The Ceylon Law Review.

A Weekly Journal of Legal Information.

Edited by

Isaac Tambyah, Advocate.

Vol. VII.] Nov. 21, 28, 1910. [Nos. 30, 31

Editorial Notes.

Mr. Rothwell Drieberg, a senior proctor of Matale, has written to a newspaper complaining of advocates receiving fees direct from suitors and then asking for a proctor's letter in ratification. We think that Mr. Drieberg has a genuine grievance though we are not so certain as to the propriety of the course he has adopted, namely of communicating his thoughts on the subject to the newspapers. It seems more consonant with the rules of professional etiquette for counsel to forego a retainer tendered by a suitor than to be at pains to solicit ratification. Has Mr. Drieberg written in the first instance to the peccant advocate?

In the Court of appeal on 25. 11. 10 His Lordship Mr. Justice Wood-Renton protested very strongly against the ubiquitousness of counsel tending to disorganise the work of the court. His Lordship was understood to say that the absence from court of an advocate when his case comes for argument was highly inconvenient and inexcusable unless it be that the advocate is at that time engaged before another bench of the court of Appeal.

Lightwood's *Time Limit on Actions* is a book useful alike to practitioners and students. A little book entitled "Time Limit on Speeches" would be not less profitable. We do not make this observation out of any feeling of jealousy towards the outbreak of oratory which is usual at this time of the year. Nor are we to be understood as lacking in admiration for the eloquence which is a natural

precursor of the first symptoms of a sense of political franchise. We do confess we are mortal enough to be swayed by the "seductive influences of silver-tongued oratory," but we with others are human enough to complain of a somewhat limited supply of the virtue of endurance. We trust we shall be forgiven for the observation that the Law-Students' dinner of 26. 11. 10, quite a great, memorable function, has somehow suggested the above depressing thoughts. The dinner committee is to be congratulated on the success of the function. Might we suggest that sixteen speeches, some of them very ponderously discoursive, should not be possible next time—the next dinner will happily be long after the election excitement has subsided.

Many of the speeches at the dinner were very thoughtful and some very wise. It is our duty however to regret that more than one speaker had forgotten the wisdom of chaste restraint. The regret is greater that the audience consisted largely of young and impressionable gentlemen to whom it was absolutely necessary to be shown that the liberal profession to which they were qualifying themselves is one in which freedom of expression has its responsibilities and that all things may be lawful but all things are certainly not expedient. It is just possible that we may be incurring somebody's displeasure for these remarks but we should be grossly deficient in our sense of duty if we did not protest against liberty bordering on license.

We are very glad to hear that the want of a good library for law-students has been felt. The lecturers are obliged to put themselves to unnecessary inconvenience in obtaining the requisite books, particularly reports, necessary for reference during the lectures. A sum of Rs 85000 has been voted for a building for the Law College. We are sure there are sufficient funds in the hands of the Council of Legal Education out of which to vote a sum for a good library for the law-students.

The retirement of Mr. Justice Wendt is officially announced. The retirement is regrettably untimely. He was a competent and very painstaking judge, laboriously studious and eminently well-informed. Great indeed is the loss the colony suffers by the Bench being deprived of the services of a very capable judge. We sincerely hope that Mr. Wendt's unofficial years—may they be many—will be years of continued helpfulness and counsel to his country.

We have much pleasure in welcoming back from England Mr Herman A Loos acting District Judge of Colombo. Rumour at Hultsdorf very favourably associates his name with the possibilities of confirmation in the capacity in which he has so worthily acted. It will be gratifying to hear that rumour for once is right.

Movable Property of Married Women

(UNDER ORD 15 OF 1876)

By G. A. Wille, Proctor, Supreme Court, Colombo.

The announcement made in this REVIEW that a Matrimonial Rights Ordinance for the Tamils will shortly become law suggests that something might be said on one aspect of the Ordinance already on our Statute book which affects those who but for it would be governed, in regard to their matrimonial rights, by the Roman-Dutch law, viz. Ord No 15 of 1876

An appropriate introduction to this article would be a reference to the Ceylon Savings Bank (Amendment) Ordinance 1909 which enacts that any deposit made in the name of a married woman or in the name of a woman who shall marry after such deposit, shall be deemed to be the separate property of such woman and shall be accounted for and paid t her as if she were an unmarried woman. This enactment, adapted from similar provisions in English statute law, was no doubt intended for the protection of the Ceylon Savings Bank in the case of deposits standing in the names of married women to whom Ord 15 of 1876 applies, and it suggests the existence of a risk against which it was thought advisable that the Bank should be protected. The risk of course arises from the possible conflict of claims between wife and husband or between her and any creditor of her husband or worse still in the event of the death of either between the survivor and others interested in the deceased's estate to a deposit standing in the wife's name, in view of the dfficulty created by sec 19 of that Ordinance which provides that all movable property to which any woman married after the proclamation of the Ordinance shall be entitled at the time of her marriage or may become entitled during her marriage shall subject and without prejudice to any settlement affecting the same

and except so far as is by the Ordinance otherwise provided vest absolutely in her husband—a provision which moved Bonser C. J to state in *Babapulle* v *Rajaratnam* (5 N. L. R. 1) that in some respects a wife's position was worse than before the passing of the Ordinance. When one considers the difficulty the Bank would have in deciding whether a deposit claimed by a wife as being her separate property does actually come under one of the several classes of a wife's separate property created by the Ordinance, one can quite see the necessity for such an enactment as the Ceylon Savings Bank (Amendment) Ordinance 1909. But the point which this article is intended to call attention to is that if the difficulties which Sec. 19 of Ordinance 15 of 1876 creates were more keenly appreciated than they appear to have been in the past—perhaps as keenly as by the Attorney General when he decided on relieving the Savings Bank from embarrassment—the wife's position need not at least be made worse than the Ordinance has made it.

In *Menik Ettana* v *Allis Appu* (3 N L R 330) Lawrie A. C. J. said: "By the Ordinance of 1876 *all* movable property to which a married woman is entitled during her marriage vests absolutely in her husband, so that presumably the money handed by the plaintiff to her husband as the consideration for the transfer was his own money. In other words the transfer to her was not for valuable consideration."

It need hardly be said that the first of these statements is far broader than the Ordinance warrants, not to say too sweeping. No consideration appears to have been given to the possibility that the money might have been the proceeds of the wife's immovable property (under Sec. 9) or her wages and earnings or money acquired by her through exercise of literary or other skill (under Sec. 10) or a gift made by her husband previously (under Sec. 13) or the proceeds of a policy of insurance effected for a term of years upon her own life or the life of her husband (under Sec. 18) all which are made the wife's separate property. But Mr. Justice Lawrie was a judge of keen discernment and we perhaps get a glimpse of this in the later clause—"So that *presumably* the money handed by the plaintiff to her husband was his own money." Why presumably if all movable property of the wife vests absolutely in the Island. Why so little after saying so much? The defect of logic is compensated by the evidence the word *presumably* affords that there was lurking in the eminent Judge's mind an idea that after all, all movable property to which a married woman is entitled does not vest in her husband.

What then is the explanation of the seemingly inconsistent conclusion that the transfer *was* not for valuable consideration ? Reading the Judge's better mind on the point of law involved, in the word "presumably" rather than in the too comprehensive statement above referred to, we may perhaps justify the decision by some such reasoning as follows :—Granted that all movable property of the wife does not vest absolutely in the husband ; we must however always presume that it does unless and until the wife proves the contrary. It is true His Lordship gives himself away once more by saying—not "we must in this case *presume* etc" but—"the transfer *was* not for valuable consideration," a statement more in accord with the broad generalization from which he started. But he goes on again to state finally : "The defendant is in possession and the plaintiff has not proved right to the land by virtue of a later transfer for valuable consideration."

If this statement, like the word "presumably," may be regarded as indicating that after all Mr. Justice Lawrie decided the case on the prima facie aspect which the evidence then before him presented, we must perhaps give His Lordship the benefit of any doubt which his preliminary dictum suggested as to his reading of Sec. 19 of the Ordinance.

Not that this affords complete satisfaction. With such an idea in his mind as we are prepared to attribute to His Lordship we might have expected him to give the wife an opportunity of proving that the money she paid to her husband was her separate property, especially as the point was apparently not raised at all. Whether he was dissuaded from this course by the circumstances of the case, which certainly were not such as to appeal to His Lordship's well known love of fair play, the judgment is too meagre to show.

But what is still more unsatisfactory, the judgment is in its turn responsible for a great deal more than it warrants unless we take Mr Justice Lawrie's words with absolute literalness and convict him of nodding badly. In Mr. Walter Pereira's well-known Institutes of the Laws of Ceylon Volume 2 p. 149 occurs the following passage : "From the *absolute right to the movable property of the wife* given by the Ordinance to the husband a curious result ensued in the case of *Menik Ettena* v. *Allis*. There the husband sold a parcel of land to T and subsequently sold the same parcel to his own wife. The deed in favour of the wife was registered before that in favour of T and the wife by reason of prior registration claimed a preferential title to the land. The Supreme Court however held

that *inasmuch as all moveable property to which a woman is entitled rested absolutely in her husband*, the money mentioned in the deed in favour of the wife as having been paid by her to her husband *must* be taken to be the husband's money and the transfer to the wife was therefore without consideration and did not gain priority by reason of prior registration." And this passage is reinforced by the comprehensive side note—" Sale by husband to wife practically a gift."

Neither Mr. Justice Lawrie nor the learned author of the Institutes of the Laws of Ceylon, no doubt, intended to convey so much as the words of either import, but the absolute nature of the right to a wife's money commonly put forward on behalf of husbands and the ready acquiescence as commonly yielded to the claim—if not by the wife at least by the wife's adviser!—shews that wives have not received all the benefit that the Ordinance was intended to confer on them. It may of course well be that just as between a wife and any person claiming under her on the one hand and any creditor or alienee of her husband on the other, Sec 14 imposes the burden of proof on the wife, so as between husband and wife the wife should prove her contention that the subject of dispute comes under one or other of the heads of a wife's separate property, as being a matter which is specially within her knowledge, although it must be admitted that as between husband and wife this ground for throwing the burden of proof on her applies with comparatively little force. Or it may be that despite the number of classes of a wife's separate property which the Ordinance creates even in respect of money alone, any claim by her must be regarded in the nature of an exception the benefit of which she can only acquire by discharging the onus that lies upon her to prove it. But does Sec. 19 of the Ordinance justify the reading of it which the language of the judgment as interpreted by the reference thereto quoted above suggests? If not, why should the position of a wife under the Ordinance, worse in some respects than it was before, as pointed out by Bonser C. J., be made still worse by an interpretation which not only ill accords with the object of the enactment but appears to ignore part of what it expressly states?

In this connection I should not omit to refer to the subject of a wife selling or consenting to a sale of immovable property to which she is entitled at her marriage or becomes entitled during her marriage, as one which perhaps requires the attention of the Legislature. According to the decision in *Sanmugam* v. *Rosaina Silva* (1 Bal: 137) a wife who became entitled by inheritance to a $\frac{1}{5}$th share of the intestate estate of her sister which comprised

a large number of parcels of land and who very reasonably in the circumstances (there being also debts of the estate to pay) consented to the sale of the lands by the administratrix, was held by Wendt and Moncreiff J. J. to have brought her share within the operation of Sec. 19 of the Ordinance so as to make it seizable for the debts of her husband, because she had not when consenting to the sale expressed an intention to re-invest the proceeds of the sale in land. Layard C. J. who arrived at the same conclusion as to the liability of the share for the husband's debts maintained that the share in the lands vested in the administratrix and that what vested in the wife was nothing more than the net proceeds of the sale of the lands after paying the debts of the estate and that according to Sec. 19 of the Ordinance the share became absolutely the property of the husband,and His Lordship did not so much as allude to the question of the wife's consent to a sale. Here much danger lies and although Layard C. J. recked it not there can be no doubt that Wendt and Moncrieff J. J. realised the gravity of the situation and sought to save it, for the future at any rate, by the expedient of an expression of a further intention to re-invest in land. But apart from cases of inheritance, one cannot help asking to whom notice of an intention to re-invest in land is to be given when a wife sees reason to sell house or land and buy others in their place but allows an interval of time to elapse before re-investing? If to the husband will notice to him affect his creditors? And if Sec. 19 works so relentlessly that even where the proceeds of a sale can be traced the conversion of immovable porperty into movable property cannot save it, can the expression of an intention override the legal effect of the section? In *Sebastina Fernando and Nonnohamy* (1 Bal. 140) a partition action, it is difficult to say how the wife would have fared if she had in any manner signified her consent to a sale; but Wendt J's judgment again evinces concern for the wife's interests and would appear to suggest that in partition actions when a sale is decreed, the court should discover what the mind of the wife is as to the disposal of her share of the proceeds—a precaution which is taken in England, as the judgment mentions, under the English partition acts which presumably expressly create an equity in such cases to effect a reconversion.

This judicial consciousness of the jeopardy of the wife's interests and the attempts to protect them arouse misgivings as to the correctness of the interpretation put upon Sec 19 and justifiy, if they do not force, the question whether a wife who sells her immovable property because she prefers to invest otherwise can rightly be said to "become entitled

during her marriage " to the money resulting from the sale so as to make it the property of the husband. If the wife can satisfactorily trace the proceeds of a sale in the event of a question ever arising as to their origin and thus discharge the onus which lies upon her, is that not sufficient for the purpose of the Ordinance ? The difficulty of such a task is of course one that she must face but the occasion for undertaking it may never arise and if it does the task may not prove to be so very difficult after all. In any case it is a matter in which she deliberately accepts the resulting risks. But if a correct interpretation of Sec. 19 involves the grievous injustice of sweeping into its net the proceeds of the sale of immovable property which formed part of the wife's estate, may we not ask whether that can have been the intention of the Ordinance ? When the wives of many of our European residents recently sold their estates in Ceylon and invested the proceeds or at least part of them in shares in Ceylon companies—and here the Ordinance applies to them—did it intend that by so doing they should make the shares the absolute property of their husbands ? If it did not, should not the Legislature intervene to make the operation of Sec. 19 less mischievous ?

Notes of Cases.

36. **Set off—Mutual debts—Assignment.**

In an action to recover a debt due from the defendant to the plaintiff the defendant is entitled to set off a debt originally due from the plaintiff to a third person who has assigned it to the defendant.

Bennett v *White* (1910) 2K. B. 643, C. A.

37. **Solicitor and client—Compromise—Misunderstanding.**

If a client by his conduct induces his solicitor to believe that he is authorised to make a certain compromise in an action which the solicitor is conducting on behalf of the client, and the solicitor, reasonably relying on that conduct and believing that he has the authority of the client, makes the compromise, the client is bound whether he intended to give that authority or not and whether he in fact understood or did not understand the terms of the compromise.

Little v *Spreadbury* (1910) 2K. B. 658.

38. **Will—Codicil.**

A document containing no words of gift but giving a list of the names of eight persons and after each name a sum of money was held to be a codicil giving to each person named a legacy of the amount set after his name.

Barrance v *Elis* (1910) 2Ch D. 419.

39. **Infant—Next friend—Costs—Indemnity.**

Where an action, properly instituted under the advice of counsel, and conducted with diligence and propriety by a next friend in the interest of an infant, has been dismissed with costs and damages to be paid by the next friend, the infant will be bound to indemnify the next friend against such costs and damages, and the costs, charges, and expenses properly incurred by him on the infant's behalf in relation to such action, but no declaration of charge in respect of such costs will be made upon the infant's property where such property is not being administered by the Court.

Seeden v *Walden* (1910) 2 Ch. D. 293.

40. **Surety—Administration bond—Right to apply for cancellation of bond**

A surety to an administration bond cannot, when the administration is complete and the bond becomes void and ineffective, apply to the court to have the bond vacated and to be discharged from his suretyship.

In the matter of Norton Knight (1909) 33 Madras 373

41. **Trade mark—Infringement—Requisites of action.**

It is settled law that a dealer in, or a manufacturer of, a particular article who adopts a name for that article, whether the name be purely a fancy or a descriptive name, cannot restrain another dealer from using the same name simply upon the ground that the article so named has acquired a reputation, even though it may be that the public have grown accustomed to buy the article in question only relying on the name and without examining the quality of the article. For a man to be entitled to restrain another from using a particular name with reference to a commodity he must show that the public have grown to associate that particular name with himself as the manufacturer of, or dealer in, the article.

Mahomud Yusof v *Rajaratnam* (1909) 33 Madras 402

42. **Joint will—Survivor's power of revocation.**

The survivor under a joint will can revoke his will unless he had taken some benefit under the will of the deceased testator

Meenachchi Ammal v *Visvanathayer* (1902) 33 Madras 406

43. **Evidence Act—sec 91—List of Property searched.**

Evidence Act sec. 91 has no application when the writing is not evidence of the matter reduced to writing. A search list is not evidence of the matter stated therein and it does not therefore exclude oral evidence of such matter.

The Emperor v *Elamathan* (1910) 33 Madras 416, see 33 Madras 413

44. **Libel—Privilege—Fair comment—Character—Revision of damages by Court of appeal.**

1 A libel which is privileged when it appears as the report of a speech in Parliament is not privileged when it appears as a statement of a newspaper correspondent.

2 Where the gist of the action is damage to the plaintiff's character the defendants may show that the plaintiff was a person whose reputation could not be damaged by a particular libel in question. Evidence can be given of the plaintiff's bad character, but not evidence of rumours and suspicions of bad character. Reputation includes both character and disposition and disposition is not the less proven because it appears on the face of the facts deposed to by the plaintiff himself or is a proper inference from those facts.

3 Fair comment is not a branch of the law of privileged occasion.

4 The English cases which deal with the question of the revision of damages by the Court of Appeal have no application in a country where, in civil suits, the jury system does not prevail.

The Engishman v. *Lajpat Rai* (1910) 37 Cal 760.

The Indian Succession Act.

The late Mr. Sanjiva Row has left behind quite a rich legacy of legal literature. His commentary on the Indian Succesion Act covers over 1000 pages of exceedingly well arranged matter. In India provision is made in Act No 10 of 1865 for all matters regarding testate and intestate succession. The usefulness to Ceylon of the Act itself may be seen by noting the headings of some of the many sections :

61 Wording of a will.

62 Inquiries to determine questions as to object or subject of will.

63 Misnomer or misdescription of object.

64 When words may be supplied.

65 Rejection of erroneous particulars in description of subject.

66 When part of description may not be rejected as erroneous.

67 Extrinsic evidence admissible in case of latent ambiguity.

68 Extrinsic evidence admissible in cases of patent ambiguity or deficiency.

69 Meaning of a clause to be collected from entire will.

70 When words may be understood in a restricted sense and when in a sense wider than usual.

71 Which of two possible constructions preferred.

72 No part rejected if it can be reasonably construed.

73 Interpretation of words repeated in different parts of will

74 Testator's intention to be effectuated as far as possible.

75 The last of two inconsistent clauses prevails.

76 Will or bequest void for uncertainty.

77 Words describing subject refer to property answering to description at testator's death.

78 Power of appointment executed by general bequest.

79 Implied gifts to objects of power in default of appointment.

80 Bequest to heirs etc of particular person without qualifying terms.

81 Bequest to representatives etc of particular person.

82 Bequest without words of limitation.

83 Bequest in alternative.

84 Effect of words describing a class added to bequest to a person.

85 Bequest to class of persons under general description.
86 Construction of terms.
87 Words expressing relationship denote only legitimate relatives or failing such, relatives reputed legitimate.
88 Rules of construction where will purports to make two bequests to same person.
89 Constitution of residuary legatee.
90 Property to which residuary legatee entitled.
91 Time of vesting legacy in general terms.
92 In what case legacy lapses.
93 Legacy does not lapse if one of two joint legatees die before testator.
94 Effect of words showing testator's intention to give distinct share.
95 When lapsed share goes as undisposed of legacy
96 When bequest to testator's child or linaeal descendant does not lapse on his death in testator's lifetime.
97 Bequest to A for benefit of B does not lapse by A's death.
98 Survivorship in case of bequest to describe class.

As a codification of principles in the matter of wills, bequests, legacies, annuities, probate and letters of administration, the Act itself is very useful. Its usefulness is greatly enhanced by Mr. Sanjiva Row's illuminative notes of every principle involved. The illustrations from English and Indian case law are very readably presented. We heartily commend to Ceylon lawyers this book published by the Law Printing House in Madras.

Oratory and the Lawyer.*

By E. Connor Hall

It is the fashion nowadays with many lawyers and journals to cast ridicule upon oratory, not merely upon particular specimens but upon oratory as an act, and to deprecate its usefulness to the lawyer. Part of this hostility can be ascribed to the human disposition to kick the under dog. For it cannot be denied that the power of oratory as a weapon of popular warfare has greatly decreased within the last generation. This has been brought about by a variety of causes. First of all, is the increased distribution of the newspaper. The daily paper by its wide dissemination of information of all sorts, has ren-

* The Criminal Law Journal of India, October 1910.

dered the reader less hungry for oratorical discussion, and has, at the same time, afforded to him wishing to present any matter to the public an audience more numerous than the fame of any orator could collect or any human voice reach Another cause is to be found in the absence in our time of any of those overshadowing national questions, such as produced Demosthenes and Cicero in the expiring days of Grecian and Roman freedom ; Burke, the Pitts, Fox, Sheridan and Erskine, in the morning of the modern British Empire ; the Adamses, Madison and Randoph in the revolutionary, and Webster, Clay, Calhoun, and Hayne in the anti-bellum period in our own country. Orators are subject to that law which operates alike upon all, and will permit nothing to ripen into perfect development until the conditions of the times have created a need for it. Great crises are the breeding times for orators, and as we have had none of supreme importance since the settlement of the slavery controversy, the effect is seen in the absence of public speakers of the first ability. Closely connected with this cause is a third, which is the commercialism of the present day and the consequent decay of that high, idealistic responsiveness wherein lies the peculiar power of the orator. A great speech is almost as much a creation of the audience as of the speaker. A people whose every thought is intent upon the accumulation of individual wealth are not open either to appeals to lofty sentiment or to the presentation of broad schemes of national or racial policy.

Though these reasons may explain the decay of the influence of the orator, they afford no justification to those who affect to treat the art of oratory with contempt. For though books and newspapers be ever so common, the printed page can never supply the place of the human speech, aided and enforced by gesture and facial expression, and, above all, enspirited by the personality of an earnest man who believes in his message, and is eager to impart it to his hearers. It is said of Erskine, Henry Clay and Seargent Prentiss, that those who heard them speak would turn with impatience from the printed reports of their speeches. These reports may have been accurate as verbal reports ; and yet they were not the speeches.

But whatever may be said of the utility of oratorical skill to the modern preacher or public man, as for the lawyer the multiplication of books and papers can never render it of less value to him. Newspapers cannot discuss his points of law before the judge, nor argue his questions of fact to the jury. He must conduct his own case quite as much as his brother of past ages. Nor has he less opportunity or less incentive than in former times. Upon his presentation still depend the dearest rights of those

who are forced to rely upon his ability and skill in defending their lives, liberties and property. And surely these are not of less value now than in the past! In the lawyer's work of asserting human rights in the ultimate tribunals forensic skill has always been accounted a valuable weapon. But within recent years it has become fashionable with many lawyers and legal journals to ridicule all oratorical attainments—as valuable only to the bombastic holiday speaker.

Part of this disposition is, no doubt, to be ascribed to a short sighted practicality, which overreaches itself, a philistinism which despises all that is excellent or beautiful in art, and can brook no thought if it be not expressed in the language of the counting-house.

Another—and perhaps a more common—cause lies in a loose use of the word oratory, due either to carelessness in speech or ignorance of the true meaning of the word. Many writers, and even some lawyers, seem to think that oratory means only windy, holiday, and schoolboy speeches, or the highflown peroration, often tacked on without logical connection, after the main speech is ended. To them the word is synonymous with irrelevancy and extravagance. Only recently a Judge of the Supreme Court of New York was quoted as advising a law class to "eschew eloquence and stick to the facts." As if oratory and eloquence were something different from the facts with which they had nothing to do!

"Oratory," says Quintilian (15 Inst. 38), "is the art of speaking well." Prof. Webster defines it as "The art of an orator; the art of public speaking in an eloquent or effective manner; the exercise of rhetorical skill in oral discourt; eloquence." And when we examine the speeches of famous advocates we find that they produced their effects not by wandering from the facts but by marshalling and correlating them. Cicero in the oration against Verres brings forward instance after instance of the depredations of the Governor of Sicily. Erskine did not procure the acquittal of Lord George Gordon, Horne Tooke or Thomas Hardy, by appeals to the jury to disregard the facts but by using the facts to demonstrate that the accused were not guilty. Take also the celebrated defence of Judge Wilkinson by Seargent Prentiss. With marvellous skill he passes in review the facts, thereby establishing the innocence of his client.

Burke and Sheridan, one the most splendid, the other the most fervid of orators, in their speeches against Hastings, denounce him in the most bitter terms but always upon the evidence before the court. They do not, it is true, confine themselves to a mere recapitulation of the testimony. If an advocate did so there would be no use

in wasting time to hear him, for the triers could depend upon their own recollection, or in the case of jury they would have the assistance of the judge's charge. But a bare recital of the testimony favorable to his cause does not comprehend the duty of advocate. He must go further and explain the relation of the circumstances of the case to each other, as well as their relation to extraneous facts. He must examine every bit of testimony, testing it by other parts of the testimony, and pointing out its significance in the light of the whole case. The facts in his case are not things by themselves, unrelated to other facts of life. His case is not isolated in the world of experience. And before a just and proper judgment can be reached, his cause must be weighed according to standards of conduct in general. To thus correlate the facts of a case, and explain their meaning in relation to one another, and to human experience in general—to do this well, is oratory. And the lawyer who can do this will not in the argument of questions feel at loss if he cannot find an exact precedent. He will study the principles of the law in order to ascertain its aim Then he will examine the principles of philosophy, of sociology, of political economy to find whether a given decision would accomplish the end which the law has set for itself. And when he states a proposition he will not be forced to base it upon his bare assertion, but can establish it by reasoning and enforce and illustrate it with the facts of history and literature.

Erskine became Lord Chancellor of England; yet his fame rests upon his successful assertion of individual liberty, in the State of Trials. And as he was defending rights under the English Constitution he discussed freely its history and its principles. Nor did he refrain from discussing questions of policy. Nor were these excursions irrelevant or merely idealistic. To his speech in support of a new trial for the Dean of St. Asaph it is reported that "old black letter lawyers and polished statesmen alike listened with delight." And the principles he asserted soon found their way into the laws of England. His theory of the rights of the jury in libel cases was adopted by act of Parliament, and to him, more than to any other man, is due the honor of having for ever given the death blow to constructive treasons. No mean achievement this for any man. The need for such lawyers has not passed, and never will pass under a free government. Our own country is especially fruitful of legal questions which are also largely economic and sociological. These questions cannot be settled by newspapers and pamphlets. They must be argued out in the courts, and in arguing them, twice armed is he who, in addition to a knowledge of the law, possesses "the art of speaking well."

Farewell to Mr Justice Wendt by the Bench and the Bar.

On His Retirement.

At the appeal Court 28. 11. 10 all Advocates and a large number of Proctors gathered in time before their Lordships came on the Bench. At 11 a.m. all the four Judges—The Chief Justice and Messrs Justices Middleton, Wood Renton and Grenier—came on the bench, and his Lordship the Chief Justice, addressing the Attorney General, said:—

Our friend and colleague Mr. Justice Wendt after nine years of service on the bench of this Court, has been compelled by ill-health to retire from it, and has resigned his commission as from to-day. No man is indispensable, but there are some, and he is one of them, whose retirement from their posts leaves a gap, which for many years at least will be difficult to be filled with perfect satisfaction. The qualities of intellect and character which nature has endowed him with and his long and extensive practice at the Bar admirably fitted him for the difficult and important responsibilities of a Judge. By nature a gentleman, generous and courteous to every one, patient in listening to and considering every thing which was urged on both sides of every question put before him, with a knowledge of the laws and customs of the country and of the practice and proceeding of the Courts, which was unrivalled, at least unsurpassed by any one on the bench, or Bar, he was an ideal Judge for Ceylon. Speaking for myself after a pleasant but comparatively short association with him, I have learnt to rely very greatly upon his opinion on questions of law, and of the soundness of his opinion and judgment on questions of fact. We are all liable to make mistakes, but his mistakes, I believe, if any, were few. At any rate, he always attempted and took the greatest pains to avoid mistakes, and suitors and advocates all accepted his decisions, whether for or against, as that of a conscientious and competent Judge, against whose goodwill, character and capacity no word could ever be spoken. All deeply regret his retirement, but we hope, his health will be restored by rest that he may have many years still, of a long and honourable life, and be able still to render service to his country.

Mr. JUSTICE MIDDLETON said :—

I would desire to add a few words on my own account to those that have fallen from My Lord, with whom I most heartily concur. It is now nearly nine years since I joined Mr. Justice Wendt as a colleague on this Bench,

and I have consequently been associated with him here longer than any of its other members. From the time I first took my seat at his side up till the time when he had unhappily to relinquish his duties on the ground of ill-health, our associations, both privately and officially, were of the kindliest character and have so continued to the present day. To me as a newcomer strange to the intricacies of the Roman Dutch Law and the procedure of these Courts, his profound knowledge of the former and intimate acquaintance with the latter were ever readily available. Genial, modest, and kindly in disposition, with a basis of strong religious feeling, scrupulously honourable and conscientious in the discharge of his duties and exceptionally learned in the law he always so ably administered, Ceylon has lost the services of a son of whom she may be justly proud, and this Bench a friend and colleague whom it warmly liked and respected. I heartily trust that in the years to come he may be able to conquer the illness which now impairs his energies and that he may live long to enjoy in the happiest surroundings of family life that learned leisure to which most of us look forward.

Mr. JUSTICE WOOD RENTON said :—It is my desire to associate myself with every word that has fallen from his Lordship the Chief Justice and of my brother Middleton in regard to Mr. Justice Wendt. I can only say that to the Bench and the Bar of this Colony his retirement means the loss of a born lawyer, a great Judge and most distinguished man. We sincerely trust that he may be long spared to the Colony, even though he is not to sit on this Bench again.

The ATTORNEY-GENERAL said :—MY LORDS, on behalf of the Bar I would ask to be allowed to say that we desire to associate ourselves with your Lordships in the expression of regret at the retirement—the untimely retirement—of Mr. Justice Wendt. We endorse every word that fell from your Lordships, and I would emphasize the fact that the retirement of Mr. Justice Wendt will be as much a loss to the Bar, and the public, as it will be to the Bench. It seems to me but yesterday that Sir Winfield Bonser in his farewell words addressed to us spoke in high and glowing terms of his colleague, who then had but recently begun his career on the Bench. We well remember the expectations then entertained and while we cordially join with your Lordships in bearing testimony to the fact that Mr. Wendt's career on the Bench more than fully justified those expectations, we find it difficult to realise the fact that that career has so soon terminated.

Mr. Justice Wendt brought a unique experience at the Bar to bear upon his labours on the Bench. Those labours were therefore an unqualified success, but more than that, in his case, on a back ground of severe and unremitting work that stood out in bright relief, covered with charming lustre is the fact of the entire absence of even a glimpse of asperity or impatience. Mr. Justice Wendt never forgot the Bar from which he rose, and each and every one of it he treated with the utmost kindness and courtesy and I may even say respect, so much so that the merest junior among us could not complain of anything in him even remotely approaching a stern word, look or gesture. My Lords, great mental gifts are not a very rare commodity in the world, and it is said that "talents grow on every tree," but the composure of mind which enables one to go through the high and responsible duties of the proud position of a Judge of the highest tribunal of his own country without ostentation and indeed with bent back and sweating brow is a quality that we seldom see in others; but in Mr Justice Wendt this quality was preeminent. My Lords, in common with the rest of the country we can do more than express our deep sense of thankfulness and gratitude to Mr. Justice Wendt, and hope that he may regain his health, and that there may still be very many years of usefulness and honour.

The Hon. Mr. Justice Wood Renton.

There is a newspaper announcement that Mr Justice Wood Renton, going on leave in December, is not likely to return to Ceylon. If so, it is a positive calamity to the administration of justice in this Colony. Though it is our bounden duty to rejoice at any possibility of his Lordship's elevation to higher spheres of activity, we are selfish enough to hope that the well-merited exalting may befall his Lordship *in* Ceylon, for there is no one, we feel certain, but sincerely wishes to have in Ceylon and for Ceylon, for as long a term as possible, the services of Mr. Justice Wood Renton's profound learning and infinite and inimitable capacity for work.