REVIEWS

THE INDIAN CONTRACT ACT, 1872. Volume 1. By A. C. Patra. Bombay: Asia Publishing House. 1966. Pp. vi+895. Rs. 40/-.

A QUINQUENNIUM hence legal scholars in India will observe the centennial anniversary of the Indian Contract Act, 1872. During the period 1872-1967, a plethora of case law has gathered on the act. Some legal problems, nevertheless, have defied solutions, some are still in the scholars' domain and have not yet reached the precints of a court of law and some conflicting judicial decisions remain to be considered by the highest judicial authority in India. Also, the act has shown its defectiveness in not keeping pace with developed notions on offer and acceptance, consideration, liability of a minor and new problems arising in the realm of quasi-contract. Any exhaustive and critical commentary on the Indian Contract Act, 1872, at this hour, when Parliament has yet to consider the recommendations of the Fifth Indian Law Commission on this act, would be most welcome and opportune.

The commentary is designed to run into two volumes. Volume one, under review, covers sections 1-67 which, broadly speaking, deal with the formation of contracts and their performance; volume second, as announced, "will cover commentaries on Sections 68-238 and include three Appendices giving the text of the proposals made by the Law Commission for the amendment of the Indian Contract Act, 1872, (Thirteenth Report); the text of the Sale of Goods Act, 1930; and the text of the Specific Relief Act, 1963. A full Table of Cases will be given at the end of the second volume."[1]

The author has proceeded in an unorthodox style by discarding a foreword to his book. His mission, as stated in the opening sentence of his preface, is "to provide the practitioners in law with a statement of the general principles of the Indian law of contract under the Indian Contract Act, 1872, and with discussions of the many controversial points in this branch of the law, on the basis of decided cases."[2]

Besides discussing controversial topics, the author has prefaced the commentary on the act with an highly useful history of the law prior to the Indian Contract Act, 1872. The introduction shows the role played by Hindu law and Muslim law of contract and the place which English common law of contract occupied in the pre-Contract Act era.

The book contains views on a number of controversial topics, which in many cases will merit consideration at the highest court. Thus the view that a threat to commit suicide made in order to induce the

1. Patra, *The Indian Contract Act, 1872*, at vi (1966) [hereinafter cited as *Patra*].
2. *Id.* at v.

other party to make a release deed is an act "forbidden by the Indian Penal Code" and is, therefore, coercion within the meaning of section 15 of the Indian Contract Act, 1872, seems sound.[3] An act of suicide is not *punished* by the Indian Penal Code, because the deceased is, really speaking, not punishable. Obviously, threat to commit suicide would vitiate free consent of the party concerned, and in the context of section 14 of the act, the deed of release would seem to have been induced on account of coercion. Again, the view based on some Indian and English decisions, that as "a contract settled by telephone is complete only when the acceptance is received by the offeror, the place where the contract is made will clearly be the place where the acceptance is received,"[4] is now confirmed by a majority opinion of the Supreme Court of India in *Bhagwandas* v. *Girdharlal & Co.*[5]—a case reported when the book was in press.

The author breaks a new topical ground by embarking upon the treatment of the doctrine of "promise as estoppel,"[6] which may also be termed "promissory estoppel," "equitable estoppel" or "quasi-estoppel." The purpose of this doctrine is to protect the injurious reliance of the offeree, even when the promise is gratuitous or without consideration. The commentary is almost wholly applicable to English law and the discussion relating thereto is fairly exhaustive. The treatment, however, from the point of view of Indian law is by no means satisfactory: the discussion *inter se* showing the relationship or antithesis between the statutory requirement of consideration and the applicability of the doctrine of promissory estoppel is not borne out by the text, the scope of the doctrine, *i.e.*, whether it applies only to bilateral contracts, unilateral contracts or gratuitous agreements is not carved out and above all the post-independent decisional development of the doctrine in India is lacking. In the United States, the doctrine of promissory estoppel began to be applied about the middle of the nineteenth century; in England its *modern* application began after Second World War, and in India the use of its nomenclature in judicial decisions seems to have been made for the first time in the post-independent era. Without going into the depth of historical researches, it may be said that in at least two Indian cases, *Sat Narain* v. *Union of India*[7] and *N. S. Society* v. *Krishna Pillai*[8] the Punjab and Kerala High Courts respectively approved the application of the doctrine of promissory estoppel to the factual situation at hand. In both these cases, the chief justice and another justice participated in the deliberations of the High Court. The

3. *Id.* at 327-28.
4. *Id.* at 261.
5. A.I.R. 1966 S.C. 543.
6. *Patra* 131-46, particularly 131-32.
7. A.I.R. 1961 Punj. 314.
8. A.I.R. 1964 Ker. 265.

first case concerned a unilateral contract situation,[9] and the second a gratuitous agreement situation dealing with charitable subscription.[10] The decisions in these cases, it is submitted, would remain unchanged even if all considerations of the doctrine are set aside and the courts apply the settled principles underlying the fact situations. In an earlier case,[11] in accordance with the statutory requirement of consideration, the court refused to give the relief to the plaintiff who had acted in reliance on the defendant's promise which was without a necessary *quid pro quo*. The Law Commission of India has, therefore, rightly suggested exception 4 to section 25 to accommodate the doctrine of "promissory estoppel."[12]

A modern problem related to the doctrine of promissory estoppel concerns the deprivation of the power of revocation of the offeror in case of a unilateral contract, once the performance has begun. The index shows that the author, for reasons best known to him, avoids the use of the term "unilateral contract," which means a promise in return for an act. The matter under this topic, however, has been discussed under the headings, "Law revision,"[13] "Fifth Indian Law Commission,"[14] and "Whether a promise in return for an act is revocable."[15] But the discussion is far from complete. A reader of a voluminous treatise as this would expect a masterly analysis of the modern English cases on the subject and an acute discussion of the Indian provisions in section 8. The problem posed by the author — whether a promise in return for an act is revocable — has arisen more pertinently in the twentieth century.[16]

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9. Plaintiff said: "In case the Government is prepared to consider this request [of derequisitioning of the property] favourably, we would be willing to forego the compensation for the period the house has been in Government possession." *Sat Narain* v. *Union of India*, A.I.R. 1961 Punj. 314, 318. This representation of future intention was acted upon by the Government and "the premises remained released for three years subsequently and although it was within the power of the Government to again requisition the premises they did not do so in view of the representation of the plaintiff to forego the compensation." *Id.* at 319. In the closing remarks, the court said: "In this view of the matter, the appellant does not deserve to succeed on the principle of 'promissory' estoppel." *Id.* at 320.

10. First defendant promised to subscribe a sum of Rs. 10,000 to start a college, which was started on the strength of this promise and a number of similar others. The court held that the promise became enforceable as soon as definite steps—in this case the construction of the building—were taken in furtherance of the object and on the faith of the promise. The court referred to a New York case and *American Jurisprudence* on "promissory estoppel" with approval. *N. S. Society* v. *Krishna Pillai*, A.I.R. 1964 Ker. 265.

11. *Adaitya Dass* v. *Prem Chand*, A.I.R. 1929 Cal. 369.

12. Law Commission of India, *Thirteenth Report (Contract Act, 1872)* 77 (1958).

13. *Patra* 276.

14. *Ibid.*

15. *Id.* at 266.

16. See review of Dean Ashly's *Law of Contracts* (1911) in 28 *L. Q. Rev.* 100, 101 (1912).

Mention must be made here of the celebrated English case of *Errington* v. *Errington and Woods*[17] which finds no place at all in the author's commentary on the subject. Lord Justice Denning (as he then was) made remarks in this Court of Appeal case, which modify the traditional notion of a unilateral contract in English law. He held that "the father's promise was a unilateral contract — a promise of the house in return for their act of paying the instalments. It could not be revoked by him once the couple entered on the performance of the act."[18] The decision is a milestone in the progressive notion of unilateral contract. The recommendations of the English Law Revision Committee,[19] though not yet signed into law by the Parliament, have been silently incorporated into this decision. The Indian courts did not have had the occasion to deal with the situation at hand. The Fifth Indian Law Commission has observed that "it is not clear whether the expression 'performance of the conditions of a proposal [in section 8 of the Contract Act] means a complete performance, or, even partial performance is sufficient."[20] This view, however, is not tenable. The Indian Contract Act, as framed in 1872, could not be expected to have thrown overboard the well-established meaning of unilateral contract in the English jurisprudence and to have made a unilateral contract binding upon part performance. Furthermore, if the legislature had intended to revolutionalize or rationalize the concept of unilateral contract in Indian enactment, it would have used suitable and clear language to achieve its end. The act, therefore, may be said to have adopted a traditional approach towards this concept.

The topic of formation of contract at an auction sale without reserve has been disposed of almost in a summary manner. The landmark controversial English case of *Warlow* v. *Harrison*[21] on the subject finds no discussion. And the remarks, "Even where the auctioneer advertises that the sale will be without reserve his advertisement to this effect will not be interpreted as a proposal on his part to the highest bidder,"[22] cite a Mysore High Court case (1962)[23] which deals with confirmation of the highest bid by authorities. It is obvious that in such a case the bid can only be an offer. The text ignores the Indian cases of *Joravarmull* v. *Jeygopaldas*[24] and *Abdul Azizkhan* v. *Municipal Committee*,[25] which thoroughly discussed the application of the *Warlow*

17. [1952] 1 K.B. 290.
18. *Id.* at 295.
19. *Patra* 276.
20. *Supra* note 12, para. 32.
21. (1859) 1 E. & E. 309.
22. *Patra* 120.
23. *Premier Insurance Co. Ltd.* v. *Bharat Commerce and Industries, Ltd.*, A.I.R. 1962 Mys. 185.
24. A.I.R. 1922 Mad. 486.
25. A.I.R. 1924 Ng. 227.

case in India and the question of retraction of bid in the case of an auction sale without reserve to the highest bidder. Unfortunately, the cases laid down diametrically opposite views. It is strange that the remarks, "The highest bidder in a public auction, subject to the confirmation by other authorities, gets no vested rights till the sale is confirmed,"[26] cite in support only the Scottish and English cases, but no Indian case — not even the one which verbatim contains these remarks.[27]

The liability of the government under the contract law when the agreement has not complied with the constitutional provisions of article 299(i) is yet another topic which deserves some reference here. This matter has been discussed under section 65, under the heading "Government, corporations, etc. as a party and Section 65." The text is strongly supported by latest decided cases, and yet it contains only their holdings and not their rationale or their *raison d'etre*. The analysis of the section vis-á-vis their problem is not shown at all. "The advanced student of law of contract in India,"[28] who may be expected to read the book "for a mastery over his subject"[29] — and the author claims to have "spared no pains"[30] to achieve this purpose for him —will be disillusioned to find the absolute absence of reasons making section 65 inapplicable to the situation at hand.

The reviewer came across a formidable number of printing mistakes now and then. Read "lend" for "lenp" (page 123, line 14), "consideration" for "cosideration" (page 142, line 36), "material" for "materiall" (page 146, line 22), "Implied" for "Implyed" (page 146, line 24), "indispensable" for "indespensable" (page 258, line 34), "proposer" for "propser" (page 265, line 13), "therefor" for "therefore" (page 269, line 21), "Merchant" for "Marchant" (page 601, line 1), "sea-insurance" for "sea-insurace" (page 601, line 3), "insurance" for "insurace" (page 612, line 11), "tortfeasor" for "torfeasor" (page 686, line 15), "unenforceable" for "uneforceable" (page 774, line 19), "principle" for "priniciple" (page 778, line 35), "63" for "36" (page 835, line 37), "discovered" for "delivered" (page 853, line 20), "immoral" for "immormal" (page 855, line 5), "plaintiff" for "plantiff" (page 856, last but one line), "adjudging" for "adjuding" (page 858, line 7), "entertained" for "etertained" (page 867, line 16). Also, folio heading sections and footnotes are not free from mistakes. In folio heading sections, read "S. 17" for "S. 16" (page 352), "S. 19A" for "S. 19" (page 390), "S. 23" for "S. 32" (page 453), "S. 40" for "S. 27" (page 675), "S. 52" for "S. 53"

26. *Patra* 120.
27. See *supra* note 23.
28. *Patra* v.
29. *Ibid.*
30. *Ibid.*

(page 733). In footnotes, read "Carbolic Smoke Ball Co." for "Carbolic Smoke and Ball Co." (page 144, n.2), "Rose and Frank Co." for "Rose; and Frank" (page 184, n.1), "Grant" for "Giant" (page 257, n.7), "Insurance" for "Iusurance" (page 601, n.1), "Benefit" for "Benifit" (page 601, n.2), "1951" for "1251" (page 861, n.1). None of these mistakes has been corrected in the errata (pages 877-78), thereby necessitating another errata.

By and large, the book is a useful addition to the existing learned commentaries on the Indian Contract Act, 1872, and may profitably be consulted by all concerned. It contains enormous citation of English and Indian decisions, enunciation and discussion of legislation bearing on the provisions of the Indian Contract Act and other source material. The author has tried to make the volume useful by embodying in it the text of the Indian Contract Act, 1872 (with amendments), subject index, recommendations of the Fifth Indian Law Commission, and of the English Law Revision Committee. A table of cases, if provided, would have been most welcome. The commentary is at times repetitious.

The reviewer hopes that in the second edition of this work, the author will provide more factual situations of decided cases and draw *his* own legal conclusions therefrom. Also, the printer's devil, it is hoped, will be put at the lowest ebb.

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THE SALE OF GOODS ACT AND THE PARTNERSHIP ACT. By Pollock and Mulla. Third Edition by D. N. Pritt, Q. C. Bombay: N. M. Tripathi Private, Ltd. Pp. xxxiv+ 456. Rs. 25/-.

THE WORK under review has its root in respect both of the enactment and the commentary in the Indian Contract Act, 1872. Sir Frederick Pollock's undertaking to write the book on the subject was based on the condition of the Indian cases being collected and digested by a competent person in India. That part of the work was entrusted to and performed "completely and faithfully" by Sir D. F. Mulla. The first edition of the book on the Indian Contract Act, 1872, was thus published by Sweet and Maxwell in the year 1905. Chapter VII (sections 76 to 123) of the Contract Act covered the law on the sale of goods which was repealed by and reenacted as act III of 1930. The law on partnership which was contained in chapter XI (sections 239 to 266) of that act was similarly separated by act IX of 1932. The commentary on partnership was transferred from the parent book and was published as a separate treatise in the year 1934 shortly after Mulla's death. The scheme presumably for a separate book on each of the two acts could

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