The Madras Law Journal

VOL. XXVI] FEBRUARY, 1914. [PART VIII

THE MALABAR BILLS.

The prevailing public opinion in North Malabar about the Bills of the Hon'ble Mr. Raman Menon, seems to be that the Marumakkathayam Law as at present administered in Law Courts should be reformed, not on the lines suggested by Mr. Menon but on the footing of customs accepted by the community as what the law ought to be. It is the absolutism of the Karnavan and the inactivity and indolence fostered by the Tarwad system, that have long stood in the way of individual enterprise, and the growing tendency of the Anandravan to separate himself from the rest of the Tarwad rather than fight with the Karnavan, has already begun to evince itself. An Act of legislature that would tend to develop this spirit of enterprise is quite welcome, but a measure such as the one proposed which aims at a complete overthrow of the Marumakkathayam Law at a single stretch, can never meet with the approval of Malabar. It must not be supposed for a moment that the people of North Malabar are devoid of feelings common to all humanity. They fully agree that one portion of a man's self-acquisitions should go to his children. They would have gladly supported the bills, if they were not as they are, opposed to the very spirit of Marumakkathayam Law. Their complaint is that the learned framer of the bills has gone rather too far. He does not seem to be satisfied with placing the Marumakkathayam Hindus on a level with other Hindus here and elsewhere. He goes a step further and applies the Indian Succession Act to the followers of Marumakkathayam Law, although S. 331 of that Act expressly exempts Hindus, Budhists and Muhammadans from its operation. It is true that their feelings and sentiments have altered a good deal since the introduction of Western Science and Civilization, and it is equally true, of course, that the prevailing idea of married life is repugnant to the feelings of an educated mind; but that does neither necessitate nor even justify the placing of the Marumakkathayam Hindus on a level with domiciled foreigners, Eurasians, East Indians and Native Christians. I am of opinion that it has been quite inexpedient on

the part of the Honourable member to introduce such a subversive measure, so prematurely and any attempt to secure the adhesion of North Malabar, is, I think, destined to prove an utter failure.

I propose therefore to point out for the consideration of those who are interested, more particularly of the Honourable member and the Government on what points the educated section of the Marumakkathayam people of North Malabar disagree and I shall also suggest in the light of their sentiments, the ways in which the bills may be made more acceptable to them. It invariably happens in a North Malabar tarwad that a member acquiring properties by his own personal exertions, allows them to be purchased in the name of his children on the one hand and sisters and sisters' children on the other in equal or unequal moieties or purchases them in his own name and then bequeaths or otherwise divides them in a similar proportion or when he has died intestate, his brothers and sisters willingly and ungrudgingly give a portion of such properties to his children, as if they claimed it as a matter of right, unless there are special reasons for them to act otherwise. Whatever might be the custom of old, this is the present custom ; but the law is still unchanged in substance. I am of opinion that law should accord with custom and not custom with law. Though there has been no substantial change in the law, still there has been some change, indeed. The Malabar Law of to-day was not the Malabar Law of 25 years ago and is not likely to remain the same 25 years hence. But for the fact that our Courts have refused to depart from the dicta of some of the Judges of the High Court based upon the principles of Malabar Law as understood in olden times, the practice above referred to would have long ago become the established custom of the country, and the law would have been, and that would be good law too, that one half of the self-acquisitions of a member of a Malabar tarwad, should go to his children and the other to his brothers, sisters and others constituting his own Tavazhi. The Malabar Marriage Act was not accepted by the people as it was opposed to their sentiments, and in consequence it has proved a thorough failure. I am of opinion that no law can prosper, unless it is in consonance with the customs of the subject-people.

In the first instance, therefore, I shall discuss Ss. 21 and 26 of the Partition and Succession bill, which are calculated to shake the Marumakkathayam Law to its very foundation. S. 21 reads thus :—" The self-acquired property left undisposed of by any person who belongs on the date of his or her death, to an imparti-

ble tarwad, shall be inherited by his or her wife or husband and children on the one hand and by his or her *tarwad* on the other." We cannot possibly lose sight of the advantage afforded to us by the Full Bench decision of the Madras High Court in *Krishnan Nair* v. *Damodaran Nair*[1] where their Lordships, *Benson*, Offg. C. J., and *Sankaran Nair* and *Sundara Aiyar* JJ. have unanimously held that the self-acquisitions of a female member of a tarwad, should according to the present customs of Malabar, descend to her own *Tavazhi*, and not to her tarwad. Although the question as to the devolution of the self-acquisitions of a male member, did not, in that case, arise for their Lordship's decision, I think the tendency of the High Court as will be seen from their judgments, is to treat alike the self-acquisitions of a male and a female, in the matter of inheritance and I hope that when a case involving the question is taken up to the High Court, they will decide it accordingly. In view of the above ruling I would also have it that no part of a woman's property should be inherited by her husband. I am therefore of opinion that the section should be modified accordingly and one of the grievances often complained of, would then be redressed. Passing on to S. 26, we see a distinct line drawn between the self-acquisitions of a member of an impartible tarwad and those of a divided member of a partible tarwad, the undivided state of a partible tarwad being altogether ignored, as I shall hereafter notice. Inheritance by sister and sister's children form the nucleus of the present complex tarwad system. Partition may be granted for the sake of peace and for various other reasons. There is no doubt that we love our brothers and sisters and next to mothers' it is our love for them and theirs' for us, that we cherished from our childhood, and we are unable to judge how much they have exerted themselves for our well being. For these reasons I think it only just to allow them also to inherit our property. It may be argued that no hardship can result from it being the common law that only wife and children shall inherit such property ; but then it would be equally true that there can be no hardship if the existing state of affairs is continued, and legislation in the matter would be unnecessary, if legislation is intended to remove a hardship. I am inclined to think that if the rationalistic view, above, is not to be accepted, a rule of law by which our brothers and sisters are allowed to have the benefit of our acquisitions, with our children, will have the effect of levelling up an inequality of fortune. To do justice to our brothers and sisters on the one hand and our children on the

1. (1912) 24, M. L. J. 240

other,I may propose that the rule of inheritance, laid down in the case of the self acquired property of a member of an impartible tarwad, may, subject to modifications suggested above, be extended to the case of a divided or undivided member of a partible tarwad also. In this connection the term " Tavazhi " has to be defined to mean and include the acquirer's mother and her descendants, and in default, his maternal grandmother and her descendants and no further beyond. It would then become necessary, that S. 27 of the Partition and Succession Bill and S. 12 of the Marriage and Inheritance Bill be expunged.

We shall now turn our attention to the other Sections of the Bills. The Moplas of North Malabar follow Marumakkathayam law in certain matters and Mahomedan Law in certain other matters. They have their tarwads and Karanavans ; in this respect they follow Marumakkathayam law. They have forms of marriage and dower agreeable to the rules of Mahomedan Law; and in this respect they follow Mahomedan Law. Further, the Madras High Court has held in *Bava* v. *Pathumma*[1] that the inheritance of a Mopla governed by Marumakkathayam law, should be regulated by the rules of Mohammadan law, unless the existence of a custom to the contrary be established. It is therefore clear that the Marriage and Inheritance Bill cannot apply to them. The question, then, is whether the Partition and Succession Bill applies to them, and, if so, to what extent. Succession and Inheritance are co-extensive and if the question of inheritance does not arise, the question of succession also does not. Ammu Sahib Bahadur, the experienced Tahsildar of Chirakkal and an influential member of the Mopla Community, whom I have consulted in the matter, says that they wish for legislation to the effect that the self acquisitions of a male member of a tarwad, do descend to his wife and children on his death, according to Mohammadan Law, and certain other gentlemen confirm his view. Though the custom invariably is that children are given or take such acquisitions exclusively, it appears that when the matter is taken up to Law Courts, the law is found to be different and they seem to deeply regret this state of affairs. They cannot agree with us. They are Mohammadans, and, if possible, they want to follow their own law. As regards Partition, Mr. Ammu says that the bill should not affect them, that their tarwad properties may be considered as trust properties divisible with the consent of all the beneficiaries and if the bills are intended to apply to them also, he should strongly protest against it.

1. (1912) M. W. N. 912

Apart from these considerations, one would be obliged to think that North Malabar Moplas have been left out of account altogether; when we see " Hindus " in the preamble, we have to conclude that the Moplas have been omitted; but when we see " Followers of Marumakkathayam law " in S. 1., we are induced to suspect that Moplas have been included. I should think that Mr. Menon has forgotten the existence of this community, and I do not think that the bills need be made applicable to them also and so the word " Hindu " may be inserted before " followers of Marumakkathayam law " in S. 1.

PARTITION AND SUCCESSION BILL.

In S. 2, the following terms may also be defined with advantage :—Tavazhi, Impartible Tarwad, Tarwad necessity, Partition, Collector and Self-acquisitions. I shall presently show how the definition of each of these terms will be useful.

S. 3:—Parties having recourse to the procedure prescribed in this section and in S. 7, should be allowed all possible convenience, and with this object in view, I would suggest that the Collector may be empowered to delegate his powers to any Gazetted subordinate of his, but the order passed by such officer may be subjected to confirmation by the Collector. The word " Collector" may therefore be defined to include such subordinate also.

S. 6:—The meaning of this section does not seem to be clear. It may mean that no appeal lies from an order of the Collector or it may mean that no civil suit lies for setting aside an order of the Collector. There is no doubt that there ought to be provision that no such suit is maintainable. But if it is intended to mean that no appeal lies, there is evidently no reason why an order granting an application should not likewise be final. Whatever the motive may be, I should think that in fairness to all parties, the rule of finality of orders rejecting an application for registering a tarwad as impartible should be extended to orders granting such an application also. As regards the non-maintainability of a civil suit, a new section may be added, or if S. 6 is intended to cover a civil suit it may be made clearer.

S. 12:—Questions may invariably arise as to what are the purposes for which a Karnavan is authorised to spend tarwad income. Hitherto the misleading expression "Justice,equity and good conscience" was guiding our courts for want of a Code. Now that a Code is to be brought into being, I do not know why it should not be specific on such points also. I think we shall do well to adopt the

well-established, though vague and too general rule of Hindu Law that a manager is empowered to spend the joint family income for legal necessities and the term "Legal necessities" may be adopted into "Tarwad necessities", and the term "Tarwad necessity" defined in S. 2.

S. 16:—This and the two succeeding Sections appear to have been framed with the object of restricting the powers of the Karnavan of an Impartible Tarwad, in the matter of creating debts binding on, and granting leases of, tarwad property. Under this Section, a Karnavan has power, without the consent of the other major members of the tarwad to mortgage tarwad property with possession for a period of six years and also grant leases of such property for a similar period. I think that the period of six years fixed is arbitrary. The Karnavan should have power to lease and mortgage, tarwad property if, at all, he should be given such power for a maximum period of 12 years, considering the fact that a Kuzhikanom lease for a period of six years or less, would be useless, and that, ordinarily, a Kanom is to enure for the benefit of the kanari at least for 12 years. See *Kelu Nedungadi* v. *Krishnan Nair*[1]. It may, however, be provided that the Karnavan shall account for all premiums and other profits derivable from leases or mortgages of tarwad property, and the allowance of 5 per cent. to the Karnavan for his trouble, may be raised to 10 per cent. See S. 14.

S. 17:—The expression "except as provided for in S. 16" placed in the beginning of the section seems to be a little confusing. It may be construed as meaning that for no tarwad necessity a Karnavan may mortgage tarwad property with possession for six years. That is clearly not the intention of the Honourable member. This mistake is apparently due to a misplacement of the expression, and it has to be made more intelligible by placing it before "without the consent of all the major members &c." In the second part of the section the words "or each of the Tavazhis" may be inserted immediately after the words "of the senior male and female members of the Tavazhi".

S. 18:—When we read this Section with S. 16 it seems to me that they contradict each other. Either the words "except as provided for in S. 16" may be prefixed to this section or the power of the Karnavan to mortgage tarwad property, may be taken away, or the word "debt" in this section may be explained to mean "hypothecation debt or simple money debt."

1, (1903) I. L. R. 26 M. 727 (F. B.).

S. 19:—The word "proportionate" is likely to mislead a court of law. The Karnavan of a tarwad consisting of ten members and having an annual income of Rs. 5,000 may be called upon to pay Rs. 500 to each of the members, in the light of this section and the result will be that the Karnavan will get nothing for his trouble and S. 14 will become meaningless. Here the word "reasonable" may be substituted for "proportionate" and the necessary changes may be made and what is a reasonable amount will always be a question of fact determinable with reference to S. 14 or the words "Subject to the provisions of S. 14" may be prefixed to this Section.

S. 21:—The wife and children may be allowed to inherit half the property and the other half must go to his Tavazhi. In default of the one class the other must get the whole. A wife inheriting with children shall be entitled to proportionate maintenance and a wife inheriting without children shall have a life estate in the property inherited, and on her death, the property shall revert to her husband's Tavazhi. To my mind, this mode of devolution appears to be just and reasonable under the circumstances.

Before leaving the Partition and the Succession Bill, I have to bring to the notice of the reader the fact that the Bill contains no provision as to the conduct of a Karnavan of a partible Tarwad that may, all the same, choose to remain joint. We see many a family around us and abroad, governed by Hindu law remaining joint notwithstanding the fact that at the instance of a single member, the whole family is liable to break up and I do not know how, we can fail to foresee the possibility of a similar state of things in families which are not declared impartible. The matter is, however, easy enough. The rules regulating the conduct of the Karnavan of an Impartible Tarwad may be extended to such families also.

MARRIAGE AND INHERITANCE BILL.

I have already discussed the Inheritance Part of the Bill and I shall close the communication with a few remarks on marriages.

Under Hindu law as well as Muhammadan Law, a man can have two or more wives at the same time. But under neither law is a women allowed to have more than one husband at the same time. To speak nothing of the evils of the custom I should think that the advantages are more. At all events, if, on account of this custom, the Hindus should be deemed to be a barbarous people, I do not know how we can escape the stigma so long as we remain Hindus. My suggestion therefore is that clause (*b*) of S. 3 may be so modifi-

ed as not to disturb the existing law. Nothing is perfect under the sun. No social system can be said to be perfect. There are certain matters in which we ought to imitate the West. I do not think we are right in trying to imitate the West in religion and in social customs.

S. 3 Clause (*c*) is directly inconsistent with the greatly extended view that the Honorable member has taken so far as partition and inheritance are concerned. The existence of castes and sub-castes has long troubled our leaders, and movements are already on foot for the fusion of the sub-castes among whom intermarriages are prohibited. I am of opinion that the attempted fusion, if accomplished, would be greatly beneficial to us. I would therefore omit cl. (*c*) S. 3.

I do not thing that S. 4 Sub. S. iii and Sections 4 to 10 are workable. I do not think we are in need of divorce Courts at all. Why do we want the help of the Court for the dissolution of marriages? Our Sambandhams can be performed very easily. The presence of one or two local elders, and a few formal ceremonies, constitute what is called a "Sambandham". I should think that, if a divorce is effected in the presence of at least two such elders, that must be held sufficient. It is very easily said in S. 7 that "an order shall be passed dissolving the marriage" Before passing such an order, we do not know what all questions may be raised by the adversary? He or she may say in answer, that he or she was quite willing to give his or her consent and that the petition was unnecessary and that he or she would not be liable for costs. The other party will insist on costs, and it will again be a matter of oral evidence and give rise to scandalous expositions in open Court. I am therefore of opinion that sub-section 3 of S. 4 and Ss. 5 to 13 should be omitted altogether. I may, however, suggest that S. 23 of the Partition and Succession Bill may be incorporated with this Bill.

I hope that in the foregoing lines I have merely voiced the sentiments of the people of North Malabar following Marumakkathayam Law. I have no doubt that the measure now proposed is a highly desirable one; but I am constrained to think that till Malabar is fully Westernized, such a measure can never be relished. I believe that no legislation can practically alter the customs of a community unless the popular sentiments are predominantly in favour of the change. No legislature can effectually stand in the way of an adult man and an adult woman, living practically as man and wife, if they are so disposed. I am of opinion that the

present marriage system among the Marumakkathayam people can never be said to have no legal sanction, since it is quite in accordance with the customs of the country.

A Nair woman in North Malabar invariably lives with her husband after marriage, but in South Malabar, I understand, the custom is different. Divorce is unknown in Tarwads of respectable standing, and is, generally speaking, very rare. There is no denying the fact that chastity is a virtue in a woman and there can be no breach of the rules of chastity if a woman remains unpolluted by any man except her own husband. I do not see any harm in allowing a man to marry as many wives as he wants if he can maintain and keep them all in harmony. I am inclined to think that such a state of things will save a man from being instrumental in polluting the virtuous habits of a maiden. On this point I have the authority of Dr. J. T. Sunderland, an American admirer of Indian habits and customs.

M. RAMAN NAIR.

NOTES OF INDIAN CASES.

Jatangir Muncherji Lali v. The Bombay Baroda and Central India Railway Company.—I. L. R. 37 B. 575.—The enunciation of the law by Mr. Justice *Davar* in this case as regards the position of a passenger where a portion of his person extrudes out of the inside limits of a railway carriage in which he is being carried seems to be unexceptionable although we are doubtful of the application of the principle in this case. There can be no doubt that in an earlier case cited by the learned judge *Dullabji Sakhidas* v. *G. I. P. Railway Co.*[1] the law was laid down too broadly. In applying the principle the learned judge seems to have assumed that the plaintiff was aware or ought to be aware that there was a danger which would possibly affect him. But for the fact that the door in the stationary train was left open the accident would not have happened and the leaving of the door open, was surely due to the negligence of the Railway Company and was the direct cause of the accident and in the face of this to say that the plaintiff in protruding his person has so directly contributed to the accident as to make his act the immediate cause seems to us to give the go-bye to the real question in the cause.

---

1. (1909) I. L. R 34 B. 427.

Bhimabai *v.* **Tayappa Murar Rao.**— I. L. R. 37 B. 598.— The decision of the Judicial Committee in *Boobun Moyee's case* has formed a text for consideration in different cases and it cannot be said that there has not been any uniformity in the construction placed upon it by the different High Courts. It has been thought in some quarters that the Judicial Committee went beyond the principles of Hindu Law in pronouncing the adoption invalid and in the limits which it laid down as regards the capacity of a Hindu widow to adopt. We cannot share in any such view. It must be admitted that there should be some limit placed upon the power of the widow to adopt. The Bombay High Court in this case has adopted the principle that when an estate is vested in an heir, whether that heir is a son's widow or any other, the power of adoption of the father's widow or mother, if any, is at an end.

Hanmant widow Rakhmaji *v.* **Anrajl Hanumanta.**— I. L. R. 37 B. 610.—There is no doubt about the correctness of the decision in this case and we are glad to note that the Bombay High Court has taken a sensible view. We cannot, however, concur in the sentiment expressed by Mr. Justice *Beaman* that the former practice of not writing judgments is desirable and right "as tending to relieve a hard worked mofussil judiciary from a heavy burden of clerical work." That the mofussil judiciary is hardworked every one will admit and that they should be relieved of much of clerical work one may also agree. But we cannot agree that writing judgments amounts to clerical work or that the judges should be relieved of writing judgments even though in cases coming under O. 41 R. 11. It is only by the judgment that one can know whether the mind of the judge has been applied to all the material facts and circumstances and whether after that application the judge has come to the conclusion at which he arrives.

Bhoji Mahadev Parab *v.* **Ganga Bai**—I. L. R. 37 B. 621— There was a maintenance decree which declared a charge on family property. Whether it was on particular family property or on the entire family property does not seem to be clear although from the report of the facts it would seem that the charge was of the latter kind but no question has been raised whether that charge is indefinite and so not capable of being enforced as such and we have no reason to suppose that where a decree expressly creates such a charge the same cannot be enforced. In fact the learned Judges of

the Bombay High Court give effect to the charge later on. The decree was in 1902. Before any execution was taken the plaintiff purchased some of the family properties in 1906. In 1907 the decree-holder applied for execution and one of the properties purchased by the plaintiff was attached and sold in 1910. The learned judges hold that there was no *lis pendens* and following the decision of the Calcutta High Court in *Kulada Prosad Chatterjee* v. *Jageshar Koer*[1] they hold that the plaintiff's purchase was subject to the charge created by the decree. The decision of the Calcutta High Court, however, does not give effect to the right of the prior purchaser and the decision of the Bombay High Court referred to by the learned judges (*Mohan Manor* v. *Tagu Uka*[2]) also shows that a sale in execution of a mortgage decree is free from all subsequent incumbrances and the redemption in that case was allowed only on the ground that the subsequent purchaser was not made a party to the suit but in the case under discussion there was already a decree. The subsequent purchaser was only a representative of the judgment-debtor and no second suit was necessary or would lie. Under those circumstances we can hardly understand the decision of the learned judges that the subsequent purchaser should be allowed to redeem. Again we can hardly understand the decision of the learned judges that the plaintiff should claim the money from the court purchaser. He should certainly pay the charge if the equity of redemption is still outstanding. Of course if the decree creating a charge could not be executed as such we can understand the decision of the learned judges that the plaintiff's sale was only subject to the charge. Even then we cannot understand how the plaintiff would be entitled to redeem in the suit that he brought. Altogether we cannot regard the decision in any way as satisfactory.

SUMMARY OF ENGLISH CASES.

National Telephone Company Limited and another v. **His Majesty's Post-Master-General**: [1913] A. C. 546 (E.)

Appeal—Maintainability of—Reference to Court on matters in dispute—Usurping jurisdiction by entertaining appeal, how to attack.

Where by statute certain matters in dispute are referred to the determination of a Court of Record with no further provision, the necessary implication is that the court will determine the matters

1. (1899) I. L. R. 27 C. 194 2. (1885) I. L. R. 10 B. 224

as a court. Its jurisdiction is enlarged, but all the incidents of such jurisdiction, including the right of appeal from its decision, remain the same. An appeal therefore lies even though the reference could be made only if the parties agree to make the reference.

If a Lower Appellate Court had usurped jurisdiction by entertaining an appeal when no appeal would lie under the statute, the way of setting aside such usurpation of powers, is by filing an appeal to the higher Court.

Sandeman and Sons v. Tyzack and Branfoot Steamship Company Limited [1913] A. C. 680 (Sc.)

Common Carrier—Suit for freight—Loss of goods—Bill of lading—Exemptions—Shortage in delivery—No right to freight—Liability for undelivered goods.

A shipowner, receiving several bales for delivery to a consignee, is bound to deliver all the bales to the consignee before he could claim freight for it. A clause in the bill of lading exempting him from liability in case of his inability to deliver the goods on account of "obliteration or absence of marks" will not relieve him from his liability for shortage. Not only is the suit for freight liable to be dismissed owing to non-delivery of all the goods but the ship-owner is also answerable for the counter-claim for the value of goods not delivered.

The fact that owing to obliteration or absence of marks the goods of some of the consignees became so mixed as to be indistinguishable is no answer for shortage in delivery to one of them who is entitled to receive in full all the goods that were sent to him.

Mason v. Provident Clothing and Supply Company Limited [1913] A. C. 724 (E).

Agreement in restraint of trade—Enforcement of, only if reasonable—Evidence of reasonableness—Question for Court and not for jury—Public policy, what is.

Agreements in restraint of trade, which are not made to protect the sale of a goodwill or to guard against the disclosure of special trade secrets, will not be enforced by Court if they are unreasonably severe and go beyond what is really necessary, for the due protection of the promissee's interests. The question of

reasonableness in such a case is one for the Court and not for the jury. Evidence cannot be given on the question of validity or of reasonableness, although evidence can be given as to the nature of the business and of the employment and also as to any practice which is usual among business men as regards the terms of the employment, not because this can determine the legal question of what is reasonable, but because what is usual is to some extent a guide in the consideration of the requirement of the particular business.

The true view at the present time is this : The public have an interest in every person's carrying on his trade freely : so has the individual. All interference with individual liberty of action in trading, and all restraints of trade of themselves, if there is nothing more, are contrary to public policy and therefore void. That is the general rule. But there are exceptions as noted above, based on expediency of protecting trade secrets and enforcing reasonable restraint of trade.

The standard of public policy must be the standard of the day and what was laid down as to public policy a long time ago may be of little use in settling what the actual standard is.

British Columbia Electric Railway Company Limited v. Stewart [1913] A. C. 816 (J. C.).

Statutes—Construction of—Repugnancy between statutes of the same year—Later statute to prevail.

It there is a repugnancy between two statutes of the same year the later statute prevails.

Grand Trunk Railway v. McAlpine [1913] A. C. 838 (J.C.).

Railway Level Crossing—Duty to warn wayfarers—Warning to be only reasonable—Injury to be actionable must be the result of breach of statutory duty—Damages, when recoverable.

In the case of a Railway Company which is obliged under a statute to give timely warning to wayfarers on the approach of the train near level crossing it is not necessary for the protection of the company that the victim should hear the warning. It is only necessary that the warning should be such as ought to be apprehended by a person possessed of ordinary faculties in a reasonably, sound, active,

and alert condition, and the time given to avoid the danger should be such as would be reasonably sufficient for such a person as the one abovementioned to avoid it. If a company permit persons whose faculties it knows to be defective to cross the line, that knowledge may possibly impose upon them the duty to take greater care than would be required towards the ordinary wayfarer who is not so affected.

There is no such rule of law in England, as that if a person about to cross a line or lines of railway looks both ways on approaching the track, he need not look again just before crossing it.

Even a plaintiff whose negligence has directly contributed to the accident, can recover damages, provided it be shown that the defendant could by the exercise of ordinary care and caution on his part have avoided the consequence of the plaintiff's negligence. Similarly, if the accident though due to the breach of the duty was the result of the folly and recklessness of the plaintiff himself, he cannot recover any damages.

Meyer and Co. Limited *v.* The Sze Hai Zong Banking and Insurance Co. Limited :

[1913] A. C. 847 (J. C.)

Negotiable Instruments—Crossed cheques—Payment of, by cheques, to one not a banker—Estoppel of the drawer.

A drawer of cheques crossed generally, who regularly allows his bankers (the defendants) to make payment for the cheques, to his own cashier or agent for collection in the shape of new cheques drawn by the bankers on others, is estopped from denying his cashier's or agent's authority to receive payment of the cheques from his bankers (the defendants), and such substitution of cheques is in law equivalent to payment.

If the cashier or agent misappropriates the proceeds of the new cheques by giving them to his own account, the drawer cannot throw the loss on his banker. This is essentially a case in which, as between two innocent persons, one of whom must suffer by the fraud of a third person, he should suffer who, by his conduct has enabled such third person to occasion the loss.

[Compare Sec. 126 to 129 of the Negotiable Instruments Act.]

Mair v. Rio Grande Rubber Estate Limited:
[1913] A. C. 853 (Sc.)

Contract—Contract to take shares—Rescission of—Prospectus—Fraudulent representations in—Liability of Company.

A company which issues a prospectus inviting subscribers to take shares, is responsible for the absence of fraud or misrepresentation in respect of the statements made therein whether those statements are made directly by the company itself or are made by an agent or director of the company and virtually adopted by the company by inserting the same in its prospectus. A subscriber who was induced to take shares on the strength of such statements is entitled to rescind his contract on proof of the fraudulent character of the representations.

In re **Allsod: Whittaker v. Bamford:** [1914] 1 Ch. 1 (C.A.)

Trustee—Judicial Trustees Act, S. 3—Acting reasonably and honestly—Power to excuse breach of trust—Paying to wrong persons on misconstruction of will, on legal advice.

This case turned on the construction of S. 3 of the Judicial Trustees Act of 1896 which gives the Court power to relieve a trustee from liability for breaches of trust when he has acted honestly and reasonably. In this case, the trustees acting upon legal advice, handed over the income of a fund to one set of persons whereas according to the construction finally put upon the will by the Court it ought to have been paid to another set. The will was obscure and the property not being large it could not be said that the trustee acted unreasonably in not going to the Court for a construction of the will. Held, overruling the opinion of *Warrington* J. that the Court had power to excuse and under the circumstances the trustees ought to be excused.

De Lisle v. Union Bank of England: [1914] 1 Ch. 22.

Mortgagor and mortgagee—Debenture stock as collateral security—Conversion of stock by mortgagee—Sub-mortgage of land—Sub-mortgagee bound to give credit for value of debenture.

Plaintiff mortgaged some land to his Solicitor to secure the advance by the latter of the purchase money and gave as collateral security some debenture stock which was transferred to his name. The solicitor without disclosing the extent of his rights over

the debenture gave it as security for his general indebtedness to defendant Bank. The Solicitor next sub-mortgaged the land by way of equitable deposit to secure his general indebtedness. Plaintiff sued to redeem the mortgage. The question was, what were the relative rights of parties. *Held* so far as the debenture stock was concerned, the Bank having had no notice of the arrangement between the parties, was entitled to have it as security for the solicitor's general indebtedness. But as regards the mortgage the question was different. Notice or no notice, the bank as a sub-mortgagee was bound by the state of accounts between the mortgagor and the mortgagee. Before the sub-mortgage the mortgagee having converted the debenture to his own use, the mortgage amount stood reduced by its value and the bank was entitled to get in the redemption action only the reduced amount.

***In re* Midland Express, Limited : Pearson v. The Company :** [1914] 1 Ch. 41.

Debenture holders—Interest of some paid before charge crystallised—No priority in respect of interest unpaid.

This was an appeal from the judgment of *Sargant* J. reported in (1913) 1 Ch. 499. The question was whether debenture-holders whose interest remains unpaid at the date when the charge is crystallised are entitled to say to the other debenture holders who rank *pari passu* with them who have been paid their interest, that their own interest in arrears should first be paid and then only the amount realised should be rateably distributed. The court of Appeal held agreeing with Sargant J. that they were not entitled to any such priority as regards the interest. The state of things existing at the date the charge is crystallised, should be accepted and distributions must proceed on that basis.

Eastwood v. Ashton [1914] 1 Ch. 68 (C. A.)

Misdescription—B. H. farm, in occupation of tenants, of certain measurement—Sale of—Reference to plan—Plan including more, effect of.

Property called B. H. Farm in the occupation of two named tenants and of certain measurements and " more particularly described in the plan " attached to the sale deed was sold to the plaintiff for a certain price. It so happened that a portion of the property marked in the plan was in the adverse possession of other

persons and the purchaser could not obtain possession of it. He sued for damages in respect of it. The description in the document did not cover it; only the plan covered it. Held under the circumstances, the description in the document should prevail. Reference to the plan was merely a *falsa demonstratio* which did not vitiate the description in the document. Judgment of *Sargant* J. in (1913) 2 Ch. 39 reversed.

In re **Harper: Plowman** *v.* **Harper:** [1914] 1 Ch. 70.

Will—Construction—To unmarried daughters of H and G, equally—Meaning of.

The testator in this case gave a legacy to be equally divided between the unmarried daughters of her brother-in-law Dr. H and Dr. G. Two questions arose upon the construction of the will. First whether the legacy was intended for Dr. G or for his unmarried daughters only. Secondly assuming Dr. G was meant, whether he took a moiety of the legacy or had to go shares equally with the unmarried daughters of Dr. H. The balance of authority is in favour of reading the legacy as one to the unmarried daughters of Dr. H and to Dr. G. *Sargant* J. preferred to rest this construction upon the circumstances of the case viz., that the testatrix had no reason to make the daughters of Dr. G the objects of her bounty in preference to him, that Dr. G had only an unmarried daughter of four and there was little chance of any occasion arising for a distinction between married and unmarried daughters. On the second point, his Lordship held that Dr. G was to go shares with the daughters of Dr. H equally and was not entitled to a moiety.

Millbourn v. **Lyons:** [1914] 1 Ch. 34.

Sale—Contract of sale—providing for restrictive, covenant for the benefit of vendor's land—Land sold away before conveyance —Effect of.

A contract for the sale of certain property provided for a restrictive covenant in respect of the user of the property sold for the benefit of the other adjoining properties of the vendor but before conveyance, all the other properties of the vendor were sold away without reference to the restrictive stipulation.

Held that the property sold was free from the restrictive stipulation as at the material date viz., the date of sale, the vendor had no property to which the benefit of the covenant could attach.

In re **Morrison, Jones and Taylor, Limited**
Cookes v. Morrison Jones and Taylor Limited:
[1914] 1 Ch. 50 (C.A.)

Hire and purchase agreement—Putting up a machine on the premises—Right to enter and remove on default in payment—Equitable interest in land—Subsequent Debenture—Prority between.

In this case a patent automatic machine was put up by the respondent on the appellant's premises on a hire purchase agreement giving the former power to enter and remove the machine in the event of default in the payment of the instalments due under the agreement. Subsequently and without giving notice of this agreement, appellants created a floating charge. The question was which of the two had precedence.

Held that the interest of the respondents was an equitable interest in land and the charge-holder's interest being also only equitable, they ranked in order of time and the former had precedence.

Smith v. Streatfield [1913] III K. B. 764.

Defamation—Libel—Privileged occasion—Co-defendants—Malice of one—Joint tortfeasors' liability.

The author of a pamphlet printed it and circulated it among persons having a common interest in it. The pamphlet contained defamatory statements against the plaintiff. In an action against the author and the printer both pleaded justification and privilege. The jury found that the justification was not proved and the author was actuated by malice but that the printers were not.

Held that the privilege extended to the printers but that the malice of the author defeated the privilege for both and both being joint tortfeasors were jointly liable.

Herd v. Weardale Steel Coal and Coke Co. Ltd.
[1913] III K. B. 771 (C. A.)

False Imprisonment—Miner—Coal mine—Refusal to work—Employers not affording facilities for leaving the mine.

A miner descended a coal mine as usual at 9-30 in the morning to work for his employers, the colliery owners. On reaching the

bottom he was asked to do some work which he wrongfully refused to do. At 11 a. m. he asked his employers to be taken to the surface in the lift. Permission was not given him till 1-30 p. m. He was in consequence obliged to remain there against his will. In an action against his employers for damages for false imprisonment;

Held by Buckley and Hamilton L. JJ. (Vaughan William L. J. dissenting) that the action was not maintainable. As there was no contractual obligation between the plaintiff and the employers, the colliery company, to afford facilities for his return under the circumstances the refusal to afford facilities did not constitute false imprisonment.

JOTTINGS AND CUTTINGS.

Women and the Legal profession:—The Court of Appeal on Wednesday last dismissed the appeal against Mr. Justice Joyce's decision in *Bebb* v. *The Law Society*. Miss Bebb brought an action against the Law Society, asking for a declaration that she was a 'person' within the meaning of the Solicitors Act, 1843, and a mandamus to compel the Law Society to admit her to qualify as a solicitor. The action was dismissed on the ground that women are by the common law disqualified from becoming solicitors, and that modern legislation has not removed this disqualification. This decision having now been affirmed by the Cout of Appeal, it is to be hoped, to quote Mr. Justice Byles' words in *Chorlton* v. *Lings* (1868), that the failure of the appeal 'will for ever exercise and lay this ghost of a doubt which ought never to have made its appearance.' The considerations, indeed which determined the unanimous decision of the Court of Common Pleas in that case against the right of women to vote at parliamentary elections apply with even greater force against the right now claimed by women to practise as solicitors. It was contended there that if women had not at common law the right to vote, the Representation of the People Act 1867, gave them the right. In the present case it was admitted that, if there actually existed a prohibition under the common law against the right of women to practise as solicitors, the Solicitors Act, 1843, did not remove the prohibition. No astute interpretation of any modern statute will avail women who desire to enter the legal profession until they show that they are not disqualified by the common law, and this we venture to think they will not succeed in doing. Every argument on their behalf must come back to the touchstone applied by the Court of Common Pleas in

Chorlton v. *Lings*—the usage of centuries must be the governing consideration. Ingenious arguments built upon the supposed analogy of the offices of churchwardens, sextons, etc., must come to the ground as soon as they come in contact with the hard fact that no woman ever has been admitted to practise as a solicitor in the English Courts. 1913. Law Journal p. 710

***

The Liabilities of Private Prosecutors:–ACTIONS for malicious prosecution and for false imprisonment, though somewhat analogous and sometimes confounded, are perfectly distinct, and a private prosecutor is often liable for the one cause of complaint when he is not for the other. The distinction between the two is sharply brought out in the recent case of *Walters* v. *W. H. Smith & Son*, in which the Lord Chief Justice delivered a considered judgment—his first—last week (December 3), after hearing arguments on the legal points involved. The defendants, the well-known book selling agents, having suffered repeated losses from one of their bookstalls, had given the plaintiff, who was an assistant at it, in charge for the theft of a particular book which was found to be missing, but had not, in fact, been stolen. On the plaintiff bringing his action for damages for false imprisonment and malicious prosecution,the jury found (1) that the defendants had taken no reasonable care to inform themselves of the true facts, (2) that they honestly believed that the plaintiff had stolen the book, (3) that they reasonably believed that the plaintiff had stolen moneys and stock other than the particular book, and (4) that they were not actuated by malice in instituting the proceedings. The judge ruled that there was no absence of reasonable and probable cause for the prosecution, and on these findings the plaintiff failed upon the claim for malicious prosecution. But the claim for false imprisonment remained, and it was urged for the plaintiff that, as it turned out that no felony had in fact been committed in respect of the particular book on which the charge was made, there was no defence to this claim. Now the gist of an action for false imprisonment is that a trespass has been committed by one man against the person of another by arresting and detaining him without legal justification, and the defendants contended that all they need establish as legal justification for the imprisonment was (*a*) that an actual felony or felonies had been committed, and (*b*) that they had reasonable and probable cause for suspecting the plaintiff of such felony or felonies. In other words, it was argued that it was not essential to the defence to prove that the felony for which the plaintiff was arrested had in fact been committed. That contention

the Lord Chief Justice, after an elaborate review of the authorities, rejected, holding that it was contrary to the common law that a private person could justify his action in causing the arrest of another on suspicion, without being able to prove that a felony had actually been committed, and that the felony proved must be that for which the arrest was made. This has, it is true, never been expressly decided before, but the classical authorities, Hawkins' Pleas of the Crown and Hale's Pleas of the Crown, show that this has always been the accepted view, viz., that to justify an arrest the private prosecutor must show that the very same crime for which he made the arrest was actually committed.' To hold otherwise now would, as Mr. Justice Byles said in one of the leading cases on the subject, be 'disturbing foundations,' and the Lord Chief Justice was conservative enough in a case involving the liberty of the subject not to find lawful excuse where the very basis had failed upon which any such defence must rest. This first reserved judgment of his is a model of accurate reasoning, and will long be cited as statement of the whole law on the subject.—*Ibid* p. 711

***

Lord Justice Buckley, who responded on behalf of the Bench, (at the annual meeting of the Solicitor's Benevolent Association) said by the time a man reached the Bench it was certain that everybody in the profession knew pretty well all about him, and after he got on the bench it became more emphatically true. His capacity if he had any and his failings—he was sure to have some—were apparent to all those who appeared before him. But he ventured to express the hope that, although the profession knew all about the members of the bench, they liked them all the same. He desired to say a few words upon one of the phenomena of the age in which we live. He supposed that law and order might be described as the expression of the thoughtful and determined wish of the majority, while disorder might be expressed as the hurried and hysterical expression of the minority. In our age, as it seemed to him, we were spectators of a marked disagreement between law and order on the one hand and disorder on the other. The first means by which law and order were supported was the willing consent of all those who had to obey the law. Of course, it was true that the ultimate resort was to force, but society was so organised that, if possible all law and order rested on common consent and not upon force. Disorders, on the other hand, resorted to force as its first, as well as its last, expedient. We were witnessing in our day a strong contention between those two forces. In proposing that toast they were

toasting a body representative of law and order, and they were expressing the wish that law and order might prevail. There were those who thought, and it was a very serious matter indeed, that to-day we were witnessing a state of things in which not only was law and order not primarily supported, but there was a strong disposition to yield to disorder, and a strong disposition not to maintain that which a judge determined to be the proper sentence, to pronounce, say, on a criminal, but to regard rather the frenzied and hysterical expression of the minority. He supposed they all felt that in the Bench must ultimately reside the support and maintenance of order, and therefore he hoped that in every society of Englishmen this sentiment might prevail, that before everthing the law, be it what it will, was for the moment to be obeyed. Anyone who thought that the law was not right was perfectly entitled to say so and entitled to endeavour to change it but the first duty of every good citizen was to support the law and not to allow it to be set at naught. This was a matter which, he confessed, lay very near his heart. It struck him as a melancholy fact, leading he knew not where, that there was abroad a spirit by which every minority chose to say, 'The law does not suit me ; I am going to do something else ; and if you do not fall in with what I think to be right, I shall indulge in. any criminal act which may seem to me sufficient to terrorise you into doing what I think to be right.' He accepted the toast as an expression of opinion on the part of those who drank it that they intended to support the law and not to support disorder.—*Ibid* p. 720

***

The Lord Chief Justice, who presided at the annual dinner of the Savage Club, in the course of his speech, said that in a somewhat strenuous life he had not been able to indulge in the pleasures of club life as much as he would have liked. But he looked forward to the time when that fault would be cured. In that as a lawyer he would be following precedent. He gave them the name of his distinguished predecessor, Lord Alverstone, who was so glad to be present at some of their meetings, and rejoiced always at being there. They were all glad to know his health was improving. ' I promise myself,' Sir Rufus continued, ' that I will seek to follow the precedent Lord Alverstone set. I say to you in all earnestness I never hear myself addressed or referred to as Lord Chief Justice of England without most serious trepidation. I think of the long line of distinguished and illustrious figures who have preceded me in that office, which was founded by William the Con-

queror. I think of the great names who have left their mark in history and upon our laws. And I feel daily, when I take my place in that chair, that never was a truer word spoken than when Chief Justice Cockburn said he trembled when he sat in that chair, and had to administer justice, because of the thought of the long and illustrious line of men who preceded him.—*Ibid* p. 722

***

An Age Limit for Judges.—Not a few notable judges have continued to render most valuable service on the Bench when they have been octogenarians. Baron Wood delivered a judgment in 1822, when he was eighty-two, which caused the Lord Chief Baron, according to 'Price's Exchequer Reports,' to publicly congratulate him upon the 'unimpaired vigour and unabated learning which he had evinced that day in the discharge of his high duties.' To take a more modern instance, Lord Macnaghten remained the greatest force on the Judicial Committee when his years numbered more than eighty. But the Commissioners recognise that the question of the compulsory retirement of judges is not to be determined in the light of exceptions, however brilliant they may be, and they recommend that all King's Bench judges appointed in the future should retire on attaining the age of seventy-two, unless a committee, consisting of the Lord Chancellor, the Lord Chief Justice, and an ex-Lord Chancellor—why not the Master of the Rolls?—shall request them to continue to serve for a further period to be specified. Veteran judges have sometimes been known to lag superfluous on the Bench, and the Commissioners' proposal will we believe, be generally recognised as a fitting solution of a rather delicate problem. It is accompanied by some fair, if unexpected, proposals as to judicial pensions. Judges who retire after fifteen years' service are to continue to be entitled to a pension of 3,500*l.* a year, but for judges who retire with a shorter record of service a sliding scale is to be introduced. For instance, a judge who resigns after five years' service or less, is to receive only 1,500*l.* a year, but for every additional year he serves he will be entitled to a further 200*l.* If he serves for ten years—and a judge is to be entitled to retire at the end of this period whether or not he is incapacitated—he will be entitled to a pension of 2,500*l.* A cognate proposal made by the Commissioners has frequently been advocated in these columns. They propose that all retired judges should be eligible, on the request of the Lord Chancellor, to serve as supernumerary judges in town or on circuit, the service being optional in the case of judges who have served for fifteen years, but obligatory in the case of judges who, not having

retired because of old age or ill-health, have served for a less period. A reserve of judicial force will thus be created which can easily be utilised whenever the Courts, owing to the illness of members of the Bench or the abnormal duration of important trials, are threatened with the recurrence of arrears.—*Ibid* p. 727

***

New Trials in Criminal Cases.—On more than one occasion the Judges of the Court of Criminal Appeal have expressed their regret that they have no power to order a new trial. The Commissioners, believing that it would 'tend to limit frivolous appeals and prevent miscarriage of justice on purely technical grounds,' recommend that the Court should possess this power. We venture, for our part, to doubt the expediency of the proposal. The Council of Judges, when they proposed the creation of a Court of Criminal Appeal in 1892, were strongly against prisoners being re-tried for the same offence. 'To prevent oppression,' they said, 'the Council think that there ought not to be new trials in criminal cases, and that, if the first conviction is quashed, the accused ought not to be put in jeopardy again.' Would not a new trial of a prisoner be something in the nature of a mockery? The jury at the second trial would know, not only that they were burdened by a prior conviction, but that the Court of Criminal Appeal had quashed it only on a technical ground. When the Commissioners speak of 'miscarriage of justice on purely technical grounds' they forget that the Criminal Appeal Act expressly empowers the Court to avoid any such result.

The Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.

In several cases, no doubt, prisoners have escaped the punishment they deserved because the Court has adopted a narrow interpretation of the powers which the Act has conferred upon them. The principle that an accused person ought not to be put in peril a second time for the same offence is, however, so time-honoured and beneficial that not even the occasional escape of a notorious offender ought, without very grave consideration, to be treated as an excuse for departing from it. A readier use of the power they possess would enable the judges to 'prevent the miscarriage of justice on purely technical grounds.'—*Ibid* p. 727

***

The 'Black Cap'.—Attention has been drawn to the fact that Mr. Justice Ridley did not assume the black cap in passing the death sentence upon the woman at the Central Criminal Court whose condition made it necessary for a jury of matrons to be empanelled. Though the putting on of the black cap is customary, it is not obligatory, and Mr. Justice Ridley was well justified on this occasion in omitting the grim formality. The black cap owes its origin to the Order of the Coif, and, according to Serjeant Pulling, the historian of the Order, its existing use is in keeping with its primordial purpose. The coif, he explains silk, was originally a close-fitting, head-covering made of white lawn or silk.

The Black cap, or sentence cap, of the Judges and Serjeants is the covering expressly assigned to veil the coif on the only occasion when the coif was required to be hidden. By the ancient privilege of the Serjeant the coif was not to be taken off in even the Royal presence. The chief insigne of the Order, it was to be so displayed when sitting on the Bench or pleading at the Bar, but this rule seems always to have been departed from in passing sentence of death. The head of the administrator of justice was then covered or veiled as a token of sorrow by the black sentence cap.

If this were the origin of the black cap—and some authorities have taken a different view—it long ago ceased to be used merely as a token of sorrow. One of the best-known portraits of Coke shows him with a black cap upon his head, and in Dugdale's time the judges 'sat at Paul's with their caps at the Sermon,' and wore their 'coyfs and cornered caps' at the reading of the Commissions. Even in Coke's and Dugdale's day, therefore, the black cap had become an ordinary part of judicial costume. That, quite apart from its associations with the death setence, it remains. The Lord Chief Justice always wears his black cap in receiving the Lord Mayor at the Royal Courts of Justice, and all the judges on State occasions, such as the re-opening of Parliament, carry their black caps in their hands. Here, so far at any rate, as the first ceremony is concerned, is no occasion for mourning or sorrow.—*Ibid* p. 727

***

Mr. Justice *Bailhache*, who presided at a social meeting of the Royal Courts of Justice and Legal Temperance Society, held in the Old Hall, Lincoln's Inn, on December 11, said that if anybody wanted to be converted to the cause of temperance he would like to make him a judge. He had only been a judge for just over a year, and he thought he would be within the mark if he said that fully one-half of the criminal cases he had tried in his short time whether of violence or otherwise, had been due directly or indirectly to drink. For his own part he was for many years what was

known as a moderate drinker. But there came a time when he was faced, as it seemed to him, with the duty of setting an example to some people who were in the habit of drinking too much. He determined to make a trial of total abstinence. That was seven or eight years ago, and he had not since taken alcohol in any shape or form. He was quite disposed to say that moderation was in some respects a higher virtue than total abstinence. But when they considered how people fell into the habit of drinking he thought it behoved all of them to set an example on this subject.—*Ibid* p. 739

***

The Work of the Courts.—At the close of his first sittings the Lord Chief Justice was able to make a statement as to the work of the King's Bench courts upon which he is heartily to be congratulated. So rapidly did the King's Bench judges get through their work that when they rose for the Christmas holidays there was scarcely an action ready for trial which remained undisposed of. The business of the King's Bench Division is, indeed, now in a better condition than that of the Chancery Division, which has lately been held up as a model of dispatch. In the King's Bench courts actions have been tried which were set down within a week or two of the close of the sittings, while of the Chancery Division little more can be said than that all the cases entered at the beginning of the term have been disposed of. The state of the Court of Appeal, on the other hand, has gone from bad to worse. Only 60 of the 203 final King's Bench appeals standing for hearing in October have been disposed of, and 62 have since been entered. No Workmen's Compensation appeals were heard during the past sittings, and the number has increased from 26 to 64; but it is right to add that these cases are to be taken immediately on the resumption of business in January. The Lord Chief Justice, Sir Samuel Evans, and Mr. Justice Neville will sit in the Court of Appeal next sittings, and the formation of a third Court will, doubtless, result in the Appeal list being cleared of its arrears. It may be hoped that the other Divisions will not unduly suffer by reason of these 'chopping and changing' arrangements.—*Ibid* p. 743

***

The Grand Jury.—The Grand Jury the abolition of which is recommended by the Law Commission, may be said to have outlived its usefulness, though it must be remembered (says the *Westminister Gazette*) that it had at one time an important position in the struggle of the people against the Royal prerogative. Blackstone put the case succinctly when he said that it afforded a guarantee

that 'no man shall be convicted except by the unanimous vote of twenty-four of his equals or neighbours, twelve on the grand and twelve on the petty jury.' Also when communications were less open the Grand Jury was useful as a means of ascertaining, through the Judges on Assize, the feeling of the countries on current topics. Latterly some Judges have been apt to use it as a means of airing their own opinions on questions of the day. Sir Henry Hawkins took a different line. 'Some Judges', he wrote, 'had been used to discourse with the Grand Jury of our foreign relations, turnips, or the state of trade; but I took a more humble theme at Aylesbury.' His theme was a pungent complaint of the lodgings assigned to the Judges, and he was accustomed to conclude with a congratulation '.not only on there being very few prisoners, but also on the fact that you are not holding an inquest on our bodies.'—*Ibid* 754

***

Is Drunkenness a sufficient ground for reducing Murder to Manslaughter—In Rex v. Griffiths, on 17th ult., the Court of Criminal Appeal had before it the question whether drunkenness is sufficient ground for reducing murder to manslaughter. The Court adopted the rule laid down in Rex v. Meade (1909), 1 K, B. 899, that if the slayer was so drunk as to be incapable of knowing that what he was doing was likely to cause serious injury, the killing is only manslaughter. This may, therefore, now be taken to be the settled modern law on this point.—Law Student's Journal, p. 220

***

The French System.—The French system of Jurisprudence as compared with ours seems somewhat curious. English, and for a matter of that American judges invariably support their opinions by reference to, and in the light of, previous decisions; whereas in France the judge is expressly forbidden to give a previous opinion as a reason for the judgment he is giving. There are therefore in France few printed reports, and the French lawyer is not confronted with the thousands of decisions and precedents with which the Anglo-American lawyer has to deal. The result is that the French Courts are free to render their judgments in their own way, only having to bear in mind the general principle of the code applicable to the facts of the case, and there is little doubt that in the administration of law in France justice is pretty sure to obtain. It may be said that we have the advantage of greater certainty, that is to say, the client can be advised that as his case is on all fours with some other case the result in the present proceedings would be the same. There is surely a good deal for and against each system.—*Ibid* p. 220

***

Great Seal.—Lord Haldane, asked by a reporter in Montreal if he had brought the Great Seal over with him, is said to have replied that he under stood a large fish had followed his boat, and he "had no doubt that it was the Great Seal."—*The Green Bag p. 56.*

***

A queer Will.—One of the briefest and queerest wills on record is that of an old Western farmer who, though reputed to be rich, died penniless. His will ran: "In the name of God, amen. There's only one thing I leave, I leave the earth. My relatives have always wanted that. They can have it."—*Exchange.*

***

A Lawyer—"The young fellow who's coming to see you, Elsie, must be a lawyer."

"What makes you think that, father?"

"Because I notice whenever he comes to court he always pleads for a stay."—*Baltimore American.*

***

Lawyers' money—"Well, son, now that you've graduated, what are you going to be?

"I think I'd like to be a lawyer, sir. There's a good deal of money passes through a lawyer's hands, isn't there?"

"He never lets it pass through if he knows his business, my son."—*Boston Transcript.*

***

Curiosity.—"Among the most amusing incidents I've ever seen in court," says a Cleveland lawyer, "was that which occurred recently in my town.

"A big chap stood at the rail completely swathed in bandages. One might say that little of his face was visible, aside from one eye that peered through an opening in the bandages.

"'You are charged with disorderly conduct,' said the Court.

"'So I understand,' said the man at the rail, 'And I want to be held for trial.'

"This was a decidedly unexpected announcement; and everyone in court was correspondingly astonished.

"'I should think,' said the Court, after a moment's hesitation 'that you would plead guilty now, and pay a fine of five dollars ending the matter.'

"'I thank your Honor,' said the man, 'but I want to be tried.

"Why ?'

"'For this reason,' explained the mussed-up man. 'The last thing I remember was that I was standing very peaceably on a street corner. When I came to, two doctors were busily engaged in sewing me together. I want to be tried so that I can hear the stories of the witnesses. That's about the only way I'll ever find out what came off.' "—*The Green Bag p. 455.*

***

Happanings in Court.—"Now, your Honor," began the shrewd, grizzled old attorney, "this has been long and tedious trial, but it becomes very simple when resolved down to its basic elements. Let us see what we have here. There is the old bachelor, with no known relatives. Then there is the middle-aged woman, and the young man, both of whom the old bachelor takes a special interest in, whatever it may be. The old bachelor is wealthy, and he dies, leaving to this middle-aged woman, the defendant here, his fortune of £200,000, and to the young man, the plaintiff here, so much thereof as she herself, the defendant, shall elect. Those are the very words of the will. That makes it very simple. Now, all the pleadings here, the testimony introduced, and the admissions of the defendant herself on the witness-stand show that she has chosen and elected out of the immense fortune, £190,000, and has given the boy only £10,000. That is clear, undisputed, and admitted by the pleadings and by the defendant herself. Upon those facts, and upon the will itself, the whole case become very simple. You see this will expressly provides that this son shall have so much thereof as this lady here shall elect. She having elected £190,000, the plaintiff asks for that as his just share of the estate. Upon that state of facts, the plaintiff rests his whole case."—*Ibid p. 487.*

***

Not to be Caught.—A justice of the Supreme Court of New York has a habit, well known to old practitioners before him, of asking three questions of counsel arguing at the bar. The first question is usually a simple one—the lawyer answers carelessly; the second question is a little more difficult—the respondent answers with some uncertainty; the third question is bound to be a "poser" fraught with humiliation.

On one occasion, when a lawyer who was quite familiar with his Honor's little habit was presenting a most important case, he replied in answer to the first question:—

"I don't know."

"Don't know?" said his Honor. "Why don't you know?"

"Because, your Honor," said the wily attorney, "I haven't heard the other two questions!"—*Ibid p. 488.*

***

Entertaining Jokes Willie.—"Paw, what is a jury?"

Paw.—"A body of men organized to find out who has the best lawyer, my son."—*Cincinnati Inquirer.*

***

"Rastus, what's a alibi?"

"Dat's provin' dat yoh was at a prayer-meetin' whar yoh wasn't in order to show dat yoh wasn't at de crap game whar yoh was."—*Life.*

***

A Plowden joke! He was taking coffee in his club on a certain evening when a fellow member remarked that hot coffee was not a good summer drink. "You should take cooling drinks," he advised. "Have you tried gin and ginger beer?" "No, but I've tried a number of men who have," he replied.—*Law Notes p. 3.*

***

Laudatory of a lawyer.—Mr. Leslie Scott was hasty in his assertion that no passage can be found in English literature laudatory of a lawyer. As many pointed out, Crabbe and Borrow both praise lawyers. Moreover, is not Dickens' Mr. Perker in reality laudatory? Mr. Perker is what the ladies call "a dear old thing." Then, as the *Globe* points out, what about the great Dr. Johnson? "Lawyers," said Dr. Johnson, "know life practically. A bookish man should always have them to converse with. They have what he wants." His own associations with the legal profession were certainly not wanting in intimacy, for Boswell was a member of the Bar, and Hawkins, his other biographer, who was also one of his executors, was an attorney. He thought, indeed, so highly of the profession that he wished he had joined it. Sir, he said to Boswell, "it would have been better had I been of a profession. I ought to have been a lawyer." "I do not think, sir," Boswell remarked, "that it would have been better. for we should not have had the English Dictionary." "But you would have had reports," replied the Doctor. At one time, indeed, Johnson did seriously think of studying the law.—*Ibid p. 5.*

***

It is wonderful that any praise can be found of lawyers. The public never come to us until they are in a mess, and, win or lose, we are bound to lighten their pockets somewhat. The public never loves anyone who lightens its pockets unless in return it gets pleasure. However, we tough-skinned old lawyers can live without the approval of the public.—*Ibid p. 5.*

***

Woman Judge.—Miss Sorensen, who has been appointed a district judge for Hammerfest, in Northern Norway, is probably the first woman judge officially elected to that position in the world. Miss Sorensen has practised for years as a lawyer at Christiania, and was for a considerable period leader of one of the greatest feminist organisations in Norway.—*Ibid p. 5.*

***

Interruption of a lawyer by the Judge.—On one occasion Mr. Strachan, the great Scotch lawyer, happened to be addressing a jury before Lord Fraser. Mr. Strachan was standing close to the Bench and was losing himself in the excitement of his case and thumping volumes of Rettie on the table beside him. Lord Fraser thereupon said: "Mr. Strachan, excuse me for interrupting you in your address. It is not altogether that I am frightened for any personal injury, but I wish you to kindly remember that these volumes are the lawful property of the Faculty of Advocates." Mr. Strachan once rebuked a judge for interrupting. After interposing on several occasions, this judge said: "Look here, sir, your arguments are just going in at one ear and out at the other." "Well, my Lord, what is there to prevent it?" queried counsel.—*Ibid p. 5.*

***

A New Culprit.—A wide variety of persons and things have been blamed for "the law's delay." Lawyers, judges, the courts, technicalities all have drawn their share of the blame. A new culprit has now been located. Mr. Levy Mayer, a Chicago attorney, is the discoverer. In a recent address he said:

"From one end of the country to the other the courts are burdened and overburdened with the labor of trying to find out the meaning of the law-giver. And you complain of the increase in courts and their functions, of the increase in the number of the members of the bar, and doubtless complain of the increase in the expense necessarily incurred in running your well fitted and well constructed law departments,"—*Law Student's Helper p.* 4.

***

Last Ditch Fight.—An old gentleman, now deceased, never seemed to be satisfied unless he had several cases pending in court. He left surviving a son who seems to have followed in his footsteps and has continued to keep up his father's record of proceedings in court.

Several of the attorneys were talking about his court troubles one day; when one of them told the following about the old gent:

The old gent had just won a case in the justice court, when the loser, in a very combative frame of mind, exclaimed: "I'll law you to the circuit court."

Old Gent—"I'll be thar."

Loser—"And I'll law you to the Supreme Court!"

"I'll be thar."

"I'll law you to 'ell."

"My attorney'll be thar."—*The Docket.*

***

Non Compos Mentis.—A commission in lunacy had called a woman to the witness stand.

"And now," said the commission's counsel to her, "what is your ground for claiming that the accused is insane?"

The woman gulped, wiped her eyes, and answered:

"Well, gentlemen, he took me to the theatre twice in one week. Each time we went in a taxicab, we had supper each time after the performance; and each time he bought me chocolates and flowers. He did'nt go out to see a man between the acts, either."

"But, madam," said a commissioner, "surely these actions do not prove insanity on the accused's part."

"But you forget, sir," said the lady, with a sad smile, "you forget that the accused is my husband."—*San Francisco Argonaut.*

***

Questions of Legal Ethics.—An attorney, in the course of representing a client in certain specific matters, is informed by the client that certain real estate is held by a third person for him (the client) in the third person's name, the property having been transferred by the client to the name of the third person for the purpose of avoiding a judgment, that deed being placed on record, the client, however, having taken back a deed from the third person to himself, this deed remaining

off record and in the client's possession. The information is given to the attorney in the course of a general discussion, and entirely disconnected from any matter in which counsel's service or advice had been given.

The client afterwards fails to pay the attorney for the services rendered. Suit follows and judgment is recovered by the attorney. Execution is issued and returned unsatisfied. It appears then that the collection of the judgment, and therefore compensation to the attorney for his services, will be impossible unless he is permitted to proceed after the real estate in question and permitted to show that the same really belongs to the debtor client.

1. Would it be improper for the attorney, in enforcing his claim for compensation against his client by legal process, to attempt to reach his client's interest in the real property, thus necessarily disclosing in the proceedings, and utilizing for his own benefit, his client's statement to him, collection otherwise being impossible?

2. In legal proceedings for the enforcement of the claim, can the attorney properly call upon another attorney, who prepared and took the acknowledgments to the deeds of conveyance and reconveyance, to testify respecting the transaction?

The answer of the Committee of the New York County Lawyer's Association is:

In the opinion of the Committee, to preserve inviolate his client's confidence is a fundamental ethical rule of our profession, binding upon every lawyer. This rule is now embodied in our New York Code of Civil Procedure, Section 835, and has been rigidly applied, but with certain apparent exceptions. With such possible exceptions in mind, the majority of the Committee is still of opinion that the attorney should not, in the case submitted, utilise for his own benefit the confidential statements of his client; and it would therefore answer Query No. 1 in the affirmative, and Query No. 2 in the negative.—*The Law Student's Helper p. 20.*

***

The Lumps Identity.—The whizzing motor car struck a stump, and one of the occupants of the back seat, a lady possessed of considerable embonpoint, executed a neat but not gaudy parabola in the atmosphere and alighted by the roadside like a polypu falling from a short tower.

"I don't believe I have broken any bones," she stated, in reply to the inquiry of the omni-present by stander, "but there is a lump on this bank that"—

"Lump—nothin!" snarled a smothered voice "I'm the constable that's goin' to arrest yougosh-dinged joy riders, if I live!"—*Judge Ibid p. 27.*

CONTEMPORARY LEGAL LITERATURE.

In the Law Quarterly Review for January, Mr. Arthur Cohen considers the effect of the Marine Insurance Act, 1908 on the law on that topic. Mr. Arthur Underhill gives a brief discription of Lord Haldane's Real Property and Conveyancing Bills. The object of these seems to be to simplify conveyancing and land tenure. One of the proposals is to abolish all kinds of tenures and substitute instead one uniform freehold tenure. If the Bill becomes law, the copyhold tenure, the tenures of Gavelkind and Borough English and perpetually renewable Caseholds will all disappear. Mr. J.C. Ledlie contrasts the German system of legal education with the English and makes a suggestion that the German method of insisting upon the student having a comprehensive survey of the whole field of law preparatory to more detailed study of particular department might be adopted. Mr. J.C. Fox seems to question the view taken by the House of Lords in *Scott* v. *Scott* that disobedience of the order of the Court prohibiting publication of evidence taken in camerais not criminal contempt. The difference between criminal contempt and the other kind of contempt called contempt in procedure lies in that punishment in the latter is mainly for enforcing private rights. Mr. Charles L Wells tells us why it was that there was great opposition in the beginning to trial by jury in Criminal cases. The reasons were manifold. In the first place, the people that charged the man were also the jury that had to try him. Secondly, in the beginning at least, the jury decided on their own information and as the accused were not allowed counsel, there was no means of persuading them or even exposing them. Again, the accused by the other modes of trial permitted by law *e. g.*, Wager of battle, oath &c., had better chances of getting off than by trial by jury. Accused could not tried by jury without his consent One of the approved methods of getting the consent was by weighing the accused down with iron. This practice was legal till 1772 when it was abolished and an accused who refused to plead was taken to plead not guilty.

To this day in Japan foreigners cannot acquire absolute rights in land. In practice, this does not work hardship as they can acquire

all interests short of it and also there is no objection to corporations registered in Japan acquiring land though composed of aliens. It is proposed to bring out a law giving rights to acquire land except in certain cases to all foreigners whose state allows the Japanese similar privileges in their own dominions. The paper of Mr. Leslie Scott on "the effect of War on contract" read before the conference of the International Law Association at Madrid is reprinted here. First he considers its effect as between the subjects of belligerent states. The effect of war on the power of citizens of belligerent states to trade with one another depends on the municipal law of their respective states. In some the municipal law prohibits by special order all trading with citizens of the enemy state. In these states, such trading is legal unless specially prohibited. It is otherwise in Great Britain where the law prohibits trade with alien enemy, for the matter of that all contracts with the enemy. Contracts made in furtherance of illegal trading even though not made directly between the citizens of two belligerent states are illegal and void. Contracts with alien enemies entered into by subjects of an allied state also are void. Of course this rule does not apply to prisoners of war. Contracts before the war are as a rule only suspended unless they inure to the aid of the enemy or are from their character incapable of suspension (e. g. partnership). The writer next considers the effect of war on contracts between neutrals and the belligerent. It is one of the recognised fundamental rules that neutral subjects must remain neutral. They are at perfect liberty to carry on trade with the subjects of either belligerent except in so far as such trade is directly calculated to prejudice or obstruct the operation of war by one power or promote those of the other. A neutral flag covers enemy goods except contraband. Neutral goods are immune even under enemy's flag provided the goods are not contraband. The various ways in which a belligerent may interfere with neutral trade are (i) by exercising the right of blockade (ii) by capturing "contraband" articles (iii) by condemning "neutral" ships that are pronounced by their acts to have turned "unneutral" Certain things are "absolute" contraband that is things of a warlike character in course of transit to the enemy. Conditional contraband are things capable of either use and are subject to be confiscated only if destined for warlike use, When a ship becomes unneutral is a question of fact. The arbitrary rule that a ship more than half of whose cargo is contraband becomes unneutral first adopted by Russia, has recently been approved in the Declaration of London. Other facts also may show that the ship is unneutral *e. g.*, carrying despatches etc. Now suppose a shipowner is unaware at the time the ship is

chartered that it is going to be put to unneutral uses. Is he entitled if he comes to know of it before the ship starts to put an end to the contract or if the ship is condemned, is he entitled to compensation ? Take again the case of a policy of insurance. There is no implied warranty of neutrality in a policy either of ship or of goods. Has he no legal grievance if at the time of shipping the capture was a moral certainty. In the case of crews, they are entitled to treat the contract of service as at an end when the ship is used to unneutral purpose. Possibly the same rule would apply as between a shipowner and charterer. "Remoteness of terms or powers" is another article of importance but being concerned with technical rules of English Real property Law is of interest only to English Lawyers.

"The End of Law as developed in legal Rules and Doctrines" is the subject of a highly interesting article by Mr. Roscoe Pound in the Harvard Law Review for January. It is an attempt to analyse the reasons for the divergence between what is " Justice" in law and what is conceived as just in social sciences. He takes up the history of law in five periods. First he considers archaic law. In this law, "Justice" meant only a desire to keep the peace. Whatever served to avert private vengeance and private war was an instrument of justice. At first it attempted nothing more than to furnish the injured person a substitute for revenge. Where modern law thinks of compensation for an injury, archaic law thought of composition for the desire to be avenged. Where modern law seeks a rational mode of trial, Archaic law that which would yield a certain, unambiguous result, without opportunity for controversy and consequent disturbance of peace. The scope of the Law was very limited. Among the powers that made for order, it was the last in importance. Gods and society had very much more power. Law was mostly made up of regulations for self-help and its rules were in the highest degree formal. The legal unit was not so much the individual as groups of kindred. In the next period law is recognised, as the predominent regulative agency of society. As a consequence, law becomes developed, but at the same time, for fear of arbitrary exercise of power by courts, law is sought to be made definite leading in time, to rigidity and immobility. Courts are not allowed to go behind the form. Formalism was a feature of the archaic law and naturally survived in later time where it was considered a safeguard against arbitrary action. Extreme individualism is another characteristic of this period. It is not an indication of the views of the period as to the desirability of self

reliance but a survival of the primitive formalism. The end of law as understood in this period is security and its contributions to the general development of law are the ideas of certainty and uniformity and of rules and forms as a means thereto. The next stage is the stage of equity or natural law which tried to reconcile law with ethics. It threw off restrictions on legal capacity of individuals. It looked to the substance behind the form. It insisted upon good faith. The doctrine that one person should not be unjustly enriched at the expense of another is another contribution of this period to legal development. In attempting to reconcile law with ethics, on the one side equity attempted too much and on the other,it gave too much discretion to judges which naturally made law uncertain. This uncertainty led to a reaction and the rules of equity became crystallised into settled rules leaving no room for further development. The next stage is called by the writer "maturity of law" which aims at equality of opportunities to all men and security of acquisitions. Its contribution to the science of administering justice is the thorough working out of the idea of individual rights. Towards the end of the nineteenth century, a new tendency manifested itself which marks the last stage in the development of law so far, that is to say the tendency to *socialise* law. Limitations have been imposed upon the use of property so as to prevent their antisocial use ; some limitations have been imposed on freedom o contract especially as between master and servant. Statutory limitations have been placed upon men's power of disposition of property. In several States, the wife is required to join in conveying homestead property and in the assignment of wages. Properties have been exempted from attachment limiting the power of the creditor to realise his debt. What was long considered as res-nulliús or res communes is more and more being recognised as res publicae *e. g.*, running water. The natural rights of parents have given way to the interests of the child.

The "still, sad music of humanity" is the somewhat fanciful heading of an article in the American Law Review for November—December which discusses the justificatiou for the presumption of innocence in law. In America there are two schools of thought, one represented by Greenleaf and the Supreme Court of the United states and the other by several state courts, Professor Thayer and others. The one says that there is not only the rule that guilt should be established beyond reasonable doubt but also that there is a presumption of innocence while the other maintains that the presumption is only a restatement of the principle that guilt should be established

beyond reasonable doubt. On an examination of the authorities it looks as if this presumption is one of recent growth; that as in the Roman, Mosaic and other ancient systems, the English rule also after centuries of growth was for long only the negative one *viz.*, that no man should be convicted without proof beyond reasonable doubt. Far from presuming innocence, English law commenced with a presumption of guilt until thanks to the jury system and the unanimity of opinion among the jury before conviction that was insisted upon the presumption against guilt arose. It was of immense service in times when the subject had greatly to fear from the oppression of the rulers. Now that the state of things is happily altered, the writer ventures the opinion that reference presumption of innocence may be omitted from charges to jury and they may be simply told that the guilt of the accused must be established beyond reasonable doubt. Habeas Corpus in the Federal Courts as a relief against state action is another article of interest. The writ is issued in all cases where a person is detained in custody for an act or mission which is justified by the law of the United States or of his own domicile or where the restraint interferes with some federal proceeding or denies the right conferred by some order of the federal court. Where the action is unjustifiable in one aspect but justifiable in another or where the question is one merely of procedure, the court does not issue the writ. In the Green Bag for October Judge William Cook of America tries to analyse the complaints the public have against the Bench and the Bar. They are according to the learned Judge: that the Judges, in a less degree lawyers lack human sympathy, that is to say the substance of human interests is subordinated by them to the abstractions they make of principles of law, that they are generally in opposition to progress and improvement that they blindly and irrationally worship at the shrine of precedent, that they deal in technicalities and exalt hidden meanings and that prolixity is their most besetting sin. For reproach the American Criminal Procedure with its eccentricities is in a class by itself. He is glad that the baser charge of infidelity to trust is never made against it.

Mr. Frederick Fish thinks that the American Patent Law is superior to that in other systems as it gives the patentee absolute control over the invention for a definite term having no payments to make and no fear of competitors while the other systems leave him little room for effort during the period of the patent. Under the present industrial conditions, he says that patent system is absolutely necessary and that even more protection

may have to be afforded in the future to inventors. In the November number of the same Journal, Professor Sherman puts forward "one code for all the United States" as the only remedy to cure American law of its confusion and uncertainty. He instances the Indian codes as affording a complete answer to those who say that Anglo-American law is essentially non-codifiable "The general estimate" says Professor Roy Temple House in the December number "which a reader of Gœthe might synthesise from his frequent allusions to the law is by no means complimentary to that august profession." In Faust for instance Mephistophes is made to say

> All rights and laws are still transmitted
> Like an eternal sickness of the race
> From generation to generation fitted
> And shifted round from place to place.
> Reason becomes a sham ; Beneficence a worry"

In the Netherlands drama "Egmont" we are told that "the rascal always has the advantage. As prisoner, he pulls the wool over the judge's eyes, as judge he takes delight in proving the innocent guilty." In the less well-known play "The Excited ones" occurs this curious estimate of the professions "I tell you child, a surgeon is the most worthy of reverence of any man on the whole face of the earth. The theologian frees you from sins which he has invented himself. The jurist wins your case and beggars your opponent, who has as good a right to win as you have; &c. &c." In one of his tragedies, we meet a Doctor Juris of the university of Bologna, whose countrymen fail to treat him with adequate respect as they suffer from the strange delusion that good sense is quite as valuable an asset as a head full of Justinian. Similarly a shrewd old gentleman marries his daughter to his adversary in a law suit on the theory that this is the only way of preventing the amount involved from becoming the property of lawyers. But for all his sarcasm, Goethe was a lawyer to the end of his life and a good one too.

BOOK REVIEWS.

Indian Evidence Act by Tarapada Banerjea revised by S. C. Mukerji M.A., B.L. (1913). Published by the Calcutta Weekly Notes Office. A fairly exhaustive commentary with extracts from judgments and text books to elucidate the principles of the sections of the Act, for its price, the book seems to be very good and we commend it to the profession.

The Indian Contract Act: by Mahendra Nath Roy, B. L.: Published by M. C. Sarkar Bahadur and Sons. It is a good idea of M. C. Sarkar and Sons to utilise the experience and learning of retired judicial officers for the production of useful text books and the present is one of that sort. To those that cannot go in for the more expensive commentaries on the subject, this cheaply priced volume will supply a real need. The author professes to have introduced all the decisions from the commencement of the Act up to date; though one may be tempted to challenge the accuracy of the statement it may be taken to be fairly accurate so far as the Indian Law Reports, the Calcutta Law Journal and the Calcutta Weekly Notes are concerned and the other journals too have not been neglected. The notes seem to be well arranged and good.

P. R. RAMA IYAR AND CO., PRINTERS, MADRAS.