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ABKARI ACT, MADRAS (I OF 1886), ss. 55 AND 56—*Person carrying arrack if in possession—Meaning of "possession"—Possession of illicit quantity in breach of licence, permit or rule—Offence under Sec. 55 or 56—Arrest and detention of persons suspected of abkari offences—Ss. 54 and 40—Confused and irreconcilable.*] "Possession" in the Madras Abkari Act has its ordinary meaning, and a person who is carrying arrack is in possession of it. Possession of an illicit quantity of arrack in breach of a licence or permit or rule under the Act comes under section 55 (*a*) and not section 56 (*b*), and renders the possessor liable to arrest under the Act.

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Swedish General Railway Company, Ltd. v. *Thompson*, [1925] A.C., 495, followed 848

Tammi Reddy v. *Gangi Reddy*, (1922) I.L.R., 45 Mad., 281, followed ... 688

Thakur Barmpha v. *Jiban Ram Marwari*, (1914) I.L.R., 41 Calc., 590 (P.C.), distinguished 639

Thimma Reddi v. *Secretary of State*, (1924) I.L.R., 47 Mad., 325, referred to. 91

Tirbhuwan Bahadur Singh v. *Rameshar Beksh Singh*, (1906) I.L.R., 28 All., 72 (P.C.), distinguished 640

Tiruvengada v. *Ranga*, (1883) I.L.R., 6 Mad., 114, considered 726

Tiruvengada Mudali v. *Tripurasundari Ammal*, (1926) I.L.R., 49 Mad., 728 (F.B.), referred to 668

Tuljaram v. *Alagappa Chettiar*, (1912) I.L.R., 35 Mad., 1, applied 770

Umaji Krishnaji v. *King-Emperor*, (1926) 93 I.C., 159, dissented from ... 750

Veeranan Ambalam v. *Ayyachi Ambalam*, (1925) 49 M.L.J., 791, overruled. 677

Velayuda Mudali v. *King-Emperor*, (1920) I.L.R., 43 Mad., 438, referred to. 913

Venkatarama Ayyar v. *Chandrasegara Ayyar*, (1921) I.L.R., 44 Mad., 632, followed 441

Venkatasami v. *Viranna*, (1921) I.L.R., 45 Mad., 429, dissented from ... 217

Venkati Rama Reddi v. *Pillati Rama Reddi*, (1916) I.L.R., 40 Mad., (F.B.), approved 193

Vidya Varuthi v. *Balusami Ayyar*, (1921) I.L.R., 44 Mad., 831 (P.C.), relied on 567

Vithoba Bava v. *Hariba Bava*, (1869) 6 Bom. H.C.R., 54, followed 583

Zamindar of Bodakimidi v. *Kumari Lahiri*, (1918) M.W.N., 772, followed ... 654

CATTLE TRESPASS ACT (I OF 1871), SEC. 20—*Criminal Procedure Code* (*V of 1898*), *ss.* 4 (c), 29—*Magistrate authorized to receive and try charges—If special authorization necessary regarding offence under sec.* 20.] Section 20 of the Cattle Trespass Act empowers any Magistrate, authorized under the Criminal Procedure Code by the District Magistrate to take cognizance of offences, to take cognizance of an offence under that section. *Emperor* v. *Vishvanath Vishnu*, (1920) I.L.R., 44 Bom., 42, approved. *Budhan Mahto* v. *Issur Singh*, (1907) I.L.R., 34 Calc., 1926, referred to.

Deenadayalu Naidu v. *Ratna Padayachi* ... (1927) I.L.R., 50 Mad., 841

CERTIORARI—*Writ of—Jurisdiction of High Court—Jurisdiction derived from Supreme Court of Madras—Jurisdiction and powers of High Court, similar in scope to those exercised by Court of King's Bench in England—Objection to jurisdiction not taken by the applicant before the lower Court—Bar to issue of writ—Power exercised by High Court, discretionary—Objection, whether based on law or facts, not taken before lower Court, bar to obtaining writ.*] In the issue of a writ of certiorari, the High Court exercises a jurisdiction which has devolved on it from the old Supreme Court, and stands in the same position as the Court of King's Bench in England, and ought to follow the rules laid down by that Court in the decided English cases as to the scope and limitation of that jurisdiction. Under the

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English decisions, the Court exercises, in such cases, a purely discretionary power, and will not exercise it in favour of a person who has not taken before the lower Court an objection to its jurisdiction but has taken the chance of its decision on the merits in his favour. Failure to object to jurisdiction before the lower Court is a bar to obtaining a writ of certiorari whether the objection to jurisdiction is based on a pure point of law or based on facts which were or should have been within the knowledge of the applicant during the proceedings in the lower Court. *Rex* v. *Williams* [1914] 1 K.B., 608, and other English cases, relied on.

Lakshmanan Chettiar v. *Commissioner, Corporation of Madras.* (1927) I.L.R., 50 Mad. (F.B.), 130

CHIT FUND PROMOTION OF—"*Lottery*" *within sec.* 294-*A*, *Indian Penal Code* —"*Wagering contract*" *within sec.* 30 *of the Contract Act.*] The promotion of a chit fund wherein the number of subscribers is determined beforehand and in which every subscriber is entitled by its rules to get from the promoters of the fund the whole of the capital subscribed for by him either before or at the closing of the fund at a fixed time is neither an offence within section 294-A of the Indian Penal Code nor a "wagering contract" within section 30 of the Indian Contract Act, even though some of the subscribers become by the rules entitled to get much more than they paid and such persons are determined by the drawing of lots. *Shanmuga Mudali* v. *Kumaraswami Mudali*, (1925) I.L.R., 48 Mad., 661, approved. *Veerannan Ambalam* v. *Ayyachi Ambalam*, (1925) 49 M.L.J., 791, overruled. Loss of interest for those who get paid only their capital at the closing of the fund is no loss in law.

Narayana Ayyangar v. *Vellachami Ambalam* (1927) I.L.R., 50 Mad. (F.B.), 696

CITY MUNICIPAL ACT, MADRAS (IV OF 1919), ss. 59 AND 347—"*Elections*" *in sec.* 59, *meaning of—Rule* 4, *whether* ultra vires:—*See* "PROCEDURE CODE (ACT V OF 1908), SEC. 115" 121

——————————ss. 233, 357 AND 392,—*Essence of an offence under sec.* 233—*Maintaining an already constructed building without licence—Conviction under sec.* 233 *read with sec.* 357 *if legal—Omission to take out licence—Limitation under sec.* 392.] The essence of an offence under section 233 of the Madras City Municipal Act is the act of constructing or reconstructing and not merely that of maintaining an already constructed building in existence. Hence the period of limitation under section 392 for a prosecution in respect of an omission to take out a licence under section 233 is twelve months from the date of construction or reconstruction. Where a complaint was made against the accused that he had a shed of inflammable material without a licence contrary to section 233 and the magistrate recorded the plea of the accused as guilty and added that the accused explained at the same time that he had had the shed of inflammable material for the last eight years without paying any fee to the Corporation, *held* that in view of the explanation of the accused it was impossible to conclude that the accused could have pleaded guilty to an offence which contained the factors required by section 233.

Razack v. *King-Emperor* ... ... (1927) I.L.R., 50 Mad., 760

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CITY MUNICIPAL ACT, MADRAS (IV OF 1919), SEC. 288—*Operation of—If proof of nuisance a prerequisite to—Person to determine what constitutes nuisance—Interpretation by reference to marginal notes.*] Under section 288 of the Madras City Municipal Act the question whether the machinery is or is not a nuisance is for the Commissioner alone, and it need not be proved that the machinery is a nuisance before any part of the section comes into operation. Any one erecting machinery, whether it constitutes a nuisance or not, has to obtain the permission of the Commissioner. The construing of a section of a statute by referring to the marginal note is not a legitimate method of construction. *In re Smith* (1925) 45 M.L.J., 731, dissented from.

Natesa Mudaliyar v. *King-Emperor* ... ... (1927) I.L.R., 50 Mad., 738

CITY TENANTS PROTECTION ACT, MADRAS (III OF 1922), SEC. 9.—*"Service of summons" must be personal—15 days' limitation not applicable, if no personal service.*] Service of summons on the defendant under section 9 of the Madras City Tenants Protection Act (III of 1922) should be personal and not by any other means. Hence where the summons was said to have been served on him by its being affixed to the outer door of his house, he is not bound to apply within 15 days of the affixture of the summons for the sale to him of the landlord's land.

Thayammal v. *Rathnavelu Nadar* ... ... (1927) I.L.R., 50 Mad., 88

CIVIL COURT, JURISDICTION OF—*Suit for declaration that election to Panchayat Court void*:—*See* "VILLAGE COURTS ACT, MADRAS (I OF 1889), SEC. 78" ... 91

CIVIL COURTS ACT, MADRAS (III OF 1873), SEC. 12—*Suit for mere declaration of adoption, with no consequential relief as to lands, houses, etc.—Valuation for jurisdiction.*] A suit for a mere declaration of the factum and validity of an adoption, without any consequential relief regarding lands or houses likely to be affected by the declaration has, for purposes of jurisdiction, to be valued, according to section 12 of the Madras Civil Courts Act, on the basis of the market value of the lands or houses likely to be affected by such declaration and not either according to plaintiff's pleasure or according to the valuation under the Court Fees Act as if it were a suit for possession of such lands or houses. *Rachappa Subrao* v. *Shidrppa Venkatrao*, (1919) I.L.R., 43 Bom., 507 (P.C.), applied.

Vasireddi Veeramma v. *Batchayya* ... ... (1927) I.L.R., 50 Mad., 646

——— SEC. 13.—*Appeal, forum of, whether High Court or District Court—Change in Court Fees Act between date of suit and date of appeal—Retrospective effect.*] If the value of a suit at its institution exceeds Rs. 5,000 according to the Court Fees Act then in force, an appeal from a decree therein lies (with reference to section 13 of the Madras Civil Courts Act) only to the High Court and not to the District Court though on the date of filing the appeal the suit would have had to be valued at less than Rs. 5,000 owing to an amendment of the Court Fees Act in the interval. *Colonial Sugar Refining Company* v. *Irving*, [1905] A.C., 369, followed.

Daivanayaka Reddiyar v. *Renukambal Ammal* ... (1927) I.L.R., 50 Mad., (F.B.), 857

——— SEC. 11—Res judicata—*Suit by reversioners—Plea of* jus tertii *in his father set up by defendant—Plea negatived and decree passed for plaintiffs—Subsequent suit by defendant, based on title vested in his father as the nearest reversioner—Question covered by plea of* jus tertii—*Decision in previous suit, whether* res judicata—*Pedigree, proof of—Name of common ancestor, not known—Whether proof of relationship, necessarily fails.*] In a suit by certain persons as reversioners to recover an estate, the defendant set up a plea of *jus tertii* in his father as the nearest reversioner who was alive at the time of the suit but was not joined in the suit; the plea was negatived and decree passed for the plaintiffs. Subsequently, the then defendant, after his father's death instituted the present suit to recover the estate from the then plaintiffs, tracing his title through his father in whom he alleged the estate had vested in his life-time as the nearest reversioner; on the latter pleading

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the bar of *res judicata*, *held*, that the decision in the previous suit on the reversionary right of the plaintiff's father raised by the plea of *jus tertii*, was not *res judicata* on the same question in the present suit, based on the title of the father as the nearest reversioner. In proving a pedigree although a person claiming as heir must show all the stages of relationship from a common ancestor, it is not the law that, if the name of the common ancestor is not known, it must be held that the relationship is not proved. *Kedarnauth Doss* v. *Projab Chunder Doss*, (1881) I.L.R., 6 Calc., 625, explained. *Roe. d. Thorne* v. *Lord*, (1776) 2 Bl.W. 1099; 96 E.R., 649, *referred to*.

Jagannadham v. *Venkatasubba Rao* ... ... (1927) I.L.R., 50 Mad., 877

CIVIL PROCEDURE CODE (XIV OF 1882), ss. 458 AND 459—*New Code*, 1908, *O. XXXII, r. 11—Guardian ad litem—Refusal to act as such, whether amounts to automatic removal—Order of Court, whether necessary—Execution proceedings—Notice served on guardian after refusal to accept but without removal by Court—Sale held, whether void for want of representation of minor in execution proceedings.*] The guardian *ad litem* of a minor duly appointed by the Court in a suit, by his declining to act as such, does not automatically cease to be the guardian, without an order of Court removing him from guardianship under sections 458 and 459 of the old Code, 1882, and the minor is consequently not unrepresented in the proceedings in the suit. Where therefore a guardian *ad litem* appointed in a suit declined to accept service of notice for the minor in the execution proceedings in the suit, but the Court did not remove him from guardianship and notice was again served on him as such, *Held*, that a sale held in execution was not void on the ground that the minor was not legally represented in the proceedings. C.M.As. Nos. 188 and 224 of 1920 and *Narendra Singh* v. *Chatrapal Singh*, 94 I.C., 340, referred to. *Krishna Pershad* v. *Moti Chand*, (1913) I.L.R., 40 Calc., 635 (P.C.), distinguished.

Kuppusamy Ayyangar v. *Baraswami Rao* ... (1927) I.L.R., 50 Mad., 357

——— **(ACT V OF 1908)**—*Party added as defendant—date on which suit deemed to have been instituted against added party:—See* "LIMITATION ACT, SEC. 22" 372

——— SEC. 13 (*b*)—*Foreign judgment—Judgment passed on default of appearance of defendant—Defendant duly served with summons—Judgment passed without trial on evidence—suit on such judgment in a Court in British India—Whether maintainable—Decision on the merits of the case, in sec.* 13 (*b*), *Civil Procedure Code, meaning of.*] A foreign judgment, passed on default of appearance of the defendant, duly served with summons, on the plaint allegations without any trial on evidence, is not one passed on the merits of the case within the meaning of section 13 (*b*) of the Civil Procedure Code; and a suit cannot be brought on such a judgment in any Court in British India. *Keymer* v. *Visvanatham Reddi*. (1917) I.L.R., 40 Mad., 112 (P.C.), followed. *Hassan* v. *Mahamad Ohuthu*, (1924) I.L.R., 47 Mad., 877, overruled.

Janoo Mahomed Kassim & Co. v. *Seeni Pakir Bin Ahmed.* (1927) I.L.R., 59 Mad. (F.B.), 261

——— SEC. 19:—"*See* SMUGGLED GOODS" 449

———, SEC. 48—*Combined decree against mortgaged property and the person of the mortgagor—Application for execution, filed more than twelve years from the date of the decree but less than twelve years from the date of sale of hypotheca—Bar—Limitation.*] Where a combined decree against the mortgaged property and the person of the mortgagor was passed under the Transfer of Property Act, an application for execution of the decree against the person of the mortgagor, made more than twelve years from the date of the decree but within twelve years from the date of the mortgagee's failing to get relief by the sale of the mortgaged property, is barred under section 48 of the Civil Procedure Code. *Khulna Loan Company* v. *Jnanendra Nath Bose*, (1917) 22 C.W.N. 145 (P.C.), relied on.

Swaminatha Odayar v. *Thiagarajaswami Odayar* ... (1927) I.L.R., 50 Mad., 5

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CIVIL PROCEDURE CODE (ACT V OF 1908), SEC. 64 AND O. XXI, R. 53 (6)—*Attachment of a decree, when complete and effective—Notice to judgment-debtor under rule* 53 (6), *whether necessary for completion of attachment—Service of notice on Court which passed the decree, necessary for completion of attachment—Bona fide payment by judgment-debtor without notice of order of attachment, whether valid.*] Notice under Order XXI, rule 53 (6), Civil Procedure Code, to the judgment-debtor of an attached decree, is not necessary for the purpose of completing the attachment of the decree; the attachment is effectuated by the service of notice on the Court which passed the decree. Rule 53 (6) merely provides, in cases of *bona fide* transactions by judgment-debtors, an exception to the general rule embodied in section 64, which invalidates alienations, payments and adjustments as against claims enforceable under the attachment. If, therefore, the judgment-debtor of the attached decree had no notice of the order of attachment at the time when the payment and adjustment pleaded were made, then even though the attachment had already become complete and effective, the payment and adjustment should be recognized by the Court.

Lakshminarasimham v. *Lakshminarasimham* ... (1927) I.L.R., 50 Mad., (F.B.), 687

SEC. 80—*Suit against public Officer—Suit for injunction—Notice of suit—Future acts and past acts—Notice, whether necessary for a suit for injunction in respect of threatened acts—"Act purporting to be done" in section* 80, *meaning of—Whether includes future as well as past act.*] In respect of acts of public officers purporting to be done in their official capacity, section 80, Civil Procedure Code, requires notice of suit prescribed therein to be given only in the case of past acts completed or begun but incomplete, and not in the case of threatened acts; the expression "acts purporting to be done" in the section should be construed as meaning past acts and not future or threatened acts. Where therefore an Official Receiver in insolvency advertised the sale of certain properties on a future date as belonging to the insolvent, a person claiming the properties can maintain a suit for a declaration and an injunction against the Official Receiver, although he did not give the two months' notice prior to the institution of the suit as prescribed by section 80 of the Civil Procedure Code. *The Superintending Engineer, II Circle, Bezwada* v. *Chituri Rama Krishna*, (1920) 39 M.L.J., 151, distinguished. Case law reviewed.

Arunachalam Chetty v. *David* ... ... (1927) I.L.R., 50 Mad., 239

SEC. 92—*Applicability to suit for removal of head of mutt and a scheme*:—*See* "HINDU LAW" 567

SEC. 115—*Revision petition to High Court—Court—Madras City Municipal Act (IV of* 1919)—*Rule* 4 *of the rules made under the Act by Governor-in-Council—Objection petition before election as to qualification of candidate for election, before Commissioner of Corporation—Revision before Chief Judge of Presidency Small Cause Court—Nature of order—Chief Judge, whether a Court or* persona designata—*Revision to High Court from his order, whether competent—Jurisdiction—Extent of jurisdiction before Commissioner and Chief Judge—Madras City Municipal Act (IV of* 1919), *ss.* 59 *and* 347—"*Elections*" *in section* 59, *meaning of—Rule* 4, *whether* ultra vires.] The Chief Judge of the Presidency Small Cause Court at Madras, in deciding a revision petition preferred to him under rule 4 of the rules made by the Governor-in-Council under the Madras City Municipal Act, 1919, acts as a *persona designata* and not as a Court; and consequently the High Court has no jurisdiction to entertain a revision petition against his order in such a case. *The Municipal Corporation of Rangoon* v. *M. A. Shakur*, (1925) I.L.R., 3 Rang. 560 (F.B.), followed; and *Parthasarathi* v. *Koteswara Rao*, (1924) I.L.R., 47 Mad., 369 (F.B.), distinguished. The word "Elections" in section 59 (2) (b) of the Madras City Municipal Act means completed elections and does not cover disputes *before* such elections and the section does not authorize the Governor-in-Council to make rules in respect of such disputes; but rule 4, though it purports to have been made under section 59, is rendered valid by the generality of the powers conferred on the Governor-in-Council by section 347 of the Act. *Quære*: Whether the jurisdiction of the Commissioner of the Corporation of Madras, and of the Chief Judge of the

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Presidency Small Cause Court, is not confined to questions of form, or extends to an enquiry as to the disqualifications of the candidate, which do not appear on the face of the nomination paper but would involve an enquiry into facts. Desirability of an amendment of the Madras City Municipal Act, so as to make it clear whether the limited or extended jurisdiction is conferred by the Act pointed out.

Lakshmanan Chetty v. *Kannappar* ... (1927) I.L.R., 50 Mad. (F.B.), 121

CIVIL PROCEDURE CODE (ACT V OF 1908), SEC. 151, O. IX, R. 9, O. XLVII, R. 4 (2) (a)—*Application for execution—Dismissal for default of appearance of pleader for decree-holder—Restoration of petition—O. IX, r. 9, applicability of, to execution proceedings—Review notice to judgment-debtors, necessity for—Review granted without notice—Validity of order—Irregularity or illegality—Right to set aside order on becoming aware—Inherent power under sec. 151, Civil Procedure Code—Jurisdiction under sec. 151, when can be invoked—Other remedies—Bar of limitation of another petition, whether a ground for invoking jurisdiction.*] An application for execution of a decree was dismissed owing to the absence of the decree-holder's pleader on the day of the hearing; on the same day the application was restored on the application of the pleader without notice to the judgment-debtors; a petition for amendment of the execution application in certain particulars was filed and notice of this petition was issued to the judgment-debtors; when the petition came on for hearing, the judgment-debtors objected that the order of restoration of the execution application, passed without notice, was illegal and invalid and that it should be set aside: *Held*, (1) that Order IX, rule 9, Civil Procedure Code, did not apply to execution proceedings and that the Court had no jurisdiction under Order IX, rule 9, to restore the execution application which had been dismissed for default; *Kaliakkal* v. *Palani Goundan*, (1917) 23 L.W., 227, followed; (2) that the order of restoration should not be considered as a valid order passed on review under Order XLVII of the Code, as issue of notice to the opposite party was imperative under Order XLVII, rule 4, clause 2 (*a*), and no notice was issued to the judgment-debtors in this case; *Abdul Hakim Chowdhury* v. *Hem Chandra Das*. (1915) I.L.R., 42 Calc., 433 followed; (3) that the order passed without notice was not merely irregular but illegal, and the judgment-debtors were not bound by it but could object to it when they became aware of it; *Surajpal Pandey* v. *Utim Pandey*, (1921) 63 I.C., 99, referred to; (4) that the *ex parte* order restoring the application, could not in its nature be considered a final order, and the opposite party, on coming to know of it, could object to it on any ground open to him if he had notice of the application for restoration; see *Krishnasami Panikondar* v. *Ramasami Chettiar*, (1918) I.L.R., 41 Mad., 412 (P.C.), relied on; (5) that the order of restoration was not based on grounds prescribed for review under Order XLVII of the Code; *Chajju Ram* v. *Nekhi*, (1922) I.L.R., 3 Lah., 127 (P.C.); and (6) that the Court had no jurisdiction to act under section 151 of the Act and restore the application for execution to its file, even though the filing of another application for execution would be barred by limitation; *Neelavani* v. *Narayana Reddi*, (1920) I.L.R., 43 Mad., 94 applied; and *Bholu* v. *Ramlal*, (1921) I.L.R., 2 Lah., 66, dissented from.

Narayana Chettiar v. *Muthu Chettiar* ... ... (1921) I.L.R., 50 Mad., 67

SEC. 146 AND O. XXII, RR. 3, 4, 10 AND 12 AND O. XXI, R. 16—*Application by transferee decree-holder for execution of the decree—His death during the pendency of the application—right of his legal representative to be substituted in the application and to continue it—Whether general principles or the Code, applicable.*] The legal representative of a decree-holder who died during the pendency of an execution petition filed by him, cannot be substituted in his place in the execution petition and be allowed to continue it. The question must be decided by reference to the specific terms of the Code of Civil Procedure and not on general principles. SEC. 146, O. XXI, r. 16 and O. XXII, rr. 3, 10 and 12, referred to.

Palaniappa Chettiar v. *Valliammai Achi* ... ... (1927) I.L.R., 50 Mad., 1

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CIVIL PROCEDURE CODE (ACT V OF 1908), O. II, R. 10 (2)—*"Necessary" and "proper" parties—Suit by A against B—Application by C to be made a party defendant—No relief prayed against C—Opposition of plaintiff to application.*] The Secretary of State for India applied to be made a party to a suit filed by the head of a mutt against the Commissioners appointed under the Madras Hindu Religious Endowments Act, for a declaration that the said Act was invalid and *ultra vires* and for an injunction to restrain the defendants from doing certain acts under the Act. The application was opposed by the plaintiff who prayed for no relief against the applicant. *Held*, that the application must be dismissed as the applicant was neither a "proper" nor a "necessary" party within Order I, rule 10 (2), Civil Procedure Code. *Moser* v. *Marsden*, [1892] 1 Ch., 487, and *Norris* v. *Beazley*, (1877) 2 C.P.D., 80, followed.

Sri Mahant Prayaga Doss v. *Board of Commissioners for Hindu Religious Endowments, Madras* ... ... (1927) I.L.R., 50 Mad., 34

———————————O. XXI, R. 2—*Uncertified oral agreement to vary a decree and to execute the decree as varied—Agreement whether an adjustment—Sec. 92, Evidence Act (I of 1872), bar to proof of such oral agreement—Sec. 6, Impartible Estates Act (II of 1904)—Decree against impartible estate without objection—Public policy—Maintainability of objection in execution.*] An agreement which does not extinguish a decree as such but which substitutes a varied or modified decree capable of execution is not an adjustment of the decree within Order XXI, rule 2, Civil Procedure Code. Moreover if the so-called adjustment is not certified and recorded by Court it is no bar to further execution of the decree. An agreement to adjust is equivalent to an adjustment. By reason of section 92, Evidence Act, an oral agreement varying or modifying the decree cannot be pleaded in answer to an application for execution of the decree. Second Appeal No. 62 of 1920 (unreported), followed, *Debendra Narain Sinha* v. *Sourindra Mohan Sinha*, (1914) 24 I.C., 39?, dissented from. Section 6 of the Madras Impartible Estates Act (II of 1904) enacts a rule of public policy. Hence even if a decree had been passed, without objection, for the sale of an impartible estate, the objection that the section prohibits the sale can be taken in execution. *Raja of Vizianagram* v. *Dantivada Chelliah*, (1905) I.L.R., 28 Mad., 84, followed.

Rajah of Kalahasti v. *Venkatadri Rao* ... ... (1927) I.L.R., 50 Mad., 897

———————————O. XXXIII, RR. 5 (*a*), 6, 7 AND 15—*Application to sue in* forma pauperis—*Summary rejection by Court under r.* 5 (*a*), *without enquiry under r.* 6—*Effect of rejection—Second application to sue in* forma pauperis, *whether barred under rule* 15 *of the same Order.*] When an application to sue in *forma pauperis* is summarily rejected by the Court under Order XXXIII, rule 5 (*a*) of the Civil Procedure Code, without an enquiry under rule 6 and a consequent order under rule 7, a second application for the same purpose is not barred under rule 15 of the same Order. *Chinnammal* v. *Parathi Ammal*, (1925) 85 I.C., 982, followed; *Atul Chandra Sen* v. *Peary Mohan*, (1926) 33 I.C., 812, dissented from; *Bil Kaur* v. *Shib Das*, (1920) 56 I.C., 207, and *Howa* v. *Sit Shein*, (1917) 42 I.C., 803, referred to

Krishnamoorthy v. *Ramayya* ... ...(1917) I.L.R., 50 Mad., 63

———————————, O. XXXIV, R. 1:—*See* "MORTGAGE" 180

———————————O. XXXVIII, R. 1—*Arrest before judgment—Security for appearance—Order for—Conditions precedent to.*] A Court before exercising the powers conferred by Order XXXVIII, rule 1, Civil Procedure Code, has to be satisfied that (1) the plaintiff's cause of action is *prima facie* unimpeachable, i.e., the plaint on the face of it does not reveal any matter which is obviously doubtful and arguable and (2) there is reason to believe on adequate materials that unless the jurisdiction is exercised there is a real danger that the defendant will remove himself from the ambit of the powers of the Court.

Seth Chand Mull Dudha v. *Purushotham Doss* ... (1927) I.L.R., 50 Mad., 27

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CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLI, R. 33—*Appeal dismissed —Right of some respondents to urge disputes against other respondents —Power of Court under rule 33—rule 33, limitation of its applicability— Mortgage bond—Interest at 24 per cent payable in six months—On default 24 per cent compound interest with six monthly rests, whether penalty.*] Rule 33 of Order XLI, Civil Procedure Code, should be limited to cases, where in interfering on behalf of the appellant it becomes necessary to alter the decree in favour of some respondent against other respondents, lest injustice should result; it is only then that the Court should act under the rule. The rule does not give a right to a respondent to urge something in his favour against another respondent which has nothing to do with the result of the appeal, without his filing an appeal or memorandum of objections himself. *Rangum Lal* v. *Jhandu*, (1912) I.L.R., 34 All., 32 (F.B.); *Gangadhar* v. *Banabashi* (1915) 22 C.L.J., 390, and *Abjal Majhi* v. *Intu Bepari*, (1915) 22 C.L.J., 394, followed. A stipulation in a mortgage bond that the principal together with interest at 24 per cent per annum shall be paid in six months' time from the date of the bond, but that, on default of such payment, the principal shall be payable, on demand, with *compound interest at the same* rate, with six monthly rests, from the date of the bond, is not by way of penalty and should not be relieved against. *Sundar Koer* v. *Rai Sham Krishen*, (1907) I.L.R., 34 Calc., 150 (P.C.); *Malli Chettiar* v. *Veeranna Thevar*, (1921) 41 M.L.J., 470; and *Aziz Khan* v. *Duni Chand* (1918) 23 C.W.N., 130 (P.C.), relied on

Ramalingam Chettiar v. *Subramaniam Chettiar* ... (1927) I.L.R., 50 Mad., 614

——— O. XLI, R. 22—*Decree, meaning of*:—*See* "HINDU LAW" 866

——— O. XLIII, R. (1) (*w*), O. XLVII, R. 7, SEC. 115—*Appeal—Order granting review on ground of new evidence— Order not stating that the new evidence was important—Appealability of— Revision of.*] Although Order XLIII, rule (1) (*w*) of Civil Procedure Code allows an appeal against an order under rule 4 of Order XLVII, granting an application for review yet the Order XLIII, rule (1) (*w*) is subject to the restrictions and limitations placed by Order XLVII, rule 7. Hence no appeal lies against an order granting review of the appeal is not on any of the grounds mentioned in Order XLVII, rule 7. If a Judge grants a review on the ground of discovery of new matter or evidence, the fact that he does not state in the order granting review that the new matter is important within the meaning of Order XLVII, rule 1, is no ground for revising the order under section 115, Civil Procedure Code.

Srinivasa Ayyangar v. *Official Assignee, Madras* ... (1927) I.L.R., 50 Mad., 891

COERCION—*Ratification*:—*See* "INDIAN CONTRACT ACT (IX OF 1872), SEC. 15." 786

COMPANIES ACT (INDIAN) (VIII of 1913), SEC. 4, CLS. 1 AND 2—*General Clauses Act* (*X of* 1897), *sec.* 3, *cl.* 39—*Partnership—Four unregistered firms forming a partnership—Total number of members of all the firms exceeding twenty—Partnership, not registered under the Companies Act—Whether illegal—Business meaning of, under sec.* 4 (2)—"*Persons*" *under section* 4 (2) *whether denotes only individuals or includes unregistered body of persons— Definition of "persons" under General Clauses Act, whether applicable to sec.* 4 (2) *of the Indian Companies Act—Suit for dissolution of illegal partnership and for accounts, whether maintainable.*] Where four unregistered firms entered into a partnership to purchase certain goods, to sell them at different times and divide the profits and it appeared that the total number of members of all the firms together came to twenty-two, but the partnership was not registered under the Indian Companies Act: on a suit instituted by three of the firms against the fourth for dissolution of partnership and taking of partnership accounts, *Held*, that the transaction was a business within section 4, clause 2 of the Indian Companies Act, and not a single venture falling outside the section; that for purposes of registration required by section 4, clause 2 of the Act, each of the unregistered firms cannot be regarded as a single legal entity; that "persons" under section 4, clause 2, denotes individuals and does not include bodies of individuals; consequently the suit partnership, being composed of more than twenty persons, was an illegal partnership for want of registration

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under the Act; *Akola Gin Combination* v. *Northcote Ginning Factory*, (1915) 26 I.C., 613, followed; and that, where a plaintiff comes to Court on allegations which on the face of them show that the contract of partnership on which he sues is illegal, he is not entitled to any relief and his suit should be dismissed.

Pannaji Devichand v. *Senaji Kapoorchand* ... (1927) I.L.R., 50 Mad., 175

COMPENSATION—*Apportionment of*:—*See* "LAND ACQUISITION ACT" 706

CONTRACT ACT, INDIAN (IX of 1872), SEC. 15—*Coercion—Ratification—Agent for a term—Refusal to give up accounts, bonds, etc., at the end of his term to a new agent, unless release was given by principal—Release so given, whether voidable for coercion—Authority of counsel to bind clients by making statement ratifying release—Special authority, whether necessary—General authority, whether can be implied and sufficient.*] An agent for a term refused to hand over the account books, bonds, etc., of the business at the end of the term to a new agent sent in his place, unless the principal gave him a release from all liability in respect of his agency; such a release had to be and was given, and the new agent got the account books, bonds, etc., from him. As some of the mortgage bonds relating to property in the foreign State of Johur, stood in the agent's name, a suit had to be brought, under the law of Johur, to get a transfer to the principal's name and was instituted in the Supreme Court of Straits Settlements; the defendant agreed not to contest the suit, on the plaintiffs' ratifying the original release. Counsel for the plaintiffs thereia made a statement embodied in the order of that court to the effect "that the said release was and is in full force and of full effect," and a consent order was passed by the court transferring the bonds to the names of the plaintiffs. On a suit being instituted by the principals to set aside the release deed and for directing the defendant to render an account of his agency, *Held*, that the release deed was given by the plaintiffs under coercion of the defendant within the terms of section 15 of the Indian Contract Act, and was voidable at their instance; but that there was a valid ratification of the release by the plaintiffs by reason of the statement made by the plaintiffs' counsel in their suit in the Supreme Court; that counsel should, under the circumstances, be held to have been specially authorized to make the statement; that, even if counsel was not specially authorized, the circumstances of the case fully justified the conclusion that acted within his authority in making the statement; and that, consequently, the plaintiffs were not entitled to set aside the release deed and call on the defendant to account. Rules regarding competency of counsel to compromise suits, make admissions, or confess judgment, so as to bind their clients, discussed.

Muthiah Chettiyar v. *Karuppan Chetti* ... ... (1927) I.L.R., 50 Mad., 786

——— SEC. 73—*Interest Act* (*XXXII of* 1839)—*Contract to supply goods—Payment of advance—Breach—Right to interest on advance.*] *Held by the Full Bench* (RAMESAM, J., *dissenting*) that in the absence of any demand or of any stipulation as to interest, a person who has advanced money to another for supply of goods at a certain time is entitled on default to recover only the advance and damages, viz., the difference in price between the contract rate and the market rate, and not also interest on the advance by way of damages for the period between the date of breach and the date of suit. *Per* RAMESAM, J.: In such a case, interest also is recoverable by way of damages, under section 73 of the Indian Contract Act.

Kandappa Mudaliar v. *Muthuswami Ayyar* ... (1927) I.L.R., 50 Mad. (F.B.), 9[illegible]

COURT FEES ACT, MADRAS (V OF 1922)—*Review—Change in the Court Fees Act before date of review—Subject matter of review and court-fee thereon—Articles 4 and 5 of Schedule I of the Court Fees Act* (*VII of* 1870).] A petition for review of an original or appellate decree must be valued on the reliefs prayed for in the petition as if the petitioner were then filing a plaint or memorandum of appeal for those reliefs. (1872) 7 M.H.C.R. (Appendix, page 1) and *In re Manohar G. Tambekar*, (1880) I.L.R., 4 Bom., 26, followed; *Nandilal Agrani* v. *Jogendra Chandra Dutta*, (1923) 28 C.W.N.,

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403, not followed. If between the date of the plaint or the appeal and the date of filing the petition for review, there has been a change in the Court Fees Act increasing the fee payable *ad valorem*, the petitioner must pay at the increased rate. A defendant who wishes to file a review of a decree in a second appeal filed by the plaintiff, which allowed in favour of the plaintiff a suit for land and three years' mesne profits prior to date of suit must pay Court fee not only on the same but also on mesne profits between the date of the plaint and the date of filing the second appeal. *Brahmayya* v. *Lakshminarasimham*, (1893) I.L.R., 16 Mad., 310, and *Balarama Naidu* v. *Sangan Naidu*, (1922) I.L.R., 45 Mad., 280, followed.

Punya Nahako, In re ... ... (1927) I.L.R., 50 Mad., 483

COVENANT TO RENEW—*If apportionable* :—*See* "LEASE FOR 99 YEARS" ... 595

CRIMINAL PROCEDURE CODE (V OF 1898), ss. 4 (*c*), 25 :—*See* "CATTLE TRESPASS ACT (I OF 1871), SEC. 20" 841

——— AS AMENDED BY SEC. 72 OF ACT XVIII OF 1923—*Accused unrepresented by legal practitioner—Required to state forthwith if he wishes to cross-examine prosecution witnesses—Magistrate recording no reason—If mere irregularity—Sec. 256, if applicable to summary trials.*] Under section 256 of the Criminal Procedure Code (Act V of 1898) as amended by section 72 of Act XVIII of 1923, a magistrate must record his reasons, where he asks an accused, who is not represented by a legal practitioner, forthwith to state whether he wishes to cross-examine the prosecution witnesses, and failure to so record his reasons is not a mere irregularity curable under section 573 of the Criminal Procedure Code. When the legislature specially amplifies a mandatory section, no rule of construction will allow the courts to treat it as directory. *Subrahmania Ayyar* v. *King-Emperor*, (1902) I.L.R., 25 Mad., 61 (P.C.), followed; *Mussamat Ghasiti* v. *The Crown*, (1925) I.L.R., 6 Lah., 554, dissented from; *Phuman Singh* v. *The Crown*, (1925) All. I.R. (Lah.), 339, referred to. Section 256 is applicable to a summary trial. *Umaji Krishnaji* v. *King-Emperor*, (1926) 93 I.C., 159, dissented from.

Raju Achari, In re ... ... (1927) I.L.R., 50 Mad., 740

———, SEC. 174—*Inquest under—Copies of statements made at—Accused's right to obtain—Same procedure as under sec.* 162—Post-mortem *certificate—Inquest report—Accused's right to copies of.*] Statements made at an inquest under section 174 of the Code of Criminal Procedure are statements made to a Police Officer "in the course of an investigation under the chapter" under section 162 and not being public documents, an accused is not entitled to copies of such statements. An accused is entitled to copies of the *post-mortem* certificate and of the inquest report (excluding statements therein). In re *Peramasami Naidu*, (1924) 22 L.W., 784, referred to.

Maruthumuthu Kudumban v. *King-Emperor* ... (1927) I.L.R., 50 Mad., 750

———, SEC. 239—*Persons separately engaged in fishing in prohibited waters—No common object or common intention—Joint trial under ss.* 379 *and* 447, *Indian Penal Code—Same transaction—Applicability of.*] Where a number of persons were all separately engaged in fishing, and were merely several poachers gathered in the same place at the same time and there was no evidence of a common object or a common intention, and the said persons were tried together for offences under sections 379 and 447 of the Indian Penal Code as having been committed in the course of the same transaction, and convicted, *held*, that the accused ought not to have been tried together and that such joint trial was not a mere irregularity. Whenever the applicability of section 239 of the Criminal Procedure Code is doubtful, it is far better that the accused should be tried separately. *Maal Makalakati Subbadu* v. *King-Emperor*, (1915) 28 M.L.J., 381, followed; *Emperor* v. *Rafuz Zaman Khan*, (1926) I.L.R., 48 All., 325, *Charagudi Venkatadri* v. *King-Emperor*, (1910) I.L.R., 33 Mad., 502, referred to.

Samiulla Sahib v. *King-Emperor* ... ... (1927) I.L.R., 50 Mad., 735

———, SEC. 476—*Nature of—Enquiry under.*] In a proceeding under section 476 of the Criminal Procedure Code, the nature, method and extent of the preliminary enquiry being at the

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discretion of the Court holding it, the enquiry need not be such as to satisfy the Court that an offence has actually been committed, the Court only having to decide (*a*) whether an offence of the kind contemplated by the section appears to have been committed and (*b*) whether in the interests of justice it should be further enquired into. *Abdul Ghafur* v. *Raza Husain*, (1912) I.L.R., 34 All., 237, approved; *Pohraj* v. *King-Emperor*, (1921) 6 Patna L.J., 146, dissented from; *In re Perumallu Venkatasubbiah*, (1923) 44 M.L.J., 74, dissented from.

Raja Rao v. *King-Emperor* ... ... (1924) I.L.R., 50 Mad., 660

CRIMINAL PROCEDURE CODE, SEC. 488—*Maintenance order—Duration of—Cancellation by Court—Wife returning to live with husband—If order automatically cancelled.*] The general principle of law that an order whose term is not fixed, and whose currency is not made expressly dependent upon the continued existence of some circumstance or set of circumstances, remains in force until it is cancelled, is *prima facie*, applicable to maintenance orders passed under section 488 of the Criminal Procedure Code. The husband may, on proof of circumstances specified in section 488 (5) or section 490, obtain the cancellation or modification of the original order, as the case may be; and until he does that, the original order must be deemed to be still in force. The mere fact that a wife has returned to live with her husband will not bring the order to an end automatically and on her separating from him again, she can enforce it. *Shah Abu Ilyas* v. *Ulfat Bibi*, (1897) I.L.R., 19 All., 50, and *Parul Bala Levi* v *Satish Chandra Bhattacharjee*, (1923) 75 I.C., 579, referred to; *Phul Kali* v. *Harnam*, (1888) 8 A.W.N., 210, dissented from.

Kanjammal v. *Pandara Nadar* ... ... (1927) I.L.R., 50 Mad., 663

———————, SEC. 520—*Seized property—Title doubtful—To whom to be returned—"Court of Appeal, confirmation, reference or revision"—Meaning of—If specifies nature of application to such Courts—Provisions regarding appeals—If applicable.*] Where the title to seized property is doubtful, it should be returned to the person from whom it was seized, unless there are special circumstances which would render such a course unjustifiable. *The Collector of Salem*, (1873) 7 M.H.C.R., 238; *In re Pandharinath Pundlik Revankar*, (1916) I.L.R., 40 Bom., 186, referred to. The phrase "Court of appeal, confirmation, reference, or revision" in section 520 of the Code of Criminal Procedure designates only the Courts, which can "modify, alter or annul" an order passed under the preceding sections of the Code, and does not specify the nature of the application which has to be made to them. Such an application cannot be treated as an appeal attracting all the provisions regarding appeals.

Srinivasamoorthi v. *Narasimhulu Naidu* ... ... (1927) I.L.R., 50 Mad., 916

CRIMINAL TRIBES ACT (VI OF 1924), SEC. 23—*Conviction under sec. 23 (1) (b)—Second and third convictions—If should be after accused's tribe is declared or accused registered as member of criminal tribe—Reduction of sentence—"Special reasons to the contrary"—Character of.*] For the conviction of an accused person under section 23 (1) (b) of the Criminal Tribes Act (VI of 1924) it is not necessary that both the second and the third convictions should be after the tribe to which the accused belongs had been declared a criminal tribe or after the accused was registered as a member of a criminal tribe. The mere fact that the offence is not of a very serious nature cannot form a "special reason to the contrary" for reducing the sentence. Such a special reason must be something apart from the nature of the offence such as, youth, age, illness, or sex. Criminal Appeals Nos. 318 and 367 of the 1925 followed. Reference No. 17 of 1924 dissented from.

Mayandi Thevan, In re ... ... (1927) I.L.R., 50 Mad., 474

DAMAGES—*Decree for—Breach of contract against insolvent—Appeal—Adjudication during pendency of—Official Receiver—If can continue*:—*See* "PROVINCIAL INSOLVENCY ACT, SS. 2, 20, 33, 49, 50" 161

DEBT OF DECEASED FATHER—*Decree against son—Liability of son to be adjudicated*:—*See* "PROVINCIAL INSOLVENCY ACT, SEC. 2 (*a*) (*d*)" 981

DEFAMATION—*Lawyer making statements in course of professional duty*:—*See* "INDIAN PENAL CODE, SEC. 499" 667

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DISCHARGE—*Order refusing—Effect of:—See* "PROVINCIAL INSOLVENCY ACT, SS. 28 AND 42" 977

DISTRAINT:—*See* "ESTATES LAND ACT, SEC. 212 (*b*)" 329

DISTRICT MUNICIPALITIES ACT, MADRAS (V OF 1920), SS. 93 (3) AND 354(2) AND RULE 28, SCH. IV—*Levy of profession-tax in two municipalities for the same half-year, legality of—Right of suit for refund when.*] If a person who becomes successively liable in a single half-year to pay profession-tax in two municipalities pays it in one, although it be the second he acquires exemption, under section 93 (3) of the Madras District Municipalities Act, from liability to pay it again in the first. Rule 28 of Schedule IV of the Act bars a suit for refund of tax paid, only if the municipality is empowered to make the demand and not otherwise.

Municipal Council, Cuddalore v. *Krishnan Nambiar.* (1927) I.L.R., 50 Mad., 987

———, SEC. 249—*Machinery likely to be dangerous to human life—Outside public, if limited to—Madras Local Boards Act (XIV of 1920), sec. 193—Effect of—One statute cancelling another—Test of.*] Machinery likely to be dangerous to human life within the term of Schedule V (*q*) of the Madras District Municipalities Act is not confined to machinery dangerous to the outside public. Human life means the life of any person whether he be within or without the premises of the factory. Section 249 of the Act has not been impliedly repealed by section 193 of the Madras Local Boards Act, as the two are not mutually destructive.

Public Prosecutor v. *Ranganayakulu Chetty* ... (1927) I.L.R., 50 Mad., 845

———, SS. 249 AND 250—*Permission under sec. 250 obtained—If licence under sec. 249 necessary.*] Permission obtained under section 250 of the District Municipalities Act (Act V of 1920) to construct or establish a factory or instal machinery does not absolve a person from taking out a licence under section 249 to work the same. The object and scope of the two sections are entirely different. Section 249 contemplates an annual payment for the use of the machinery, while section 250, a payment once for all, for installing it. *In re Smith.* (1920) 45 M.L.J., 731, approved, *In re Ramachandra Rao*, (1920) 45 M.L.J., 555, referred to. Criminal Revision Case No. 503 of 1925, dissented from.

Muthu Balu Chetty, In re ... ... (1927) I.L.R., 50 Mad., 467

ELECTION—*Only one candidate nominated—Deemed elected—If election petition lies:—See* "LOCAL BOARDS ACT, MADRAS (XIV OF 1920)" 86

ESTATES LAND ACT, MADRAS (I OF 1908), SEC. 3, CL. (2) (*c*) AND (*d*), SEC. 6—*Regulation XXV of 1802—Jagir—"Unsettled jagir," meaning of—Unsettled jagir, whether an estate under the Estates Land Act, sec. 3, cl. (2) (c)—Enfranchisement at inam settlement, effect of—Tenants of ryoti lands in a jagir—Tenants in possession of lands at the time the Estates Land Act came into force—Tenants, whether acquired occupancy right under sec. 6 of the Act.*] A jagir is a grant of land for life or for a definite number of lives in consideration of services, usually military, rendered to Government, in order that the grantee may maintain a certain dignity and state. Where in respect of certain villages granted by the East India Company in 1829 to a person as a jagir for three generations, the deed of grant styled the villages a jagir, the Officers of the Company consistently adopted that nomenclature in their documents such as the Inam Commissioner's Report, and the grant included the villages as a whole including waste lands and poramboke as well as the cultivated ayakut, *Held*, that the grant was not merely of the land revenue and the villages were therefore not an inam falling under section 3, clause (2) (*d*) of the Madras Estates Land Act; that, even though merely calling a village a jagir will not constitute it a jagir, still the terms of the grant and the circumstances abovementioned showed that the grant in this case was a jagir, and there was no foundation in statute or authority for the view that the term "jagir" in section 3, clause (2) (*c*) of the Act, must be limited to jagirs granted before the advent of the East India Company; that the word "unsettled" in section 3, clause

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(2) (c) of the Act, qualifies jagir as well as palaiyam, and the jagir referred to therein means only an unsettled jagir, as a settled jagir would be included in "permanently settled estate" under section 3, clause (2) (a); that a jagir which has not been settled either under the permanent settlement regulation or under the Inam Rules is an unsettled jagir, and mere confirmation by the Inam Commissioner as an inam would not amount to a settlement; and that an unsettled jagir is consequently an estate, and the cultivating tenants in possession of ryoti land and not old waste, in an unsettled jagir, at the time the Madras Estates Land Act came into force, acquired occupancy rights therein under section 6 of the Act, even though they had no occupancy rights before the Act.

Ramasami Kavundan v. *Tirupathi Kavundan* ... (1927) I.L.R., 50 Mad., 10

ESTATES LAND ACT, MADRAS (I OF 1908), SEC. 3 (4) (a) AND (f)—*Wells dug at very small cost and planting coconut gardens, not improvements.*] Wells constructed by digging small pits in sandy soil at a very small cost, in which underground and surface water naturally collects are not "improvements" within section 3, clause (4) (a) of the Act. Coconuts are not "fruits" and planting coconut gardens is not planting "fruit gardens" within section 3 (4) (f) of the Act and hence it is not an improvement within the section. Second Appeal 571 of 1916 explained and dissented from.

Vellayappa Chetty v. *Subramaniam Chettiar* ... (1927) I.L.R., 50 Mad., 482

——————————, SS. 3 (10), (16), 6, 8 AND 185—*Conversion of ryoti lands into private lands by a zamindar before the Act—Lease of such lands after the Act for a period—No occupancy right—Sec. 8, not retrospective.*] Before the Estates Land Act (Madras Act I of 1908) it was competent for a zamindar to convert what were once ryoti lands into private or *kamatam* lands and to hold them as such; and if after the Act a person is let into possession of such converted lands either as ijaradar (lessee for a period) or as the agent of the zamindar, he does not thereby acquire occupancy rights therein. Section 8 of the Act is not retrospective.

Veerabhadrayya v. *Zamindars of North Vallur* ... (1927) I.L.R., 50 Mad., 201

——————————, SEC. 212 (b)—"*Distraint duly made*"—*Distraint—Essence of—When complete.*] The essence of a distraint is the act of taking out of the possession of the real owner and such act is not completed until the taking out of the possession of the real owner is complete. Where cattle seized for arrears of rent under the Estates Land Act were still in the owner's pen and the person distraining was proceeding to drive them out of the pen, and the owner prevented him from so doing, *held*, that the distraint was not complete, and that such interference constituted resistance to a distraint duly made within the meaning of section 212 (b) of the said Act. *Narayana Reddi* v. *Dyvadeenachar*, (1925) I.L.R., 48 Mad., 505, distinguished.

Satyanarayanamurti v. *Ramayya* ... ... (1927) I.L.R., 50 Mad., 329

EVIDENCE ACT (INDIAN), SEC 27:—*See* "ACCUSED CHARGED WITH MURDER AND THEFT" 274

—————— **(I OF 1872),** SEC. 92:—*See* "CIVIL PROCEDURE CODE, O. XXI, R. 2" 897

EXECUTION—Ss. 21, 37, 38, 150, *Civil Procedure Code (V of 1908)—Preliminary mortgage decree—Transfer of territorial jurisdiction thereafter to another Court—Passing of final decree by the first Court without objection—Right of the first Court to order sale of mortgage properties.*] After the passing of a preliminary mortgage decree, the Court that passed it ceased to have territorial jurisdiction over any of the mortgaged properties. After a final decree was passed by the same Court without any objection by the mortgagor, the mortgagee applied to that Court for sale. *Held* (1) that that Court had no power to order a sale of the properties, though it can receive an application for sale and transmit it to the Court having territorial jurisdiction and (2) that omission to object to the jurisdiction of that Court

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to pass the final decree estops the mortgagor only from disputing the validity of the final decree but does not estop him from objecting to the jurisdiction of that Court to order a sale.

Sivaskanda Raju v. *Raja of Jeypore* ... ... (1927) I.L.R., 50 Mad., 882

EXECUTION—*Application for—Dismissal for default—Restoration—O. IX, r. 9—if applicable* :—*See* "CIVIL PROCEDURE CODE, SEC. 151" 67

———*Application for, of decree—Application by judgment-debtor to record satisfaction—Statement by decree-holder objecting—Subsequent application for execution more than three years from last application for execution—Step in aid of execution—Pendency of application if necessary—See* "LIMITATION ACT, ART. 182" 49

———*Application for—Filed more than twelve years from the date of the decree but less than twelve years from the date of sale of hypotheca—Combined decree against person and property—Limitation—Bar of* :—*See* "CIVIL PROCEDURE CODE, SEC. 48" 5

———*Sale of property not belonging to judgment-debtor and purchased by decree-holder and satisfaction—Art.* 166, *Limitation Act* (*IX of* 1908)—*Application by decree-holder to set aside sale and for further execution, after thirty days after sale—Maintainability of.*] A decree-holder got the properties of some one other than the judgment-debtor sold in execution of his decree, purchased them himself and entered up satisfaction. More than thirty days after the sale, he found out his mistake and applied for further execution by setting aside the sale. *Held*, that the application for further execution was unsustainable as the sale though of a stranger's property was not void and as the prayer for setting it aside, which was a necessary preliminary for further execution, could not be granted, being barred by article 166 of the Limitation Act. *Thakur Barmha* v. *Jiban Ram Marwari*, (1914) I.L.R., 41 Calc., 590 (P.C.), and *Tirbuwan Bahadur Singh* v. *Rameshar Baksh Singh*, (1906) I.L.R., 28 All., 72 (P.C.), distinguished.

Muthukumaraswami Pillai v. *Muthuswami Thevan.* (1927) I.L.R., 50 Mad., 639

EXECUTOR—*Removal of* :—*See* "SUCCESSION ACT, SEC. 301" 956

FACTORIES ACT, INDIAN (XII OF 1911), SS. 2 [(2), (3)], 41 AND 46—*Groundnut decorticating room in a building—Drying yard five or six yards away from wall of building—If part of "factory"—Children employed in drying, cleaning and sorting kernels—If incidental to or connected with article subject of process—Liability of occupier.*] Where a drying yard was situated about five or six yards from the wall of a building in which a groundnut decorticating machine was installed, but the said yard had no connexion with machinery, and children were employed in the yard for cleaning, drying and sorting the groundnut kernels, *held*, that the drying yard was part of the factory within the meaning of section 2 (3) of the Indian Factories Act, and that the occupier (or manager) was liable under section 41 as having employed children in work incidental to a manufacturing process or connected with the article, subject of the process, within the mischief of the Act. *Law* v. *Graham*, [1901] 2 K.B., 327, *Paterson* v. *Hunt*, (1909) 101 L.T., 571, referred to.

Ramanatham v. *King-Emperor* ... ... (1927) I.L.R., 50 Mad., 834

FOREIGN JUDGMENT :—*See* "CIVIL PROCEDURE CODE, SEC. 13 (*b*)" 261

FORMA PAUPERIS—*Application to sue in—Summary rejection without enquiry—Effect of—Second application—If barred under r.* 15 :—*See* "CIVIL PROCEDURE CODE, O. XXXIII" 63

GENERAL CLAUSES ACT (X OF 1897), SEC. 3, CL. (39)—*Partnership* :—*See* "INDIAN COMPANIES ACT (VII OF 1913), SEC. 4, CLS. (1) AND (2)"... 175

GIFT—*Registration—Gift of immovable property by Hindu—Acceptance of gift—Adoption by donor before registration—Indian Registration Act* (III *of* 1887), *sec.* 47—*Transfer of Property Act* (*IV of* 1882), *ss.* 122 *and* 123.] A Hindu executed a deed of gift of part of his immovable property and delivered it to the donee. On the following day he adopted a son. Three days later the deed was registered. *Held*, that the gift was valid against the adopted son. On delivery of the deed to the donee, there was an acceptance of the transfer

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within section 122 of the Transfer of Property Act, 1882, and thereupon the gift became effectual, subject to its registration as required by section 123. *Venkati Rama Reddi* v. *Pillati Rama Reddi*, (1916) I.L.R., 40 Mad., 204 (F.B.), and *Atmaram Sakharam* v. *Vaman Janardhan*, (1925) I.L.R., 49 Bom., 388 (F.B.), approved.

Kalyanasundaram Pillai v. *Karuppa Mooppanar*. (1927) I.L.R., 50 Mad. (P.C.), 193

GIFT TO THE ALMIGHTY—*Whether gift to a living person* :—*See* "HINDU LAW" 687

GOODS :—*See* "INDIAN PENAL CODE, SEC. 294 (*a*)" 479

GOVERNMENT OF INDIA ACT, SEC. 106 (2) :—*See* "SMUGGLED GOODS" ... 449

GUARDIAN *ad litem*—*Refusal to act—Effect of* :—*See* "CIVIL PROCEDURE CODE, (XIV OF 1882), SS. 458 AND 459" 357

GUARDIANS AND WARDS ACT (IX OF 1890), ss. 29, 30, 31 (2), 47 AND 48 —*Alienation by guardian—Mortgage—Sanction by District Court, effect of—Necessity and benefit of minor—Validity of mortgage, whether can be questioned—Sanction, whether conclusive as to necessity for the mortgage—Sanction order, not reciting necessity, whether invalid.*] Where an alienation by way of mortgage or sale has been made by the guardian of a minor, appointed under the Guardians and Wards Act, with the sanction of the District Court, the alienee can rely upon it and the alienation must be upheld unless the alienee has been a party to a fraud or collusion or has been guilty of any underhand dealing: *Gangapershad Sahu* v. *Maharani Bibi*, (1885) I.L.R., 11 Calc., 379, followed; *Venkatasami* v. *Viranna*, (1922) I.L.R., 45 Mad., 429, dissented from. The fact that the order granting sanction did not recite, as required by section 31 (2) of the Act, the necessity for the loan does not render the sanction invalid, as this defect is nothing more than a mere irregularity; the Court must be taken as having adopted the grounds set forth in the petition and affidavits, even though the grounds are not reproduced in the order: *Rameshwar Singh* v. *Dhanput Singh*, (1910) 5 I.C., 334, and *Buddhoo* alias *Gulab Dass* v. *Sheo Charan*, (1924) 22 A.L.J., 851, followed.

Raman Chettiar v. *Tirugnanasambandam Pillai* ... (1927) I.L.R., 50 Mad., 217

———, ss. 41 (3), (4)—*Minor attaining majority—Discharge of Guardian by Court—Accounts, filed by guardian—Application to Court by quondam minor to enquire into the correctness of accounts filed by guardian—Court, whether competent to inquire in proceedings under the Act—Remedy by suit—Scheme of the Act—Court, not bound to declare guardian discharged from liability to minor—Disputes between minor and guardian to be determined only by suit and not by proceedings under the Act.*] Where a minor, to whom a guardian had been appointed under the Guardians and Wards Act, 1890, attained majority and the guardian was discharged and filed his accounts, the Court should not hold an enquiry under the Act into the correctness of the accounts and determine what amount or property was really accountable by the guardian to the minor. The whole scheme of the Act seems to provide for matters of this kind, i.e., disputes between the minor and the guardian, by way of a suit by the minor against the guardian and not by way of proceedings under the Act. Under section 41 (4), the Court is not *bound* to declare the guardian discharged from his liabilities and so is not bound to make an enquiry into the correctness of the accounts filed by him. *Nabu Bepari* v. *Sheik Mahomed*, (1900) 5 C.W.N., 207; *Jagannath Ponja* v. *Mahesh Chandra Pal*, (1916) 21 C.W.N., 688; and *Abdul Hasim* v. *Maleka Khatun*, 29 C.L.J., 44, followed; *Sita Ram* v. *Musammat Govindi*, (1924) I.L.R., 46 All., 458, dissented from.

Subbarami Reddi v. *Pattabhirami Reddi* ... ... (1927) I.L.R., 50 Mad., 80

HINDU LAW—*Adoption by a Jain widow—Consent of husband or his sapindas, whether necessary—Hindu Law of adoption, whether applicable to Jains—Custom—Onus.*] It is concluded by the authority of a series of decisions, extending over several years, that the presumption is that the Jains are governed by the ordinary Hindu Law, unless it is shown that by custom a different law prevails among them. *Sheo Singh Rao* v. *Dakho*, (1878) I.L.R., 1 All., 688 (P.C.) and *Chotay Lall* v. *Chunno Lall and others*, (1879) I.L.R.,

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4 Calc., 744, relied on. A Jain widow is not competent to adopt a son to her husband without the authority of her husband or the consent of his sapindas, in the absence of proof of a custom to the contrary. The onus of proving such a custom among the Jains in derogation of the ordinary Hindu Law, is upon the party setting it up; the fact that among certain special sects of Jains in the other Presidencies such a custom has been upheld by Courts, does not warrant a general presumption of the prevalence of the custom in the Madras Presidency in the face of the decision in *Peria Ammani* v. *Krishnaswami*, (1893) I.L.R., 15 Mad., 182, which negatived such a custom.

Gettappa v. *Eramma* ... ... (1927) I.L.R., 50 Mad., 228

HINDU LAW—*Adoption—Rights of adopted son—Will—Diversion of property from adopted son—Ante-adoption agreement by natural father—Custom—Consensus of judicial decision.*] Having regard to consensus of judicial decision, excepting that in *Jagannadha* v. *Papamma*, (1893) I.L.R., 16 Mad., 400, an arrangement made on the adoption of a Hindu whereby the widow of the adoptive father is to enjoy his property during her lifetime, or for a less period, that arrangement being consented to by the natural father before the adoption, is to be regarded as valid by custom. But an agreement or consent by the natural father is not effectual in law or by custom to validate any other disposition, taking effect after the adoption and curtailing the rights of the adopted son as a co-sharer. Consequently, a will by which a testator gave part of his property to his intended adopted son, part to his widow for life, part to kindred, and part to charity is not binding upon the adopted son, although before the adoption took place the natural father executed a deed by which he consented to the provisions of the will and gave his son in adoption subject thereto. Review of the authorities in Madras and Bombay, *Falkrishna Motiram* v. *Shri Uttar Narayan Dev*, (1919) I.L.R., 43 Bom., 542, approved. Observation in *Bhasha Rabidat Singh* v. *Indar Kunwar*, (1883) I.L.R., 16 Calc., 556 (P.C.); 16 I.A., 53, 59, followed.

Krishnamurthi Ayyar v. *Krishnamurthi Ayyar*, (1927) I.L.R., 50 Mad., (P.C.) 508

———— *Alienation by a co-parcener—Suit by another co-parcener to recover property alienated or his share therein—Right of alienee as defendant to demand a general partition in that suit—Proper course for alienee, to institute a separate suit for general partition—Decree in co-parcener's suit, whether* res judicata *as to share of co-parcener in a suit by vendee for general partition—Form of decree to be given in co-parcener's suit.*] In a suit instituted by a co-parcener of a joint Hindu family against a vendee for setting aside an alienation of a certain item of family property by another co-parcener and recovering his share in it, it is not competent to the Court to direct a general partition of all the family properties at the instance of the alienee-defendant. *Subba Goundan* v. *Krishnamachari*, (1922) I.L.R., 45 Mad., 449, followed. *Ramasami Ayyar* v. *Venkatarama Ayyar*, (1923) I.L.R., 46 Mad., 815, explained. A decree in the suit of a co-parcener to have his share of the alienated property partitioned between him and the alienee, is not *res judicata* in a subsequent suit by the alienee for general partition, including the share in the property decreed to the co-parcener by the previous decree. *Sourimuthu* v. *Pavadai Pachia Pillai*, (1925) 49 M.L.J., 679, dissented from. When a suit is instituted by a co-parcener to recover his share in the alienated property, the proper course to be followed by the alienee is to institute a separate suit for general partition so that the two suits may be tried together and the Court may be in a position to consider whether the property alienated to him should be allotted to the alienor's share or not. Form of the decree in a suit by a co-parcener, to recover his share in property alienated by another co-parcener, considered. *Hanmandas Ramdayal* v. *Valabhdas*, (1919) I.L.R., 43 Bom., 17, followed.

Kandasamy Udayar v. *Velayutha Udayan* ... ... (1927) I.L.R., 50 Mad., 320

———— *Joint family—Self-acquisition—House built on ancestral site—No co-parceners at the time of building—Use of self-acquired funds for building—Adoption of a son, subsequent to construction—Son and father living in the house—Superstructure, whether joint family property—Mixing*

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of funds, effect of—Intention to make it joint family property, necessity for—Evidence—Presumption.] Where a Hindu, who had no co-parceners, built a house worth about forty thousand rupees, with his self-acquisitions, on an ancestral site worth a few rupees, and several years thereafter adopted a son and lived with him in the house but did not otherwise evidence an intention of treating the house as joint family property, on a creditor of the son claiming to attach and sell the son's share in the house and site, *Held*, that the mere fact that the superstructure, which was built out of self-acquired funds, was raised on the ancestral site, did not render it joint family property; that the presumption was that the father intended it to be his self-acquired property, especially when there were no other co-parceners; that it would not become joint family property unless he had intended to make it such property, and the mere fact that he allowed his major son to live in the house along with himself, did not disclose an intention to make it joint family property; and that consequently, the father was solely entitled to the superstructure and to a half of the site, and the son's creditor was entitled to attach and sell the son's half share only in the site and not the superstructure: *Vithoba Bava* v. *Hariba Bava*, (1869) 6 Bom. H.C.R., 54 (A.C.J.), followed; *Lala Muddun Gopal Lal* v. *Khikinda Koer*, (1891) I.L.R., 18 Calc., 341 (P.C.), referred to; *Subbiah* v. *Gundlapudi*, (1923) I.L.R., 46 Mad., 104, distinguished.

Periakaruppan Chetty v. *Arunachelam Chetty* ... (1927) I.L.R., 50 Mad., 582

HINDU LAW—*Joint family—Suit for partition by a son against his father and his other sons, impleading alienees of the share of one of the sons—Personal debt of the father incurred prior to suit for partition—Debt neither illegal nor immoral—Liability of sons' shares for the father's debt incurred prior to partition suit—Right of alienees of son's share—Alienees' rights, whether subject to liability for father's debts—Suit by creditor pending suit for partition—Decrees exonerating alienees*—Res judicata.] Where a personal debt, not being of an illegal or immoral character, was incurred by a Hindu father, and subsequently a suit for partition was instituted by one of his sons against the father and his other sons impleading also alienees of the share of one of the sons, and it appeared that the father's creditor had, pending the partition suit, sued to recover his debt from the father, his sons and the alienees and obtained a decree against the father personally and the joint family estate, the alienees being, however, exonerated. *Held*, that the liability of the alienees of the sons share for the father's debt was not *res judicata* by the judgment in the creditor's suit; that, in the suit for partition, the Court should provide for the payment of the father's debt which was incurred prior to the suit, out of the joint family estate of the father and his sons, before directing partition of the estate by metes and bounds, and that the alienees of the son's share were entitled to their vendor's share, only subject to such liability.

Venku Reddi v. *Venku Reddi* ... ... (1927) I.L.R., 50 Mad. (F.B.), 535

——— *Maintenance—Illegitimate son, right of—Right of illegitimate daughter to maintenance—Right to maintenance, whether a charge on joint family property of putative father in the hands of his co-parceners—For what period, if at all, right to maintenance extends.*] Among Nattukottai Chetties, who have been held to be Sudras, illegitimate sons, born of a woman kept as a continuous and exclusive concubine, are entitled to maintenance for their life, out of the joint family property of their putative father in the hands of his co-parceners. The fact that the woman kept is a dancing girl is immaterial. *Subramania Ayyar* v. *Rathnavelu Chetty*, (1918) I.L.R., 41 Mad., 44 (F.B.), and *Ananthaya* v. *Vishnu*, (1894) I.L.R., 17 Mad., 160, relied on. An illegitimate daughter is not entitled to maintenance out of the joint family property of their putative father in the hands of his co-parceners. There is no basis in the Hindu Law for the view that the father is bound to maintain his illegitimate daughter, nor is she a member of the family of her putative father's coparceners, so as to be entitled to a charge for maintenance on the joint family property. *Parvati* v. *Ganpatrao Balal*, (1894) I.L.R., 18 Bom., 177, referred to.

Vellaiyappa Chetty v. *Natarajan* ... ... (1927) I.L.R., 50 Mad., 340

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HINDU LAW—*Minor—Suit by minor for partition—Preliminary decree—Division of status, whether from date of plaint or of preliminary decree—Manager, accountability of—Nature of liability of manager to account—Difference as to nature of accountability, prior to and after suit—Civil Procedure Code (Act V of 1908), O. XLI, r. 22—"Decree" in r. 22, meaning of—Respondent's right to support decree on other grounds, in what cases permitted, without filing an appeal or memorandum of objections.*] In a suit for partition instituted on behalf of a Hindu minor, if the Court holds that a division is necessary in the interests of the minor and passes a preliminary decree for partition, it must be deemed that the divided status of the plaintiff dates from the date of the plaint and not from that of the preliminary decree; and the fact that the preliminary decree was passed on a consent statement of the parties does not make any difference; *Krishnaswamy Thevan* v. *Pulukaruppa Thevan*, (1925) I.L.R., 48 Mad., 465, followed; *Chelimi Chetty* v. *Subbamma*, (1918) I.L.R., 41 Mad., 442, distinguished. In an ordinary suit for partition, in the absence of fraud or other improper conduct, the only account the kartha or manager is liable for is as to the existing state of the property divisible and the parties have no right to look back and claim relief against past inequality of enjoyment or other matters; but it is open to the plaintiff to prove specifically fraud, misappropriation or other improper conduct on the part of the manager with respect to such management; the same rule of accountability of the manager applies in a suit for partition by a minor, as regards his management prior to suit; but subsequent to the date of suit, the plaintiff and the defendant (the manager) are only tenants-in-common or co-sharers, and therefore the manager is strictly bound to account for all receipts and expenses and can take credit only for such expenses as have been incurred for the benefit or necessity of the estate, and the net income after deduction of such expenses will have to be divided among the shares according to their shares. Though the word "*decree*" has been used in rule 22, Order XLI, Civil Procedure Code, what the rule contemplates really is the *decision* by the Court below, and it merely enables the decision arrived at to be supported on grounds other than those on which the lower Court proceeded; and under that rule it is not open to a respondent to have adjudicated by the Appellate Court rights or causes of action which have been decided against him in the Court below and in respect of which he has filed no appeal or memorandum of objections.

Sri Ranga Thathachariar v. *Srinivasa Thathachariar*. (1927) I.L.R., 50 Mad., 866

——— *Mutt—Head of mutt, whether a trustee—Some properties in question belonging to the mutt—Civil Procedure Code (Act V of 1908), sec. 92, for removal and for a scheme, whether competent.*] Where the properties in question belong to a mutt, the head of the mutt is answerable for mal-administration as a trustee in a general sense though he may not be an express trustee in the English sense. Section 92, Civil Procedure Code, is applicable to such a case, and a suit can be instituted for removal of the head of the mutt and for a scheme, after obtaining the sanction prescribed by the section. *Ram Parkash Das* v. *Anand Das*, (1916) I.L.R., 43 Calc., 707 (P.C.), and *Vidya Varuthi* v. *Balusami Ayyar*, (1921) I.L.R., 44 Mad., 831 (P.C.), relied on; *Nataraja Thambiran* v. *Kailasam Pillai*, (1921) I.L.R., 44 Mad., 283 (P.C.), explained.

Nelliappa Achari v. *Punnaivanam Achari* ... (1927) I.L.R., 50 Mad., 567

——— *Religious endowment—Math—Loan contracted by Mahant for purpose of math—Liability of succeeding Mahant—Receiver of math income.*] Where the deceased head of a math has borrowed money for the purpose of discharging duties for which he is responsible as head, and the money has been legitimately applied to that purpose, it can be recovered from the succeeding head of the math. The decree should provide, as in *Niladri Sahu* v. *Mahant Chaturbhuj Das*, (1927) I.L.R., 6 Patna, 139; 53 I.A., 253, that on default in payment by the successor a receiver be appointed of the income of the math so that his beneficial interest therein may be applied to discharge the decree. Cases as to the validity of permanent alienations of math property, such as *Palaniappa Chetty* v. *Sreemath Devasikamony Pandara*, (1917) I.L.R., 40 Mad., 709 (P.C.); 44 I.A., 147, are distinguishable.

Vibhudapriya v. *Lakshmindra* ... ... (1927) I.L.R., 50 Mad. (P.C.), 497

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HINDU LAW—*Religious endowment—Power of karta to dedicate family property—Evidence of dedication—Application of profits of property.*] The fact that the deceased karta of a Hindu joint family regularly paid the expenses of a choultry out of the profits of a family property, the expenses not however exhausting the whole of those profits, does not establish a dedication of the profits to the charity. Consideration of the powers of a karta to dedicate property of the joint family to a religious charity.

Gangi Reddi v. *Tammi Reddi* ... ... (1927) I.L.R., 50 Mad. (P.C.), 421

——— *Right of husband in distress to take his wife's stridhanam—Text, meaning of.*] The word "take" in the text of Yagnavalkya, that "a husband is not liable to make good the property of his wife *taken* by him in a famine or for the performance of a duty or during illness or while under restraint" does not mean "physical taking" but means "taking and using." Hence if the husband taking his wife's property in such circumstances does not actually use it, the wife still remains its owner.

Nammalwar Chetty v. *Thayarammal* ... ... (1927) I.L.R., 50 Mad., 941

——— *Trusts for public religious purposes—Gift to God—Almighty—Agreement, reciting creation of gift and appointment of trustee and providing for making of a formal document—Necessity for registration of the agreement—Indian Registration Act (XVI of 1908), sec. 17 (2) (v)—Indian Trusts Act (V of 1882), ss. 1 and 5—Gift to the Almighty, whether gift to a living person—Transfer of Property Act (IV of 1882), ss. 5 and 123, applicability of, to such gifts.*] Where a Hindu executed an agreement, which recited that a person had been constituted trustee and certain lands had been dedicated to God Ramachandra Moorti, and also provided that he would execute a formal conveyance and put him in possession of the lands, whenever the trustee required, and would meantime be accountable for the rents, on a suit instituted by a creditor of the donor to establish his right to attach the property as that of the donor on the ground that no trust or gift was validly created for want of a registered document, *Held*, that, as the document was merely one which recorded a past transaction and gave another party a right to call for a formal document, it was exempted from registration under section 17 (2) (v) of the Registration Act: *Rajangam Aiyar* v. *Rajangam Aiyar*, (1923) I.L.R., 46 Mad., 373 (P.C.), referred to; that the document, constituting a trust of property for a public religious purpose, falls within the saving clause of section 1 of the Indian Trusts Act, and that consequently section 5 of the Act which relates to creation of trusts and requires registration of deeds of trust, does not apply to the document; that a gift to God—Almighty, (as in this case), is not a gift to a *living* person within the meaning of the Transfer of Property Act, and that, consequently, section 123, read with section 5 of the Act, does not apply to such a gift, so as to require a registered document for its creation. Though an idol is considered by a fiction of law a juristic person clothed for some purposes with rights of persons, yet a juristic person is not a living person for all purposes. *Pallayya* v. *Ramavadhanulu*, (1903) 13 M.L.J., 364; *Ramalinga Chetty* v. *Siva Chidambara Chetty*, (1919) I.L.R., 42 Mad., 440, *Tammi Reddy* v. *Gangi Reddy*, (1922) I.L.R., 45 Mad., 281 followed; and the principle of *stare decisis* applied.

Narasimha Swami v. *Venkatalingam* ... (1927) I.L.R., 50 Mad. (F.B.), 687

IDENTITY OF THUMB-MARK—*Judge taking thumb-mark of accused—If objectionable—Conviction based on comparison of thumb-marks—If proper.*] The question of identity of a thumb-mark is a question of fact to be decided as any other question of fact. There is no objection in law to a Judge taking the thumb-mark of an accused person, if the Judge thinks it relevant; and a conviction based on a comparison of the thumb-mark of an accused person with the thumb-mark on the document in question is not improper. *Bajari Hazam* v. *King Emperor*, (1922) I.L.R., 1 Pat., 212, dissented from. *Public Prosecutor* v. *Veerammal*, 23 Cri. L.J., 695, referred to.

Public Prosecutor v. *Kandasami Thevan* ... ... (1927) I.L.R., 50 Mad., 462.

IMPARTIBLE ESTATES ACT (II OF 1904), SEC. 6—*Objection to sale—if can be taken in execution*:—*See* "CIVIL PROCEDURE CODE, O. XXI, R. 2" 897

IMPROVEMENTS:—*See* "ESTATES LAND ACT (MADRAS), SEC. 3 (4) (*a*) and (*f*)." 482

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INAM—*Unenfranchised personal—Suit for division—Alienation—Effect of prohibition—Inam Rules, r. 5, cl. (3)—See* "PENSIONS ACT, SEC. 4" 441

INCOME-TAX ACT (XI OF 1922), SEC. 2 (1)—*Land leased for manufacture of salt—Profits derived from manufacture of salt on the lands leased—Licensee, whether liable to assessment to income-tax in respect of such profits—Lands so used, whether used for agricultural purposes—"Agricultural purpose," meaning of.*] Income derived from manufacture of salt in agricultural lands is *not* agricultural income within the meaning of section 2 (1) of the Income-tax Act (XI of 1922); and consequently the licensee of a salt factory is liable to be assessed to income-tax in respect of profits derived from manufacture of salt on such lands.

Commissioner of Income-tax, Madras v. *Linga Reddy* ... (1927) I.L.R., 50 Mad. (S.B.), 763

INCOME-TAX ACT (INDIAN) (XI OF 1922), SEC. 2 (1) (*b*)—*Agricultural income—When income derived from toddy is such income.*] Income derived from toddy is agricultural income when it is received by the actual cultivator, whether owner or lessee of the land on which the trees grow. If the income is obtained by a person who has not produced the trees from which the toddy is tapped, or has not done any agricultural operation whereby those trees have been raised, it is not agricultural income within the meaning of the Act.

Commissioner of Income-tax, Madras v. *Yagappa Nadar* ... (1927) I.L.R., 50 Mad. (S.B.), 923

———————, SS. 4 (1), (2), 10 AND 13—*Loan advance made by a person owning a business at Rangoon, to his partnership business in Penang—Interest on advance credited in Rangoon accounts, though no cash was received from Penang—Mercantile basis of accountancy adopted in the Rangoon accounts—Income, whether accrued without or within British India—Liability to income-tax, whether under sec. 4 (1) or sec. 4 (2).*] An assessee, who had a business of his own in Rangoon and a partnership business at Penang, advanced a sum of money from the Rangoon funds to the Penang business; it appeared that interest on that advance was credited in the account of the Rangoon business, though no amount was actually received from Penang; the assessee had chosen to adopt the mercantile basis in his accounts. On his being assessed to income-tax in respect of such interest, the assessee contended that he was not liable, as it was not income which accrued, arose or was received in British India; *Held*, that the interest in question was not profit or gain arising without British India, but was income which properly accrued or arose in British India within section 4 (1) of the Indian Income-tax Act (XI of 1922). The assessee, having chosen to adopt the mercantile basis of accountancy in keeping his accounts, it is upon that basis, and upon that basis alone, that he was to be assessed to income-tax, under sections 10 and 13 of the Act.

Commissioner of Income-tax, Madras v. *Subramania Chettiar* ... (1927) I.L.R., 50 Mad. (S.B.), 765

———————, SEC. 4 (2)—*Resident in British India, meaning of—Test of residence of firm—Residence of partners, whether relevant in determining residence of firm—Central control and management of the whole business necessary—Possibility of two or more places of residence of firm—Delegation of a portion of the business, insufficient, but one of a portion of the management as a whole, necessary.*] A firm or partnership resides for the purposes of income-tax at a place where its real business is carried on; and the real business is carried on where the central management and control of the whole of its business actually abides: *De Beers Consolidated Mines, Ltd.* v. *Howe*, [1906] A.C., 455, followed. There may be two such places of residence but the suggested second residence must not merely have a delegation of management of some portion of the partnership business, however extensive, but a delegation of some portion of the management of the business as a whole: *Swedish Central Railway Company, Ltd.* v. *Thompson*, [1925] A.C., 495, followed. The question as to where the individual partners actually had their places of residence is a wholly irrelevant consideration in determining the place of residence of

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the firm. Where, therefore, it appeared that a firm of partners were carrying on business as bankers, money-lenders and cloth merchants in several places inside and outside British India, that the partners regularly resided at a place within the foreign State of Pudukkotai, wherefrom they exercised a general supervision and direction of their whole business inside and outside British India, that they had several branches in British India generally controlled from Madras and also branches outside British India but no part of the control of the overseas branches ever passed through Madras or any other branch in British India, and that profits earned outside British India were remitted to the Madras branch, *held*, that the firm had for purposes of income-tax its place of residence only outside British India and at no place within British India, and was consequently not liable to assessment of income-tax, for profits remitted into British India from outside, under section 4 (2) of the Income-tax Act (XI of 1922).

Commissioner of Income-tax, Madras v. *T. S. Firm* ... (1927) I.L.R., 50 Mad. (S.B.), 847

INCOME-TAX ACT (INDIAN) (XI OF 1922), SS. 4 (2) AND 66—*Reference by Commissioner—Profits earned or accrued outside British India—Remitted into British India—Profits accrued both beyond and within three years of remittance—Presumption, whether remittance related to earlier or later profits—Burden of proof on assessee.*] When a man has profits earned more than three years before the year of assessment and also profits earned within that period, to his credit, in a trade carried on by him outside British India, there is no presumption that a remittance made to him in British India, of a sum which might fall in either set of profits, is made from the earlier profits and not from the later. The effect of section 4 (2) of the Income-tax Act (XI of 1922) is to cast upon the assessee the burden of proving that the profits accrued or arose outside British India more than three years before the yweré received or brought into British India.

Commissioner of Income-tax, Madras v. *S. K. R. S. L. Firm*, (1927) I.L.R., 50 Mad. (S.B.), 853

——————————, SEC. 10 (2) (vi)—*Assessee leasing his machinery and plant to another for rent, himself undertaking to bear loss due to depreciation—Assessee entitled to deduction on account of depreciation.*] If *A* leases to *B* his buildings, machinery and plant for a certain rent and undertakes himself to bear the loss arising from depreciation on account of *B* working the machinery, etc., the lessor *A*, if assessed to income-tax on his rent, is entitled to a deduction allowable under section 10 (2) (vi) in respect of loss caused by such depreciation. In order to claim this deduction it is not necessary that the assessee himself should use the machinery and cause the wear and tear, the assessee's business of leasing his machinery being also a business, within the meaning of the section, in which the depreciation ensues.

Commissioner of Income-tax, Madras v. *Gin and Rice Factory, Guntur*, (1927) I.L.R., 50 Mad. (S.B.), 529

——————————, SEC. 50—"*Recovered*," *meaning of*] The words "tax was recovered" in section 50 of the Indian Income-tax Act (XI of 1922) mean "tax was received by the Government" and not either "tax was refunded" to the assessee in the United Kingdom under section 27 of the Finance Act, 1920 (10 and 11 Geo. V, Ch. 18), or "tax was recovered by coercive process." Hence any claim for refund of tax claimable under section 49 of the Indian Income-tax Act, should, as provided by section 50 of the Act, be made within one year from the last day of the year in which it was received by or paid to the Government in India.

Commissioner of Income-tax, Madras v. *Binny & Co.* ... (1927) I.L.R., 50 Mad. (S.B.), 920

—————————— SEC. 66 (2)—*Combined application by four assessees before Commissioner to state a case—Competency of—Applicants, separately assessed—Separate application and separate fees, whether necessary—Combined application, whether can be regarded as valid on*

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behalf of one of the applicants—Time for making the application, whether can be extended by the Commissioner.] Where four persons, who were members of an undivided Hindu family, but subsequently became divided and were separately assessed to income-tax, applied to the Commissioner in one combined application on a single fee of one hundred rupees, to have a case stated to the High Court under section 66 (2) of the Income-tax Act (XI of 1922), and the applicants did not pay the additional fees or elect to have the application confined to one of them within time, as suggested by the Commissioner, *held*, (1) that it was not competent for four separately assessed persons to combine their applications in one document for a case to be stated by the Commissioner under section 66 (2) of the Act; that even assuming that they may, as, for instance, where the points to be raised are similar, their cases must be separately stated as they were separately assessed, and they must pay a separate fee of one hundred rupees for each assessment under the Act; (2) that there was no proper application before the Commissioner for his taking action in the case of one of the applicants, as the Commissioner had offered to do that and his offer was not accepted; and (3) that the Commissioner has no power under the Act to extend the time limited for making an application under section 66 (2) of the Act.

Commissioner of Income-tax, Madras v. *Ganga Raju.* (1927) I.L.R., 50 Mad., 335

INDIAN PENAL CODE, SEC. 294 (*a*)—"*Goods*"—*Immovable property—if included in.*] The term "goods" in section 294 (*a*) of the Indian Penal Code includes both movable and immovable property. The publication of an advertisement of a lottery by which the lucky winner would get a factory for less than its real value is an offence under section 294 (*a*) of the Indian Penal Code. 8 George I, Chapter II, section 36, and 12 George II, Chapter XXVIII, section 1, referred to.

Malla Reddi v. *King Emperor* ... ... (1927) I.L.R., 50 Mad., 479

———— *Charge under sec. 302—Conviction under sec. 304 (second part), Indian Penal Code—Revision under section 439, Criminal Procedure Code—Notice of enhancement—Effect of section 439 (4), Criminal Procedure Code—Finding of acquittal, not complete, but partial.*] Where a person was charged with murder and the Sessions Court was of opinion on the evidence that the accused had been gravely provoked and did not intend to cause death and convicted him under the second part of section 304 of the Indian Penal Code, and the accused was called upon, in a revision petition filed in the High Court, to show cause why he should not be convicted of murder and the sentence enhanced to one of death *held*, that the High Court had no power in revision under section 439, Criminal Procedure Code, to do what was tantamount to convert a finding of acquittal into one of conviction, that the accused could not be convicted of an offence either under section 302 or the first part of section 304 of the Indian Penal Code except on an appeal by the Local Government. *Held* further, that the finding of acquittal referred to in section 439 (4), Criminal Procedure Code, need not be a complete acquittal. *In re Bali Reddi*, (1914) I.L.R., 37 Mad., 119, dissented from; *Emperor* v. *Sheodarshan Singh*, (1922) I.L.R., 44 All., 332, followed.

Subba Chukli, In re ... ... (1927) I.L.R., 50 Mad., 259

————, SEC. 341—*Agraharam road—Vested in a municipality—Public street—All members of public entitled to equal rights—Obstruction to lawful user—Wrongful restraint—Conviction for, if proper.*] All members of the public have equal rights in public streets vested in a municipality, and one section of the community cannot interdict another section of the community from the lawful use of the public streets. Where the accused, a Brahman, obstructed the complainant an Izhuva convert to Arya Samaj, from using a road in an *agraharam*, the road in question being vested in a municipality, *held*, that he had no right to so obstruct, and that he was rightly convicted under section 341, Indian Penal Code. *Sadagopa Chariar* v. *Krishnamoorthy Rao*, (1907) I.L.R., 30 Mad., 185 (P.C.), *Mansur Hasan* v. *Muhammad Zaman*, (1925) I.L.R., 47 All., 151 (P.C.), *Muchumarri Malliah* v. *Yerravulu Ganganna*, (1926) 94 I.C., 226, followed.

Sundareswara Srauthigal v. *King-Emperor* ... (1927) I.L.R., 50 Mad., 673

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INDIAN PENAL CODE (ACT XLV OF 1860), SEC. 499, EXCEPTION 9—*Statements by a lawyer acting in course of professional duties* prima facie *defamatory—Necessary in interests of client—Presumption of good faith—Proof of malice, overrides presumption—Absolute privilege, if available in India.*] When a lawyer is acting in the course of his professional duties and is thus compelled to put forward everything that may assist his client, good faith is to be presumed, and bad faith is not to be presumed merely because the statement is *prima facie* defamatory, but there must be some independent allegation and proof of private malice from which, in the circumstances of the case, the Court considers itself justified in inferring, that the statement was made, not because it was necessary in the interests of the client, but that the occasion was wantonly seized as an opportunity to vent private malice. Even the presence of malice will not override the presumption of good faith, when the statement made was obviously necessary in the interests of the client, and where the lawyer could not omit to make it without gravely imperilling the interests of his client, and would, in fact, not be discharging his duty to his client unless he made it. *In re Nagari Trikamji*, (1895) I.L.R., 19 Bom., 341, *Nikunja Behari Sen* v. *Harendra Chandra Sinha*, (1914) I.L.R., 41 Calc., 514, *Niren Narayan Singh* v. *Emperor*, (1927) 27 Cr. L. J., 1090, *McDonnel* v. *Emperor*, (1927) 27 Cr. L.J., 821, followed. *Dubitante*: The Indian law on the subject being found within the four corners of the Indian Penal Code, whether a complaint for defamation against a lawyer for matters uttered in Court in the course of his professional duties cannot be entertained. *Sullivan* v. *Norton*, (1887) I.L.R., 10 Mad., 28 (F.B.), questioned. *Tiruvengada Mudali* v. *Tirupurasundari Ammal*, (1926) I.L.R., 49 Mad., 728 (F.B.), referred to.

Mir Anwarrudin v. *Fathim Bai Abidin* ... ... (1927) I.L.R., 50 Mad., 667

INQUEST REPORT:—*See* "CRIMINAL PROCEDURE CODE, SEC. 174" 750

INTEREST ACT (XXXII OF 1839)—*Payment of advance—Interest on*:—*See* "CONTRACT ACT (INDIAN), SEC. 73" 94

———— *Contract to supply goods*:—*See* "INDIAN CONTRACT ACT (IX OF 1872), SEC. 73" 94

INTERPRETATION OF STATUTES—*Marginal note*:—*See* "CITY MUNICIPAL ACT (MADRAS), SEC. 288" 733

IRRIGATION CESS ACT, MADRAS (VII OF 1865)—*River, when "navigable"—Riparian proprietor using water of non-navigable river, whether liable to pay irrigation cess.*] A river is not "navigable" unless it is navigable *throughout* the year for *steamers and big boats*. Where only one side of a non-navigable river belongs to the Government and the other side belongs to a private owner (e.g., a Zamindar with a permanent sannad or, as in this case, an inamdar from him, the latter has a right as a riparian owner to take reasonable quantity of water for irrigation purposes without any liability to pay any cess under the Madras Irrigation Cess Act (VII of 1865), the extent of the right to take water being determined by the configuration of channels and sluices and the width of the river.

Subbarayudu v. *Secretary of State for India* ... (1927) I.L.R., 50 Mad., 961

JAGHIR—*Unsettled jaghir—Meaning of*:—*See* "ESTATES LAND ACT (MADRAS), SEC. 3" 10

JOINT TRIAL UNDER SS. 379 AND 447, INDIAN PENAL CODE:—*See* "CRIMINAL PROCEDURE CODE, SEC. 239" 735

JUDGMENT—*Order of single judge of High Court staying execution of lower Court's order, pending appeal to High Court*.—*See* "LETTERS PATENT, MADRAS HIGH COURT, CL. 15" 350

———— *Refusal to revoke leave to sue on the original side*:—*See* "LETTERS PATENT, CL. 15" 770

JURISDICTION—*Civil Courts—Suit for unenfranchised personal inam*:—*See* "PENSIONS ACT, SEC. 4" 441

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JURISDICTION—*High Court—Issue of writ of certiorari—Failure to object to jurisdiction before Lower Court—If bar to obtaining writ*:—*See* "CERTIORARI" 130

———— *Under section* 151, *Civil Procedure Code—When can be invoked—Inherent power under*:—*See* "CIVIL PROCEDURE CODE, SEC. 151" 67

JUS TERTII:—*See* "CIVIL PROCEDURE CODE, SEC. 11" 877

KARNAVAN—*Suit for removal—liability to account*:—*See* "MALABAR LAW" ... 431

KARTA—*Powers of*:—*See* "HINDU LAW" 421

LAND ACQUISITION ACT (I OF 1924), SEC. 6 (1)—*Contribution of one anna only, by Government towards acquisition—Validity of acquisition.*] In the absence of proof that the acquisition of a particular land is brought about by improper motives or that the Land Acquisition Act is set in motion to annoy a private owner, the contribution of even one anna by the Government towards the compensation for the acquisition of a land for a public road (the rest of the amount required for the purpose being contributed by the villagers) satisfies the proviso to section 6 (1) of the Act which provides that no declaration of acquisition shall be made unless the compensation to be awarded is to be paid . . . wholly or *partly* out of the public revenue. *Ponnaia* v. *Secretary of State for India*, (1926) 51 M.L.J., 338, dissented from; *Chatterton* v. *Cave*, (1878) 3 App. Cas., 483, and *Luchmeswar Singh* v. *Chairman, Darbhanga Municipality*, (1891) I.L.R., 18 Calc., 99 (P.C.), distinguished.

Senja Naicken v. *Secretary of State* ... ... (1927) I.L.R., 50 Mad., 308

———— SS. 18, 19 AND 30—*Sale by landlord of his kudivaram interest for cash and certain money rent payable every year—Land acquired under Land Acquisition Act—Compensation—Apportionment of—Dispute between landlord and purchasers of kudivaram—Right of landlord, whether merely to capitalized value of rent—Interest of landlord after sale of kudivaram.*] Where a landlord sold his kudivaram interest in the land to certain individuals under a sale deed whereby the vendees, besides paying a certain amount in cash were to pay also rupees four every year to the landlord and subsequently the land, comprising both the melvaram and kudivaram interests, was acquired by the Government under the Land Acquisition Act, and disputes arose as to the apportionment of the compensation amount between the landlord and the vendees of kudivaram, *held*, that the landlord, after the sale of the kudivaram, has not merely a right to receive the rent from the vendees, but has several other rights, such as the right to get back the land on forfeiture of the permanent tenancy, and other rights in the land; that it would be quite unfair and inequitable to value the melwaramdar's interest at a capitalized value at 20 years' purchase of the rent reserved in his favour; and that the apportionment of one-third of the compensation amount to the landlord was not improper.

Natesa Ayyar v. *Kaja Maruf Sahib* ... ... (1927) I.L.R., 50 Mad., 706

LANDLORD AND TENANT—*Lease—Restraint upon alienation of leasehold interest—Alienation of a portion, no breach of restraint.*] Unless there is a restriction against the alienation of any portion of the demised property, a restraint upon alienation of the demised premises does not prevent the alienation of a portion; *Chatterton* v. *Terrell*, [1923] A.C., 578, followed.

David Cutinha v. *Salvadora Minazes* ... ... (1927) I.L.R., 50 Mad., 331

LEASE FOR 99 YEARS—*Covenant for renewal for a further period of 99 years—"On such terms and conditions as should be judged reasonable"—Covenant, whether uncertain and void—Lessee assigning a portion of the premises to another—Lessee, whether competent to enforce specific performance of covenant for renewal of the whole or portion—Specific Relief Act (I of 1877), ss. 14 to 17, effect of.*] A lease for 99 years, granted by the East India Company in 1821, contained a clause for renewal for another like period on the lessee paying a sum of money and "upon such terms and conditions as should be judged reasonable," the entire leasehold interest became, by subsequent

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assignments, eventually vested in the plaintiffs, who in their turn assigned a major portion of the holding to a third party. Shortly before the expiry of the original lease period, the plaintiffs tendered the due amount and asked for renewal of the lease; but the lessors who had previously to the tender given notice to the plaintiffs, to quit the holding, refused to renew; the lessors sued to eject the plaintiffs, while the latter sued for specific performance of the covenant for renewal, in respect of the entire holding, or of the portion in their possession, without impleading the assignees of the other portion: *Held* by COUTTS TROTTER, C.J. (agreeing with VENKATASUBBA RAO, J.), that the covenant to renew was not unenforceable on account of uncertainty, *Gourlay* v. *The Duke of Somerset*, (1815) 19 Ves, 429; and that assignees of a portion only of the originally demised lands can sue for specific performance of a covenant for renewal, in respect of such portion only without the assignees of the other portions. A covenant to renew is, of all covenants, the clearest case of a covenant which must run with the land and is apportionable and can be specifically enforced by the assignee of a portion of the holding. *Simpson* v. *Clayton*, (1838) L.J. (C.P.), 59, followed. There is nothing in the Indian Specific Relief Act (I of 1877), to forbid each assignee of the lessees from suing for specific performance of the covenant to renew *qua* his portion. *Held*, by KRISHNAN, J. (*contra*), that the covenant for renewal of the lease "upon such terms and conditions as shall be judged reasonable," is too vague, uncertain and unenforceable, and hence void; that the covenant for renewal is a single and indivisible covenant which cannot be apportioned between the various assignees; that sections 14 to 17 of the Indian Specific Relief Act (I of 1877) govern this case, and specific performance of part of the contract cannot be directed as the case did not fall under the exceptions specified in sections 14 to 16 of the Act. *Safiur Rahman* v. *Mahara-munnissa*, (1897) I.L.R., 24 Calc., 832, and *Graham* v. *Krishna Chunder Dey*, (1925) I.L.R., 52 Calc., 335 (P.C.), relied on.

Secretary of State for India v. *Volkart Brothers* ... (1927) I.L.R., 50 Mad., 595

LETTERS PATENT (MADRAS), CL. 12:—*See* "SMUGGLED GOODS" ... 449

———, CL. 15—*Judgment—Leave to sue on the Original Side granted—Application to revoke leave—Order of refusal, whether and when appealable.*] An order of a single Judge of the High Court refusing to revoke an order granting leave to sue on the Original Side of the High Court, *is not appealable*, under clause 15 of the Letters Patent, if the question of jurisdiction of the High Court to entertain the suit is still open to the defendant and can be raised on an appropriate issue at the trial of the suit; but if the order has finally shut out the defendant from thereafter pleading that the suit should have been dismissed on the point of jurisdiction, then the order is a judgment and is appealable. *Tuljaram* v. *Alagappa Chettiar*, (1912) I.L.R., 35 Mad., 1, applied.

Maharajah of Pithapuram v. *Rama Rao* ... ... (1927) I.L.R., 50 Mad., 770

———, **MADRAS HIGH COURT**, CL. 15—*Order of single Judge, staying execution of a lower Court's decree, whether a judgment" within cl.* (15)—*appealability of—Party guilty of contempt by disobedience to decree, whether entitled to stay of execution.*] An order of a single Judge of the Madras High Court staying execution of a decree or order of a lower Court, by suspending an injunction, pending an appeal to the High Court, is a "judgment" within clause (15) of the Letters Patent, and is hence appealable. The long series of decisions of the High Court to the above effect are not affected or overruled in effect by *Sevak Jeranchod Bhogilal* v. *The Dakore Temple Committee*, (1925) 49 M.L.J., 25 (P.C.)

Pedda Jeeyangarlavaru v. *Krishnamacharlu* ... (1927) I.L.R., 50 Mad., 380

LIMITATION—*Combined mortgage decree against person and property—Application for execution—Filed more than twelve years from date of decree but less than twelve years from date of sale of hypotheca—Bar*:—*See* "CIVIL PROCEDURE CODE, SEC. 48" 5

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LIMITATION ACT (IX of 1908). ARTS. 89 AND 120—*Pleader and client—Several cases entrusted to same vakil—Agency in each case, separate and terminating at the end of each case—Suit for accounts against legal representatives of pleader—Limitation.*] A pleader engaged by a client for several cases died without finishing some of them. In a suit by the client after the pleader's death against his sons for an account of the moneys received by their father in all the cases and for the balance due to the plaintiff, *held*, that the pleader was not a general agent of the client so as to entitle the client to say that the agency terminated only on the death of the pleader, that the engagement in each case was separate, that the agency in respect of each case terminated at its end, that article 89 of the Limitation Act (IX of 1908) was applicable and that no new cause of action arose as against the sons on the death of their father so as to entitle the client to say that article 120 was applicable. *Arunachalam Chetty* v. *Rama Chetty*, (1914) 16 M.L.T., 614, followed, and *Bindraban Behari* v. *Jamuna Kunwar*, (1903) I.L.R., 25 All., 55, dissented from.

Appa Rao v. *Subba Rao* ... ... (1927) I.L.R., 50 Mad., 249

———————, ART. 166—*Application by decree-holder to set aside sale of property not belonging to judgment-debtor and for further execution, more than thirty days after sale:—See* "EXECUTION" 639

———————, ART. 182 (5)—*Application for delivery by decree-holder-purchaser, whether a step in aid.*] An application by a decree-holder-purchaser for delivery of property purchased by him in execution, is a step in aid of execution within article 182, clause (5) of the Limitation Act (IX of 1908). *Lakshmanan Chettiyar* v. *Kannammal*, (1901) I.L.R., 24 Mad., 185, followed. In order that an application by the decree-holder should serve as a step in aid, it is not necessary that it should be made in a pending execution application. *Kunhi* v. *Seshagiri*, (1882) I.L.R., 5 Mad., 141, followed. In these matters the principle of *stare decisis* is applicable.

Kannan v. *Avvulla Haji* ... ... (1927) I.L.R., 50 Mad., 403

———————, ART. 182 (5)—*Application for execution of decree—Application by judgment debtor to record satisfaction—Statement by decree-holder, objecting to judgment-debtor's application—Subsequent application by decree-holder for execution, more than three years from last application for execution—Filing of statement by decree-holder objecting to record of satisfaction, whether a step in aid of execution—Pendency of execution application, whether necessary for effectiveness of an application for a step in aid of execution.*] The filing of a statement by a decree-holder, objecting to the judgment-debtor's application to record satisfaction of the decree, is not a step in aid of execution of the decree under article 182 (5) of the Limitation Act (IX of 1908) and cannot therefore save his application for execution from being barred by limitation. *Kuppuswami Chettiar* v. *Rajagopala Aiyar*, (1922) I.L.R., 45 Mad., 436, followed. *Quære*:—Whether an application to be a step in aid of execution should be one made in a pending execution application.

Krishna Pattar v. *Seetharama Pattar* ... ... (1927) I.L.R., 50 Mad., 49

———————— SS. 14 AND 15—*Suit by maker of note for declaration that it was obtained by fraud and undue influence—No injunction against payee filing a suit—Dependent judgment—Limitation for a suit on the note by the payee.*] The fact that the maker of a promissory note sued the payee for a mere declaration that the note had no consideration and was obtained by fraud and undue influence without suing for an injunction to restrain the payee from filing a suit on the note does not suspend the running of time for a suit on the note by the payee. *Sethu Row* v. *Seetha Lakshmi Ammall*, (1925) 21 L.W., 716, followed. The principle of dependent judgment is no longer good law and no equitable grounds for suspension of a cause of action can be added to the provisions of the Limitation Act. *Naganna* v. *Venkatappayya*, (1923) I.L.R., 46 Mad., 895 (P.C.), followed.

Satyanarayana Brahmam v. *Seethayya* ... ... (1927) I.L.R., 50 Mad., 417

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LIMITATION ACT (IX OF 1908), SEC. 19—*Acknowledgment*:—*See* "TRANSFER OF PROPERTY ACT, SEC. 55 (4) (b)" 548

——— SEC. 22—*Civil Procedure Code (Act V of 1908), O. I., r. 10 (5)—Application by plaintiff to add party as defendant—Order granting application—Review—Application dismissed—Revision—Order by High Court adding party—Date from which suit deemed to have been instituted against the added party.*] Where an application made by the plaintiff in the original Court to add a person as a defendant in a pending suit was originally granted but subsequently on review dismissed by that Court, and, on a revision petition filed against the last order, the High Court ordered that the party be added as a defendant to the suit without prejudice to any defence of limitation being raised by him in the trial of the suit, *held*, that the order of the High Court adding the party as a defendant, should, for purposes of limitation, be deemed to have taken effect, not merely on the date when it should have been made by the lower Court if it had taken a correct view of the position, but on the date when the plaintiff's application was presented to the trial Court; and that the suit was not barred. *Ramakrishna Moreshwar* v. *Bamabai*, (1893) I.L.R., 17 Bom., 29, followed. *Haveli Shah* v. *Khan Shahib Painda Khan*, (1926) M.W.N., 592 (P.C.), distinguished.

South Indian Industrials, Limited v. *Narasimha Rao* ... ... (1927) I.L.R., 50 Mad., 372

LOCAL BOARDS ACT (MADRAS) (XIV OF 1920)—*Election Rules under the Act, r. 1—Only one candidate for presidentship, nominated—Such candidate deemed elected—Election petition filed against the appointment, competency of—Election, meaning of.*] Where only one candidate for the presidentship of a local board has been nominated and in accordance with the rules has been deemed to be elected, no election petition will lie against this appointment. Election means selection of one out of two or more candidates, and therefore the return of a solitary candidate is not, strictly speaking, an election by the electors, for the electors have had no say whatever in the matter.

Krishnasamy v. *Gulam Muhammad Ghouse* ... (1927) I.L.R., 50 Mad., 86

———, R. 4, CL. (3)—*Rules for elections—Elections to Union Boards—Jurisdiction of District Court to transfer part-heard case—Objection to personation of a voter.*] Rule 4, clause (3) of the rules for the conduct of election enquiries framed under the Madras Local Boards Act (XIV of 1920) enables a District Court to transfer to a Munsif's Court even a part-heard case in the case of elections to Union Boards. *Zamindar of Bodakimidi* v. *Kumari Lahiri*, (1918) M.W.N., 772, followed. Even if no objection is taken at the time of election to the voting of any person personating a real voter, the same can be taken at the election enquiry.

Moideen Meera Sahib v. *Fernando* ... ... (1927) I.L.R., 50 Mad., 654

———SS. 166 (1) AND 207—*Liability of licence-holder for act of his servant—Person licensed to ply car for hire on specified roads—Conductor employed by him plies for hire on road not covered by licence—Employer charged under ss. 166 (1) and 207 of the Madras Local Boards Act—Plea, act was done through conductor's ignorance and employer was unaware of act—Principle applicable—Act of servant is act of master.*] Where a person was licensed under the Madras Local Boards Act to ply his motor car for hire on certain specified roads, and a conductor employed by him plied the car for hire on a road not covered by the licence and the employer was charged with an offence under section 166 (1) of the Madras Local Boards Act, punishable under section 207 of the same Act, and he pleaded that the conductor plied the car on that road through ignorance and that he himself was not aware of the servant's act, *held*, that the principle to be applied in the case was that which applied in the case of other licence-holders, such as, holders of abkari licences and licences under the City Police Act; that the licence-holder having undertaken to conform to the terms of the licence and to be responsible that no breach of it took place, that it was the licence-holder

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who did everything that was done under cover of the licence, that the act of the servant of a licence-holder was the act of his master, and that the licence-holder was in law responsible for all that his servant did. *In re Sudalaimuthu Pillai*, 1 Weir, 647, *Velayuda Mudali* v. *King-Emperor*, (1920) I.L.R., 43 Mad., 438, *Queen-Empress* v. *Tyab Ali*, (1900) I.L.R., 24 Bom., 423, *Emperor* v. *Babu Lal*, (1912) I.L.R., 34 All., 319, *Emperor* v. *Jwala Prasad*, (1923) I.L.R., 45 All., 642, referred to.

Sivarama Mudaliar v. *Muthannanziengar* ... (1927) I.L.R., 50 Mad., 913

LOCAL BOARDS ACT (XIV OF 1920), SEC. 193—*If repealed sec.* 249 *of Act* (*V of* 1920) :—*See* "DISTRICT MUNICIPALITIES ACT" 846

——— SCH. VII, CL. (c)—"*Storing or otherwise dealing with*"—*Forwarding agent—Collection of packages of fish—Kept in shed or godown with a view to consignment—If comes within mischief of Sch. VII, cl.* (*c*).] A forwarding agent, who collects packages of fish and keeps them in a shed or a godown for a day or two with a view to their subsequent consignment elsewhere, is "storing or otherwise dealing with" fish within the meaning of Schedule VII, clause (*c*) of the Madras Local Boards Act. The shortness or otherwise of the period does not affect the question. A man who handles goods in any way is dealing with them, and storing for private purposes apart from trade is "dealing with". *Emperor* v. *Wallace Flour Mill Co.*, (1905) I.L.R., 29 Bom., 193, *N.E. Ry. Co.* v. *Mayor, etc., of Kingston-upon-Hull*, (1891) 55 J.P., 518, referred to.

Public Prosecutor v. *Saidali Kutti and Sons* ... (1927) I.L.R., 50 Mad., 752

"LOTTERY" WITHIN SEC. 294-A, INDIAN PENAL CODE :—*See* "CHIT FUND" 636

MAINTENANCE -*Illegitimate son—Illegitimate daughter—Hindu Law—Rights under—Charge* :—*See* HINDU LAW" 340

MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (MADRAS ACT I OF 1900), SEC. 3—"*Improvements*"—*Whether Act applies to non-agricultural holdings.*] Malabar Compensation for Tenants' Improvements Act (Madras Act I of 1900) applies only to improvements effected in agricultural holdings and vacant building sites. Hence if a shop in an urban area is let to a tenant who agrees by his lease to remove at the end of the term a bakery oven erected by him thereon, he is not entitled to any compensation for the oven at the time of eviction

Chathukutty v. *Kunhappu* ... ... (1927) I.L.R., 50 Mad., 813

MALABAR LAW—*Tarwad—Karnavan—Suit by junior members for removal of karnavan—Liability to account—Fraud and misappropriation alleged against karnavan—Karnavan ceasing to be such by succession to a higher sphere—Maintainability of suit—Suit, whether can be continued as to accounts—Karnavan, whether and when personally liable—Liability of agent of karnavan.*] Where certain junior members of a Malabar tarwad sued for the removal of the karnavati, on allegations of fraud, misappropriation of family funds in general and devoting the funds to her particular branch, and prayed that she should render a general account of her management and pay personally whatever sums be found due to the family, but in the course of the suit the karnavati ceased to be such because under the family law of succession she moved to a higher sphere, *held*, (1) that, as the removal of the karnavati was otherwise an accomplished fact, the suit for general account, not being necessary and incidental to her removal, was not in law sustainable and should be dismissed; (2) that, in a properly framed suit, on proof of specific fraudulent alienations or misappropriation by the karnavan, the junior members, suing on behalf of the tarward, are entitled to recover personally from the karnavan the amount of which their tarwad has been defrauded; (3) that, in so far as a person acted as agent of the karnavati, a suit which would not lie against the principal would not lie against the agent; and that, in so far as he acted as a mere trespasser, there could be no calling upon him for general accounts; but in a properly framed suit it would be open to the karnavan to sue such person as liable personally for any proved act of misfeasance or misappropriation by him.

Manavadan v. *Sreedevi* ... ... (1927) I.L.R., 50 Mad., 341

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MANAGER—*Liability to account—Nature of:—See* "HINDU LAW" 866

MATH—*Loan contracted by mahant—Liability of succeeding mahant:—See* "HINDU LAW" 497

MORTGAGE—*Puisne mortgagee paying off decree on prior hypothecation—Suit thereafter for redemption of puisne mortgage—Lapse of twelve years from date of hypothecation on date of suit—Right of puisne mortgagee to be paid the decree amount.*] When a puisne mortgagee pays off a decree on a prior hypothecation, he is subrogated to the right of the prior hypothecatee. He is not entitled to enforce the decree as such but can only enforce his charge arising by subrogation. The period within which he should enforce it is 12 years from the date on which a suit on the hypothecation should have been brought and not 12 years from the date of payment. Hence, if in a suit for redemption by the mortgagor to redeem the puisne mortgage, more than 12 years had elapsed from the date on which a suit on the hypothecation should have been brought, the puisne mortgagee cannot resist redemption by claiming also the amount he had paid in addition to the amount due on his mortgage. *Parvathi Ammal* v. *Venkatarama Iyer*, (1924) 47 M.L.J., 316, considered; *Mahomed Ibrahim Hossain Khan* v. *Ambika Pershad Singh*, (1912) I.L.R., 39 Calc., 527 (P.C.), *Gopi Narain Khanda* v. *Bansidhar*, (1905) I.L.R., 27 All., 325 (P.C.), applied.

Kotappa v. *Raghavayya* ... ... (1927) I.L.R., 50 Mad., 626

———*Redemption—Mortgage not purely usufructuary—Separate charge on same property—Mortgagee's right to have charge also redeemed—Code of Civil Procedure (Act V of 1908), O. XXXIV, r. 1—Transfer of Property Act (IV of 1882), ss. 61-62.*] Section 62 of the Transfer of Property Act, 1882, which gives a usufructuary mortgagor a right to recover possession of the property mortgaged when the mortgage money has been realized, or is paid, tendered or deposited in Court, applies only to a mortgage which is purely and simply usufructuary. The section is not in any way inconsistent with section 61 of the Act, which enacts by implication that a mortgagor cannot redeem without paying money due under a separate mortgage or charge on the same property. A deed of mortgage with possession provided for interest at a specified rate, and contained covenants by the mortgagor to pay both principal and interest. By a separate document of the same date the mortgagee leased part of the mortgaged property to the mortgagor, the document providing, upon its true construction, that upon default in payment of the rent reserved it should be a charge upon the property included in the mortgage deed. In a suit for redemption and possession brought by an assignee of the mortgagor's interest against an assignee of the mortgage, *held*, that the deed did constitute a usufructuary mortgage within section 62 and that under section 61 the mortgagee was entitled to have the arrears of rent included in the sum to be paid as a condition to possession; further, that to exclude the rent would lead to a circuity of action and would be contrary to O. XXXIV, r. 1, the object of which rule is that all claims affecting the equity of redemption should be disposed of in one suit.

Ramarayanimgar v. *Maharaja of Venkatagiri* ... ... (1927) I.L.R., 50 Mad. (P.C.), 180

———*Suit for sale in a Sub-Court—Suit against Official Assignee and insolvent mortgagor—Transaction, fraudulent under sec. 53 of Transfer of Property Act—Presidency Towns Insolvency Act (III of 1909), ss. 4, 7, 55 and 56—Jurisdiction of Sub-Court to determine question under sec. 55 of the latter Act—Special Act—Special forum, Insolvency Court—Provincial Insolvency Act (V of 1920), ss. 53 and 54—Jurisdiction of Civil Courts to determine question raised under either Act.*] Any question as to the invalidity of a transaction, raised by the Official Assignee under the special provisions contained in sections 55 and 56 of the Presidency Towns Insolvency Act, can be determined only by the Insolvency Court, constituted under the Act, and not by the ordinary civil Court. The principle of the decisions holding that only Insolvency Courts have jurisdiction to determine questions under sections 53 and 54 of the Provincial Insolvency Act, should be applied to cases falling under sections 55 and 56 of the Presidency Towns Insolvency

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Act. *Mariappa Pillay* v. *Raman Chettiar*, (1919) I.L.R., 42 Mad., 342, and *Official Receiver, Coimbatore* v. *Palaniswami Chetty*, (1925) I.L.R., 48 Mad., 750, followed. Where, therefore, in a suit for sale on a mortgage instituted in a Sub-Court against the Official Assignee and others, the Court found that the transaction was not voidable under section 53 of the Transfer of Property Act, the Court had no jurisdiction to determine, at the instance of the Official Assignee, whether it was void as against him under section 55 of the Presidency Towns Insolvency Act, but a decree should be given to the mortgagee, leaving it open to the Official Assignee to apply to the Insolvency Court to set aside the transaction if he could show that the case fell within section 55 of the latter Act.

Official Assignee of Bombay v. *Sundarachari* ... (1927) I.L.R., 50 Mad., 776

MORTGAGE BOND—*Whether certain stipulation regarding interest is by way of penalty* :—*See* " CIVIL PROCEDURE CODE, O. XLI, R. 33 " 614

OFFICIAL RECEIVER—*Right to continue appeal when insolvent adjudicated during pendency of appeal*:—*See* " PROVINCIAL INSOLVENCY ACT, SS. 2, 20, 33, 33, 4, 50 " 161

———————— *not an agent of Court to enable court to ratify unauthorized acts*—*Sale by*—*If sec. 43 of Transfer of Property Act applicable* :—*See* " PROVINCIAL INSOLVENCY ACT, SS. 16 AND 19 " 13

ORIGINAL SIDE, *High Court*—*Cause of action wholly or in part in Madras*:—*See* " SMUGGLED GOODS " 449

PARTIES—" *Proper* " *and* " *necessary* " :—*See* " CIVIL PROCEDURE CODE, O. 1, R. 10 " 34

PARTNERSHIP—*Illegality for non-registration*—*Dissolution*.—*See* " PROVINCIAL INSOLVENCY ACTS, SS. 2, 20, 33, 49, 50" 175

PENAL CODE, INDIAN, SEC. 294-A :—*See* " CHIT FUND " 696

PENSIONS ACT (XXIII of 1871), SS. 3, 11 AND 12—*Political pensions, meaning of*—*Political prisoner under Regulation III of* 1818—*Allowance granted by Government of India to such prisoner*—*Arrangement between Government of India and Foreign State* (*Panna State*) *that the allowance should be paid by the latter into Government treasury for payment*—*Allowance, whether ceases to be political pension*—*Pensions Act, applicability of*—*Agreement by the pensioner with his creditor, empowering latter to draw amounts from time to time in discharge of his debt*—*Validity of*—*Transfer of Property Act* (*IV of* 1882), *sec.* 6, *cls.* (*d*) *and* (*g*)—*Specific performance of agreement, suit for, whether maintainable.*] A pension payable to a political prisoner by the Government of India under a statutory obligation to maintain that person as under Regulation III of 1818, does not cease to be a political pension because the Government of India under some arrangement gets a foreign State to remit the amount to the Government treasury for payment, but falls under the Pensions Act (XXIII of 1871). An agreement entered into by such a pensioner with his creditor irrevocably empowering the latter to draw the amounts from the treasury from time to time in discharge of his debt and to pay a portion to the pensioner, is void under the provisions of the Pensions Act (XXIII of 1871), as well as under section 6, clauses (*d*) and (*g*) of the Transfer of Property Act, and cannot be specifically enforced. *Muthusami Nayudu* v. *Prince Alagia Manavala Samala Raja*, (1903) I.L.R., 26 Mad., 423, followed ; *Bishambar Nath* v. *Imdad Ali Khan*, (1891) I.L.R., 18 Calc., 216 (P.C.), explained ; *Rajendra Narain Singh* v. *Sundara Bibi*, (1925) I.L.R., 47 All., 385 (P.C.), distinguished.

Satraji Dongerchand Firm v. *Madho Singh* ... (1927) I.L.R., 50 Mad., 711

———————, SEC. 4—*Jurisdiction of Civil Courts*—*Unenfranchised personal inam lands*—*Suit for division of*—*Suit in Civil Court, whether maintainable and in what cases*—*Grant of land or land revenue*—*Prohibition of alienation of inam lands*—*Rule* 5, *cl.* (3) *of Inam Rules*, 1859—*Effect of prohibition*—*Alienation not binding on Government but not void*—*Will executed by a sharer in the inam lands, bequeathing his share*—*Right of legatee to sue for partition*—*Validity of bequest.*] A suit for partition, between members of the family, of unenfranchised personal inam lands, where the inam was

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the grant of lands and not of land revenue, is maintainable in a Civil Court, as its jurisdiction is not taken away in such cases by section 4 of the Pensions Act (XXIII of 1871). The object of rule 5, clause (3) of the Inam Rules of 11th October 1859 in prohibiting alienations of inam lands is to protect the interests of the Government, and the prohibition therein can only mean that as against the Government all alienations are inoperative, not that they are void: so long as the Government do not step in to enforce their rights, whatever they are, by ignoring the alienation, it is not open to others to question a transaction which amounts to an alienation; *Venkatarama Ayyar* v. *Chandrasekhara Ayyar*, (1921) I.L.R., 44 Mad., 632, followed. Where, therefore, a sharer in certain unenfranchised personal inam lands, after a division of status in the family, made a bequest of his share therein in favour of his wife, the latter is entitled to sue in a Civil Court for division of such lands by metes and bounds in respect of her husband's share bequeathed to her under his will.

Vaidyanatha Ayyar v. *Yogambal Ammal* ... ... (1927) I.L.R., 50 Mad., 441

PLEADER—*Agency—Suit for accounts against legal representatives of pleader*:—*See* "LIMITATION, ARTS. 89 AND 120" 249

POLITICAL PRISONER UNDER REGULATION III of 1818:—*See* "PENSIONS ACT, XXIII OF 1871" 711

PRESIDENCY TOWNS INSOLVENCY ACT (III of 1909), SS. 4, 7, 55 AND 56:—*See* "MORTGAGE" 776

———————————, SS. 55 AND 56—*Questions arising under—appropriate forum*:—*See* "MORTGAGE" 776

———————————SS. 55 AND 56—*Insolvent transferring all his property to a simple creditor without providing for other creditors—Knowledge of transferee—Good faith and consideration—Onus.*] If a person in insolvent circumstances transfers all his properties to one of his creditors solely for a past debt, without providing for his other creditors to whom he was heavily indebted, by means of an antedated deed of transfer, and the transferee, a relation of the transferor, takes the transfer knowing all the circumstances, he is not a transferee in good faith within the meaning of section 55 of the Presidency Towns Insolvency Act (III of 1909) and his transfer is liable to be cancelled under the section if the transferor is adjudged insolvent within two years of the transfer. The onus of proving that a particular transfer effected by the insolvent is void as against the Official Assignee under section 56 of the Act is on the Official Assignee, whereas the onus of proving good faith and valuable consideration in a case coming under section 55 is on the transferee.

Official Assignee, Madras v. *Sheik Moideen Rowther* ... (1927) I.L.R., 59 Mad., 948

———————————, SEC. 116—*Order of adjudication, based on certain acts of bankruptcy—Conclusiveness of the order as to character of the acts—Effect of order only as to acts furnishing grounds for adjudication—Order as to character of the acts whether binding on transferees—Duty of Official Assignee to apply under the Act to set aside transfers, etc., comprised in the acts on which adjudication was based—Application by Official Assignee—Cause of action—Fraudulent preference—Conversion—Amendment.*] An order of adjudication, based on certain acts of the insolvent being regarded as acts of bankruptcy, is not conclusive as to the character of such acts in all its legal consequences; the decision as to the character of such acts, apart from its furnishing ground for adjudication as insolvent, is not binding on the parties affected thereby who have not had any opportunity of being heard in the matter: but the Official Assignee is bound to take the ordinary procedure prescribed by the Insolvency Act to set aside the fraudulent preferences and payments, if any, constituted by such acts on which the adjudication was founded. The expression "duly made" in section 116 of the Presidency Towns Insolvency Act, construed. Where an Official Assignee applied to recover an amount from a garnishee alleging a case of fraudulent preference but the facts

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proved showed a case of conversion, the Official Assignee was not entitled to amend his petition at a late stage, or to withdraw his application. Duty of Official Assignee, more than the lay public, in making such applications, to set out the exact grounds or cause of action properly and definitely, pointed out.

Official Assignee of Madras v. *O.R.M.O.R.S. Firm* ... (1927) I.L.R., 50 Mad., 541

PROFESSION TAX:—*See* "DISTRICT MUNICIPALITIES ACT (MADRAS), SEC. 93 (3)" 987

PROVINCIAL INSOLVENCY ACT (V OF 1920)—*Two partners liable on a joint debt—Acts of bankruptcy by each during continuance of debt—Single petition to adjudicate both as insolvents, maintainability of.*] If two partners are liable on a joint debt and each of them is guilty of acts of bankruptcy during the continuance of the joint debt, by making alienations calculated to defeat or defraud the creditors of the firm, a single petition to adjudge both of them as insolvents is sustainable, though they may not have committed a joint act of insolvency. The test is whether if the petition were treated as a suit, the suit would be bad for multifariousness.

Punniah v. *Kesarmal Firm* ... ... (1927) I.L.R., 50 Mad., 256

———————————————SS. 2, 20, 33, 49, 50—*Suit by vendor for damages for breach of contract for purchase of goods—Decree for damages—Appeal by vendee—Vendee adjudicated insolvent subsequent to filing of appeal—Right of Official Receiver to continue appeal—Suit by vendee to recover deposit—Decree dismissing suit—Appeal by vendee—Vendee adjudicated insolvent pending appeal—Right of Official Receiver to continue appeal—Remedy of Official Receiver against decrees for damages against insolvent—Official Receiver entitled to contest such decree by taking proceedings under the Insolvency Act.*] Where a decree for damages was passed against a vendee in a suit against him by the vendor for damages for breach of contract, and the vendee appealed against the decree but was adjudicated insolvent during the pendency of the appeal, and the Official Receiver claimed to continue the appeal, *held*, that section 59 of the Provincial Insolvency Act (V of 1920), does not authorize the Official Receiver to appeal, or continue an appeal already preferred by the insolvent prior to his adjudication, against a decree for damages in a suit for breach of contract against the insolvent; the expression "relating to the property of the insolvent" in clause (*d*) of section 59, does not mean "*affecting* the property of the insolvent." The Official Receiver is not without remedy against decrees for damages passed against the insolvent, because the decree is not binding on him but it is open to him to contest the validity of the decree as a debt, in proper proceedings taken under the provisions of the Provincial Insolvency Act (V of 1920), such as sections 33, 49 and 50 of the Act. Where, however, an insolvent before his adjudication, had instituted a suit against his vendor for the return of a deposit of money made by him with the latter under a contract for sale of goods, alleging breach of contract by the latter, but the suit was dismissed and the former appealed prior to his adjudication, the Official Receiver is entitled to continue the appeal, because in this case the deposit is the insolvent's property which became vested in the Official Receiver under section 20 of the Provincial Insolvency Act, 1920, and section 59, clause (*d*), expressly authorizes the Official Receiver to institute or continue legal proceedings relating to such property.

Subba Ayyar v. *Munisami Ayyar* ... ... (1927) I.L.R., 50 Mad., 161

———————————————SEC. (2) (*a*) (*d*)—*Decree against son for debt of father—Liability of son to adjudication under the Act.*] Until there is a personal decree under section 52, Civil Procedure Code, a decree against a person as the legal representative of another (such as in this case a decree against a son for the debt of his deceased father to the extent of the assets in his hands) does not make him liable to adjudication under the Provincial Insolvency Act. *The Official Assignee of Madras* v. *Palaniappa Chetty*, (1918) I.L.R., 41 Mad., 824, followed; *Muthuveerappa Chettiar* v. *Sivagurunatha Pillai*, (1926) I.L.R., 49 Mad., 217, considered.

Nagasubrahmania Mudaliar v. *Krishnamachariar* ... (1927) I.L.R., 50 Mad., 981

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PROVINCIAL INSOLVENCY ACT (V OF 1920), SEC. 9, CLS. (*a*) AND (*b*)—*Petitioning creditor's right to present insolvency petition if entitled to Rs. 500 on date of presenting petition—"Some certain future time," meaning of—Section 25, giving discretion to Court.*] According to clause (*a*) of section 9 of the Provincial Insolvency Act (V of 1920), it is sufficient if the petitioning creditor is entitled to a debt of Rupees Five Hundred on the date of presenting the insolvency petition; it is not necessary that he should be entitled to that amount on the date of adjudication also. It is immaterial that by the later date the amount gets reduced as the result of an appeal or counter-suit by the debtor. Adjudicating a debtor on a creditor's petition is discretionary under section 25 of the Act.

Venkatarama Ayyar v. *Buran Sheriff* ... ... (1927) I.L.R., 50 Mad., 396

——— **(III OF 1907),** SS. 16 AND 19—*Order of adjudication passed by Official Receiver on reference by District Court—No order passed by Court appointing Official Receiver as Receiver of insolvent's properties—Sale of joint family immovable properties by Official Receiver—Validity of sale of insolvent's son's share—Suit by son for his share as unaffected by the Receiver's sale—Subsequent order, by District Court, appointing Official Receiver as Receiver of properties with effect from date of adjudication—Sale, whether validated thereby—Transfer of Property Act (IV of 1882), sec. 2 (d) and sec. 43—Applicability of the sections to sales by Official Receiver—Official Receiver, whether an agent of Court—Ratification—Sale by Receiver, whether a transfer falling within sec. 2 (d) of the Act.*] An application by a person to a District Court to be adjudicated an insolvent was referred by the Court to the Official Receiver for disposal; the latter adjudicated him an insolvent; the Court did not however pass an order appointing the Official Receiver as Receiver of the insolvent's properties; the Official Receiver sold certain joint family immovable properties belonging to the insolvent and his son; the latter sued in a District Munsif's Court for a declaration that the sale of his share was invalid and for partition and delivery of his share from the vendees; pending the suit the District Court passed an order appointing the Official Receiver as the Receiver of the insolvent's properties; on the vendees contending in the suit that the sale by the Official Receiver was validated by the subsequent order of the District Court appointing him Receiver of the insolvent's properties, *held* (*by the Full Court*), that the Official Receiver was not an agent of the Court, so as to enable the Court to ratify unauthorized acts done by the agent; *held* (*by the majority of the Court*, KRISHNAN, J., *dissenting*), (*a*) that a sale by an Official Receiver in insolvency was not a transfer by operation of law or in execution of, a decree or order of Court, falling under section 2, clause (*d*) of the Transfer of Property Act; and that consequently, section 43 of the Act was applicable to such a sale; and (*b*) that although at the time when the Official Receiver sold the properties he had no title vested in him in the absence of an order appointing him as Receiver of the insolvent's properties, still as the Receiver acquired title subsequently by the subsequent order of Court, the sale operated on such subsequently acquired interest under section 43 of the Act, and became valid. *Held* by KRISHNAN, J., that a sale by an Official Receiver is in the nature of a Court sale, and there is no implied representation as to title involved in it; that the Official Receiver's sale falls under the word "transfer by order of a Court of competent jurisdiction" in section 2, clause (*d*) of the Transfer of Property Act, and that consequently section 43 of the Act is not applicable to such sales.

Basava Sankaran v. *Anjaneyulu* ... ... (1927) I.L.R., 50 Mad., 135

——— SS. 28 (7) AND 53—*Voluntary alienation within two years prior to presentation of petition for insolvency—Voidability of.*] Though section 53 of the Provincial Insolvency Act (V of 1920) enacts that a voluntary transfer by an insolvent is voidable as against the Receiver if the transferor is adjudged insolvent within two years of the transfer, yet as an order of adjudication relates back to, and takes effect from, the date of presentation of the petition for insolvency, a voluntary transfer made within two years prior to the date of presentation of the petition for insolvency is voidable though it is beyond two years of the date of adjudication. Section 53 of the Act must be read along with section 28 (7) of the Act. *Sankaranarayana Aiyar* v. *Alagari*

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Aiyar, (1918) 35 M.L.J., 296, followed; *Nagindas* v. *Gordhandas*, (1925) I.L.R., 49 Bom., 730, and *Ghulam Muhammad* v. *Panna Ram*, (1923) 72 I.C., 433, dissented from.

Rangiah v. *Appaji Rao* ... ... (1927) I.L.R., 50 Mad., 300

PROVINCIAL INSOLVENCY ACT (V OF 1920), ss. 28 AND 42—*Refusal to order final discharge, whether a termination of insolvency proceedings—No annulment of adjudication.*] On an order of adjudication, the property of the insolvent vests in the Official Receiver under section 28 of the Provincial Insolvency Act and it continues to be so until the insolvency proceedings terminate in any of the ways indicated by the Act, such as, annulment of the adjudication. An order refusing under section 42 of the Act the final discharge of the insolvent does not terminate the insolvency proceedings and does not, therefore, enable a decree-holder to apply for execution against the insolvent, without the leave of the Court.

Alamelu Ammal v. *Venkatarama Iyer* ... ... (1927) I.L.R., 50 Mad., 977

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ss. 53 AND 75 (3)—*Appeal filed without leave—Petition for leave after filing of appeal, validity of appeal—Debtor in insolvent circumstances transferring all his movable and immovable properties to trustee for distribution among his creditors—Trustee, whether a purchaser in good faith and for valuable consideration—Indian Trusts Act (II of 1882), ss. 4, 5 and 6.*] In cases of appeals under section 75 (3) of the Provincial Insolvency Act (V of 1920) it is not necessary that leave to file the appeal should be obtained before filing the appeal; it may be obtained after. *Anantanarayan Ayyar* v. *Sankaranarayana Ayyar*, (1924) I.L.R., 47 Mad., 673, followed. A deed of trust by a person of his properties for payment of his debts is not valid unless it is an actual transfer of his properties and otherwise conforms to the provisions of sections 4, 5 and 6 of the Indian Trusts Act. If the intention to transfer both movables and immovables by means of a deed is one and indivisible and if the transfer of the immovables is invalid for some reason, e.g., non-registration of the deed, the transfer of the movables too cannot take effect. A trader who could not pay his debts in the ordinary course and who was in financial difficulties transferred to a trustee all his movable and immovable properties for distribution among his creditors and filed his petition for adjudication as an insolvent within three months of the transfer. *Held*, that the trustee who took the properties for such distribution with knowledge of the debtor's circumstances was not a purchaser in good faith and for valuable consideration within section 53 of the Provincial Insolvency Act. *Official Receiver of Trichinopoly* v. *Somasundaram Chettiar*, (1916) 30 M.L.J., 415, not followed; *Ex parte Hillman, In re Pumfrey*, (1879) 10 Ch. D., 622, followed.

Official Receiver, Cuddapah v. *Subbiah* ... ... (1927) I.L.R., 50 Mad., 815

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ss. 53 AND 54:—*See* "MORTGAGE" 776

PUBLIC OFFICER—*Suit against—Notice:*—*See* "CIVIL PROCEDURE CODE, SEC. 80" 239

PUBLIC OFFICIALS—*Immunity from prosecution without sanction—Extent of—Act arising out of abuse of official position, and not purporting to be official—Municipal Chairman—Threatening injury to voter's property with intent to influence his vote—Complaint under sec. 54 (a) of the Madras District Municipalities Act (V of 1920)—Sanction under sec. 197 of the Criminal Procedure Code (Act V of 1898)—If necessary.*] The privilege of immunity from prosecution without sanction accorded to public officials only extends to acts which can be shown to be in discharge of official duty, or fairly purporting to be in such discharge. A prosecution for an offence arising out of an abuse of official position by an act not purporting to be official does not require sanction under section 197 of the Code of Criminal Procedure. Where a complaint against a Chairman of a Municipal Council charged him with an offence under section 54 (a) of the Madras District Municipalities Act (V of 1920) in that he threatened a voter with injury to his property, with intent to induce such voter to vote for

a candidate or to abstain from voting, held that sanction under section 197 of the Code of Criminal Procedure (Act V of 1898) was not necessary for the institution of the complaint. *Sheik Abdul Kadir Saheb* v. *Emperor*, (1916) M.W.N., 384, at 388, followed; *In re Gulam Muhammad Sharif-ud-daulah*, (1886) I.L.R., 9 Mad., 439, dissented from; *Municipal Commissioners of the City of Madras* v. *Bell*, (1902) I.L.R., 25 Mad., 15, referred to.

Kamisetty Raja Rao v. *Ramaswamy* ... ... (1927) I.L.R., 50 Mad., 754

PUBLIC STREET—*Right of user* :—*See* "INDIAN PENAL CODE, SEC. 341" ... 673

REGISTRATION ACT (INDIAN) (XXI OF 1908)—Bona fide *purchase of property for the purpose of facilitating registration of a transaction*—Bona fide *inclusion of such property in a mortgage document*—*Fraud on registration*—*Validity of registration of the document.*] Where a person *bona fide* buys property for the purpose of facilitating registration of a transaction and also *bona fide* includes it in a sale or mortgage, he cannot be held to commit a fraud on registration which would render the whole transaction invalid.

Chokkalingam Chettiar v. *Athappa Chettiar* ... (1927) I.L.R., 50 Mad., 800

———— **(XVI OF 1908)**, SEC. 17 (2) (*v*).—*See* "HINDU LAW" .. 687

———— **(INDIAN) (III OF 1887)**, SEC. 47—*Transfer of Property Act* (*IV of* 1882), ss. 122, 123 :—*See* "GIFT."

REGULATION, XXV OF 1802 :—*See* "MADRAS ESTATES LAND ACT (I OF 1908), SEC. 3, CL. (2), (*c*) AND (*d*), SEC. 6" 10

RELIGIOUS ENDOWMENTS ACT (XX OF 1863), SEC. 10—*Election to vacancy in temple committee on the authority of managing member and not on the authority of the committee—Election on basis of old voters' list in spite of objection, validity of.*] Where in accordance with the rules framed for the conduct of business of a temple committee, a member of the committee made a requisition in time to reopen a resolution of the committee fixing a date for filling up a vacancy in the committee, on the grounds that the voters' list on which the election was sought to be held was very old and required to be revised by the inclusion of names of new and eligible voters who had applied to be included and that the election should be held only after the revision of the list, *held*, that an election held on the basis of the old list without complying with the requisition of the member and on the authority of the managing member of the committee alone and not on the authority of the committee as required by section 10 of the Religious Endowments Act is invalid and should be set aside. *Tiruvengada* v. *Ranga*, (1883) I.L.R., 6 Mad., 114, considered.

Singaram Chettiyar v. *Srinivasa Ayyangar* ... (1927) I.L.R., 50 Mad. 726

RESIDENCE :—*See* "INDIAN INCOME TAX ACT, SEC. 4 (2)" 847

RES JUDICATA—*Decree in a suit giving share to Co-parcener in alienated property*—*If operates as* :—*See* "HINDU LAW" 320

RIVER—*Non-navigable*—*Riparian owner*—*Right of* :—*See* "IRRIGATION CESS ACT (MADRAS)" 961

REVIEW—*Notice to judgment debtors*—*Necessity of*—*Review without notice*—*Validity of* :—*See* "CIVIL PROCEDURE CODE, SEC. 151" 67

RULES—*Sec. 78 of Madras Village Courts Act*—*Constituting Special tribunals to inquire into elections*—*If ultra vires* :—*See* "MADRAS VILLAGE COURTS ACT, SEC. 78" 91

SAME ISSUE AGITATED BOTH IN CIVIL AND CRIMINAL COURTS—*If civil proceeding to be given precedence over criminal*—*General rule applicable.*] There is no invariable rule that when the same issue is agitated both on the civil and criminal side, the civil shall take precedence of the criminal Court. Each case must be considered on its own merits, and the only general rule that can be adumbrated is that every Court should be left as far as possible to dispose of the case on its file with the utmost expedition. *Ram Saran*

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Singh v. *Nikhad Narain Singh*, (1925) A.I.R. (Patna), 624; *Sheikh Bahadur* v. *Nobadali*, (1924) A.I.R. (Calc.), 634, followed.

Ramiah v. *Ramiah* ... ... (1927) I.L.R., 50 Mad., 839

SAME TRANSACTION:—*See* "CRIMINAL PROCEDURE CODE, SEC. 239" ... 735

SANCTION—*Section* 197, *Criminal Procedure Code*:—*See* "PUBLIC OFFICIALS". 754

SEIZED PROPERTY—*Title doubtful*:—*See* "CRIMINAL PROCEDURE CODE, SEC. 520" 916

SERVANT—*Act of*—*Liability of master*:—*See* "MADRAS LOCAL BOARDS ACT, SS. 166 (1) AND 207" 913

SMUGGLED GOODS SEIZED OUTSIDE MADRAS—*Order of confiscation by Collector, Customs, Madras—Given effect to at place of seizure—Suit for conversion on the Original Side by owner against Government—Cause of action—Wholly or in part in Madras—Sec.* 19, *Civil Procedure Code*—"*Resides*"—*Applicability to Government*—"*Business*"—*Nature of*—*Cl.* 12, *Letters Patent* (*Madras*)—"*Carry on business*", "*personally works for gain*" *and* "*dwells*"—*Explanation of*—*Sale-proceeds of confiscated goods, if revenue*—*Sec.* 106 (2), *Government of India Act*.] Where goods were seized outside the local limits of the ordinary original jurisdiction of the High Court by a subordinate customs officer as being smuggled into British India without payment of the duty lawfully leviable and the Collector of Customs, Madras, thereupon, passed an order directing the confiscation of those goods and the said order was communicated to the subordinate customs officer and given effect to by him. *Held*, in a suit for conversion by the owner of the goods against the Secretary of State for India filed on the Original Side of the High Court at Madras, that the confiscation became complete in the place where the seizure was carried out originally and not in Madras and that only a part of the cause of action arose within the local limits of the ordinary original jurisdiction of the High Court. The language of section 19 of the Code of Civil Procedure (Act V of 1908) does not cover the case of Government and the word "resides" in the section must be taken to refer only to natural persons and not to legal entities such as limited companies and Governments. The business intended by the section is a commercial business and not the business of Government. In clause 12 of the Letters Patent (Madras), whereas the words "carry on business" apply to corporate bodies, and the words "personally works for gain" to an individual or individuals the word "dwell" can only apply to an individual in a private sense and not to a legal entity. Money derived from the sale of smuggled goods, seized and confiscated, is revenue and the seizure and confiscation of smuggled goods is an act done or ordered to be done in the collection of revenue, and section 106 (2) of the Government of India Act is a bar to the entertainment of any suit concerning the same by the High Court in the exercise of its ordinary original civil jurisdiction. *Best & Co., Ltd.* v. *The Collector of Madras*, (1918) 35 M.L.J., 23, followed; *Subbaraya Mudali and others* v. *The Government and Cunliffe*, (1883) 1 M.H.C.R., 286 dissented from; *Doya Narain Tewary* v. *The Secretary of State for India*, (1887) I.L.R., 14 Calc., 256, approved; *Rodricks* v. *The Secretary of State for India*, (1913) I.L.R., 40 Calc., 308, approved.

Govindarajulu Naidu v. *Secretary of State* ... (1927) I.L.R., 50 Mad., 449

SPECIFIC RELIEF ACT (I OF 1877), SS. 14 TO 17:—*See* "LEASE FOR 99 YEARS" 595

STORING:—*See* "MADRAS LOCAL BOARDS ACT, SCH. VII, CL. (*c*)" 752

SUBROGATION—*Puisne mortgagee paying off decree on prior hypothecation—Suit to redeem puisne mortgage after lapse of more than twelve years from date on which suit on hypothecation should have been brought*:—*See* "MORTGAGE" 626

SUCCESSION ACT (INDIAN) (X OF 1865), SEC. 187—*Corresponding to sec.* 213 *of Act XXXIX of* 1925—*Suit by heir-at-law for possession—Resistance by defendant relying on unprobated will in his favour—Bar by*

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section.] A defendant resisting a claim made by the plaintiff as heir-at-law cannot rely in defence on a will executed in his favour at Madras in respect of property situate in Madras, when the will is not probated and no letters of administration with the will annexed have been granted. Section 187 of the Indian Succession Act (X of 1865) corresponding to section 213 of Act XXXIX of 1925 is a bar to every one *claiming* under such a will, whether plaintiff or defendant; *Lakshmamma* v. *Ratnamma*, (1915) I.L.R., 38 Mad., 474, approved; *Caralapathi Chunna Gunniah* v. *Cotti Nammalwariah* (1910) I.L.R., 33 Mad., 91, overruled. The section is no bar to proving the will for other purposes.

Ganshamdoss v. *Gulab Bi Bai* ... ... (1927) I.L.R., 50 Mad. (F.B.), 927

SUCCESSION ACT (INDIAN) (XXXIX OF 1925), SEC. 301—*Administrator-General's Act (V of 1902)—Judicial Trustees' Act (59 and 60, Vic., Ch. 35)—Application under sec. 301 for removal of executor—Duty of Court to enquire—Remedy of petitioner—Suit for removal, whether necessary and competent—Sec. 301, construction of the word "may" in—Remedy by suit or application.*] Where an application is made to the High Court, under section 301 of the Indian Succession Act (XXXIX of 1925) for the removal of an executor, the Court ought to enquire into the allegations made by the petitioner and ought not to dismiss the petition without any kind of enquiry on the ground that the matter required the taking of a considerable quantity of evidence and that another remedy by way of suit was open to the petitioner. Section 301 of the Indian Succession Act, 1925, reproduces section 4 of the Administrator-General's Act (V of 1902), which itself reproduces the Judicial Trustees' Act of England (59 and 60, Vic., Chap. 35); and until the said Acts were passed, the Courts had really no power to remove an executor as distinguished from a trustee, though a limited power existed in the Court of imposing restraints on his powers by appointing a receiver: see *Ratcliff, In re*, [1898] 2 Ch., 352, and *Amerchand Madhowji, Ex parte* (1905) I.L.R., 29 Bom., 188. But after the above Acts were passed in India, if the removal of an executor is sought, the only remedy that is open is by way of a petition under section 301 of the Indian Succession Act. The use of the word "may" in section 301 of the Act shows merely that a proper case must be made out, and that the Court shall act only if a proper case is made out; to that extent the power is discretionary, but the discretion is not arbitrary but a judicial discretion.

Dhanabakkiyammal v. *Thangavelu Mudaliar* ... (1927) I.L.R., 50 Mad., 956

SUCCESSION CERTIFICATE ACT (VII OF 1889), SEC. 4—*Insurance money payable after death, whether a "debt" due to the deceased within sec. 4.*] Under a policy of insurance, the policy amount was payable to the assured if he attained a stated age or to his representatives or assigns if he died earlier. The policy was not assigned to any one. On a claim for the policy amount by the son of the assured who died before the stated age, *held*, that the amount was a "debt" due to the deceased within section 4 of the Succession Certificate Act, *Banchharam Mazumdar* v. *Adya Nath Battacharjee*, (1909) I.L.R., 36 Calc., 936 (F.B.), followed.

Vittal Rao v. *Hanumanthu Rao* ... ... (1927) I.L.R., 50 Mad., 412

SUMMARY TRIAL:—*See* "CRIMINAL PROCEDURE CODE, SEC. 256" 540

TAKING—*Meaning of*:—*See* "HINDU LAW" 941

TEMPLE COMMITTEE—*Election to*:—*See* "RELIGIOUS ENDOWMENTS ACT, SEC. 19." 726

TENANT—*City Tenants Protection Act, Madras—Service of Summons under*:—*See* "CITY TENANTS PROTECTION ACT, MADRAS (III OF 1922)" 88

TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 61 and 62:—*See* "MORTGAGE" 180

——— ss. 122 and 123:—*See* "GIFT." 193

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TRANSFER OF PROPERTY ACT (IV OF 1882), s. 2 (*d*) AND s. 43 : —*See* "PROVINCIAL INSOLVENCY ACT (III OF 1907), ss. 16 AND 19" 135

——— ss. 5 AND 123 :—*See* "HINDU LAW." 687

——— SEC. 6, CLS. (*d*) AND (*g*): —*See* "PENSIONS ACT (XXIII OF 1871)" 711

——— SEC. 53 :—*See* "MORTGAGE" 776

——— SEC. 55 (4) (*b*)—*Vendor's lien—Vendee executing a promissory note to a third party for the whole or part of purchase-money —Vendor's lien, whether extinguished—"Contract to the contrary," meaning of—Limitation Act (IX of 1908), sec. 19—Acknowledgment—Deposition—Acknowledgment, whether must be express or can be implied from facts and circumstances or as a matter of law.*] Where, at the instance of a vendor of immovable property, a promissory note was executed by the vendee to another person for the whole or part of the purchase-money, and both the vendor and the holder of the note sued to recover such amount personally as well as by sale of the property, *held*, that the holder of the note was the only person competent to sue on the note, whether he was beneficially entitled to the note or was a benamidar for the vendor: *Reoti Lal* v. *Munna Kunwar*, (1922) I.L.R., 44 All., 290, and *Subramania Tevan* v. *Arunachala Tevan*, (1909) 18 M.L.J., 186, followed; that the vendor's lien for unpaid purchase-money under section 55 (4) (*b*) of the Transfer of Property Act was extinguished by the execution of the promissory note, as it was a "contract to the contrary" within the section, but the vendor was entitled to a personal decree on the note, as the holder agreed to such a decree. Cases of extinguishment of vendor's lien by execution of a promissory note or a bond, etc., discussed. An acknowledgment of liability under section 19 of the Indian Limitation Act, 1908, need not be express but may be implied from facts and circumstances under which a statement in a deposition was made, but it cannot be implied as a matter of law. *Muniram Seth* v. *Seth Rupchand*, (1906) I L.R., 33 Calc., 1047 (P.C.), applied; *Kandaswami Reddi* v. *Supramma*, (1922) I.L.R., 45 Mad., 443, followed; *Ranganayekalu Aiya* v. *Subbayya*, (1906) 5 M.L.T., 71, disapproved.

Swaminatha Odayar v. *Subbarama Ayyar* ... ... (1927) I.L.R., 50 Mad., 548

TRANSFEREE DECREE HOLDER—*Application by for execution of decree—Death during pendency of application—Right of legal representative to be substituted and to continue* :—*See* "CIVIL PROCEDURE CODE, SEC. 146 AND O. XX" 1

TRANSFEREE IN GOOD FAITH :—*See* "PRESIDENCY TOWNS INSOLVENCY ACT, ss. 55 AND 56" 918

TRUSTS ACT (INDIAN) (V OF 1882), ss. 1 AND 5 :—*See* "HINDU LAW" ... 687

VENDOR'S LIEN—*Extinction of* :—*See* "TRANSFER OF PROPERTY ACT, SEC. 55 (4) (*b*)" 548

VILLAGE COURTS ACT (MADRAS ACT I OF 1889), AS AMENDED BY MADRAS ACT (II OF 1920), ss. 13 AND 73—*Wide discretion of Munsif under section 73—No interference by High Court on revision—Suit for damage to growing crops—Growing crops personal property within section 13 of the Act.*] Section 73 of the Madras Village Court Act (Act I of 1889) gives a District Munsif the widest discretion to interfere or not with the decision of a Village Court. He may refuse to interfere even if the conditions imposed by the section are complied with and the High Court will not ordinarily interfere in revision with the exercise of such discretion. A suit for the value of growing crops destroyed by the defendant is a suit for the value of "personal property" within the meaning of section 13 of the Act.

Sundara Naicker v. *Potti Naicker* ... ... (1927) I.L.R., 50 Mad., 494

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VILLAGE COURTS ACT (MADRAS ACT I OF 1889), SEC. 78, RR. 18 (*a*) AND 64—*Election of members of Panchayat Court—Suit in a Civil Court for declaration that election is void—Maintainability of suit—Rules constituting a special tribunal for deciding validity of elections, whether* ultra vires—*Application for injunction—Order, whether valid or proper.*] A Civil Court has no jurisdiction to entertain a suit to obtain a declaration that the election of certain persons as members of a Panchayat Court is void. Rules framed by the Governor-in-Council under section 78 of the Madras Village Courts Act (I of 1889), constituting special tribunals (namely, Revenue Divisional Officer and the Collector) to inquire into and decide objections to elections, are not *ultra vires*, as the power to constitute a tribunal is a necessary part of the power to regulate the appointments, etc., conferred by the section. *Thimma Reddi* v. *Secretary of State*, (1924) I.L.R., 47 Mad., 325, referred to.

Venkata Siva Rao v. *Rama Krishnayya* ... ... (1927) I.L.R., 50 Mad., 91

"WAGERING CONTRACT" WITHIN SEC. 30 OF THE CONTRACT ACT :—
See "CHIT FUND" 696

WILL—*Unprobated* :—*See* "SUCCESSION ACT, SEC. 187" 927