MOGHA'S THE INDIAN CONVEYANCER (9th ed. 1984). By Prem Prakash. Eastern Law House Pvt. Ltd., Calcutta. Pp. xlii + 859 Price Rs. 115.

MOGHA'S BOOKS on pleadings and conveyancing were pioneers when first published in the thirties and regarded as good according to the standard of those times. But the law develops fast. The difficulty of keeping abreast of it is that the author who took pains on the writing of his book is no more. Subsequent editions of the book on conveyancing have not kept pace with the growth of the law.

A few instances picked up at random from the precedents of conveyancing given in this book[1] will show how they have failed to keep abreast of the law. Thus the draft of an arbitration award has been set out[2] and the very first paragraph states[3] that the arbitrators have disagreed and could not make the award and therefore under the power given to them by the aforesaid arbitration agreement they appointed the umpire. This is not in accordance with law. According to the Arbitration Act 1940[4] the appointment of the umpire has to be made within one month after the arbitrators enter on the reference. Obviously this happens before they have proceeded with the arbitration and ultimately differed. Again at the end of the draft it is stated, "A few forms are also given in the Second Schedule to the Indian Arbitration Act, 1940".[5] This statement is not borne out by the Arbitration Act.[6] There are no forms of awards or of anything else given there.

Further, it would have been useful if a few instructions could have been given as to the writing of the award. For instance, it may have been said that the award should mention the claim, the defence and/or the counter-claim to show that it is made *de premissis*. Also it should have been stated that while an award need not discuss all the claims separately and a lump sum award can be given, still it is desirable that findings on each claim may be separately given to show that they have been considered. It should also be shown that the defence and the counter-claims too have been considered.

Lastly, it should have been stated that a short statement of reasons for the findings should be given by the arbitrator. This does not mean that an award has to be like a judgment of a court. But it is a part of natural justice that the party against whom the award is given should know the reasons for it. The parties have been given the right to demand that reasons for an award be given by the English Arbitration Act 1979. The

1. Prem Prakash, *Mogha's The Indian Conveyancer* (9th ed. 1984)
2. *Id.* at 126.
3. *Id.* at 127.
4. First schedule, para 2.
5. *Supra* note 1 at 127.
6. Second schedule.

Law Commission of India, in their report on the Arbitration Act some time ago did not opine in favour of reasons being made compulsory in an award, but the Supreme Court has recently referred the question to a five-judge bench as to whether an award without reasons is contrary to the principle that every judicial or quasi-judicial decision must contain the reasons for it.

A preliminary note on family settlement, *etc.*, has been given.[7] The statement of law as to its requirements made there obviously does not take note of the Supreme Court decision in *Kale* v. *Director of Consolidation.*[8] This is why it is not stated that even if there is no actual dispute between the members of the family, still a family settlement can be made to prevent a possible or future one. Similarly, it should have been stated that a memorandum made of a past oral family settlement does not require registration.

There is mention of a precedent of a guarantee taken by the bank from a person to secure the payment of money due on a bank balance from a customer.[9] It is stated further that any account settled between the bank and the customer shall be conclusive evidence against the surety.[10] This is not enough. For, the liability of the surety has also to be made absolute in case the customer does not agree with the bank in settling the account. This is why it should have been stated in the guarantee that the decision or the judgment of the bank that the money has become payable under the guarantee would be final. *The present wording of the first paragraph is that the guarantees would be payable in respect of all sums of money* "that may be due".[11] The crucial question is to decide whether the money is due. In this kind of term the customer as also the surety may contend that it has not become due. It is the essence of a guarantee that it is not the satisfaction of the condition of liability objectively but the judgment of the person entitled to invoke the guarantee which should be regarded as final. The decision as to the objective conditions will have to be given by a court of law. The need to go to it cuts at the very root of the practice of taking guarantees, particularly in favour of the banks or by them. Unless the guarantee can be invoked unilaterally its very purpose would be defeated.

It is to be hoped that the classics of Indian law would be revised and kept up-to-date by editors who are knowledgeable and prepared to give the required time to the revision. Otherwise a person who buys this book today is supplied with that information which the original author had given in the thirties and which may then have been satisfactory, but not in the late eighties.

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7. *Id.* at 187.
8. A.I.R. 1976 S.C. 807.
9. *Supra* note 1 at 220.
10. *Id.* at 221.
11. *Id.* at 220.

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