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RECENT LEGISLATION.

We propose to notice in this article the provisions of some of the enactments placed on the statute book during the present session of the Viceregal Council, namely, The Indian Contract Amendment Act of 1899 and the Indian Arbitration Act of 1899. The main object with which the amendments of the Contract Act have been introduced is to give relief to persons who have been led into extortionate bargains in some of the cases in which the present law is supposed to be incapable of giving adequate relief. It is also expected that these amendments may be of special benefit to the agricultural classes in the country who are in a state of chronic indebtedness. The subject of agricultural indebtedness has been long engaging the attention of the Government, and they have been urged to introduce special legislation for the relief of agriculturists by an extension of the Deccan Agriculturists' Relief Act and by the imposition of restrictions upon the alienation of land. These and other special remedies have been rejected by the Government after careful consideration, and it has been considered sufficient to extend the definition of "undue influence" contained in the Act of 1872, so as to embrace cases which have been recognized by the English Courts as savouring of undue influence. The principle of freedom of contract is not interfered with, but in ascertaining the preliminary question whether the parties are really free, the Courts will under the amending Act be entitled to take into consideration circumstances which under the Act of 1872 did not very much weigh with the Courts. The question when the consent of a party to a contract can be said to be free was determined under the old Act by somewhat narrow, if workable, tests. Once these tests are set aside and broader tests adopted, the determination of the character of consent is likely to become a matter of discretion and to give rise to some amount of uncertainty in the application of the law, like

any other question of discretion. The question of freedom is essentially a question of degree; and different views are likely to be taken by different people as to whether the parties to a contract were or were not free in the fullest sense of the term. How far a person may legitimately take advantage of another's necessities is a matter upon which it will be difficult to lay down any satisfactory rule of law. From an ethical point of view, it may, no doubt, be said, no one ought to take advantage of the necessities of others. But for the legislator who has to deal with the actual conditions of society, it would be an impossible counsel of perfection. Our modern system of political economy which recognizes the principle of buying in the cheapest and selling in the dearest market is practically based upon the assumption that it is permissible to take advantage of others' necessities. The definition of freedom of consent is thus beset with difficulties; but it does not follow that the Legislature should be deterred by them from attempting to give relief as far as practicable. There are numerous cases in which it will be possible to come to the conclusion that there has been an exercise of undue influence, though it may not be easy to lay down the definition of undue influence in the abstract. The safest course for the Courts as well as the Legislature would be to move on the lines which have been laid down by the English decisions. It has often been held that the Contract Act of 1872 is not an exhaustive treatment of the law of contracts, as the Act itself merely professes to define and amend certain parts of the law relating to contracts. It has often been laid down by the Privy Council and by the High Courts in India that the Indian Courts were at liberty to follow the English cases and give relief in cases not reached by the Contract Act. Notwithstanding this discretionary power, the Courts sometimes imagine themselves to be confined within the four corners of the Contract Act and have hesitated to award relief, where they could have safely relied upon the authority of English precedents. Only a few weeks ago, a learned Judge of the Madras High Court sitting on the Original Side was unwilling to hold that a plea of a catching bargain with an expectant heir could be set up in this country in the absence of any circumstances bringing the case within the definition of undue influence in the Act of 1872. While the learned Judge conceded that the law in England recognized such a plea, he maintained that the law in India was different and that the difference was demonstrated by the

fact that the Legislature had thought it necessary to introduce the new amendments. Such a remark coming from a Judge of the High Court is a somewhat significant commentary upon the hopes and fears expressed in the Viceregal Council as to the mode in which the amending Act was likely to be worked by the Courts in this country. Notwithstanding, however, all the difficulties surrounding the question, we think the amendment is a move in the right direction, though in some respects it does not go far enough.

S. 16 of the Contract Act of 1872 is repealed, and the following definition is substituted in its place :—

"A contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other."

We do not think that the language used in the amending section is sufficiently apt to convey the meaning of the Legislature. The language suggests that there must be some antecedent relationship subsisting between the parties to the contract, in virtue of which one of them is able to dominate the will of the other. Neither clause 2 of the section, nor the illustrations to it, carry the matter any further than the old Act. Cases may occur in which the antecedent relationship between the parties does not fall under clause 2; as, for instance, where a zamindar enters into an unconscionable bargain with his ryots. And in these cases the new section may enable the Courts to give relief. There are, however, several classes of cases in which the contract is set aside by the Courts of Equity on the ground of undue influence, notwithstanding the absence of any antecedent relationship between the parties. In the case of catching bargains with expectant heirs and reversioners, there is no antecedent relationship; and yet the Courts of Equity have interfered to set aside these contracts. Cases of the type of *Aylesford* v. *Morris*, L. R. 8 Ch. 484, cannot be reached even by the amended section. The liberty possessed by the Indian Courts of following the English precedents where the Act furnishes no guidance is still left to them and one can only hope that the result of the amendments will not be to leave the Courts to suppose that they cannot travel beyond the provisions of the Act.

The next important provision of the amending Act is the amendment of S. 74. The amending section provides that if a contract contains any other stipulation by way of penalty, reasonable compensation alone should be awarded. The explanation provides that a stipulation for increased interest from the date of default may be a stipulation by way of penalty. The old Act expressly avoided the use of the word 'penalty' with a view to get rid of the nice distinctions drawn by English Courts between penalties and liquidated damages. There was no doubt, however, that in cases of provisions which were really penalties the Courts in India could interfere and give relief. The insertion of the clause that we have referred to serves no purpose, except that of being, as pointed out by Sir Griffith Evans, a peg to hang certain illustrations on. The explanation, however, will serve a really useful purpose, as many cases of extortionate bargains have evaded the present law by reason of the provision that the enhanced rate of interest shall be payable only from the date of default. We share the hope expressed by Sir Griffith Evans that this inartistic piece of legislation will make up in utility what it lacks in beauty.

The Arbitration Act is almost a *verbatim* reproduction of the English Arbitration Act of 1889,(52 and 53 Vic. ch. 49). It is intended to codify the law relating to arbitrations out of court. The Act is in the first instance intended to apply only in cases where if the matter of the arbitration were the subject of a suit, the suit could, whether with leave or otherwise, be instituted in a Presidency Town.

We wish to point out one or two matters in regard to which the Act appears to us to be defective. S. 11 of the Act recognises an arbitrator's lien upon the award for payment of fees and charges due in respect of the fees and charges payable in respect of the arbitration and award. The section does not state whether in the absence of any agreement an arbitrator would be entitled to remuneration for his trouble, and, if so, to any lien therefor. We presume, however, that the section only contemplates cases where the fees are payable only by agreement of parties and not cases in which an arbitrator claims remuneration in the absence of any agreement. The general rule is that the appointment of an arbitrator on a reference by consent is not of such a nature as to raise

an implied promise to pay him a reasonable compensation. Russel on Awards, 7th edn., p. 492. It has been recently held in England that in mercantile references there is an implied promise to pay fees to an arbitrator. Where there is such an implied promise for remuneration to the arbitrator and he demands an excessive fee, there ought to be some means provided for summarily determining the amount to which the arbitrator is entitled and compelling him to deliver up the award on payment of the amount so determined. We must express our regret that the Council did not see fit to adopt the amendment of the Honorable Mr. Ananda Charlu providing for the enforcement of the attendance of witnesses. A party may be justified in believing at the time of his submission that his witnesses would voluntarily attend and give evidence and produce documents. The witnesses may subsequently prove unwilling to attend. And if a party had no means of enforcing their attendance, he would be left completely helpless and the arbitrators would not have the materials necessary for a just determination of the dispute. Arbitrators should not, as a rule, dispose of cases in the technical way that the regularly constituted Courts are obliged to do, and it would be deplorable if arbitrators decided cases against parties simply because they fail to attend at the proper time, or their witnesses did not turn up in time, or the parties have been guilty of some slight and similar irregularity. The English Arbitration Act, S. 18, gives the court power to compel the attendance of witnesses before an arbitrator or umpire, and this provision might have been adopted in our Act with advantage. The Act provides that in the absence of any agreement to the contrary the parties should be bound by the provisions in the first schedule. The provision in regard to the time within which an arbitrator or umpire should make his award appears to be very unsatisfactory. Under clauses 3 and 5 of the schedule it is open to the arbitrator or umpire to extend the time for making the award indefinitely depriving the parties of the benefit of the arbitration and of the right to resort to the ordinary civil courts for redress. It may no doubt be urged that it is open to the parties to make a distinct arrangement as to the time. But we think that in the large majority of cases there will be no specific agreement about the time and the provisions of the schedule may produce hardship. Some limitation should be placed upon the time

for making the award by fixing the maximum length of time and by providing that any extension beyond that should be made only with the consent of both the parties.

BANDHUS.—II.

We have seen in our former article (*vide* 8 M. L. J., p. 313) who the bandhus generally are and who are meant by or fall under that description. We now propose to consider who your (one's) bandhus are. This inquiry is quite different from the one we have already considered, *viz.*, who fall under the denomination of or, what is denominated by the term 'bandhu'. *Your bandhus* are of 3 classes.

(1) *your own*; (2) *your father's*; (3) *your mother's*.

These are as stated by Vriddha Satatapa the following:—

The sons of one's father's sister (paternal aunt), the sons of one's mother's sister (maternal aunt), and the sons of one's mother's brother (maternal uncle) must be considered to *be one's own cognate kindred, i.e., one's own bandhus*.

The sons of the father's paternal aunt (father's father's sister), the sons of the father's maternal aunt (father's mother's sister), and the sons of the father's maternal uncle (father's mother's brother) must be considered to *be the father's bandhus or cognate kindred*.

The sons of the mother's paternal aunt, the sons of the mother's maternal aunt and the sons of the mother's maternal uncle must be considered to *be the mother's bandhus or cognate kindred*.

The mother's brother, the father's mother's brother, the mother's mother's brother must be held to be impliedly included; for if their sons are bandhus to the propositus, the fathers who are more nearly related to the propositus must also be bandhus. If the sons are sapindas, the fathers must necessarily be sapindas, for as was shown before (in our former article) if the fathers are not sapindas how can their sons be sapindas; for it is through their fathers, particles of the body are transmitted (*vide* also *Gridhari Lal Roy* v. *The Bengal Government*, 12 M. I. A., p. 448).

We therefore see that, according to the Mitakshara, your *heritable* bandhus are—

I. Your *own* bandhus (mark the word '*own*').

II. Your father's bandhus (mark the absence of the word '*own*').

III. Your mother's bandhus (mark again the absence of the word '*own*').

In other words, your bandhus are your *atma* bandhus, your *pitri* bandhus, and your *matri* bandhus. Here it must be noted that the Mitakshara makes *your father's* bandhus and *your mother's* bandhus as *your* bandhus, and that the author speaks of *father's* bandhus not simply of *father's own*, and *mother's* bandhus not simply of *mother's own*. At the same time it is also significant to note that the Mitakshara does not speak of *grandfather's* (or father's father's) bandhus generally and as such and grandmother's *mother's mother's* bandhus generally and as such, *your* bandhus. The inference naturally suggests itself that as the author speaks of *father's* bandhus generally and as he has already divided *your bandhus* into three classes as *your own*, *your father's* and *your mother's*, the author intended that the *father's bandhus* should also be further divided into three, as *father's own bandhus*, *father's father's bandhus* and *father's mother's bandhus*. It must be noted that when the author has clearly divided one's bandhus into three classes and makes a marked distinction between *one's own bandhus* and *one's bandhus* generally, it is nothing but natural and reasonable to infer that when he speaks of *father's bandhus* generally (and not of *father's own simply*) he does not limit himself to the class of *father's own* (though the illustrations give only instances of father's own) but intends also to include *father's father's* and *father's mother's*. Similarly *mother's bandhus* should also be divided into *mother's own*, *mother's father's* and *mother's mother's*.

In enumerating persons by way of sample, the author gives as comprised in the term *your bandhus*, examples of

(*a*) Your own bandhus.

(*b*) Your father's own bandhus.

(*c*) Your mother's own bandhus.

Now as all *Pitri* bandhus are *your* bandhus and as the author of the Mitakshara, or rather Vriddha Satatapa, understands *your* bandhus (when *illustrating* merely) as *your own, your father's own* and *your mother's own,* it follows as a logical result that under the terms *Pitri* bandhus he also meant to include :

(*A*) *Pitri atma* or your father's own.

(*B*) *Pitri pitri atma* or your father's father's own.

(*C*) *Pitri matri atma bandhu* or your father's mother's own.

The question is whether we ought to place a limit to the father's pitri bandhus. We have already taken the father's father's own by the analogy of the illustrations appearing from the context of Vriddha Satatapa. But the further question arises whether we ought to go beyond and divide father's pitri bandhus into (1) father's own, (2) father's pitri bandhus, and (3) father's matri bandhus, and then go on again to divide class (B) as (1) father's father's own, (2) father's father's pitri bandhus, and (3) father's father's matri bandhus, and so on, *ad infinitum* (as respects the pitri and matri bandhus of each class) and class (C) as (1) father's mother's own, (2) father's mother's pitri bandhus, and (3) father's mother's matri bandhus, and so on.

It has been already pointed out that the author of the Mitakshara does not speak of *grandfather's bandhus* and *grandmother's bandhus* as *your bandhus.* He *only* says that the *father's bandhus* and *mother's bandhus* are *your bandhus.* It is, therefore, to be apprehended that the grandfather's bandhus *generally* were not mentioned in order that they may be taken out of the category of *your bandhus.* The suggestion finds ample support from the fact that Apararaka, a commentator on the Mitakshara, intended to exclude and did exclude even the *father's bandhus* and *mother's bandhus* generally from the category of *your bandhus.* (See Mitakshara, Colebrooke's Translation edition of Tarkalankara, p. 364 note.) And though his doctrine is elaborately controverted by the author of the Vyavahara Mayukha (see Stokes' Hindu Law Books, p. 89, chapter IV, sec. VIII, pl. 22 and 23) and is not accepted by the other writers, it shows that there was some limit intended to be given 'to *your* (*heritable*) *bandhus,*' that while Apararaka

wanted to exclude the father's and mother's bandhus in toto, yet other authors and commentators only intended to exclude all persons beyond the father's and mother's bandhus generally.*

The Mitakshara says:—The *father's* own *bandhus* are your bandhus, and so the father's father's own bandhus are your father's and consequently also your bandhus. But the father's father's pitri bandhus are more related to your grandfather or rather great grandfather (and through him to your father) and as your grandfather's pitri bandhus as such are not mentioned as having a heritable right to you, they are not your bandhus.

The father's sister's son *who is expressly mentioned in the Mitakhsara as one's atma bandhu* is really also the grandfather's bandhu, for he is the grandfather's daughter's son. Similarly the father's father's sister's son *who is expressly mentioned as being one's pitri bandhu* is also the grandfather's bandhu, for he is the grandfather's father's (or great-grandfather's daughter's son). It must not therefore be said that the father's father's own bandhus, *viz.*, the father's father's father's sister's son, &c., are not *your bandhus,* though they are also the *grandfather's bandhus.* No doubt just as the father's sister's son and father's father's sister's son are also grandfather's bandhus, though they are pre-eminently one's atma bandhus, and pitri bandhus, so the father's father's father's own bandhus are the father's pre-eminently and are your pitri bandhus. Though, therefore, a given person may be a bandhu of several persons, yet he is by nearness or proximity of kindred pre-eminently and specially related to those near to him in blood. The fact, therefore that the father's father's father's sister's son, &c., are also the grandfather's bandhus is of no avail to disentitle them to be *your bandhus* when they are more nearly related to the father directly. Likewise it is of no avail to say a person is *your bandhu* when he is

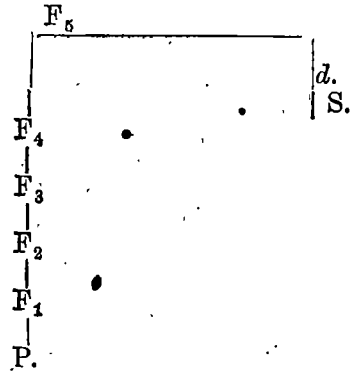
* It is also useful to observe here that the bandhus were themselves not admitted as *heirs* by Apastamba as no mention is made therein of them (Sacred Books of the East Apastamba, Vol. II, Part II, p. 132, 133 Pr. 2 Patala 6, Khanda 14, verses 2 and 3). Even in Manu they are not mentioned though Kulluka and Raghunandana are not inclined to adopt this view. (See Sacred Books of the East, pp. 367 and 368, note to chapter IX, verse 187), *vide* Mayne, para. 495, page 619. *Vide* also Vasishta., ch. XVII, verse 79 (Sacred Books of the East, Vol. XIV, and Baudhayana Pr. Ad, 1 and 5, Kan. II, verses 11, 12 and 13, Sacred Books of the East, Vol. XIV, p. 179.)

your grandfather's bandhu simply and not nearly related to your father.

There is yet another reason why the grandfather's pitri bandhus ought not to be considered as having heritable rights. The grandfather's pitri bandhus are—

Father's father's father's. { (*a*) Father's sister's son. (*b*) Mother's sister's son. (*c*) Mother's brother's son.

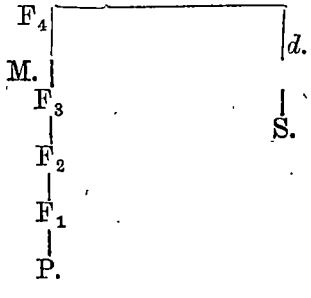
(*a*) Let us take father's father's father's father's sister's son and see whether he is a sapinda relation to the propositus.



Here S. is not a sapinda of P, as P is beyond 5 degrees of F_5 the maternal grandfather of S.

(*b*.) Father's father's father's mother's sister's son.

Do. do. do. do. brother's son.



Here F_4 himself the maternal grandfather of S. is not the sapinda of P., for P. is beyond 5 degrees of F_4 (P. being a descendant of the daughter's line of F_4.)

Therefore his (F_4's) daughter's son or son and grandson cannot have any heritable rights and are not sapindas.

We have thus found 7 groups of heritable bandhus. These are—

CLASS I. *Atma Bandhus.*

GROUP I. Your own bandhus. These are as stated by the author of the Mitakshara.	(*a*) Father's sister's son. (*b*) Mother's sister's son. (*c*) Mother's brother (stated by Viramitrodaya). (*d*) Mother's brother's son.

CLASS II. *Pitri Bandhus.*

These are groups II, III and IV.

GROUP II. Father's own.	(*a*) Father's father's sister's son. (*b*) Father's mother's sister's son. (*c*) Father's mother's brother. (*d*) Father's mother's brother's son.
GROUP III. Father's father's own.	(*a*) Father's father's father's sister's son. (*b*) Father's father's mother's sister's son. (*c*) Father's father's mother's brother (*d*) Father's father's mother's brother's son.
GROUP IV. Father's mother's own.	(*a*) Father's mother's father's sister's son. (*b*) Father's mother's mother's sister's son. (*c*) Father's mother's mother's brother. (*d*) Father's mother's mother's brother's son.

CLASS III. *Matri Bandhus.*

These are Groups V, VI and VII.

GROUP V. Mother's own.	(*a*) Mother's father's sister's son. (*b*) Mother's mother's sister's son. (*c*) Mother's mother's brother. (*d*) Mother's mother's brother's son.
GROUP VI. Mother's father's own.	(*a*) Mother's father's father's sister's son. (*b*) Mother's father's mother's sister's son. (*c*) Mother's father's mother's brother. (*d*) Mother's father's mother's brother's son.
GROUP VII. Mother's mother's own.	(*a*) Mother's mother's father's sister's son. (*b*) Do mother's sister's son. (*c*) Do mother's brother. (*d*) Do mother's brother's son.

Mutual right of inheritance is, as we have seen, the essence of the Mitakshara scheme of inheritance. Hence the propositus will

be the heir of all the persons mentioned in the 7 groups. We shall therefore have by correlation the following persons :—

CLASS I. *Atma Bandhus.*

GROUP I. The correlations are—

(*a*) Mother's father's son's son, same as original (d).
(*b*) Mother's father's daughter's son, do do (b).
(*c*) Father's daughter's son.
(*d*) Father's father's daughter's son, same as original (a).

CLASS II. *Pitri Bandhus.*

GROUP II. *Father's own Bandhus.*

(*a*) Mother's father's son's son's son.
(*b*) Mother's father's daughter's son's son.
(*c*) Father's daughter's son's son.
(*d*) Father's father's daughter's son's son.

GROUP III. *Father's Pitri Bandhus.*

(*a*) Mother's father's son's son's son's son.
(*b*) Mother's father's daughter's son's son's son.
(*c*) Father's daughter's son's son's son.
(*d*) Father's father's daughter's son's son's son.

GROUP IV. *Father's Matri Bandhus.*

(*a*) Mother's father's son's daughter's son's son.
(*b*) Mother's father's daughter's daughter's son's son.
(*c*) Father's daughter's daughter's son's son.
(*d*) Father's father's daughter's daughter's son's son.

CLASS III. *Matri Bandhus.*

GROUP V. *Mother's own Bandhus.*

(*a*) Mother's father's son's daughter's son.
(*b*) Mother's father's daughter's daughter's son.
(*c*) Father's daughter's daughter's son.
(*d*) Father's father's daughter's daughter's son.

GROUP VI. *Mother's Pitri Bandhus.*

(*a*) Mother's father's son's son's daughter's son.
(*b*) Mother's father's daughter's son's daughter's son.
(*c*) Father's daughter's son's daughter's son.
(*d*) Father's father's daughter's son's daughter's son.

GROUP VII. *Mother's Matri Bandhus.*

(*a*) Mother's father's son's daughter's daughter's son.
(*b*) Mother's father's daughter's daughter's daughter's son.
(*c*) Father's daughter's daughter's daughter's son.
(*d*) Father's father's daughter's daughter's daughter's son.

We have seen in some detail the persons who fall under these classes and groups. It may be noted that among these no person beyond 5 degrees comes in as bandhu.

We shall now determine the families in which these bandhus are to be found. They will be found in the children of the daughters born of the propositus's own family and in foreign families. Those foreign families and their lines we shall now determine from the several groups and correlations.

From the originals mentioned above, we get these families.

Group I.

(*a*) Father's father's daughter's son's line or family.
(*b*) Mother's father's daughter's son's line.
(*c*) Mother's father's line.
(*d*) Do. do. do.

Group II.

(*a*) Father's father's father's daughter's son's line.
(*b*) Father's mother's father's daughter's son's line.
(*c*) Father's mother's father's line.
(*d*) Do. do. do.

Group III.

(*a*) Father's father's father's father's daughter's son's line.
(*b*) Father's father's mother's father's daughter's son's line.
(*c*) Father's father's mother's father's line.
(*d*) Do. do. do.

Group IV.

(*a*) Father's mother's father's father's daughter's son's line.

(*b*) Father's mother's mother's father's daughter's son's line.

(*c*) Father's mother's mother's father's line.

(*d*) Do. do. do.

Group V.

(*a*) Mother's father's father's daughter's son's line.

(*b*) Mother's mother's father's daughter's son's line.

(*c*) Mother's mother's father's line.

(*d*) Do. do. do.

Group VI.

(*a*) Mother's father's father's father's daughter's son's line.

(*b*) Mother's father's mother's father's daughter's son's line.

(*c*) Mother's father's mother's father's line.

(*d*) Do. do. do.

Group VII.

(*a*) Mother's mother's father's father's daughter's son's line.

(*b*) Mother's mother's mother's father's daughter's son's line.

(*c*) Mother's mother's mother's father's line.

(*d*) Do. do. do.

The correlations mentioned above give us—

Group I.

(*a*) Mother's father's line.

(*b*) Mother's father's daughter's son's line.

(*c*) Father's daughter's son's line.

(*d*) Father's father's daughter's son's line.

Group II.

(*a*) Mother's father's line.
(*b*) Mother's father's daughter's son's line.
(*c*) Father's daughter's son's line.
(*d*) Father's father's daughter's son's line.

Group III.

(*a*) Mother's father's line.
(*b*) Mother's father's daughter's son's line.
(*c*) Father's daughter's son's line.
(*d*) Father's father's daughter's son's line.

Group IV.

(*a*) Mother's father's son's daughter's son's line.
(*b*) Mother's father's daughter's daughter's son's line.
(*c*) Father's daughter's daughter's son's line.
(*d*) Father's father's daughter's daughter's son's line.

Group V.

(*a*) Mother's father's son's daughter's son's line.
(*b*) Mother's father's daughter's daughter's son's line.
(*c*) Father's daughter's daughter's son's line.
(*d*) Father's father's daughter's daughter's son's line.

Group VI.

(*a*) Mother's father's son's son's daughter's son's line.
(*b*) Mother's father's daughter's son's daughter's son's line.
(*c*) Father's daughter's son's daughter's son's line.
(*d*) Father's father's daughter's son's daughter's son's line.

Group VII.

(*a*) Mother's father's son's daughter's daughter's son's line.
(*b*) Mother's father's daughter's daughter's daughter's son's line.
(*c*) Father's daughter's daughter's daughter's son's line.
(*d*) Father's father's daughter's daughter's daughter's son's line.

We have therefore *one's own family* and *the foreign families.* Probably the expression *one's own family* is not quite accurate. This refers to the families of the daughters born in the propositus's own family. For want of a concise terminology the above expression is used.

As *regards one's own family,* see I (*a*), I (*c*) cor., I (*d*) cor., II (*a*), II (*c*) cor., II (*d*) cor., III (*a*), III (*c*) cor., III (*d*) cor., IV (*c*) cor., IV (*d*) cor., V (*c*) cor., V (*d*) cor., VI (*c*) cor., VI (*d*) cor., VII (*c*) cor., VII (*d*) cor.

The foreign families are—

1. *Mother's father's family.*

I (*a*) cor., I (*b*), cor., I (*c*), I (*d*).
II (*a*) cor., II (*b*) cor.
III (*a*) cor., III (*b*) cor.
IV (*a*) cor., IV (*b*) cor.
V (*a*), V (*a*) cor., V (*b*) cor.
VI (*a*), VI (*a*) cor., VI (*b*) cor.
VII (*a*) cor., VII (*b*) cor.

2. *Father's mother's father's family.*
II (*b*), II (*c*), II (*d*), IV (*a*).

3. *Father's father's mother's father's family.*
III (*b*), III (*c*), III (*d*).

4. *Father's mother's mother's father's family.*
IV (*b*), IV (*c*), IV (*d*).

5. *Mother's mother's father's family.*
V (*b*), V (*c*), V (*d*), VII (*a*).

6. *Mother's father's mother's father's family.*
VI (*b*), VI (*c*), VI (*d*).

7. *Mother's mother's mother's father's family.*
VII (*b*), VII (*c*), VII (*d*).

The *foreign families* are therefore seven.

(1) Mother's father's family.
(2) Father's mother's father's family.
(3) Father's father's mother's father's family.
(4) Father's mother's mother's father's family.
(5) Mother's mother's father's family.
(6) Mother's father's mother's father's family.
(7) Mother's mother's mother's father's family.

Taking one's own family also (*i.e.*, the families of the daughters born in the family who are treated as one class) we have eight families in which the bandhus are to be found.

We shall now determine the lines in the various families in which the various bandhus are to be found. These will be obtained by the correlations of the various foreign families.

Original.	*Correlation.*
1. Mother's father's family. F. | M. | P.	Sons of daughters born of the eligible families. D. | S.
2. Father's mother's father's family. F. | M. | F. | P.	Sons of sons of daughters born of the eligible families. D. | S. | S.
3. Father's father's mother's father's family. F. | M. | F. | F. | P.	Sons of sons of sons of daughters born of the eligible families. D. | S. | S. | S.

4. Father's mother's mother's father's family.

F.
|
M.
|
M.
|
F.
|
P.

Sons of sons of daughters of daughters born of the eligible families.

D.
|
D.
|
S.
|
S.

5. Mother's mother's father's family.

F.
|
M.
|
M.
|
P.

Sons of daughters of daughters born of the eligible families.

D.
|
D.
|
S.

6. Mother's father's mother's father's family.

F.
|
M.
|
F.
|
M.
|
P.

Sons of daughters of sons of daughters born of the eligible families.

D.
|
S.
|
D.
|
S.

7. Mother's mother's mother's father's family.

F.
|
M.
|
M.
|
M.
|
P.

Sons of daughters of daughters of daughters born of the eligible families.

D.
|
D.
|
D.
|
S.

Here again we see from these originals and their various correlations that we do not go lower down than what is indicated below. The lines may therefore be expressed thus—

(1)	(2)	(3)	(4)	(5)	(6)	(7)
D.	D.	D.	D.	D.	D.	D.
|	|	|	|	|	|	|
S.	S.	D.	S.	D.	S.	D.
	|	|	|	|	|	|
	S.	S.	S.	S.	D.	D.
			|	|	|	|
			S.	S.	S.	S.

In the foreign families we have two more—

(*a*) The male ancestors who are within 5 degrees of the propositus.

(*b*) Their male agnatic descendants who are also within 5 degrees.

I. *Thus we have in one's own family*—

10 bandhus in the line of the propositus.

11 bandhus each in the line of the father, grandfather, great-grandfather and great-great-grandfather.

Total 54 male bandhus.

For instance, we have in the father's line.

1. Daughter's son.
2. Daughter's son's son.
3. Son's daughter's son.
4. Daughter's daughter's son.
5. Daughter's son's son's son.
6. Son's daughter's son's son.
7. Son's son's daughter's son.
8. Daughter's son's daughter's son.
9. Daughter's daughter's son's son.
10. Son's daughter's daughter's son.
11. Daughter's daughter's daughter's son.

In the case of the propositus, we must exclude the daughter's son who by reason of express texts comes immediately after the widow and daughter and before the parents in the Gotraja succession.

II. Then in the *mother's father's family*—

16 bandhus each in the line of the maternal grandfather, maternal great-grandfather and maternal great-great-grandfather.

Total 48 male bandhus.

For instance we have in the maternal grandfather's line.
1. The maternal grandfather.
2. The 4 descendants of the maternal grandfather in the agnatic line.
3. The 11 persons mentioned as already (*vide* one's own family —father's line).

III. *Father's mother's father's family*—

16 bandhus each in the line of the father's maternal grandfather and great-grandfather.

Total 32 male bandhus.

IV. *Father's father's mother's father's family*—

16 bandhus in the line of the father's father's maternal grandfather.

V. *Father's mother's mother's father's family*—

16 bandhus in the line of the father's mother's maternal grandfather.

VI. *Mother's mother's father's family*—

16 bandhus each in the line of the mother's maternal grandfather and the mother's maternal great-grandfather.

Total 32 male bandhus.

VII. *Mother's father's mother's father's family*—

16 bandhus in the line of the maternal grandfather's maternal grandfather.

VIII. *Mother's mother's mother's father's family*—

16 bandhus in the line of the mother's maternal grandmother's father.

Thus there are in all 230 male bandhus.

We shall arrange for purposes of convenience the above into the several classes and groups (making special reference to the distinction of *paterna* and *materna*, which will appear later on.)

CLASS I.—*Atma Bandhus.*

Total No. 48.

(*A*) *Ex-Parte Paterna.*

These are the 10 bandhus in the line of the propositus and 11 bandhus each in the lines of the father and grandfather. Total 32 bandus.

(*N.B.*—Throughout the relationship is to the propositus—for brevity we don't repeat propositus. If we say father, grandfather, &c., it is the father, grandfather, &c., of the propositus.)

(*B*) *Ex-Parte Materna.*

The 16 bandhus in the line of the maternal grandfather.

Total of A & B = 48 bandhus.

CLASS II.—*Pitri Bandhus.*

Total No. 86.

(*C*) Pitri Atma bandhus *Ex-Parte Paterna.*

The 11 bandhus in the line of the paternal great-grandfather.

(*D*) Pitri Atma Bandhus *Ex-Parte Materna.*

The 16 bandhus in the line of the father's maternal grandfather.

C & D = 27.

(*E*) Pitri Pitri Atma Bandhus *Ex-Parte Paterna.*

The 11 bandhus in the line of the paternal great-great-grand father.

(*F*) Pitri Pitri Atma Bandhus *Ex-Parte Materna.*

The 16 bandhus in the line of the father's father's maternal grandfather.

E & F = 27.

(*G*) Pitri Matri Bandhus *Ex-Parte Paterna.*

The 16 bandhus in the line of the father's maternal great-grandfather or (father's mother's paternal grandfather).

(*H*) Pitri Matri Bandhus *Ex-Parte Materna.*

The 16 bandhus in the line of the father's mother's maternal grandfather.

G & H = 32.

Total of C, D, E, F, G & H = 86.

CLASS III.—*Matri Bandhus.*

Total No. 96.

(*I*) Matri Atma Bandhus *Ex-Parte Paterna.*

The 16 bandhus in the line of the father of the maternal grandfather (or the mother's paternal grandfather).

(*J*) Matri Atma Bandhus *Ex-Parte Materna.*

The 16 bandhus in the line of the mother's maternal grandfather.

I & J = 32.

(*K*) Matri Pitri Bandhus *Ex-Parte Paterna.*

The 16 bandhus in the line of the mother's paternal great-grandfather.

(*L*) Matri Pitri Bandhus *Ex-Parte Materna.*

The 16 bandhus in the line of the mother's father's maternal grandfather.

K & L = 32.

(*M*) Matri Matri Bandhus *Ex-Parte Paterna.*

The 16 bandhus in the line of the mother's maternal great-grandfather, *i.e.*, mother's mother's father's father.

(*N*) Matri Matri Bandhus *Ex-Parte Materna.*

The 16 bandhus in the line of the mother's mother's maternal grandfather.

M & N = 32.

Total of I, J, K, L, M & N = 96.

In Class	I. (Atma Bandhus)	the total No. is	48
Do.	II. (Pitri Bandhus)	do.	86
Do.	III. (Matri Bandhus)	do.	96
			230

Thus we see that there are in all 230 male heritable bandhus in the 3 classes mentioned in the text of Vriddhasatatapa.

P. R. GANAPATI AIYAR.

NOTES OF INDIAN CASES.

Narayya Kaviraya *v.* **Kandasami Goundan,** I.L.R., 22 M. 24.

We must confess to a feeling of surprise at the decision of *Shephard* and *Boddam*, J. J., in this case. It may be that a person suing for specific performance upon a contract to sell is entitled to ask for possession of the property, *vide* Form III, Sch. iv, Code of Civil Procedure. But this right to ask for possession is perfectly distinct from the right to possession which accrues from the conveyance. Upon a decree for specific performance the plaintiff obtains a conveyance and he bases a new action for possession upon the conveyance he has secured. S. 55 of the Transfer of Property Act deals with the right to possession which the purchaser of property has. We are equally unable to see the distinction attempted to be drawn between the case under notice and *Nathen Valad Pandu* v. *Budhu Valad Bhuka*, I. L. R., 18 B. 537. We should have thought no authority was needed for the position that a fresh suit based upon a conveyance would lie for possession. S. 43, Civil Procedure Code, has nothing to do with a cause of action that accrues subsequent to the institution of the prior suit.

Queen-Empress *v.* **Shree Ahobala Matam Jeer,** I.L.R., 22 M. 47.

We are not satisfied that the question involved in this case has been rightly decided. A criminal case partly tried is transferred from one court to another. S. 350, which empowers the succeeding Magistrate to continue the trial from where it was left off, does not apply to a case where the proceedings have been transferred to another court. And the proviso which entitles the accused to demand the commencement of the trial *de novo* is necessarily limited to cases with which the section itself deals, namely, of Magistrates succeeding in the same court. We imagine, however, that the new court to which the case is transferred must begin the proceedings *de novo* in the absence of a specific direction in the code. Can this rule be affected if the court to which the transfer is directed is presided over by the same officer who tried the case as judge of the court from which the case was transferred ? *Collins*, C. J., and *Benson*, J., are of opinion that this circumstance makes all the difference. We do not find any provision in the Code saying so. We may also concede there is nothing unreasonable in such a provision being enacted. We quite agree that the cases cited by the counsel for the petitioner do not decide the question; nor does the passage in Prinsep's Commentaries at p. 293, quoting a case from the Allahabad weekly notes, 1889, p. 130, conclude the matter. But we think that in the absence of express statutory direction, it is not for the Judges to lay down a rule at variance with general principles; and in this case, we think, that the general rule that where a case is transferred from one court to another, the proceedings shall be begun *de novo* is not qualified by any statutory exception. In civil cases, a similar rule was laid down by the Allahabad High Court, *Bandhu Naik* v. *Lakhi Kuar*, I.L.R., 7 A. 342. S. 191 of the Code of Civil Procedure was, however, modified by the Legislature after the Allahabad ruling. Clause 2 of that section enables a Judge of the court to which a case is transferred to continue the proceedings from the stage at which they were left off, the proviso to the section enabling the court making the order of transfer direct a commencement of proceedings *de novo*. There is no provision in the Criminal Procedure Code similar to para. 2 of S. 191; and hence we conclude that the difference in this respect between the two enactments is intentional. The point is one of considerable importance, and we hope it will receive a full and dispassionate consideration when it happens to be raised again.

SUMMARY OF RECENT CASES.

Public Authorities Protection Act, 56 and 57 Vic., Ch. 6, S. 1—Suits in chancery—Judgment for defendant—Applications—Appeal.

Fielding *v.* Morley Corporation [1899,] I Ch. 1.

Section 1, Sub-section (*b*) of the Public Authorities Protection Act (56 and 57 Vic., c. 61) which provides with reference to an action against any person for any act, neglect or default in the execution or intended execution of any Act of Parliament or of any public duty or authority, that "wherever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client", applies to "suits in chancery", (injunction actions as well as actions for damages), but not to appeals or interlocutory applications.

The dismissal of an action in the Chancery Division is equivalent to a judgment for the defendant.

The plaintiff, a landowner, brought an action for an injunction to restrain the defendant corporation from allowing the water passing along an aqueduct or conduit to their reservoir—works constructed under a special Water Act, and also for an injunction to restrain the defendants from trespassing upon his lands, damages and costs. *Byrne*, J., dismissed the action with costs and held that the defendants were entitled to solicitor and client costs. The Court of Appeal dismissed an appeal from the whole judgment and held as to costs that the defendants (respondents) were entitled to costs as between solicitor and client in the Court below and simply to ordinary costs (as between party and party) in the Court of Appeal.

Contract to sell equitable interest in reversion—Formal conveyance—Specific performance—Delay.

Levy *v.* Stogdon [1899], I. Ch. 5.

When the clauses of a contract to sell plainly contemplate a formal deed of assignment, relief can be obtained under the contract only on the ground of specific performance, although it relates to a purely equitable interest capable of passing without a formal conveyance.

And specific performance cannot be granted after 10 years from the date of the contract when the position of all the parties is altered, as the effect of so granting relief will be to do injustice to everybody concerned.

S. contracted to sell and K. to buy, free from incumbrances, a sum of £21,667-10-5 consols comprised in the vendor's marriage settlement

to which S. was entitled absolutely in reversion if there were no younger children of his marriage, but subject to the life interests of S. and his wife therein. The agreement provided amongst other things, that the purchase was to be completed within the 25th of June 1886. It appeared upon investigation that the reversion was subject, along with other property, to heavy incumbrances which S. could not discharge and from which the incumbrancers declined to release the reversion. S. became bankrupt in January 1888, and subsequently his property was sold in pursuance of a scheme of arrangement with his creditors under which sale R. claimed title to the reversion. S. and his wife died, respectively, in 1890 and 1895. No active steps were taken to enforce the contract of April 1886 until B., in whom K.'s interest under it became vested, obtained leave on March 5th, 1896, to attend proceedings in an action in which the estate of S. was being administered. In that action B. took out a summons claiming the consols, and an order was passed thereon directing an inquiry who was entitled to them with a provision that the applicant's claim was to be treated as if he had commenced an action for specific performance on March 5th, 1896. The master found that K. was not entitled, and *Stirling*, J., affirmed his decision. The Court of Appeal held on appeal from that decision that no property could be had in the consols except by a conveyance and that specific relief by way of execution of a conveyance could not be granted after such a long delay.

Discovery—Accounts—Depositions—Privilege.

Goldstone *v.* **Williams Deacon & Co.**, [1899], I. Ch. 47.

In an action by the infant children of G. against the defendant Bank with whom the widow of G. had (in alleged breach of trust in the administration of G.'s estate) deposited securities belonging to G.'s estate to secure advances to herself, the defendants obtained an order for discovery and claimed production—

(1) of the accounts prepared by the plaintiffs' solicitors in a previous action by the plaintiffs against the widow and her trustees in bankruptcy for breaches of trust in the administration of G.'s estate, produced to her on examination before an examiner and admitted by her to be correct, and entered as read in an order on a petition of compromise in that suit, and

(2) of the office copy of the widow's depositions,

both of which were in the plaintiffs' possession,

Stirling, J., in discharging the order for discovery of the accounts and ordering the production of the depositions, held:

(*a*) that the accounts prepared at the instance of the plaintiffs' professional advisers with a view to a former litigation after that litigation had been commenced were privileged and not open to the inspection of the defendants, even though they had not been prepared also with a view to the present litigation. *Walsham* v. *Stainton*, 2 H. & M., 1.

(Full and free communication ought to be allowed for the purposes of litigation, not only between a solicitor and his client, but between solicitor and persons whose assistance he requires or with whom he communicates in order to enable him properly to conduct the litigation);

(*b*) that a document once privileged is generally always privileged until the privilege is waived. *Bullock & Co.* v. *Carry & Co.*, 3 Q. B. D., 356; *Pearce* v. *Foster*, 15 Q. B. D., 114; *Calcraft* v. *Guest* (1898), 1 Q. B., 759, 761;

(*c*) that the mere fact that the accounts were entered as read in the order on the petition of compromise (the accounts having been merely exhibited to the depositions of the widow, not being themselves on the file nor having got on the examiner's notes and having been brought before the Judge only to enable him to determine whether the compromise was proper) did not constitute a public disclosure of the same so as to bring them under the rule laid down with regard to notes of proceedings in open court or before an arbitrator, in *Nicholl* v. *Jones*, 2 H. & M. 588; *In re Worswick*, 38 Ch. D. 370; *Rawstone* v. *Preston Corporation*, 30 Ch. D. 116; and that it did not amount to a waiver of the privilege. *North Australian Co.* v. *Goldsborough, Mort and Co.* (1893), 2 Ch. 381; and

(*d*) that the copies of the depositions constituting a note of what took place before an officer of the court, came within the rule as to notes of proceedings in open court or before an arbitrator, and that consequently they were *publici juris* and could not be said to be privileged.

Condition—Gift—Condition in terrorem.

In re **Nourse; Hampton** *v.* **Nourse**, (1899) I. Ch. 63.

A condition annexed to a gift that the donee should get the property only on the condition of his marrying with the previous consent in writing of a certain specified person, is valid if the gift be one of realty.

But it is as such, void if the gift be one of pure personalty and the gift takes effect absolutely, whether the condition be precedent or subsequent. *Reynish* v. *Martin*, 3 Atk. 330.

There are however exceptions to this latter rule. Where there is a gift over of the property in case the condition is not fulfilled, then the condition is valid and ought to be performed. *Lloyd* v. *Branson*, 3 Mer. 117.

Where there is a gift in any event, the condition is not merely *in terrorem*, but valid and binding. *Gillet* v. *Wray*, 1 P. Wms., 284, applied; *Reynish* v. *Martin*, 3 Atk. 330, distinguished.

Lease—Option to purchase—Assigns—Equitable assignee in possession.

(5) **Friary Holroyd and Healey's Breweries, Limited, v. Singleton.** (1899) I Ch. 86.

In a covenant in a lease giving an option to purchase, the word "assigns" means the persons entitled to the term as between them and the lessor and to the benefit of the covenants entered into by the lessor and lessee, respectively, which run with the land demised.

The equitable assignee of a lease who has omitted to perfect his title by a legal assignment, although in possession of the premises and paying the rent reserved by the lease, not coming within the meaning of the word "assigns," is not entitled to the benefit of an option to purchase given to the lessee, his executors, administrators and assigns.

Thus where the plaintiff company claimed to be entitled to the benefit of an option to purchase given in a lease which they got under an agreement with an "old company" which went into voluntary liquidation, *Romer*, J., held that they were not entitled to the benefit of the option to purchase, though they were in possession of the premises, paying the rent reserved by the lease.

(6) **Wauton** *v* **Coppard,** (1899) I. Ch. 92.

The plaintiff negotiated with the defendant's agent for the purchase of a house to carry on his preparatory school for boys. The defendant's agent was aware of the purpose for which the house was required and informed the plaintiff, in answer to an inquiry on this point, that there were no restrictions preventing the house from being used for that purpose. The plaintiff asking to see a deed of covenant of 1851, subject to the provisions of which the house was to be sold, he was told that it

contained nothing that would interfere with the carrying on of a school. The plaintiff thereupon entered into a contract for the purchase of the house. The deed of covenant of 1851 after prohibiting certain offensive and noisy trades and businesses, provided that there should not be carried on "any trade or business or occupation whatsoever whereby any unwholesome or offensive or disagreeable smell or gas or unwholesome or offensive or disagreeable matter, deposit or fluid or any injurious or offensive or disagreeable noise or nuisance shall or may be collected, occasioned, caused or made." The plaintiff on coming to know of this, declined to complete his purchase and demanded the return of his deposit. This being refused he brought this action for rescission of the contract and for recovery of his deposit with interest. *Romer*, J., held (1) that the covenants could not be limited to trades or businesses *ejusdem generis* as those previously specially mentioned; (2) that they would interfere with the plaintiff carrying on his school in an ordinary and reasonable way; (3) that the representation of the defendant's agent looking at its substance was one of fact and not one of law; and (4) that the plaintiff was entitled to rescind the contract, though the representation was not fraudulent and might have been caused by the agent wrongly construing the deed or making a legal mistake. *Tod Heatly* v. *Benham*, 40 Ch. D. 80, followed.

JOTTINGS AND CUTTINGS.

We beg to acknowledge with thanks the receipt of the following publications:—

An Abstract of Maine's Ancient Law, published by Messrs. *Thomson & Co., Madras*;—Price Re 1.

The Lawyer and Magistrate, No. 3 (*in exchange*).
The Bombay Law Reporter for February (*in exchange*).
The Albany Law Journal for February (*in exchange*).
The Calcutta Weekly Notes for February (*in exchange*).
The Allahabad Weekly Notes for February (*in exchange*).
The Green Bag for February (*in exchange*).
The Canadian Law Times for February (*in exchange*).
The Canada Law Journal for February (*in exchange*).
The Educational Review for February (*in exchange*).
The Indian Journal of Education for February (*in exchange*).
The Harvard Law Review for February (*in exchange*).

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Overcrowding of the Bar:—There is a growing feeling in some quarters that the annual addition to the number of vakils and pleaders is going on at a rapid rate and that the time is come when the Presidency and Mofussil bars have become overcrowded to an inconvenient extent. If this were a fact, there would be good ground for a consideration of the means of limiting the numbers. Overcrowding in the ranks of the profession leads to under-bidding in respect of fees and promotes an anxiety to get on at any risk. Professional character is likely to become lowered and the honorable traditions of the bar can no longer be kept up. The evil is especially great in a country where professional etiquette is not well regulated by an efficient professional opinion and where the bar is split up into several orders with varying qualifications. We think the time has not yet come when it can be said that there is such an inconvenient pressure. But it is well to look ahead and suggest means by which such a day may be pushed to a remote future. The bar is practically the only independent profession in this country which gives employment to any considerable numbers. That is the only field for ambition and talent apart from Government Service. To shut its portals against new comers or to make entrance extremely inconvenient is sure to be attended with great unpopularity. But it seems to us desirable to take some step to relieve the tension, if any. We do not think it necessary for the criminal courts to allow any longer uncertificated practitioners to appear before them. Again, it seems to us that it is time for the High Court to cease to hold the examination for second-grade pleaders, or, at all events, to suspend that examination for two or three years. This will reduce the annual addition to the ranks of pleaders and induce more first-grade pleaders to settle at Munsif's stations, thereby relieving to some extent the pressure in the bars of the District Towns. As another result of the same step, more High Court vakils than now will feel induced to settle in the District capitals. We think it undesirable to allow first-grade pleaders to enter upon practice the moment they pass their examination without subjecting them to a preliminary training. Such a training appears to us essential in their case as in the case of High Court vakils.

The mere passing of an examination is not the whole qualification for a professional career. Some acquaintance with the technicalities of pleading and procedure and with the code of professional ethics and propriety is a necessary equipment before a pleader is entrusted with the conduct of litigation. A six months' probation at the office of a vakil of standing may fairly be insisted on before a pleader is enrolled. Some effort should be made to form bar associations for the purpose of the

body exercising some sort of supervision over members who might otherwise be prone to err. It may be a further question whether the Legislature may not empower these bodies with some authority to enquire into allegations of misconduct and report upon them to the court. The changes and reforms we have above indicated will to a great extent improve the position of the bar and for a considerable time stave off the evil day if it ever should come, of inconvenient overcrowding of the profession, or, at all events, such a crowding as will have a deteriorating effect upon the tone and character of the profession.

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Tributes to the memory of Lord Herschell.—In the House of Lords on Thursday the Marquis of Salisbury and the Earl of Kimberley having spoken, the Lord Chancellor said: Not only on my own behalf, but on behalf of the profession which, for the moment, I represent, I desire to associate myself with what has been said of our lamented friend Lord Herschell. No one can have been associated with him so long as I have been, and as some of your Lordships have been, in the study and administration of the law, without recognising in him a profound and most able lawyer—a man with a degree of energy and inexhaustible industry which made him master of any subject to which he applied himself. My personal relations with Lord Herschell go back many years before either of us was a member of this House. Although we have been opposed in Court, and although we have taken different views on public questions, I think I can say—indeed, I know it—nothing has ever occurred to mar the personal friendship that existed between us. Even the lay-members of your Lordships' House will be able to recognize the great loss which the judicial strength of the country has sustained, and I am quite sure that those who have known him in this country, or any other country, recognize the fact that this country is the poorer for the loss of a most able and upright Judge, the loss of one who was probably in the best sense of the word a law reformer and who devoted his best energies to putting right in the law whatever was wrong. I am sure it will also be recognized, not only in this country, but by all English-speaking races, that we have lost a jurist whose counsels were most valuable.

Lord James of Hereford.—I hope you will pardon me adding a few words. I speak under rather peculiar circumstances. I had opportunities of judging of Lord Herschell's great qualities which few men had. We served as law officers of the Crown together for some five years.

We served under circumstances of a peculiar character. Our labours were severe, and I recollect with gratitude how generous was the conduct of Lord Herschell in bearing the greater share of those labours. During that period I learnt to know how great was the area of his knowledge, how strong and discerning were his perceptive faculties, and with what a true and just judgment he always determined every question that came before him. This house may thank him for his labours, but the public are sure to recognize how well he deserved thanks. In one of the last interviews I had with Lord Herschell he told me of the claim that had been made on his services by the Prime Minister to represent this country under circumstances of great delicacy. At the same time he told me of his system overwrought, and how weary and worn he was, how he was looking forward to a long period of rest and repose with those who were very near and dear to him; but he turned aside from that prospect of restoration to health, and cast not one lingering look upon it in order that he might do his duty to his country. Under these circumstances surely his friends will be proud of the recollection of the true friendship they enjoyed, and not only your Lordships, but the whole country ought to be grateful to him for the work he did.

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The following were the words addressed to the law graduates of the Calcutta University by the Vice-Chancellor *Sir Francis Maclean.*

I am conscious that among those who have taken their degrees to-day a large number will follow the profession of the law. Among the graduates of this University a very large proportion are lawyers, and the members are not unlikely to increase. I fear, as lawyers, we are not over-popular. We are regarded as a sort of necessary evil, but our consolation must be that the world hitherto has not been able to get along without us; and it never will be able to get along without us. I agree that a permanent superfluity of lawyers in our social economy would be undesirable, but at the same time I can quite appreciate the motives and the attractions which prompt and draw the youth of so many countries to the pursuit of the law. To those of you who propose to follow that pursuit, I would give a very few words of special advice, which my now rather long experience may justify me in doing.

First let me impress upon all beginners the necessity of being absolutely honourable in every transaction, and do not, for the purpose of gaining some temporary and fleeting advantage to the conduct of any case, swerve by one hair's breadth from the path of honour. Recollect again that in

the conduct of a case, it is your client's and your client's interests alone which are to be considered; think of him, and only of him, and avoid the fostering of litigation. A great advocate is a great man; but the man who prostitutes his advocacy to promote his own mercenary ends is a creature only to be despised. There is, perhaps, among some of the native gentlemen who practise in the courts of this country a tendency to over refinement and subtlety in their argument. This over-subtlety and over technicality, if not a danger, is certainly a fault, a fault which I believe the reckless layman is ever inclined to attribute to every lawyer. Some of you may be astonished when I say that law and common sense proceed hand in hand much more than many of you may conceive. The greater my experience in the principles which govern judicial decisions, the more am I satisfied of their harmony with common sense. A very technical lawyer can never be a really great one, and I would advise you when you come to the actual practice of the law in the courts of this country to ascertain first the principle which ought to govern the decision of the particular case, to argue for that principle, to prefer, as the object point of your argument, a conclusion which satisfies rather the criterion of common sense and which is more in harmony with the practical side, the features of every-day life, than to aim for a result based upon over-subtlety and even unreasonableness. I am only tendering advice: I do not desire to be misunderstood: I am not saying that what I speak of as a fault is present to every native advocate: on the contrary, I am struck, most forcibly struck, with the marked ability and knowledge which characterises the arguments of many of the native gentlemen who practise in the courts of Calcutta, and to whose arguments the court is frequently much indebted. You may safely emulate them.

It has been said of the great Napoleon's soldiers that everyone of them might carry in his knapsack the baton of a Marshal of France, so, remember, that to each of you there is open at least the possibility of terminating your career upon the Bench of the High Court, one to my mind, of the greatest and most valuable prizes open to native gentlemen of this Empire, a most honourable ambition for an honourable career. May this be the goal of your ambition.

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Cross-examination acquittals:—A correspondent writes to the Westminster Gazette relative to cross-examining on acquittals:—"Has the following anecdote any bearing on the subject? Sir Frank Lockwood was called in to cross-examine in a chancery suit. He was anxious to

impeach the veracity of an important witness on the opposing side, and when he came back to his common-law brethren he is reported to have said: 'What extraordinary ideas of cross-examination these chancery men have!' I asked Mr. A. if it were not a fact that he had been charged with a particular kind of fraud and been convicted, and he confessed that it was the truth; whereupon my opponent got up and said: 'Oh, that is all very well, but have you not been charged five other times with the same kind of fraud, Mr. A., and always been acquitted?' And, receiving an answer in the affirmative, sat down triumphant":—*The Albany Law Journal.*

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Admission of Lady Barristers:—Though there is much discussion in Paris over the approaching admission of ladies to the bar, France, as a matter of fact, says the St. James's Gazette, is considerably behind hand in this latest form of enlightened feminine progress. Several other nations have anticipated her. New Zealand, Mexico, Chili, Finland, Japan, Sweden, Norway and Switzerland already enjoy the advantages of feminine advocacy. But the Swiss lady barristers are hardly treated. They have to prove their "good reputation," to pay a deposit of £120, to possess a certificate of proper capacity, and to obtain the permission of their husbands when they are married. And when the thing is carried in France this last condition will no doubt be found advisable. Yet even when a married barmaid (if that be the feminine of barrister) is restrained by her lord and master from appearing, she will make certain of at least one case by pleading for her liberty before the higher tribunals:—*The Albany Law Journal.*

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A New Zealand newspaper contains the following: "A Maori chief, who lost £40 through a white storekeeper going through the Bankruptcy Court, has given the following lucid exposition of this particular branch of British jurisprudence: 'The pakeha (white man) who wants to become pakarapu (insolvent) goes into business, and gets lots of goods, and does not pay for them. He then gets all the money he can together, say £2,000, and puts all of it, except £5, away where no one can find it. With the £5 he goes to a judge of the court and tells him he wants to become pakarapu.' The judge then calls all the lawyers together, likewise all the men to whom the pakeha owes money, and he says: 'This man is pakarapu, but he wishes to give you all that he has got, and so he has asked me to divide this £5 amongst you all.' The judge there-

upon gives the lawyers £4, and the remaining £1 to the other men. Then the pakeha goes home" :—*The Albany Law Journal.*

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Contract assigning future earnings to ten years void :—An interesting decision involving a contract made by a person whereby he assigned his earnings for ten years to another person as security for the payment of money borrowed, has just been handed down by Judge Hollister, of the Hamilton county (Ohio) common pleas court. It was in the case of John J. Rose for the use and benefit of D. H. Tolman, against the Hyndman Steel Roofing Co. Rose had been in the employment of a cab company, and borrowed money and pledged his salary from that company as security for the payment of the debt. The contract he made with Tolman provided that the company by which he was employed when he made the contract, or any other person with whom he might be employed in the ensuing ten years, should pay to Tolman on presentation of the order the amount of money due to Tolman less the amount already paid, which was indorsed upon the back of the order. Rose left the employment of the cab company and went to the Hyndman Steel Company, and the order for money was presented to the Hyndman Company and payment refused. Then the suit was filed. Judge Hollister held that such a contract was void, as against public policy, as a man could not make a contract pledging something he did not have. The contract pledged any salary the man might earn in a period of ten years. This could not be done :—*The Albany Law Journal.*

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Legal Laughs.

In trial term, part XII, of the Supreme Court in Manhattan the other day, Justice Wilmot M. Smith presided. The clerk assigned to that part was G. C. Smith, the stenographer is H. J. Smith, and the court crier is Alexander B. Smith. What's the matter with the Smiths ?

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"I was recently making out a deed for a man," says a Detroit lawyer, "and all went swimmingly till I turned to him and asked his wife's name. 'Oh, yes, of course. Wife's name. Very necessary, to be sure,' and it was plain to be sure that he was sparring for a time, while making every effort to bring his memory into play. He had a rush of blood to the face, looked sorely troubled, and finally turned his back on me while he looked out of the window, as though relief were to be found there. 'Wouldn't that beat you,' he exclaimed, as he turned slowly back. 'I'll be blowed if I can recall her name. You see, they

used to call her 'Pet' when she was a girl at home, and that was her name with me up to two years after our marriage, when I began calling her 'Mamma.' I couldn't tell you her name if it were a capital offense not to know it. S'pose it wouldn't do to just call her 'Pet' in the deed?' It wouldn't, so he hurried away, and in an hour was back with his wife's full name on a slip of paper."—*Detroit Free Press.*

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As a junior counsel, Mr. Justice Hawkins was once practising before Lord Campbell, who was somewhat pedantic. In addressing the jury Mr. Hawkins, in referring to a brougham, pronounced the word with two syllables—bro'am. "Excuse me," said his Lordship blandly, "but I think that if instead of saying 'brough-am' you were to say 'broom,' you would be more intelligible to the jury, and, moreover, you would save a syllable." "I am much obliged to your lordship," quietly replied Mr. Hawkins, and proceeded to bring his address to a close. Presently the judge, in summing up, made use of the word "omnibus." Instantly up rose Mr. Hawkins, and exclaimed: "Pardon me, m'lud, but I would take the liberty of suggesting that instead of saying 'omnibus' your lordship would say 'bus,' and you would then be more intelligible to the jury, and besides you would save two syllables."

A jocular barrister, going for his holidays, was told by a friend that two judges were laid up with swelling in the legs. "So I see," he said; "and others are suffering from swelling in the head." "Yes," was the reply, "both suffering from defective understandings."—*Law Times* (London).

Sir Walter Scott was a shrewd lawyer as well as an excellent novelist, and speaking through the mouth of his Counseller Pleydell in "Guy Mannering," he makes a very sagacious observation: "In civilized society," says the worthy counsellor, "law is the chimney through which all that smoke discharges itself that used to circulate through the whole house and put every one's eyes out; no wonder, then, that the vent itself should sometimes get a little sooty." No wonder, either, if lawyers should get a little cynical, witnesses as they are of a constant procession of human folly and roguery. Yet the fact is that they do not. Lawyers know that neither the angry litigant nor the hardened criminal is a fair sample of the race, and they do not, from these specimens, conclude with Tennyson's Northern Farmer that "men in the loomp is baad." What they learn—and it is an excellent lesson—is tolerance, and this differs *toto cœlo* from cynicism. Carlyle's advice to people in general was, "Consume your own smoke." Alas! the sage

"reeked not his own reed;" still the advice was none the less excellent. But by the time that advice is generally adopted the millennium will have arrived, and the smoky chimney of the law will no longer vex any of our souls.—*Law Journal* (London).

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Property in Animals Ferœ Naturœ.—When an animal *ferœ naturœ* is reduced into possession, the possessor gains a qualified proprietary right. The limitations of that right were involved in a recent decision of the New York Supreme Court. *Mullett* v. *Bradley*, 53 N. Y. Supp. 781 (Sup. Ct. App. Term.). A sea-lion, brought from the Pacific coast to Long Island, escaped from the possession of its owner, and was abandoned by him. A year afterward it was recaptured upon the New Jersey coast by a fisherman, seventy miles from the place of escape. Upon these facts it seems clear that the former owner had forfeited his right by the abandonment. *Buster* v. *Newkirk*, 20 Johns. 73. However, this was not the *ratio decidendi*. The court held for the fisherman upon the ground that the owner had lost his property by the very loss of possession.

The ruling of the court represents the usual statement of the law of property in wild animals that remain undomesticated. *Goff* v. *Kilts*, 15 Wend. 550; *Ulery* v. *Jones*, 81 Ill. 403. The old writers assume that as ownership in animals *ferœ naturœ* is acquired by taking possession, the property is always contingent upon the maintenance of an actual possession. The further ancient rules that such animals remain property when beyond manual control *animo revertendi*, and their young, always, *ratione impotentiœ*, seem not even exceptions to that general principle. Bracton, liv. 2, c. i.; Institutes, liv. iv. Tit. 9. Now, the usual title gained by possession is not defeasible by the mere loss of possession. Again, this ancient rule limiting the rights of ownership in animals *ferœ naturœ* seems inconsistent with the related law governing the responsibility of owners for injury done by such animals. Where a bear slipped his collar and in his escape to the woods injured a man, the court held the owner liable as a matter of course. *Vredenburg* v. *Behan*, 33, La. Ann. 627. The one limitation that has been suggested is that when the animal reaches its native place or an environment specially adapted to its existence, liability should cease. This points to a practical distinction between indigenous and imported animals—liability for the one may cease upon loss of possession, not for the other.

It would seem that the same law should govern the extent of the responsibility for animals *ferœ naturœ* and the rights of property in them;

and it is to be regretted that an express dictum in the principal case insists upon the ancient rule. If in the principal case the interruption of the owner's possession had been momentary, it would be hard to hold that a fisherman taking possession the next moment thereby had the title. Large amounts of capital are to-day invested in wild animals imported for exhibition, and grave injustice may some time arise from a strict application of the ancient rules:—*Harvard Law Review.*

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Donatio Mortis Causa.—In the case of *Liebe* v. *Battman*, 54 Pac. Rep. 179, the Supreme Court of Oregon had occasion to apply to exceptional, as well as notorious facts the rule that a *donatio mortis causa* requires delivery. It appeared that one about to commit suicide indorsed a promissory note, sealed it in an envelope directed to a friend with whom he was living, and placed the envelope, together with a letter to the same friend, upon a table beside his bed. Then he shot himself. The friend came quickly from his room in an opposite part of the house, but the dying man, without further reference to the gift, soon passed into a comatose state from which he never rallied. It was held there had been no delivery in spite of the fact that the friend had picked up the envelope before the donor died, though after he became unconscious. The Court said, "There must be a parting with the dominion over the subject-matter of the gift with a present design that the title shall pass out of the donor and to the donee." The definition and the application of it seemed sound. Placing the addressed envelope on the table where it was directly at the hand of the donor could not amount to a giving up of dominion, and though possibly there was a change of possession before the death that was not enough. A transfer, a positive act of giving, a parting with dominion,—these require a corresponding intent which the unconscious man could not have had. *Leonard* v. *Administrators of Kebler*, 50, Ohio St. 444.

The facts suggest another case far more difficult,—where the document is mailed by the man about to die, but he becomes unconscious before it is actually received. There, with full intent, he has actually set in motion the machinery which was to complete the gift, has done all in his power, and has put the document beyond recall, actually outside of his own dominion. The technical requisite, possession in the donee, alone is lacking. The cases of gifts *inter vivos* where a delivery to A for B is held a good delivery to B are clearly in point, but it must be remembered that these decisions are not harmonious and that the courts might be loath to apply the relaxation of the law *inter vivos* to the *donatio*.

The caution that led the Roman law to require five witnesses to perfect a gift in fear of death still lingers in our law and causes not only suspicion and strict scrutiny, but, occasionally at least, a tendency to cramp the rights of the donee :—*Harvard Law Review.*

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Quasi Contracts—Mistake of Law.—Plaintiff, as executor, paid a legacy to an adopted child, erroneously believing her to be entitled to it by law. On discovering his mistake, plaintiff sued the child's guardian for the money. *Held*, that he cannot recover. *Phillips* v. *McConica*, 51 N. E. Rep. 445 (Ohio).

While money paid under a mistake of fact can generally be recovered, this case holds that there can be no such recovery when the mistake is one of law. The reason given for this distinction, namely, that ignorance of the law excuses no one, seems unsatisfactory, for the plaintiff does not ask to be excused for having injured any one, but merely that the defendant shall not be allowed to make an unjust gain out of the plaintiff's mistake. Where the mistake is one of fact, recovery is allowed because it is manifestly inequitable for the defendant to keep the money. This reason evidently applies just as strongly when the mistake is one of law, and there are a few cases supporting this view. *Mansfield* v. *Lynch*, 59 Conn. 320; *Culbreath* v. *Culbreath*, 7 Ga. 64. The great weight of authority, however, supports the principal case. *People* v. *Foster*, 133 Ill. 496; *Vanderbeck* v. *Rochester*, 122 N. Y. 285; *Carson* v. *Cochran* 52 Minn. 67 :—*Harvard Law Review.*

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Torts—Malicious Prosecution of Civil Suit.—Held, that an action for the malicious prosecution of a civil suit will not lie where there has been neither arrest of person, nor seizure of property, nor other special injury. *Smith* v. *Michigan Buggy Co.*, 51 N. W. Rep. 569 (Ill.).

The question was squarely before the Illinois court for the first time, and after a full examination of the authorities a decision was reached which is probably contrary to the weight of American judicial opinion. *Clossur* v. *Staples*, 42 Vt. 207; *McCardle* v. *McGinley*, 86 Ind. 538. The authority in accord with the principal case, however, is strong. *Wetmore* v. *Mellinger*, 64 Iowa, 741; *Muldoon* v. *Rickey*, 103 Pa. 110. The latter decisions must be put on the broad ground of public policy, and on that ground, it seems, ought to be supported. Allowing the action tends to increase useless and vexatious litigation, and one who honestly seeks redress through legal means should not be subjected to the probability

of incurring another suit as a penalty for failure in his own. The successful defendant in a civil suit maliciously prosecuted suffers slight damage beyond the expense of the suit. He is reimbursed for this by way of costs, and if, as in most American jurisdictions, these do not cover his entire expense, that is a proper case for legislative action.—*Harvard Law Review.*

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The Pleadership Examination.—We have often found the question papers set for the Pleadership Examination to be much more difficult than those set for the B. L. Examination in the same subjects; and this difference partly accounts for the much heavier slaughter in the former Examination. The paper on Civil Procedure and Limitation for the Pleadership Examination of 1899 appears to be one of the worst instances that have come across our notice. The questions require an intimate knowledge, not merely of the sections and articles, but also of the case-law upon the subjects. In not a few instances the decisions of the courts are contradictory and uncertain. We doubt very much whether even among practising lawyers the great majority would not find it difficult in passing in this paper. It seems to us that the Examination Board must have been very lax in the exercise of its powers of moderation, for, otherwise, we cannot understand how a paper of such scandalous severity happened to be passed by the Board.

REVIEWS.

Index of Cases reported in the Indian Law Reports: Allahabad Series, by Dharam Das Suri, published at *The Caxton Press, Lahore.*

Mr. Dharam Das Suri has done a piece of useful service in bringing out this book. If the practising lawyer wishes to know how a case reported in the Allahabad Series has been dealt with by that or any other court, he need only turn to this index for the purpose. As the index is only confined to Allahabad cases, indexes of the reports of the other High Courts not being available the usefulness of the publication is considerably limited. We hope Mr. Suri will complete his labors by bringing out indexes of the

reports of the other High Courts. Mr. Pearson's and Mr. Ghose's indexes are based upon the alphabetical order of the names. Mr. Suri's is based upon the order of the cases as reported.

The Indian Stamp Act—No. II of 1899. Compiled by D. E. Cranenburgh and published at the *Law Publishing Press, Calcutta.* Price Rs. 1.

We congratulate Mr. Cranenburgh on his enterprise in bringing out his Indian Stamp Act of 1889, together with the proceedings of the Legislature and all the rulings under the Stamp Law. The publication is very timely, and we think it will be found very useful by all practising lawyers, more especially with the copious general index. He has carefully pointed out by printing in italics the changes made by the Legislature upon the old law. The printing and the paper leave nothing to be desired.

Presumptions and Inferences.—A note based chiefly on Privy Council judgments on the law as to second appeals in India by G. C. Whitworth, I. C. S., Printed at *The Mercantile Oil Engine Press, Karachi.*

Mr. G. C. Whitworth has made a useful contribution to the right understanding of S. 584 of the Code of Civil Procedure.

The Yearly Practice of the Supreme Court for 1899 :—By Muir Mackenzie, Lushington and Fox, 1 vol., published by *Butterworth & Co., 7, Fleet Street, London.* Price, 20*s.* net.—We have the pleasure to introduce this edition of the Supreme Court Practice to the legal profession as a very handy and convenient one for reference. As the book consists of a single volume, it spares the practitioner the trouble and annoyance attending a reference to a two-volume book. One inconvenient feature of many annotated books including the Annual Practice is that the rules of the Supreme Court are not printed continuously, but are cut up by numerous and often long paragraphs of notes which prove very irritating when a practitioner wants to refer to the several rules consecutively. This has been happily avoided in

the present book, and we find all the rules of the Supreme Court printed continuously at the top of the page, and the notes printed at foot. While the limit of space imposed by the necessity of confining the book to a single volume prevents the notes from being as full as in the Annual Practice and thus competing with and displacing the latter, it gives as much information as it is possible to give within the compass of a single volume. We think the book will be a useful addition to the practitioner's shelf.