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A Plea for a Second Court of Appeal.

BY "REFORMER."

The Ordinance No. 31 of 1909 has been proclaimed, and the Collective Court has ceased to exist. The Collective Court was an anomaly. It was the only Court of its kind in the Colonies. In other Colonies cases are not heard in review before an appeal is allowed to the Privy Council. Why this hearing in review was imposed on Ceylon it is difficult to say. But it had its uses, and its abolition will deprive the public of Ceylon its highest local Court of Appeal. In most countries there are local Courts of Appeal of various grades as the Courts of Appeal in England and in India. Was the hearing in review imposed as a condition precedent to an appeal to the Privy Council in view of the fact that there is only one Court of Appeal in this Island? It would be a pity to let the Collective Court lapse. In the present confused state of the law in Ceylon, and in view of the tardiness with which remedial legislation of any kind is effected, and the fact that at times the Supreme Court bench is occupied by able English lawyers who are not imbued with the spiri

of our laws and who are not familiar with various systems of laws prevailing amongst us, a Collective Court cannot fail to be of great advantage to the country. It is a notorious fact that over 95 per cent of the cases brought up and heard in review never went beyond the hearing in review and the application to the Privy Council was used as a blind to enable unsuccessful litigants to test the soundness of the judgment of the Supreme Court in appeal, but these hearings in review were not the success they might have been owing to the fact that generally two of the three judges composing the Court had originally heard the case in appeal, and the knowledge on the part of the judges that they were merely conduit pipes to the Privy Council. It is clear therefore that in practice though not in theory litigants had a second local Court of Appeal where interests exceeding Rs. 5000 in value were involved. The Colony should not be deprived of a Court of Appeal which has been in existence for over three quarters of a century, especially at a time when it is witnessing the birth of a new era of commercial activity which is likely to bring litigation of a complicated character in its train. Further, there is a marked tendency to discourage and restrict appeals to the Privy Council owing to the great delay and expense which such an appeal involves, and to make the highest local Court the final Court of appeal. The abolition of a Court of Appeal by taking away the right of having cases heard in review might easily be remedied by re establishing this Court under a new name such as the "Court of Second Appeal", such Court to consist of three judges of the Supreme Court and to have the power to hear appeals from the judgments of two judges of the Supreme Court and all appeals which a judge or judges of a Supreme Court thinks ought to be submitted to the decision of a bench of three judges.

The limit now fixed in the case of appeals to the Privy Council might be retained as the pecuniary limit of the jurisdiction of the new Court and the judgment appealed against must be in respect of a sum, matter or property exceeding Rs. 5000 in value.

The appeals should be restricted to cases in which points of law are involved or where the Court of first appeal has reversed the judgment of the District Court on the facts. When the appeal is on a question of law, such question would have to be certified by counsel as being fit for adjudication by the Court of Second Appeal.

Two at least of the judges constituting the Court of Second Appeal should be other than the judges who heard the first appeal, the Chief Justice if possible to be always

one of the members of the Court. The appellant would be liable to give security for the second hearing in appeal. With these limitations and safeguards there is no likelihood of the work of the appellate court being interfered with, but at the same time, the new court will conserve a right of appeal which litigants have long enjoyed.

The above does not pretend to be a full and complete enumeration of the powers and duties of the suggested new Court of Appeal, but merely a general outline of the power with which such a Court might be invested. The writer suggests that the opinion of the leading members of the Bar should be taken on the subject and also commends his suggestion to the consideration of the newly constituted Bar Council.

A Pure Question of Fact.

"The appellate jurisdiction of the Supreme Court shall extend to the correction of all errors *in fact* or in law which may be committed by any District Court, any Court of requests . . any police court . . a court of any Municipal Magistrate."—Ord. No. 1 of 1889, § 39.

"What facts are proved? What are the proper inferences to be drawn from facts which are either proved or admitted? What witnesses are to be believed? In regard to the two first questions, I do not think that any special sanctity attaches to the decision of a court of first instance, and, speaking for myself, I should always claim the right of dealing with them with a free hand."—Wood Renton, J., in *R* v. *Charles* [1907] 1 A. C. R. 125.

From the earliest times, it has been the practice of the Appeal Court to hesitate to disturb the lower court findings upon matters of fact, especially where the credibility of witnesses is concerned. Mr. Justice Wood Renton's dictum[2] may be taken as expressing this tendency in recent years :

We have a decision of the learned judge on the vital question of the comparative trustworthiness of...and...It is an estimate based not only on their evidence but on their demeanour in the witness-box. It is an estimate in which full account has been taken of the shortcomings of...It is an estimate which an Appeal Court ought not lightly to revise.

On another occasion[3] the same learned judge expressed himself thus as to the trustworthiness of witnesses :

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1. Morgan's *Digest* [1833] para. 53.
2. In *Soysa* v. *Sammugam* [1907] N. L. R. 366.
3. *R* v. *Charles* [1907] 1 A. C. R. 125.

In regard, however, to questions of credibility it appears to me to be essential to the stable administration of criminal justice in this Island that the Appeal Court should follow the course of the decisions in England, and should not disturb the findings of the courts of first instance when it is clear that there was evidence on which the judge ought to come to a conclusion in favour of the prosecution on being satisfied of its truth, where the story of the witnesses, as disclosed in the record, is not inherently incredible, and when there is no reason to think that he has not duly weighed all the circumstances of the case.

Now, it is quite true that the Appeal Court is placed in a very difficult position when asked to do the duty of a court of first instance,[4] but the reason for non-interference with findings on facts, that a judge of the original minor court in Ceylon has the same functions and the same advantages as a judge and jury in England, is based on a false analogy. It is, of course, understood that a minor court judge is himself the judge and jury.[5] This is a legal fiction at best, since it is common knowledge that the minor judiciary of Ceylon is, with exceptions that heighten the contrast, largely non-professional, with executive and revenue instincts strongly predominant, and remarkably deficient in, or very slow to acquire, a working acquaintance with the ways, habits, modes of thought and expression of the people of the country. The combination of revenue and judicial duties and frequent changes, may account to some extent for this. It is, however, simply scandalous that Ceylonese, as judges, should sometimes be found to be no better than their foreign colleagues who are beset with the excusable difficulties of a new language and strange environment.

Assuming that the analogy of an English judge of first instance assisted by a jury is not inappicable to a local judge of an original minor court, we are confronted with the fact that the English rule, as to questions of fact, is not so Medean and immutable as one is led to believe. The statement in an American case[6] is very clear :

> If a chancellor, trained and bred to the law, with long experience on the bench, decides a case contrary to the evidence, or decides that there is no evidence when we think there is, this court does not hesitate to reverse the decree, and will frequently enter in this Court a decree for the unsuccessful party.
>
> On what meat has this one fed that he has grown so great,
>
> that he may disregard the clearest evidence ?

It is to carry the doctrine of the impeccability of the

4. D. C. Col. 27121 [1910] 7 Ceylon Law Review p. 62 (Appeal Court Notes).
5. *R.* v. *John*, D. C. Col. 1500. S. C. M. 1. 4. 98.
6. *Oglesby* v. *Missouri Pacific Railway Co.* Citator iii. 17.

lower judiciary to an illogical length to hestitate to find "that important facts have been overlooked or disregarded or that any cardinal fact has been unduly estimated by the court below[7] " in deliverances which are an apology for judgments and which are so scrappy, insufficient and full of effete formulae," I believe,[8] " "I see no reason to doubt," "I accept[9] the evidence," "This is a clear case[10]" and the like. The English exceptions to the rule—that a finding on facts should be untouched—go beyond those indicated recently by Hutchinson, C. J.,—

> Unless it clearly appears that the decision is wrong, or some wrong reason is given, or some obvious mistake made which vitiates the finding on facts the finding ought not to be disturbed[12]

Less stringent and more generous are the principles propounded[13] by Lindley, M.R.,—

> The case was not tried with a jury...Even where, as in this case, the appeal turns on a question of fact, the Court of Appeal has to bear in mind that its duty is to re-hear the case and the Court must reconsider the materials before the judge with such other materials as it may have decided to admit. The Court must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering it and *not shrinking from overruling it* if, on full consideration, it comes to the conclusion that the judgment is wrong. Where as often happens, much turns on the relative credibility of witnesses who have been examined and cross-examined before the judge, the Court is sensible of the great advantage he has had in seeing and hearing them. It is often very difficult to estimate correctly the relative credibility of witnesses from written depositions; and when the question arises which witness is to be believed rather than any other, and that question turns on manner and demeanour, the Court of Appeal always is, and must be, guided by the impression made on the judge who saw the witnesses. *But, there may obviously be other circumstances, quite apart from manner and demeanour, which may shew whether a statement is credible or not, and these circumstances may warrant the Court in differing from the judge, even on a question of fact turning on the credibility of witnesses whom this Court has not seen.*

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7. Lord Herschel in [1893] A. C. 268.
8. 'I believe' is not enough (P. C. Bala. 31801. 24. 8. 08.)
9. "I do not know what else he could do but accept the evidence. It is his duty to accept all the evidence adduced. It is a different thing to accept and record the evidence, and to believe statements made by a person." Layard, C. J., in P. C. Kalt. 4902. S. C. M. 21. 4. 04.
10. P. C. Mallagam 27797, [1910] 6 Ceylon Law Review p. 135 (A. C. Notes).
11. P. C. Reg. 11997. S. C. M. 16. 3. 10. 7 Law Review p. 16 (A. C. Notes).
12. In *Somasundaram Chetty* v. *Perera*, C. R. Col. 19380, S. C. M. 27. 9. 09, his Lordship was of opinion that leave to appeal ought not to be granted even if it be possible to take a view different from that of the commissioner.
13. *Coghlan* v. *Cumberland* [1899] L. R. 1 Ch. 705.

Contradictions and exaggerations may be often accounted for as due to nervousness of temperament, being bullied in the witness box or want of education, but it is hardly fair to overlook them altogether on the sole ground that the judge of first instance had given due regard to all the infirmites of the case and his judgment is not obviously unreasonable.[14] What is an obviously unreasonable judgment? It is one where a judge believes the plaintiff and his witnesses and dismisses his case, or when a magistrate believes an *alibi* and convicts the accused—a self-condemned judgment, due to imbecility or perversity or bias. Chief Justice Bonser is recorded[15] to have acted on the English rule once in discrediting the complainant whom the magistrate had "believed *in spite of the discrepancies* and did not give his reasons for such a startling conclusion."

Our observations on the reasonableness of expecting a Court of Appeal to revise findings on facts, even where the credibility of witnesses is concerned, may fitly conclude with the words of some of the eminent judges in a modern case[16] of more than ordinary interest as it was a reversal of the judgments of two courts upon pure questions of fact. Lord Halsbury thus stated the rule and an exception :

> Doubtless when a question of fact has been decided by a tribunal which has seen and heard the witnesses, the greatest weight ought to be attached to the finding of such a tribunal. It has had the opportunity of observing the demeanour of the witnesses and judging of their veracity and accuracy in a way that no appellate tribunal can have. But when no question arises as to truthfulness when the question is as to the proper inferences to be drawn from truthful evidence, then *the original tribunal is in no better position to decide that than Judges of the Appeal Court.*

Lord Davey cited the opinion of Lord Herschell in an earlier case[17] only to deny it an exaggerated value and

14. *R.* v. *Eliatamby*, D. C. Jaffna 1163, S. C. M. 5. 8. 85. Fleming, A. C. J., held that the court below had weighed the evidence with the contradictions and the Appeal Court was not justified in interfering unless the finding was obviously unreasonable. "If every prisoner was to go free in this country because in the testimony against them there were contradictions, exaggerations, *and even untruths*, our prisoners would be few but our crime would be great."

15. P. C. Rat. 1371. S. C. M. 19. 8. 92. In 41 D. C. Badulla 2012, (S. C. M. 17. 9. 08) Wood Renton, J., found "all the conditions that justify an appellate internal in revising the findings of a court of first instance *on a question of credibility*."

16. *Montgomerie & Co.* v. *Wallace James* [1904] L. R. A. C. 73.

17. *Caland & Freight* v. *Glamorgan Steamship Co.* [1893] A. C. 268 Lord Herschel said, "Although I might probably myself have come to a different conclusion, I cannot say that any cardinal fact was disregarded or unduly estimated by the court below.

tolerate a liberal deviation from it in these terms :

I do not disagree with what was there stated, *if* it is to be regarded *merely as a guide to the judgment of the tribunal and not as a rule of law or practice*...Some noble and learned lords have lamented that an appeal lies to this House on questions of fact ; *but so long as that is the Law* [18], *I think this House cannot decline the duty of forming and expressing its own judgment*.....I think the learned judges did not give sufficient weight to some circumstances which, in my opinion, are of material import, and attached too much weight to evidence of user which seems to me of a very precarious description

Lord Lindley agreed :

I entirely concur in thinking that *there is no law or settled practice of this House to prevent it from differing even from two concurrent findings of fact*, if, on a careful consideration of the evidence, this House comes to the conclusion that those findings are wrong.

The law gives the Ceylonese suitor the right of appeal upon pure questions of fact. The statute imposes no restriction by defining any particular kind of *error in fact* which alone may be the subject matter of an appeal. Either there is that right or not. If there is that right, full and unabridged, then, any tendency to curtail it or deny it is to deprive the subject of a statutory privilege. Even within the limits set for similar appeals in England, as shewn above, the exercise of the right of appeal in respect of findings on facts is one that, so long as the statute is what it is, is entitled to be more largely countenanced than, it is feared, it is now.

W. S.

I can lay hold of nothing as turning the balance decisively the one way rather than the other. I think the decision of the question of facts depends on which way the balance of probability inclines".

18. As it is in Ceylon. Ord. No. 1 of 1889 Sec. 39.

Obiter.

By Guy O. Grenier, Advocate.

Perjury.

One of the great crying evils in our Courts is the way in which witnesses suppress the truth, and tell stories which are made to fit their ideas of what is required by their own interests, or by the interests of persons for whom they appear to give evidence; and anything in the course of practice or procedure which would in any way encourage such a state of things is to be strongly reprobated. Therefore, even if such a course of procedure were technically correct, I should say that it was not for the interests of justice that it should be adopted, and sitting as a Court of appeal I should discountenance it.

Per Bonser, C.J., in *Wikramasooriya* vs. *Appusingho* [1895] 1 N. L. R. 302.

Police Officers as Judges

A police officer exercising judicial functions is to me a complete novelty. English judges of the greatest eminence have repeatedly expressed the strongest disapproval of a police officer conducting a prosecution before Magistrates, on the ground apparently that the duty and interest of the police officer being to secure a conviction, he could not be expected to lay the facts before the Court in the dispassionate manner which ought to characterize the conduct of a prosecution.

Per Bonser, C J., in *Rode* vs. *Bawa* [1896] 1 N.L.R. 374.

Judge's Chambers.

By chambers I do not mean only the stuffy little room which is all the accomodation usually given to our judges in this hot country I include in chambers the judge's own house, if it be situate in the town where his Court is.

Per Lawrie, J., in *Mohidin* vs. *Nalle Tamby* [1896] 1 N. L. R. 379.

Insolvency.

I have no sympathy with creditors who allow a man in receipt of a wretched salary to run up such a bill as this. If they lose their money they have only themselves to thank for it.

Per Bonser, C. J., in In Re *Presslie* [1895] 1 N.L.R. 322.

Insolvency is a question which affects the interests of the Colony at large. It is not merely a question between the individual creditors and the debtor, but one which

affects the whole trading community. That the insolvency law should be properly administered is of the utmost importance to this Colony, and to this city in particular as a great commercial centre.

Per Bonser, C.J., in Re *Thornhill* [1895] 2 N.L.R. 106.

Framing Charges.

There are no provisions of the Code which ought to be more carefuly observed than those requiring definiteness in the statement of the offence charged, for looseness in the charge is almost invariably accompanied by looseness and vagueness in the proof of the offence and in the general conduct of the case.

Per Bonser, C.J., in *Maclean* vs. *Appan Kangany* (1896] 2 N. L. R. 59.

Assessors.

If assessors are nominated by the parties, there is very great danger that they will consider themselves to be bound to support the cause of those who nominate them. That is found to be the case where arbitrators are appointed with an umpire : the two arbitrators act as advocates for the parties. That is not the object of the appointment of assessors. Their duties are analogous to those of jurymen, and the judge should select them on his own responsibility, listening of course and giving due weight to any objections that may be made by either of the parties to any assessor on the ground of interest or bias or otherwise.

Per Bonser, C. J., in *Suppramani Ayer* vs. *Changra Pilla* [1896] 2 N. L. R. 18.

The Lower Judiciary.

It is to be regretted that so much of the time of this Court should be taken up by pointing out and correcting the errors of gentlemen who are either unable or unwilling to make themselves acquainted with the law which they have to administer.

Per Bonser, C.J., in *MacLean* vs. *Appan Kangany* [1896] 2 N. L. R. 54.

Perjury and Punishment.

The section under which this order was made was intended to provide a prompt punishment for the perjury which is unfortunately so rife in our courts. It is an axiom in paenology that a light punishment following with certainty close upon the offence is far more efficacious than the mere chance of a much heavier punishment which may never be inflicted. Experince has shown that

prosecutions for perjury are so rare and so seldom successful that the risk of punishment may safely be disregarded by any one who is minded to commit the offence.

Per Bonser, C. J., in *Andris* vs. *Juanis* [1896] 2 N. L. R. 75.

Religious Disputes.

Disputes which arise in the course of the performance of religious ceremonies, and the management of temples in which the parties feel deeply interested, cannot be satisfactorily settled by a Court of law, which necessarily has but little knowledge or no sympathy with the feelings of the opposing parties. In a matter like this it is impossible for the Court to do justice. The parties are to exercise mutual forbearance or to submit their disputes to the arbitration of those conversant with the customs of the country or learned in the mysteries of the temple.

Per Lawrie, J., in *Kurukal* vs. *Velapillai* [1896] 2 N. L. R. 80.

Delay in Tramsmitting Appeals.

The appeal was delayed and it was delayed at the instance of the insolvent, whose proctor moved the District Court that the appeal should not be sent up to the Supreme Court until after a certain date. It was an act of insubordination to apply to the judge that he should not do his duty, and I trust that such a proceeding will never occur again. This Court must not be impeded in the exercise of its appellate jurisdiction, and will visit with punishment any attempt to do so.

Per Bonser, C. J., in In Re. Insolvency of Thornhill [1895] 2 N. L. R. 105.

Revisionary Powers of the Supreme Court.

There is no doubt whatever that this Court has the power of revising the proceedings of all inferior Courts, and that it should have such a jurisdiction is most necessary in the circumstances of this Colony, where justice is largely administered by judges and magistrates who are not professional men, who have in many cases but little experience of judicial work, and who, in the outstations, have not the assistance of a strong Bar.....The object at which this Court aims, in exercising its powers of revision is the due administration of justice.

Per Bonser, C. J., Re. Insolvency of Thornhill [1895] 2 N. L. R. 106.

Decisions of the Collective Court.

It is obvious that if this question—[Is a solemn and unanimous decision of the Collective Court to be treated as a binding authority or not?]—is to be answered in the negative, it will be impossible in the future to regard any question of law as finally settled. The result will be that the law, which is proverbially uncertain, will be rendered more uncertain still, and the passion for litigation which is one of the curses of this Island, will be fostered. Cases will be instituted and appeals taken on the chance that the Court will be induced to refuse to follow its former decisions.

Per Bonser, C. J., in *Emanis* vs. *Sadappu* [1896] 2 N. L. R. 261.

Humanum Est Errare.

The greatest judges are liable to err, and Lord Campbell, who, when at the bar, reported in the Court of King's Bench, which at that time was presided over by Lord Ellenborough one of the most eminent of judges who have occupied the position of Lord Chief Justice of England, used to say that he had a drawer full of Lord Ellenborough's bad law.

Per Bonser, C. J., *Emanis* vs. *Sadappu* [1896] 2 N. L. R. 264.

Appeal Court Notes.

(By W. Sanson and V. Grenier, Advocates.)

54. **Costs incurred by consulting Solicitors in England—Defts in England.**

Where the defendants were sued at a time when they were in England and there incurred expenses, resulting from consulting solicitors who gave them advice and sent out instructions to defendants' proctors in Colombo, *Held* on plaintiff's action being dismissed with costs, the defendants were entitled to include in the costs claimed the charges so incurred in England.

S. C. 55 D. C. (Inty) Colombo, 25820 S. C. M. 16. 5. 10.

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55. **Chetty firm, initials of—Personal Contract—Vilasam—Attorney using firm's Vilasam.**

Wood Renton, J. :—The cases cited by the learned S.-G. undoubtedly show that the use by a Chetty trader of th

initials of his firm in entering into a contract, may have the effect of binding the firm and not himself. But they have not established the proposition that such a trader cannot bind himself personally where he has prefixed his firm's initials to his own name. . . . . We must look to the whole circumstances of each case in order to see what was the nature of the contract entered into.

S. C. 296 D C. Galle 9355 S. C. M. 13. 5. 10.

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56. **Trial—Premature dismissal of Case—Absence of compl't's Witnesses.**

Where the P. M. dismissed the case on the ground of the absence of some of the complainant's witnesses, thinking that their uncorroborated evidence would be insufficient, *Held* the Magistrate should have gone on with the trial as he was bound to do under the procedure, prescribed by the Criminal Pro: Code, relating to summary trials.

S. C. 264 P. C. Badulla 3942 S. C. M. 13. 5. 10.

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57. **Fences in Northern Peninsula—Custom. Tesavalamai.**

Both the Thesewelamai and the Roman Dutch Law contain no reference to the custom or servitude which permits of a land owner screening his fence with olas, and for this purpose crossing over into his neighbours' land at irregular intervals whenever the fence gets out of repair. These intervals are I understand by no means frequent because an ola screen is very strong and substantial and the intervals may vary from one year to 18 months. The custom, however, is an inveterate one in the Northern Peninsula and may rightly be said to have the force of law. It is besides a reasonable one. The opposition of the defendant is, I think, perverse considering that the action of the plaintiff secures privacy for his own land and only entails the presence of the plaintiff on his land for just sufficient time as will enable him to secure the fences.

S. C. 68 C. R. Jaffna, 7532/A S. C. M. 17. 5. 10.

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58. **Cooly Ordce. No. 16 of 1905 Sec. 2.—Authority to prosecute.**

Per Grenier, A. J.:—The second ground upon which the Magistrate has founded his verdict of acquittal is equally bad. The prosecution is at the instance of the Superintendent of the Estate, and it is unreasonable to expect the proprietors who may be in England to authorise every

prosecution of the kind [The P. M. followed P. C. Kalutara No. 13342 S. C. M. 22. 3. 10.]
S. C. 250 P. C. Matale 34251. S. C. M. 16. 5. 10.

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59. **Hire and Service Ordce. No. 11 of 1865 Sec. 9.—Temporary employment.**

Per Grenier, A. J.:—The Ordinance makes use of the word service or employment. Here the accused knowing that the coolies were bound by contract of services to complainant employed them on his Estate as agricultural labourers and thereby deprived the complainant of the benefit of their labour. The Ordinance does not say that the employment should be permanent and I cannot import into it words which the draughtsman apparently intentionally avoided using, for employment may either be temporary or permanent according to mutual agreement.
S. C. 274 P. C. Matale 34174 S. C. M. 16. 5. 10.

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60. **Vendor—Warrant & defend title—Appeal.**

Where a vendor was added as a party in a case for the purpose of warranting and defending his purchaser's title *held* he was a necessary party to the appeal and should have been made a Respondent his interests too being at stake—Where he had no notice of appeal and no security having been tendered, within the prescribed time, for his costs in appeal, *held*—on a preliminary objection—the appeal was imperfect and out of time. The S. C. also thought that they had no power to add parties in appeal.
322, D. C. Matara 4429. S. C. M. 6. 5. 10.

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61. **Interpretation of agreement—Intention of parties.**

Hutchinson C. J.:—I do not agree with the D. J. that the plaintiff was bound by the agreement as he understood it. He is bound by the agreement according to its plain meaning, unless he can shew, not only that he understood it differently, but that the other party to it also understood it differently.
S. C. 332 D. C. Chilaw 4025, S. C. M. 10. 5. 10.

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62. **Fraud—Presumption of intention—Registration—Sec, 19 of Ord. 14 of 1891.**

Hutchinson, C. J.:—I cannot see in the evidence any justification for the suggestion that the appellant was an

accessory to James' fraud. It is urged that the natural consequence of leaving the crown grant in James' hands for 6 months was that he was thereby enabled to commit the fraud on the 1st. deft, and the respondents contend that the appellant must therefore be taken to have intended that consequence. But it is not the natural consequence that he would commit a fraud . . . The much abused rule that a man may be taken to have intended the natural consequence of his act does not mean that a court must presume that he intended a particular consequence when it knows that he did not.

The appellant's deed was registered before those under which the plaintiff claims : but that does not render the plaintiff's deeds void as against the appellant. Section 17 of the Registration Ordinance No. 14 of 1891 does not render them void as against the appellant's deed because the appellant's deed is not subsequent.

S. C. 308 D. C. Matara 4526, May, 1910.

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63. **Toll—H. M.'s Mails—Passengers.**

Grenier J :—A conveyance—even although it contains passengers—which is carrying H M ' S. mails is entitled to pass a toll free. *Followed Ram 1877 p. 189.*

P. C. Manaar 3185, S. C. M. 13. 5. 10.

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64. **Criminal trespass mischief—withdrawal of charge—agreement—illegal consideration.**

An agreement to pay a sum of money to a complainant in consideration of his withdrawing a charge of criminal trespass and mischief, cannot be enforced in law. The consideration, being the shifting of a criminal prosecution, it is illegal and against public policy.

69. C. R. Colombo, 15823—S. C. M. 17. 5. 10.