The Ceylon Law Review.

A Weekly Journal of Legal Information.

Edited by

Isaac Tambyah, Advocate.

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Editorial Notes.

We desire to draw special attention to the notes of cases in this number of the Law Review. It is proposed to have this as a regular feature of the Review in the hope that the summary of Indian and other decisions of importance will be of use to the members of the Profession, especially in the out-stations. The substance of each decision is accurately given with its date and name and source from which the case is taken. Where necessary short notes about cases followed, distinguished, overruled or dissented from are added, making the digest as useful as possible.

Of equal interest, thought not of equal value, will be, we feel sure, the extracts from different law magazines grouped under the general heading of Cullings.

There is shortly to be published a collection of cases decided in appeal from the courts of Matara. As the editor of the cases is to be Mr O. L. de Kretszer of the Matara Bar, we may confidently expect a well-edited volume of cases.

The publishers of the *Ceylon Observer* have nearly completed a book on the Labour Laws of Ceylon. It is the first part, and by far the most important, of a larger work intended primarily for Planters and all those who have anything to do with the laws in so far as the plant-

ers are concerned. Each section of the work is separately indexed, and forms a distinct volume. The immediately forthcoming volume will consist of at least four parts, the first dealing with the law as to master and servant, the second with debt, the third with neighbourly rights and duties, and the fourth with the planter's public duties as juror, &c..

In 70 C. R Colombo 16942 a very interesting question of law was discussed. The rate of interest was agreed upon between the parties to a promissory note at the time of the making of it but the rate was inserted in the note by the payee long after the making. Was the addition of the rate a material alteration vitiating the note ? In *Raman Chetty* v. *Ramanthan* (1902) 1 Bal. 1 82 inserted in the note shortly before action, Grenier J. held that the addition of the rate of interest was a material alteration vitiating the note. The same learned judge followed in *Abdul Majeed* v. *Yasaya Nadan* (1909) 4 L. L. R. his earlier ruling and held that a promise to pay interest was not the same thing as an authority to make an alteration in the note by the insertion of the rate of interest so agreed upon. These judgments were not followed by Middleton J., in *Saminathan Chetty* v. *Kunji Kannan* 70 C. R. Colombo 69452, Sept. 2. 1910. It was thought at the argument that his Lordship was disposed to refer the point to a Bench of two judges, and indeed it would appear from his Lordship's judgment that he was so disposed for a long time after the argument. We humbly think that the main point in the three cases was one and the same, and a Reference would have been very desirable.

There seems to be some commotion in the Transvaal over certain rules framed by the Bar Council of that place In the current number of the *South African Law Journal* is published the full text of the correspondence between the Council and Mr. Horace Kent, a lawyer of seven years' standing at the Bar. In his protest against some of the Council's rules Mr. Kent asks:

> Is it to be supposed in these democratic days that a self-constituted oligarchy can for their own personal advantage successfully maintain regulations which subordinate the highest public interests and even block and stop the avenues of justice?
>
> If an advocate were to appear in the Transvaal having a statutory right to practise here, and who combined in his own person the talents and experience of Lycurgus and Solon, Cicero and Demosthenes, Cujacius, Donellus, Grotius and Voet, and he neglected to apply for admission to your order,or if he applied and were rejected, the young gentleman of forty-eight hours' standing, who has just scraped through his

qualifying examination, would refuse to hold a brief with him, and such an one would be treated by his professional brethren as a pariah and an out-cast.

He says in another place:

The bar is a cult not a craft, and a barrister is just as much a trustee of his rights and privileges as is the Sovereign of his prerogatives, and the one is as little able to renounce or to do anything to impair them as is the other. The right to exercise is controlled by the duty to defend, and we have the power neither to abuse, to bestow nor to surrender them.

We regret that certain statements in No. 19 about some magistrates have been misapplied by a gentleman for whom we personally have the greatest regard. Our observtions were not penned for him whom we have reasons to consider to be a very courteous and efficien Judge. We owe this assurance to the gentleman concerned

Decisiones Frisicæ.

Translated by F. H de Vos, Barrister-at-Law, Galle.

XVI.

(lib. 3, tit. 4, def. 11.)

That the action accorded in terms of *C. de rescind. vend.* is prescribed after thirty years.

The Greek commentators, as stated by Jacobus Cujacius *in tract. de divers. praescript. cap. 13*, say that the remedy given in terms of *C de rescind. vendit.* (*Cod. 4. 44.*) is prescribed after four years, and Arius Pinellus states *ad l 2. part. 2. cap 1.* that this opinion has been followed by the Court and approved by eminent jurists such as Bartolus *num. 2.* Baldus *num 4.* Salicet *num. 4. and 5 ad. d. l. 2* Mattheus Wesenbecius *consil. 42. num. 105.* to the contrary states that the general opinion is that this action can only be prescribed after thirty years, which opinion is rightly approved by Antonius Faber *de errorib. Pragmat. decad. err. 7.* for the vendee who has suffered lesion exceeding a half of the just price has his remedy by the ordinary action *ex vendito* and not by the extraordinary proceeding for restitution, as is the common opinion, according to Pinellus *d. loco. num. 26.* and Andraeas Fachinaeus *lib. 12. controv. cap. 31.* For, as whatever the vendor has customarily to give to the vendee or *vice versa* is governed by the action *empti venditi Dig. 21. 1. 31. sec. 20.* for a greater reason are those things so governed which according to express law have to be made good as restitution *ex l. 2.* the relief afforded by which is not towards the rescission of the sale and the remedy of specific performance must be resorted to obtain to delivery, but the sale, which was unjustly carried out, subsisting, what saw

done is made equitable by the vendee being given the choice of paying a just price and keeping the goods sold, or getting back the price and returning the propery *Cod. 4. 44. 8. in fin.* Therefore this action is not prescribed in four years but in thirty, and the Court has so held.*

XVII.

(lib. 3, tit. 4, def. 12.)

By the *lex secunda C. de rescind. vendit.* the plaintiff is given judgment who claims in his plaint not the relief under this *lex* but *restitutio in integrum* and proves enormous lesion. This relief is also given against a sale by decree of Court or in execution. The profits decreed by this action are confined only to those enjoyed after litis contestation.

A land belonging to the debtor Titius was sold in execution under a decree of Court at the instance of the creditors but for a very low price. Whereupon Titius, after expiration of some years, sued the purchaser alleging that he was greatly prejudiced to the extent of more than half of the just price by this sale, and prayed for *restitutio in integrum*, adding the following prayer.

"On all that has been alleged and to be alleged I seek that justice may be administered to me, etc."

When called as a witness he gave abundant proof of enormous lesion. In the investigation of this case the first difficulty that presented itself arose from the prayer of the plaintiff by which his whole plaint was governed. For regard is paid to the conclusion, and not the averments of a plaint, indeed although the cause of action and the statement of claim are inapt, the judge should nevertheless give judgment as under a proper prayer, and on the other hand, if in a statement of claim, notwithstanding the fact alleged, a wrong prayer is added, the whole plaint is vitiated *Dig. 2. 13. 1.* Baldus *in l. 2. ad finem l. de petit. hered.* But the plaintiff, who was over twenty five years of age, irregularly attacked the sale and sought *restitutio in integrum.* For those who are over twenty-five years of age, who have neither been deceived by fraud nor coerced by fear to effect a sale, cannot claim *restitutio in integrum* unless it be on that part of the edict which treats of the grounds on which those who have attained majority get restitution *in integrum.* But by that part of the edict a major is not restituted who has suffered loss through his own act but through his necessary and probable absence *Dig. 4. 6. 26. in fin Dig. 4. 6. 18.* It so seemed that this plaintiff should have his claim rejected on account of his wrong prayer. And indeed a plaintiff who concludes his plaint with an inapt prayer is generally nonsuited with the reservation of a right to bring a fresh action properly constituted. And our Courts have not seen much virtue in this clause the effect of which, as the jurists state, consists in this that it includes all acts competent to anyone arising on the fact stated. Andr. Gail. *lib. 1. obs. 61. num. 11, 12.* Matth. Wesenbecius *consil. 3. num. 18. et seqq.* Franciscus Vivius *lib. 2. decis. 315. num. 5. et. decis. 395. num. 2. et. seqq.* But in this case the court thought that the plaintiff and his

* 22 October 1609.
Tyaert Aebes Wijtzma. plaintiff *v.* Arent Martens. defendant.

advocate should be pardoned for following the lawyers and many distinguished jurists who say that in cases of enormous lesion *restitutio in integrum* is given against the sale, as stated in the first definition, This is borne out by what Ludovicus Charondas *lib. 4. respons. 71.* has given as his opinion that where it is a question of minority in respect of the rescission of a contract and the minority ha not been proved but it has been abundantly proved that there was enormous lesion, in such a case the contract should nevertheless be rescinded by the judge or the price should be paid by the vendee according to the reading of the said *lex. 2*, for this remedy has thes same end in view and the one is helped by the other. And Gerard Maynard *lib. 3. obs. 41* says that this view has been adopted in the Court of Toulouse, and although Antonius Faber does not give it his approval, *decad. 7. err. 9.*, yet he himself *lib. 4 cod. Sabaud. tit 3.* relates that the Court of Saxony had given judgment in terms of *lex 2.* in favour of the vendee who alleged that he had beer deceived by the fraud of the adverse party and defrauded of over half the just price and therefore sought *restitutio in integrum*, although he proved no fraud but only loss in the price ; which is similar to our present case.

The other doubt which arose in the case was whether the remedy of *lex 2.* applies in the case of a sale by judicial decree ? Bartolus and others *ad Cod. 10. 38. 1. lib. 10.* answer this in the negative and Anton. Faber agrees with them *decad. 10. err. 9.* especially for this reason that the true price is that which is generally fixed by people *Dig. 35. 2. 63.*, and that which is realised by a public sale cannot be regarded otherwise than as the ordinary price. It is generally stated that a thing is worth what it can be sold for, and what it can be sold for is best ascertained by a public sale. And that the Chief Courts of Paris have often adopted this opinion is stated by Georgius Louet *en son Recueil des arrests notab. in. lit D num. 35* and Johan. Gilletus *de tutel et cura cap. 53 vers. Davantage etc.* And the Dutch Court has also so ruled as seen in *Decisionibus Supremae Curiae decis. 75.*

But the contrary opinion in the affirmative is held by many who are referred to and followed by Arius Pinellus *ad. d. l. 2. part. 2. num. 21 et seqq.* Ferdinandus Vasquius *lib. 6. controvers. cap. 61. num 1. 2. 3.* Andreas Fachineus *lib. 2. controv. cap. 21.* Alexander Trentacing *lib. 3. resolut. tit. de emptione et vendit, resolut, 3. num. 5.* Johan Parludorius *lib. rer. quotod cap. final. part, 5. sec. 16. 10.*, and that this view has been adopted by the Court of Saxony is stated by Faber *d. lib. 4. tit. 30. definit. 4.*, and this by reason of the frequent deceptions practised by those who frequent the market place through whose artifices it often happens that a thing cannot always be sold for its just price, although it is sold by auction. And this presumption that a thing is worth what it can be sold for, is destroyed by the contrary presumption and the real facts are preferred to the presumpti n. And in cases of certainty no presumptions or conjectures are admissible. And our Court adopted this view in the present case† and the defendant was condemned either to supply the just price or restore the property with the rents, issues and profits enjoyed after litis contestation, for the defendant, being the vendee, keeps to himself the profits enjoyed before litiscontestation as he was a *bona fide* possessor who bought under a decree and authority of

† 21 December 1604
Douwe van Roorda, plaintiff *v.* Mr. Minne Broersma, defendt.
23 May 1615. Jacob Benedictus, Plaintiff *v.* Minte Alberts, deft.

the Court and paid the price. Ant. Faber *d. decad. X. Err. 9. et d. lib. 4. tit. 3. definit 26.* Johannes Imbertus *in enchiridio.vers. Possesseur de la chose.*

Concerning the remedy of the rescission of private sales by the *lex. 2.*, the jurists are not agreed. Some say that the property should be restored with the fruits, and these are referred to and followed by Didacius Covarru *lib. 2 resolut. cap. 3. num. 9.* Others are of a contrary opinion and these are followed by Johan Parladoreias *d. loco num. 14.* Antonius Gomesius *lib 2. resolut. tit. 2. num. 24* Joachinus Mynsingerus *cents. 4. obs. 73. num.8.* Andr. Fachineus *lib 8. controv. cap. 24.* And this opinion is generally followed by our Courts in their judgments‡

Notes of Cases.

[*In the following Notes the usual English Law Reports abbreviations are used except that A. L. J. R.=Allahabad. Law Journal Reports, and S. A. L. J.=South African Law Journal.*]

1. Facts—Prima facie evidence—Appeal.

Prima facie evidence is evidence which raises a rebuttable presumption of fact, it stands until rebutted, it therefore cannot establish more than a probability, but a probability which may be displaced by evidence.

House of Lords drew from admitted facts an inference different from that drawn by the Court below.

The Draupner (1910) L. R. A. C. 450.

2. Charity—Testator's intention overlooked.

Funds in charity cannot be applied cypres, even under a scheme more beneficial than that intended by the testator, unless it be impossible to carry out his intentions.

In Re Weir Hospital (1910) 2 Ch. 124.

3. Injunction—Breach—Intent.

An act is a breach of an injunction, whether it be by a corporation or by an individual, though it may not be a contumacious act. Only casual, accidental or unintentional disobedience is excepted.

Stancomb v T. U. DistrictCo (1910) 2 Ch. 190.

4. Joinder of parties—Cause of action technically different.

Joinder of defendants is good if subject-matter of complaint is same, though cause of action is technically

‡ 27 October 1609.
Tiaret Everts Wytsma. plaintiff *v.* Aerent Martens. defendant.
12 April 1614 Aggi Johannes. plaintiff *v.* Hidde Eelekes deft.

different in form and the several liabilities alleged against them are to some extent based on different grounds.

Compania de Congeldas v Houlder Bros et al (1910) 2 K. B. 354.

5. Joinder—Interest in relief.

It is not necessary that every defendant should be interested as to all the reliefs claimed in the suit, but it is necessary that there must be a cause of action in which all the defendants are more or less interested although the relief asked against them may vary.

Umabai v Bhau Balawnt (1910) I. L. R. 34 Bomb. 358.

6. Divorce—Costs.

Re-trial not allowed to husband till wife's first trial costs paid or secured and security given for future costs.

Kemp-Welch v Welch-Kemp (1910) L. R. Prob. 233.

7. Estoppel—Res judicata—Omitted defence.

In a rent arrears suit no objection was taken to the want of a writing. Held, in a suit for further arrears, that the objection was not urgeable.

Humphries v Humphries (1910) 2 K. B. 531.

8. Decree—Modified after appeal—Execution time extended.

After appeal the Appeal Court alone can modify the decree or extend time for execution.

Paramanandha Das v Krippasindhu Roy (1909) I.L.R. 37 Cal. 548.

9. Autrefois acquit—Penal Code 180, 479 (Indian 182, 500.)

Acquital under Penal Code 180 (Indian 182) no bar to prosecution under 479 (Ind. 500.)

Ramsebak Lal v Mureswar Singh (1910 I. L. R. 37 Cal. 604.

10. Divorce case—Attachment before Judgment.

Attachment before judgment is a matter of relief not of procedure. It is not allowable in divorce suits.

Phillips v Phillips (1910) I. L. R. 87 Cal. 613.

11. Costs—Guardian ad litem—Personal liability.

A guardian ad litem taking it upon himself to appeal against a decree puts himself in the position of a next friend initiating proceedings and is no longer in the position of a passive guardian ad litem.

Harver v Monosseh [1909] I. L. R. 34 Bomb.374.

12. Fact—Revisional powers—Attempt.

Bombay High Court does not revise findings of fact

except for misstatement of evidence, or misconstruction of documents, or wrong rule as to onus.

An attempt to commit an offence is some external act, something tangible and ostensible of which the law can take hold as an act showing progress, though interrupted, towards the actual commission of the offence.

Emperor v Modak (1909) I.L.R. 34 Bomb. 378.

13. Mohommedan law—Wife becoming Christian—Effect.

The conversion of a Mohammedan wife from Islam to Christianity effects a complete dissolution of her marriage with her husband.

Amir Beg v Samon (1910) 7 Allahabad L.J.R. 956.

14. Goods—Money deposited—refund.

Plaintiff paid part of earnest money promised but failed to take delivery of goods. Held, not entitled to claim back deposit.

Roshan Lal v Delhi Mills Co. (1910) 7 All. L.J.R 1910.

15. Landlord and tenant—Lien on goods—Storage rent.

Landlord retaining goods in right of lien may not charge rent for storage of such goods.

Laingsburg School Board v Logan (1910) 27S. A.L.J. 139.

Appeal Court Notes.

99. **Gaming—Joinder of charges Same transaction—Keeping common gaming-place**

To charge one accused with keeping a common gaming-place and another with gaming does not amount to a misjoinder of charges as the offences, in respect of which the charge was made, were committed in the course of the same transaction.

314—316. P. C. Balapitiya 3319. 22. June 1910.

100. **Maintenance—Adulterine—child Respondent not husband of the petitioner.**

Per Grenier J.—This is an application for maintenance. The applicant's husband James and Krineris married two sisters and it is alleged that James lived

with Krineri's wife, and Krineri lived with James' wife —The parties all resided in the same village: and the question is whether it is open to the applicant to say that the child in question is not the child of her husband, but of the respondent, her sister's husband,—Sophi Nona *v* Marisan 6 N. L. R. 378 held to apply non-access or impotency must be proved.

* * *

101. **Sec. 292 Penal Code—Essentials of offence—Feelings need not be wounded.**

For a conviction under Sec. 292 of the Penal Code, it is not necessary that the feelings of any person must be proved to have been wounded, it is sufficient if the accused can be said to have the knowledge that this effect would be caused.

339—340 P. C. Panadura 33207. 17th June 1910.

* * *

102. **Decisory oath—Proceedings by Commissioners administering oath - Challenge.**

Where the plaintiff agreed that he would consent to judgment being entered against him on defendant taking a decisory oath but after the report of the officer administering the oath had been received, took the objection that the oath was not properly administered,—Held that the Commissioner should have recorded his evidence as to the nature of the oath administered, in view of the fact that the plaintiff had expressly challenged the proceedings.

121 C. R. Galle 10235 22 June 1910.

* * *

103. **Maintenance—Pending divorce—Maintenance for child of tender years.**

On the authority of Fernando *v* Dionis Fernando (1884) 6 S. C. 99 Wood Renton J. ordered proceedings in a maintenance action to be stayed pending the decision of a divorce suit instituted by the respondent.

There may be cases in which a wife, though disentitled under Sec. 5 of Ord 19 of 1889 to maintenance for herself, may still be entitled to receive maintenance for a child of tender years who still is in her custody.

Perera *v* Perera (1903) 7 N. L. R. 166.——343 P. C. Anuradhapura 34215 22 June 1910.

Cullings.

Three million robbers.

"There are three millions of people in India who live by robbery in various forms, and we propose to take charge of them if the Government will furnish us with land reservations, such as those given to the Red Indians in the United States. If they can be provided with some form of industry and taken care of, they will settle down and we shall be able to convert them into valuable and loyal subjects."—*General Booth*, *Law Times*, August 27, 1910.

Detection of forgery by pulse beats.

"It may be said to depend upon the fact that in a considerable number of diseases a person's pulse beats are individual, and that no one suffering from any such diseases can control, even for a brief space of time, the frequency or peculiar irregularities of his heart's action, as shown by a chart recording his pulsation. Such a chart is obtained for medical purposes by means of a Sphygmograph, an instrument fitted to a patient's wrist and supplied with a needle which automatically records on a prepared sheet of paper the peculiar force and frequency of the pulsation." This statement is on the authority of Dr. Lindsey Johnson. 'It is added that when a document purporting to be written by a certain person contains the traces of pulse beats, and the normal hand-writing of that person does not show them, then clearly the document is a forgery"—*Law Times*, August 27, 1910.

Drink and Crime.

About a year ago the people of Masterton decided to try the experiment of having no licensed houses for the sale of alcoholic liquors in that district. The following figures exhibit the amount of law-breaking during six months in which drink was sold as usual, during the corresponding six months of the following year when the population was compulsorily sober.

	With Alcohol.	Without Alcohol.
Drunkenness	137	23
Assault	20	0
Theft	18	0
Housebreaking	6	0
Resisting police	8	0
Neglect of family	9	5
No means of support ...	9	1
Bad Language	8	2
"Sly grog selling" ...	0	6
Bringing liquor into district ...	0	14

The law against the sale or introduction of alcoholic liquor was infringed by twenty persons, but against this there is a total decrease of 184 in offences of other kinds. It was the late Mr. Justice Walton who said that "he had come to the conclusion that 99 % cent of crimes of violence were due to strong drink."—*Law Times*, August 27, 1910.

Imperial Reciprocity.

In the legal profession the principle will probably never go further than it has already done. British qualifications are usually valid overseas, but the reciprocal arrangement does not fully apply. There are barristers abroad—particularly in South Africa, Australia, and India—who have been called to the Bar, in this country, where, however, they are never likely to practise, and who secured an English qualification mainly with the idea of overseas practice. But the differences of law and procedure within the Empire are enough to prevent both solicitors and barristers, from quitting the country where they have been trained. England and Scotland themselves offer examples of both differences, while the legal tendency to exclusiveness is strikingly illustrated by the fact that though law and procedure are very much alike in England and Ireland, a call to the Bar in one country does not mean a call to the Bar in the other. At the time of the last Imperial conference the highest legal authorities in this country explained that imperial reciprocity in their world was impossible.—*Law Journal*, August 27, 1910.

Points from the French Procedure Code.

There are several points in French procedure worthy of our attention, such as the presence of supplementary jurors throughout a criminal trial, who are sworn and hear all the evidence and, if necessary, take the place of any original jurors who are absent through illness, and thus avoid the harshness of a rehearing; or the right of the Court of Cassation to order a retrial, the absence of which right in our Criminal Appeal Court is frequently mischievous. The complacency which a Blackstone could feel as to the perfection of the edifice of English justice cannot survive in our day, when the study of comparative law enables us to realise the defects as well as the outstanding merits of our system, and in no branch of law is it so desirable that nation should learn from nation as in its criminal procedure, which directly touches the happiness and welfare of thousands of its subjects.—*Law Journal*, August 13, 1910.

Communications to the Editor.

Anything by way of reply to contributions under this heading will be always accorded the courtesy of publication.—Editor.

1. Proposed Legistation.

I understand that a large number of ordinances was to be introduced this session dealing with matters of the greatest importance but that their introduction will be deferred till the return of the permanent Attorney General. This is as it should be. The Franchise Bill had to be pushed forward with all speed and could not wait the return of Mr. Lascelles. But practically everything had been done with regard to that bill, it had been fully considered all round and the part the introducer of the Bill had to take was a merely formal one. It is satisfactory to note that some fantastic legislation which was proposed when Mr. Lascelles was previously away did not meet with the approval of either Mr. Lascelles or the members of the Profession and the Judiciary. The voluminous papers are said to be slumbering somewhere in a waste-paper pigeon hole of the Attorney-General's office and it is to be hoped will not be awakened from their slumbers till the lapse of centuries when some jurist of the future will publish to an amused world the legislative freaks of the early twentieth century. It is also satisfactory to note that the forthcoming enactments, though not of the showy class, are most useful and necessary. Huge codes which encumber the statute book are generally monuments of the vanity of the legislator and they involve neither much labour, much originality nor much research. It is practically the work of the copyist or compiler, giving the word compiler its original meaning. The evils of a code as compiled by an empiric—a tolerably successful practitioner for instance—are manifold. The legislatures of various countries are exploited and a code from someone country bodily lifted into our statute book. These Solons seem to forget that what is suited for one country need not necessarily be suited for another country and that the legislator must study the habits, modes of thought, idiosyncrasies and even the vices and virtues of the people and legislate accordingly. Some parts of our Civil Procedure Code are taken bodily from the New York code. A little reflection will show that what is suited to the hustling American citizen is entirely un-

suited to the sleepy Sinhalese goiya and that the Wall Street millionaire is a different being from the Pettah pedlar. What is wanted is legislation suited for the people. Most of our codes are failures because most of their authors were mere copyists. It is as easy to lift a code as to compile institutes. The former requires only a copying clerk the latter only scissors and paste. Nor is a knowledge of Latin as of old necessarily required for a study of Roman-Dutch Law. There are excellent translations procurable at the Cape, and locally De Sampayo's translations of Voet's chapter on Donations is a model of accuracy and lucidity. N.

2. Mr. Advocate E. H. Prins on the Franchise Ordinance.

The chief question of course is whether our register is to be divided into two parts, A and B, or not. This is not an easy question to decide off-hand. Taking everything together I think the division into two parts is correct. I heard it stated the other day that the objection to the division is that it will be considered an insult to be placed on the "B" part of the Register. Why it should be so I fail to see. It has been decided that the Burgher voters fall into two classes, viz, "A" descendants in the male line, and "B" in the female line. It is only consistent then that the "A" class should be registered in the A part and the B class in the B. I suppose the insult lies in considering that B being the second letter in the alphabet the B part is second in importance, A being First Class, No. 1, Reserved Seats. But this is rubbish. A "B" class man may have a larger quantity of burgher blood in his veins than an "A" class man. The division is simply according to whether his descent is in the male line or female. The separation, however, is correct. There is a natural desire on the part of the direct male line descended Burgher to preserve his identity and his connection with his European forefathers, and to resent the inclusion into his community of those who bear Sinhalese, Tamil, or other native names. I grant that the Native gentlemen who married into Burgher families are as a rule, respectable, which cannot perhaps be said of the "Smith" or "Jones" ancestor who is accepted without question merely on the ground of his being European. But you cannot blame the male descended Burgher for endeavouring to keep up his European connection, and thus preserve his prestige. I cannot help referring in this connection to the Dutch Burgher Union. It seems to me a matter for regret that that Union ever used the word "Dutch" in their title. The word seems out of place now-

a-days. It is altogether unsuited to the majority of the Burghers, to use it now, pigmented as they are. The Union is an excellent institution and is calculated to do a lot of good if only in showing the present Burgher youth who he is and what his traditions are. The word "Burgher was adopted by a heterogenous mass of nondescripts" who could not come under any other class, and the Union was not formed a day too soon. The only mistake they made in my humble opinion was to use the word "Dutch." The very use of the qualifying adjective "Dutch" shows there was something to qualify, to distinguish. Had they called themselves the "Burgher Union" they could have taken their definition before the Commision, and every one outside their definition would in all likelihood not have been accepted as Burghers. But by using the word Dutch they made a sort of a separate caste, if I may so call, it for themselves. The Franchise being for Burghers generally and not merely Dutch Burghers, this definition was not considered wide enough to cover all, and hence a "B" class was formed to take in the rest. This could not be avoided. The only way to right matters and to satisfy the majority is in my opinion to do as the Draft Ordinance suggests. Mr. Lascelles, the Attorney-General, has been here many years now. He understands the people, knows their distinctions and differences, their wants and requirements, and his decision should not be lightly set aside.

E. H. PRINS.

3. MR. ADVOCATE E. W. PERERA ON THE FRANCHISE ORDINANCE.

It strikes me that there are embodied in sections 22, 31 32 and 33 of the Franchise Ordinance two provisions which are contrary to the fundamental principles of constitutional law. The right of adjudicating on the validity of elections, of interpreting the electoral law, and of nominating the Locum Tenens of an elected member is vested in the Governor. The Secretary of State in emphatic language has given the reasons why the Governor should not appoint the substitute of an elected member. It is illogical that an elected member's Locum Tenens should be a Government nominee. The elected member will be in touch with the electorate and his nominee will be expected to carry his policy. The nominee may be constitutionally irresponsible and his policy be opposed to that of the elected member.

In England, and if I am not mistaken in all British Colonies and all countries where representative or semi-representative institutions obtain, the highest judicial

tribunal of the land, and not the executive Government, is the supreme arbiter in all election disputes. I beleive the exceptions are India and Russia. Even the British House of Commons has been supposed to be not sufficiently impartial to consider such questions, and I cannot do better than quote the authority of the statements in Halsbury's Laws of England, vol 2 page 36 :—

"But after making all due allowance for the credit which is due to the parliamentary committees for setting up and honestly trying to uphold just and equitable standards of decision, the inherent unfitness of non-legal tribunals whose impartiality was not above suspicion to deal with election petitions could not fail to become more and more apparent, and so it was gradually recognised by Parliament itself that judicial knowledge and fairness in dealing with these matters were essential to the freedom and purity of elections, and this led at last in 1863 to the voluntary surrender of the real authority to the judges.

It would be difficult to exaggerate the importance of this change. Instead of the casual and unscientific character of the decisions, and the inevitable party-bias to which they were subject, the same absolute fairness which prevailed in the administration of the ordinary law was introduced into the determination of contested elections. And the cardinal point is this : The Judges are independent and irremovable, "quamdiu se bene gesserint", and all trace of party influence is now removed from the consideration of every question relating to elections, and in substance every such question is decided by the Judges or their nominees.

First as to parliamentary elections. The Election Judges are appointed from among judges of the King's Bench division of the High Court, so that it would be impossible for Parliament or for the executive government to have anything to do with their selection, or directly or indirectly to interfere with their decisions, while any connection with politics which they may have individually had before they were raised to the Bench is at an end from the time of their appointment."