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V. V. CHITALEY

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(1) After thirtysix years — planning and conducting All India Reporter and its publications — I retired in 1957 at the age of 73.

I may be pardoned if I yield to the temptation of quoting what Mr. Allen Gledhill, the distinguished writer on constitutional law, has observed in reviewing the publications of AIR Ltd. in Vol. 74 of the Law Quarterly Review (The leading Law Journal of the British Commonwealth) at Page 316—

“The case-law for half a century on all statutory penal provisions, and on many cognate matters, such as malicious prosecution, can easily be ascertained. One cannot but marvel at the industry and wide scope of the activities of the authors. Each month, in All India Reporter, they give us an up-to-date selection of the rulings of all the superior courts in India. They issue monthly and annual digests. From time to time they publish valuable encyclopaedic commentaries on the more important statutes.

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CAN RUBRIC LAW REPORTS BE CITED?

Law Reports Act must be repealed—says Law Commission.

Chapter 28 of the report of the Law Commission dated 26th September 1958 is bristling with instances and arguments exposing conclusively the absurdity and impossibility of banning citation of unofficial reports. The climax is reached, at page 645 in para 42, where they say "In view of the recommendations made by us, The Indian Law Reports Act (1875) will have to be repealed." Extracts culled out serially from page 626 to page 645, will show (in a nut-shell) the gist of the arguments, as also their suggestions for improvement of the present system of Law Reporting.

Here I would draw your attention to what Lord Sumner observed in the House of Lords' decision in *Palgrave, Brown and Son Ltd. v. S. S. Turid.*, LR (1922) 1 AC 397 (413, 414).

Lord Sumner:—... "My Lords, all the Courts below have felt themselves bound to follow and apply the decision of the Court of Appeal in *Holman v. Wade* (The Times, May 11, 1877) which your Lordships are free to overrule... The Master of the Rolls, in the Court below, says (1921) P. 149 that *Holman v. Wade* is only reported in a most unsatisfactory manner, that is to say, it is only reported as a piece of news in the newspaper.....The difficulty about it is to ascertain exactly what it decided. As for this, if it had not been reported at all, it would still have been a decision, which when brought to light by any means, must have been regarded as authority. I have often wondered what would happen if some learned and industrious person compiled from the records and cases lodged by the parties in your Lordships' House, and the transcripts of your Lordships' opinion preserved in the Parliament Office, a selection of 'Un-noticed House of Lords Cases.' The results might be somewhat unexpected but the decisions themselves, all Courts, your Lordships' House included, would be bound to follow, wherever they applied. As for the actual report in *Holman v. Wade* (The Times, May 11, 1877) it turns out, on reference to the original pleadings, to be very correct, and I think it is plain what was decided. It is true the report is very brief, and I wish this model were more often followed. We who deliver judgments would alone regret it."

The specific provision of S. 84 of The Indian Evidence Act says "The Court shall presume the genuineness of every book purporting to contain reports of decisions of the Courts of such (any) country" and thus once a decision is properly produced before a Court, the Court is bound to presume its genuineness under this section.

Extracts from the report of the Indian Law Commission

"The High Courts have gone so far as to characterise refusal on the part of "subordinate courts to follow their decisions as being tantamount to insubordination." (Page 626)

"(9) As has been pointed out by Justice Cardozo, "The labour of Judges would be increased to the breaking point if every past decision could be reopened in every case." Nature of the Judicial Process, page 144." (Page 626)

"(11) If the system of precedents being regarded as binding is to prevail it must inevitably follow that no suggestions as to the restriction on the publication of reports or the conferring of the right of exclusive citation on an authorised series of reports can arise. These suggestions ignore the fundamental fact that the law in a particular matter is what it is not because it has been so reported to be but because it has been so laid down in the decision of a Judge. In England it is "the privilege, if not the duty of a member of the Bar to inform the court whether as Counsel engaged in the case or as *amicus curiae* of a relevant decision whether it has been reported or not; so it is the duty of a Judge to follow the decision of a competent court whether reported or not; it may well be that there has not been time to report it." Report of the Lord Chancellor's Committee on Law Reporting, Para. 15. The same is the position in India." (Page 629)

"12. If the fact of a judgment being reported or not is irrelevant to its authority, how could it be urged that judgments reported in a particular series,

say, the authorised series should alone have binding authority and not others? Is a text book writer to ignore decisions which have not been reported in the authorised series and state the law only in accordance with what is to be found in that series?

In this connection we may recall a passage in a judgment delivered by Justice Niyogi of the Nagpur High Court :

"From the point of view of the judgment becoming a judicial precedent what is material is the decision in the case; it is the decision and not the opinion of the Court nor the report of it that makes the precedent. Hence an unreported case may be cited as an authority. It is the decision which establishes the precedent and the report but serves as evidence of it." Vinayak Shamrao v. Moreshwar, A.I.R. 1944 Nagpur 44 at p. 46.

13. The Supreme Court has itself on more than one occasion referred to its unreported judgments or those of the Privy Council." (Page 630)

"14. If there is no reason to doubt the correctness of the report the court would be bound in principle to allow the judgment in an unauthorised report to be cited for the same reason that it permits a certified copy to be cited.

Turning now to decisions which do not have a binding authority on the courts in which they are referred to but only persuasive authority the position is no different. The value of such decisions lies solely in their reasoning and that reasoning is no way affected by the fact that the report of the decision is an authorised one or otherwise, provided the report is an accurate report.

15. Section 38 of the Indian Evidence Act provides inter alia that when the court has to form an opinion as to a law of any country, any report of a ruling of the court of such a country contained in a book purporting to be a report of such rulings is relevant. It is clear that this provision would enable unofficial reports of foreign rulings to be cited where the court has to form an opinion as to question of foreign law. It would, indeed, be curious if, while permitting foreign unofficial reports to be cited, the courts were compelled to refuse to look at unofficial Indian reports.

16. OUR COURTS HAVE ALWAYS PERMITTED THE CITATION OF CASES DECIDED IN BRITAIN, AUSTRALIA, CANADA AND UNITED STATES.

These decisions have in our courts only persuasive authority. If we are not to deny the assistance of this persuasive authority to our courts, would it be right to prevent our courts from having the benefit of the decisions of Indian High Courts, merely because they do not happen to be reported in an official series?

17. Nor would such a prohibition, even if imposed, be workable in practice. It would be open to counsel to read parts of a decision in an unofficial report as a part of his argument." (Page 631)

"21. The conclusion is thus irresistible that to permit a system which would restrict citation to a particular series of law reports and exclude others would be destructive of the entire doctrine of precedent as we understand it. In such a system, a decision would derive its authority not by reason of its being a decision of a particular tribunal but from the fact of its having been chosen by the reporter for inclusion in the authorised series. We repeat and express our concurrence with the conclusions reached by the Lord Chancellor's Committee on this question. "To such a proposal or anything like it we are unanimously opposed. It ignores, as we think, the fundamental fact that the law of England is what it is, not because it has been so reported but because it has been so decided." Report of the Lord Chancellor's Committee on Law Reporting, Para. 15." (Page 633)

"25. THE PROFESSION AND THE PUBLIC SHOULD BE KEPT INFORMED. FROM WEEK TO WEEK, OF DECISIONS OF IMPORTANCE BY THE PUBLICATION OF NOTES OF CASES." (PAGE 637)

"(35) As has been observed by the Committee on Law Reporting in England "The decisions of the Court must be open for publication, discussion and criticism. * * * Nor can a judge by any means deny the right to publish as law, that which he has decided to be law." Report of the Lord Chancellor's Committee on Law Reporting, para. 16." (Page 642)

"40. Though we were at the commencement inclined to favour the suggestion that restrictions should be imposed on the publication of private reports or that citation in court should be restricted to a particular series, we feel bound to reject it." (Page 644)

"42. IN VIEW OF THE RECOMMENDATIONS MADE BY US THE INDIAN LAW REPORTS ACT (XVIII OF 1875) WILL HAVE TO BE REPEALED."

43. WE, THEREFORE, RECOMMEND THAT AN INDEX BE MAINTAINED BY ALL THE HIGH COURTS AND THE SUPREME COURT so that lawyers and private persons could have access to these indexes and be able to apply for certified copies of such judgments as they may need for the purposes of the cases they are interested in." (Page 645)

CAN DIGESTS OR NOTES BE CITED ?

Why not? Even newspapers have been cited in England. Has not the House of Lords itself, as shown above, strongly criticised the manner in which the court of appeal treated the report in The Times newspaper? **IN FACT ESTATE GAZETTE DIGEST, WEEKLY NOTES AND THE LONDON TIMES HAVE BEEN CITED EVEN DURING THE LAST FOUR YEARS. A HUNDRED AND FORTY SUCH INSTANCES ARE NOTED BELOW.** It is worth noting that search for precedents has taken the lawyer to the last century for arguing cases during the last four years, e.g. the Court of Appeal in *Holiday Fellowship Ltd. v. Hereford* reported in (1959) 1 W L R 211 (213) cites *Bally v. Plummer* reported in 1879 June 17 Times. The same Court in *In re Capelovitch v. Capelovitch* reported in (1957) 1 W L R 102 (103) cites *Field v. Field* reported in (1877) W N 98. Similarly *Harvey v. Crawley* reported in (1957) 1 A E R 504 (505) cites *Metropolitan Dist. Ry. Co. v. Burrow* reported in (1884) No. 22 Times. Several such instances will be found in the list given below.

- (1959) 2 W.L.R. 324 (326) *Cadam v. Beverbrook News Papers Ltd.*, Cites 1957 April 17 Times—*Brine v. National Sporting League*.
 (1959) 2 W.L.R. 128 (142, 150-152-153) *Mountbatten v. Mountbatten* cites 1958 Nov. 18 Times: *Gerrard v. Gerrard*.
 (1959) 2 W.L.R. 454 (455) *In re Hastings* Cites 1958 July 29 Times—*E. T. Hastings*.
 (1959) 2 W.L.R. *In re. No. 88 High Road Kilburn* 279, 283) Cites 1959 Feb. 4 Times—*In re Sunlight House*.
 C. A. (1959) 1 W.L.R. 211 (213) *Holiday Fellowship Ltd. v. C. A. Hereford* cites 1879 June 17 Times: *Ball v. Plummer*.
 H. L. (1959) 1 W.L.R. 284 (285) *Wintle v. Nye* Cites 1957 Decem. 17 Times Tr. Court Appeal—*Wintle v. Nye*.
 H. L. (1959) 1 W.L.R. 284 (285) *Wintle v. Nye*. Cites 1957 May 21 Times.
 (1959) 1 W.L.R. 403 (412) *Ryan v. Pilkington C. A.* cites (1951) W.N. 355 (356) *Navarro v. Mosegrand* (1951) W. N. 335.
 (1959) 1 W.L.R. 403 (412) *Ryan v. Pilkington C. A.* cites (1948) W.N. 455 *Wragg v. Lovett*.
 (1959) 1 W.L.R. 551 (553) *Olver v. Hillier* cites 1959 Feb. 18 Times *Melgrave v. Finer*.
 (1959) 1 A E L R 99 (100-115) *Mountbatten v. Mountbatten* approves *Gerrard v. Gerrard* 1958 Nov. 18 Times.
 (1959) 1 A E L R 411 (415) *R v. Jones* cites *Hilton v. Marshall* 1951 W N 81.
 (1959) 1 A E L R 464 *Independent Television v. I R C* cites *British India Corporation* 1921 W N 220.
 (1959) 1 A E L R 527 *Re No. 83 High Road, Kilburn v. D. D. W. Consolidated* cites *Re Sunlight House* Times Feb. 4 of 1959=173 *Estates Gazette Digest* 311 and also *Berkovits and Co.* (1956) 167 *Estates Gazette Digest* 573.
 (1959) 1 A E L R 602 (607) *Court of Appeal De Jean v. Flescher* approves *R v. Adamson*, Times 1957 July 16.
 (1959) 1 A E L R 689 (690) *Ryan v. Pilkington*, *Court of Appeal* approves *Navarro v. Mosegrand* (1951) W N 335.
 (1959) 2 A E L R 81 (83) *M. & J. S. Properties v. White C. A.* cites 108 *Law Journal* page 476 *Perjures v. Panteli*.
 (1959) 2 A E L R 85 (91) *Squares v. Squares* approves *Mitter v. Mitter* Times 1922 May 3 and *Saundess v. Saundess* 1936 Times Dec. 8.

- (1958) 1 W.L.R. 993 (999) *Naker v. J. E. Hopkins* cites 1954 *The Times* April 1 (1954) *Zinovieff v. Br. Transport Commission*.
- (1958) 2 W.L.R. 473 (477) *Harvey v. R. G. O'dell Ltd.* Cites *The Times* June 26, 1956: *Br. Transport Commn. v. Ministry of Supply*.
- Grace Raymer Investment Ltd. v. Waite* (1958) 2 W.L.R. 200 (210) cites *The Times* May 30, 1957 at P. 15 namely *Hitchcock v. Waite*.
- Grech v. Odhams Press Ltd.* (1958) 2 *Weekly Law Report* 16 (19) cites *The Times* 1937 April 17 *Morris v. Victor Gollancy Ltd.*
- Viscount Simonds L.C. of England* in (1958) 2 W.L.R. 11 (15) (17) Lord Morton at p. (19) (20) and Lord Cohen at (21) in *Taylor v. National Assistance Board* have approved *Thorogood v. Thorogood* 1955 *Times* Oct. 20 p. 5.
- (1958) 1 W.L.R. 480 (483) Footnote 11: *Borch v. Borch* cites *Baguley v. Baguley* 1957 Oct. 19. *The Times*.
- (1958) 1 W.L.R. 1098 (1103) *Raymond v. Cooke* cites *John v. Heathe* 1958 April 24 *Times*.
- (1958) 1 W.L.R. 980 (981) *Borch v. County Motor & Engineering Co. Ltd. (C. A.)* Lord Evershed M.R. *Romer Ormerod L.JJ.* cite *Current Law Yearly Digest* 1956 Item No. 2245 namely *Price v. Price*=1954 Feb. 12 *Times*.
- (1958) 1 W.L.R. 519 (521) *In re J & P Sussman Ltd.* Cites and approves 1911 Dec. 20 *Times*. *In re E. S. Shell & Sons Ltd.* It also approves *In re L. Industrie Vriere Ltd.* Reported in 1914 *Weekly Notes* 222.
- (1958) 2 W.L.R. 725 (728) *Mignel Sanchez v. Result (owners)* Cites *Eyre v. Moreing* (1884) W.N. 58.
- (1958) 2 W.L.R. 755 (758) *Hanak v. Grieve (C. A.)* Cites *M'c-Creagh v. Judd* 1923. W.N. 174.
- (1958) 3 W.L.R. 676 (679) *In re Royce's Will Trusts* cites *In re Brown* 1918 W.N. 118.
- (1958) 3 W.L.R. 337 (344) (C.A.) *Grace Ryemer Trustments Ltd v. Waite* Lord Evershed M.R. Cites *Hitchcock v. Waite* 1957 May 30 *Times*.
- (1958) 3 W.L.R. 635 (637) *Jhones v. Jhones*. Lord Merrimen President cites 1950 W.N. 29 *Baker v. Baker*.
- (1958) 3 W.L.R. 635 (637) *Jhones v. Jhones* Cites *Lolley v. Lolley* 1958 Oct. 30 *Times*.
- (1958) 3 A E L R 126 (127) *Independent Television Authority v. I R C* Cites *British India Corporation* 1921 W N 220.
- (1958) 3 A E L R 140 (141) *R v. Me Carfan* approves *R v. Flaherty* *Times* June 24—1958.
- (1958) 3 A E L R 407 (409) *Raymond v. Cook* (Court of Appeal) Cites *John v. Heath* 1958 *Times* April 24.
- (1958) 3 A E L R 468 (471) *S. Riffin v. Squires* approves *Heath v. Pearson* (1957) *Criminal Law Review* 195.
- (1957) 2 W.L.R. 1007 (1011-1014) *Kelsen v. Imperial* Cites (1926) W.N. 336 *Gifford v. Dent*.
- (1957) 2 W.L.R. *Jones v. National* 761 (767) C. A. cites 1952 April 8 *Harris v. Harris*.
- (1957) 2 W.L.R. 189 (191-192-195-197) *Denning L.J., Hodson L.J.* C.A. cite 1955 Oct. 20 *Times*: *Thorogood v. Thorogood*.
- (1957) 1 W.L.R. 102 (103) *In re Capelovitch v. Capelovitch* cites *Field v. Field* (1877) W.N. 98.
- (1957) 1 W.L.R. 582 (585) *Bolam v. Friern Hospital Management Committee*—Cites *Hatcher v. Black*, *The Times* 2 July 1959.
- (1957) 1 W.L.R. 220 (222) *Key and Staples*—Cites *Hooper v. Hooper*, *The Times* 15 October 1953 C.A.
- (1957) 1 W.L.R. 102 (103) *In re Capelovitch Decd. Sandelson v. Capelovitch* Cites *Pimm*: *In re* (1916) W.N. 202 & (1877) W.N. 98 *Field v. Field*.
- (1957) 2 All E.R. 1154 *Scott v. Scott X/IX* cites *Sidney v. Sidney*, *The Times*, 25 October 1950 C.A.
- (1957) 3 W.L.R. 1023 (1027) *Winchester v. Fleming* Cites *The Times*, March 5, 1955. *Gottlieb v. Oleiser*.
- (1957) 3 W.L.R. 741 (742) *Payne v. Cooper* Cites (1920) W.N. 200 *Kelly v. White* C.A.

- (1957) 3 W.L.R. 801 (805) *Benton v. Benton*. Cites (1950) W.N. 200 *Cooper v. Cooper*.
- (1957) 3 A.E.R. 134 (140) *Macalpine v. Macalpine* Cites (1949) W.N. 83 *Boettcher v. Boettcher*.
- (1957) 3 A.E.R. 260 (261) *Cockburn v. Cockburn* Cites (1935) W.N. 128 *In re A Judgment Debtor*.
- (1957) 3 A.E.R. 703 (704) *Taylor v. National Assistance B.D.* Cites (Oct. 19, 1955) *The Times Thorogood v. Thorogood*.
- (1957) 1 A.E.R. (33) 34 *Re Capelovitch's Estate & Will Trusts* (2) *Sandelson v. Capelovitch & another* Cites (1877) W.N. 98 *Field v. Field* (1916) W.N. 202 *Re. Pimm*.
- (1957) 1 A.E.R. 183 (184) *Taylor v. National Assistance Board and another* Cites (Oct. 19, 1955), *The Times Thorogood v. Thorogood*.
- (1957) 1 A.E.R. 504 (505) *Harvey v. Crawley Development Corporation* Cites (1884), *The Times Jan. 24 R. v. Burrow C.A.*
- (1957) 1 A.E.R. 504 (505) *Harvey v. Crawley Development Corp'n.* Cites (1884) *The Times, Nov. 22, Metropolitan & District Ry Co. v. Burrow*.
- (1957) 1 A.E.R. 629 (630) *Re White's Settlement Trusts* Cites (1908) W.N. 161 *Re Baker's Settlement Trusts, Hunt v. Baker*.
- (1957) 1 A.E.R. 635 *Alliance Perpetual Buildings Society v. Belrum Investments Ltd. & others* cites (1914) W.N. 258.
- (1957) 2 A.E.R. 14 (31) *Wood v. Wood* Cites (1949) W.N. 83 *Boettcher v. Boettcher C.A.*
- (1957) 2 A.E.R. 155 (159) *Jones v. National Coal Board* Cites (Apr. 9, 1952) *The Times Harris v. Harris C.A.*
- (1957) 2 A.E.R. 343 (348) *Kelsen v. Imperial Tobacco Co. (of Great Britain & Ireland)* Cites (1926) W.N. 336 *Gifford v. Dent*.
- (1957) 2 A.E.R. 807 (810) *Pigney v. Pointers Transport Services Ltd.* Cites (Oct. 23, 1956), *The Times Cavanagh v. London Transport Executive*.
- (1956) 3 W.L.R. 887 (891) *Wood v. Wood* cites (1949) W.N. 83 *Boettcher v. Boettcher*.
- (1956) 3 W.L.R. 679 (681) *Davies v. British Geon Ltd.* cites (1884) W.N. 252 *In re Eversley Hotel Co. C.A.*
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- (1956) 2 W.L.R. 493 (496) *In re W.* cites (1950) W.N. 22 *Chinchen v. Chinchen*.
- (1956) 2 W.L.R. 299 (304) *Elizabeth Anima v. Akwasi Ahyeve* W.N. 276 *Dashwood v. Dashwood*.
- (1956) 2 W.L.R. 299 (304) *Elizabeth Anima v. Akwasi Ahyeve* (substituted for *Khame Dwaa, decd.*) cites 1891 W.N. 170 *Australasian Automatic Weighing Machine Co. v. Walter*.
- (1956) 2 W.L.R. 735 (738) *In re Brabour's Policies of Assurance Westminster Bank Ltd. v. Inland Revenue Commissioner* cites (1908) W.N. 107 *In re Lingard*.
- (1956) 2 W.L.R. 888 (890) *Smith v. East Elloe Rural District Council* Cites (1947) W.N. 189 *Tutin v. North Allerton Urban District Council*.
- (1956) *Wood v. Wood* cites (1949) W.N. 83 *Boettcher v. Boettcher*.
- (1956) *Davies v. British Geon Ltd.* Cites (1884) W.N. 252 *In re Eversley Hotel Co. C.A.*
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- (1956) 1 W.L.R. 585 (589) *Spring v. National Amalgamated Stevedores & Dockers Society* cites (1955) *The Times, July 9, Andrew v. National Union of Public Employees*.
- (1956) 1 W.L.R. 1380 (1385) *Roe v. Roe* Cites (1950) W.N. 200 *Cooper v. Cooper*.

- (1956) 1 W.L.R. 51 (52) *Waldon v. War Office* C.A. Cites, *The Times*, Feb. 8, 1955
Davies v. Fraser & Chalmers Engineering Works.
- (1956) 1 W.L.R. 277 (278) *Sullivan v. Sullivan* Cites (1949) W.N. 159 *Duffield v. Duffield*.
- (1956) 1 W.L.R. 277 (279) *Sullivan v. Sullivan* Cites (1951) W.N. 250 *Frampton v. Frampton*.
- (1956) 1 W.L.R. 428 (429) *Fullerton v. Ryman* Cites (1907) W.N. 137 *Harrington v. Ramage*.
- (1956) 1 W.L.R. 258 (260) *Guinness v. Guinness* Cites (1951) W.N. 296 *Hutchison v. Hutchison*.
- (1956) 1 W.L.R. 562 (565) *Polskie Towrzystwo Handin Zagranicznego Dla lektrotechniki 66, Elektrimspolka Zogranic zona Odpowiadalnoscia v. Electric Furnace Co. Ltd.* Cites (1875) W.N. 203 *Liverpool, Brazil, & River Plate Steam Navigation Co. v. London & St. Katherine Steam Navigation Co. C.A.*
- (1956) 1 W.L.R. 586 (589) *Spring v. National Amalgamated Stevedores & Dockers Society* Cites (1894) W.N. 141 *Williams v. Powell*.
- (1956) 1 W.L.R. 762 (763) *In the Estate of Tame, decd. Tyler v. Sweet Love Tame & Tame* cites (1901) W.N. 172 *In re. Wrigglesworth, Wilkinson v. Wrigglesworth*.
- (1956) 3 A.E.R. 113 (116) *Re Bradley (deceased) Bradley v. Barclays Bank Ltd.* cites (1935) W.N. 51 *Re Van Oppen Reberts v. Gray*.
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- (1956) 3 A.E.R. 645 (648) *Wood v. Wood* cites (1949) W.N. 83 *Boettcher v. Boettcher*.
- (1956) 3 A.E.R. 645 (650) *Wood v. Wood* cites (1949) W.N. 59, *Wood v. Wood*
- (1956) 3 A.E.R. 955 (965) *Key v. Key Stamples* cites (1953), *The Times*, Oct. 15, P. 2. *Hooper v. Hooper*.
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- (1956) 2 A.E.R. 630 (633) *Beigan v. Beigan* cites (1949) W.N. 225 *Pearson v. Pearson*.
- (1956) 1 A.E.R. 273 (277) *Amon v. Rappael Tuck & Sons Ltd.* cites (1924) W.N. 287 *Hood Barras v. Frampton, Knight & Clayton*.
- (1956) 1 A.E.R. 368 (369) *Re W. and Another* cites (1950) W.N. 22 *Chinchen v. Chinchen*.
- (1956) 1 A.E.R. 603 (608) *Thompson v. Thompson* cites (Feb. 9, 1956), *The Times*.
- (1956) 1 A.E.R. 753 (R. v. State Sub-Committee of London County Council's Education Committee and another Ex parte Schonfeld & others) cites (1947) W.N. 218 *Practice Notes*.
- (1956) 1 A.E.R. 785 (786) *Ingram v. Ingram* cites (July, 10, 1953) *The Times*, *Warburton v. Warburton*.
- (1956) 1 A.E.R. 807 (808) *Inland Revenue Commissioner v. Hambroo v. Cites* *The Times* (May 29, 1869), *Bushe v.R.*
- (1956) 1 A.E.R. 855 *Smith v. East Elloe Rural District Council & others* Cites (Feb. 24, 1956) *The Times* *Richardson v. Minister of Housing & Local Government*.
- (1955) 3 W.L.R. 72 (80) *J.—P.C. v. J.—A.F.* cites (1951) W.N. 367 *Alhadeff v. Alhadeff C.A.*
- (1955) 3 W.L.R. 347 (350) *National Assistance Board v. Parkes* Cites (1951) *The Times* Apr. 5 *Chapman v. Chapman*.
- (1955) 3 W.L.R. 994 (996) *Eaves v. Eaves & Powell* cites (1892) W.N. 54 *Dashwood v. Magniac*.

- (1955) 3 W.L.R. 162 (170) Knott v. Knott cites *The Times*, Dec. 5, 1919 Hadden v. Hadden.
- (1955) 3 W.L.R. 596 (598) Gibbons v. Kahl cites (1955) *The Times*, March 3, Marson v. Thompson.
- (1955) 3 W.L.R. 108 (118) Thynne v. Thynne cites (1948) W.N. 238 Reder v. Reder.
- (1955) 3 W.L.R. 145 (147) Lake v. Lake cites (1922) W.N. 124 Tindall v. Wright.
- (1955) 3 W.L.R. 231 (243) Pilcher v. Pilcher cites (1949) W.N. 59 Wood v. Wood.
- (1955) 2 W.L.R. 463 (469) Martell Pothers v. Consett Iron Co. Ltd. Cites (1948) W.N. 352 Brocket v. Laton Corporation C.A.
- (1955) 2 W.L.R. 264 (251) S. v. S. (Orsec) cites (1949) W.N. 250 Morgan v. Morgan.
- (1955) 2 W.L.R. 273 (274) Regina v. Onufaczezyk cites (1875) *The Times*, Aug. 8, 1875 R. v. Armstrong C.A.
- (1955) 2 W.L.R. 256 (263) In Re. Harrison's Settlement Harryson v. Harrison cites (1887) W.N. 231 In re Evans v. Thomas C.A.
- (1955) 1 W.L.R. 309 (316) Wells King v. Wells—King cites (1951) W.N. 367 Alhadeff v. Alhadeff.
- (1955) 1 W.L.R. 163 (165) In re Caston Cushioning Ltd. cites (1894) W.N. 111 In re Blocwich Iron & Steel Company.
- (1955) 1 W.L.R. 531 (538) Forbes v. Forbes cites (1919) *The Times*, Dec. 5 Hadden v. Hadden.
- (1955) 1 W.L.R. 88 (90) In re East Yorkshire Gravel Co. Ltd's Application cites (1924) W.N. 257 In re Nnuery Colliery Co.'s Application.
- (1955) 1 W.L.R. 1005 (1007) Creed v. Mc. Gcoch & Sons Ltd. cites (1955) *The Times*, Feb. 23 Sullivan v. Lipton.
- (1955) 1 W.L.R. 1068 (1069) Penfold v. Pearlberg cites (1930) W.N. 200 Tydir Accumulator Co. Ltd. v. China Mutual Steam Navigation Co. Ltd.
- (1955) 1 W.L.R. 1037 (1044) In re Rumbally Decd. Sherlock & other v. Allan & other cites (1911) *The Times*, Feb. 17 In re Van Wart.
- (1955) 1 W.L.R. 1275 (1285) Stainer v. Tragett cites (1884) W.N. 17 Wagslaff v. Jacobowitz C.A.
- (1955) 1 W.L.R. 351 Parish v. Birch Bros (Dover) Ltd., Cites (1937) W.N. 360 Walton v. Rikob.
- (1955) 1 W.L.R. 669 (672) Carpenter v. Carpenter, Holden Intervening cites (1953) *The Times*, July 10 C.A. Warburton v. Warburton.
- (1955) 1 A.E.L.R. 1007 Cites 1955 Feb. 23 *Times*.
- (1955) 1 A.E.L.R. 1275 (1285): Cites (1884) W.N. 17.
- (1955) 1 A.E.L.R. 669 (672): Cites (1953) *Times* July 10.
- (1955) 1 A.E.L.R. 1037 (1044): Cites (1911) *Times* Feb. 17.
- (1955) 1 A.E.L.R. 531 (538): Cites (1919) *Times* Dec. 5.
- (1955) 1 A.E.L.R. 309 (316): Cites 1951 W.N.—367.

ARE NOTES OF CASES CITED IN INDIAN REPORTS?

In spite of the Law Reports Act, even in Indian Reports, notes of unreported cases have been freely cited. It is worth noting that notes of unreported cases (NUC) published in 1955 by me in AIR have been not only cited in more than 50 cases but the Division Benches of the Allahabad, Assam, Himachal Pradesh, Hyderabad, Orissa, Patna and Punjab High Courts have approved and relied on these notes. Further the Calcutta, Patna and Punjab High Courts refer to these notes as "Reports in substance"; e.g. see AIR 1960 Cal 138 (Pr 9—AIR 1959 Punj 578 (Pr 2)—AIR 1957 Pat 121 (Pr 11)—AIR 1959 All 540 (Pr 9 & 19) (FB)—AIR 1957 All 782 (Pr 7)—AIR 1957 All 53 (Pr 30)—AIR 1960 Assam 45 (Pr 7)—AIR 1957 Him Pra 5 (Pr 4)—AIR 1955 Hyd 260 (Pr 2)—AIR 1959 Orissa 179 (Pr 16)—AIR 1948 Cal 182 (184).

AIR 1958 SC 353 (Pr 20)
 AIR 1960 Cal 138 (Pr 9)
 AIR 1960 Cal 40 (Pr 14)
 AIR 1960 Mad 27 (Pr 11)
 AIR 1960 Ker 83 (Pr 3)
 AIR 1960 Assam 45 (Pr 7)
 AIR 1960 Ker 145 (Pr 5)
 AIR 1959 All 513 (Pr 20)

AIR 1959 All 540 (Prs 9 & 19)
 AIR 1959 Andh Pra 534 (Pr 8)
 AIR 1959 Madh Pra 7 (Pr 2)
 AIR 1959 Madh Pra 333 (Pr 3)
 AIR 1959 Mad 339 (Pr 8)
 AIR 1959 Orissa 167 (Pr 6)
 AIR 1959 Orissa 179 (Pr 16)
 AIR 1959 Pat 489 (Pr 3)

- AIR 1959 Punj 503 (Pr 11)
 AIR 1959 Punj 578 (Pr 2)
 1959 Punj LR 609 (614)
 AIR 1958 Him Pra 14 (Pr 5 and 6)
 AIR 1958 Orissa 26 (Pr 15)
 1958 ALJ 660 (668)
 AIR 1958 Raj 239 (Pr 6)=ILR (1959)
 9 Raj 594 (597)
 AIR 1957 All 53 (Pr 13)
 AIR 1957 All 782 (Pr 7)
 AIR 1957 Him Pra 5 (Pr 4)
 AIR 1957 Mani 23 (Pr 6)
 AIR 1957 Pat 121 (Pr 11)
 AIR 1957 Trip 47 (Pr 6)
 AIR 1956 Ajmer 49 (Pr 3)
 AIR 1956 Ajmer 55 (Pr 5)
 AIR 1956 All 63 (Pr 22)
 AIR 1956 All 234 (Pr 9)
 AIR 1956 All 619 (Pr 10 and 32 and 33)
 AIR 1956 Mani 25 (Pr 25)
 AIR 1956 Madh B LJ 1275 (1278)
 AIR 1956 Mani 31 (Pr 7)
 AIR 1956 Orissa 142 (Pr 6)
 AIR 1955 Him Pra 25 (Pr 5)
 AIR 1955 Hyd 260 (Pr 2)
 AIR 1955 J and K 9 (Pr 12)
 AIR 1955 Madh B 188 (Pr 8)
 AIR 1955 Trip 33 (Pr 5)
 Suit No. 2276 of 1952 Dated 18-7-56
 (Cal) (Pr 87)
 S A 28 of 1953 Dated 23-5-56 (Him
 Pra)
 Cr. A. No. 3 of 1956 Dated 2-5-56
 (Tripura)
 Mis. S. A. 13 of 1955 Dated 7-12-55
 (Tripura)
- Instances of such citations (prior to
 1955) by High Courts numbering a
 couple of hundreds are given below.**
- AIR 1951 Ajmer 79 (2) (Pr 5)
 AIR 1950 Cal 161 (163)=54 C W N 207.
 AIR 1950 E P 20 (21).
 I L R (1950) 1 Cal 371 (372).
 I L R (1945) 2 Cal 405 (444).
 AIR 1949 Pat 47=26 Pat 479=49 Cr L J
 612, Ray J.
 AIR 1948 Cal 182 (184).
 I L R (1948) Bom 223 (244, 259).
 AIR 1947 Pat 47=25 Pat 311 (316)=
 13 B R 314=229 Ind Cas 348, Fazl Ali
 C. J.
 I L R (1946) 1 Cal 355 (357).
 AIR 1945 Cal 24=ILR (1945) 1 Cal
 556 (562)=48 C W N 837=221 Ind
 Cas 490, Sharpe J.
 AIR 1944 Cal 310 (312)=ILR (1944)
 2 Cal 263=48 Cal W N 321, Mitter
 and Blank JJ.
 AIR 1944 Cal 118 (119)
 1944 A L J 182.
 AIR 1943 Oudh 280=1943 O W N C C
 202=1943 All W R C C 49=207 Ind
 Cas 374=1943 O A C C 123=44 Cr
 L J 640 Ghulam Hasan J.
 AIR 1942 Cal 401 (403)=ILR (1942)
 2 Cal 13=75 C L J 139=46 Cal W N
 317=201 Ind Cas 588, Akram J.
 15 Luck 703 (712).
 AIR 1940 Cal 540 (542)=I L R (1940)
 1 Cal 519=44 Cal W N 677=191 Ind
 Cas 154=42 Cri L J 87, Sen J.
 AIR 1939 Cal 28 (29).
 AIR 1939 Pat 467 (473)
 I L R (1937) 2 Cal 373 (379).
 18 P L T 559 (561).
 AIR 1937 Pat 224 (225)
 12 Luck 526 (530).
 ILR (1937) (Nag 236 (239).
 12 Rang 355 (362).
 AIR 1934 P 53 (54).
 61 C 607 (625).
 60 Cal 1181 (1187)=54 Cal L J 596
 (598).
 AIR 1933 Cal 870 (873)=38 C W N 25
 =61 Cal 155=1933 Cr C 1481 Lort
 Williams and McNair JJ
 60 C 384 (386).
 60 Cal 630 (633).
 37 C W N 301 (304).
 54 All 379 (383).
 59 C 709 (716).
 AIR 1934 Rang 292 (294)
 13 L 233 (234, 238).
 25 S L R 59 (61).
 10 Pat 264 (271).
 52 C L J 68 (70).
 11 Lah 111 (114).
 53 C L J 326 (327).
 8 Pat 251 (258).
 AIR 1929 Cal 645=125 IC 101, Mitter
 J.
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 122 I C 298 (299).
 56 Cal 723 (729).
 32 C W N 98 (100).
 112 I C 787 (788).
 5 R 772 (774).
 51 All 467 (469).
 32 C W N 132 (133).
 32 C W N 93 (101).
 29 Bom L R 1470.
 31 C W N 258 (261).
 50 All 113 (115).
 101 I C 755 (755).
 29 Bom L R 204 (205).
 AIR 1927 Cal 84=97 I C 879 (881).
 31 C W N 215 (218).
 98 I C 164 (165).
 30 C W N 494 (496).
 30 C W N 850 (853).
 21 N L R 111 (116).

- 52 C 670 (674).
 42 C L J 74 (76).
 2 R 673 (677).
 78 I C 330 (333).
 5 L 429 (439).
 3 Pat 1 (35).
 AIR 1924 Pat 513 (514).
 51 Cal 347 (352).
 28 C W N 845 847 (848).
 28 C W N 377 (382).
 28 C W N 552 (553).
 1924 Cal 446 (448).
 27 C W N 888 (892).
 38 C L J 147 (148).
 AIR 1924 Nag 22=76 I C 327. Hallifax
 A. J. C.
 51 Cal 418 (430).
 35 Cal L J 493 (497).
 50 Cal 872 (877).
 AIR 1923 Cal 615=27 C W N 521=77
 Ind Cas 364, Chatterjee and Cumming
 JJ.
 55 I C 48 (50).
 27 C W N 315 (316).
 11 L B R 398 (406).
 36 C L J 389 (391).
 18 N L R 178 (181).
 1922 P H C C 218 (222).
 AIR 1922 Cal 77 (78)=68 I C 109.
 Newbould and Panton JJ.
 1 Pat 5 (13), Jwala Prasad J.
 18 N L R 42 (43).
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 23 Cr L J 508=3 P L T 484, Adami J.
 49 Cal 538 (542).
 18 N L R 109 (110).
 18 N L R 111 (113).
 44 All 401 (402).
 (1921) 61 I C 516 (517).
 25 C W N 178 (182).
 25 C W N 717 (719).
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 L T 16=61 Ind Cas 51=22 Cri L J
 323=1921 P H C C 112, Jwala Pra-
 sad J.
 47 Cal 125 (128).
 47 Cal 115 (122).
 54 Cal 757 (758).
 58 Ind Cas 459 (461).
 1920 P H C C 83.
 5 P L J 39 (42).
 23 C W N 435 (436).
 AIR 1922 Lah 85 (85)
 4 P L J 207 (209).
 23 C W N 201 (206).
 23 C W N 513 (515).
 4 P L J 682 (689).
 23 C W N 956 (958).
 22 C W N 972 (976).
 46 Cal 730 (737).
 23 C W N 145 (147).
 22 C W N 323 (324).
 22 C W N 790 (792).
 24 C L J 363 (366).
 44 Cal 804 (814).
 9 L B R 71 (73).
 2 P L J 457 (459, 467, 470).
 43 Cal 332 (386).
 13 N L R 176 (178).
 AIR 1919 Lah 106 (108).
 AIR 1915 Cal 276 (277).
 (399).
 AIR 1916 Lah 74 (75).
 AIR 1915 All 397=38 All 7
 19 C W N 1169 (1171, 1172).
 18 C W N 103 (105).
 (1914) 7 L B R 84, Hartnoll J.
 19 C W N 359 (360).
 (1913) 17 C W N 889 (910).
 (1913) 17 C W N 613 (615).
 (1913) 17 C W N 108 (111, 112).
 (1912) 16 C W N 802=39 Cal 1010
 (1015).
 (1912) 15 C L J 621 (624).
 (1912) 16 C W N 777 (778).
 (1911) 20 M L J 400 (402).
 1911 11 I C 84 (85) (Cal).
 (1911) 15 C W N 703 (704).
 (1911) 15 C W N 249 (253).
 (1911) 15 C W N 218 (219).
 (1910) 5 I C 385 (386) Cal.
 (1910) 5 I C 327 (329) (Cal).
 (1910) 37 C 637 (692) =14 Cal W N
 779.
 (1910) 7 I C 720 (721) (Cal).
 (1910) 11 C L J 86=5 I C 305 (305).
 (1910) 6 N L R 27 (29).
 (1910) 14 C W N 71 (73).
 (1910) 14 C W N 884 (887).
 (1910) 37 Cal 30 (40).
 (1910) 12 C L J 410 (419).
 (1910) 5 I C 385 (386) (Cal).
 (1910) 7 I C 886 (888) (Cal).
 (1909) 13 C W N N 630 (631-662).
 (1909) 10 C L J 91 (95).
 (1909) 2 I C 623 (624) (All).
 (1909) 3 I C 291 (297) (Cal).
 (1909) 4 I C 1013 (1020).
 (1909) 11 Bombay L R 177 (187).
 (1909) 5 N L R 189 (192).
 (1909) 13 C W N 224 (225).
 (1909) 10 C L J 115 (117).

The practice of citing notes of cases is hallowed by long usage as will be seen from the following instances wherein the House of Lords in 1922 the

Privy Council in 1935, the Court of Appeal in England in 1954, and the Supreme Court in 1953, followed the usage.

- (A) (1922) 1 A C 397 (413, 414) *Palgrave, Brown and Son Ltd., V. S. S. Turid, L. R.*
- (B) 62 Ind. App. 129 (138) = AIR 1935 PC 89 (91).
- (C) (1954) 70 Law Q R 246 (247, 248) "Notes of Cases in 'Current Law' have from time time been cited in the Court of Appeal, e.g., by Evershed M.R. in *Hallwood Estate, Ltd. v. Flack*. (1950) 66 (2) T. L. R. 368 at 375."
- (D) 1958 S.C. 353 (pr. 20) (AIR V. 45 CN 57).

I would conclude by quoting (1954) 70 LAW Q R pages (247, 248).

"Another instance of notes being referred to is provided by *Lockwood v. Lowe*, decided in March, 1953. The reserved judgment of the Court of Appeal was ignored by the usual law reports, but was preserved in shortened form by the *Times Newspaper* and the *Estates Gazette* (*Times*, April 1, 1953; 161 E. G. 73). In *Isaacs v. Titus*, (1954) 1 W.L.R. 398, the same point of law arose for decision, and Denning L.J. observed that it was "a fortunate thing that the reserved decision in *Lockwood v. Lowe* was noticed in the *Times Newspaper*, because it was not reported in any regular series of reports" (*The Times*, January 27, 1954).

"These notes enabled *Palmer v. Young*, 1684) to be reported for the first time more than two centuries after it had been decided. See (1903) 2 Ch. 65a."

"For many years past the Courts have often not only permitted notes from the *Estates Gazette Digest* to be cited, but also have held such decisions to be binding: See the instances collected in Megarry's *Rent Acts* (7th Edn., 1953), p. lxx. When from these instances and from (1948) 2 K.B. 253 and (1953) 2 Q.B. 163 it is observed that the law reports show that Lord Hanworth M.R., Sir Raymond Evershed M.R. and Roche, Sir Mark Romer, Scrutton, Greer, Slessor, Scott, Clauson, Finlay, Tucker, Bucknill, Asquith, Birkett and Sir Charles Romer L.J.J. have all either cited cases from the *Estates Gazette* or concurred in judgments which have done so (sometimes to announce that a case so cited was binding on them) it seems a little late in the day to say that such cases ought not to be cited to the Court of Appeal."

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CASES REPORTED HEREIN.

- (1) A.I.R. 1959 Sup. Cou. 896 (899, 901)
- (2) A.I.R. 1959 All. 607 (608, 610)
- (3) A.I.R. 1959 Bom. 437 (442, 443)
- (4) A.I.R. 1959 Bom. 443 (446, 447)
- (5) A.I.R. 1959 Tripura 41 (44, 45)
- (6) (1959) 57 All L.J. 343 (347, 348)
- (7) (1959) 1 An. W.R. 7(10) (Andh. H.C.)
- (8) (1959) 1 An. W.R. 363 (364, 365)
- (9) (1959) 63 C.W.N. 666 (673, 674)
- (10) (1959) 35 I.T.R. 633 (638) (Dacca)
- (10a) (1959) 1 L.L.J. 194 (196) (Bom.)
- (11) (1959) 1 L.L.J. 198 (201, 202) (Kerala)
- (12) (1959) N.L.J. 22 (25 & 26) (Bom.)
- (13) (1959) N.L.J. 26 (30) (Bom.)
- (14) (1959) N.L.J. 22 (24) (Bom.)
- (15) (1959) N.Z.L.R. 606 (607, 608)
- (16) A.I.R. 1959 An. Pra. 545 (546)
- (17) (1959) N.Z.L.R. 487 (490, 491) (C.A.)
- (18) (1959) 11 P.L.D. (Dacca) 192 (193)
- (19) (1959) 11 P.L.D. (Peshawar) 34 (44)
- (20) (1959) 11 P.L.D. 62 (64, 66, 67) (Privy Council Case from Jamaica)
- (21) (1958) 1 All E. R. 73, (74, 76) (Ch. D.)
- (22) (1958) 1 All E. R. 81 (82, 85, 93, 94)
- (23) (1958) 1 All E. R. 494 (499) (Q. B. D.)
- (24) (1958) 1 All E. R. 783 (786, 787)
- (25) (1958) 3 All E. R. 300 (302, 304) (P.C. case from British Guiana)
- (26) (1958) 3 All E. R. 307 (313)
- (27) (1958) 3 All E. R. 402 (403, 406) (Privy Council)
- (28) (1958) 3 All E. R. 657 (658) (C. C. C.)
- (29) (1958) 99 C. L. R. 1 (5 & 6) (Australian H.C.)
- (30) (1957-58) 99 C. L. R. 94 (96 to 99, 101-103 & 108)
- (31) (1958) N. Z. L. R. 767 (771) (772)
- (32) (1958) N. Z. L. R. 609 (612, 613) (New Zealand Sup. Cou.)
- (33) (1958) N. Z. L. R. 912 (918, 921, 925, 926) (New Zealand Sup. Cou.)
- (34) (1958) 10 P. L. D. Dacca 8 (12, 13)
- (35) (1958) 10 P. L. D. Lahore 1 (11)
- (36) (1958) 10 P. L. D. Lahore 22 (27, 28)
- (37) (1958) 10 P. L. D. Lahore 263 (282)
- (38) (1958) 10 P. L. D. 319 (323) (Lahore)
- (39) (1958) 10 P. L. D. Lahore 345 (358)
- (40) (1958) 10 P. L. D. Lahore 366 (369)
- (41) (1956) (1957) 97 C. L. R. 71 (82-85) (Austr. H. C.)
- (42) (1957) 97 C. L. R. 337 (342, 343) (Austr. H. C.)
- (43) (1956) 1 L ed 2d 765 (769) (American S.C.)
- (44) (1956) 1 L ed 2d 1485 (1490) (American S.C.)
- (45) (1951) 2 All E. R. 473 (England)
- (46) (1960) 61 N.L.R. 302, (303, 304) (Ceylon)
- (47) 1959 Ex. C. R. (Canada) 248 (249 to 256)
- (48) (1959) S. C. R. (Canada) 404 (409)
- (49) (1960) 61 N.L.R. 320 (321 to 325) (Ceylon).
- (50) (1958) N.Z.L.R. 1106 (1108, 1109).
- (51) (1959) 29 Com. Cas. 305 (319)
- (52) 1 L ed. 2d 1 (7, 8, 10, 14-16)
- (53) (1957) 97 C.L.R. 279 (293-94)
- (54) (1957) 97 C.L.R. 289 (298, 299)
- (55) (1958) 3 A.E.R. 285 (293-296)
- (56) (1959) 11 P.L.D. 627 (635)
- (57) (1956) 1 L ed 2d 1488 (1508)
- (58) (1959) N.Z.L.R. 540 (544)

ANDHRA TENANCY ACT (18 OF 1956), SECS. 6 & 16(1) — OBJECTS —

Affording protection to the tenant by giving security of tenure, and providing for collection only of fair rents notwithstanding agreements between the parties to the contrary, form the main purposes of this Act — Initially Tahsildar is the only authority empowered to determine fair rent—

“THE MAIN purpose and intendment of the Act is, firstly, to give protection to the cultivating tenants by giving them a security of tenure in the manner provided, and, secondly, to provide for the collection only of fair rents, notwithstanding agreements to the contrary between the parties.”

“Having regard to the scheme and intendment of the Act and the express provision contained in section 6 read with section 16(1), it is obvious that the only authority to determine the question of fair rent is Tahsildar initially.”—C. R. P. No. 652 of 1958: D/- 30-9-1958: Karumuri Venkata Ramadham v. Devalla Venkataratnam: (1959) 1 An. W. R. 7 (10) (Andh.). =1 RLR 1. R. J.

* ARBITRATION ACT (10 OF 1940), S. 30 — MISCONDUCT, WHAT CONSTITUTES (English Case.) —

It is a ‘misconduct’ if an arbitrator takes evidence or hears argument on behalf of one party in the absence of the other. Whether in fact arbitrator was or was not influenced by such evidence or argument in the making of the award is immaterial. This rule applies even to the case of evidence given by a

disinterested stranger — (Natural Justice) — (Words & Phrases — “Misconduct”) —

“IT DOES tend to appear to tend to an unjust award if the arbitral tribunal receives evidence or argument in the absence of the parties. There is ample authority, extending over 150 years, from Lord Eldon, L.C., in *Walker v. Frohisher* (1801) 6 Ves. 70 decided in 1801, to *Croom-Johnson, J.* in *Re Fuerst Bros.* (1951) 1 Lloyd’s Rep. 429 decided in 1951, that it is misconduct for an arbitrator to hear evidence or receive argument on behalf of one party in the absence of the other; or, as I prefer to put it, the court will not imply a term permitting him to do so; and there is also ample authority that where evidence or argument is so received it is immaterial whether it in fact affected the arbitrator’s decision. The rule that an arbitrator must not receive evidence or argument in the absence of one of the parties, whether it be regarded as ‘misconduct’ or as a term to be implied in the arbitration agreement, applies even to evidence or argument given, not on behalf of either of the parties, but by a disinterested stranger; see *Royal Commission on Sugar Supply v. Kwik-Hoo-Tong Trading Society* (1922), 38 T.L.R. 684.” D/-10-2-1958: London Export Corporation, Ltd. v. Jubilee Coffee Roasting Co. Ltd., (1958) 1 All E.R. 494 (499) (Eng.) =1 RLR 2.

Anno: AIR Man. Arbitration Act (10 of 1940) S 30 N. 8: AIR Com. Const. of India Art, 226 N. 59.

S. R. I.

* BERAR REGULATION OF AGRICULTURAL LEASES ACT, SEC. 9(1) AND S. 9(2) — TELEGRAPHIC NOTICE —

Notice sent telegraphically by the guardian

of the minor satisfying the requirements of Sec. 9(1) and Sec. 9(2) is a valid notice in writing. Telegraphic notice is presumed to have been signed by the sender. A second notice given under different conditions is not invalid merely because the first notice is invalid — (Evidence Act (1 of 1872), Sec. 114).

"THE NOTICE in question is certainly a notice in writing though sent telegraphically and, it fulfills all the requirements of a valid notice under Section 9(1) and (2). The telegraphic notice must be presumed to have been signed by the guardian of the minor appellant."

"The second notice given in 1954 in entirely different circumstances was not invalid merely because the previous notice given in 1952 was held to be invalid."—Rev. A. No. 296/51-B of 1956: D/- 26-11-1958: Vithal Baba v. Appa Shivling, (1959) N. L. J. 26 (26, 30) (Bom.). =1 R L R 3.

Anno: AIR Com. Evidence Act Sec. 114 N. 44 S.R.I.

BERAR REGULATION OF AGRICULTURAL LEASES ACT, S. 9(6) — CULTIVATION, WHAT CONSTITUTES —

The word "landholder" means the original lessor and not the transferee — The sub-section corresponds to Sec. 37 of the Bombay Tenancy and Agricultural Lands Act, except for difference in period — (Bombay Tenancy and Agricultural Lands Act, S. 37) — (Words and phrases — "Landholder")—

"THE PROVISIONS of sub-section (6) of section 9 of the Berar Act are in *pari materia* with those of section 37 of the Bombay Tenancy and Agricultural Lands Act, except for difference in the period prescribed."

"The cultivation carried on by the purchaser from the landholder cannot be construed as cultivation by the 'landholder' within the meaning of sub-section (6) of section 9 of the Berar Regulation of Agricultural Leases Act, especially in view of the fact that the expression 'landholder' is qualified by the words 'if on re-entering upon any land after termination of the lease of a protected lessee in accordance with this section' which clearly shows that the expression 'landholder' has a reference to the person who has terminated the lease under sub-section (6) of section 9 and who has re-entered upon the land after such termination. Rev. A. Nos. 90 and 95/51-V of 1958: D/- 7-11-1958: Wasudeo Vithoba Patil v. Dongarchand Motilal (1959) N.L.J. 22 (25 & 26) (Bom.). =1 R. L. R. 4. S.R.I.

BERAR REGULATION OF AGRICULTURAL LEASES ACT, SEC. 9(6) — PREMATURE APPLICATION —

Application by lessee filed before completion of two years from the date the landholder takes possession is not premature and the cause of action arises as soon as the land is transferred and the transferee is put in possession — (Civil Procedure Code (Act 5 of 1908), S. 20(c)) — (Limitation Act (9 of 1908), S. 9).

"THE APPLICATION filed by the appellant (lessee) was (not) premature as it was filed before the completion of two years from the date

the landholder took possession of the field. Since the original landholder actually sold the field to respondent No. 2 on 6-2-1957, it was obvious that he had ceased to cultivate the land personally for the prescribed period of two years and thus committed a breach of sub-section (6) of section 9 of the Act. There was, therefore, a cause of action for the application filed by the appellant as soon as the field was sold by the landholder and the transferee put in possession."—Rev. A. Nos. 90 and 95/51-V of 1958: D/- 7-11-1958: Wasudeo Vithoba Patil v. Dongarchand Motilal, (1959) N.L.J. 22 (24) (Bom.). =1 R. L. R. 5.

Anno: AIR Com. Civil Procedure Code S. 20 N. 14. Limitation Act S. 9. N. 7. S.R.I.

* CIVIL PROCEDURE CODE (5 OF 1908). SEC. 82 & O. 27, R. 8 — GOVT. DEFENDING OFFICER BECOMES PARTY—(Pakistan Case)—

The effect of Sec. 82 read with O. 27, R. 8, is that a decree against the Government and a decree against a public officer in his official capacity are placed on the same footing and where the Government undertakes to defend a public officer in a suit in respect of an act done by him in his official capacity, the Government virtually becomes a party to the decree that may be passed in such suit and execution has to be against the Government.

"A DECREE against the Government and a decree against a public officer in his official capacity is placed on the same footing by virtue of section 82 (of the Code of Civil Procedure). Just as a decree against the Government is not to be executed till the case is reported to the Government, similarly a decree against a public officer in his official capacity cannot be so executed. Had the matter stopped here, there may still have been room for doubt as to the effect of a suit against a public officer in his public capacity, but rule 8 of O. 27 is decisive. According to it if the Government Pleader does not appear, the suit is to be regarded as one between private parties, which means that if he does appear it is not a suit against the public officer in his personal capacity but the Government virtually becomes a defendant. This inference receives strong support from the fact that in a suit against a public officer a note has to be made in the register of suits if the Government Pleader appears and defends the suit.

Unless the intention was that, in such a case, the Government, for all intents and purposes, becomes a party to the suit, there is no reason why an entry should be made in the register as to the appearance of the Government Pleader on behalf of the defendant. Considering all these matters it appears to me that in a case where the Government undertakes to defend a public officer in respect of an act done by him in his official capacity, the Government is virtually a party to the decree and execution has to be against the Government." — Execution First Appeal No. 2 of 1958: D/- 10-2-1958: The Registrar, Co-operative Societies, West Pakistan, Lahore v. The Montgomery Flour and General Mills, Ltd., Lahore. (1958) 10 P.L.D. 366 (369) (Lah.). =1 R.L.R. 6.

Anno: A.I.R. Com. Civil Procedure Code Sec. 82 N.1 & O. 27 R.8 N.1. S.R.I.

*** CIVIL PROCEDURE CODE (ACT 5 OF 1908),
SEC. 110 — QUESTION OF LAW AND FACT —
(Privy Council case from Jamaica) —**

A new point involving questions of fact in addition to questions of law will not be entertained by the Privy Council (Supreme Court). It will be presumed that questions raised for the first time in Supreme Court were considered by the party raising it for the purposes of proceedings in the lower courts — (Evidence Act (1 of 1872), Secs. 2 & 114) — (Civil Procedure Code (Act 5 of 1908), Sec. 100).

"IT MUST be presumed that the question whether the tractors and trailers were 'motor vehicles' within the meaning of the statute had been considered by the respondents and their advisers for the purposes of the proceedings in Jamaica (from where the case has come up). It was not raised in the Courts there, possibly for good reason. It cannot be entertained on this appeal as it involves questions of fact in addition to questions of law." — Privy Council Appl. No. 14 of 1957: D/- 15-12-1958: Kingston Wharves Ltd. v. Reynolds Jamaica Mines Ltd. (1959) 11 P.L.D. 62 (66) (Jamaica P.C.). =1 R.L.R. 7.

Anno: A.I.R. Com. Civil Procedure Code, S. 110 N. 17; S. 100 Nn 28 and 55, C.J.I. Evidence Act S. 114 N. 150.
S.R. 1.

*** CIVIL P. C. (5 OF 1908), S. 135 (2) — PRIVILEGE IS OF COURT NOT OF PARTY — (English Case) —**

The privilege from arrest while a person is in court in connection with some business is a privilege belonging to the court and not to the person concerned — This is an inherent power belonging to the court to see that justice is done and people properly in court are not interfered with by being arrested and thereby prevented from assisting the court — (Civil Procedure Code (Act 5 of 1908), S. 151) — (Criminal P. C. (5 of 1898) S. 561A) — Cameron v. Lightfoot (1778) 2 Wm. Bl. 1190, followed.

"IT IS a misconception to talk about a litigant or a solicitor or a witness having immunity from arrest while within the precincts of the court. The truth is that the privilege, if privilege there be, is a privilege of the court to be sure that justice is done in court, and for that purpose to prevent anybody properly before the court from being arrested. That seems perfectly clear if one looks at one or two of the authorities. If one goes back to 1778, it will be seen in Cameron v. Lightfoot ((1778) 2 Wm. Bl. 1190), that this matter was fully dealt with, and De Grey, C.J., in that case said this (at p. 1192):

"The question therefore is, whether the privilege of the King's Court, extended to suitors redeundo, so vitiates an arrest, or suspends the operation of the writ, that the taking a man thereon becomes an act of trespass to the party taken. The ancient way of availing oneself of the privilege of the courts was by suing out a writ of privilege for suitors, jurors, and witnesses. But this privilege is not considered as the privilege of the person attending the court, but of the court which he attends."

There the matter is being dealt with, not as a privilege of the litigant but as something which the court has power to do in order that there should be a proper administration of justice."

"This so-called privilege from arrest is a power which every court has inherently to see that justice is done in the court, and for that purpose that people properly in the court are not interfered with by being arrested and prevented from assisting the court and carrying on their business in the court. In so far as it is said to be a privilege of the persons attending the court, the privilege is no more than this, that they are entitled to rely on the judge of that court to see that justice is not interfered with by their being arrested."—D/- 16-12-1958: Re Hunt: (1958) 1 All E.R. 73 (74 & 76). =1 R.L.R. 8.

Anno: AIR Com. Civil P. C. S. 135 N. 1 & 4 & S. 151 N 1 & 4; Criminal P. C. S. 561A N. 1.
V.K.

*** COMPANIES ACT (1 OF 1956), SEC. 192 —
RESOLUTION EFFECTIVE UNTIL REVOKED —
(Australian High Court case) —**

Extraordinary resolution authorising the directors to sell the company's property did not prescribe any time limit for effecting the sale — Resolution had been registered under S. 192 — Held by Webb & Kitto JJ. (Dixon C.J. contra), that it was operative until it was revoked — (Evidence Act (1 of 1872) See 114).

PER WEBB, J.: "The resolution of 2th July, 1950, was duly registered in the office of the Registrar of Companies as required by the (Australian) Companies Act, and I think it must be taken to have been operative until it was revoked. The intending purchaser could, I think, safely have relied on the resolution as a consent to the sale. It would be contrary to the purpose of registration of the resolution that a purchaser should act upon it at his peril, while it was held out by the company as operative by leaving it unrevoked. The shareholders alone are in control of the situation that arises from registration of the resolution. It might perhaps be different if the resolution had fixed a price and there was evidence of a change in the meantime warranting a much higher price."

"A resolution of consent to the sale of Heindorff House might be limited in terms either to a specified period or to the continuance of a specified situation. But if it expresses consent to a sale without limit of time, and thus indicates rather an opinion that the time has passed for treating the ownership of Heindorff House as important to the members than that the existing circumstances are opportune for sale at a good price and on satisfactory terms, it would be contrary to sound principles of construction to import a time limit which only speculative considerations could suggest."

Per Dixon, C.J., disagreeing on this point with Kitto J.: "I prefer the view that (the) operation (of) the extraordinary resolution passed on 25th July 1950 is limited to a reasonable time, in accordance with the general rule implying an intention that an act shall be done within a reasonable time, when no time is specified by the instrument contemplating the doing of the act. Cf. Reid v. Moreland Timber Co. Pty. Ltd. (1946) 73 C.L.R. 1, at p. 13. and the authorities there cited. I am not satisfied that the purpose of art. 107 (13) (of the Articles of Association) or the nature of the extraordinary resolution supplies any indications to the contrary which would exclude the implication." — D/

29-11-1955: *Palmos v. Wilson*: (1957-58) 99 C.L.R. 94 (96 & 99 & 108) (Aus.). = 1 R. L. R. 9.

Anno: CJI Evidence Act Sec. 114 N. 23. S. R. I.

*** COMPANIES ACT (1 OF 1956), S. 227 — AUDITOR BOUND TO USE REASONABLE CARE AND SKILL — (New Zealand Supreme Court case) —**

The purpose of engaging an auditor is to obtain a report on the accounts of the company to the shareholders — In making the report he is never bound to exercise more than reasonable care and skill — What is reasonable care is a question of fact. Where there is cause for suspicion more care is necessary though the test is still that of reasonable care and skill — (Civil Procedure Code (Act 5 of 1908), S. 100) — (Companies Act (1913), S. 145) — Auditor — Duties of) — *London and General Bank* (No. 2) (1895), 2 Ch. 673 (683); *Re Kingston Cotton Mill Co. (No. 2)* (1896) 2 Ch. 279 (288); *Fomento (Sterling Area) Ltd. v. Selsdon Fountain Pen Co.* (1958) 1 All E.R. 11 (23), followed.

“FROM A consideration of the statute (New Zealand Companies Act) and the observations of the Courts it is possible to adduce at least five important principles applicable to the (duties of auditors).

1. That the primary purpose in the engagement of an auditor is to obtain a report to the shareholders on the accounts of the company and the primary duty of the auditor is to make that report.

2. That in carrying out this primary duty an auditor has to exercise reasonable care and skill in making inquiries and investigations which may include investigations and reports upon the conduct of employees of the company.

3. That an auditor is never bound to exercise more than reasonable care and skill.

4. That what is reasonable care and skill in any particular case must depend upon the circumstances of that case.

5. That where there is cause for suspicion more care is necessary but the test is still that of reasonable care and skill in the light of all the circumstances including those circumstances which arouse suspicion.” — D/- 25-3-1958: *Nelson Guarantee Corporation Ltd. v. Hodgson*, (1958) N.Z.L.R. 609 (612 & 613) (N.Z.S.C.). = 1 R.L.R. 10. Anno: AIR Manual, Companies Act 1913 Sec. 145 V. K.

*** COMPANIES ACT (1 OF 1956), SECS. 292 & 293 — CONSENT TO SALE IS NOT CONFINED TO PARTICULAR SALE — (Australian High Court Case) —**

By the articles of association of a company, the directors were empowered to sell a house provided they first obtained the consent of its members expressed by extraordinary resolution — They were “authorised to sell” the property by an extraordinary resolution — On the question whether this general consent was sufficient consent for the directors effecting a sale: — Held by Dixon C.J., Webb, Kitto and Taylor, JJ., (Fullagar J. dissenting) that the “consent” referred to in the articles of association was “to sale in principle,” and “not to any particular sale” — (Deed — Articles of association of a company — Con-

struction of) — (Partnership Act (9 of 1932) S. 20) — (Companies Act (1913), S. 86) —

PER WEBB, J.: “By the memorandum of association of the company it is provided, inter alia, that 107. ‘Without prejudice to the general powers it is hereby expressly declared that the board’ (i.e. the board of directors) ‘shall have the following powers.... (13) To sell as they shall think fit and on such terms as they shall think proper all or any portion of the company’s property plant or other assets; Provided however that the freehold property (i.e. Heindorff House) of the company described in cl. 3 of the company’s memorandum shall not be sold without first obtaining the consent of its members expressed by extraordinary resolution.’

On 25th July 1950, the shareholders passed the following extraordinary resolution — ‘That, pursuant to art. 107 (13) of the articles of association of the company, the directors be and are hereby authorised to sell the company’s freehold property described in cl. 3 of the company’s memorandum of association.’

“The natural meaning of the words in cl. (13) is that the consent (is) to be to the mere selling and not necessarily to the terms of the sale.”

Per Dixon C.J.: “What the proviso (to art. 107(13) of the articles of association of H. B. Co., Ltd.) says is that the property shall not be sold without first obtaining the consent of the members expressed by extraordinary resolution. Is this condition satisfied by an extraordinary resolution which states no more than that ‘the directors be and are hereby authorised to sell’ that property? Must the precise sale be identified or the terms of a sale approved or consented to? Must the price be named or delimited? Or is it enough to give a general consent expressed as an authority to sell? In my opinion it is enough to do so. I think that the purpose of the proviso was to preserve, subject to the members’ decision, the company’s property in the building, because the acquisition and management formed so to speak the substratum of the company. No doubt the proviso enabled the members to retain a complete control of the disposition of the property. The consent might have been given only to a sale on particular terms or to a proposed transaction identified in all its details. But if the members were prepared to give a general consent expressed in an extraordinary resolution and otherwise to leave the sale to the directors, I do not see why they should not do so. Neither the language nor the general purpose of the proviso appears to me to require an interpretation which entrusts exclusively to the members of the company any greater responsibility in the sale of H. House and I do not think that such a proviso should receive a narrow construction.”

Per Kitto J. (Taylor J. agreeing): “The natural reference of the expression used is to sale considered as a method of disposal, and not to a particular sale. The conclusion must be that it is sale in general which is the subject of the proviso, and that accordingly the modifying words ‘without first obtaining the consent of its members’ refer only to a consent to the radical alteration in the company’s affairs which a sale of Heindorff House at any price and on any terms would necessarily bring about — a consent to sale in principle, and not a consent to any particular sale.”

Per Fullagar J., dissenting: "At the time when (the resolution) was passed no particular transaction was in contemplation or was submitted to the meeting. It is not possible, therefore, to place any limited construction on the resolution, and it must be taken to be what it purports to be, viz., a general authority to the directors to sell the property if and when a satisfactory sale could be effected."

On the one construction clause 107(13) means that a general authority to sell the property at any time in the future may be given by extraordinary resolution to the directors. If this is the correct construction, the directors had authority to sell to the bank and to cause the common seal of the company to be affixed to the contract. On the other construction, the directors have no authority to effect any sale of the property except a particular sale to which a specific consent of the members is given by means of an extraordinary resolution. If this is the correct construction, the directors had no authority to sell to the bank or to cause the common seal of the company to be affixed to the contract, and the appellant plaintiffs are entitled to an injunction.

The latter construction is, in my opinion, the correct construction. The vital word is the word 'consent'. That word does not convey to my mind the notion of a general conferring of authority. It suggests rather the approval of a particular proposal submitted for approval — an ad hoc acceptance of something definite and concrete."

"And the critical word here does not seem to me to comprehend the giving of a general authority to sell. I begin by thinking that an ad hoc approval must at least be included in what is contemplated by art. 107 (13). That is, indeed, the primary meaning of the word 'consent'. It could not, to my mind, be contended that a resolution in terms consenting to a sale to X for £100,000 was outside the scope of that provision. Then I consider that a general authority to sell is something much wider in scope and effect than a consent to, or approval of, a particular sale. I feel an insuperable difficulty in saying that a thing so different in nature, and so much wider in scope is comprehended by a word the primary meaning of which is plain. The point may be put in another way by saying that 'general authority' is the wider term, and 'ad hoc approval' is the narrower term. 'General authority' may include 'ad hoc approval', but 'ad hoc approval' cannot include 'general authority'.

There is another consideration which carries weight to my mind. A general authority to sell has the instant effect of making art. 107(13) a dead letter. To all intents and purposes it is deleted from the articles by an extraordinary resolution. An ad hoc consent, on the other hand, is a factum upon which art. 107(13) operates, but it leaves art. 107(13) with the same force as before, and, if the particular transaction approved falls through, any new proposal for sale will be subject to art. 107(13). It seems to me much more likely that the extraordinary resolution was intended to have the more limited effect." — D/- 29-11-1955: *Palmos v. Wilson* (1957-58) 99 C.L.R. 94 (96 to 99, 101 to 103 & 108): (Aus.). 1 R L R 11.

Anno: AIR Manual Companies Act (1913) S. 86 N. 1 & S. 17 N 1; AIR Manual — Partnership Act Sec. 20 N 1. S.R.I.

OPPRESSION OF MINORITY MUST CONTINUE TILL DATE OF APPLICATION — (English Case *COMPANIES ACT (1 OF 1956), S. 397 — — English Companies Act (1948), S. 210) —

Per Jenkins, L.J. — The oppression can be complained of only by a member and it should be oppression of some part of the members as such — This section does not apply to all cases in which it will be "just and equitable" to wind up a company; there must be in addition oppression which continues till the date of application — It covers oppression by any one conducting the affairs of the company whether *de facto* or *de jure*. — The word "oppressive" must be given its ordinary meaning — (Companies Act (1 of 1956), Ss. 237 & 399) — (Words & Phrases — "Oppressive").

"THE PERSON permitted to apply to the court under section 210 (of the English Companies Act (1948) corresponding to sec. 397 of the Indian Companies Act (1956)) is 'any member of the company,' and he must show 'that the affairs of the company are being conducted in a manner oppressive to some part of the members (including himself).' This indicates that the oppression complained of must be complained of by a member of the company and must be oppression of some part of the members (including himself) in their or his capacity as a member or members of the company as such. Secondly, it is to be noted that the section does not purport to apply to every case in which the facts would justify the making of a winding-up order under the 'just and equitable' rule, but only to those cases of that character which have in them the requisite element of oppression. Thirdly, the phrase 'the affairs of the company are being conducted' suggests *prima facie* a continuing process and is wide enough to cover oppression by any one who is taking part in the conduct of the affairs of the company whether *de facto* or *de jure*. Fourthly, the section gives no guidance as to the meaning of the word 'oppressive', although it does indicate that the victim or victims of the oppressive conduct must be a member or members of the company as such. *Prima facie*, therefore, the word 'oppressive' must be given its ordinary sense and the question must be whether in that sense the conduct complained of is oppressive to a member or members as such." — D/- 17-11-1958: *In re H. R. Harmer, Ltd.*, (1959) 29 Com. Cas. 305(319) = (1959) 1 W.L.R. 62 (Eng.) = 1 R L R 12 V.K.

COMPANIES ACT (1 OF 1956), S. 433 (e) — COMMERCIAL INSOLVENCY, MEANING OF —

In winding up a Company under this sub-section the question to be considered by the Court is whether in a commercial sense the company is solvent and not whether the assets, when realised, will exceed its liabilities — A company is commercially insolvent if its current assets cannot meet its current liabilities and there is no chance of making profit or the business being carried on — (Companies Act (1913), S. 162) — (Words and phrases — "Commercially Insolvent") — *Vanaspathi Industries Ltd. v. Prabhu Dayal Hari Ram*, A.I.R. 1950 E. P. 142, followed

"WHEN THE Court is called upon to wind up a company under clause (e) of S. 433, what has to be considered is not whether the company, if it converted all its assets into cash, would be able

to discharge its debts, but whether in commercial sense the company is solvent."

"It was observed in *In the matter of Punjab Flying Club Ltd.*, AIR 1933 Lah. 301 that what the Court has to see is whether the company is commercially insolvent, that is, whether it is unable to meet its current demands although the assets when realised may exceed its liabilities."

"Reliance on this point was placed on *Vanaspati Industries Ltd. v. Firm Prabhu Dayal Hari Ram*, AIR 1950, E.P. 142. (There) it was held that 'Commercially insolvent' means that the assets of the company are such, and its existing liabilities are such, as to make it reasonably certain as to make the Court feel satisfied that the existing and probable assets would be insufficient to meet the existing liabilities, and it was pointed out that a company heavily indebted to various creditors and all its assets being in mortgage or in pledge, and there being no possible chance of a profit being made or its business to be carried out, the company must be found to be 'commercially insolvent'."

In the present case the position is not far different." Civ. Misc. Case No. 10 of 1958: D/- 9-1-1959: Tripura Administration v. Tripura State Bank Ltd.; AIR 1959 Tripura 41 (44 & 45).

= 1 R L R 13.

Anno: AIR Manual-Companies Act (1913) S. 162 N. 6.
V.K.

*** CONSTITUTION OF INDIA (1950), ART. 14 — RULES FOR TESTING DISCRIMINATION — (U. S. Supreme Court Case) —**

(a) Equal protection clause avoids only what is done by the State arbitrarily without any reasonable basis — (b) A classification does not offend the clause if it has some reasonable basis, though it is not made with mathematical nicety or in practice it results in some inequality — (c) When the classification in a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of the state of facts at the time the law was enacted must be assumed — (d) The burden of proving the unreasonableness and arbitrariness of a classification lies on him who assails it — (e) Careful consideration in discrimination of an unusual character is warranted to determine whether they are obnoxious to the equal protection clause — (Evidence Act (1 of 1872), Secs. 101 to 104 & 114) — (Constitution of India (1950) Preamble) — (Interpretation of Statutes).

"THE RULES for testing a discrimination have been summarized as follows:

1. The equal protection clause does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must

carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.' *Lindsley v. Natural Carbonic Gas Co.* 220 US 61, 78, 79, 55 L ed 369, 377, 31 S Ct 337. Ann Cas 1912C 160.

To these rules we add the caution that 'Discrimination of an unusual character especially suggests careful consideration to determine whether they are obnoxious to the constitutional provision.' *Louisville Gas & E. Co. v. Coleman*, 277 US 32, (37, 38) 72 L ed 770, 774-48 S Ct 423; *Hartford S.V.I. Ins. Co. v. Harrison*, 301 US 459 (462) 81 L ed 1223, (1226) 57 S Ct 838." Fol. — D/- 24-6-1957: *Lloyd Morey v. George W. Doud*: (1956) 1 L ed 2d 1485 (1490) (U.S.) = 1 R L R 14.

Anno: AIR Com. Constitution of India (1950) Art. 14 N. 3 & Preamble N. 6. C.J.I. Evidence Act Secs. 101 to 104 N. 2 & S. 114 N 150; A.I.R. Com. Civil P.C. Preamble N. 7. S.R.I.

*** CONSTITUTION OF INDIA (1950), Arts. 19(1) (f) & 226 — ADMINISTRATIVE ORDER AFFECTING FUNDAMENTAL RIGHT — (Pakistan Case—Late Constitution of Pakistan (1956), Arts. 11, 170) —**

The powers conferred by Art. 226 are wide enough and can be invoked even where an order is not of a judicial or quasi-judicial nature but has been passed by an authority in an administrative capacity and the fact that the authority was acting in an administrative capacity would not be enough to oust the jurisdiction of the High Court especially when the fundamental right to acquire and dispose of property is involved — (Constitution of India (1950), Art. 32).

"THE POWERS conferred by Article 170 of our (Pakistan) Constitution (corresponding to Art. 226 of Constitution of India) can be invoked even where (an) order is not of a judicial or a quasi-judicial nature and has been passed by an authority in an administrative capacity. The decision (in such cases) would depend upon the determination of the question as to whether the discretion which vested in the (authority concerned) was exercised justly, fairly, and reasonably, on a correct interpretation of and in accordance with law and without any discrimination. The fact that the authority, which passed (an) order, was acting in an administrative capacity would not be enough to oust the jurisdiction of (the High) Court, especially when the question of exercise of the fundamental right to acquire and dispose of property, guaranteed by Article 11 of the late (Pakistan) Constitution, (Art. 19 (1) (f) of the Constitution of India) is involved." — *Writ Petn. No. 59 of 1957: D/- 16-1-1958: Frontier Textile Mills v. The Textile Commissioner, Government of Pakistan*, (1958) 10 P.L.D. 345 (358) (Lah.) = 1 R L R 15.

Anno: AIR Com. Constitution of India (1950) Art. 226 Nn. 26 & 31. S.R.I.

*** CONSTITUTION OF INDIA (1950), ART. 133 (1) (a) — EXTENT OF INQUIRY INTO VALUE OF PROPERTY IN DISPUTE — (Australian High Court Case — Australian Commonwealth Judiciary Act (1903-1955), S. 35 (1) (a) and (2)) —**

The inquiry is only to find out whether the judgment to be appealed from deprives the claimant of his estate or interest to the extent of the requisite value under Art. 133 (1) (a) — It cannot extend

further to ascertain whether the appellant himself is benefited so that his economic situation has not suffered to the extent of Rs. 20,000 — (Civil Procedure Code (5 of 1908), Sec. 110).

'Once you get the denial, by a judgment of a claim to a title to an estate or interest in land or an interest in personality and the estate or interest of which the judgment deprives the claimant is itself of the requisite value you do not inquire further. For it means that he has been prejudiced in proprietary rights which he claims of the prescribed value. You do not inquire further to ascertain whether the liability or liabilities which would sufficiently counterpoise the prejudice economically to enable one to say that on balance his economic situation has not suffered to the extent of £1,500 (in India it is Rs. 20,000 by virtue of Art. 133(1) (a) of the Constitution). This falls within what O'Connor J., said in *Amos v. Fraser* (1906) 4 C.L.R. 78 (87 & 88) in the passage quoted in *Certel v. Crocker* (1947) 75 C.L.R. 261(272) for the formulation of principle. O'Connor J. said 'the measure of value is to be the value of the appellant's right in the property'; that is the right claimed by him but denied by the judgment.' D/- 29-5-1957: *Ballas v. Theophilos*: (1957) 97 C.L.R. 186 (195), (Aus.)

= 1 R L R 16.

Anno: AIR Com. Constitution of India (1950) Art. 133 N. 12 & 14; Civil P.C. Sec. 110, N. 11. S.R.I.

CONSTITUTION OF INDIA (1950), ART. 226 — EXECUTIVE OR ADMINISTRATIVE DIRECTIONS —

Government order containing merely executive or administrative directions confers no legal enforceable rights on any person—They impose no legal obligations on subordinate authorities for whose guidance they are issued — Directions issued under S. 43A of Motor Vehicles Act by Government are not required to be published or to be made known to persons applying for permits — They have not the force of statutory rule of law — Their breach, even if patent, justifies no issue of a writ — (Motor Vehicles Act (4 of 1939) S. 43-A) — (Order under Madras Government Order No. 1298 dated 28-4-1956).

"IT IS not and cannot be seriously disputed that if the Government Order obtains merely executive or administrative directions, their breach, even if patent, would not justify the issue of a writ of certiorari. The executive orders properly so-called do not confer any legal enforceable rights on any person and impose no legal obligations on the subordinate authorities for whose guidance they are issued; that is not to say that the directions are not valid and should not be followed by the said authorities; the said authorities are undoubtedly expected to follow the said directions and their breach may expose them to disciplinary or other appropriate action. The direction itself, though valid, and in a sense binding on the subordinate authorities is not a statutory rule and has not the force of law; and so its mis-construction cannot be said to be an error of law. The distinction between statutory rules having the force of law and administrative or executive directions has been recently emphasised in the decision of this Court in *Nagendra Nath Bora v. Commr. of Hills Division and Appeals Assam*, AIR 1958 SC 398 at pp. 412, 413."

"The directions issued under Section 43A (Motor Vehicles Act, 1939) are not required to be published and may not even be known to the several persons applying for permits. They have been issued not for the information of the applicants, but for the information and guidance of the authorities; and that is not surprising because the public-at-large would be entitled to know these directions only if they confer any legal enforceable rights on the applicants for permits. Therefore, reading the (Madras) Government Order (1298 dated 28-4-1956) as a whole, we feel no difficulty in agreeing with the view of the High Court that by this Order the State Government has issued executive instructions for the guidance of the transport authorities; and that the said instructions are not in the nature of statutory rules having the force of law." Civ. Appis. Nos. 2 & 20 of 1959: D/- 18-2-1959: *R. Abdulla Rowther v. The State Transport Appellate Tribunal, Madras*: with *S. Gopalan Nair v. K. Damodaran Nair*: A.I.R. (1959) S.C. 896 (899 & 901) (Mad.) = 1 R L R 17.

Anno: AIR Com. Constitution of India (1950) Art. 226: Nn. 17(c)-27-31-76-165 & 183. S.R.I.

* CONTRACT ACT (9 OF 1872), S. 73 — MEASURE OF DAMAGES, BLACK MARKET—(Privy Council case from New Zealand) —

Where a purchaser of a car covenanted with the dealer not to resell it in the market without first offering it to the dealer at a fixed price it was held in a suit for damages for breach of the covenant that the dealer was entitled in law to be put into as good a position as if the covenant had been fulfilled and that the damages should be assessed on the basis that the dealer was entitled to go into the market, though it was a surreptitious market, to buy a similar car — The measure of damages was held to be the difference between the market price and the price fixed under the covenant though the actual loss to the dealer by the breach was much less.

"THE APPELLANT bought a motor car from (the) dealers the respondents, and at the same time he entered into a special covenant with them in these terms:

"1. The covenantor will not...during the space of two years after the delivery of the said vehicle to the covenantor deal with the said vehicle in any manner whereby any other person...may become entitled to the possession or use of the said vehicle other than for the private purposes of the covenantor...or whereby the property in the said vehicle is or may be or become liable to be transferred to or vested in any other person...without first making an offer to the dealer to resell the said vehicle...at the original sale price thereof...less an allowance by way of depreciation calculated at the rate of ten pounds (£10) for every complete one thousand miles run by the said vehicle since the date of delivery to the covenantor but so that such allowance shall not be less than fifty pounds (£50) or more than one hundred and fifty pounds (£150)...."

"The price paid by the appellant was £1,207; but in breach of the covenant the appellant, three months later, sold the car for £1,700. The respondents thereupon sued him for damages for breach of covenant. They sought to recover damages assessed on the following basis: the appellant, instead of selling the car for £1,700, ought to have offered to resell it to the respondents

for £1,157 (being £1,207 less £50 depreciation); and they claimed £543 (being the £1,700 he got less the £1,157 at which he ought to have offered it to them). The appellant pleaded that the damages recoverable were not £543 but only £50."

"It is said that the damages suffered by the dealers only amounted to £50. If the appellant had performed his covenant and offered to resell the car to the respondents for £1,157 (£1,207 less £50 depreciation) the respondents, under the Board of Trade conditions, could only have resold it for £1,207. So their loss, it is argued, is only £50. The result of this argument, if right, is that the appellant would benefit to the extent of nearly £500 by breaking his covenant. He made a profit on resale of £543 (£1,700 less £1,157) and would only have to pay £50 damages. In the opinion of their Lordships, the argument is not well-founded. It does not lie in the appellant's mouth to say that, if he had fulfilled his covenant, the respondents could only resell the car for £1,207. That was a matter peculiar to the respondents which was no concern of his. The respondents were entitled in law to be put into as good a position as if he had fulfilled his covenant; and to do this they were entitled to go into the market and buy a similar car at the market price: see *Williams Bros. v. E. & T. Agius, Ltd.* (1914) A. C. 510 at p. 531, per Lord Moulton). This rule applies even though the only available market is a surreptitious market which is fed by persons who have broken their covenants; see *British Motor Trade Assocn. v. Gilbert* (1951) 2 All E. R. 641. The market price of this car in that market was £1,700. At any rate, the appellant can hardly deny that that was its market price, since that is the sum for which he sold it; and the damages should be the difference between that market price of £1,700 and the contract price of £1,157." — D/- 20-10-1958: *Mount v. Betts Motors, Ltd.* (1958) 3 All E. R. 402 (403 & 404 & 405) (N. Z. P.C.) = 1 R L R 18.

Anno: AIR Com. Contract Act S. 73 N. 22.
N. 22.
V. K.

*** CRIMINAL PROCEDURE CODE (ACT 5 OF 1898), SEC. 367 — PERJURED EVIDENCE — (U.S.A. Sup. Court Case) —**

Where the prosecution questions the truthfulness of its own material witness on the basis of false evidence given by the witness in other proceedings after the trial, the trial of all the accused is tainted by such evidence where the trial judge believed his evidence as material against all the accused.

"IT IS the (prosecution) which now questions the credibility of its own witness (Mazzei) because in other proceedings in the same field of activity he gave certain testimony — some parts of it positively established as untrue and other parts of it believed . . . to be untrue. The (prosecution) conceded that without Mazzei's testimony in this case the conviction of two of the petitioners cannot stand, but he argued that as to the other three Mazzei's evidence may not have had a substantial effect. But the trial judge believed Mazzei's testimony was material against all the accused. . . . This being so, it cannot be determined conclusively by any court that his testimony was insignificant in the general case against all the (accused). Thus it has tainted the trial as to all (the accused)." D/- 10-10-1956: *Stephen Mesarosh et al., v. United States of America*; 1 L ed 2d 1(7) = 1 R L R 19.

Anno: AIR Com. Criminal P.C. Sec. 367 N. 6.
S.R.I.

CRIMINAL PROCEDURE CODE (ACT 5 of 1898), SEC. 423 — REMAND IN TRIAL BY JURY — (U.S.A. Sup. Court Case) —

The appellants appealed against their conviction in a trial by jury — The prosecution prayed for a remand of the case on the ground that an important prosecution witness had given false evidence before other tribunals subsequent to this trial and that his evidence was of doubtful credibility: **Held:**—As it is the jury who can determine the sustainability of the conviction on the facts and not the judge, remand of the case is not justified. The court set aside the conviction and ordered new trial—

OPINIONS OF the Court:—"In this appeal by the accused-petitioners, the prosecution) moved to remand the case to the trial court for further proceedings because of untruthful testimony given before other tribunals by Mazzei, a (prosecution) witness in this case. This counter-motion of petitioners asked for a new trial."

"In (this) criminal case, the original finder of fact was a jury. The (Sessions) judge is not the proper agency to determine that there was sufficient evidence at the trial, other than that given by Mazzei, to sustain a conviction of any of the petitioners. Only the jury can determine what it would do on a different body of evidence, and the jury can no longer act in this case. (Also the trial of all the accused has been tainted by the perjured evidence of this material witness). For (these) reasons if on a remand the (Sessions) Court should rule that the verdict against some of the petitioners could stand, we would be obliged, on a subsequent appeal, to reverse and, at that late date, direct that a new trial be granted. This case was instituted four and one-half years ago; petitioners have been proceeding in forma pauperis. The interests of justice could not be served by a remand that must prove futile."

"The Government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them. The interests of justice call for a reversal of the judgments below with direction to grant the petitioners a new trial."

Per Mr. Justice Harlan dissenting—(Mr. Justice Frankfurter and Mr. Justice Burton agreeing with this opinion): "As a preliminary to a new trial it must first be determined whether any of Mazzei's collateral testimony (before other tribunals) now drawn in question, so reflects upon the truthfulness or credibility of his trial testimony as to warrant submission of the case to a new jury. That preliminary determination has always been recognized as the function of the trial court. *United States v. Johnson*, 327 US 106, 90 L ed 562, 66 S Ct 464; *United States v. Troche* (CA 2d NY) 213 F2d 401; *United States v. Rutkin* (CA 3d NJ) 208 F 2d 647; *Gordon v. United States* (CA 6th March) 178 F2d 896, cert den 339 US 935, 94 L ed 1353, 70 S Ct 664. . . . The (Sessions) Court was the proper forum for the kind of investigation which should have been conducted here. The Courts of Appeal are ill-equipped for such a task. We need say no more than that appellate courts have no facilities for the examination of witnesses; nor in the nature of things can they have that intimate knowledge of the evidence and 'feel' of the trial scene, which are so essen-

tial to sound judgment upon matters of such complexity and subtlety as those involved here, and which are possessed by the trial court alone..... The fact that this case has been long-drawn-out does not justify short-circuiting normal and orderly judicial procedures..... We think that the Government's motion to remand should have been granted." — D/- 10-10-1956: Stephen Mesarosh et al., v. United States of America: 1 L ed 2d 1 (3, 8, 10, 14, 15 & 16) = 1 RLR 20.

Anno: A.I.R. Com. Criminal P.C. Sec. 423, N. 23 and N. 28.
S. R. I.

*** CRIMINAL PROCEDURE CODE (ACT 5 OF 1898), Ss. 435 & 439 — DIRECT REVISION BY HIGH COURT — WHEN ENTERTAINED — (Pakistan Case) —**

Normally from a decision of a Magistrate, the Sessions Judge must be moved in revision — A revision application direct to the High Court should not ordinarily be entertained in the absence of special and exceptional grounds. But once the application is entertained the technical objection will cease to have force.

THERE IS a great preponderance of authority in favour of the existence of the practice of not entertaining a revision filed in the High Court direct, though no doubt in some cases the practice was departed from on special or exceptional grounds; and in most of these cases the High Court did not consider the objection fatal after the application had been admitted and the record called for. When an application is presented before an application Judge, he should, in accordance with the practice of the Court, refuse to entertain it if the District Magistrate or the Sessions Judge has not been previously approached unless there are very special reasons why the applicant should not have gone to the District Magistrate or the Sessions Judge in the first instance. But after the application has been entertained and the record called for, the technical objection must cease to have force. The ultimate dismissal of (the application on this preliminary ground after the case has been pending in this Court for a long time may be) highly prejudicial to the applicant. I have no doubt in my mind that, in view of the long series of rulings, the existence of such a practice is fully established and it is our duty to give effect to such a practice. Failure to observe it would cause unnecessary confusion and uncertainty in the mind of accused persons, who would not know whether they should come direct to the High Court or first go to the District Magistrate or the Sessions Judge."

"When the High Court has once issued a rule (i.e., where a revision petition has been entertained direct by the High Court) it will not be discharged on such ground only, but must be heard on the merits."

"Therefore, normally from a decision of a Magistrate, the Sessions Judge must be moved in revision and a revision application direct to the High Court is not ordinarily entertainable." Shailabala Devi v. Emperor, A.I.R. 1933 All 678 (684) (F.B.), quoted and followed — Cri Rev. Nos. 504 to 506 of 1957: D/- 7-8-1958: Shah Zillur Rahman v. The State (1959) 11 P.L.D. 192 (193) (Dacca) = 1 RLR 21.

Anno: AIR Com. Criminal Procedure Code (5 of 1898) S. 439 N. 23 and S. 435 N. 5.
V.K

*** CRIMINAL TRIAL — DUTY OF PROSECUTION — DISCRETION OF PROSECUTION TO CALL WITNESSES — EXERCISE OF — (Australian High Court Case) —**

It is at the discretion of the prosecution to call or not to call a witness — But this discretion should be exercised with due regard to traditional considerations of fairness — Case law examined — (Criminal Procedure Code (Act 5 of 1898), S. 207-A(4)).

PER FULLAGAR, J.—"There is no rule of law that a prosecutor for the Crown must call every witness who has been bound over and is available. On the contrary, the discretion of the prosecutor has been recognised in many cases, and was recently asserted in *Adel Muhammad El Dabbah v. Attorney-General for Palestine* (1944) A.C. 156 (167-169) — Any one or more of a variety of reasons may justify a prosecutor in not calling a witness who has given evidence for the Crown before the coroner or before the magistrate, and I could not wish to say anything that might unduly limit his discretion. The present case, however, seems to me to call for a reminder that the discretion should be exercised with due regard to traditional considerations of fairness. I have no doubt that the correct practice is that which is stated in *Archbold's Criminal Pleadings, Evidence and Practice*, 33rd ed (1954), pp. 515, 516. It is there said:—"Although in strictness it is not necessary for the prosecutor to call every witness whose name is on the back of the indictment, it has been usual to do so in order that the prisoner may cross-examine them." Reference is made to *R. v. Simmonds* 171 E.R. 1111; *R. v. Beezley* 172 E.R. 678; *Reg. v. Vincent* 173 E.R. 754; and *Reg. v. Barley* (1847) 2 Con. 191. In *Halsbury's Laws of England*, 3rd Ed., Vol. 10, par. 764, p. 418, the learned author of the article says: "All the witnesses whose names are on the back of the indictment should be called by the prosecution except those who were conditionally bound over and upon whom notice to attend has not been served..... Even if it is not proposed to examine a witness whose name is on the back of the indictment, counsel for the prosecution should, unless there are exceptional reasons to the contrary, place him in the witness box so that the defendant may have an opportunity of cross-examining him."

"In *Reg. v. Woodhead* 175 E.R. 216 Alderson B. announced that the judges had laid down a rule that a prosecutor is not bound to call witnesses merely because their names are on the back of the indictment. But the prosecutor, it was said, ought to have all such witnesses in court, so that they may be called for the defence, if they are wanted for that purpose. If they were called for the defence, the person calling them made them his own witnesses. This statement is, of course, quite consistent with there being cases in which a particular witness ought to be called by the prosecutor. The position was considered in a judgment delivered by Lord Roche for the Privy Council in *Seneviratne v. The King* A.I.R. 1936 P.C. 289. The appellant had been convicted of murder in the Supreme Court of Ceylon. His Lordship referred to an Indian case of *Ram Ranjan Roy v. The King* A.I.R. 1915 Cal. 545 in which it appears to have been laid down that 'all available eye-witnesses' should be called by the prosecution.' He then said (p. 300):—"Their Lordships do not desire to lay down any rules to fetter discretion in a matter such as this which

is so dependent on the particular circumstances of each case". But a little later he said:—"Witnesses essential to the unfolding of the narratives on which the prosecution is based must, of course, be called by the prosecution, whether in the result the effect of their testimony is for or against the case for the prosecution."

"In *R. v. Dora Harris* (1927) 2 K.B. 587 (590), Lord Hewart C.J., said:—

"in criminal cases the prosecution is bound to call all the material witnesses before the Court, even though they give inconsistent accounts, in order that the whole of the facts may be before the jury." In *Adel Muhammed El Dabbah v. Attorney-General for Palestine* (1944) A.C., 156 Lord Thankerton for the Privy Council, referring to this statement, said:—"In their Lordships' view the learned Chief Justice could not have intended to negative the long-established right of the prosecutor to exercise his discretion to determine who the material witnesses are". It is not, indeed, to be supposed that the Lord Chief Justice did so intend, but there could be no possible question that Sergeant Phillis was not merely a material witness but a witness of vital importance. So far as appears, the only possible object of not calling him was to place the appellant under the tactical disadvantage which resulted from inability to cross-examine him. Such tactics are permissible in civil cases, but in criminal cases, in view of what is at stake, they may sometimes accord ill with the traditional notion of the functions of a prosecutor for the Crown. It is a very relevant fact here that the witness in question was a police witness, and a senior member of the force at that." — D/- 2-7-1957: *Ziems v. The Prothonotary of the Supreme Court of New South Wales*: (1957) 97 C.L.R. 279 (293 & 294) (Aus. H.C.)

Anno: AIR Com. Criminal Procedure Code S 286 N 6.
S.R.I.

*** EASEMENTS ACT (5 OF 1882), SS. 13 & 28 — RIGHT OF WAY OF NECESSITY — WHEN GRANTED — (Ceylon Supreme Court Case) —**

A right of way of necessity cannot be claimed beyond what 'absolute necessity' requires. But 'absolute necessity' does not involve that the plaintiff should establish that the way claimed is the only means of access to a public road. If the alternative route is so difficult and inconvenient as to be practically impossible the court can grant a right of way subject to payment of compensation. A simpler test would be this: 'A right of road of necessity can be claimed no further than the actual necessity of the case demands' — (Evidence Act (1 of 1872), Ss. 101 to 103) —

PER T. S. FERNANDO J. (H. N. G. Fernando J. agreeing): "The plaintiff's action claiming a right of footway was dismissed by the learned trial judge on the sole ground that the plaintiff had failed to discharge the rather heavy onus that lay upon her to satisfy the Court that the 'absolute necessities' of the case demanded the grant of the right of way claimed. A reference to 'absolute necessity' appears in certain judgments in South African cases in respect of claims for rights of way, but 'absolute necessity' does not appear to my mind to involve in these cases a requirement that the plaintiff should establish that the way claimed is the only means of access from his land to a public road or a neighbour's road (via vicinalis). De Villiers C.J. in *London and S.A. Ex-*

ploration Co. v. Bultfontein Mining Co. (1890) 8 S.C. at 60 stated that the Court has more than once decided that a servitude of necessity cannot be claimed beyond what absolute necessity requires. The same learned judge, ten years later, in the case of *Van Schalkwijk v. Du Plessis and others* (1900) 17 S.C. at 464 said that the Court has never laid down any definite rule as to what circumstances would constitute a necessity nor was it advisable that such a rule should be laid down. He did not go so far as to hold that there can be no road of necessity over a neighbour's land unless the only possible approach to a public road is over such land. In his own words, 'there may perhaps be cases in which the alternative route would be so difficult and inconvenient as to be practically impossible, and in such cases the Court might be justified in affording relief subject to compensation and the other restrictions mentioned by Voet (8:3:4)'. Another, and to my mind, a simpler expression was used by the same learned judge in an earlier case *Peacock v. Hedges* (1876) 6 Buchanan's Cape S.C.R. at 69 where he stated that 'the authorities in the Roman-Dutch law clearly shew that a right of road of necessity can be claimed no further than the actual necessity of the case demands'. If I may say so, with great respect, this simpler and more readily understood expression appears to afford an easier test to be adopted when a Court is called upon to decide a question of the grant of a right of way of necessity." — S.C. 120 — D. C. Panadure, 2375, D/- 25th July 1957: *Rosalin Fernando v. P. L. P. Alwis* (1960) 61 N.L.R. 302 (303 & 304) (Ceylon) = 1 RLR 22A.

Ano: AIR Man. Easements Act, S. 13, N. 4; S. 28. N. 1: CJI Evidence Act, Ss. 101 to 104. N. 48. V.K.

*** EVIDENCE ACT (1 OF 1872), Ss. 17 AND 24 — CONFESSION OF ACTS OF CO-ACCUSED — NO VALUE TO PROSECUTION — (Privy Council case from British Guiana) —**

Voluntary statement made by an accused is admissible as confession — Accused can confess as to his own acts only, not as to the acts of others which he has not seen — Prosecution cannot take advantage of such an admission.

A VOLUNTARY statement made by an accused person is admissible as a 'confession'. He can confess as to his own acts, knowledge or intentions, but he cannot 'confess' as to the acts of other persons which he has not seen and of which he can only have knowledge by hearsay. A failure by the prosecution to prove an essential element in the offence cannot be cured by an 'admission' of this nature." — D/- 2-10-1958: *Surujpaul v. Dick v. Regina*: (1958) 3 All E.R. 300 (304) (Eng.) = 1 RLR 23.

Anno: CJI Evidence Act S. 24 N. 4 & S 17 N 1 and 4.
V.K.

*** FACTORIES ACT (63 OF 1948), S. 6 — FIREMAN ATTENDING FACTORY — NOT AN INVITEE — DUTY OF INSPECTOR — (New Zealand Supreme Court Case) —**

Factories Act is not enacted for the benefit or protection of a fireman who attends the premises not in its character as a factory, but as a building in which an outbreak of fire has occurred — A fireman summoned to put out a fire in a premises may be an invitee of the occupier, but the invitation is

not to the factory as such but to premises containing danger which, though unusual in a factory, is usual in a building on fire — Assuming that the Inspector owes a duty to the general public including invitees and licensees, not to be negligent in granting registration to a premises as a factory he owes no duty to a fireman summoned for fighting an outbreak of fire—(Tort — Negligence) — (Words & Phrases "Invitee") — (Factories Act (63 of 1948), Preamble) — *Merrington v. Ironbridge Metal Works* (1952) 2 All E.R. 1101 — *Hartley v. Mayoh* (1954) 1 All E.R. 375 — *Donoghue v. Stevenson* (1932) A.C. 562 and *Denny v. Supplies Transport Co.*, (1950) 60 T.L.R. (Pt. I) 1108, distinguished —

"I AM unable to find in the provisions of the (Factories) Act as a whole any provision which, on its proper construction, could be regarded as a provision enacted for the benefit or protection of a fireman who attends the premises not in its character as a factory, but as a building in which an outbreak of fire has occurred. A fireman who is summoned to fight an outbreak of fire in certain premises may occupy a status equivalent to that of an invitee of the occupier, as was held in *Merrington v. Ironbridge Metal Works* (1952) 2 All E.R. 1101, and *Hartley v. Mayoh & Co.* (1953) 2 All E.R. 525, on appeal (1954) 1 All E.R. 375; but the invitation is not an invitation to a factory as such, but to premises which are on fire and contain dangers which, though unusual in a factory as such, are usual in a building on fire.

In the result, while assuming, without deciding, that (the Factories Act) imposes a duty upon the inspector which is owed to a particular class of the general public, and while assuming — again without deciding — that the class may include certain invitees and licensees of the occupier provided their invitation to or licence to enter is in respect of the premises in its character as a factory, I am of opinion that it does not include a fireman who is summoned to the building or otherwise attends the building for the purpose of fighting an outbreak of fire therein." — D/- 9-6-1958: *Goodman v. New Plymouth Fire Board and Attorney-General*. (1958) N.Z.L.R. 767 (771) (N.Z. S.C.) = 1 RLR 24.

Anno: Fifty Years' Digest — Tort — 18 — Negligence (h).
V.K.

*** FACTORIES ACT (63 OF 1948), S. 6 — SUMMONED FIREMAN TO INSPECT FACTORY PREMISES — INSPECTOR'S DUTY TOWARDS — (New Zealand Supreme Court case) —**

An inspector granting a certificate of registration can reasonably assume that a fireman summoned to the factory will make an examination of the conditions of means of ingress and egress, light, ventilation and other circumstances before deciding to enter the building — This assumption removes him from the category of persons who are affected by the Inspector's act in granting a certificate — The Inspector will not be liable for any negligence — (Tort — Negligence).

"AN INSPECTOR when granting a certificate of registration can reasonably anticipate that if there is an outbreak of fire in the factory building, a fireman will assuredly make an examination of the means of ingress and the conditions of light and ventilation obtaining in assessing the risks involved in any decision which he may

make to enter the building. The situation of a fireman attending an emergency outbreak of fire warrants assumption, not merely of the opportunity of inspection, but also of exercise of that opportunity and ascertainment of the condition of means of ingress and egress, light, ventilation, and other circumstances as they exist at that moment. Reasonable assumption, reasonably held, that a fireman will look and determine for himself, removes the fireman from the category of persons who were so closely and directly affected by the inspector's act in granting a certificate that he ought reasonably to have had a fireman attending a future outbreak of fire in contemplation as being affected by his act." — D/- 9-6-1958: *Goodman v. New Plymouth Fire Board and Attorney-General*. (1958) N.Z.L.R. 767 (771 & 772) (N.Z. Sp. Court). = 1 RLR 25.

Anno: Fifty Years Digest — Tort — 18 Negligence — (h).
V.K.

*** GOVERNMENT OF INDIA ACT (1935), S. 240 — REMOVAL FROM SERVICE — EFFECT OF — (Pakistan Case) —**

The question of removal or dismissal arises only when the question whether a person is to be employed or not is finally decided and the order of discharge by itself finds a person blameworthy or deficient — Though the real reason for a discharge may be unsatisfactory work, if the Government does not proceed on that basis but terminates the service on the basis of an agreement it will not amount to 'removal' or 'dismissal' within the meaning of this section — (Constitution of India (1950), Art. 311) — (Words & Phrases "Removal" and "Dismissal") — (Industrial Dispute — Dismissal) —

"LEARNED COUNSEL relies upon *Shayamlal v. State of U.P.* A.I.R. 1954 S.C. 369 wherein it has been held that a discharge is tantamount to a removal if the officer concerned has been found to be blameworthy or deficient. This definition of removal, he says, has been approved in *Noorul Hassan v. The Federation of Pakistan P.L.D. 1956 S.C. (Pak.) 331*. There are two answers to this argument. The first is that the question of removal or dismissal arises only when the question whether a person is to be employed has been finally decided. The second is that it is only where the order of discharge by itself finds a person to be blameworthy or deficient that it can, according to observations in *Mrs. Issac's case* (1956-P.L.D. 431 S.C.), be regarded as removal or dismissal. To such a removal or dismissal a stigma attaches, but if all that has happened is that the real reason of discharge is the unsatisfactory work of an employee but the Government does not proceed on the basis that he is guilty or deficient and simply terminates his services in accordance with the terms of his agreement of service, that would not be a removal. After all, the true reason for the discharge of one whose services can be terminated after notice will generally be unsatisfactory work or the undesirability of retention in service of the employee and to hold that, if the reason of such discharge be unfitness or misconduct, a notice to show cause is essential would be tantamount to nullifying the clause or discharge after notice." — Regular Second Appl. No. 422 of 1956: D/- 25-11-1957: *Federation of Pakistan v. Riaz Ali Khan* (1958) 10 P.L.D. (Lah.) 22 (27 & 28)

= 1 RLR 26.

Anno: AIR Com. Constitution of India Art. 311 N. 4.
V.K.

*** HINDU MARRIAGE ACT (25 OF 1955), SEC. 10 (1) (a) & EXPLANATION AND S. 13 — CONSTRUCTIVE DESERTION — PROOF OF INTENTION — WHEN NECESSARY — (Australian High Court Case) —**

Distinction between "conduct amounting to constructive desertion" and "conduct merely justifying one spouse in leaving the other" — "To establish constructive desertion, intention, actual or imputable, to break the matrimonial relation" must be proved — Intention is irrelevant when the question is whether there is "just cause" for one spouse to withdraw from the other — It is only the "reasonableness" of withdrawal in the light of the conduct of the other spouse that is to be considered — Burden of proof of "absence of just cause" lies on the party whose conduct is in question — (Dissolution of Muslim Marriages Act (8 of 1939) S. 2) — (Special Marriage Act (43 of 1954), Sec. 27 (8)) — (Divorce Act (4 of 1869) Ss. 3(9), 10 & 22) — (Evidence Act (1 of 1872), Secs. 101 to 104) — (Criminal Procedure Code (5 of 1898) S. 488) — Sholl, J., in Nicoll v. Nicoll (1956) V.L.R. 591 (595 & 596) & Lang v. Lang (1953) 86 C.L.R. 432, referred to —

"THE DISTINCTION between conduct which will amount to a 'matrimonial offence', such as constructive desertion, and conduct which will merely justify one spouse in leaving the other, may well be thought to be one of the many unsatisfactory features of our divorce law. It is, of course, of less importance in jurisdictions where cruelty alone is a ground of divorce."

"The matter has been recently discussed by Sholl J. in Nicoll v. Nicoll (1956) V. L. R. 591, (595 & 596). His Honour says that the distinction has, for the most part, been rested on a difference between conduct justifying a 'temporary' withdrawal and conduct justifying a 'permanent' withdrawal. We would agree with his Honour when he says, in effect, that, practically speaking, the question in cases of this type may often resolve itself into a question of degree, but the real substance of the distinction is, we think, that, in order to establish constructive desertion, what has been called a 'subjective element' must be proved — as intention, actual or imputable, to break the matrimonial relation: Lang v. Lang (1953) 86 C.L.R. 432; (1954) 90 C.L.R. 529; (1955) A.C. 402. Where, on the other hand, the question is as to 'just cause or excuse', no inquiry into intention need be undertaken. The misconduct must be grave, but the only question is as to the reasonableness of the departure of the respondent in the light of the petitioner's conduct viewed objectively. The petitioner carries the burden of proof of absence of just cause or excuse." — Sholl J. in Nicoll v. Nicoll (1956) V.L.R. 591, at pp. 595, 596 and Lang v. Lang (1953) 86 C.L.R. 432; (1954) 90 C.L.R. 529; (1955) A.C. 402 (referred to). D/- 13-8-1958: Magaard v. Magaard, (1958) 99 C.L.R. 1 (5 & 6) (Aus.) = 1 RLR 27.

Anno: AIR Man. — Divorce Act S. 3 N. 3. AIR Man. — Dissolution of Muslim Marriages Act S. 2 N. 2. F.Y.D. — Divorce Act S. 10 N. 6. AIR Com. Criminal P.C. S. 488 N. 21. S.R.I.

*** HINDU MARRIAGE ACT (25 OF 1955), SEC. 10 (1) (a) & EXPLANATION — CONSTRUCTIVE**

DESERTION — DRINKING AND SEXUAL BRUTALITY OF HUSBAND — NO GROUND FOR JUDICIAL SEPARATION — (Australian High Court Case) —

Constructive desertion — Where the husband had been guilty of excessive drinking and a degree of sexual brutality the wife is justified in leaving him, but is not herself entitled to a decree of judicial separation on the ground of constructive desertion — (Dissolution of Muslim Marriages Act (8 of 1939) S. 2) — (Special Marriage Act (43 of 1954), Sec. 27 (b)) — (Criminal P. C. (5 of 1898) S. 488) — (Divorce Act (4 of 1869) S. 3(9), 10 & 22) — (No Extract) — Bain v. Bain 1923 (33) C.I.R. 317 Upheld (1958) 99 C.L.R. 1 (5) D/- 13-8-1958; Magaard v. Magaard (1958) 99 C.L.R. 1 (5) (Aus.) = 1 RLR 28.

Anno: AIR Com. Criminal P.C. 488 N. 21. AIR Man. Divorce Act S. 3 N. 3. AIR Man. Dissolution of Muslim Marriages Act S. 2 N. 2. F.Y.D. — Divorce Act S. 10 N. 6. S.R.I.

*** HINDU MARRIAGE ACT (25 OF 1955), S. 26 — ORDER OF TRANSFER OF CHILD'S CUSTODY — STAY OF — (English Case) —**

If there is no urgency for the transfer of custody from one parent to the other, court should not, in the interests of the child, refuse a reasonable stay of the order of transfer pending appeal. If it is satisfied that there is a genuine intention to appeal against its order of transfer — Court ought not to make an order of transfer of custody to take effect *instanter* — At least a week's time should be allowed for its order to take effect, so that the aggrieved party, in case of refusal of stay by it, might obtain it from the appellate court — On facts, the appellate court found that there was no urgency and granted stay pending disposal of appeal — (Divorce Act (4 of 1869) Sec. 43) — (Hindu Marriage Act (25 of 1955), Ss. 31 and 28) — (Special Marriage Act (43 of 1954), Ss. 38 & 39 and 40) — (Civil P. C. (Act 5 of 1908) O. 41, R. 5(1)) — (Guardians and Wards Act (8 of 1890) S. 12) —

"WHERE THERE is no urgency for the transfer — and I emphasise those words 'where there is no urgency for the transfer' — it is not normally in the interests of an infant to refuse a reasonable stay pending appeal if the magistrates are satisfied that there is a genuine intention to appeal. Further, if they think that they ought to refuse a stay, then, unless there is an even greater sense of urgency, they ought not to make the order to take effect *instanter* as distinct from, say, seven days hence, so as to enable the aggrieved party (that is to say, the party aggrieved by their refusal to grant a stay) to apply as that party is quite entitled to do, to this court to ask for a stay."

"Two things are, however, inescapable. The first is that if there are sufficient reasons, they are much weaker than would be the position in a normal case in which care and control is given to the father of a child of such tender years as this child (below 5 years). The second is that nobody can deny that the mother has a reasonable chance of success on this appeal. In those circumstances, I am sure that one must look for some ground of urgency to justify an immediate order for the transfer of possession of the child to the father. The child has never suffered any injury from being with the mother, and there is no sugges-

tion that he will suffer any injury. I cannot believe that a matter of a few weeks would make the slightest difference one way or the other to the welfare of the child. I have studied the reasons which the magistrates have given for their decision to find in them any inkling of urgency, and I can find absolutely none. I therefore order that the infant do remain in the custody of the mother until the hearing of the appeal." — D/- 28-2-1958: Re. S. (an infant), (1958) 1 All E.R. 783 (786 & 787) (Eng.) = 1 RLR 29.

Anno: AIR Man: Guardians And Wards Act S. 12 N 1. AIR Man: Divorce Act S. 43, N. 1. AIR Com. Civil Procedure Code O. 41 R 5 N 5. V.S.S.

HOUSES AND RENTS — U. P. (TEMPORARY) CONTROL OF RENT AND EVICTION ACT (3 OF 1947) SEC. 7 — TENANT CHANGING THE NATURE OF ACTIVITIES ON THE PREMISES WHETHER CREATES VACANCY —

A tenant has the right to use the accommodation in any lawful manner — He may start new business and close the running one or start a genuine partnership business with others — If he continues to be in occupation mere closing down of the business temporarily creates no vacancy.

"A TENANT has the right to make use of the accommodation rented by him in any lawful manner. He may start a business and close it down, and start a fresh business. None of these changing activities can have the effect of terminating his tenancy or making the accommodation vacant."

"A tenant has the right to start a business in his premises in partnership with another, provided that the partnership is a genuine transaction and not a cloak to conceal a transfer of possession of the premises to a bogus 'partner' in consideration of payment of an illegal premium or rent."

"Nor does the accommodation automatically fall vacant if the tenant closes down one business but does not start another for some time. If he continues to be in occupation of the premises, the mere closing down of his business creates no vacancy." — Civ. Misc. Writ No. 3720 of 1956: D/- 2-9-1958: Puran Chand v. Rent Control and Eviction Officer, Kanpur (1959) 57 A.L.J. 343 (347 & 348). = 1 RLR 30. S.R.I.

HYDERABAD HOUSES (RENT EVICTION AND LEASE) CONTROL ACT (20 OF 1954), S. 15 (2) PROVISIO — RIGHT OF EVICTION REVIVED BY SUBSEQUENT ACT —

Once a tenant has forfeited his right to remain in possession and the landlord has become entitled to the relief of eviction, the right cannot be revived by any subsequent act of the party unless it comes under the proviso to this section — The principle contained in O. 41, R. 33, C.P.C., can be used even in revision but only in exceptional circumstances when it is called for in the ends of justice — (Civil Procedure Code (Act 5 of 1908), O. 41, R. 33) — (Transfer of Property Act (4 of 1882), S. 111) — (Houses and Rents) — (Landlord and Tenant) —

"THE QUESTION is when once the tenant has forfeited his right to continue in possession and the landlord became entitled to the relief of eviction, can any subsequent act of the tenant

undo the effect of favourable direction in favour of the landlord? It is no doubt true that the principle contained in Order 41, rule 33, Civil Procedure Code, may in fit cases be called in aid even in revisions; but this power is intended to be exercised sparingly and only in special circumstances without prejudice to the other party to shorten litigation and to subserve or attain the ends of justice. In cases where this principle may be applicable, the correctness of the judgment in question will be considered having regard not merely to the state of the case at the time the judgment was rendered but also having regard to the relief that the subsequent events might warrant. It is however essential that the party seeking relief must establish a case for such relief on the material on record. The statute provides for cases where the tenant may be given an opportunity to undo the effect of his defaults. But such cases are limited to default in payment of rent provided it is not wilful. The Legislature in its wisdom has not extended this benefit to default of any other description or other objectionable acts. That is clear from the proviso to section 15(2). Therefore the right once lost under the provisions of the Act cannot be revived by any subsequent act of the party — (Hence) a tenant cannot undo the effects of the previous acts which had occasioned the right of eviction (in favour of) the landlord."

"Once the authority concerned is satisfied that a case under section 15 has been established, he has to make an order of eviction under the mandatory provisions of the statute save in cases which are governed by the proviso to that section in which case, before making such order, he in exercise of his discretion has to comply with certain procedure." — C.R.P. No. 330/4 of 1956: D/- 10-10-1958: Pushpa Bai v. A. Sulochana Menon: (1959) 1 An. W.R. 363 (364 & 365) (Andhra) = 1 RLR 31.

Anno: AIR Com. C.P.C. O. 41 R 33 N 1. V.K.

*** INCOME-TAX ACT (11 OF 1922), Ss. 2(4) AND 10(1) — "BUSINESS" — TEST TO DETERMINE WHETHER PROFIT FROM A PARTICULAR TRANSACTION IS INCOME FROM A BUSINESS — BURDEN OF PROOF — (Canada Exchequer Court case — (Canada) Income-tax Act, R. S. C. 1952 C. 148, Sec. 139(1) (e)) —**

The profit from a transaction is income from a business if the amount is "a gain made in an operation of business in carrying out a scheme for profit making" — The burden of rebutting the assumption that particular profit is from a business is upon the assessee. Where a company dealing in real property, purchased a parcel of land with the intention of making profit out of it by developing it into a motel and at the same time it intended to sell away the property as such in case it should not be able to finance the construction of the motel, and did sell the land itself, while dealing with the question whether or not the profit made in the transaction was "business profits", held: that the profit was made in carrying out the alternative purpose, when the preferred purpose of constructing a motel failed, that it was a profit made in an operation of business in carrying out a scheme of profit making and was liable to income-tax as arising out of business — (Evidence Act (1 of 1872) Ss. 101 to 103) — Californian Copper Syndicate v. Harris (1904) 5 T. C. 159 — Ducker v. Rees Roturbo Development Syn-

dicade, (1928) A. C. 122 — Johnson v. Minister of National Revenue, (1948) S. C. R. (Can.) 486, followed.

Per Thurlow J.: "The purposes of the (appellant) corporation are expressed in terms wide enough to include dealing in real estate. On December 31, 1951, the appellant acquired from one of its three shareholders a parcel of undeveloped land (for purposes of implementing this policy)."

"The appellant was unable to obtain moneys to finance the construction (of even a single) dwelling house thereon. (So) it abandoned this scheme and accepted an offer for about half of the property. It is admitted that the profit realized on this sale was income."

"On August 29, 1952, the appellant purchased another parcel of undeveloped land this one being located in Lachine. On June 3, 1953, the appellant sold this property and it is the profit realized in this transaction that is in issue in this appeal. These were the only purchases and sales of real estate made by the appellant up to that time, and none save the sale of the remaining land (of the first transaction) have been made since then."

"The case put forward on behalf of the appellant is that the land at Lachine was not purchased in the course of any business of dealing in real estate but was acquired for the sole purpose of constructing and operating a motel and service station thereon, that it was only when such purpose failed because of the appellant's inability to borrow the moneys required to carry out that purpose that the appellant accepted an offer for the property and realized the profit in question, and that, in these circumstances, the profit was a capital gain and not income."

"In my opinion when purchasing the property, the directors gave some little consideration to what course was to be followed in the event of the motel scheme failing and they intended, in that event, to turn the property to account for profit in some way but the course that might be taken was not settled. It appears, however, that the only course actually considered when it became obvious that the loan could not be obtained was that of sale."

"Business" is defined in s. 139(1) (e) (of the Canada Income Tax Act, R. S. C. 1952, C. 148) as including 'a trade, manufacture or undertaking of any kind whatsoever and an adventure or concern in the nature of trade.' The question whether or not the profit in question was income or capital turns on whether or not the profit was profit from a business as so defined. The Minister, in making the assessment, has proceeded on the assumption that the profit in question arose from such a business, and in this appeal the onus upon the appellant to satisfy the Court that this assumption is wrong. Johnson v. Minister of National Revenue (1948) S. C. R. 486.

The test to be applied in determining whether the profit in question was income from a business is that stated by Lord Justice Clerk in *Californian Copper Syndicate v. Harris* (1904) 5 T. C. 159 at 185. Referring to that test, Lord Buckmaster, in *Ducker v. Rees Roturbo Development Syndicate*, (1928) A. C. 122 at 140 said:

"My Lords, I think it is undesirable in these cases to attempt to repeat in different words a rule or principle which has already been found applicable and has received judicial approval, and I find that in the case of the *Californian Copper Syndicate v. Harris*, 5 Tax Cas. 159, it is declared that in considering a matter similar to the present the

test to be applied is whether the amount in dispute was 'a gain made in an operation of business in carrying out a scheme for profit-making.' That principle was approved in a judgment of the Privy Council in the case of *Commissioner of Taxes v. Melbourne Trust*, (1914) A. C. 1001, and it is, I think, the right principle to apply."

In applying the test to the case before the House, Lord Buckmaster continued at p. 151:

"These reports show that the directors were contemplating from the beginning the possibility of the sale of some of these patents. It is quite true that they preferred not to sell them if a sale could be avoided, but the statement in para. 11 of the case is quite plain, that 'the possibility of the sale of the foreign patents or rights has always been contemplated by the appellant company in respect of such interest as it possessed in the foreign patents.' It is one of the foreign patents with which this appeal has to do, and the agreements which are set out, showing the way in which the foreign patents in the case of France and of Canada have also been dealt with, show that that statement was not a statement of a mere accidental dealing with a particular class of property, but that it was part of their business which, though not of necessity the line on which they desired their business most extensively to develop, was one which they were prepared to undertake."

In the present case, the evidence, in my opinion, points to the conclusion that the property was acquired with the overall intention of turning it to account for profit. The method favoured by the directors by which this intention was to be carried out was that of developing the property as the site of a motel and service station if the moneys necessary to carry out that purpose could conveniently be borrowed, and for that reason they turned down the early offers received for the property. They intended, however, if such moneys could not conveniently be borrowed, to turn the property to account for profit in any way that might present itself, and in my opinion such ways included sale of the property. In purchasing the property, the directors relied on their own knowledge of real estate and acted without any independent appraisal of the property, and in the transaction they committed the bulk of their company's financial resources for an unproductive, but saleable, property. I am far from satisfied that men of their ability and experience would have done this for the purpose of building a motel and service station without having arranged for the funds to finance this construction and without, at the same time, having in mind the most obvious alternative course open to them for turning the property to account for profit. Despite their optimism the possibility, if not the probability, of their not being able to obtain the necessary loan must, in my opinion, have been present in their minds, and the experience of the appellant's first project alone would have suggested both the necessity for an alternative course and the availability of the alternative course which was in fact followed less than a year after the property was purchased. To my mind, it is not without significance that that course was the only alternative course considered and that it was decided upon as *the only thing left to do*. In my opinion, the sale of the property for profit was one of the several alternative purposes for which the property was acquired, and it was in the carrying out of that alternative purpose, when it became clear that the preferred purpose was unattainable, that the profit in question was made. It was, accordingly, a profit made in an operation

of business in carrying out a scheme for profit-making and was properly assessed." — D/- 9-3-1958: Bayridge Estates Ltd. v. The Minister of National Revenue: (1959) Ex. C. R. (Canada) 248 (249 to 251 & 253 to 256) = 1 RLR 31A

Anno: AIR Man. Income-tax Act, S. 2, N. 6; S. 10, N. 2. C.J.I. Evidence Act. Ss. 101 to 104, N. 24.
SRI.

*** INCOME-TAX ACT (11 OF 1922), SEC. 3 — CONTINGENT BENEFIT — WHEN TREATED AS INCOME — (English Case) —**

A benefit contingently receivable by an employee, as profit of employment, should be treated for tax purposes as income for the year in which it is actually received if no money value can be put on it until it is realised — (Income-tax Act (11 of 1922), Sec. 7(1)).

"FOR THE proposition that a benefit contingently receivable by an employee as a profit of his office or employment is to be treated for tax purposes as income of the year in which it is received, counsel for the Crown cited Edwards v. Roberts (1925) 19 Tax Cas. 618. I think that that must be so where no money value can be put on the benefit until it is actually realised." — D/- 7-7-1958: Hochstrasser (Inspector of Taxes) v. Mayes; Jennings v. Kinder (Inspector of Taxes) (1958) 3 All E.R. 285 (293) (Eng.) = 1 RLR 32.

Anno: A.I.R. Man. Income-tax Act (11 of 1922) Sec. 3, N. 2. Sec. 7 N. 1.
V.K.

*** INCOME-TAX ACT (11 OF 1922), S. 7 (1) & EXPL. 2 — PROFIT OF EMPLOYMENT — NOT INCLUDED IN CASUAL BENEFITS — (English Case) —**

The profits of an employment include every sum paid by the employer to the employee in his capacity as employee for no other consideration than the services which he renders — It does not include testimonials or other casual benefits such as birthday presents — (Income-tax Act (11 of 1922), Sec. 4(3) (vi)).

PER JENKINS, L.J.: "The profits of an office or employment include every sum in money or money's worth paid by an employer to an employee during his employment in his capacity as employee and for no consideration moving from the employee other than the services which he renders. I would, however, qualify that broad proposition by saying that it is not to be taken as extending to 'testimonials' of the kind considered by the House of Lords in Seymour v. Reed (1927) — 11 Tax Cas. 625, and also that there may be benefits casually bestowed by an employee such as birthday, Christmas, or wedding presents, or given on compassionate grounds referable to relationship, friendship, social custom, or motives of charity, which, though made for no consideration in the legal sense, should not be treated as referable to services, or as made to the employee in that capacity."

"The following passage from the judgment of Stirling, L.J., in Herbert v. McQuade (1902) 4 T.C. 489 at p. 501 seems to me to be much in point:

'... a profit accrues by reason of an office when it comes to the holder of the office as such — in that capacity — and without the fulfilment of any further or other condition on his part...'

Per Parker, L.J.: "Where you find that an employee has during the course of his employment received from his employer a benefit in money or money's worth, that receipt is a profit of his employment and taxable as such unless (i) it amounts to a gift to him in his personal capacity, e.g., a benefit conferred out of affection or pity; or (ii) it has been received for a consideration other than the giving of services. This can be put more shortly by saying that such a benefit, to be a profit of his employment, must have been received by him in his capacity of employee as a reward for services. In the two exceptions referred to above, (by Jenkins L.J.) though the benefits are received by him while he is an employee and might not have been received but for his being an employee, yet in his hands the benefit is not a reward for services." — D/- 7-7-1958: Hochstrasser (Inspector of Taxes) v. Mayes; Jennings v. Kinder (Inspector of Taxes) (1958) 3 All E.R. 285 (290 & 294 & 295) (Eng.) = 1 RLR 33.

Anno: AIR Man. Income-Tax Act (11 of 1922) Sec. 7, N. 1 Sec. 4 N. 24.
S.R.I.

*** INCOME-TAX ACT (11 OF 1922), S. 7(1) EXPL. 2—PROFITS OF EMPLOYMENT—WHAT IS INCLUDED IN — (English Case) —**

The discharge of a liability of the employee to a third party by the employer is a profit arising out of employment — Similar is the case of payment of income-tax of the employee by the employer — When a Managing Director lives in his own house at the request of the company and the outgoings are paid by the company or when an employee receives a lump sum after completion of a certain period of employment, these payments are profits of employment and thus taxable — (Income-tax Act (11 of 1922), S. 4 (3) (vi)) — Weston v. Hearn (1943) 2 All E.R. 421 — Nicoll v. Austin (1935) 19 Tax Cas. 531 and Hartland v. Diggins (1926) 10 Tax Cas. 247, Approved.

PER JENKINS, L.J.: "Counsel pointed out that the discharge by an employer of a liability incurred by his employee to a third party may, to the extent of the liability thus discharged, constitute a profit of the employee's employment. In support of that proposition, which I fully accept, he cited Hartland v. Diggins (1926) 10 Tax Cas. 247, where an employer paid his employee's income tax and this was held to constitute a profit of his employment. He also cited on the same point Nicoll v. Austin (1935) 19 Tax Cas. 531, where a managing director continued at the company's request to live in his own house, the company paying all outgoings, and these payments were held to be profits of his office. For the proposition that a single payment to an employee may be a profit of the employment, (which again I fully accept), he cited Weston v. Hearn (1943) 2 All E.R. 421. A lump sum paid to an employee on completing twenty-five years service was held taxable." — D/- 7-7-1958: Hochstrasser (Inspector of Taxes) v. Mayes Jennings v. Kinder (Inspector of Taxes) (1958) 3 All E.R. 285 (293) (Eng.) = 1 RLR 34.

Anno: A.I.R. Man. Income Tax Act (11 of 1922) S. 7, N. 1. AIR Man Income Tax Act (11 of 1922) S. 4 N. 24.
V.K.

*** INCOME-TAX ACT (11 OF 1922), SEC. 13 — MARKET RATE — ADOPTION OF — WHEN JUSTIFIED — (Pakistan Case) —**

Where the accounts of the assessee are deficient in material particulars and do not furnish a proper basis for the ascertainment of the profits made by him, the adoption of the ordinary market rate is justifiable under sec. 13 of the Act for the ascertainment of the cost incurred by the assessee in his business — But it is not a correct application of sec. 13 when an average selling rate is adopted which increases the admitted receipts by a considerable sum leading to an absurd result, or when a certain rate is adopted which is based on no evidence and unaccompanied by any reason.

"THE POINTS formulated for consideration are as follows:

(i) Whether the circumstances of the case admit of the ordinary market rate as found at Rs. 218 per bullock as an acceptable standard under the law or under section 13 for the ascertainment of the purchase price of the bullocks, and whether the acceptance of the ordinary market rate overlooks the material circumstances having a bearing on the question of cost rate of the bullocks and heifers supplied?

(ii) Whether the average selling rate adopted by the Income-tax Officer at Rs. 263 violates the principle of natural justice increasing the admitted receipt of Rs. 11,84,540 by Rs. 67,300 leading to an absurd result and whether the adoption of that rate in preference to the average rate of Rs. 248 per animal leads approximately to an estimate of true income is sustainable under the law?

(iii) Whether the rate of Rs. 187 the rate adopted per dead animal, a fictitious figure based on no evidence and unaccompanied by any reason, is sustainable in law?

The assessment relates to the year 1946-47 on account of the income made by the assessee during the account year 1945, and the business in respect of which the income has been assessed is the business of supply of bullocks and heifers during the said year to the Commonwealth Relations Department of the Government of India. (The contract between the assessee and the Commonwealth Relations Department had classified the bullocks and heifers into different categories according to their sizes fixing different prices for the different categories. But the accounts of the assessee did not disclose how many of each category he purchased and at what price, nor how many of each category he sold and at what price. Therefore, the Income-tax authorities had applied sec. 13 of the Income-tax Act to ascertain the profits). Our answer as to point No. 1 is that section 13 of the Income-tax Act has been correctly applied by the Tribunal, and so far as points Nos. 2 and 3 are concerned our answer is that section 13 has not been correctly applied." — Refce. Case No. 12 of 1956, D/- 22-2-1957 Muhammad Youssaf v. Commissioner of Income-tax, East Bengal: (1959) 35 I.T.R. 633 (638) (Dacca) = 1 RLR 35.

Anno: A.I.R. Man: Income Tax Act S. 13, N. 3. V.K.

*** INCOME-TAX ACT (11 OF 1922), S. 14 (3) — DOCTRINE OF MUTUALITY — FACTORS IN APPLICATION OF — (Pakistan Case).**

To apply the doctrine of mutuality the relevant factors to be considered are the constitution of the

assessee, its objects, the character of relationship between the assessee and its members, the terms of their agreement and the utilisation of the income of the assessee — (Income-tax Act (11 of 1922), Ss. 2(6c) (vii), 3, 14(4), 16(3) (a) (iv) & (b)) — (Words & Phrases "Doctrine of Mutuality").

"IN DETERMINING the applicability of the doctrine of mutuality one should look to—

- (1) the constitution of the assessee;
- (2) the objects with which it is formed;

(3) the true character of the relationship between the assessee and its members from whom the income in question has been derived;

(4) the terms of the agreement between the assessee and its members; and

(5) the application of the income and fund of the assessee." — Civ. Ref. No. 1 of 1953: D/- 4-5-1959: Commissioner of Income-tax Punjab and N.W.F. Province v. The Lyallpur Central Co-operative Bank Ltd. (1959) 11 P.L.D. 627 (635) (Lah.) = 1 RLR 36.

Anno: AIR Man. Income-tax Act S. 2 (6C) N. 9. S. 3 N. 10; F.Y.D. Income Tax Act S. 10 — 5 Cl. (2) (iii) — (d).

R. J.

INDUSTRIAL DISPUTE — BONUS — BONUS FORMULA IN THE CASE OF A MANUFACTURING CONCERN WHEN CAN BE APPLIED IN OTHER CASES.

The workmen can contribute to the increase of production even in non-manufacturing companies like oil companies and as such bonus formula laid down in the case of a manufacturing concern can be applied in the case of a non-manufacturing concern also — (Bonus).

"IT IS admitted that the industry makes huge profits. But the managements contend that the workmen do not contribute to increase of production. In support of this, Mr. Pai would lucidly argue that a distinction has to be made between manufacturing concerns like textiles and non-manufacturing concerns like these oil companies and would emphasize that the Labour Appellate Tribunal (in 1953 II LLJ 250) evolved the bonus formula having in view the manufacturing concerns. He has narrated the kind of work done by these workmen in these oil companies in the area and I am clear that there is not much of production process here as in textile mills except the four-gallon-tin manufacturing."

"It seems there is some misapprehension in the minds of some managements including the oil companies that because the bonus formula evolved by Labour Appellate Tribunal was in regard to textile mills, this formula cannot be applied in the case of some industries which are not essentially manufacturing concerns according to them." — Award D/- 26-12-1953: in Industrial Dispute No. 55 of 1958: Burmah-Shell Oil Storage and Distributing Company of India Ltd., and Their Workmen (Petroleum Workers' Union) Ernakulam: (1959) 1 Lab. L.J. 198 (201 & 202) (Kerala) = 1 RLR 37. V.K.

INDUSTRIAL DISPUTES ACT (14 OF 1947), S. 2 (9) — CONTRACT SYSTEM OF WORK WHEN CAN BE ALLOWED.

A contract system will not be allowed to continue if the work done through the contractors.

is not of an intermittent or casual nature but is done in the regular course of business and is permanently required — It is justified only if direct employment is inconvenient, undesirable or impossible — The employers cannot escape from the restrictions imposed under the Act by resorting to contract system.

“THE CONTRACT system cannot be allowed to continue if the work done through the contractors is not of an intermittent or casual nature, but is required to be done in the regular course of the company's business, and does not vary a great deal from time to time, is more or less constant, and permanently required. Only where a concern finds that it cannot keep on its permanent staff the workers who are required to work only occasionally, and that the number of workers required at any time in any process varies greatly or where the workers make or manufacture things which the company buys as finished goods or for any other similar reason, which makes the direct employment of labour inconvenient, undesirable or impossible that the employment of labour on contract basis can be justified. But if the same strength of workers is engaged in work throughout the year, and such work is a part of the usual process of manufacture, then the contract system cannot be allowed. The State has conferred certain privileges and benefits on industrial workers, and has set up tribunals for enforcing of their rights by special legislation, and imposed certain restrictions on the powers of the employers. The employers cannot be allowed to escape these by having resort to contract system. What I have said is now being well established by a series of decisions.” — Ref. (II.) No. 205 of 1957: D/- 31-10-1958: *Kandivli Metal Works v. Their Workmen (excluding clerks)*, (1959) 1 Lab. L.J. 194 (196) (Bom.)

= 1 RLR 38.

Anno: FYD Industrial Disputes Act S. 2 (9).
V.K.

*** INTERPRETATION OF STATUTES — RESTRICTIVE MEANING — WHEN GIVEN — (U.S. Supreme Court Case).**

The rule of constitutional adjudication is that restrictive meaning must be given to the plain words of a statute if a broader meaning would generate constitutional doubts — “A restrictive meaning for what appear to be plain words may be indicated by (a statute) as a whole, by the persuasive gloss of legislative history” — (Civil Procedure Code (Act 5 of 1908), Preamble) — (No extract) — D/- 29-4-1957: *United States of America v. George I. Witkovich*: (1956) 1 L ed 2d 765 (769)

= 1 RLR 39.

Anno: AIR Com. Civil Procedure Code, Preamble N. 7.
S.R.I.

*** INTERPRETATION OF STATUTES — RECITATIVE WORDS IN JUDGMENTS — CAUTION AGAINST ATTACHING IMPORTANCE TO — (NEW ZEALAND COURT OF APPEAL CASE).**

“IN THE interpretation of a phrase it is wise to be wary of attaching too great importance to merely recitative words in particular judgments and enactments — Such judgments are concerned with particular features of specific enactments and recitative words may well be merely linguistic expedients and may not imply expressions of judicial opinion, whilst enactments may use words in a general sense.” — (Civil Procedure Code (Act

5 of 1908) Preamble) — (Judgment — Interpretation of) — (No other extract) — D/- 4-7-1958: *Sullivan v. Sullivan* (1958) N.Z.L.R. 912 (918) (N.Z. S.C.)

= 1 RLR 40.

Anno: AIR Com. Civil Procedure Code, Preamble, N. 7.
V.K.

*** INTERPRETATION OF STATUTES — “DEEMED” — DIFFERENT USES OF — (English Case) —**

“THE WORD ‘deemed’ is used a great deal in modern legislation. Sometimes it is used to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible.” (Civil Procedure Code (Act 5 of 1908) Preamble) — (No other extract) — Per Lord Radcliffe in *St. Aubyn v. A. G.* (1951) 2 All L. R. 473 (498) = 1 RLR 41.

Anno: AIR Com. Civil Procedure Code, Preamble, N. 7.
V.K.

*** INTERPRETATION OF STATUTES—WORDS BEARING TWO MEANINGS — WIDER MEANING NOT COMPULSORY — (English Case).**

“When a word is used in a statute which may bear one of two meanings I know of no canon of construction that compels the court to adopt the wider of the two meanings merely because it is the wider — The court must look at the word in its context in the statute and decide which meaning Parliament intended it to bear”—(Civil Procedure Code (5 of 1908) Preamble) (No other extract) — D/- 22-9-1958: *R. v. Mackinnon*: (1958) 3 All E.R. 657 (658) (Eng.) (C.C.C.) = 1 RLR 42.

Anno: AIR Com. Civil Procedure Code, Preamble N. 7.
V.K.

*** INTERPRETATION OF STATUTES — PROVISION IN A STATUTE WHEN CAN BE READ AS A PROVISIO — (Pakistan Case).**

Court can use a provision in a statute or rules as a proviso to another provision in that statute or rules, though the former provision is not mentioned as a proviso to the latter, but before doing so it must be satisfied that the former provision governs the latter and does not have independent existence — (Civil Procedure Code (Act 5 of 1908), Preamble).

“THERE CAN be no manner of doubt that it is not necessary that before a Court can use a provision in a statute or rules as a proviso to another occurring in that statute or in those rules, the former should be mentioned as a proviso to the latter, but before a provision not described as a proviso to another is held to be that, it should be clear that the provision governs the latter and could not have been intended to have an independent existence.” — Writ Petn. No. 433 of 1957: D/- 6-12-1957: *Mahmood Ali Khan Chaudhry v. The Islamic Republic of Pakistan* (1958) 10 P.L.D. 1 (14) (Lah.)

= 1 RLR 43.

Anno: AIR Com. Civil Procedure Code, Preamble N. 7.
V.K.

[Specimen Of Commentary]
INDIAN PENAL CODE

ACT No. XLV OF 1860.

[6th October, 1860]

(As modified up to the 1st March, 1960)

CHAPTER I

INTRODUCTION

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S. 2. Punishment of offences committed within India—Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within
^a[India] ★ ★ ★ ★ ★ ★ ★

^aThe original words "the said territories" have successively been amended by A.O. 1937, A.O. 1948, A.O. 1950 and the Part B States (Laws) Act, 1951 (3 of 1951) [1-4-1951] to read as above.

^bThe words and figures "on or after the said 1st day of May 1861" were repealed by the Amending Act, 1891 (12 of 1891).

SYNOPSIS.

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| <ul style="list-style-type: none"> 1. Scope and object. 2. "Every person." 3. Physical presence in India of the accused, if necessary. 4. Exemptions from liability. 5. Public servants — statutory. 6. President, Governor and Rajapramukh. 7. Indian Princes. 8. Foreign sovereigns and armies. 9. Ambassadors and diplomatic agents. 10. Foreign warships. 11. Foreigners. 12. Corporation. 13. Constructive liability. | <ul style="list-style-type: none"> 14. Master's and principal's liability for acts of servants and agents. <ul style="list-style-type: none"> (i) General. (ii) Statutory liability. (iii) Acts through innocent agents. 15. Exceptions. <ul style="list-style-type: none"> (i) Statutory liability and license cases. (ii) Public health and Government revenue statutes. (iii) Negligence. (iv) Nuisance. 16. "And not otherwise." 17. "Contrary to the provisions thereof." |
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3. Physical presence in India of accused, if necessary.—According to this section, offences committed *within India* are triable under the Code irrespective of the nationality of the offender. S. 3 enacts that any person *liable by any Indian law*, can be dealt with for an offence committed *beyond India*, which implies that a foreigner committing an offence beyond India cannot be tried under the provisions of the Code, as he cannot be said to be liable, by any Indian law, to be so tried. Again, S. 4 lays down that the provisions of the Code also apply to any offence committed beyond India by any *citizen of India*. It will thus be seen that a foreigner can be tried under the provisions of the

Code only if he commits an offence *within India* and not otherwise. S. 2 is not explicit on the point whether, for the purpose of committing an offence within India, the physical presence in India of the offender at the time of the commission of the offence is a *sine qua non*. The matter is not free from difficulty. The question hinges on whether the commission of an offence implies physical presence in all cases. While physical presence of the offender is an absolute necessity for the commission of certain offences, such as theft, assault, rape, etc., it may not be necessary in others, such as, fabricating false evidence, conspiracy, etc. The Supreme Court⁽¹⁾ has decided that, for the purpose of conviction under S. 34 for a criminal act done in furtherance of the common intention, the physical presence of the accused at the site of the occurrence is necessary, see Note 24 under S. 34.

As stated above, if a foreigner commits an offence within India, he can be tried under the provisions of the Code, and if it is conceded that his physical presence in India at the time of the commission of the offence is not necessary, the provisions of S. 3 could be brought into play. This question recently came up for consideration before the Supreme Court.^(1a) The accused in this case was a Pakistani national who, during the entire period of the commission of the offence of cheating under S. 420, never stepped into India, but the offence was attributable to him by virtue of letters, telegrams and telephone calls which passed between the parties concerned. The accused was extradited from England, where he happened to be, under the provisions of the Fugitive Offenders Act, in connection with another offence, and was tried and convicted for the offence of cheating under S. 420. It was contended on behalf of the accused that Ss. 108A, 177, 203, 212, 216, 216A and 236 of the Code provide for offences committed outside and beyond India, and that, wherever the legislature wanted to legislate about anything done outside India, it has specifically said so, and that, therefore, if it intended that the provisions of the Code should bring within their ambit a person not actually present in India at the time of the commission of this particular offence, it would have specifically said so. This contention, however, was not accepted as the particular sections cited refer to related offences being committed in India in the context of the principal offences themselves having been committed outside India.

Certain cases,^(1b) where an offence committed outside British India by a foreigner residing in a foreign country was held not to be an offence punishable under the Penal Code, were brought to the notice of the Supreme Court, who held that these decisions were rendered at a time when the competence of the Indian Legislature was considered somewhat limited. The Supreme Court observed that these concepts are no longer tenable after India became

SECTION 2—NOTE 3.

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| <p>1. 1955 SC 287 (293) (Pr 23) [AIR V 42];
1955 Cri L Jour 857. Shree Kantiah v. State of Bombay.</p> <p>1a. 1957 SC 857 (870) (Pr 27) [AIR V 44 C [25]; 1957 Cri L Jour 1346, Mubarak Ali v. State of Bombay.</p> <p>1b. (1870) 7 Bom HCR (Cr) 89 (130) (FB).</p> | <p>Reg. v. Elmstone, Whitwell.
(1873) 10 Bom HCR 356 (357) Reg. v. Pirtal.
(1878) 20 Pun Re (Cri) P. 49 (53).
Mst. Kishen Kour v. The Crown.
1933 Sind 333 (334) [AIR V 20]=35
Cri L Jour 585 Gokaldas v. Emperor.</p> |
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an independent sovereign republic. Even before the attainment of independence, the view was taken by the Bombay High Court(2) that where a foreigner started the train of his crime in a foreign territory and perfected and completed his offence in British Indian limits, he was triable by a British Indian Court when found within its jurisdiction. On the question of extra-territorial jurisdiction the Privy Council(3) held that, for certain purposes, notably those of Police, revenue, public health and fisheries, a State may enact laws affecting the seas surrounding its coasts to the distance seaward which exceeds the ordinary limits of its territory. The Supreme Court also relied on the observations of Spence, C.J.(4) in regard to the concept of extra-territoriality in recent times.

After reviewing in some detail the administration of municipal laws according to the ethics of the International Law, and taking into consideration all the facts of the case, the Supreme Court(5) decided that the accused was rightly held guilty and punished under the Penal Code notwithstanding his not being corporeally present in India at the time of the commission of the offence. In this connection, it added, "..... a reference to S. 3 of the Code (Penal) clearly indicates that it is implicit therein that a foreigner who commits an offence within India is guilty and can be punished as such without any limitation as to his corporeal presence in India at the time. For if it were so, the legal fiction implied in the phrase "as if such act had been committed within India" in S. 3 would not have been limited to the supposition that such act had been committed within India, but would have extended also to a fiction as to his physical presence at the time in India." The Supreme Court further stated, "It is not necessary and indeed not permissible to construe the Indian Penal Code at the present day in accordance with the notions of criminal jurisdiction prevailing at the time when the Code was enacted. The notions relating to this matter have considerably changed between then and now during nearly a century that has elapsed. It is legitimate to construe the Code with reference to the modern needs, wherever this is permissible, unless there is anything in the Code or in any particular section to indicate the contrary."

The Supreme Court, however, observed that, in respect of offences in which the actual presence of the culprit is a necessary ingredient of the offence, a foreigner *ex-hypothesi* not present in India cannot be held guilty.

Under the English law, for the purpose of criminal jurisdiction, an act may be regarded as done within English territory, although the person who did the act may be outside the territory. Thus, a person who, being abroad, procures an agent to commit a crime in England is deemed to commit a crime in England.(6) Similarly, if a person, being outside England, sends to Eng-

2. (1912) ILR 36 Bom 524 (531), Emperor v. Chhotalal.

3. 1933 PC 16 (17) [AIR V 20]=1933 ALJ 284 E. R. Croft v. Sylvester Dunphy.

4. 1944 FC 51 (61, 62) [AIR V 311]: (1944) MLJ 477. Governor-General v. Raleigh Investment.

5. 1957 SC 857 (867, 868) (Pr 23) [AIR

V 44 C 125]=1957 Cri L Jour 1346 Mubarak Ali Ahmed v. The State of Bombay.

6. (1803) 4 East 164 (171, 172): 14 Digest 136 (1088), R. v. Brisac. (1805) 29 St. Tr. 81 (462, 499), Mr. Justice Johnson's case. Halsbury's Laws of England, 3rd Ed. Vol. 10, Para 581.

land by post or otherwise, with a criminal intent, a fraudulent document or a libellous or obscene publication, he commits an act in England for which he is triable in England. Such a person, even though a foreigner, can be tried if he is found in England.(7)

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SECTION 5 NOTE 6.

6. **Applicability of special and/or general law.**—In cases where there is a conflict between a special Act and a general Act, it is a well established principle, resting on decided cases,—and recognised in S. 4, Civ. P. C., so far as questions of a civil nature are concerned,—that the provisions of the special Act must prevail.(1) Where, however, the provisions of the Penal Code are not in conflict with those of a special law, effect may be given to both. (2) It cannot be contended that a special law repeals the provisions of the Penal Code simply because both of them deal with offences arising under both the Acts.(3) The proposition that where a particular set of acts or omissions constitute an offence under the general law and also under a special law, the prosecution should be under the special law, is confined to cases where the offences are coincident or practically so.(4) Where a new offence is created by a special law and the particular manner in which proceedings should be instituted is laid down, the accused must be proceeded against in accordance with the provisions of the special Act.(5) Where, however, a new law makes an act punishable, which is already penal under an existing law, and there is nothing in the latter enactment which either expresses or implies that the operation of the earlier law is excluded, an offender can be prosecuted and punished under either of the two enactments. The earlier law will not be put out of operation merely because there is some change in the procedure or some difference in penalties, the effect of the new enactment being to add a remedy and not to repeal the former remedy.(6) In the absence of anything in a

7. (1793) 1 Esp. 62(63): 14 Digest 127 (994), R. v. Muntion.
- (1905) 2 K B 67 CCR (72): 74 L.J.K.B. 591, R. v. Oliphant.
- (1907) 1 K B 388 CCR (391, 392): 71 L.J.K.B. 210, R. v. DeMarny.

SECTION 5—NOTE 6.

1. 1934 Bom 162 (163) [AIR V 21]: 36 Bom L R 297 (DB). Collector of Bombay v. Kamalavahooji.
- 1947 Cal 1 (7) [AIR V 34]: 51 C W N 1 (SB). Moti Lal Shah v. Chandra Kant Sarkar.
2. (1883) ILR 6 Mad 249 (250) (DB). Queen v. Ramchandrapappa.
- (1865) 1 Weir 26 (27). Sadasiva Pillai.
- 1955 All 275 (281) (Pr 24) [AIR V 42 C 84]: (1955) Cri L Jour 754 (FB) Om Prakash v. The State.
- (Two laws under which the same act or omission is punishable can co-exist side by side.)
- 1950 Mad 599 (600) (Pr 2) [AIR V 37 C 251]: 51 Cri L Jour 1518. In re: Mrs. B. Gervase.
3. 1953 Mad 137 (137) [AIR V 40 C 40]: (1953 Cri L Jour 309. In re: V. V. Satyanarayanamurthy .
- 1918 Mad 460 (461) [AIR V 51]: 18 Cri L Jour 992. Segu Baliah v. N. Ramasamiah.
4. 1930 Pat 622 (623) [AIR V 17]: 31 Cri L Jour 934 Suchit Raut v. Emperor.
5. 1929 Bom 433 (443) [AIR V 16]: 31 Cri L Jour 495 (DB). Bhalchandra v. Emperor.
- 1953 Madh B 139 (141) Pr. 7) [AIR V 40 C 48]: (1953) Cri L Jour 932. Madho Prasad v. State.
- 1952 All 35 (37) (Pr 11, 15) [AIR V 39 C 91]: (1952) Cri L Jour 236. Bhup Narain v. State.
- 1923 Pat 1 (12) [AIR V 10]: 23 Cri L Jour 625 (SB) Emperor v. Abdul.
- 1930 Oudh 497 (500) [AIR V 17]: 32 Cri L Jour 104 (DB). Mohanlal v. Emperor.
6. 1955 All 275 (281) (Pr 24, 25) [AIR V 42 C 84]: (1955) Cri L Jour 754 (FB) Om Prakash v. the State.
- 1953 Madh B 139 (141) (Pr 7) [AIR V 40 C 48]: (1953) Cri L Jour 932. Madho Prasad v. State.
- 1952 All 35 (37) (Pr. 11, 15) [AIR V 39 C 91]: (1952) Cri L Jour 236. Bhup Narain v. State.

special Act to exclude the operation of the general criminal law, an intention on the part of the legislature to exclude it should not be inferred.(7) In an old case, it was held that the ordinary criminal law was not excluded by Regulation VII of 1817 or Act XX of 1863. The conditions in these Acts that permission of the Board of Revenue or of the Committees to prosecute was necessary, was only for the procedure prescribed in the special Acts and the special provisions cannot be taken out of the Acts and applied as a restriction to the ordinary operation of the criminal law.(8) It was, however, held by the Calcutta High Court(9) that when there are no express words in a special Act to make the provisions of the Penal Code applicable, they cannot be imported. Since a special Act does not repeal the provisions of a general law unless there is anything in the special Act to specifically exclude the provisions of the general criminal law, the latter law, it is submitted, should also apply.

On the other hand, where a new offence is created under any enactment, the accused must be dealt with in accordance with the provisions of that enactment only, as stated before. It cannot be laid down, however, as a general rule of law that, where there is a special law making a particular act an offence and providing penalties for such an offence, the general law must be held to be inapplicable. It is possible that the same act may be an offence under two different Acts, and both may be applicable simultaneously and the offender may be prosecuted and convicted under either Act. Where, however, the offence falls strictly within the provisions of a section of the special Act, and does not go beyond it, it would be more appropriate to prosecute the offender and convict him under that Act rather than fall back upon a more general law, which prescribes a heavier penalty.(10) But the Madras,(11), Mysore,(12) and Lahore(13) High Courts held that, if the punishment under the local or special Act is inadequate, the offender can properly be convicted and punished under a section of the Penal Code which prescribes a heavier sentence.

The Bombay High Court(13a) held that where there is a special legislation for a particular type of offence, the maximum punishment provided in such special Act may be accepted as an appropriate maximum. The Bombay High Court view, it is submitted, is correct as there is no legal bar to such a procedure, and the cases which came up before the Madras and other High Courts might have justified the view they took, but it would be inequitable, if not dangerous, to lay down as a proposition of law that the provisions of the Penal Code should be applied because they prescribe a higher penalty. The

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| <p>7. (1885) 1885 Pun Re (Cr) No. 0 p. 20 (22) (DB). Imam Baksh.</p> <p>8. (1876) ILR 1 Mad 55 (55, 56). Proceedings dated 22-2-1876.</p> <p>9. (1895) ILR 22 Cal 131 (138, 139) (DB). Chandi Pershad v Abur Rahman.</p> <p>10. 1932 All 69 (69, 70) [AIR V 19]: 33 Cri L Jour 309. Jiwa Ram v. Emperor.</p> <p>1950 Mad 599 (600) (Pr 2) [AIR V 37 C 251]: 51 Cri L Jour 1518. In re: Mrs. B. Gervase.</p> | <p>11. 1953 Mad 137 (137) (Pr 4) [AIR V 40 C 40]: (1953) Cri L Jour 309. In re: V. V. Satyanarayanamurthy.</p> <p>(1864) 1864 Suth W R (Gap No.) (Cr. 21 (1) (21). Bakoo.</p> <p>12. (1931) 9 Mys L Jour 156 (157).</p> <p>13. (1874) 1874 Pun Re (Cr) No. 11 p. 19 (DB). Fattah Khan.</p> <p>1915 Lah 350 (351) [AIR V 2]: 16 Cri L Jour 788. Emperor v Gul Muhammad.</p> <p>13a. (1906) 3 Cri L Jour 494 (496, 498): 8 Bom L R 414 (DB) Emperor v Bayne.</p> |
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legislature must have intended that the special form of punishment was appropriate to special cases, and whether the punishment is severer or lighter would seem to be immaterial.

Adverting to the general question of the applicability of special and general laws, take, for example, the Prevention of Corruption Act, 1947. If a new offence has been created under this Act, the accused must be proceeded against in accordance with its provisions. Where, however, the offence is one which was punishable under the Penal Code and is later made punishable under the Prevention of Corruption Act also, it is open to the prosecution to proceed against the accused under the Penal Code.(14) Thus, an accused is liable to be prosecuted either under S. 409, Penal Code, or under S. 5(1), Prevention of Corruption Act.(15) S. 5(1) (c) of this Act does not create any new offence. Read with Sub-Sec. (2) of S. 5, it only makes an act already punishable under S. 409 of the Code punishable as a criminal misconduct under the Act. The difference in the punishment, the requirement as to sanction and the special rules of evidence cannot make it a new offence.(16) In a case decided earlier by the Punjab High Court(17), it was held that, as long as S. 5 of the Prevention of Corruption Act remained in force, the provisions of S. 409 of the Penal Code, so far as they concerned offences by public servants, were *pro-tanto* repealed by S. 5(1) (c) of the Act. This case is, however, no longer good law in view of the amendment of S. 5 (4) of the Act.(18)

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SECTION 34, NOTES 14, 24, 25, 26 AND 27.

14. "In furtherance of the common intention of all"—General.—The words "when a criminal act is done in furtherance of the common intention of all" mean that all the persons charged must have consented to and

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| <p>14. 1952 All 35 (37) (Pr 11, 15) [AIR V 39 C 91; 1952 Cri L Jour 236. Bhup Narain v State.
1953 Mad 137 (137) (Pr 3, 4) [AIR V 401; (1953) Cri L Jour 309. In re: V. V. Satyanarayanamurthy.
1955 NUC (Sau) 5768 [AIR V 421 Vraj-lal v The State.
1956 Pepsu 1 (2) [AIR V 43 C 11] The State v Raj Kumar.
1954 Him Pra 76 (78) [AIR V 41 C 42]; (1954) Cri L Jour 1481. Ghan Chand v The State.
1955 Bom 451 (453) (Pr 6, 7) [AIR V 42 C 121]; (1955) ILR Bom 984 (FB). The State v Pandurang Babu-rao.
15. 1953 NUC (Sau) 5768 [AIR V 421. Vrajlal Vishwanath v The State.
16. 1953 Madh B 139 (141) (Pr 4) [AIR V 40 C 481; (1953) Cri L Jour 932. Madho Prasad v State. (1952 Pun 89 dissented from).
1955 Cal 236 (241) (Pr 8) [AIR V 42 C 611; (1955) Cri L Jour 784 (DB). Amarendra Nath Roy v The State.
1955 All 275 (280-282) (Pr 20, 26, 28; [AIR V 42 C 84]; (1955) Cri L Jour 754 (FB). Om Prakash v The State. (1952 Pun 89 dissented from).
1955 Bom 451 (453) (Pr 6, 7) [AIR V 42 C 121]; = ILR Bom 984. (FB).</p> | <p>The State v Pandurang Baburao. (1952 Pun 89 dissented from).
1956 All 197 (199) (Pr 6) [AIR V 43 C 871; Cri L Jour Ganga Narain v State.
1954 Hyd 56 (64) (Pr 23) [AIR V 40 C 24]; 1954 Cri L Jour 464. K. Jaya-rama v The State of Hyderabad.
1954 Raj 211 (213) [AIR V 40 C 651; 1954 Cri L Jour 1446. State v Gulab Singh.
1954 Mad 401 (402) (Pr 4) [AIR V 41 C 182]; 1954 Cri L Jour 480. In re: Govindswami.
1953 Cal 681 (682) (Pr 4) [AIR V 40 C 258]; 1953 Cri L Jour 1523. Moham-mad Ali v The State.
1955 NUC (Hyd) 5923. [AIR V 421] The State v Bhim Rao.
1953 Mad 137 (137) (Pr 3) [AIR V 40 SC 401; 1953 SCri L Jour 309. In re: V. V. Satyanarayanmurthy.
1955 NUC (Sau) 5768. [AIR V 421] Vrajlal v The State.
17. 1952 Pun 89 (93) (Pr 7) [AIR V 39 C 251; 1952 Cri L Jour 316 (DB). The State v Gurcharan Singh.
18. The Prevention of Corruption (Sec-ond Amendment) Act, (59 of 1952).
1955 NUC (Hyd) 5923 [AIR V 421. The State v Bhim Rao.</p> |
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contemplated the commission of the particular crime committed. The existence of a common intention is the sole test of joint responsibility and what the common intention is must be proved.(1) Any act may be regarded as done in furtherance of the common felony, if it is a step intentionally taken for the purpose of effecting that felony.(2) The act must have been done while, or for the purpose of, executing or carrying out a common intention. If it is extraneous to the common intention or is done in opposition to it, or is not required to be done at all for carrying out the common intention, it cannot be said to be in furtherance of it. Whether an act is in furtherance of a common intention or not, depends upon the nature of the act, and is an incident of fact and not of law.(3)

Stephen, J., of the Calcutta High Court(4) held that S. 34 applied only where a criminal act was done by several persons, of whom the accused charged thereunder was one, and not where the act was done by some person other than the latter, so that only the person, who actually committed the offence, could be convicted. This view is no longer good law, as a Full Bench of the same High Court(5) took an exactly opposite view, and when the matter went in appeal to the Privy Council(6) they confirmed the Full Bench decision. The Privy Council ruling can now be considered as having taken the matter beyond the realm of controversy.

Cases, where two or more persons attack another simultaneously, may be broadly divided into two categories: Firstly, where the assailants do not have an opportunity at all of having a pre-arranged plan. In such a case, there may be a similar intention in the minds of the assailants, but there will not be a common intention, and S. 34 will not apply. Secondly, where there is an opportunity for the assailants to have preconcert, S. 34 would generally apply and a common intention would be presumed, provided the conduct of the assailants is such as to give rise to an inference of pre-concert.(7) Where there was no evidence whatsoever of any pre-meditation, or of a pre-arranged plan by the assailants of murdering the deceased, the Supreme Court(8) held that the mere fact that all the accused were seen at the spot at the time of firing, could not be considered sufficient to prove or even to infer a common intention, because, unless the possibility as to who amongst them fired the fatal shot was not eliminated, none of the accused could be convicted of murder under S. 302. S. 34 does not apply to such a case. It further held that, where there is a charge also of conspiracy, and the evidence as to conspiracy is rejected, the same evidence cannot be used for finding a common intention under S. 34.

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24. Presence and participation.—It has been stated in Note 26 *infra* that the mere presence of a person at the time of the commission of an offence by his confederates is not in itself sufficient to bring his case within S. 34. This averment raises the question whether the presence of the accused, who is made constructively liable for an offence, is a condition precedent for his conviction. A careful reading of the section, and the case law on the subject, would indicate that his physical presence, at the site of the occurrence, is not absolutely

essential, and that the offender can be convicted even when he is not present, provided the other requirements of the section are satisfied. The Supreme Court(1) also considered that the physical presence of the accused, in India is not essential in all cases, see Note 3 under Section 2. However, in deciding a case under S. 34, it(1a) held that the accused must be physically present at the actual commission of the crime; though he need not be present at the spot where the crime is committed, he must be present at the scene of the occurrence and must actually participate in the commission of the offence in some way or other at the time the crime is actually committed. It held that the preliminary stages, viz, the agreement, the preparation and the planning are covered by S. 109 of the Code, and it is only the stage of the actual commission of the offence which is covered by S. 34. Emphasis is laid on the word "done", and it was, therefore, held essential, for the application of S. 34, wherein that word is used, that the accused must join in the doing of the act and not merely in planning its perpetration. The Supreme Court relied on an earlier Privy Council(2) decision for the latter reason. The Madhya Bharat High Court(3) has followed this Supreme Court decision.

It is respectfully submitted that there is nothing in the Privy Council decision, relied on by the Supreme Court, to suggest, either by implication or by inference, that the physical presence of an accused person at the site of occurrence is a condition precedent for the application of S. 34. The cases decided by the Lahore(4) and Allahabad(5) High Courts, even after the decision of the Privy Council, relied on by the Supreme Court, lend support to our view.

In the Lahore case, Bhide, J., observed, "I can find nothing in the wording of S. 34 or in the judgment of Their Lordships in *Barendra Kumar Ghose V. Emperor* to justify the contention that the actual presence at the time of murder is essential. All that the Section seems to require is that he (accused) is one of the participators in the joint criminal action." The Allahabad High Court(6) also held that the first essential for the applicability of this section is undoubtedly the existence of a common intention between all the several persons who committed the criminal act, and the next essential is that a criminal act be done in furtherance of that common intention. When these two essentials are satisfied, each of such persons would be liable for the entire criminal act in the same manner as if he alone had done it irrespective of the fact whether he was present at the time or not. It added that such view was held by their Lordships of the Privy Council.

As regards the scope of S. 34, Lord Sumner, who delivered the judgment of the Privy Council, referred to by the Supreme Court, observed, "S. 34 deals with the doing of separate acts, similar or diverse, by several persons, if all are done in furtherance of a common intention, such person is liable for the result of them all, as if he had done them himself, for, "that act" and "the act" in the latter part of the section must include the whole action covered by "a criminal act" in the first part, because they refer to it."

It will be seen from the foregoing discussion that the true test for the application of S. 34 is the doing of an act "in furtherance of a common inten-

tion", and once that and participation were proved, the provisions of S. 34 are attracted, apart from whether the accused was physically present at the scene of occurrence or not. The ultimate doing of an act can be accomplished in several ways, as, for instance, an accused person, having a common intention, may be giving instructions from his residence by telephone or other means of communication for the commission of the crime, and if it is proved that he had a common intention, he would be liable as if he had committed the crime himself. Such would also be the case where a dacoity was planned by a group of persons, one of whom was deputed to detain the head of the family at a place far away from the site of occurrence, thus facilitating the commission of the offence.

It is true that an agreement, preparation and planning are preliminaries of the offence of abetment, but they are not, it is submitted with due respect, for this reason, excluded from the scope of S. 34, because having a common intention to commit a criminal act, would indicate a far greater degree of criminality than would be necessary for the offence of abetment. Having a common object means that the offenders desiring to bring about the intended result by all means are interested in the affair till that result is achieved. It seems evident, therefore, that it cannot be said that the physical presence of an accused person is an essential ingredient for the purpose of constituting an offence under S. 34.

It is also true, as pointed out elsewhere, that the question of construing S. 34 bristles with difficulties. In the words of Lord Sumner,⁽⁷⁾ "to introduce a general section, S. 34, which has little, if any, content, and to attach a wholly new importance to abetments and attempts, was to complicate and not to simplify the administration of the law." Even so, the particular aspect as to whether the physical presence of the accused person is necessary to constitute an offence under this section would seem to require reconsideration, as the foregoing remarks would seem to warrant such a course, or the legislature must step in and suitably amend the section and clarify not only this issue but also the exact scope of S. 34. It is worth noting that an express provision has been made in S. 114 regarding the presence of an abettor.

25. Participation. — On the principle laid down in this section, it is not necessary that all the members of an assembly united together by a common intention should take an active part in the actual commission of a crime before any individual member thereof can be held liable for it. All the persons joined together by a common intention are regarded in law as one single body and the common intention running through the entire body makes every member of it responsible, irrespective of his taking or not taking any active part in the actual commission of a crime,⁽¹⁾ but if no part whatsoever has been taken at all in the crime, S. 34 cannot apply.⁽²⁾

26. Effect of presence. — The mere presence of a person at the time of the commission of an offence by his confederates is not in itself sufficient to bring his case within the purview of S. 34, unless the community of design is proved against him.⁽¹⁾ Peacock, C.J., of the Calcutta

High Court,(2) observed: "It does not follow that because they (accused) were present with the intention of taking him away, that they assisted by their presence in the beating of him to such an extent as to cause death. If the object and design of those who seized Amrodi was merely to take him to thannah on a charge of theft, and it was no part of the common design to beat him, they would not all be liable for the consequence of the beating merely because they were present. It is also said that, although a man is present when a felony is committed, if he takes no part in it, and does not act in concert with those who commit it, he will not be a principal merely because he did not endeavour to prevent it or to apprehend the felon."

As regards participation while being present, the Court must arrive at a finding as to which of the accused took what part, if any, in furtherance of the common intention. A conviction without such finding is illegal.(3) It is, however, to be remembered that in crimes, as in other things, 'they also serve who only stand and wait.' It is the expectation of aid, in case it is necessary to the completion of the crime and the belief that his associate is near and ready to render it, which encourage and embolden the chief perpetrator, and incite him to accomplish the act. It is, therefore, not correct to say that a person present on the spot does nothing. He plays a very important part in the scheme of the offence. The potential utility of a person who is present as a guilty confederate on the scene of offence cannot be overestimated.(4) Where all accused come on the spot armed before a murder is completed and the murder is a pre-arranged matter and the accused has a part assigned to him from beforehand such as keeping away the intruders, it is of no avail to him to say that he struck no blow on the deceased nor can his presence be considered accidental.(5) In the two cases given below(6) the accused, it was held, could not be convicted with the aid of S. 34.

27. Omission to act. — Though, as a rule, mere presence without proof of any act or omission to act to facilitate the offence, or at least without proof of the existence of a common intention, will not be sufficient for conviction under S. 34, where a statutory duty is cast upon a person to act, if he fails to act, he can be held constructively liable. Thus, where four persons were inside the house in which a murder took place, and in spite of the loud cries of the victim, none of the accused persons did anything to prevent the murder, it was held that the accused were bound to take measures to prevent the crime under S. 44, Cr. P. C., and, as they failed to do so they were constructively liable for the murder.(1)

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SECTION 77, NOTES 2, 3 AND 4.

2. This section, S. 78 and Judicial Officers' Protection Act, 1850. — The Judicial Officers' Protection Act (18 of 1850) gives judicial officers and their ministerial officers protection against civil liability. Ss. 77 and 78 extend such protection to judicial officers against criminal prosecutions. S. 1 of the Judicial Officers' Protection Act states. "No Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be liable to be sued in

any civil Court, for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction; Provided that he at the time in good faith, believed himself to have jurisdiction to do or to order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially, shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same."

It is clear from the above provision that a judicial officer may be protected under that Act even though he exceeds the limits of jurisdiction if he, at the time, in good faith, believed himself to have jurisdiction to do or order the acts complained of. It has been held that the word 'jurisdiction' in S. 1 of the Judicial Officers' Protection Act, 1950, has to be taken in the sense of authority or power to act in the matter and not in the sense of authority or power to act in a particular manner.(1)

S. 77 of the Code, however, uses the word "power" instead of "jurisdiction," which means that a judicial officer cannot be protected from criminal proceedings if he acts without jurisdiction though he might, in good faith have believed that he had jurisdiction.

3. **Power and jurisdiction distinguished.**—The words "jurisdiction" and "power" are not synonymous. There is a clear distinction between them.(1) Jurisdiction consists in taking cognizance of a case involving the determination of some jural relation, in ascertaining the essential points of it and in pronouncing upon them.(2) In other words, jurisdiction means the legal authority to administer justice according to the means which the law has provided and subject to the limitations imposed by that law upon the judicial authority.(3) Jurisdiction is a pre-requisite to the exercise of judicial powers of a Court.(4) On the other hand, power is the right to determine actual controversies arising between adverse litigants.(5)

In Entries 77 and 95 of List I of Schedule VII to the Constitution, as well as in Entry 65 of List II and in Entry 46 of List III of the same Schedule, the jurisdiction and powers of the various Courts have been mentioned.

Further, S. 561A of the Cri. P.C. saves the inherent power of the High Courts to mould the procedure subject to statutory provisions,(6) but does not authorise the Court to assume any new jurisdiction in it. The rule is that jurisdiction has to be given by a statute and cannot be assumed.(7) Dr. Justice Subramanya Iyer of the Madras High Court(8) observed, "It has to be borne in mind that there is an essential distinction between a Court's inherent power and its jurisdiction. I am not aware of any authority which supports the view that the inherent power of a Court could be invoked except for limited purpose of preserving and enforcing order, securing efficiency and preventing abuse of process in the exercise of a jurisdiction which the Court otherwise possesses."

It may also be noted that the "existence" of jurisdiction is different from the "exercise" of jurisdiction. The failure to comply with statutory requirements in the assumption of jurisdiction, and in the exercise of that jurisdiction, entails very different consequences. The authority to deal with a matter at all is what makes up jurisdiction. When there is such jurisdiction, the decision of all other questions in that matter is only an "exercise" of that jurisdiction.(9) An error, omission or irregularity in such exercise of jurisdiction, which does not occasion a failure of justice, is an irregularity curable under S. 537 of the Cr.P.C.(10), whereas if the Court has no jurisdiction, its judgment and order are mere nullities.(11)

Again, S. 78 of the Code protects persons acting in pursuance of a judgment or an order of a Court of Justice though the Court had no jurisdiction, provided the person in good faith believes that the Court had jurisdiction. S. 77 does not prevent prosecution of a Judge if he acts without jurisdiction.

The reason why a Judge should not be protected for acting beyond the jurisdiction seems to be that conflict of jurisdiction between a Judge unwittingly usurping jurisdiction and a Judge having legal jurisdiction, must be avoided.

4. Judicial and executive acts distinguished.—The protection afforded by this section is for an officer acting in his judicial capacity and not in his executive capacity. Thus, where a search must be conducted by a Magistrate in his executive, and not in his judicial capacity, there is no statute to protect a Magistrate for a wrongful act.(1) Where the officer in command of a cantonment was not a judicial officer and acted in an executive capacity, it was held that he was not protected by Act 18 of 1850.(2) The motives as well as the duty of a military officer, acting in a military capacity, are questions for a military tribunal alone and not for a Court of law to determine.(3)

A Political Agent was held not liable for the acts done by him in his executive capacity, because he acted as a subordinate officer directly to the Governor and indirectly to the Governor-General, and it is settled that a Governor is not liable to be sued in a Court of law for an act done by him in his political capacity.(4)

The existence of Exceptions to S. 499 indicates that S. 77 cannot by itself cover the cases of remarks made by a Judge or Magistrate in the course of his office, so as to exempt him from any liability under S. 500.(5)

To secure protection of the Judicial Officers' Protection Act (18 of 1850), the defendant must show, (i) that the act complained of was done or ordered by him in the discharge of his judicial duties, and (ii) that it was within the limits of his jurisdiction, or if not within those limits, that he, at the time, in good faith believed himself to have jurisdiction to do or order the acts complained of.(6)

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NOTE 26 TO SECTION 211.

26. False charge under S. 211 and false information to police under S. 182.—In the last preceding Note, a general outline of the distinction be-

tween this section and S. 182 is indicated. This Note deals in particular with the distinction between making a false charge under S. 211 and giving false information to the police under S. 182. The High Courts are not unanimous as to whether these two expressions are *per se* distinct and convey an altogether different connotation, or whether the one is included in the other. For the purpose of elucidation, the views of the different High Courts are given below.

Allahabad view. — There is an essential difference between a mere information to the police and a definite statement to it that a certain person has committed a certain particular offence. To the latter case, which is much graver than the former, S. 211 applies.(1) If, however, the complainant confines himself to reporting what he knows of the facts, stating his suspicions and leaving the matter to be further investigated by the police, or leaving the police to take such course as they think right in the performance of their duty, he may be making a report, and to such a case, S. 182 would apply.(2) Where there is a doubt whether the facts alleged constitute a graver offence under S. 211, a prosecution under S. 182 is legal.(3)

Bombay view. — The circumstances which are necessary to bring a case within S. 182 involve different considerations from those that arise in a case under S. 211. S. 182 does not necessarily impose upon a person giving information to an officer criminal liability for mere want of caution before giving that information unless there is a positive and conscious falsehood established, while, under S. 211, it is sufficient for the prosecution to establish that there was no just or lawful ground for the action taken and that the accused knew it.(4) In an earlier case,(5) Ranade, J., observed, "The criminal law makes a clear distinction between a false charge which falls under S. 211 of the Penal Code and false information given to the police, in which latter case, the offence falls under S. 182 of the same Code. If the plaintiff in the present case had chosen to prosecute the offender under S. 182, it would not have been necessary for him to prove malice and want of probable or reasonable cause, except so far as they were implied in the act of giving information known to be false In an enquiry under S. 211, on the other hand, proof of the presence of just and lawful ground for making the charge is an important element. There is a good reason for this distinction. People in this country, as elsewhere, think twice before making a regular complaint before the Magistrate. No such precautions are taken or deemed necessary in the case of information given to the police".

In a later case,(6) the same High Court held that S. 182 is to be interpreted not in isolation but in association with S. 211 and it applies to cases when the information to the public servant falls short of amounting to the institution of criminal proceedings against a defined person and falls short of amounting to the false charging of a defined person with an offence as defined in the Code.

Calcutta view. — An offence constituted by a false complaint against unknown persons is not one under S. 211, but under S. 182.(7) In earlier

cases, it held that where the charge was of a serious nature, the offence fell under S. 211 even when a complaint was made to the police.(8)

Lahore view. — An offence falling under S. 182 is included in the more serious offence falling under S. 211; and a prosecution for a false charge may be either under S. 182 or S. 211, though clearly if S. 211 does apply and the false charge is serious, a prosecution should be under the more serious S. 211.(9) This case overruled the earlier view(10) that it was necessary, to constitute an offence under S. 211, to institute proceedings in a Court.

Madras view. — To constitute an offence under S. 182 it is only necessary that the information given by an accused person to a public servant should be false to his knowledge, whereas, to constitute an offence under S. 211, it is necessary that the accused should falsely charge a person with having committed an offence. The expression of a suspicion that a person may have committed an offence does not amount to the institution of a criminal charge against him where the police are only left to act upon the suspicion. Under S. 211 there must be a definite accusation before a person can be said to have either charged or instituted criminal proceedings against another.(11) In an earlier case,(12) the same High Court had held that the word "charges" as used in S. 211, meant something different from "gives information" in S. 182.

Nagpur, Peshawar, Patna and Rajasthan views.— According to the Nagpur(13) and Peshawar(14) view, S. 182 is primarily intended for cases of false information which do not ordinarily involve a particular allegation or charge against a specified and definite person. S. 211 covers cases where there is a definite information or charge with reference to a criminal offence against a particular person.

The Patna High Court(15) held that every false charge made to the police is not necessarily an offence under S. 211. If the intention to injure is absent, then the offence falls under S. 182.

The Rajasthan(16) view is that, if a case falls both under Ss. 211 and 182, it is open to the authority concerned to proceed either under one section or the other.

Rangoon view.— Where there have been Court proceedings in consequence of a report to the police, then S. 211 is the appropriate section, at any rate, where the offence is a serious one.(17)

Sind view.— Under S. 211, if the accused makes his complaint without any just grounds and acts without due care or caution, it is enough to constitute an offence. But under S. 182 the information given to the police should not only be false in fact but it must be false to the knowledge or belief of the informant and the mere fact that the accused had reason to believe it to be false is not sufficient.(18)

It will be seen that the consensus of the views appears to be that S. 182 is confined to minor offences, while S. 211 is meant for offences of a serious

nature. If this proposition is accepted, one of the sections is certainly redundant. On the other hand, S. 132 refers to giving to any public servant any false information, while S. 211 mentions falsely charging any person with having committed an offence. What these two expressions exactly mean is the bone of contention and would seem to require clarification, though the controversy has not in any way affected the process of criminal law.

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SECTION 307, NOTES 3, 4 AND 5.

3. "Whoever does any act." — Illustrations (c) and (d) to the section indicate the stage at which the criminal act takes shape. All acts which are in a preparatory stage do not constitute an offence under this section. As stated in the last preceding Note, it is, however, not necessary that it should be the penultimate act to constitute an offence; it is sufficient that the accused had the requisite intention and the attempt has gone so far that the crime would be completed but for an extraneous intervention which frustrates its commission. At the same time, if the accused gives up the attempt voluntarily for any cause, the provisions of this section are not attracted. For example, the accused may point a gun at the intended victim, he may even put his finger on the trigger, but may refrain from firing on account of repentance or out of commiseration towards the victim. But, once he pulls the trigger, he commits the offence apart from whether he succeeds in his object or not.

What is necessary to establish is that there is an act done under such circumstances that death might be caused if the act took effect. The act must be capable of causing death in the natural and ordinary course of things,⁽¹⁾ or, in other words, that death might be caused if the act took effect. The degree of probability should not enter into the question. It would be a very uncertain criterion to apply. Strictly speaking, powdered glass is not a poison, but, in this country, it is popularly believed to be actively poisonous, and its administration in food was held to be an offence under this section.⁽²⁾ Where, however, a doctor, who treated the injured, did not say that the injuries were capable of causing death, the principle of deducing intention from the nature of the injuries was held to be misapplied.⁽³⁾ Also, where the accused struck his wife on the neck with a hatchet, it could not be said that the act was likely to cause death in the ordinary course of nature.⁽⁴⁾ In a Bombay case,⁽⁵⁾ the accused struck the deceased three blows on the head, and believing the victim to be dead, set fire to the hut in which he was lying with a view to remove all evidence of the crime. The medical evidence showed that death was due not to the blows struck but by injuries from burning. It was held that the accused was guilty under this section, but Parsons J., who dissented, considered him to be guilty of murder. But where the death occurred some days after the throwing of an acid on a person, the accused was held to be guilty under S. 324 and not under S. 307.⁽⁶⁾ If a man fires blindly in the dark with a shot gun in the direction in which he heard sounds coming, it cannot be held that his act must in all probability cause death or such bodily injury as would be likely to cause death^(6a), but a person who is being pursued as a thief,

fires at one particular part of his pursuer's body and hit that part and that part only, it must be concluded that his intention was to kill.(7)

As already stated, the only act which would fall within the purview of this section, is an act which by itself must be ordinarily capable of causing death in the natural and ordinary course of events, and the accused's criminal liability must be limited to the act which he did in fact, and cannot be extended so as to embrace the consequence of another act which he might have done but did not,(8) e.g., a blow with a hatchet may or may not cause death. It depends on the nature of the blow inflicted.

S. 307 makes a distinction between an act of the accused and the result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned but still there may be cases in which the culprit would be liable under this section. If the person knows that a certain result would ensue from his act he must be deemed to intend such result by doing the act. Further, it is not necessary that the injury actually caused to the victim should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of the result, was done with the intention or knowledge and under the circumstances mentioned in the section.(9) However, a single Judge of the Orissa High Court,(10) after coming to the conclusion that all the injuries were simple, except one, which was grievous, held that, causing injuries, though with the intention of causing death but which do not result in death, does not come under the provisions of this section.

In an old Bombay case,(11) it was held that, where the accused admitted having thrown a girl into a canal, but the body could not be found, it was inexpedient to convict the accused of murder, but that conviction for attempt to murder would be proper.

4. "With such intention or knowledge."—The section uses the words "such intention or knowledge" and not intention and knowledge. Intention and knowledge are alternative ingredients of S. 299 and S. 300. Hence, an offence under this section can be committed where there is no intention proved but there is knowledge that the act is so imminently dangerous that it must, in all probability, cause death,(1)

The intention must be to cause such bodily injury as is likely to cause death. Where there is no proof of intention to kill, this section does not apply. It was alleged that the accused fired a revolver at the Inspector but there was no proof of intention to kill him. It was held that the charge under this section was unsustainable.(2) If it could be proved in this case, it is submitted, that the accused knew that death would result, he could have been convicted under this section. In certain cases, the intention can be inferred. For instance, if a person fires several shots with a rifle at a person, it would ordinarily mean that he wants to kill that person. The fact that the person aimed at was not killed, though the accused was a good shot, does not necessarily mean that he had no intention to kill that person. A person may be excited and that is why

PROSPECTUS

A copy of this PROSPECTUS has been delivered to the Registrar of Companies, Bombay, for registration as required by Sec. 60 of the Companies Act, 1956.

TRUE LAW SERIES LIMITED

Registered Office:
Swastik Building, 2nd Floor,
Thakurdwar Post Office Lane, Bombay-2.

SHARE CAPITAL

AUTHORISED

Rs. 10,00,000 divided into—
5,000 Equity Shares of Rs. 100, each, Rs. 500,000

5,000 ten per cent. less tax non-cumulative Preference Shares of Rs. 100, each, „ 500,000

PRESENT ISSUE

Rs. 450,000 divided into 4,500 Equity Shares of Rs. 100, each, at par;

Rs. 500,000 divided into 5,000 ten per cent. less tax non-cumulative Preference Shares of Rs. 100, each,

Ten per cent. less tax non-cumulative Preference Shares at par are available upto 14th September 1960. From 15th September 1960, recurring monthly premium of one per cent. will be added to nominal amount of Rs 100/- (five shares of Rs. 100/- each).

1. Objects of the Company

The company was incorporated on 13th December 1958 as a private limited company, since converted into a public limited company from 18th December 1959, generally for the purpose of carrying on all or any of the objects or purposes mentioned in the Memorandum of Association and particularly, to carry on the business of printing and publishing Law Reports, Commentaries and Digests.

The main objects of the company as contained in the Company's Memorandum of Association are:—

(a) To print and publish and sell any works, to start a newspaper, to work as booksellers, to deal in machinery, paper, stationery, printing materials of all kinds and such other articles as are found necessary in the business of printing and publishing and to do any other trade or business whatsoever which is necessary in the opinion of the company, by way of extension of or in connection with such business, or is calculated directly or indirectly to develop any branch of the company's business or to increase the value of or to turn into account any of the Company's assets, property or rights.

(b) To acquire from time to time and to manufacture and deal in all such stock-in-trade, goods, chattel and effects as may be necessary or convenient for any business for the time being carried on by the company.

Copies of the Memorandum and Articles of Association of the Company can be inspected at any time during the usual business hours at the Registered Office of the company.

Names, addresses, descriptions and occupation of the signatories of the memorandum and

the number of shares subscribed for by them—

The following is a statement of the names, addresses, descriptions and occupations of the signatories of the Memorandum and the number of shares subscribed for by them.

natories of the Memorandum and the number of shares subscribed for by them.

Name of subscriber.	Address, description and occupation of the subscriber	Number of shares taken by each subscriber.
V. V. Chitale	79, Lane, Senior Advocate, Supreme Court.	One (Equity)
H. M. Raut	L. 8 Sharada-shram, Bhavanishankar Road, Dadar, Bombay-28. Bart-at-law.	One (Equity)

The number and classes of shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

Number and classes of shares.

5,000 Equity Shares of Rs. 100, each	Rs. 500,000
5,000 ten per cent. less tax non-cumulative Preference Shares of Rs. 100, each	„ 500,000

The nature and extent of the interest of the holders in the property and profits of the company.

Nil

The number of redeemable preference shares intended to be issued, with the date of redemption or, where no date is fixed, the period of notice required for redeeming the shares and the proposed method of redemption.

No redeemable preference shares intended to be issued.

Directors.

The Articles of Association of the Company provide that—

Until otherwise determined by a General Meeting, the number of Directors shall not be less than three nor more than fourteen.

2. Qualification of a director.

Article No. 46 provides that the qualification of every director shall be his holding one equity share.

Remuneration of a director.

Each of the directors shall be paid out of the funds of the company by way of remuneration for his services the sum of Rs. fourteen for each meeting of the directors attended by him. There is no Managing Director in the Company. No director in any other capacity will be entitled to get remuneration other than that mentioned above.

3.(a) Particulars of directors.

Name	Address	Description & Occupation
Vaman Vasudeo Chitale	Gangaram Khatri Wadi, Thakurdwar, Bombay-2.	Advocate.
George Kurein	B u o n a c a s a Homji Street, Sir P. M. Road, Bombay-1.	Advocate.
Ramanand Deo- rao Hattangadi	Fort Chambers, 2nd Floor, 6-10, Dean Lane, Bombay-1.	Advocate.

- (b) Particulars of Managing Director or proposed managing director, if any.

No managing director is appointed or is proposed to be appointed.

- (c) Particulars of managing agent or proposed managing agent, if any.

No managing agent is appointed or is proposed to be appointed.

- (d) Particulars of Secretaries and Treasurers or proposed Secretaries and Treasurers, if any.

No Secretaries and Treasurers are appointed, or are proposed to be appointed.

- (e) Particulars of the manager or proposed manager, if any.

No manager is appointed or is proposed to be appointed.

4. If managing agent or secretaries and treasurers are a body corporate, the subscribed capital of such body.

No managing agent or Secretaries and treasurers are appointed or are proposed to be appointed.

5. Minimum Subscription.

The minimum subscription in respect of the present issue on which the Directors will proceed to allot is Rs. 200,000, whether Residuary or Preference Shares.

This amount is required for conducting monthly journal, mainly Rubric Law Reports and publishing legal Commentaries.

6. The time of the opening of the subscription list.

The subscription list will open on 14th August 1960.

7. The amount payable on application and allotment of each share, and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

This is the first offer of shares to the public. The amount payable on each share is as follows:—

- (a) on application 5% of the nominal value
(b) the balance, when called for.

9. No shares and debentures have ever been has been or is proposed to be given to any person to subscribe for any shares in or debentures of the company.

- 9.2 No shares and debentures have ever been issued or agreed to be issued, in the past, to any person, as fully or partly paid up otherwise than in cash.

10. The amount paid or payable by way of premium, if any, on each share which had been issued within the two years preceding the date of the prospectus or is to be issued, stating the dates or proposed dates of issue and, where some shares have been or are to be issued at a premium and shares of the same class at a lower premium, or at part or at a discount the reasons for the differentiation and how any premiums received have been or are to be disposed of.

This is the first offer of shares to the public. No premium was paid anytime in the past. Of the present issue, Equity Shares are payable at par. Ten per cent less tax non-cumulative preference shares at par are available upto 14th September 1960. From 15th September 1960, recurring monthly premium of one per cent, will be added to nominal amount of Rs. 100/- (five shares of Rs. 100/- each). The reason for the differentiation is that those who will be applying for shares on or before 14th September 1960 will not be getting any interest on their money, since they have parted with it, while those who will subscribe

after 15th September 1960, will be having the advantage of getting interest on their money by investing wherever they may choose. These premiums will be utilised in writing off Preliminary Expenses and Commission paid on issue of shares, as provided in Section 78(2) (b) & (c).

11. Where any issue of shares or debentures is underwritten, the names of the underwriters, and the opinion of the directors that the resources of the underwriters are sufficient to discharge their obligations.

No shares are underwritten.

12. (1) As respects any property to which this clause applies—

- (a) the names, addresses, descriptions and occupations of the vendors;

- (b) the amount paid or payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so paid or payable to each vendor, specifying separately the amount, if any paid or payable for goodwill;

- (c) the nature of the title or interest in such property acquired or to be acquired by the company;

- (d) short particulars of every transaction relating to the property completed within the two preceding years, in which any vendor of the property to the company, or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest, direct or indirect, specifying the date of the transaction and the name of such promoter, director or proposed director and stating the amount payable by or to such vendor, promoter, director or proposed director in respect of the transaction.

- (2) The property to which sub-clause (1) applies is property purchased or acquired by the company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, other than property—

- (a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or

- (b) as respects which the amount of the purchase money is not material.

- (3) For the purposes of this clause, where any of the vendors is a firm the members of the firm shall not be treated as separate vendors.
No property is or is to be purchased.

13. No commission on shares is payable to any person in particular, but commission at the rate of five per cent, of the nominal value of shares allotted will be paid generally, as provided in Clause No. 7 of the Articles of Association.

- 14(i) Preliminary expenses are estimated at Rs. 1,650/- and are payable to V. V. Chitale, as stated in Statement-in-lieu of Prospectus.

- (ii) The amount of the expense of the issue save as aforesaid is Nil.

15. There is no promoter to the company and no benefit is paid or given within the two preced-

ing years or intended to be paid or given within the two preceding years or intended to be paid or given to any promoter or officer.

16. There is no contract appointing or fixing the remuneration of a managing director, managing agent, secretaries and treasurers or manager, as no such officer is appointed

17. Auditor.

J. T. Parchure, A.C.A., Chartered Accountant, Meadows House, Meadows Street, Fort, Bombay-1.

The consent in writing of the abovenamed Auditor to act in his capacity as auditor accompanies this Prospectus as required by Section 60(b).

18. Interest of Directors.

All the directors are interested to the extent of the shares subscribed for by them in the company.

Further, V. V. Chitale is interested, as he incurred expense of Rs. 2,882-24 in preparing manuscript for publication prior to the incorporation of the company and after incorporation, the company has with the sanction of the resolution of the Board of Directors paid the said amount to him as expense prior to incorporation. Similarly, with the sanction of the resolution of the Board of Directors, V. V. Chitale sold to the company paper of the value of Rs. 5,230/-.

Interest of promoters.

There being no promoter, no amount is paid or payable to any promoter.

19 & 20 Right of voting.

Article No. 37 of the Articles of Association of the Company reads as follows:—

Upon a show of hands, every member holding equity shares present in person or by proxy or attorney or in the case of a corporation, a representative under Section 187 of the Companies Act, 1956 shall have one vote and upon a poll every member present in person or by proxy or attorney or by representative under Section 187 of the said Act shall have one vote for every equity share held by such member. The votes of Equity and Preference Shares shall, however, be governed by Section 87 of the Act.

Rights in respect of Dividends.

Non-cumulative Preference Shareholders will have preferential rights to capital and also to dividend at ten per cent. and Equity Shareholders will have right to dividend in proportion to the amount paid on their shares, as provided in regulation No. 88 of Table A of the Companies Act, 1956, which is adopted by the Articles of the Company.

Restriction of the Right to Transfer.

The Directors may without assigning any reason decline to register any transfer of shares not fully paid up or upon which the company has a lien, as provided in Article No. 24 of the Articles of Association of the Company.

21. The Company has been carrying its business since incorporation.

The Company does not propose to acquire any outside business.

22. The Company has no subsidiaries.

No assets of the company have ever been re-valued since incorporation.

23. Copies of the Balance Sheet and the Profit & Loss Account of the company for the period ended 31st December, 1959 can be inspected at any time during the usual business hours at the Registered Office of the Company.

24. Auditor's Report.

J. T. Parchure, A.C.A., Chartered Accountant.

Meadows House,
Meadows Street, Fort,
Bombay-1.

Dated, 2nd August, 1960.

To
The Directors,
True Law Series Ltd.,
Bombay.

Dear Sirs,

I have examined the accounts of True Law Series Ltd. made up from 13th December, 1958 (date of incorporation) to 31st December 1959 in accordance with the provisions of clause 24 of Part II of Schedule II of the Companies Act, 1956, and beg to report as follows:—

(1) Profits & Losses:

At present, the company has been preparing Manuscripts for its publications and as such all the expenses have been debited to Manuscript Account which account is being carried forward. There cannot, therefore, be said to be profit or loss, so far.

The details of expenditure of Rs. 18,106-83 on Manuscript Account for the above period are as under:

	Rs. nP.
Misc. expenses upto the date of incorporation	3,882-24
Purchase of paper (from a director) .. Rs. 5,230/-	60-00
Less Stock at close .. 5,170/-	
Establishment charges	11,201-79
Subscriptions to journals	323-22
Packing & forwarding	68-87
Rent	111-00
Stationery charges	104-67
Advertisement charges	164-32
Travelling & Conveyance (spent by a director Rs. 440/-)	589-78
Postage	39-43
Audit fee	200-00
Filing fee	92-50
Directors' meeting fee	126-00
Miscellaneous expenses	455-43
Interest on loans	682-69
Depreciation	7-90
Less Interest on Bank a/c received	18,109-84
Cost of Manuscript upto 31st Dec. 1959	3-01

Rs. 18,106-83

The company has incurred Preliminary Expenditure of Rs. 1,628-50 upto 31st December, 1959.

(2) Dividends:

No dividend has been declared by the Company since the date of incorporation.

(3) Assets & Liabilities:—

Net Assets of the Company as at 31st December, 1959 are as under:—

	Rs. nP.
(a) Fixed Assets (at cost)—	
Furniture & Deadstock (Purchased in the period)	263-45
Less Depreciation written off for the period	7-90
	255-55
(b) Current Assets—	
Stock of paper (at cost) As per inventory taken, valued & certified by a director	5,170-00
Manuscript (at cost) As per inventory taken, valued & certified by a director	18,106-83
	23,276-83
(c) Cash & Bank Balances—	
Cash on hand at Head Office & Madras Branch	2,699-30
With Bank on current account	3,841-01
	6,540-31
(d) Miscellaneous Expenditure & Losses—	
Preliminary Expenses	1,628-50

c/o
B. F. Rs. 31,701-19
Rs. 31,701-19

Less Liabilities:

Unsecured Loans—			
(Other Loans & Advances),			
(a) Loan from a director	Rs. n.p.	128-50	
(b) Loans from others	28,400-00		
Current Liabilities & Provisions	1,032-69	29,561-19	
Net Assets on 31st December, 1959	Rs.	2,140-00	
Net Assets Represented by—			
8 Equity Shares of Rs. 100/- each Rs. 5 per share called & paid	40-00		
420 Equity Shares of Rs. 100/- each fully called	42,000-00		
	42,040-00		
Less Calls in arrears	39,900-00	2,140-00	

J. T. PARCHURE,
Chartered Accountant.

The accounts of the company have been last made up only in respect of the period ending 31st December, 1959 and that no accounts in respect of any part of the period have been made any time thereafter.

25. No proceeds, nor any part of the proceeds, of the issue of the shares are or is to be applied directly or indirectly—

- (i) in the purchase of any business; or
- (ii) in the purchase of an interest in any business, whatsoever.

26. No proceeds, nor any part of the proceeds, of the issue of the shares are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate such that by reason of that acquisition or anything to be done in consequence thereof or in connection therewith, that body corporate will become a subsidiary of the company.

Application and Allotment.

Application for shares may be made on the form accompanying this Prospectus.

Allotment will be notified by the despatch of an allotment letter, but the Directors reserve the full uncontrolled right of accepting or rejecting any application in whole or in part. Where an application is rejected or not accepted in full the whole or any balance of the application money will be refunded to the applicant, in which event Bank's Commission, if any, will be payable by the applicant.

Dated, at Bombay,

V. V. CHITALEY,
R. D. HATTANGADI,
GEORGE KURIEN,
Directors.
For office use only

Applicants in their own interest should read the instructions carefully before completing this form.

TRUE LAW SERIES LIMITED.

(Incorporated under the Companies Act, 1956).

FORM OF APPLICATION.

Issue of

4,500 Equity Shares of Rs. 100/- each.
5,000 ten per cent. less tax non-cumulative preference shares of Rs. 100/- each.

To
The Directors,
True Law Series Limited,
Bombay.

Gentlemen,

I/We request you to allot to me/us, upon the terms and conditions of the Company's Memorandum and Articles of Association and Prospectus

Equity/Preference Shares of Rs. 100/- each. I/We send herewith Rs. being a deposit of Rs. 5/- per share, by cash/cheque/draft as required to be sent with the application. I/We agree to accept the same or any less number that you may allot to me/us and to pay the amount due on allotment and subsequent calls as and when made. I/we authorise you to register me/us as the holder/s of the said shares. (I/We am/are resident in India).

Dated this day of 19 ..

1. Usual Signature
Full Name
(State whether Mr. Mrs. or Miss)
Address
Occupation
2. Usual Signature
Full Name
(State whether Mr. Mrs. or Miss)
Address
Occupation
3. Usual Signature
Full Name
(State whether Mr. Mrs. or Miss)
Address
Occupation

N.B. In order that the application may be quickly disposed of, the first named applicant is requested to write his name and address in block letters and the number of shares applied for in the form below also.

ATTENTION IS DIRECTED TO THE FOLLOWING.

Applications must be in the names of individuals or limited companies and not in the names of firms and must be completed in Block Letter in English.

In the case of joint applications, all applicants must sign, and all communications will be addressed to and refunds made payable to the applicant whose name appears first.

Where applications are signed under a power of attorney the power must be attached to application form or lodged with the Company at its Registered Office.

Application forms must be completed in full or they will be rejected.

Name in full No. of Shares
(State whether Mr. Mrs. or Miss)

Full Address applied for—

TRUE LAW SERIES LIMITED.
BOMBAY

(Receipt for Deposit Amount for Application.)

No. Date,

Received from Mr./Mrs./Miss
the sum of Rupees by

Cash/Cheque being the deposit of Rs. 5/- per Equity Share/Preference Share on Equity/Preference Shares of Rs. 100/- each in the above-named company.

Rs. For True Law Series Limited.

55985
22.1.77
V. V. CHITALEY,
R. D. HATTANGADI,
GEORGE KURIEN,
Directors.

(Payment by cheques are subject to realisation.)
This receipt should be preserved to be exchanged for the share certificate when ready.

LIST OF JOURNALS, REPORTS OF WHICH ARE REPORTED IN RLR

Indian Law Reports Series—					Price
1.	Supreme Courts Reports	..	..	..	39-00
2.	I.L.R. Assam	..	..	..	17-50
3.	Allahabad	..	..	..	9-00
4.	Bombay	..	..	..	22-00
5.	Calcutta	..	..	..	15-00
6.	Hyderabad	..	..	..	18-25
7.	Madhya Bharat	..	..	..	12-00
8.	Madras	..	..	..	12-00
9.	Mysore	..	..	..	6-37
10.	Nagpur	..	..	..	9-00
11.	Cuttack	..	..	..	10-00
12.	Patna	..	..	..	15-00
13.	Pepsu	..	..	..	9-50
14.	Punjab	..	..	..	9-00
15.	Rajasthan	..	..	..	12-00
16.	Trav-Cochin	..	..	..	12-00
17.	Jammu and Kashmir Law Reports	..	..	..	6-00
Provincial Journals.					
18.	Ajmere Merwara Law Journal	..	..	..	6-00
19.	Allahabad Law Journal including Revenue Decisions	..	..	..	15-00
20.	Allahabad Weekly Report including Revenue Decisions	..	..	..	23-00
21.	Revenue Decision	..	..	..	8-00
22.	Allahabad Criminal Reporter and A.W.R. Supp.	..	..	..	10-00
23.	Andhra Law Times	..	..	..	14-00
24.	An. Madras Weekly Notes & Cri	..	..	..	18-00
25.	Andhra Weekly Reporter	..	..	..	15-00
26.	Kerala Law Journal	..	..	..	20-00
27.	Bombay Law Reporter	..	..	..	18-00
28.	Calcutta Weekly Notes including Dacca Reports	..	..	..	15-00
29.	Calcutta Law Journal	..	..	..	36-00
30.	Madhya Bharat Law Reporter	..	..	..	30-00
31.	Madhya Bharat Law Journal—including Industrial and labour Supplements	..	..	..	15-00
32.	Madras Weekly Notes	..	..	..	12-00
33.	Madras Weekly Notes Criminal	..	..	..	18-00
34.	Madras Law Journal	..	..	..	12-50
35.	Law Weekly	..	..	..	16-00
36.	Mysore Law Journal	..	..	..	18-00
37.	Nagpur Law Journal	..	..	..	12-00
38.	Cuttack Law Times	..	..	..	15-00
39.	Bihar Law Journal Reports	..	..	..	20-00
40.	Punjab Law Reporter	..	..	..	15-00
41.	Rajasthan Law Weekly including Revenue Supplements	..	..	..	15-00
42.	Saurashtra Law Reporter	..	..	..	18-00
43.	Kerala Law Times	..	..	..	108-00
All India Journals.					
44.	All India Reporter	..	..	..	36-00
45.	Criminal Law Journal	..	..	..	36-00
46.	Dominion Law Reporter	..	..	..	15-00
47.	All India Criminal Decisions	..	..	..	15-00
48.	Company and Insurance Cases Vols.	..	..	..	32-00
49.	Income Tax Reports	..	..	..	17-00
50.	Sales Tax Cases	..	..	..	32-00
51.	Factories Journal	..	..	..	25-00
52.	Labour Law Journal	..	..	..	25-00
53.	Labour Appeal Cases	..	..	..	18-00
54.	Supreme Court Appeals	..	..	..	20-00
55.	Supreme Court Journal	..	..	..	7-00
56.	Election Law Reports	..	..	..	48-00
57.	Tax and Commercial Reports	..	..	..	7-00
58.	Election Law Reports	..	..	..	95-20
Foreign Journals					
59.	All. E. R.	..	..	..	57-00
60.	Can. L. R.	..	..	..	60-00
61.	Comm. L. R.	..	..	..	144-00
62.	Mal. L. J.	..	..	..	31-50
63.	N. L. R. (Ceylon)	..	..	..	132-00
64.	N. Z. L. R.	..	..	..	75-00
65.	Pak L. D.	..	..	..	90-00
66.	Scss. Cases (Scot)	..	..	..	75-00
67.	U. S. S. C. R.	..	..	..	
Grand Total					1860-82