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TARWAD—REPRESENTATION IN SUITS.

As a compendious statement of the law on this subject Mr. Justice Holloway's remark that "a Malabar family speaks through its head and in all Courts of Justice, except in antagonism to its head, can speak in no other way" holds as good to-day as in 1862. It cannot be said that this principle is peculiar to Malabar Law. It is as much applicable in the case of the manager of a joint Hindu family but the question is not quite as important under that system owing to the right of the individual members to sue for partition. Except where the Karnavan has improperly alienated or dealt with family properties or is submitting to the infringement of the family right or has so far delayed in asserting family rights as to put them in serious jeopardy, the junior members cannot ordinarily maintain a suit to assert the family rights. *Rajah of Arakal* v. *Churiah Kunhi Kanna* [1], *Cheria Pangi Achan* v. *Unnalachan* [2], *Karunakara Menon* v. *Kutti Krishna Menon* [3], *Anantan* v. *Sankaran* [4]. In the last mentioned case, the junior members were permitted to sue for the recovery of possession of property from the alienees when the Karnavan whose deputy was the alienor had failed to sue for nearly 12 years. Where the alienor is dead and his successor is not disqualified, it is the Karnavan alone that can sue. *Ex necessitate rei*, to borrow the expression of their Lordships of the Privy Council with reference to reversioners, right of suit is conferred upon the junior members but it ceases as soon as the necessity ceases. A fresh right accrues when the new karnavan also fails in his duty.

Where alienation is induced by mutual mistake or fraud, whether the individual members have, apart from the karnavan, an independent right of suit was the subject of discussion in a recent case *Parameswaram Nambudripad* v. *Sankaran* [5]. Mr. Justice Sadasiva Aiyar thought they had not. The point became material in deciding the question of limitation. We should think that the right

1. (1915) 29 M. L. J. 532.
2. (1916) 32 M L. J. 328.
3. (1916) 5 L. W. 511.
4. (1890) I. L. R. 14 M 101.
5. (1914) 25 I C. 755=(1914) M. W. N. 689.

of the junior members in such a case is distinct from the right of the executant to set aside the transaction. As against him, it is not binding if induced by fraud or mutual mistake. As against the family, as represented by individual members it would be bad because not beneficial. The case would be different if the transaction vitiated by fraud or mistake is one of purchase or investment where the discretion of the karnavan is wide, as it is sometimes said, even absolute.

Except in the circumstances referred to and except in so far as under a family karar or otherwise special rights of suit are reserved for individual members and barring also the case of redemption in which a statutory right is conferred on all persons interested in the property of redeeming the mortgage (*Karattole Edamana* v. *Unni Kannan* [1]) the junior member cannot sue. The effect of allowing suits under other circumstances would be to substitute the discretion of the junior member or of the Court for that of the Karnavan to whose care administration of the family affairs is by law committed. *Cheria Pangi Achan* v. *Unnalachan* [2]. But it is possible to make too much of this discretion and the rule may well be modified in the direction suggested in *Kunhan* v. *Moorthi* [3] (a case of trustees,) at any rate when the karnavan, *a fortiori* when all the members of the family are parties and do not object to the suit. Where a *de facto* manager sued making the karnavan party defendant, the suit was held maintainable. (S. A. No. 612 of '02).

The junior member sues no doubt to recover the property for the family and when the decree is got, the decree will enure for the benefit of the family. (*Moidin Kutti* v. *Krishnan* [4]; *Ibrayan Kunhi* v. *Kommamuti Koya* [5]) and the family will be precluded from further agitating the question. Though undoubtedly he is enforcing the right of the tarwad nevertheless, it is an individual right that he is asserting (*Otappurakkal Thazhatsuppi* v. *Cherichil Pattikkal Uppathimma* [6]) so that if the action is dismissed for default, that would not preclude the other members from suing for the same relief. *Moidin Kutti* v. *Krishnan* [4]. The effect of a dismissal of the suits on the merits is doubtful.

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1. (1902) I L. R. 26 M. 649.
2. (1915) 32 M. L. J. 323.
3. (1910) I. L. R. 34 M. 406.
4. (1887) I. L. R. 10 M. 322.
5. (1893) I. L. R. 15 M. 501
6. (1909) I. L. R. 33 M. 31.

The nearest analogy is furnished by the suits brought by individual members of the public to restore improperly alienated trust properties to the trust. If the recent case in *Rangamma* v. *Narasimhacharyulu* [1] has been rightly decided, the decision could easily be held binding if the parties litigated *bona fide* (Sec. 11, C. P.C., Expl. 6). Mr. Justice Shephard's view is that the explanation cannot cover cases of Malabar Tarwad as the Karnavan's interest and the interest of the junior members is not the same. But suits by junior members would seem to be unaffected by this as undoubtedly their interest would be the same. A case in *Beari* v. *Puttanna* [2] however thus describes the nature of the suit. "The suit is on behalf of the family and for the purpose of recovering the property for its use. The right to set aside the sale is not that of any individual member but it is the right of the family which the individual is taken to represent." In this view, the effect of such a suit would not materially differ from a suit by the karnavan for the same purpose.

There may also be cases in which the family puts forward a particular member as its manager and the family may for that reason be estopped from saying that he is not the manager. Again, on the principle of *Kishan Prasad* v. *Har Narain Singh* [3] where transactions are entered into in the name of individual members with the funds belonging to the family, without disclosing that they are acting on behalf of the family it may be open to those individual members to maintain the suit. Apart from these cases, it would seem to be ordinarily difficult to maintain that decision in favour of or against individual members though they may be *de facto* managers of the family would bind the family.

Having so far indicated the exceptional cases in which suits are permitted to be brought by individual members, we shall next consider the effect of judgments in suits by or against the Karnavan. After a long period of doubt and vacillation, in which many distinctions were made, between cases where the karnavan sued or was sued as such or in his individual capacity, where he himself brought a suit and where he was only a defendant, where the object of the suit was to recover a debt or it was to recover some property belonging to the family and also between absolute and qualified representation, the Full Bench laid down in.

1. (1916) 31 M. L. J. 26, 2. (1890) I. L. R. 14 M. 38,
3. (1911) I. L. R. 33 A. 272.

Vasudevan v. *Sankaran* [1] that a decree made in a suit in which a Karnavan is sued in his representative capacity and which he honestly defends is binding on the other members of the family not actually made parties. The law is stated to be the same in cases where the Karnavan is the plaintiff. *Vasudevan* v. *Sankaran* [2]. Though opinion is expressed in various parts of the judgment that fraud or collusion is the only ground on which a decree against the karnavan, can be successfully impeached, on careful examination it will be found that it is by no means confined to those cases. That conclusion is certainly not involved in the answer to the reference. The necessary implications of the answer to the reference are (i) the suit must have been against the Karnavan in his representative capacity (ii) that he must have defended the suit honestly. The word 'honestly' implies according to Chief Justice Collins that the Karnavan acted in good faith and what he believed to be in the interests of the tarward. *Vasudevan* v. *Sankaran* [3]. According to Mr. Justice Subramania Aiyar the decree would be binding "unless it is shown that there was fraud or collusion or anything of that sort or that the Court was cheated into believing that the case was fairly fought or fairly represented whereas in point of fact it was not". Mr. Justice Shephard says in one place that whenever the Karnavan sues or is sued in his representative character, the tarwad is bound, cases of fraud or collusion alone being excepted; but elsewhere he observes "distinctions founded on the nature of the right or the way in which it comes to be litigated may be material in considering whether the Karnavan did really represent the tarwad and honestly represent it". One thing at any rate is clear that the word fraud is used in a wider sense than that in which it is used in connection with ordinary judgments. The fraud need not be the fraud of the other side but may be of the Karnavan himself. Another thing to be noticed is that the case does not cover cases of *ex-parte* judgments or judgments on default. The opinion of Mr. Justice Shephard would seem to be and the terms of reference suggest that it is open to the members of the family to show that the Karnavan though he was sued in his capacity as Karnavan, did not in fact represent the family. This would bring

1. (1897) I. L. R. 20 M. 129 2. (1897) I. L. R. 20 M. 129 at 133, 137.
3. (1897) I. L. R. 20 M. 133.

the case into line with decisions in cases of trust. Their Lordships of the Privy Council lay down in *Prosunno Kumari Debya* v. *Golabchand Baboo* [1], that "before holding the judgment against a trustee to be res judicata against the succeeding trustee the court must satisfy itself that proper issues were raised and determined." If he put forward the appropriate defence and honestly defended the suit, the judgment would bind the family though there might be some negligence in the conduct of the suit. *Madhavaya* v. *Kerala Varma* [2]. In cases where the action is brought to enforce an obligation incurred by the Karnavan or to enforce the consequences of a default of the Karnavan, the dividing line between fraud and failure to plead would generally be hard to delineate. It would certainly be advisable in such cases for the stranger to make the senior Anandravan or Anandravans parties to the suit. The failure to raise which appropriate defence would make the case a case of nonrepresentation of the family is not capable of a comprehensive answer but would largely depend on the facts of each case. Mere repudiation of his position as Karnavan on a refusal to act on behalf of the family may not affect the case if in fact he is sued in his representative capacity and fights the family cause honestly. *Ambalam Pakkiya Udayan* v. *Bartle* [3]. Failure to put forward a contention owing to an error of judgment on the part of the Karnavan or his legal adviser or mere negligence not amounting to gross negligence or fraud can certainly not affect the binding character of the judgment. *Madhavaya* v. *Kerala Varma* [2]. The terms of the reference and the answer would seem to preclude in cases covered by the reference, that is to say, where the Karnavan has appeared and defended the suit, attack on the ground of gross negligence which does not amount to fraud or to a practical non-representation of the family. In *Thenju* v. *Chimu* [4] the Karnavan chose to accept the challenge of oath by the plaintiff and their Lordships held that in the circumstances of the case, it was gross negligence, and the decree was not binding on the family. It is observed there:— "When a Karnavan fails to utilise the means of proof at his disposal and loses the Tarwad property negligently or credulously trusting to the oath of the opposing defendant, the Anandravans are not bound by his act and precluded from showing that

1. (1875) L. R. 2 I. A. 145=23 W. R. 253.
2. (1902) 13 M. L. J. 63.
3. (1911) I. L. R. 36 M. 418.
4. (1884) I. L. R. 7 M. 413.

it was negligent, even if not fraudulent and therefore prejudicial to the interests of the Tarwad which it was his duty to protect with ordinary diligence. His position like that of a Hindu father is fiduciary though his acts are binding on the Anandravans as those of the head of the family until they show that such acts are in excess of his authority or negligent or fraudulent. A decree against him is binding on the Tarwad because it is a decree against the head or representative of the family but his power as head of the family is a qualified power, qualified by his fiduciary position and the duties which by the usage of the District attach to such position. It is enough to say that when fraud or breach of duty as Karnavan is shown his act must be treated as a fraud upon his power and as the Karnavan's conduct was negligent, if not fraudulent, the decision against him in that suit, does not bind the respondents." How much of this can survive the Full Bench decision is not clear. The case is referred to by Mr. Justice Shephard and is not dissented from; on the other hand the conclusion is assumed to be consistent with the opinion of the Full Bench. Unless the case is distinguished as a case of practically no defence, we should think the case is inconsistent with the Full Bench decision. Fraud on power, negligence, and breach of duty are not terms necessarily connoting absence of honesty. But the case may be viewed as one of consent to foregoing a regular trial to which considerations other than those applicable to contested suits would apply. In this view, the observation extracted above may be useful in the determination of the liability of the family on judgments on default.

As we noted above, before a decree is held binding, it is essential that the court should be satisfied that the Karnavan sued or was sued in his representative capacity. It must appear clearly on the pleadings that he did so (*Ittiachan* v. *Velappan* [1]) although it is not necessary that it should be expressly so stated in the decree. On this point the decisions prior to the Full Bench Case have not lost their authority. The nature of the claim itself may in many cases unerringly indicate the character in which the suit is brought. For instance where the suit is brought to recover tarwad property on the strength of the Tarwad title or to enforce an admittedly Tarwad claim, it is not necessary that there should be a further express statement in the

1. (1885) I. L. R. 8 M. 484.

pleadings that the action is brought in a representative character. In this respect, generally, there is a difference between suits brought by a Karnavan and those brought against him. It may well be that though the defendant alleged a Tarwad title, the plaintiff might merely seek to evict him personally or to recover damages from him personally or where the suit is on a contract entered into by the karnavan he might be merely seeking to enforce the claim personally against the Karnavan. Therefore in such cases it is incumbent on the plaintiff to clearly indicate in what character he is suing him. *Appa Rao* v. *Venkatadri* [1]. The mere fact that he might have got relief against the Tarwad is no ground for holding that he did seek to get it. (See *Venkata Krishna Aiyar* v. *Kaveri* [2], *Ittiachan* v *Velappan* [3], *Kuthen* v. *Kaliani* [4] and *Sankaran* v. *Parvathi* [5]). Especially so when as between the Karnavan and the Tarwad, the Karnavan is guilty of a breach of trust. *Nagender* v. *Sreemutty* [6] *Brij Bhukan Lal* v. *Mahadeo Dobey* [7].

The junction of junior members describing them as Anandravans, (*Ittiachan* v. *Velappan* [2]) is sufficient indication of the intention to sue him in his representative character. Where the suit was brought to sell tarwad property on a hypothecation executed by the senior male and the senior female impleading them both as parties, that circumstance alone was held a sufficient indication of an intention to bind the family, *Subramanyam* v. *Kali* [8]. *Prima facie* a maintenance decree would be regarded as one got against the Karnavan in his representative capacity (*Chandu* v. *Raman* [9]) though there may be some doubt when the claim is only for arrears. The circumstance that the defendants were in fact the Karnavan and the senior Anandravan was held not to suffice when the existence of the branch as such was not recognised by the plaintiff in his suit. *Konappa Nambiar* v. *Ukkaran Nambiar* [10]. In the case of suits for the recovery of debts, a statement that the debt is binding on the family being necessary in the plaint if the family is sought to be bound, there would generally be very little difficulty in determining the nature of the suit. Once the view prevailed

1. (1907) 17 M. L. J. 197.
2. (1883) I. L. R. 7 M. 201.
3. (1885) I. L. R. 8 M. 484.
4. (1917) 6 L. W. 25.
5. (1889) I. L. R. 12 M. 434.
6. (1867) I. L. R. 11 M. I. A. 242
7. (1875) L. R. 2 I. A 275.
8. (1887) I. L. R. 10 M. 355.
9. (1888) I. L. R. 11 M. 378.
10. (1893) I. L. R. 17 M. 214.

that all debts incurred by the Karnavan should be held *prima facie* binding on the Tarwad, but that view is no longer held. *Kutti* v. *Muthan* [1], *E. Kohle Achau* v. *K. Lakshmi Amma* [2]. In *Ittiachan* v. *Velappan* [3] it was held that a decree against a Karnavan could not be executed against the family property unless he was sued in his representative capacity even though the debt is found to be for a binding purpose—see also *Sri Devi* v. *Kelu Eradi* [4]. In *Manakat Velanna* v. *Ibrahim Debhe* [5], it was however held that this view was opposed to the Privy Council decisions therein referred to. The Bombay High Court in a more recent case has held that whatever the conclusion that ought to be arrived at when there has been a sale, the court is not bound to direct the sale when the decree has not been passed against the manager in his representative capacity. *Lakshman Nilkant* v. *Vinayak Keshav* [6]. The question however is not one peculiar to Malabar Tarwads and should follow the general course of decisions under the Hindu Law.

A question that may be considered before we pass on to the next point is what is the effect of karars that restrict the power of management of the karnavan on his capacity to represent the family. A karar that merely restricts the power of the karnavan to deal with the family property cannot have the effect of depriving him of the capacity to represent the family in suits. But a person who knows of a karar which practically deprives a karnavan of all his powers, will have great difficulty in persuading the court to hold that there was an honest and effective representation of the family in the suit. If in addition the suit is brought to enforce a transaction entered into by such a person and particularly if he was *ex parte*, hardly anything more would be needed to make out a complete case of fraud. We should think that in respect of transactions prohibited by the karar, the karnavan would *per se* be disqualified to represent the Tarwad and decrees against him should not bind the Tarwad so far as at least parties who have notice of such incapacity are concerned. But here we are more or less digressing into liability for decree-debts which is not the question we are concerned with in this article.

1. (1881) I. L. R. 3 M. 288.
2. (1882) I. L. R. 5 M. 201.
3. (1885) I. L. R, 8 M. 484.
4. (1836) I, L. R. 10 M. 79.
5. (1903) I. L R. 27 M. 375.
6. (1915) I. L. R. 40 B. 329.

The next question we have to consider is to what extent judgments *ex parte* are binding against the family. In *Yusuf Saheb* v. *Durgi* [1] the view taken apparently is (though it cannot be said to be clear) that it is open to members of the family to show that the decree is wrong on the merits. The same view seems to be taken in *Subbammal* v. *Avudayammal* [2] as regards a Hindu widow. On the other hand in *Venkayya* v. *Subbarayudu* [3] the view taken is that the decree would be binding unless it is shown that "she had reason to believe there was a good defence". *Ex parte* decrees should we think be placed on a different footing from decrees passed after contest. In suits decided after contest an impartial court which can be trusted to some extent to watch the interests of absent parties. *Chiruvolu Punnamma* v. *Chiruvolu Perraza* [4] comes to a conclusion after hearing the case for the family as honestly represented by the accredited representative of the family and the judgment might well be held to be binding. But where the head of the family has left the field without contest though the action of the court is justified by the facts may bind, it would not seem to be right to give the decree a higher value, especially where innocent third parties are not concerned, than any other voluntary act or omission of the karnavan. The *ex parte* decision of the court may raise a presumption of accuracy and propriety in favour of the decree but the family must be allowed to show that the karnavan had a defence to put forward if he so minded. At any rate, to the extent *Thenju* v. *Thimmu* [5] proceeds, the *ex parte* decree must be open to attack. If the plaintiff was a party to the original transaction and was aware of the infirmative circumstance and nevertheless got an *ex parte* decree against the family, without giving notice to the other members of the family there is no injustice in holding the family not liable. Even in other cases, if the defendent was *ex parte* the plaintiff had a remedy in his own hands of making other members parties. If S. 11 Expl. VI applies to suits by karnavans the only defences open would be want of good faith, and a non-representation in fact, of the family.

It is a even more difficult question to say what is the extent to which a dismissal for default should bind the family. On the one hand, it may be argued that the family should be bound

1. (1907) I. L. R. 30 M. 447.
2. (1906) I. L. R. 30 M. 8.
3. (1907) 17 M. L. J. 160.
4. (1905) I. L. R. 29 M. 406.
5. (1884) I. L. R. 7 M. 413.

by the default of its representative ; on the other analogy of class actions may be given for justifying the contrary conclusion. Under Or. 9 R. 9, it is only the plaintiff that is prevented from suing again. In *Kamalkutti* v. *Ibrayi* [1] followed in *Marivittil Mathu Amma* v. *Pathram Kunnct Cherukot* [2] it has been held that all members of the family are constructively parties to a suit by or against a Karnavan as such. In that view it may be said that in suits by Karnavans, all the members are party plaintiffs and as such, precluded from bringing a fresh suit. But that is begging the very question in issue. In the first place, *Kamalkutti* v. *Ibrayi* [1] goes too far and the doubts of Shephard, J., about the correctness of the conclusion arrived at would seem to be justified. What the Full Bench case decides is that the decree under certain circumstances binds the other members of the family. The authority of the Full Bench does not go to the extent supposed. At any rate, the Full Bench decision as we have shown above does not preclude the conclusion that the decree is not binding in other circumstances than those set out in the Full Bench case. Any way a minor is not precluded from bringing a suit to set aside a decree on the ground of the gross negligence of the guardian either by S. 11 or by O. 9, R. 9. The same reasoning would apply to the case of junior members of a Marumakkathayan or Aliyasantana family. The only effect of holding them parties may be to prevent them from questioning the binding nature of the decree in execution. It is not open even to strangers to question the decree in execution. That can be done only in a separate suit.

SUMMARY OF ENGLISH CASES.

Geipel v. Peach, (1917) 2 Ch. 108.

Tort—Actio personalis moritur cum persona—*Company—Liability of director for untrue statements in prospectus—Death of director; effect of—Companies consolidation Act, (1901) S. 84, Sub-S. 1.*

The only cases in which, apart from questions of breach of contract, express or implied, a remedy for a wrongful act can be pursued against the estate of a deceased person who has done the act, are those in which property, or the proceeds or value of

1. (1900) I. L. R. 24 M. 658. 2. (1906) I. L. R. 30 M. 215.

property, belonging to another have been appropriated by the deceased person and added to his own estate or moneys.

The liability of directors, promoters, and others, under S. 84 Sub-S. 1 of the Companies Act (1908) to pay compensation to subscribers for loss or damage sustained by untrue statements in prospectuses or reports is a liability in tort and is subject to the rule above laid down.

Eggar *v* **May** :—(1917) 2 Ch. 126.

Will—Construction—Legacy—Forfeiture in case of legatee being a Roman Catholic—Infant legatee.

A testatrix bequeathed a sum of £ 5,000 upon trusts to invest and accumulate the income until M. should attain the age of 24 and if he attained that age to pay the income of the said sum and the accumulations to him during his life, "provided M. shall not be a Roman Catholic at my death or being a Roman Catholic shall cease to be such before the expiration of 12 months after my death." There was a gift over on the happening of any of the aforesaid events or of the death of M. whichever should first happen. M. was an infant of 11 years at the death of the testatrix and had been baptised in the Roman Catholic faith and was being brought up by his father in that faith. On a construction of the will, held, that M, the infant, was not a Roman Catholic within the meaning of the will, that the intention of the testator was to give M. an opportunity of making his choice in the matter of his religion, and M. would have that opportunity after attaining the age of 21 and before he attained the age of 24 when the legacy would become payable.

Tingley *v.* **Muller**, (1917) 2 Ch. 144.

Trading with the enemy—Contract for the sale of land in pursuance of irrevocable power of attorney given by German residing in England on the eve of his departure to Germany—Validity of—Payment of purchase money—Contract for the benefit of the enemy—Trading with the Enemy Acts 1914 and 1916—Change of domicil.

An irrevocable power of attorney to sell land and give receipts for the purchase money is not put an end to by the donor of the power subsequently becoming an alien enemy. Consequently an

agreement for sale of land situate in England and belonging to the grantor of the power, entered into by the attorney in execution of the power does not involve any intercourse with the enemy and is not within the mischief of the Common Law or of the Trading with the Enemy Acts. The sale could be legally completed by the attorney and the vendee could be compelled to pay the purchase money to him.

Per *Scrutton, L. J.*: The contract was illegal at Common Law as well as under the Trading with the Enemy Acts, involving as it did commercial intercourse with an enemy through his agent in the United Kingdom. The vendee could therefore repudiate the contract and recover the purchase money paid by him.

A national character, acquired in a foreign country by residence, changes immediately the party has left such country *animo non revertendi*; and this is especially the case if he be returning to his native country, *sine animo revertendi*. In such case the native domicil revives while he is yet in *transitu*, for it very easily reverts, and is re-acquired the moment the foreign domicil is abandoned.

In re **Fr. Meyers Sohn, Ltd**: (1917) 2 Ch. 201.

Trading with Enemy Amendment Act (1916) S. 1, Sub-S. 3 —Company—Business directed to be wound up—Power of controller—Surplus assets, if can be distributed.

The Board of Trade ordered the winding up of a Company's business and appointed a controller. The Company however was not in liquidation. *Held*, that the controller could not be empowered by the Board to distribute assets in his hands so far as they were not required for payment of the debts of the business and the costs of the winding up, among the company's shareholders.

Meguerditchian *v.* **Lightbound**: (1917) 2 K. B. 298.

Solicitor—Lien—Documents obtained by negotiation without litigation.

Where a firm of solicitors instructed by a client to obtain restitution of certain documents succeeded in obtaining those documents as a result of negotiations conducted by them, and claimed a lien on the documents so recovered, for their costs, *held*, that no lien existed on the fruits of a mere negotiation without litigation.

Maclennan *v.* **Segar**, (1917) 2 K. B. 325.

Innkeeper—Duty of—Liability to guests for personal injuries sustained by them—Fitness of premises—Negligence of independent contractor.

Where the occupier of premises, for example an innkeeper agrees for reward that a person shall have the right to enter and use them for a mutually contemplated purpose the contract between the parties (unless it provides to the contrary) contains an implied warranty that the premises are as safe for that purpose as reasonable care and skill on the part of any one can make them. The rule is subject to the limitation that the defendant is not to be responsible for defects which could not have been discovered by reasonable care or skill on the part of any person concerned with the construction, alteration, repair, or maintenance of the premises. But subject to this limitation it matters not whether the lack of care or skill be that of the defendant or his servants, or that of an independent contractor or his servants, or whether the negligence takes place before or after the occupation by the defendant of the premises.

Evans & Co. *v.* **Heathcote**: (1917) 2 K. B. 336.

Restraint of trade—Combination among manufacturers to control output, prices, etc.—Agreement unlimited in point of time —Reasonableness as between parties.

Plaintiffs were manufacturers of certain tubes and members of a combination called C. T. A. The defendants who were also manufacturers of the same commodity consisted of all the other members of the C. T. A. The object of the association was the regulation of prices in the trade and the taking of such action for the protection of the interest of the members as might from time to time be resolved upon. The scheme, in short, was that members whose turnover should fall below a fixed percentage of the trade should be compensated by payment out of a fund or "pool" created by payments in from members whose turnover exceeded their fixed percentage. The rules of the association provided that the members should sell their tubes only upon the terms and at the prices to be fixed from time to time by the association. There was no provision for a person who had once joined the association to terminate his membership. Under an agreement made between

plaintiffs, the defendants and certain firms, the plaintiffs in consideration of the defendants, fixing their percentage at a certain figure, agreed not to sell their cased tubes to any persons other than the said firms. The agreement was to be in force so long as the association and a certain other society over whom plaintiffs had no authority continued to control the prices. Plaintiffs claimed certain sums of money from the association out of the pool, alleging that their out put was less than their percentage for several months.

Held that the agreement taken along with the rules, imposed an unreasonable and therefore illegal restraint of trade as between the parties and that the plaintiffs were not entitled to recover the money claim as the restraints went to the root of the contract.

Anthony Hordern and Sons Ltd. *v.* **Commonwealth Dominion Line Ltd.**: (1917) 2 K. B. 420.

Bill of lading—Liability of ship-owner, limitation of—Harter Act—Effect of.

Under the Harter Act of the United States it was unlawful for the owner of any vessel to insert in any bill of lading any clause whereby he was relieved from liability for loss or damage arising from negligence, fault or failure in proper loading, storage, custody, case or proper delivery of goods and any such clause was to be null and void and of no effect. Goods were shipped under a bill of lading expressed to be subject to all the terms and conditions of the Harter Act and the bill of lading contained a clause to the effect that the ship-owner would not be accountable for any package of the value of more than £, 100 unless the value thereof was declared and extra freight paid thereupon. The shipowner failed to deliver one package worth more than 100 £, the value of which had not been declared and for which no extra freight had been agreed upon or paid. In an action by the owner of the goods for their value, from the shipowner who relied on the clause in the bill of lading and claimed exemption from liability, *held* that the clause was inconsistent with the Harter Act and should be treated as of no effect.

JOTTINGS AND CUTTINGS.

The following is the address delivered by Mr. P. Nagabushanam at this year's Vakils' Gathering which took place at the Advocate-General's (Hon'ble Mr. S. Srinivasa Ayangar's) residence.

I am here before you this evening by the command of the Advocate-General. Willing and cheerful obedience to the head of the profession is the *sine qua non* of the springing up of a healthy *espirit de corps*. When the Hon'ble Mr. Srinivasa Iyengar,—the worthy host of the evening sent me word a few days ago that I should address the gathering on this occasion, it was in this spirit that I accepted the call, however much I had to complain of the choice that he made and of the time that he was pleased to allow. It is now 20 years and some months since I was enrolled as a vakil of the Madras High Court—the Honourable court to which we are all attached and where we all practise. I carry no information to you when I say that my practice at the bar has been anything but of the "roaring" kind. Nor is there any fear of your attributing it to mock-modesty on my part when I say that I can lay no pretensions whatever to legal learning. Still when a person has been at the bar for two decades, *nolens volens*, he must have seen and heard a good deal if he has only had eyes to see and ears to hear. I have had the privilege of appearing before a large number of judges—the number is no less than 35—some of whom are unfortunately no more. I have also been brought into close contact with the leaders of the bar of great repute whose names have become household words in Southern India. Before proceeding to other topics, it seems to me to be appropriate that I should at this stage advert to the death of our revered leader Mr. J. L. Rosario, which sad event occured a few weeks ago. This is the first occasion on which we the Vakils of this High Court meet in a body after that occurence, and it behoves us to pay a tribute to his memory. He had a long and strenuous career at the bar both in the mofussil and here in Madras; and soon after he settled himself down here Sir C. Sankaran Nair once said of him that for studying and marshalling facts and presenting them with effect, they on the west coast knew of no greater vakil than he, and that in that respect he stood altogether unapproached. As the years of his stay in Madras rolled by, his sterling worth as an advocate and his sweet disposition came to be appreciated more and more and one may state

with confidence that at the time of his death there was no member of the Madras bar more universally liked and loved than he. His life, in my humble opinion, was an illustration of how thorough ability and uncommon powers of intellect could co-exist with the greatest simplicity, least ostentation and perfect gentlemanliness. Those who closely observed him or came in contact with him could not resist the chastening influence of his silent example. We are thankful to His Lordship the Chief Justice for having gracefully acknowledged his services to the bar by saying that "his ideal of advocacy was so high that it must have raised the level of the profession generally." Let us remember that by cherishing the memory of such eminent members of the bar we shall be able, in some degree, to keep up the noble traditions of the profession to which we have the honour to belong.

On an essentially social occasion like this, the place of honour must be assigned to amusing anecdotes, leaving them to convey such instruction as they may. The most amusing incident that I can recollect is one that occurred soon after I had begun to practice. An up country client of mine came to Madras to contest an order that had been passed against him for maintenance in favour of his wife under the Code of Criminal Procedure. He waited here until the case was heard in the Admission court and during the interval he had an opportunity of attending court and observing things for himself for about a week. All through the week he chose to attend the same court and he noticed that day after day the judgments of that court were written by the same judge, his colleague merely affixing his initials to the judgments. The man was not altogether illiterate and at the end of the week he thought he was justified in coming to the conclusion that the learned judge who was affixing his initials to the judgments pronounced, was only a marksman. At the end of the week he asked me one morning at my house in all seriousness and in a hushed tone whether marksmen could be appointed to the Bench of the High Court. He was aware of the fact that in some villages where literacy was scarce men who were illeterate and who could not even sign their names were sometimes appointed as village magistrates. By a little stretch of the imagination he thought that there could be no objection to the policy being extended to the appointment of High Court Judges. The learned judge who received this compliment from this particular suitor happened to hear his case the next day and His Lordship's order

on his application for revision was that according to his own statement he was a vagabond and that the order of the Magistrate directing him to pay maintenance to his wife was right. By this mutual exchange of compliments the judge and the suitor squared up account with each other and retributive justice was then vindicated almost instantaneously.

Another incident perhaps more instructive which led to a slight breeze in court was this. A barrister of standing appeared in an application for review along with the Vakil who had previously handled the case. At that time when an application for review was put in the judge or judges used almost invariably to ask whether the point proposed to be argued in review had or had not been taken at the first hearing. The barrister had apparently anticipated this kind of interrogation fromt he Bench and was prepared for it. Surely enough the learned judge by whom the application for review was heared put him the very question and his answer was to this effect.—I am not going to answer your Lordship's question for I know the object of it. If I say the point was taken on the former occasion, your Lordship is going to say that the point must have been considered and disposed of then and cannot be reopened now. If I say that the point was not taken on the former occasion, your Lordship will at once reject my application by saying there can be no review on a ground not urged on the first occasion." This answer had the desired effect and the judge was good enough to quietly listen to the application and dispose of it on the merits.

A third incident that I remember is no less amusing. A subordinate judge had disposed of a small cause in a somewhat summary manner. The judgment was unintelligible. There was a revision petition to the High Court and the learned judge who heard it had to call for findings and passed an order accordingly. It was pointed out by one of the Vakils who appeared in the case that the judge who had disposed of the Small Cause was no longer in the station and that therefore the order calling for findings was perhaps not a very desirable one to pass under the circumstances. The learned Judge cried out at the top of his voice—"That is a regular God-send; we are going to have something intelligible at least this time."

I did not practise in the High Court when that great Judge, Sir T. Muthuswami Iyer was on the Bench. While he was a Judge, I happened to visit the High Court one day when I was probably a student of the Law class, and the observation that he then made with the solemnity which was characteristic of him, I can never forget. A Vakil persistently argued that because a certain person was described as the agent of somebody else it did not follow that what he did bound the person of whom he was the professed agent Mr. Justice Muthuswami Iyer after listening to the argument which was reiterated several times came out with his weighty observation which he pronounced with great grace and dignity:—"Don't you know that often a man's death is announced by a single word, and yet how farreaching are the consequences of a man's death in regard to his poperty!"

We often speak of the independence of the Bench and here is an illustration of how it may be brought into relief by even a casual remark from a Judge. An Advocate-General who had just taken charge of the office offered to present in Court certain papers in connection with an urgent application which he wanted to make to the court immediately. The then Chief Justice asked him whether notice of the proposed motion had been given as required by the rules. On his receiving a negative reply the Chief Justice said "why don't you move tomorrow after giving notice to-day? One rule for every body will be very convenient. Don't you think so?"

Striking repartees of practitioners also sometimes make a strong impression on the mind. One such repartee of the late Sir V. Bashyam Iyengar I recollect. He appeard in a case and put forward a contention somewhat different to the one that he had put forward on a previous occasion for other clients in a connected litigation. He was opposed by several of the then leaders of the bar, and they wanted to make capital of the fact that on the former occasion he had contended the other way and were constantly bringing this fact to the notice of the court by saying "you yourself argued to the contrary on the last occasion. How can you maintain your present position?" He was almost fiercely attacked and the interruptions of his sturdy opponents was very annoying. For a moment he appeared to be helpless and then he came down with his crushing reply:— "What do you mean by "*yourself*"? Do you mean A and B

for whom I then appeared or C for whom I appear now?" This effectually silenced the opponents and the rest of the case went on amidst calmer surroundings.

The ignorance of semi-educated clients also affords us merriment at times. Several years ago I remember a gentleman coming to me to consult me on a question of law. He had a smattering of English education, and what he came for was an opinion on a point under what he called the suits *violation* Act. He of course meant the Suits Valuation Act, and he little knew what a source of innocent mirth he was to his hearers whenever he mentioned the name of the Act.

Legal reminiscences and anecdotes are the subject of almost a literature in England. In this country anything like an enlightened bar has not been in existence for more than 30 or 40 years and the traditions of the bar cannot claim the antiquity that they do in England or America. Since the establishment of the High Court, Madras has had a worthy bar and I hope some young member of the bar with the spirit of antiquarianism in him will undertake the task of collecting all anecdotes worth remembering and throw them into the form of a book. The sooner the task is undertaken the better, because practitioners of the last generation upon whom you will have to rely for anecdotes of times long since gone by cannot live until such time as you may choose to make up your mind to undertake the task. The adventurous compiler, whoever he may be, will get valuable help from Mr. Norton's contributions to the "Looker On".

Anecdotes, recollections, reminiscences are the saving grace of this profession which for the great majority that take to it has no tempting rewards to offer. No doubt legal practitioners in this country that entered the profession about 30 or 40 years ago prospered as a rule. They came to their profession, after qualifying for it and their untrained and uneducated competitors with no language of English lagged behind in the competition and gradually disappeared. Now the conditions of success are totally different and a young man now taking to this profession has to contend against odds. All those with whom he has to compete and who are already in the profession are quite his equals in learning and attainments, whereas in point of experience they are by far his superiors. Hence the success of those that join now is highly problematical and much more a matter of chance than

before. Of course even now-a-days we know of so many young men who quickly make their mark in the profession and rise rapidly. These however are only the exceptions that prove the rule. With the growth of members the influence of the profession is increasing and as the bulk of public workers in the country are supplied from the ranks of this profession, from this point of view the constant growth of members may not be a matter for regret. But we know that sheer necessity arising from the unavailability of other suitable callings compels many a young man who may not have enough of aptitude for it or who may not have means enough to tide over the period of brieflessness or to equip himself with the necessary requisite for practising the profession in right earnest, to enlist in the ranks of the legal profession. It will be readily admitted that if some of these young men could turn their attention to other wealth producing callings, not only would the country be benefitted from an economic point of view, but the young men themselves would find ampler scope for the use of their talents and attainments. It is but natural that those young men whose near relations such as their fathers or uncles or fathers-in-law are already highly placed in the profession should be not only anxious themselves to become Vakils but should be desired to do so by their elders. Scores of other young men not in a similar position are also pursuing the same course of action with no definite thought as to their future. Until the millenium was brought about it might not be possible to stop the evil but the immediate problem before us is how, so long as the evil lasts, to provide for the numerous young men that join the profession annually. The elders in the profession must face the problem. In my humble opinion every Vakil of standing who has secured a footing for himself in the profession should make it a point to lend a helping hand to as many juniors as he can. We know of some members of the bar whose daily work is so very heavy that they must needs have juniors to be able to cope with their work. The lucky juniors of such senior practitioners may have nothing to complain of. But there are lots of other juniors to be taken care of and it may not be too much to impose a moral obligation on all senior practitioners of standing that a certain percentage of their income (what-that percentage should be being left to be determined by the practitioner himself with due regard to all his circumstances)

should be set apart for helping juniors after getting some kind of work from them. I do not know that there are very many men among our ranks who take a delight in the study of law and pursue it for its own sake. Lawyers of the type of the late Dewan Bahadur Ramachandra Rao Sahib are not easy to come across now. Young vakils coming of rich families to whom bread-winning by means of practice of the profession is of secondary importance may well take to the study of law for its own sake specialising in some branch which may have a fascination for them. To young men possessing knowledge of Sanskrit there are fields of unending interest for exploration. Some of our M. L's. who have taken their degree in Hindu Law may have had opportunities of studying in the original texts and commentaries and of appreciating the terseness of style of the commentators, their precision of expression and the logic of their reasoning. There are however other branches of ancient Hindu Law the study of which may not be of much use in the actual practice of the profession but will be of great utility for the acquisition of culture. I wonder how many of our young men are aware that refined pleas regarded as the outcome of a highly developed system of jurisprudence were known to the ancient Hindu Law. The plea of "confession and avoidance" was known to that system of law and was called "*Pratyavaskandanam*" (प्रत्यवस्कन्दनम्). The plea of *Res Judicata* or prior adjudication was likewise known and was termed *Prangnyaya*" (प्राङ्न्याय). Misjoinder of causes of action under the name of "*Vadasankramana*" (वादसंक्रमण) was allowed to be pleaded and Limitation or *Bhukti* (भुक्ति) was also a recognised defence. The actual trial of a suit was called "*Kriyapada*" (क्रियापाद) and the actual decision in a legal proceeding was known by the name of "*Nirnaya*" (निर्णय). The successful party obtained from the Court a "*joya pathram*" (जयपत्रम्), that is, a recorded judgment in his favour. There would appear to have been no provision for the issue of an authenticated copy of the Judgment to the unsuccessful party. It is significant that the practice of the Privy Council is more or less similar. There the successful party is furnished with a copy of the order-in-Council with the Royal Seal impressed upon it. The unsuccessful party has to satisfy himself with a mere plain print of the Order in Council. Under the ancient Hindu Law *Asedha* (आसेध) or arrest was one of the

means of the execution of a decree but wisely enough certain classes of persons and persons placed under certain circumstances were exempted from arrest. The provisions of the Hindu Law on this point are very analogous to the similar provisions contained in the Code of Civil Procedure; and the high development which Hindu Law must have attained in ancient times is testified to by this circumstance. It is also worthy of note that under the ancient Hindu Law those who were accused of particularly heinous offences were not allowed to engage counsel to defend them just as a matter of practice no one accused of any serious offence is admitted to bail now under the Code of Criminal Procedure. Each one of the topics of law just indicated here might be made the subject of a separate study and great light might be thrown upon it possibly to the benefit and edification of even the present day legislators. It is to be hoped that young men who command leisure and who can afford to devote their leisure to the study of law will consider it worth their while to enlighten the public and the practitioners of this profession on these ancient topics of great general interest.

The members of this profession are constantly reminded of the noble traditions of the profession which they have chosen to practice and of the heavy duty and responsibility lying on them of maintaining those traditions untarnished. I do not know whether it is one of the traditions of the bar that the most prominent members of it must take a leading part in the public life of the country. The leading part that prominent members of the bar of England have taken in the public life of that country is well-known. Just now out of the five members of the War Cabinet in England no less than three are lawyers *viz.*, Mr. Lloyd George, Lord Milner and Sir Edward Carson. In the United States of America not only is the president of the States a lawyer but no fewer than seven of the ten members of his cabinet belong to the same profession. Judged from this standpoint the legal practitioners of this country are in no way behind. The brunt of the public work of this country is borne by them, and without the slightest disparagement to the people of other professions taking part in the public life of the land it may be said that but for men of the legal profession anything like the progress we have achieved, especially in Southern India, would have been virtually impossible. It is not of course given to every legal practitioner of this country to take anything like

a prominent part in its public life. It may be a question how every one who followed this profession might contribute his own mite in order to enable the profession as a whole to keep up its traditions. To me it seems that the problem can be solved by each one observing the strictest honesty in the various professional relations in which he may be brought into contact with others. Perfect straightforwardness in giving advice, scrupulous regard for truth in the conduct of a case, thorough honesty in your monetary relations with your client, religious abstention from questionable methods of getting work,—these virtues if systematically practised might enable any one in the profession, however humble his status might be, to keep the traditions of the bar stainless so far as he was concerned. In this country it is our painful experience to notice from time to time lapses from the standard of honour and moral rectitude expected of the followers of this profession. Cases of wilful dishonesty are rare indeed. Most cases of delinquency are traceable to carelessness or neglect in the maintenance of proper accounts. Juniors who wish to save their reputation and guard themselves against the unwary acts of their clerks which often bring them into trouble cannot do better than to carefully check the accounts kept by their clerks or keep them themselves if possible, at least at the beginning of their careers. A vakil who produces on his gumastha's mind the impression that he will not check the accounts of the latter is sure to lead him into temptation which ultimately will bring both the master and the servant into trouble. I am glad to note that the Madras Law Journal in its brief notice of the late Mr. Rosario calls special attention to the fact that he had almost religious regard for the accuracy of his accounts with respect to his clients' money and that up to the last he maintained a set of accounts himself apart from what his clerks used to maintain for him. Contrast with this a confession made to me by a vakil who never had the time or the patience to check the accounts kept by his clerk notwithstanding that he had no reason to believe that the accounts were kept with strict accuracy or that the monies were duly utilised by him for the purposes for which they were entrusted to him. After this course of things went on for a time the Vakil whose suspicion regarding the conduct of the gumastha increased day by day had no course left for him but to dispense with his services.

Gatherings of this kind and the annual Law Dinners have done a great deal towards bringing together the members of the profession. These institutions if they are kept up, as they are sure to be, will do a great deal more in this direction as time advances. There is however one drawback in the removal of which these gatherings have not been helpful. There are now at the bar of the High Court at Madras Vakils of all grades of standing, and just now the state of things is such that every one must feel with great regret that there are so many among the practitisners whom he does not know except by sight. The senior practitioners who are at the very top of the profession and whose services are sought by juniors may come to know some of them at any rate in the course of their professional work. Other vakils of standing at the bar may never have an opportunity of knowing them except by sight. This is an anomalous state of things for which a remedy must be found. In all humility I would suggest a plan for your consideration. Apart from this annual gathering let there be a lesser gathering consisting only of vakils of a certain standing at the bar say of fourteen or fifteen years and of the vakils who have been enrolled during the twelve months preceding the time when the gathering is held. The gathering may take place at the house of one of the senior practitioners and the special object of the gathering should be that the new vakils are introduced to every one of the senior vakils present so that from that time forward they may not look upon them as mere chance acquaintances and the growth of something like friendship may be possible between them. This remedy may not commend itself to you, but if you do not approve of it is incumbent upon you to devise another which may be equally efficacious.

On this occasion you will pardon me for adverting to what is regarded by several people as an anomaly in regard to the disposal of Full Bench cases by the High Court. In the Full Bench cases decided in the Year 1916 there were at least 6 cases in which out of the three judges constituting the Full Bench one dissented from the other two. The points that were considered by the Full Bench in each of these cases were not points involved in Letters Patent appeals heard by three judges but points that were actually referred to the Full Bench owing to conflict of opinion among the division benches of this High Court or between

this High Court and other High Courts. Some of the points are of great general importance and it is regrettable that the decision of the so-called Full Bench on these points consists of the opinion of only two of the learned judges *i.e.*, of no higher number than ordinarily constitutes a division bench. When the total number of judges constituting the High Court was only five or six, three judges might have been considered enough to constitute a Full Bench but as the number of judges is now as much as twelve, the number three as compared with it is so disproportionately small that people cannot easily bring themselves to regard three judges of the court as a Full Court for giving a decision binding upon the whole court as well as all the mofussil courts. Having regard to the present strength of the High Court it is highly desirable that every point referred for the decision of a Full Bench should be heard and decided by a bench of not less than five judges. This arrangement will also prevent the anomaly of the opinion of the so-called Full Bench consisting of the opinion of only two judges.

The High Court have recently ruled that in batch cases the judges shall have a discretion to allow some fee less than the minimum fee in each of the cases. Practitioners are of course interested in seeing that as much fee as possible is realised without detriment to the real interests of clients. Where in a batch of cases the same party happens to be the Appellant or Respondent and he fails, there is every justification for the application of the rule just referred to. Where however the party that fails in a batch of suits is not the same in every case there is no real hardship in directing that the unsuccessful party in each one of the batch of suits shall pay the minimum fee to the opposite side. So far as he is concerned there is no special burden imposed upon him, and there is no reason why he should not be subjected to the rule as to the minimum fee. These are matters for consideration and I beg to be excused for having taken the liberty of suggesting them for your consideration.

On the whole, vakils are being shown greater and greater consideration and there is no reason why as a body we should not be content with our lot. They have fared well at the hands of the Public Services Commission, and day by day the chances of the judiciary being recruited from the ranks of Vakils are improving. We must be thankful for the Government of India for the

recent legislative enactment by which vakils have been declared eligible for the Chief Judgeship of the Presidency Small Cause Courts.

I must now wind up by apologising to you for this hurried expression of my rambling thoughts. The chances of the average vakil getting on in the profession are by no means improving, but vakils whenever they are caught are seldom spared. Let us all hope that these gatherings will have a solemnising effect upon us and each time we meet in such bodies our resolve to pursue the profession with a lofty sense of our responsibility, to maintain its noble traditions will be more and more strengthened. Vakils may sometimes have to decide nice questions of casuistry and there may be room for honest doubt as to how a particular question may have to be solved. Sometimes we get papers at the very last moment and we are called upon to file the appeal. We look into the papers and find that there is nothing in the case. Will you be justified in refraining from filing the case when there is not time enough for you to communicate your view of the case to the client and for him to make up his mind as to whether he should get it filed by somebody else if not by you? Again a client may pay no heed to your calls for money and the case may be posted for hearing; still you appear in the case and do your best for him and fail. The client after the hearing is over will worry you for the result without having or not having heard about it. He will write to you ordinary and registered letters and wire to you and so on. If you let him know the result you may have no chance of getting your balance in the near future; in fact you will get no chance until such time as he may have need for the record in the case. Under such circumstances, are you justified in taking no notice of the communications with which the client worries you. I think there might be a committee of the Vakils Association to which the task of considering such questions may be entrusted. When the existence of such a committee is known and when it inspires confidence it may be expected that references will be made to it by members of the profession feeling honest doubt on questions such as those mentioned above.

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Mr. Justice Holmes:—Mr. Justice Holmes has the reputation of citing more peculiar cases from the old Law books than any other member of the Supreme Court. He dug up an additional one

recently to the amusement of his associates, when it was contended in a libel suit that the declaration was insufficient because the offences were not stated properly. "That leads me to recall a case in the old books" said the justice where an indictment set forth that the accused struck a man on the head splitting the skull until a portion fell down on either shoulder, and the court held the indictment defective because it did not allege that the man was killed."

The justice observed that it was a hair splitting decision and he did not intend it as a punishment either. *New york Times.*

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Cabinet Ministers and the Bench.—If the persistent rumour that Sir George Cave will shortly leave the Home Office for a high judicial position should prove to be well-founded, he will not be the first Cabinet Minister who, not being a Law Officer of the Crown, has been appointed to the Bench. The most conspicuous instance—in England, indeed, almost the only one—is afforded by Lord Campbell's appointment as Lord Chief Justice. Campbell was Chancellor of the Duchy of Lancaster, with a seat in the Cabinet, when he succeeded Lord Denman as the Lord Chief Justice in 1850. It will be remembered that Lord Haldane was Secretary of State for War when he succeeded Lord Loreburn as Lord Chancellor in 1912, but the office of Lord Chancellor, being largely political in character, can hardly be said to count in this connection. Lord Dunedin, who is now a Lord of Appeal in Ordinary, sat in the Cabinet a Secretary for Scotland when he was promoted to the offices of Lord Justice General of Scotland. In the Colonies it is not at all an uncommon thing for a distinguished statesman to become a judge. To give but a single instance, Sir Edmund Barton, who was the first Prime Minister of the Commonwealth, is now a judge of the High Court of Australia. But in England the appointment of Cabinet Ministers to the Bench, if not unprecedently, is certainly rare, and there are very good reasons, no doubt, why it should not become common. It is not desirable that the relations of the Bench and the Executive should become intimate, and anything which gave a semblance of such intimacy would tend to impair the status of the judiciary, Sir George Cave, who was Solicitor-General before he became Home Secretary in the Coalition Ministry, occupies, however, a special position, and

both the public and the profession, who are well acquainted with his great qualifications for judicial office, would welcome his appoint to the Bench. If a second precedent for the appointment of a Cabinet Minister to an English judgeship is to be created, there is no distinguished lawyer in the political world who is more worthy to have his name associated with it.—*The Law Journal, August 25, 1917.*

BOOK REVIEW.

THE NEGOTIABLE INSTRUMENTS ACT *by Bhashyam and Adiga, 2nd Edition, 1917.* Rs. 10/-

We are glad to announce the publication of the second edition of the commentaries on the Negotiable Instruments Act by Messrs. Bhashyam and Adiga. The volume under review has already taken the place of a treatise on the subject; and this renders a lengthy statement of the scope and objects of the work superfluous. Till the publication of the first edition of this work Chalmer's Negotiable Instruments Act was the one in general use by the profession and students. But the meagre notes in that book created the necessity for a publication like the one under review dealing exhaustively with the subject of Negotiable Instruments. To the students we would draw their particular attention to the introduction to this work which gives a lucid account of the origin and growth of the law of Negotiable Instruments and the skeleton of the Act which will conduce to give them a comprehensive idea of the provisions of the Act. To the practitioners and judges it will suffice if we state that the work will meet their wants in every direction by giving the references to all the important decided cases up to date with a statement of the principles wherever necessary with criticism on the decided cases wherever the authors think they are open to question. We need hardly add that the reprinting of the enactments bearing on the law of Negotiable Instruments, given in the appendices to the work will be found to be of great use both to the practitioners and the judges.
