under section 10 (2). Section 10 (2) of the Act enumerates under different sub-clauses wilful default ; subletting ; committing nuisance ; committing waste, etc., as grounds for eviction. All these grounds are under one clause *viz.*, 10 (2). When an application is made by a landlord for eviction based on more than one of the above grounds the Court insists upon payment of Rs. 15 for each one of the reliefs prayed for under section 10 (2). This really works out great hardship for the clients. A real construction and a bare reading of the "description" in the revised schedule would clearly show that a sum of Rs. 15 alone is to be paid for one or more of the reliefs under section 10(2). If the intention of the rule-making authorities was to collect separate Court-fee as is now demanded they would have well stated so in the amended schedule separately as sections 10 (2) (*i*), 10 (2) (*ii*) etc. The "particulars" of the new schedule are the same or similar to the old one and the Court-fee portion alone is revised. When the schedule does not provide separate Court-fee for each relief, the collection of such fee cannot have any basis.

It is therefore submitted that the High Court may be pleased to issue necessary directions to the Subordinate Courts to give relief to the clients.

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tracts entered into by him on behalf of his principal nor is he personally bound by them. *Periaswami Konar* v. *Mikole Udayar*[1] states that a partner is not entitled to any rendition of accounts by the other partners in his favour (on the dissolution of the partnership) and the only relief to which the partner is entitled is a decree for general accounting in regard to the entire transaction of the partnership from its commencement till it came to an end.

Chinna Vanan v. *Alamelu*[2] makes it clear that a subsequent purchaser of property with knowledge of a prior agreement to sell to another is a necessary party in a suit by the latter for specific performance and the decree should direct both the owner and the subsequent purchaser to execute the conveyance in favour of the agreement-holder ; that since a contract for sale of immovable property does not create any interest in such immovable property, the vendor could enter into a sale transaction with a third party and confer an absolute title on him in spite of the agreement to sell ; that as between the subsequent purchaser and the vendor there is a valid transfer of ownership and the title is conveyed to the subsequent purchaser ; but if the purchase by the third party was with the knowledge of the prior agreement to sell he will hold the property as a trustee to the extent necessary to give effect to the contract ; that even when section 91 of the Trusts Act is applicable the transaction of sale is not void, but the subsequent purchaser is under an obligation to convey the property to the agreement-holder as and when he establishes his rights ; and that section 19 (*b*) of the Specific Relief Act enables the agreement-holder to enforce specific performance of the contract against any person under or party to the contract by a title arising subsequent to the contract. *Rajendrakumar Bhandari* v. *Poosammal*[3] points out that the exercise of discretion either in the matter of grant or refusal of specific performance ought to be made judiciously and judicially and as section 20 (1) of the Specific Relief Act says, it ought not to be arbitrarily or unreasonably exercised. *V. R. Nathan* v. *Mac Laboratories (P.) Ltd.*[1] holds that where a suit for injunction was dismissed and during the pendency of an appeal therefrom, the plaintiff-appellant filed applications to amend the plaint by adding a claim for damages in the alternative, in view of the imperative language of the proviso in section 40 of the Specific Relief Act, 1963, the plaintiff is entitled as a matter of right to have the amendments made and the only discretion left for the Court is about the terms, if any, on which he may be permitted to amend. *Chennai Vedanta Sangam* v. *Shanmughasundaram*[2] expresses the view that where the defendant had claimed in his written statement that he got the suit property on lease from the plaintiff and that he was the lessee thereof, to contend that he had acquired right by adverse possession by introducing an amendment in the written statement is diametrically opposed to the case put forward by him that he is the lessee of the suit land ; that such an amendment cannot be entertained ; and that the Court must automatically order the mandatory injunction prayed for by the plaintiff if it finds that the defendant is a trespasser, unless acquiescence amounting to equitable estoppel is established.

Property Law : Land Tenures and related legislation.

In *South Indian Bank Ltd.* v. *M/s. Krishna Chettiar and Brother*[3], it is pointed out that there is no decisive and final test or guideline to earmark property such as machinery etc., found in a building as immovable property or movable property ; that the maxim *quic quid plantatur solo, solo cedit* does not apply in India ; that the question whether movable properties which are fixed to the earth are an annexation to the land often depends upon the mode of annexation and primarily on the intention of the parties and other relevant surrounding circumstances in each particular case ; that it is often presumed that if an owner of machinery which could be annexed to the earth so annexes it with his own immovable property in connection with his trade or

1. (1975) 1 M.L.J. 70.
2. (1975) 1 M.L.J. 263.
3. (1975) 2 M.L.J. 59.

1. (1975) 1 M.L.J. 119.
2. (1975) 1 M.L.J. 435.
3. (1975) 2 M.L.J. 431.

business, then it is said to assume the character of immovable property; that equally a *prima facie* presumption but not a sure one is raised in the case of a tenant or person not owning the immovable property but causing such annexation of movable property such as machinery etc., to be made to the premises as such, which is to the effect that such annexed property is movable property; but in the ultimate analysis, if the intention of either the owner or the tenant in making such annexation of movable property to immovable property is to permanently fix it along with the earth or the said immovable property, then, it becomes part and parcel of it; that the onus is on the person who alleges that the particular article was always intended to retain the character of movable property; and that such intention on the part of the owner or the tenant, to treat such machinery fixed to the earth as movable property can sometimes be inferred by their voluntary treatment of such property as belonging to one or the other species of property and by their conduct; and that attachment should be for the permanent beneficial enjoyment of that to which it is attached. *Muniappa* v. *Periasami*[1] holds that where by a deed of release the releasor, after getting a sum of money from the releasee, transferred his right, title and interest in a half-share of the suit properties absolutely in favour of the releasee the document could not be construed as enlarging the limited right of the releasee but as giving absolute right in the half-share belonging to the releasor; hence the document has to be construed as a deed of transfer of title and as such it falls within the definition of transfer in section 5 of the Transfer of Property Act. *Kuppayyee Amma* v. *Guruswami Padayachi*[2] states that under section 6 (*dd*) of the Act a right to future maintenance in whatsoever manner arising, secured or determined, cannot be transferred; but where under the guise of securing the right to future maintenance, possession of vast properties is given to the maintenance-holder or a charge is created in his favour in respect of the properties for an amount far in excess of what would be reasonable for his maintenance, it is open to the Court to appoint a receiver and equitably execute a decree against him without violating either the provisions of section 60, Civil Procedure Code or section 6 (*d*) or (*dd*) of the Transfer of Property Act. *Thayyanayaki Ammal* v. *Venugopal Pillai*[1] holds that there is no scope for applying sections 10 and 11 of the Act to a compromise since a compromise is not a transfer. *Rajendrakumar Bhandari* v. *Poosammal*[2] points out that in cases of persons who contract to sell property, but with no title, the purchaser can take advantage of the subsequent acquisition of such title by the vendor, and the law compels the vendor to convey the property, if by supervening act or otherwise his imperfect title or no title is perfected; that this is the principle of estoppel feeding title; that if third persons are interested in the bargain and if the vendor can compel such persons to join in the transfer of such property over which he had no title or had only an imperfect title, then the purchaser can compel the vendor to procure such concurrence or compel such third parties to procure such a conveyance; that the expression "title free from reasonable doubt" is analogous to the expression "marketable title" adopted by Courts of law in interpreting section 55 (2) of the Transfer of Property Act; that title cannot be understood as something equivalent to a process involving making of title; that in order to convey property the vendor should have a present right or interest in immovable property which he contracts to convey; that a title which has not been perfected is no title at all; and that "marketable title" is one which both in the strict and reasonable sense means that the vendor would be in a position to force the property concerned on an unwilling purchaser under all circumstances.

Muniappa Pillai v. *Periasami*[3], states that where a document falls to be construed as a deed of transfer of title and as such falls within the definition of "transfer" in in section 5, a suit to set aside the document as fraudulent will come only under section 53 of the Transfer of Property Act. *Yuvarajan* v. *Mylapore Hindu Permanent Fund Ltd*,[4] makes it clear that under sec-

1. (1975) 1 M.L.J. 236.
2. (1975) 2 M.L.J. 12.
1. (1975) 2 M.L.J. 424.
2. (1975) 2 M.L.J. 59.
3. (1975) 1 M.L.J. 236.
4. (1975) 2 M.L.J. 414.

tion 69 what is authorised to be sold is the mortaged property itself and not any smaller or lesser or limited interest carved out of the mortgaged property ; that when the section itself contemplates the giving of notice under sub-section (2) thereof, to any one of the mortgagors, it is too much to contend that simply because pursuant to the said sub-section notice is given to only one of the mortgagors and a sale is held thereafter it is only the mortgagor's interest that passes by the sale and not the interest of all the mortgagors ; that the legal position flowing from the language of section 69 is what is contemplated by that section, namely, the sale of the mortgaged property itself and not the interest of any particular mortgagor ; and that if the conferment of the power on the mortgagee to sell the property is valid and beyond challenge and the appellants were not even born at the time of the mortgages, the exercise of that power so long as it has been properly exercised cannot be called in question. *Padmavathi Ammal* v. *Swaminatha Iyer*[1], expresses the view that if a mortgagee cannot effect a valid sale in his own favour, by merely, putting up his nominee the position would not be different; if really the plaintiff auction-purchaser is only a nominee of the mortgagee the sale would be *ab initio* void. *Chellasivalingam Nadar* v. *Aruldas*[2], points out that section 72 (*b*) of the Transfer of Property Act is an enabling provision, enabling a mortgagee to spend such money as is necessary for the preservation of the mortgaged property from destruction , forfeiture or sale, and in such a case, in the absence of a contract to the contrary he could add such money to the principal money and recover it with interest. *Rasappa Gounder* v. *Ramaswami*[3], holds that one of the lessees can surrender his interest in the leasehold in favour of the lessor, in which case, the lessor will be entitled to call for partition of that interest alone. *Subbaiah Thevar* v. *Muthurangaswamy Naicker*[4], lays down that under the general law of the Transfer of Property Act, in the absence of a contract or local usage to the contrary the rights of the landlord and a tenant under a tenancy agreement are both transferable and heritable ; therefore, if a tenant, before the tenancy agreement is determined, dies or assigns his right to a third person, the legal representatives or the assignee respectively will be entitled to claim the rights under the tenancy agreement as if the tenancy agreement was entered into with them ; and thus, the law created privity of estate in such cases between the original landlord and the legal representatives or the assignee of the tenant.

State of Tamil Nadu v. *Sivaganga Devasthanam*[1] makes it clear that having regard to the definition of an 'estate' in section 2 (3) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, which includes a zamindari, or an undertenure, or an inam, once an estate, be it any one of the three categories is notified under section 1 (4) the validity of such notification cannot be assailed on the ground that there was an erroneous description of one of the villages comprehended by the notification ; that the moment an estate is notified section 3 comes into play and the estate to whichever category it belongs would vest in the Government free of all encumbrances and the Government will be entitled to take possession thereof immediately; that it would make no difference to the validity of the notification, vesting and taking possession, though the estate concerned was wrongly described in the notification as a zamindari estate ; that whether what was taken over is a zamindari or an undertenure or an inam estate would have a bearing only upon the particular provision of the Act which would govern computation of compensation, namely, section 27 or section 31 or section 36 and nothing more. *Chinnaswamy Gounder* v. *Chinnaswami Gounder*[2], points out that it is well-settled that no title to any part of the land in an estate notified under section 3 of the Act vests in any person except as provided in the Act and through the procedure envisaged under its provi-

1. (1975) 1 M.L.J. 27.
2. (1975) 1 M.L.J. 85.
3. (1975) 2 M.L.J. 157.
4. (1975) 1 M.L.J. 366.

1. (1975) 1 M.L.J. 278.
2. (1975) 1 M.L.J. 105.

sions: that ryotwari patta would be issued either in respect of ryoti land or for land shown to be private land either to the ryot or to the quandom landholder as the case may be ; that the Act does not contemplate conferment of ryotwari patta on any one in respect of communal land ; that Government is the owner of the communal land and can deal with it in any way it likes subject to the communal character of the land ; that under section 19-A the Government may allow a person to remain in possession subject to payment of assessment and on such specific terms and conditions as may be specified ; and that even lands which are communal lands and required for communal purposes would fall within the ambit of section 19-A. *Board of Revenue* v. *Machia Thevar*[1] expresses the view that Madras Act XXVI of 1948 was enacted with a view to repeal the permanent settlement and the acquisition of the rights of landholders in the permanently settled and certain other estates in the province of Madras ; that the effect of a notification under section 3 (*b*) is to vest absolutely and free from encumbrances the entire estate in the Government ; that the power to notify and take over was confined to what was granted as permanently settled estates which means that the Act does not apply to grants other than "estates" such as grants of part villages ; that the Act nowhere contemplates vesting in the Government of a grant which was less than a village and therefore not an 'estate' or an 'inam estate' as defined in the Act ; that section 58 is limited in its application to whole inam villages ; that section 27 (b) deals with the components which go into the computation of compensation payable to a quandom landholder for the estate taken over and vested in the Government ; and the components covered by section 27 (*v*) would also point to the fact that jodi payable on a part village grant which could not be notified and taken over under the Act, could not enter into the computation of the compensation payable to a landholder. *Raja Ambalam* v. *Adaikappan*[2], decides that by the issuance of a ryotwari patta to the petitioner the lawful nature of his possession had been recognised by the Government, and the petitioner as ryotwari pattadar was entitled, notwithstanding the bar of section 38 (3) of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act of 1963, though he obtained patta under a sale by his predecessor-in-title after the Act had come into force in view of the supervening circumstances in the instant case, to file a suit for recovery of arrears of melwaram due to him from the person in occupation of his land. *State of Tamil Nadu* v. *Ambalavana*[1] states that where the jurisdiction of a Tribunal or Court is dependent on certain characteristics, it would be incidental to the jurisdiction of the tribunal or the Court to find out as a preliminary issue whether the elements are present in order to assume or not to assume jurisdiction to proceed with the case ; that where one party says that the land is ryotwari and the other says it is non-ryotwari and it constitutes a minor inam, the Tribunal under section 5 of Act XXXI of 1963 would have jurisdiction to decide the issue and once the Tribunal decides that the land is non-ryotwari the further question would arise whether it would be a minor inam ; and the two questions are well within the power of the Tribunal to decide under section 5.

Subbaiah Thevar v. *Muthurangaswamy Naicker*[2], holds that the definition of 'cultivating tenant" shows that in order that a tenant may claim protection under the Madras Cultivating Tenants Protection Act, 1955, there should be (*i*) a tenancy agreement, express or implied, between him and the landlord, and (*ii*) he should contribute his own physical labour or that of any member of his family in the cultivation of the land ; that the term 'sub-tenant' implies that he is a person to whom the original tenant had assigned his entire rights under the tenancy in respect of the land ; that after the determination of the tenancy the tenant has no right in the tenancy apart from the statutory right which cannot be assigned ; that the Amending Act of 1969 did not in any way change the general

1. (1975) 1 M.L.J. 130.
2. (1975) 1 M.L.J. 276.

1. (1975) 2 M.L.J. 50.
2. (1975) 1 M.L.J. 306.

law relating to the rights of a sub-tenant under a tenancy agreement ; that the general law that only an assignment during the subsistence of the tenancy agreement will confer right on the assignee to enforce the terms of the tenany has not been changed by the Amendment ; and that under the amended provisions one who was found not entitled to protection after the determination of the tenancy would also be entitled to protection. *Mariappa Gounder* v. *Subbiah Pillai*[1] states that if a tenant is a cultivating tenant within the meaning of the Act of 1955, the Insolvency Court would have no jurisdiction whatsoever to evict him and that all that could be done is to effect delivery of symbolic possessior of the property in favour of a purchaser from the official receiver leaving the purchaser to pursue his remedies against the cultivating tenant under the Act XXV of 1955. *Baluchami* v. *Srinivasan Ayyavaru*[2], makes it clear that under section 3 (3) (*b*) of the Cultivating Tenants Protection Act it is incumbent on the Authorised Officer to grant time even without a request from the tenant, when he finds that the amounts deposited by the latter did not represent the correct amount. *Janaki Ammal* v. *Muthiah Thevar*[3], points out that there is absolutely nothing wrong in the order passed by the Authorised Officer converting an application filed under section 3 (3) of Act XXV of 1955 into one under Tamil Nadu Act XXI of 1972 even though it has not been so stated in specific terms. *Brahadambal* v. *Swayambunathaswami Devasthanam*[4], decides that in cases where a decree for recovery of arrears of rent had been obtained before the date of the publication of the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief, Act, the decree passed would naturally include the costs incurred by the landlord ; that the Legislature has made a distinction between cases pending on the date of publication of the Act and cases in which decrees had been passed before that date, while conferring a benefit on the tenants for the purpose of getting a discharge from this liability to pay arrears of rent to their landlords ; that it has directed that in respect of pending matters no costs are to be allowed to the landlords, but that in respect of decrees obtained earlier to the date of publication of the Act, the tenants are entitled to have the decree vacated only in so far as they related to arrears of rent ; hence in the latter case the tenants are not entitled to have the decrees set aside in so far as they relate to costs though they are entitled to have the decrees vacated in so far as they relate to the arrears of rent; that the deposit by the tenants of the whole of the current rent in the Revenue Court and the acceptance of such deposit by the Court does not mean that the entire decree for arrears is discharged ; that the acceptance of the deposit is under section 3 (1) and such acceptance will amount to a discharge of arrears of rent alone and not of any other amounts covered by the decree. *E.P. Sankaran* v. *C.M.Narayani Ammal*[1] expresses the view that though the order of the Land Tribunal and the Land Board is expressly given immunity from judicial scrutiny by the ordinary civil Court by the Mahe Land Reforms Act no such immunity is given to the order of a Deputy Tahsildar or the Revenue Divisional Officer relating to exclusion or inclusion of a person from the register of kudikidappukarans and there is nothing in that Act which bars the jurisdiction of a civil Court from investigating whether a tenant is a kudikidappukaran or not, notwithstanding that the Deputy Tahsildar and the Revenue Divisional Officer have rejected the tenant's claim to be a kudikidappukaran.

Abdul Gani v. *State of Tamil Nadu*[2], makes it clear that the principal object of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act (XVII of 1970) is to reduce the ceiling limit of 30 standard acres provided for in the principal Act of 1961 to 15 standard acres ; that the object of section 3 (2) of the Act of 1970 is to give effect to this reduced ceiling limit with effect from 15th February, 1970, and therefore it provides that even when the ceiling limit of any

1. (1975) 1 M.L.J. 285.
2. (1975) 1 M.L.J. 30.
3. (1975) 2 M.L.J. 105.
4. (1975) 1 M.L.J. 161.

1. (1975) 2 M.L.J. 131.
2. (1975) 1 M.L.J. 67.

person is determined with reference to the provisions of the principal Act of 1961 under section 3 (1) of the Act of 1970, still because of the overriding effect flowing from section 3 (2) of the latter Act such person can hold land after 15th February, 1970, only subject to the reduced ceiling limit prescribed in the 1970 Act. *Authorised Officer* v. *Damodaraswami Naidu*[1], points out that the expression in section 5 (3) (*b*) of the Ceiling Act (LVIII of 1961) that the extent of land held by an individual in a company shall be taken into account should be understood as the land which could be legally taken into account; that as under the Companies Act, no shareholder can say what extent of interest he has in the assets of the company the shareholding cannot be the foundation for evaluating such an interest in the company itself; and the Tamil Nadu Act LVIII of 1961 cannot override the provisions of the Companies Act. *Anjalai* v. *Authorised Officer*[2] holds that the rule requiring an application for assignment to be filed within a particular time cannot be said to be *ultra vires* section 94 of the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961, and that there is no inconsistency between the rules and the provisions of section 94.

Insolvency.:—In *Mariappa Gounder* v. *Subbiah Pillai*[3], it is stated that if under section 4 of the Provincial Insolvency Act, the Insolvent Court could direct delivery of possession it can equally rectify its own order in the interest of justice and direct redelivery if it was established to its satisfaction that the delivery originally ordered was in violation of the provisions of the Madras Cultivating Tenants Protection Act of 1955. *Pushpam* v. *Jeevaraj*[4], expresses the view that under section 12 (1) (*c*) of the Presidency Towns Insolvency Act, the act of insolvency should have occurred within 3 months of the presentation of the petition; that if on the date of presentation the cause of action was available and by mistake or inadvertence this had not been taken as a ground, it would have been open to the petitioning creditor to come by way of amendment; but if the cause of action itself was not available and by the amendment petition a new cause of action was sought to be introduced such amendment cannot be allowed. *Official Assignee* v. *Kannappa Mudaliar*[1], lays down that where moneys entrusted by a sister to her brother for doing a money-lending business were taken back by her later, the fact that 15 days after the taking back the brother applied to be adjudicated as insolvent and was so adjudicated does not constitute preference, inasmuch as in the circumstances of the case, the transaction between the sister and the brother (insolvent) was in the nature of a trust. *Official Assignee* v. *Padmalakshmi*[2], states that where in law there is an obligation in the nature of trust as between a father and his daughter and the father is obliged to discharge that obligation and make good a breach of trust, it will be far-fetched to contend that he was paying the amount with a view to 'prefer'; nor again could it be deemed to be 'fraudulent' within the meaning of section 56 of the Presidency Towns Insolvency Act merely because the repayment was made to the daughter with the moneys borrowed from creditors.

Hindu law and related legislation—In *Lakshmi Ammal* v. *Meenakashi Ammal*[3], it is held that on adoption the person to whom the boy is adopted becomes the adoptive father and only properties inherited from him thereafter could be called his ancestral property and any property got by him from his natural family will be in the nature of a gift from the natural family and not ancestral in his hands; and it is strange that a property inherited by him before adoption should continue in his hands even after adoption as ancestral property but if he had got the same property from his natural father after the adoption it could not be considered to be ancestral property. In *Sappani Mohd. Mohideen* v. *Sethusubramania Pillai*[4], the Supreme Court makes it clear that whether an endowment is absolute or partial, primarily depends on the terms of the grant; that if there is an express

[*To be continued*]

1. (1975) 1 M.L.J. 132.
2. (1975) 1 M.L.J. 196.
3. (1975) 1 M.L.J. 285.
4. (1975) 1 M.L.J. 344.

1. (1975) 2 M.L.J. 115.
2. (1975) 2 M.L.J. 86.
3. (1975) 2 M.L.J. 199.
4. (1975) 1 M.L.J. (S.C.) 25.

endowment the intention has to be gathered on the construction of the document as a whole ; that if the words of the document are clear and unambiguous the question of interpretation would not arise; that if there be ambiguity, the intention of the founder has to be gathered from the scheme and language of the grant ; and that even surrounding circumstances, subsequent dealings with the property, the conduct of the parties to the document and long usage of the property and other relevant factors may have to be considered in appropriate cases. *Thanumalayaperumal Mudaliar* v. *Commissioner, Hindu Religious and Charitable Endowments*[1], expresses the view that the fact that at one particular point of time a small extent of 2 acres odd was additionally granted to a deity by some strangers cannot alter the nature of the initial grant or the character of the temple from a private one to a public one ; and that the mere presence of the worshippers on certain occassions by itself is not conclusive to show that the generality of the public were having ingress into the temple as of right. *Rajan* v. *Kannikonda Reddiar*[2], lays down that all that the Privy Council has decided in the *Benares Bank case*[3] is that a mortgage or sale would not be valid as such where a father mortgages or sells ancestral property to start a new business, but where he sells ancestral property to discharge an antecedent debt it would be binding even though the antecedent debt had been contracted for starting a new business; that the starting of a new business in plying buses cannot be called *avyavaharika* and the sons would be liable to pay the debt incurred for the purpose on the pious obligation theroy. *Pachiammal* v. *Veerappa Thevar*[4], states that the only property sought to be excluded from the operation of the Hindu Law of Inheritance (Amendment) Act, 1929, was property of a male held in coparcenary ; that though the nature of the property may be coparcenary in origin, yet after partition and when the last maleholder holds it, it can no longer said to be property held in coparcenary ; that the character of the property has to be judged neither with reference to its past history nor with reference to its future potentialities, but solely with reference to the nature of its tenure at the time when the last maleholder thereof died and succession thereto opened; and the mere fact that once upon a time the property was held by coparceners cannot, after it has devolved upon a sole coparcener make the property as held in coparcenary. In *Krishnan* v. *Shanmugham*[1], it is pointed out that the presumption which usually arises when a property stands in the name of a male member of a Hindu joint family is not so easily available in cases where the properties stand in the name of a female member; that if the challenge by a member of the family is that the property standing in the name of a female member such as a member's wife or a sister of the family should enure to the benefit of the family in general, then he has to bring home such hypothesis and data in an action initiated by him and establish at lease reasonably, that his contention is maintainable ; and that if on such data the ostensible title of the female holder is likely to be tilted, then she is obliged to give contrary evidence to set at naught the inference liable to be drawn against her. *Kandaswami Chettiar* v. *Gopal Chettiar*[2], makes it clear that if a coparcener desires to establish that a property in the name of a female member of the family or in the name of the manager himself has to be treated as property acquired from the joint family nucleus, such coparcener should not only plead the same but also establish the existence of such a joint family fund or nucleus and that such nucleus was an income-yielding apparatus ; that the proof required is very strict ; that there should be proof of the availability of surplus income or joint family fund on the date of the acquisition or purchase ; that the same is the principle even in the cases where moneys were advanced on mortgages over immovable properties ; that it is obligatory on the part of the Court below to undertake the investigation as to the existence of such properties or liabilities and thereafter quantify the rights of parties ; that in a preliminary decree for parti-

1. (1975) 2 M.L.J. 310.
2. (1975) 1 M.L.J. 26.
3. 63 M.L.J. 92.
4. (1975) 1 M.L.J. 39.

1. (1975) 2 M.L.J. 73.
2. (1975) 2 M.L.J. 184.

tion and allotment of a litigant's share in joint family properties it is but essential for the trial Court to find out what are all the assets of the joint family, whether movable or immovable, and after ascertaining such properties, determine the liabilities of the joint family as well and thereafter reckon the litigant's share in the available surplus; that it is only in that perspective that a Court can pass a preliminary decree for partition and it cannot avoid its responsibility by postponing the determination of the relevant factors to the final decree proceeding. *Sankaralingam* v. *Mani*[1], decides that where though the plaint had not described the defendant as the manager of a Hindu joint family and did not purport to sue him in his representative capacity, still if having regard to the circumstances of the case the suit must be deemed to have been brought against him as manager in his representative character, the other members of the family must be held to be substantial parties to the suit through the manager of the joint family. *Radhakrishnan* v. *Dhanalakshmi*[2], states that it cannot be said that a wife is refusing, much less unreasonably refusing, to give her wifely company to her husband because she was unwilling to resign her valuable job wuhout which she and her child may probably become helpless and restitution of conjugal rights cannot be ordered in such circumstances. *Lakshmi Ammal* v. *Alagirisami Chettiar*[3], points out that under section 23 of the Hindu Marriage Act, the Court shall not decree the relief unless it is satisfied that there has not been any unnecessary and improper delay in instituting the proceedings; that the expression "there has not been any unnecessary or improper delay in instituting the proceedings" in section 23 (*d*) means that the appellant should have invoked the grant of relief under section 13 (2) (1) without unnecessary or improper delay after the coming into force of the Act ; that it may be that having regard to the conditions of the Hindu society and the ideals of Hindu womanhood, a wife out of a sense of delicacy may commit some delay which however would not be regarded by the Court as unnecessary or improper delay ; but if after becoming aware of the ground she chose not to invoke it in proceedings for divorce but to cohabit with her husband and beget children and live in her husband's home for a number of years and then to invoke the ground because of a misunderstanding which arose long after she had entered into matrimony, the Court would have no option but to regard the delay as unnecessary and improper. *Soumynarayana* v. *Jayalakshmi Ammal*[1], makes it clear that even if a marriage annulled under section 12 (1) on the ground of impotency is treated as void and even as no marriage at all, still there can be no objection under section 25 (1) of the Act to grant maintenance to the wife so long as she remains unmarried. *Mottaiyan* v. *Anjalai Ammal*[2], states that the right of alienation possessed by a Mitakshara coparcener in this State has not been in any way affected by the passing of the Hindu Succession Act. *Muthu Bhattar* v. *Chokku Bhattar*[3], holds that where property is given to a widow for maintenance who had no pre-existing right to a share in the property it would become her absolute property under section 14 (1) of the Hindu Succession Act and the Legislature included a maintenance right in the Explanation to section 14 (1) so as to expand that right and to make it an absolute right in the female concerned after the commencement of the Hindu Succession Act. *Thayyanayaki Ammal* v. *Venugopala Pillai*[4], lays down that if a compromise, or award, or deed etc., is the source or foundation of the right of a widow, the restrictions prescribed thereunder would govern and to such a case section 14 (2) would apply, but on the contrary if what the compromise, award or the document does is nothing more than to restate the law as it then stood the intervention of the same will not affect the rights of the widow, in which event, section 14 (1) will apply. *Radhakrishna Naidu* v. *Govindaswami Naidu*[5],

1. (1975) 1 M.L.J. 376.
2. (1975) 1 M.L.J. 439.
3. (1975) 1 M.L.J. 228.

1. (1975) 1 M.L.J. 18.
2. (1975) 1 M.L.J. 245.
3. (1975) 2 M.L.J. 232.
4. (1975) 2 M.L.J. 424.
5. (1975) 1 M.L.J. 212.

expresses the view that when a person makes a bequest in favour of his daughter to be enjoyed by her during her lifetime without power of alienation and thereafter to the son to be born to her, the moment the son is born that son acquires a vested right in the properties of the testator and he becomes immediately a fresh stock of descent and consequently on his death, his mother as heir to him inherits the vested remainder and comes to enjoy the same with her life-interest and by virtue of section 14 what otherwise would be a woman's estate becomes an absolute estate capable of being transmitted or bequeathed by her. *Krishna Pillai* v. *Bhoopai*[1], decides that as between the husband's sister of the interstate and her half-brother the former is the preferential heir to the properties of a female intestate under sections 15 and 16 of the Hindu Succession Act.

Law of Evidence.—In In re *Onthan*[2], it is held that a dying declaration can be accepted without corroboration and all that is necessary for the Court is to satisfy itself whether the statement is true and if it is convinced that the statement is true it is the duty of the Court to convict; and the fact that the person giving the dying declaration belonged to a political party which had no faith in the existence of God would not make any difference in assessing the truth or otherwise of the dying declaration. *Rajammal* v. *Chinnathal*[3], states that once the execution of a document is denied by the alleged executant, the document cannot be admitted in evidence, unless one attesting witness at least has been called for proving the execution of the document, if alive, and subject to process of Court. *Subramanian* v. *State of Tamil Nadu*[4], expresses the view that where the convictions of the accused were based on the evidence of the approver which had been adequately corroborated from independent soruces, the concurrent findings of the Courts below that the evidence of the approver was reliable and was sufficiently corroborated could not be disturbed.

1. (1975) 1 M.L.J. 419.
2. (1975) 2 M.L.J. 318.
3. (1975) 2 M.L.J. 155.
4. (1975) 2 M.L.J. (S.C.) 8.

Limitation.—In *Mathi Ammal* v. *Ajjan*[1], it is pointed out that the words "sufficient cause" in section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice where no negligence or inaction or want of *bona fides* is imputable to the appellant; that what constitutes sufficient cause must be determined with reference to the circumstances of each particular case; and the discretion given by the Limitation Act should not be defined and crystallised so as to convert a discretionary matter into a rigid rule of law. *Ganapathy* v. *Kumaraswami*[2], *lays* down that as far as the Rent Controller and the Appellate Authority created under the Tamil Nadu Buildings (Lease and Rent Control) Act are concerned, such authorities are *persona designata* and the Limitation Act provisions applicable to 'Court' cannot be invoked in proceedings before them. *Veerabahu Pattar* v. *Eswara Pillai*[3], decides that mere transfer of rights in a mortgage is not enough to conclude that it would amount to an acknowledgment of a subsisting liability and that assignments of mortgages though they had been made before the expiry of the period of limitation would not amount to an acknowledgment of liability if there was no intention on the part of the parties to admit jural relationship in that regard. *Union of India* v. *Dakshinamurthy*[4] states that section 19 of the Limitation Act deals with the effect of payment on account of debt or of interest made before the expiration of the period prescribed by the person liable to pay and it is only in such cases a fresh period of limitation shall be computed from the time when the payment was made. *Union of India* v. *Venkatarama Naidu*[5], points out that when an employee whose services had been illegally terminated had been reinstated and was informed that the period during which he was off from service would be treated as if he had been on duty, then a fresh cause of action would arise on the date when he was reinstated and on the date when a communication was issued

1. (1975) 2 M.L.J. 384.
2. (1975) 2 M.L.J. 171.
3. (1975) 2 M.L.J. 31.
4. (1975) 1 M.L.J. 269.
5. (1975) 1 M.L.J. 345.

to him. *Vedammal* v. *Krishnamoorthy Iyer*[1] holds that where while adverse possession is running but not perfected, a suit is filed by the owner for a declaration of his title to the property and for recovery of possession and the suit is decreed, the institution of the suit destroys the previously existing adverse possession or suspends it and the period from the institution of the suit up to the date of judgment and decree has to be ignored in calculating the period of adverse possession. *Ramaiah Nadar* v. *Rajalakshmi Ammal*[2], lays down that where a date is fixed for redemption of a mortgage and in default of such redemption on that date, it is agreed that the mortgagor will pay the amount whenever demanded and redeem or discharge the mortgage, the mortgage money became due at the time when the period fixed for redemption by the mortgagor expired. *Arukonathan* v. *Jayaraman*[3], states that under Article 125 the appellant has just 30 days from the date of the adjustment to apply to record the adjustment or satisfaction of a decree. *Salem Malai Murasu* v. *E. S. I. Corporation*[4], and *Mysindia Tiles and Engineering Co.* v. *E. S. I. Corporation*[5], hold that an Insurance Court is a statutory body and not a Court and Article 137, Limitation Act is not applicable to applications under the Employees' State Insurance Act.

Civil Procedure Code .—In *Durgamma* v. *Kamakshiamma*[6], it is pointed out that the order of the executing Court directing amendment of an execution petition by praying for attachment of the properties substituted in place of the original items in the main petition is an order which is not interlocutory in nature but a final order answering to the description of a decree within the meaning of section 2 (2) of the Code of Civil Procedure. *Adaikapu Chettiar* v. *Ayesha Natchiar*[7], expresses the view that a holder of a mortgage, although it had been granted under the French law and procedure, is entitled under the Civil Procedure Code to file a suit in accordance with the procedure thereof and that when a person, who enjoyed a "privilege", filed a suit in the ordinary civil Court on foot of a notarial mortgage deed, it is the plain duty of the Court to entertain it under section 9, Civil Procedure Code. *Shanmughasundaram* v. *Janagarajan*[1], decides that there cannot be any *res judicata* where the earlier suit had been dismissed as settled out of Court. *Official Receiver* v. *Kadir Meera Hussain*[2], points out that where the Official Receiver—the son of the judgment-debtor being an insolvent—failed to raise certain pleas which were available to him in an earlier application by him to set aside a judicial sale, he must be deemed to have raised them and the pleas must be deemed to have been negatived and he would be clearly barred by constructive *res judicata* from raising again those objections. *Union of India* v. *Davangere Cotton Mills*[3], holds that a suit is instituted when the plaint is instituted for the first time, and that reading sections 26 and 80 together it is clear that the date on which a plaint is presented for the first time is the date of institution of the suit. *Ramalinga Reddiar* v. *Radhakrishnan*[4], points out that where a Sub-Court decree for Rs. 25,000 with interest thereon was transmitted to the District Munsif's Court for execution and the executing Court dismissed a petition filed before it under section 20 of the Madras Agriculturists Relief Act claiming the benefits thereunder, and against the dismissal order the judgment-debtor filed an appeal to the Sub-Court, such appeal was competent; and section 42 Civil Procedure Code is a special provision and therefore, it will override any general provision. *Nachimuthu Goundar* v. *Amaravathi*[5], states that section 47 (1) of the Code prescribes that all questions arising between the parties to the suit in which the decree was passed, or their representatives and relating to the execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit

(*To be continued.*)

1. (1975) 2 M.L.J. 482.
2. (1975) 2 M.L.J. 175.
3. (1975) 1 M.L.J. 164.
4. (1975) 1 M.L.J. 242.
5. (1975) 1 M.L.J. 124.
6. (1975) 1 M.L.J. 280.
7. (1975) 2 M.L.J. 298.

1. (1975) 2 M.L.J. 363.
2. (1975) 2 M.L.J. 1.
3. (1975) 2 M.L.J. 341.
4. (1975) 2 M.L.J. 343.
5. (1975) 1 M.L.J. 333.

and there is nothing in the section which restricts its benefit to persons whose interests are affected by the sale. *Thiravia Nadar* v. *Thiravia Nadar*[1], makes it clear that the concept of an 'agriculturist' as contemplated by section 60 (1) (*c*) of the Code is not the same as but is different from the concept of 'agriculturist' under Madras Act IV of 1938 ; that an agriculturist under section 60 of the Code need not have a saleable interest in land; nor need he even be a lessee of the land; and that it is sufficient if he is merely a tiller of the soil and depends exclusively for his living on tilling the soil, and he is unable to maintain himself otherwise. *Swaminathan* v. *Annammal*[2], states that under section 60 (1) (*n*) of the Code a right to future maintenance is not attachable ; that this is analogous to section 6 (*dd*) of the Transfer of Property Act prohibiting transfer of a future right to maintenance ; that when once the maintenance amount has accrued, and especially when the same is deposited into Court, the money so accrued or deposited does not remain a mere right to future maintenance ; that both under section 60 (1) (*n*) of the Code and section 6 (*dd*) of the Transfer of Property Act what is not attachable or transferable, as the case may be, is not "future maintenance" but right "to future maintenance;" that once the right is exercised and the same fructifies into a quantified amount which has actually come into Court, it cannot be called a mere right to future maintenance, since in such a contingency the right transforms itself into cash ; that once it stands to the credit of the person entitled it becomes attachable ; and the fact that a right for maintenance is only a personal right of the person on whom the right is conferred either by a decree of a civil Court or by order of a criminal Court or otherwise has nothing to do with the question of maintenance which has accrued and is in arrears ; such amount is the property of the person entitled to the maintenance. *Kuppayee Ammal* v. *Guruswami Padayachi*[3], expresses the view that though under section 6 (*dd*) of the Transfer of Property Act a right to future maintenance in whatever manner arising, secured or determined, cannot be transferred, where under the guise of securing the right to future maintenance, possession of vast properties is given to the maintenance-holder or a charge is created in his favour in respect of the property for an amount far in excess of what would be reasonable for his maintenance, it is open to the Court to appoint a receiver and equitably execute the decree against him without violating either the provisions of section 60 (1) (*n*) of the Code of clause (*d*) or (*dd*) of section 6 of the Transfer of Property Act. *Varadarajan* v. *Govindaswamy*[1], holds that a revision lies to the High Court as per section 115 of the Code, when no appeal lies thereto from the judgment and decree sought to be revised and that a revision cannot be maintained if an appeal lies to the High Court either directly or indirectly. *Ajantha Transports (P.) Ltd.* v. *T.V.K. Transports*[2], points out that relevancy or otherwise of one or more grounds of grant or refusal of permit could be a jurisdictional matter ; that a grant of permit or its refusal under the Motor Vehicles Act on totally irrelevant grounds would be *ultra vires* or a case of excess of power ; that if a ground which is irrelevant is taken into account with others which are relevant, or, a relevant ground which exists is unjustifiably ignored, it could be said to be a case of exercise of power under section 47 of the Act, which is quasi-judicial, in a manner which suffers from a material irregularity ; and that both will be covered by section 115 of the Civil Procedure Code. *Century Flour Mills Ltd.* v. *Suppiah*[3], lays down that the inherent powers of the High Court under section 151 of the Code are wide and are not subject to any limitation; that where in violation of a stay order or injunction against a party something has been done in disobedience, it will be the duty of the Court as a policy to set the wrong right and not allow the perpetuation of the wrong-doing ; and the inherent power will not only be available in such a case, but it is bound to be exercised in that

1. (1975) 1 M.L.J. 116.
2. (1975) 1 M.L.J. 328.
3. (1975) 2 M.L.J. 12.

1. (1975) 2 M.L.J. 17.
2. (1975) 2 M.L.J. (S.C.) 16.
3. (1975) 2 M.L.J. 54 (F.B.).

manner in the interests of justice. *Palaniammal* v. *Valliammal*[1], expresses the view that under Order 5, rule 19 of the Code both in cases where the process-server has filed an affidavit and in cases where he has not filed the same, the Court must satisfy itself regarding the sufficiency of a proper service of notice and declare that the service is proper ; that the satisfaction of the Court must be patent on record ; and that though the exact form of the declaration may be in any convenient form what is important is that the endorsement of the Court itself must indicate that the presiding officer had applied his mind and held that the summons has beem duly served. *M.C.S. Rajan & Co.* v. *National Nail Industries*[2], decides that where a person as manager of a proprietorship concern had signed the pleadings and verified the same as one acquainted with the facts of the case, if at any material point of time, a specific plea is taken that the pleadings had not been properly signed and verified, the production of the requisite authority by the concerned person from the proprietor or his satisfying the Court of his being fully acquainted with the facts of the case will be sufficiently in conformance with the principles and substance of Order 6, rules 14 and 15. *Karuppanna Mudaliar* v. *Kuttianna Mudaliar*[5], holds that a Court cannot shirk its duties because by granting amendment the pleadings have to amended and fresh evidence has to be let in ; the predominant interest of the Court should be to render justice and allow amendments for such purposes in order to determine the real question in controversy between the parties. *Chennai Vedantha Sangam* v. *Shanmughasundram*[4], states that where the defendant had claimed in his written statement that he got the suit property on lease from the plaintiff and that he was the lessee thereof, to contend that he had acquired absolute right by adverse possession by introducing an amendment in the written statement is diametrically opposed to the case put forward by him that he is the lessee of the suit land and such an amendment cannot be entertained and that too at the stage of second appeal, especially as the case pleaded by way of amendment was diametrically opposed to the one already pleaded in the written statement. *G.R. Corera* v. *Government of Pondicherry*[1] points out that where a suit was adjourned at the request of the petitioner for adducing evidence but on the adjourned date he did not adduce any evidence and his advocate was actually present in Court and the Judge had rightly gone into the merits of the case and decreed the claim, the decision is one under Order 17, rule 3 and the application for setting aside the decree is liable to be rejected. *Lakshmi Ammal* v. *Subba Raj*[2], indicates that the legal position is that in a suit for partition, with regard to future mense profits the plaintiff has no cause of action or to value it or pay court-fees thereon at the time of the institution of the suit ; that relieves the plaintiff of the necessity of claiming specifically future mense profits in the suit itself ; and it is not the fact that it is the claim for past mesne profits in the suit that enables the Court to award future mesne profits. *Veerappa Gounder* v. *Sengoda Gounder*[3], lays down that in a suit for partition of common properties, profits accruing therefrom subsequent to the filing of the suit are also property to be divided among the sharers ; that when the preliminary decree directs division of the properties it means that not only the properties described in the plaint schedule but also the profits derived therefrom after the filing of the suit till the date of the final decree have to be divided according to the shares declared in the decree ; that the mere fact that there is a final decree in respect of the property described in the plaint schedule which does not incorporate the profits derived after the filing of the suit is not a ground to refuse the request that the profits should be ascertained and divided ; that till that is done the suit for partition cannot be said to have been completely disposed of in spite of the Court having already passed a final decree; and when a final decree is passed, if it does not cover all the properties that are to be divided the suit must be held to be still pending

1. (1975) 1 M.L.J. 65.
2. (1975) 2 M.L.J. 490.
3. (1975) 2 M.L.J. 152.
4. (1975) 1 M.L.J. 435.

1. (1975) 1 M.L.J. 155.
2. (1975) 1 M.L.J. 137.
3. (1975) 1 M.L.J. 53.

and not completely disposed of. *Ponnaiah Servai* v. *Sree Visalam Chit Fund Ltd.*[1], makes it clear that the burden of proving that the judgment-debtor has got the capacity to pay lies on the decree-holder and the decree-holder should prove to the Court that the judgment-debtor has got substantial means to pay off some substantial part of the decree and is refusing to pay. *Mrs. P. Subbiah* v. *V. Muthuraja*[2], holds that the special procedure laid down in Order 21, rule 49 applies only to a partnership which is in existence and not to one which has been dissolved; that the special procedure is not in respect of a debt against the firm or against a partner as such, but in respect of a debt against a partner in his individual capacity; and in a case of a dissolved firm, till accounts are settled the erstwhile partner may not be entitled to any particular item of property but, in such a case, if the decree-holder attaches any property of the dissolved firm for a decree against an erstwhile partner in his individual capacity the remedy of the other erstwhile partners would be only to make a claim. *Krishnaswami Gounder* v. *Jambuthurai Kottai Co-operative Society*[3], lays down that where a property had been sold in execution of an award-decree of the Deputy Registrar of Co-operative Societies, a subsequent sale of the same property in Court-auction sale cannot prevail against the earlier sale. *Saraswathi Ammal* v. *Manickavasaka Reddiar*[4], expresses the view that a person claiming to have purchased the property concerned prior to the date of its attachment in execution and whose claim petition under Order 21, rule 58 was dismissed and who did not prefer a suit under Order 21, rule 63 allowing the adverse claim order to become final can maintain a petition under Order 21, rule 90 and the order made on the claim petition would not by itself operate as *res judicata* barring an application by such claimant under Order 21, rule 90 to set aside the execution sale on the ground of fraud or material irregularity. *Official Receiver* v. *Kadir Meera Hussain*[5], points out that a sale is not null and void for want of attachment; that attachment is merely a measure of protection of the decree-holder and the purchaser of the property in execution and the judgment-debtor is not entitled to question a sale on the mere ground that it has not been preceded by an attachment; and the failure of the decree-holder to take out any notice under Order 21, rule 22 does not vitiate the subsequent execution proceedings, especially, when notice had been issued to the official receiver under Order 21, rule 66 and he appeared in Court and raised contentions which were unsubstantial and vexatious. *Krishnaswami Gounder* v. *Palani Gounder*[1], makes it clear that Order 21, rule 66 has no reference to land held in ryotwari tenure; that the language of the Madras Amendment of Order 21, rule 66 (2) shows that the value of the property as stated by the judgment-debtor can be specified by the Court only if the judgment-debtor appears in the execution proceedings and states the value of the property as per his estimate; and, if the judgment-debtor fails to appear in that execution application and fails to state in that execution proceeding his estimate of the value of the property, it is no part of the duty of the Court to make a research into the prior proceedings or to rummage the records relating to any other proceedings between the parties in order to find out if the judgment-debtor had stated the value of the property. *Natarajan* v. *Amirthasamy*[2], expresses the view that there is nothing in the first or second proviso to Order 21, rule 90 which prevents the Court, if it is considered sufficient, accepting the property sold as security; that in every case the Court will have to consider with reference to the first and second provisos whether the security offered by the applicant is enough security and only if it considers that the property offered as security is insufficient it can reject the application. *Ramalingam* v. *Rajagopala*[3], decides that where mortgaged property was purchased by a person at a Court-sale in execution of the mortgage decree and the mortgagor's application

1. (1975) 1 M.L.J. 206.
2. (1975) 1 M.L.J. 311.
3. (1975) 2 M.L.J. 439.
4. (1975) 1 M.L.J. 174.
5. (1975) 2 M.L.J. 1.

1. (1975) 1 M.L.J. 114.
2. (1975) 1 M.L.J. 428.
3. (1975) 2 M.L.J. 494.

for setting aside the sale is dismissed, the sale confirmed and sale certificate engrossed on stamp paper, and the mortgagor filed an appeal to the High Court but before it was heard he applied under Order 34, rule 5 and section 151 for redemption of the morgaged property, the appeal filed by the mortgagor had the effect of rendering the Court sale and its confirmation fludial and nebulous, setting at large the finality of the sale, and the application under Order 34, rule 5 was competent. *Neela Bai Ammal* v. *Krishnaveni Ammal*[1], lays down that reading Order 38, rule 5 with Order 38, rule 17 it is clear that an attachment before judgment effected pursuant to an order made under Order 38, rule 5 subsists, and its effect is not in any way impeded or lessened by the supervening obtaining of a decree by the plaintiff in the very proceedings and thereafter; and that an order made under Order 38, rule 5 is effective even for purposes of the execution of the decree subsequently obtained by the platintiff. *Muthukaruppan Chettiar* v. *Chinnaponnu Ammal*[2], expresses the view that the receiver appointed by the Court under Order 40, rule 1 is an officer of the Court and not an agent of the party at whose instance he was appointed and that if the money which ought to have been put ino Court by the receiver has not been put into Court and the receiver has died, the proper course in the circumstances will be for the executing Court to issue a notice to the heirs of the receiver and hold an enquiry and take all steps to realise the amount, if any the receiver had collected but had not depositec into Court. *Kazimar Peria Pallivasal* v. *Arumugham*[3], makes it clear that an application for the appointment of a receiver is generally made as interlocutory measure when a main relief is pending adjudication by the Court; that such application is made either under Order 40, rule 1 or section 94; that the condition precedent is the existence of a main action already initiated by the person seeking the interlocutory relief, and where there is no enforceable substantive right, in the plaintiff to be enforced in a substantive action, and in consequence no interlocutory relief by way of appointment of receiver can be had, a suit for appointment of a receiver pending proceedings before a Land Tribunal under Madras Act XXX of 1963 is not maintainable.

Criminal Procedure Code (II of 1974: In *Kalyanasundaram* v. *Kalyani Ammal*[1] it is held that under section 133 of the Code of 1898 (corresponding to section 133 of the new Code) no action can be taken where the obstruction or the nuisance has been in existence for a long period and the only remedy open to the aggrieved party is to move the civil Court and the section is attracted only in cases of emergency and imminent danger to the health or physical comfort of the community. *Rafeeq Ahmed Sahib* v. *Istiaq Ahmed*[2], states that proceedings are barred under section 195 (1) of the old Code (section 195 (1) new Code) where no complaint is made by the concerned Court; that the bar would apply only in respect of a document forged subsequent to the initiation of proceedings in any Court. *Paranjothi Udayar* v. *State*[3], makes it clear that if once the new Code is made to apply to any proceedings such proceedings must be dealt with irrespective of the stage of such proceedings as if such proceeding was instituted after the new Code came into force and deal and dispose it of under the provisions of the new Code; that section 202 (2) of the new Code gives a discretion to the magistrate to take evidence of witnesses on oath before the issue of process for the purpose of finding out whether there was any case for enquiry or trial, but, under the proviso, no such discretion is given in the case of offences triable exclusively by the Court of sessions, and in such cases it is mandatory that the magistrate shall require the complainant to produce all his witnesses and examine them on oath; that under section 203 even in cases triable exclusively by the Court of session, the magistrate, if he is of opinion, after examining the witnesses, that there are no sufficient grounds for proceedings shall dismiss the complaint; that section 208

1. (1975) 2 M.L.J. 37.
2. (1975) 2 M.L.J. 229.
3. (1975) 2 M.L.J. 454.

1. (1975) 2 M.L.J. 93.
2. (1975) 2 M.L.J. 4.
3. (1975) 2 M.L.J. 389.

provides that in a case instituted otherwise than on a police report, if it appears to the magistrate issuing process under section 204 that the offence is triable exclusively by the court of session, the magistrate shall without delay furnish to the accused free of cost, a copy of each (*i*) the statements recorded under section 200 or section 202 of all persons examined by the magistrate, (*ii*) the statements and confessions, if any, recorded under section 161 or section 164, and (*iii*) any documents produced before the magistrate on which the prosecution proposes to rely; that a reading of the proviso to clause (*a*) of section 202 together with section 208 (1) would show that on a complaint before a magistrate where it appears that the offence committed is triable exclusively by a Court of session, the statements of all the witnesses produced by the complainant must be recorded and the copies of such statements of the witnesses so recorded and documents relied on by the prosecution shall be furnished to the accused free of cost; and thus the recording of statements of witnesses under the proviso to clause (2) of section 202, and the furnishing of copies of such statements as provided under section 208 (1) are mandatory. *Govinda Naicker*, In re[1] points out that there is no conflict between the provisions of Article 227 of the Constitution and section 397 (3) of the Criminal Procedure Code; and in exercising its powers under the latter provision the High Court can consider the correctness, legality or propriety of any pending sentence, or order, recorded or passed, and the regularity of any proceedings of the inferior Court. *Misrimal Hansraj* v. *Union of India*[2], holds that under section 517 (1) former Code [section 452 (1) new Code] when any enquiry or trial in any criminal Court is concluded the Court has to make an order in respect of the disposal of the property by destruction, confiscation or delivery to any person claiming to be entitled to the possession thereof; that the order of the Court will be as it thinks fit in the circumstances of the case; that the order can be made in respect of any property or document produced before it or in its custody or regarding which an offence appears to have been committed or which has been used for the commission of any offence; that once the Court finds that the goods, in respect of which confiscation is made by the department, are not "offending goods" the only course open to the Court is to acquit the offender and dispose of the property as it thinks fit; that the fact that the confiscation of the goods has been made by the department on the view that the goods were liable to confiscation would not fetter the power of the Court in disposing of the goods under this section; that the adjudication proceedings by the Customs Department are under substantive law while the disposal of the property is made under the Criminal Procedure Code, a procedural law, and it cannot therefore be said that the principle of *res judicata* will apply. *Paranjothi Udayar* v. *State*[1], decides that where a Judicial Second Class Magistrate on receiving a complaint by transfer, took the complaint on file and adjourned the case for the examination of the prosecution witnesses but in the meanwhile the new Code came into force, the Magistrate ought, under section 484 of the new Code to have dealt with and disposed it of as if the enquiry commenced after the new Code came into force.

Penal Code.—In *Subramanian* v. *State of Tamil Nadu*[2], the Supreme Court makes it clear that where the convictions of the accused were based on the evidence of an approver which had been adequately corroborated from independent sources, the concurrent findings of the Courts below that the approver's evidence was reliable and sufficiently corroborated could not be disturbed and the convictions were right. *Karunakaran*, In re.,[3] expresses the view that where the accused chose to kill his victim when he was slumbering and the victim was unarmed and defenceless and the accused did not even alert the accused and face his opponent in cutting him to death, death is the only appropriate sentence to be awarded to him. *Ramachandra Mudaliar* v. *Eswara Devarayan*[4],

1. (1975) 2 M.L.J. 386.
2. (1975) 1 M.L.J. 188.

1. (1975) 2 M.L.J. 389.
2. (1975) 2 M.L.J. (S.C.) 8.
3. (1975) 1 M.L.J. 209.
4. (1975) 1 M.L.J. 19.

Mohan, J.

Mrs. T. R. Faria, *In re*

18*th December*, 1975

Diary No. 8275 of 1973.

Succession Act (*XXXIX of* 1925), *section* 2 (d)—"*Indian Christian*" —*Definition of*—*Anglo-Indian*—*Whether an* "*Indian Christian*"—*Petition by Anglo-Indian for succession certificate*—*If maintainable.*

The petitioner seeking succession certificate is an Anglo-Indian. The objection by the office is that the petition is not maintainable. The definition of "Indian Christian" under section 2 (*d*) of the Indian Succession Act would not enable an Anglo Indian to file or petition for succession certificate. The proper remedy would be to apply for letters of administration in view of sections 212 and 219 of the Act.

R. Mohan, for Petitioner.

R.S. ——— *Order accordingly*

Kailasam, J.

P. S. Angayya Raja a firm by Partner *v.* **A. K. D. Alagar Raja Hakdar of Rajapalayam Christian Charities.**

2*nd January*, 1976.

C.R.P. Nos. 1762 and 1763 of 1973.

Tamil Nadu City Tenants' Protection Act (*III of* 1922), *section* 9—*Application by tenant*—*Delay in filing*—*Wrong advice by counsel*—*Whether sufficient cause.*

Limitation Act (*XXXVI of* 1963), *section* 5 —*Applicability.*

Under section 9 of the City Tenant's Protection Act the application will have to be made within one month after the service of summons. Section 5 of the Limitation Act, 1963 provides that any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause of not making the application within such period. The requirement, that section 5 ought to have been made applicable by or under any enactment has been omitted in the new section. After the Limitation Act of 1963 came into force, the rule is that section 5 will be applicable to all applications before the Court, though the petition may be opposed on the ground that section 5 of the Limitation Act is not applicable, for the period prescribed under any particular section is in the nature of a condition precedent. It cannot be construed that the wording of section 9 of the 1922 Act is imposing a condition precedent or expressly excluding the operation of section 5 of the Limitation Act. The provisions of section 5 of the Limitation Act, 1963 applies to an application under section 9 (1) of the City Tenants' Protection Act. On merits there can be no difficulty in excusing the delay for the learned Advocate who appeared for the petitioner has filed affidavites to the effect that he had advised his clients wrongly, and as the Explanation to section 5 of the Limitation Act provides that the fact that the applicant was misled in computing the prescribed period for filing the application will be sufficient cause within the meaning of section 5.

A. Sundaram Iyer and *S. V. Jayaraman*, for Petitioner.

S. Padmanabhan and *R. Nedanasabhapathy*, for Respondents.

R.S. *Revision allowed.*

Mohan, J.

M/s. The Management of Shanti Theatres (P.) Ltd., Madras *v.* **The State of Tamil Nadu.**

28*th January*, 1976.

W.P. Nos. 2388 of 1974 and 344 of 1975.

Industrial Disputes Act (*XIV of* 1947), *section* 10 (1)—*Dismissal of workmen*—*Refusal by Government to refer the matter for adjudication* —*Memorandum to Government to reopen matter* —*Reference to Labour Court without opportunity to management*—*Violation of principles of natural justice*—*Order set aside*—*Constitution of India* (1950), *Article* 226.

The Management of Shanti Theatres (P.) Ltd., Madras dismissed three workmen. The Government refused to refer the matter for adjudication. A writ petition and a further appeal to quash this Government order failed. Subsequently, a

memorandum to Government was filed to reopen the matter and the Government passed the impugned order directing reference to the Labour Court, whereupon it was taken on file as an Industrial Dispute. The Labour Court directed reinstatement of the dismissed workers. The management challenged order of the Government on the ground that no opportunity was given to the management and the reference must be set aside for failure to observe the principle of natural justice.

Held, Admittedly when the impugned Government order was passed by the Government directing reference to the Labour Court concerning the dismissal of these three workmen, the management did not have an opportunity to put forth its case. Where the principle of natural justice has not been observed, the order is bad. The matter stands remitted to the Government for fresh consideration and the question of making reference will be decided after giving an opportunity to the management.

M. R. Narayanaswamy, for Petitioner.

V. Krishnan, for Respondents.

S.J. *Petitions allowed.*

Kailasam and
Paul, JJ.

Gopalakrishna Naidu, In re.

3rd February, 1976.

Crl.M.P. No. 534 of 1976.

Criminal Procedure Code (II of 1974), section 482—Petitioners acquitted by High Court of all offences—Appeal by State to Supreme Court—Special leave granted—Order for the issue of non-bailable warrants of the petitioners by the Supreme Court—Petition to High Court for bail—High Court has no powers to grant bail.

The petitioners were convicted by the learned Sessions Judge for certain offences under the Indian Penal Code and the Arms Act. On appeal by the petitioners, the High Court acquitted all the accused of all the offences. The State filed an application to the High Court for grant of a certificate to appeal to the Supreme Court and the same was dismissed. But the State moved the Supreme Court for special leave which was granted and the Supreme Court also ordered the Sessions Judge to issue forthwith non-bailable warrants for the arrest of the petitioners. The petitioners filed a petition under section 482 of the Criminal Procedure Code to the High Court to release them on bail.

Held, The Criminal Procedure Code is not applicable. There is no power conferred by the Criminal Procedure Code to the High Court or by any other enactment. Neither is the High Court in a position to construe the Supreme Court order as giving the High Court any discretion to grant bail pending further orders by the Supreme Court.

Gopaloswami, for Petitioners.

S J. ——— *Petition dismissed.*

K. Veeraswami, C.J. and
Suryamurthy, J.

Muniyandi *v.*
Rajangam Iyer.

21st January, 1976.
A.A.O. No. 213 of 1975.

The Tamil Nadu Agricultural Lands Record of Tenancy Rights Act (X of 1969), *section* 16-*A—Correction of record—Jurisdiction of Civil Court—Whether barred by the Act.*

Section 16-A of Act X of 1969 admits of no doubt that a civil Court has no jurisdiction to decide any matter which the record officer, District Collector, or other officer or authority empowered by or under the Act should determine. The Court is also forbidden from granting injunction in respect of any action taken or to be taken by such officer or other authority in pursuance of any power conferred by or under the Act. The Act indicates and provides for the remedy to correct the record by following the procedure laid down. Until the contrary is proved or a new entry is lawfully substituted therefor, the entry shall be presumed to be correct.

V. Somasundaram, for Appellant.

S. J. ——— *Appeal allowed.*

Ramaprasada Rao, J.

Thaiyal Nayaki *v.*
Ayyavu Chettiar.

6th February, 1976
C.R.P. No. 3843 of 1974

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), *section* 8 (2)—*Petition for eviction—Wilful default—Tenant sending rent by money Order—Refusal by landlord—Tenant depositing the same in saving account in post office—Procedure prescribed in section* 8 (2) *not adopted—Effect—No wilful default by tenant.*

For the month of July, 1968, the tenant sent the rent by M.O. and this was refused by the landlord. For the month of August, 1968 also, the tenant sent the rent by M.O. and this was rejected by the landlord. In September, 1968, the tenant opened an account in a Post Office and deposited the rents for every month during the suit period. However, the tenant did not adopt the procedure prescribed by section 8 (2) of the Madras Buildings (Lease and Rent Control) Act. The landlord filed a petition for eviction on the ground of wilful default in payment of rent. The Petition was dismissed by Rent Controller, but allowed by the Appellate Authority. On revision,

Held, The non-adoption of the procedure prescribed under section 8 (2), of the Madras Buildings (Lease and Rent Control) Act which could be adopted by the tenant in her discretion does not throw any light upon want of *bona fides* of the tenant in the instant case. Far from proving any wilfulness to avoid the obligation to pay rent, the course adopted by the tenant establishes her *bona fides*. The procedure prescribed under section 8 (2) of the Act is only optional and not mandatory. The tenant has respected the law and her obilgation by depositing monthly rents in a Post office, thus proving that she was at all times willing to pay the rents to the landlord. Order of the Rent Controller restored.

S. Sivasubramanian, for Petitioner.

K Sarvabhauman, for Respondent.

S. J. ——— *Petition allowed.*

Ramanujam, J.

Dr. A. Subramania Kumaran Nambiyar *v.*
The Secretary to Government Health & Family Planning Department, Government of Tamil Nadu, Madras.

9th February, 1976.
W.P. No. 3447 of 1972.

Constitution of India (1950), *Article* 226—

Tamil Nadu Medical Service—Assistant Surgeon—Appointment of—D. M. & S. qualification Second Pay Commission recommending scale of pay of Assistant Surgeons without refereuce to qualifications—Subsequent Government Order prescribing two scales of pay—One applicable to Assistant Surgeons having M.B.B.S and another for those having D.M. & S.—Validity—Cannot be differentiated—Writ of certiorari issued.

The petitioner had the qualification of D.M.& S. and was appointed Assistant

Surgeon in the category II of Class I of the Tamil Nadu Medical Service and had been working as such from 2nd April, 1965 to 3rd July, 1972. The Second Pay Commission recommended a scale of pay for Assistant Surgeons without making any distinction between those having M.B.B.S. degree and those having D.M.& S. qualification. This was accepted by Government and a uniform scale of pay was fixed. Subsequently the Government issued a Government Order prescribing a lesser scale of pay for those having D.M.&S. qualification. The petitioner challenged this Government Order on the ground that the Assistant Surgeons having beenput in one category without reference to qualification, they should not be separated into two categories after entry.

Held, the contention raised by the petitioner that there could not be any distinction between Assistant Surgeons having M.B.B.S. and those having D.M. & S. qualification in the matter of pay fixation had to be accepted. The impugned Government Order was quashed.

K. Kumaraswamy, for Petitioner.

S. J. ——— *Petition allowed.*

Ismail, J.

Kishtappa Naicker *v.* **Elumalai Naicker.**

4th February, 1976.

S.A. No. 501 of 1973.

Burden of Proof—Suit for declaration—Property purchased by husband in the name of wife—Claim that purchase was benami—Burden on person who asserts that the beneficial owner was somebody else.

A husband purchased a property in the name of his wife. The wife sold the property to the respondent herein. The first appellant who is the son of the vendor trespassed on the property alleging that the property belonged to the joint family of himself and his father and that the wife was only a benamidar. The respondent filed the suit for declaration of his title. The trial Court dismissed the suit. On appeal it was held that the case of benami was not proved and the wife was competent to convey title. On further appeal by the appellants.

Held, Once the title deed stood in the name of a person and somebody came forward and asserted that the real title vested in another person and the person in whose name the title stood was a benamidar, the burden of proving that the person in whose name the title deed stood was not the beneficial owner and the beneficial owner was somebody else, was throughout on the person who asserted to that effect and the burden never shifted. Under the circumstances, there were no merits in the Second Appeal.

R. Sundaravaradan, for Appellants.

S.J. ——— *Appeal dismissed.*

Ramanujam, J.

The Piracode Village Agricultural Credit Co-operative Society *v.* **The Joint Registrar of Co-operative Societies, Tirunelveli.**

18th February, 1976.

W.P. Nos. 2994 and 1043 of 1974.

Tamil Nadu Co-operative Societies Act (LIII of 1961), section 65 (3)—Co-operative Society—Enquiry conducted—Interim reports submitted to Deputy Registrar—Copy of interim reports not furnished to the petitioner-society—Whether petitioner entitled to copies of interim reports—Constitution of India (1950), Article 226.

In the year 1971, the Deputy Registrar of Co-operative Societies at Nagercoil directed an enquiry under section 65 (1) of the Tamil Nadu Co-operative Societies Act and interim reports were submitted by the enquiry officer. However no final report was sent by the enquiry officer. The petitioner filed this petition to direct the Deputy Registrar to furnish copies of the interim reports to the petitioner-society under section 65 (3) of the Act.

Held, It is only when some action is contemplated on the report, the petitioner will have to be furnished with a copy of the report. In this case, so long as there is no final report by the Co-operative Sub-Registrar on which further action could be taken against the Society (petitioner), the petitioner cannot insist that copy of the interim reports also should be furnished. Section 65 (3) contemplates the furnishing of a copy of the final report. There is no justification in the demand made by the petitioner that even copies of the interim reports were to be furnished to them.

S. D. Selvaraj, for Petitioner.

S.J. ——— *Petitions dismissed.*

Ramanujam, J.

K. Ramalingam *v.* **District Revenue Officer, Salem.**

20th February, 1976.

W.P. No. 5089 of 1975.

Essential Commodities Act (*X of* 1955), *section* 6 (a)—*Proceedings initiated by District Revenue Officer under section* 6 (a) —*Not valid.*

The petitioner attacked the validity of the proceedings initiated against him by the District Revenue Officer on the ground that the properly constituted authority under section 6 (*a*) of the Essential Commodities Act was the District Collector and not the District Revenue Officer.

Held, As conceded by the learned Assistant Government Pleader that the District Revenue Officer had no jurisdiction to initiate proceedings under section 6 (*a*) and that the District Collector was the proper authority to initiate proceedings, the impugned order as confirmed by the appellate authority under section 6 (*a*) was quashed.

K. Doraiswamy, for Petitioner.

Assistant Government Pleader, for Respondents.

S.J. ——— *Petition allowed.*