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TAVAZHI PROPERTY.

Tavazhi means Tayar mother, vazhi line that is, mother's line. Though every Tarwad is that, the term is ordinarily used to denote a component part of a tarwad consisting of a mother and her descendants. Mr. Justice Sadasiva Aiyar says that etymologically, the term does not include the mother. But as understood at present, it includes her. The term cannot however be said to have acquired a definite signification; for, sometimes the various branches into which a Tarwad splits up with no community of property in each other's property are also called Tavazhis the main family retaining the name of Tarwad. But that is not the ordinary use of either the term Tarwad or of Tavazhi. A Tarwad in which "there is community of purity and impurity but no community of property" is a misnomer. The word Tavazhi is not employed in connection with a branch unless it owns some property also. The way in which Tavazhi comes to own property is by division of Tarwad property for convenience of enjoyment. Another way, in which a Tavazhi comes to hold property is by inheritance. The third way is by gifts or by acquisition. This species of property is known as Putravakasam property. In Travancore, such property is called Makkathyam property. It derives its name from the fact that usually these gifts are made by fathers to their Marumakattayam wife and children. Each of these species of properties require a separate treatment. We shall deal with them separately reserving some comments on certain features common to all of them to the end.

As we said, one way and for a time the only way in which a Tavazhi came to hold property was by division of the Tarwad property for convenience of enjoyment. When the family becomes too large for single management the properties are divided and the units adopted for separate allotment are usually branches. Even where absolute division takes place ordinarily it is only done as

between branches, reserving a life interest for such of the members as do not constitute of any of the branches. The rule is as their Lordships of the Privy Council observe in a recent South Canara case *Sulaiman* v. *Biyaththumma* [1], "that division for the purpose of partition is stirpital." So that one not very infrequent source of litigation is the dispute as to whether an alleged division is only a division for convenience of enjoyment or an absolute, out and out partition. The recent case of *Sulaiman* v. *Biyaththumma* [1], is an instance in point. Among the circumstances referred to by their Lordships in support of a finding of absolute partition are separate residence, separate assessment, separate management and separate alienation. Where there are several houses bearing the same original Tarwad name says but with an addition and there is no evidence of the passing of a member of the house to another, Justice Holloway that there is the strongest ground for believing that a separation has taken place *Korapen Nayar* v. *Chenen Nayar* [2]. As observed in another case, though mere lapse of time cannot destroy community of property lapse of time without any apparent exercise of proprietary right is a very cogent circumstance against its existence and the presumption against it must tell with increasing force according to the length of time that has elapsed. Joint performance of religious ceremonies is a circumstance against but insufficient to rebut this presumption 9 I. C. 849. Forty years' separate enjoyment has been held to be sufficient to shift the onus (A. S. 18 of 1898 and A. S. 78 of 1878). In Travancore, enjoyment for even shorter period, (for 20, 25 years) has been held sufficient 24 T. R. 187, 19 T. L. R. 73. None of the circumstances above referred to can be held to be conclusive. It is a question of fact in each case, (as observed in a Travancore case) whether there is enough evidence of 'an intention to be divided in interest." When there is a deed or writing under which the disputed arrangements are made, the question as to their legal effect will have to be determined mainly with reference to the terms of the document. Short of express language, permanent arrangement for separate residence, management and assessment ordinarily means partition. Mutual liability to account and retention of any of the indicia of joint ownership such as joint patta, and restrictions on enjoyment and alienation, are more or less strong

1. (1916) 32 M. L. J. 137 at 141. 2. (1871) 6 M. H. C. R. 411 at 414.

circumstances tending in the opposite direction. Restrictions on alienation or on incurring debts by themselves, may not be of much significance; in certain circumstances restrictions on alienation may be indications in favour of absolute partition as they assume absolute power of alienation in their absence. Provision for joint incurring of debts, or joint alienation might indicate continuance of the joint status while rights of pre-emption should ordinarily be conclusive the other way. Words importing absolute division such as "bhaga" or "hise", might require the disregarding of subsequent imposition of restrictions on alienation as repugnant.

These arrangements are usually provided to last till the extinction of each branch but quite as often, no particular period is fixed for their duration and it is a question of considerable difficulty as to under what circumstances such arrangements can be revised. If the allotment is merely one for management and done at the instance of the Karnavan of his own will, there could be no question the arrangement could be revoked by him at any time. *Velia Kaimal* v. *Velluthadatha Shamu* [1]. If on the other hand the allotment is made for the maintenance of the branch though made by the karnavan of his own authority, the arrangement would not on the authorities be revocable by the karnavan unless and until he makes some other and suitable arrangement for the maintenance of the branch though the new arrangement might amount to no more than calling upon the members of that branch to come to the family house and live there. But more frequently these arrangements are the result of binding family karars in that case, they would not be revocable by the karnavan without recourse to courts. With reference to the question as to when the courts might be justified in superseding these arrangements, the following distinctions may be of use.

(i) The arrangement might be one for separate management primarily and separate enjoyment only subsidiarily but stated to be permanent.

(ii) It might be for separate enjoyment and intended to be permanent.

(iii) It might be a permanent arrangement for the maintenance of the branch.

1. (1871) 6 M. H. C. R. 401.

(iv) Objects of the arrangement might be any of the above but the duration might be left indeterminate.

In the first case, no separate interest is created in favour of each of the branches and as a contract the arrangement would bind only the actual parties to it and children subsequently born would not be bound so far as their interests are affected by it. Again, in the last case also, the Court might have power to interfere if having regard to the changed circumstances, it should prove inequitable to hold parties to the original terms of the arrangement. In fact, it may well be presumed that it is an implied term of every such arrangement that it should continue only so long as the conditions are not substantially changed.

The same however cannot be said of the other two classes of arrangements. In effect they amount to permanent alienation of the right of enjoyment and the Courts would not have the power to alter them without the consent of the parties. It may be that in the case of merely maintenance arrangements, very strong words are necessary before they are held to be unalterable because ordinarily, maintenance arrangements are alterable on material change in the circumstances.

In respect of the properties allotted as above, the manager of each branch must stand towards the individual members of the branch much in the same position as the general manager towards the Tarwad including the liability to be removed (see *Kenath Pathan* v. *Narayan* [1] A. S. No. 31/05, 46, 47, 48/06) and his powers would be measured by necessity. But so far as the other branches are concerned, the validity of the alienations would largely depend on the nature of the arrangements. The assignment of the lands might be for the support of the branch till its extinction or it might be a permanent division for enjoyment. In such a case, possession could not be obtained for the Tarwad till the branch became extinct, any clause against alienation notwithstanding. But if the allotment is only for management and not for the absolute enjoyment of the branch, obviously other considerations would apply and the alienations would be valid only to the extent they are permitted by the deed of arrangement if any or in their

1. (1904) I. L. R. 28 M. 182 at 193.

absence, their validity should be examined by the ordinary tests of necessity and the properties could be recovered for the family by any member of the Tarwad if they fail to satisfy those tests. Ifthe allotment is temporary or revocable the alienee's interest must cease on the revocation of the arrangement. Subject to what we have said above, where property is assigned for the maintenance only of a branch, the branch would have no power to bind the Tarwad by its alienations by any appeal to necessity; the powers of the manager of the branch would be strictly powers of management. Temporary assignments for maintenance would not make the property immune from the binding debts or obligations of the family *Parrakel Kondi Menon* v. *Vadekentil Kunni Penna* [1], but permanent assignments might stand on a different footing especially in respect of obligations incurred subsequent to the assignment and independently of the branch.

(To be continued).

SUMMARY OF ENGLISH CASES.

In re : **Williams. Williams** *v.* **Ball**: (1917) 1 Ch. 1 C. A.

Deed—Memorandam on Life Insurance Policy—Construction —Assignment—Gift — Testamentary disposition or Power of Attorney.

Where a person who had a policy of insurance on his own life handed it to his house-keeper after indorsing thereon the memorandum; "I authorise my house-keeper and no other person to draw this insurance in the event of my predeceasing her, this being my sole desire and intention at time of taking this policy out and this is my signature," *held*, that the memorandum was a mere revocable authority to receive the moneys after the assignor's death and was a mere nullity because the authority would be revoked by the assignor's death.

Per Lord Cozens-Hardg, M. R.:—The indorsement was neither an assignment nor a gift because the assignor had not done all that was necessary to complete the gift. The memoran dum was if anything, in the nature of a testamentary document.

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1. (1864) 2 M. H. C. R. 411.

In re **Deprez : Henriques** *v.* **Deprez :** (1917) 1 Ch. 24.

Will—Operation—Documents not in existence at date of will when included in its operation—Bequests to children—Codicil—Direction in codicil that son should bring into hotchpot "advances appearing in books of account"—Advances subsequent to will and before and after codicil—Effect.

Where a testator by his will gave his properties to his children and by a codicil executed subsequently directed that all sums of money appearing in his books of account to have been advanced by him to his son should be brought into hotchpot and there were no entries of advances in the books at the date of the will but there were such entries between the dates of the will and of the codicil and also after the date of the codicil, *held*, that entries of advances in the account books prior to the date of the codicil were incorporated in the will but not entries subsequent to the date of the codicil.

Vanneck *v.* **Benham :** (1917) 1 Ch. 60.

Intestate's estate—Next of kin—Right in estate—Nature of right.

The interest of one of the next of kin in an intestate's estate is sufficiently specific to raise a case of election, representing as that interest does all the money's worth of the property comprised therein, but such interest is not sufficiently specific, apart from agreement with the other next of kin, to enable him to claim from the administrator any particular article as his own.

In re **Walmsley and Shaw's Contract :** (1917) 1 Ch. 93.

Deed of sale—Construction—Easement—Right of way when passes.

When a property with a particular mode of access apparently and actually constructed as a means of access to it is contracted to be sold the strong presumption is that the means of access is included in the sale. But where the road over which the right was claimed was a farm cart-track across a field used for all the necessary purposes of the farm, but not a made road, nor in any sense constructed as a means of access to the property contracted to be sold, *held*, that the right of way claimed did not pass by the

conveyance. The common words "with all ways thereinto appertaining" do not carry a right of way over another tenement of the grantor.

Dyson *v.* **Peat**: (1917) 1 Ch. 99.

Principal and Agent—Agent's right to indemnity against principal—Scope of—No right in respect of possible future claims.

The right of an agent to an indemnity against his principal for damages incurred in the performance of his agency does not exist in respect of a liability which may ripen into a debt but in respect of which no demand even had been made upon him.

Held:—An agent, who, in working a colliery for his principal, has rendered himself liable to future claims for damage by surface owners, has no lien, at law, or, in equity, upon moneys subsequently coming into his hands outside his agency but as trustee for his principal to answer possible future claims, where no liability has yet accrued.

Hill *v.* **Settle**: (1917) 1 Ch. 105.

Bankruptcy—Undischarged bankrupt—After-acquired property—Trustee's position as to—Trustee who has once intervened if can determine intervention—Determination if can be as from date anteceden to date of notice of determination.

The position of the trustee in bankruptcy as to after-acquired property of an undischarged bankrupt is that he may either claim it as assets vested in him as trustee, or, he may, if he thinks fit, allow the bankrupt to receive and use it for his own purposes just as if he were free from the disadvantages of being an undischarged bankrupt. When once he has made it clear that it is his intention to intervene and to assert his paramount title to the property the bankrupt is disqualified from giving a valid receipt for and from maintaining an action to recover such property. But a trustee who has once intervened can determine his intervention and he can determine it as from a date antecedent to his notice of determination.

Rex *v.* **Lincolnshire Appeal Tribunal: Stubbins, Ex parte**: (1907) 1 K. B. I C. A.

Appeal– Jurisdiction—Regulation as to service of notice of appeal in prescribed form—Nature of, mandatory or directory—Non-compliance with—Effect—Local tribunal authorised to grant Certificates of exemp

tion from military service--Chairman's application for certificate—Chairman sitting on tribunal on date of disposal of his application, though retiring from chair at time of disposal of his application—Propriety.

Where a statute in terms provided for a right of appeal in certain cases and for regulations to be made with respect to the constitution, functions and procedure of the original and appellate tribunals and where the regulation with reference to appeals provided that the party aggrieved might appeal by delivering to the original tribunal in the prescribed form, in duplicate, notice of appeal not later than three clear days after the decision appealed against and that the original tribunal should thereupon send to the other party the duplicate notice of appeal, held that the regulation with reference to service of notice of appeal was directory only and not imperative and that in a case in which notice was not served in the prescribed form but the opposite party was within the time allowed by the regulation verbally informed of the fact that an appeal was to be filed and of the grounds of the appeal, the appellate tribunal had ample jurisdiction to entertain the appeal.

Distinction between regulations which are mandatory and those which are directory only.

A local tribunal was authorised by statute to grant a certificate of exemption from military service. The chairman of the tribunal had applied for a certificate. On the date on which his application came on for disposal, the chairman sat on the tribunal till his own application came on for disposal, when he vacated the chair. The chair was then occupied by another member of the tribunal who had been sitting until that moment with the chairman and the chairman himself stood behind the new chairman while his application for exemption was being considered. Eventually a certificate of exemption was granted in his favour. *Held*, by the Division Bench that the certificate would probably have been held to be of no validity if it had been attacked and that the chairman ought not to have sat on the tribunal on that date.

Rex *v.* Christs' Hospital Governors : Dun, Ex Parte ; (1917) 1 K. B. 19.

Mandamus when proper remedy—Scheme for management of Hospital—"Recommendation"—Meaning—Persons to be appointed by one body "on recommendation of" another—Discretion as to appointment of person recommended.

Where a clause of a scheme for the management of a Hospital provided that a certain number of the council of Almoners should be appointed by the Governors *"on the recommendation of"* among other bodies, the Lord Mayor and Aldermen of the city of London, *held*, that the word "recommendation" meant nomination and that the Governors had no discretion as to appointing the persons recommended by the Lord Mayor and Aldermen.

Held, further, that in the circumstances, mandamus was the proper remedy to compel the Governors to perform the duty of appointing the person recommended.

Rex *v.* **Kennaway**: (1917) 1 K. B. 25.

"Dead Person"—Meaning—"Fictitious person" included.

Where the statute provided that forgery of a will of a "dead person" should be felony *held, semble*, forgery of the will of a fictitious person would be felony within the meaning of the statute.

In re **Hilckes. Ex parte Muhesa Rubber Plantations Ltd.**: (1917) 1 K. B. 48 C. A.

Alien Enemy—Meaning—Company in all other respects English but having commercial agent doing business in enemy country not prohibited from suing in English Courts—Distinction between alien enemy and Englishman carrying on business in enemy country—Bankruptcy—Proof by alien enemy creditor—Rejection of Proof—Validity.

Held, that a company, which was registered in England, whose directors were all English, whose secretary was English, whose meetings were held in London, the large majority of whose shareholders were English, but which happens to have a commercial agent doing business in an enemy country was not thereby constituted an enemy company and was not prohibited from instituting or carrying on proceedings in the English Courts during the continuance of the war.

Whether a company is an alien enemy is one question and whether a company which is not an alien enemy, but which carries on business in an enemy country thereby infringes the rules of the common Law against trading with the enemy is an entirely different question.

Per Scrutton, L. J.—An Englishman who at the outbreak of war had property in an enemy Country and who is not proved

to have done anything whatever with regard to that property twice is not prohibited from suing in English Courts.

Where on the bankruptcy of a person, one of his creditors, alleged to be an alien enemy, claimed to prove in his bankruptcy for the debt due to him and the trustee rejected his proof, *held*, that even if the creditor was an alien enemy the proof ought not to have been rejected but must have been postponed till the end of the war.

Rex *v.* **Casement**: (1917) 1 K. B. 98.

Ancient Statute — Interpretation — Reference to contemporary authority—Reference to how it has been understood for long--Propriety.

In construing an ancient statute regard may be had to the interpretation put upon it by contemporary authority and by judges and text-writers from time to time.

JOTTINGS AND CUTTINGS.

The Privilege of Solicitors.—An attack upon the established rule that communications between client and solicitor are privileged is reported to have been made by the military authorities in Ireland which intimately concerns practitioners in all parts of the kingdom. An Irish solicitor is said to have been placed under military detention because he refused to tell the military authorities how he came into possession of certain documents which he produced for the defence at the hearing of a case in Limerick. The military authorities appear to have proceeded under Regulation 53 of the Defence of the Realm Regulations: 'The competent naval or military authority may by order require any person or persons of any class or description to furnish him, either verbally or in writing, with such information as may be specified in the order.' The words of this Regulation are certainly very wide, but they can scarcely have been intended to compel a solicitor to disclose, against the wish of his client, communications made to him in the ordinary course of his professional work. That would obviously be to make the administration of justice a mockery. No defence in a criminal case could properly be prepared—no legal business of any description could safely be transacted—if the confidence of solicitor and client could be

violated. The privilege is entirely in the client's favour, and the interests of justice sanction it. 'The foundation of the rule,' said Lord Brougham, 'is not on account of any particular importance which the law attributes to the business of legal professors, or any particular disposition to afford them protection. But it is out of regard to the interests of justice, which cannot be upholden, and the administration of justice, which cannot go on without the aid of men skilled in jurisprudence, in the practice of the Courts, and in those matters affecting rights and obligations which form the subject of all judicial proceedings.' If the military authorities insist that they have been empowered to disregard this old-established rule, their claim will, we hope, not be recognised before the Regulation under which they profess to act receives a judicial interpretation. *The Law Journal, 13th Jan. 1917.*

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Gray and the Law.—Gray, the bicentenary of whose birth will be celebrated on Tuesday next, is among the many men of letters who have given up to literature what was originally meant for the law. Before he retired to Cambridge he made a languid study of the common law, and, though he had no special liking for legal things, showed a renewed interest in them by taking the degree of Bachelor of Laws on returning to his old University quarters.

> I am got half way to the top of jurisprudence, and bid fair as another body to open a case of impotency with all decency and circumspection; you see my ambition: I do not doubt, but some thirty years hence I shall convince the world and you that I am a very pretty young fellow, and may come to shine in a profession, perhaps the noblest in the world, next to man-midwifery.

That was what, in his playful way, he wrote to Dr. Wharton, in 1742, when he was twenty-six years old. He never entertained, however, any serious desire to join the practising ranks of the Bar, and the allusion to man-midwifery was made, of course, in honour of the calling of the most intimate of his correspondents. Another reference to the legal profession, in a more serious vein, occurs in a letter he addressed to the most valued of his earlier friends, Richard West who did become a member of the Bar, seeking to dissuade him from leaving the Temple.

> Examples show one that it is not absolutely necessary to be a blockhead to succeed in this profession. . . . Laws have been the result of long deliberation, and that not of dullmen, but the contrary; and have so close a connection with history, nay, with philosophy itself, that they must partake a little of what they are related to so nearly. . . . Are you sure, if Coke had been printed by Elzevir,

and bound in twenty neat volumes, instead of one folio, you would never have taken him for an hour, as you would a Tully, or drank your tea over him ?

What a pity it is that the 'most learned man in Europe' did not himself become a writer of books strengthening this alliance between law and history and philosophy, and worthy of being bound in this attractive form! He could have done it had he chose. Yet where even is the lawyer who would have wished the world to lose 'The Elegy in a Country Churchyard' for the sake of the most learned and elegant law book that could be written?—*The Law Journal, 23rd Dec. 1916.*

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The Business Names Act.—Bad in principle as most of our emergency legislation is, it has at least the all-sufficing excuse that it is designed for the safety of the Realm, and that it is limited in operation to the period of the war. No one quarrelled, therefore, with the law, which was passed soon after the outbreak of hostilities, restricting the right of change of name which had hitherto been common to all residents under the King's protection. It had always before been recognised as part of the common law that, as Chief Justice Tindal put it in *Davies* v. *Loundes* [1835], 'A man may if he pleases' and it is not for any fradulent purpose, take a name and work his way in the world with his new name as well as he can.' But the circumstances of the time made people suspicious of such changes, and for the period of the war the fraudulent purpose was assumed, at least in aliens. The reactionaries, however, who have found their opportunity in the abnormal conditions created by the war, have now succeeded in passing through Parliament, by methods appropriate only to emergency laws, a piece of legislation which is intended to be permanent and to stamp out, as far as a penal law can, every foreign element from British business. The Bill, which was introduced under the innocent title of the 'Registration of Business Names' Bill, has now passed into a statute under the same name (6 & 7 Geo. V., cap. 58), but the original Government draft has been altered beyond recognition, and the main purpose has become quite subordinated to the oppressive and inquisitorial provisions which now form the distinguishing features of this extraordinary Act.—*The Law Journal, 20th January 1917.*

Oppression by Legislation.—Every firm and every individual carrying on business (and 'business' includes profession) under a business name which does not consist of the true surnames of all partners or his own true surname, and every individual or firm who, or any member of which, has either at any time before or after the passing of the Act changed his name, must in future be registered in the manner directed by the Act. The particulars to be registered are 'the present Christian name and surname, any former Christian name or surname, the nationality, and if that nationality is not the nationality of origin, the nationality of origin,' and also the place of residence, and other business occupation (if any) of the individual, or of each of the individuals who are partners in the firm. Non-compliance with these searching requirements is an offence punishable not only by heavy penalties on 'summary conviction,' but by a general disability to enforce by action or other legal proceedings any rights under contracts made by the defaulter in relation to his business. All documents filed are to be open to puplic inspection, and any competitor in business of the registered firm or individual may require a certified copy of any registered statement for his own private purposes. As if this were not enough, it is further provided (S. 18) that very individual and firm required to be registered must set out in full the quoted particulars required to be registered 'on all trade catalogues' trade circulars, show-cards, and business letters on or in which the business name appears'; and if default is made in compliance with this section further penalties are to be incurred on summary conviction. The mistake of the Merchandise Marks Act, which served only as an advertisement for our present enemies, seems to have had no effect on the unthinking patriots who are responsible for these enactments. The oppressive character of the Act is not modified by its being made to apply to British-born subjects equally with foreign firms and individuals, but that burdensome fact may perhaps bring home sooner to the business community, and to the professions who are included, the unwisdom and impracticability of such legislation. This oppressive Act goes beyond any of the Continental models from which it is borrowed, and though it is not limited to the period of the war, it is to be hoped that it will not endure, or be endured, much beyond that.—*The Law Journal, 20th January, 1917.*

Ex-Lord Chancellors and their Pensions.—Because there now happen to be four Ex-Lord Chancellors the less responsible apostles of economy in the Press are complaining that the country is required to provide them with pensions amounting in all, to 20,000£. a year. It appears to be forgotten that the Ex-Lord Chancellors are qualified not only to take part in the judicial work of the House of Lords but also to sit on the Judicial Committee and in the Court of Appeal and that they are accustomed to earn their pensions by the services they render on these tribunals. If there were no retired Lord Chancellors to take part regularly in the work of these courts, the number of paid Law Lords would have to be larger. Lord Finlay's stipulation that his appointment as Lord Chancellor should not entitle him to a retiring allowance was certainly not intended to cast any reflection upon his predecessors who are receiving pensions. Nobody knows better than he how valuable are the services they continue to render in the administration of the law. The new Lord Chancellor's stipulation was due to considerations wholly personal to himself, and has been entirely misrepresented by those who have treated it as an occasion for attacking the usual order of things. Lord Campbell, who made a somewhat similar arrangement when he became Lord Chancellor of Ireland, makes this allusion in his autobiography to his pensionless state:—

> To this day many believe that I am in receipt of 4,000£. a year for having held the Great Seal of Ireland six weeks. I rejoice that I am poor and pensionless. The pension would have been very convenient for me and my family, and the services I am now gratuitously rendering to the public as a judge on the Privy Council or in the House of Lords would not be adequately compensated by the amount of the pension of an Ex-Irish Lord Chancellor, but it would have exposed the Government to obloquy and would have been a subject of very painful recollection to myself.

The circumstances in which Lord Campbell waived his claims to a pension bear, of course, not the slightest resemblance to those in which Lord Finlay has followed his example. What makes the quotation apt is Lord Campbell's allusion to his gratuitous services in the Supreme Appellate Courts. The office of Lord Chancellor may, from the constitutional point of view, be open to criticism, Walter Bagehot described it 'as a bundle of anomalies' and its intimate association of political and judicial functions makes the description not unjust. But what exactly is intended by the attacks made upon the pensions of the four distinguished lawyers who have held the office? Is it proposed that no Lord

Chancellor, no matter how short or long his term of office, should be entitled to a pension. That would inevitably mean since an ex-Lord Chancellor is not free to return to practise in the courts, that the most competent men at the Bar would not always be willing to accept the office.—*The Law Journal, 30th December 1916.*

CONTEMPORARY LEGAL LITERATURE.

The Journal of the Society of Comparative Legislation for January contains a life of Professor Dicey the great jurist Sir Charles Tupper traces the growth of the treaty making powers of the Dominions with foreign states. The Constitutional power of the Imperial Parliament is no longer used to compel its commercial policy with other countries to be adopted in the dominions. The self-governing colonies after considerable demur on the part of the colonial office are now permitted to regulate their own trade policy subject always to this restriction that it should not be such as to infringe upon the obligations incurred by the mother country in her treaties. The Imperial Government authorises its Minister at the Court of the Power which is to be treated with to carry on the negotiation and then technically it is the Empire which makes the treaty though the whole thing is managed by the representatives of the colonies concerned. The writer says that desire of the colonials is to have a voice in declaring peace or war.

Mr. Pelley discusses the proposals of Professor Keith, Mr. Lionel Curtis and Mr. Worsfold for a closer union of the Empire and rejecting the proposal for federal legistature suggest the utilisation of the Privy Council for the purpose.

Mr. Montmerency meets the criticisms of Maine, Bentham and Austin on the work of Blackstone and shows why he is entitled to high rank as a jurist. He was fully conscious of the defects of the criminial jurisprudence of England and was as a great critic of it as any of his contemporaries. Nor was he less conscious of the defects of the other parts of the jurisprudence of the country. He was not a professed reformer but he placed a true picture of the law on record and by so doing, substantially helped reform. The true criticism and it is at the same time the true praise of Blackstone is that he believed in a rapid evolution of the English

Common Law which would cleanse it from all impurities and bring it into close approximation to an ideal law. In this he was wrong but his faith in the capacity of the English Common Law without any very fundamental change to subserve the needs of the human race is fully justified by the event. That Law has been adopted in large portions of the globe and in entirely new conditions; in fact it divides with the law of Rome the allegiance of modern civilisation and William Blackstone played no mean part in the achievement.

M. De Becker gives an idea of the family council in Japan. It takes the place of the Court in England in the appointment of and in the giving of advice to the guardians. Professor William Bennett Munro of the Harvard University gives an extremely interesting description of the recent Municipal experiments in the United States. The policy of the states of America after the Declaration of Independence in respect of the constitutions of their Municipalities was to copy the state constitution with its double chamber and its checks and balances. The machinery was unwieldy and proved generally inefficient. The success of a temporary management of municipal government by a commission adopted in respect of a hopelessly mismanaged corporation led to its gradual adoption throughout. Under that system the entire legislative, and administratives functions are vested in a small body elected by the rate prayers. A certain per cent of rate payers are given the power to recall them. They may similarly veto their actions or require them to submit their byelaws to a referendum. This method of Government was a great improvement upon the old but still disclosed certain defects in working and the improvement generally adopted is to leave actual executive work in the hands of a highly paid expert. Mr. Hogg gives a survey of the company law in the British Empire. Some of the crown colonies have no company law at all nor feel the necessity for them but generally the English Company act with slight modification has generally been adopted In Canada, instead of incorporation as under the Company's Act, creations of companies by charter is adopted as a result of which there is no scope for the application of the *ultra vires* doctrine.

In the Law Quarterly Review for January, Mr. Willson continues his consideration of the question of insurance of foreign property in war time. He says that whereas a foreign assured may

recover against an English underwriter for loss accruing through the acts of his own Government if those acts take place whilst a state of peace exists between it and that of the insurer, the position of the assured where the acts occur after the actual out break of hostilities between the two governments has not yet been directly adjudicated upon. The doctrine of *Conway* v. *Gray* that the act of the Government must be taken to be the act of the assured also has no longer any support; nevertheless having regard to *Zanson* v. *Driejontien*, the claim is not likely to be decreed but on the more satisfactory ground of public policy. Another writer deals learnedly with the *writ* of *conspiracy* whether it existed at Common Law or whether it was due only to the statute of conspiration its scope and application.

In the *Harvard Law Review* for December. Professor Willinston takes cudgels against Professor Cook's view that the right of an assignee of a chose in action is legal rather than equitable. Professor Willinston maintains that though the assignee's remedies are legal, his right is equitable. The fundamental characteristic of an equitable obligation is according to the professor that it binds others only when their relation to that person is such that in conscience they should be subject to his duties. He tries to establish that the assignee's rights possess this characteristic by reference to the debtor's right to set off, the effect of laten equities and the effect of a subsequent total assignment on a prior partial assignment.

Mr. Jenks continues his observations on Civil Law. He thinks that the success of the executive in England in repressing disorder and self-help has arrested the growth of "community action through law and he attributes the individualism of the English Law to the success of English men in life during the eighteenth century. The comparative completeness of the English Law of contract and incompleteness of the law of torts he traces to this undividualistic tendency of the English mind above referred to. Another very strong reason for the English man's respect for his law is according to the writer the fact that it is his own production. The "impersonality" of the English Law is similarly traceable to this tendency of the English mind. It is a less disputable and more purely juristic objection to English law that it

scandalously neglects minor reforms which it might easily accomplish but for pure inertia. Witness the anomalies of the law of seduction. Another charge often levied against English Law is that while it resorts freely to the coarse argument of physical force, and the somewhat base argument of pecuniary mulct, it makes little or no attempt te employ the more general sanction of reward but this criticism, the writer thinks is ill founded and the writer points to the recognition of "good will," passing off" of the assignability of chose in action &c. The writer does not believe that the power of testation is any great incentive to industry for he is of opinion that the desire of benefitting his posterity has ceased to be a leading motive in the industry of the average man in England.

BOOK REVIEWS.

THE INDIAN CONTRACT ACT WITH COMMENTARY *by T. R. Desai Vakil, Bombay (6th Edition* 1917.)

That Mr. Desai has to bring out 6 Editions of his book on the Indian Contract Act within very short intervals of each other is by itself a sure test of its popularity. Though the main features of the book are familiar to the profession to and students of law, we would draw attention to some of the details which make it popular both with the busy practitioner and the student preparing for law examinations.

To the busy practitioner it gives in their proper places a clear statement of the law on each particular head with references to the more important decisions brought up to date without embarrassing him with all the details which can be got at, easily if need be, from the references to leading cases given under each head. From what we have seen in the book, we can point as a special feature of this Edition, to the reatment of the effect of the war on the performance of contracts under S. 56 of the Act with references to the cases decided in England and India. To the student of law appearing for law examinations, the book under review will continue to be of invaluable assistance by reason of its various appendices containing a summary of the Act, the differences between the Indian and English Law, the explanations of technical terms, the explanations of legal maxims, the leading English and Indian cases on contracts, a brief state-

ment of the law of negotiable instruments and the University Examination papers for the L. L. B. degree of Bombay for the last 10 years.

THE LAW OF RECEIVERS. *By C. S. Somanatha Sastri and P. Ramanatha Aiyar, Vakil Trichinopoly (Lawyers Companion Series) Law Printing House, Madras* 1916.

We have great pleasure in welcoming the law of Receivers of the Lawyers Companion Series as a valuable book of reference to every lawyer's library. The book under review is one of the most exhaustive books on the subject and the authors have given wherever possible the references to English and American Cases on which this branch of law has largely grown. The statements of law and principles have been taken from the well known books on the subject so that the practitioners in the mofussil to whom all the treatises on the law of Receivers may not be available will find this book supplying a real want. We heartily recommend this publication to the profession at large and we congratulate the publishers on their success at the treatment of uncodified law after their "Law of benami transactions."

EVIDENCE, A POCKET BOOK, *By Arthur Eggar, B. A., Bar-at-law Higginbothams Ltd., Madras Price Rs. 2/4.*

This is an interesting attempt to restate the principles of the law of evidence in a sequence somewhat different from that adopted in the Indian Evidence Act, the statement of principles being conveniently interwoven with the connected matters of practice forming part of other enactments such as the Civil and Criminal Procedure Codes, and the Oath Acts, etc., as well as special rules of evidence or legal presumption like those contained in the Registration Act, the Stamp Act, the Negotiable Instruments Act etc. The result of the latest case-law is also embodied in the work though the citation of cases is very limited. The text as well as the notes are substantially in proposition form and discussion is almost completely avoided. This gives the book an appearance of being elementary but it is none the less instructive. The rules of law and practice are carefully and accurately stated and the practitioner will also find valuable hints here and there. The text of the Indian Evidence Act is printed as a kind of supplement

and a well arranged index completes the volume. A list of cases would it seems to us add in some measure the utility of this excellent little book.

THE LAW OF ARBITRATION.—*By A. K. Nanniah Lawyer's Companion Office, Law Printing House, Madras 1916.*

The book under review is intended to give the practitioner an idea of the law of arbitration scattered through various Acts of the Legislature and as understood by the judicial decisions both in this country and in England. The plan of the work is that it consists of three parts. The first part gives the Indian Arbitration Act which is largely based on the English Statute 52, 53 Vic. Ch. 49 with copious notes drawn from English and Indian decisions and from the leading text books on the subject. In this connection we should mention that the English Arbitration Act (52, 53 Vic. Ch. 49) is itself given as an appendix to the volume. The second part gives the provisions of the Civil Procedure Code relating to the law of Arbitration fully annotated under appropriate headings. In the third part are collected the provisions from various enactments of the Imperial and Local legislatures, dealing with arbitration. This part is particularly valuable as it gives a comprehensive view of the law of Arbitration as applied to special enactments. As this volume is conceived on the same lines of Lawyer's Companion Series it will be of great use to the busy lawyer as a book of ready reference. So far as we have seen the notes are very full and carefully written and we have no hesitation in recommending it for the use of every one to deal with the law of Arbitration.
