The Ceylon Law Review.

A Monthly Journal of Legal Information.

Edited by

Isaac Tambyah, Advocate.

Vol. VII.] February 1911. No. 32

Editorial Notes.

The experiment of a weekly law journal has been found to be not quite the success it was hoped it might become. The task of overcoming the difficulties as to the out-put of energy in connection with such an undertaking has been rendered laborious by a dead lack of response on the part of those whose support and sympathy had been solicited in vain. No one can however complain that the experiment had not been given sufficient time for the testing of its possibilities. The period covered by thirty weekly issues was, we have felt, long enough for the formation of a decision . It has been made. The Review is once more a monthly magazine, to the immense relief of the editor. The present volume will conclude in June, and subscribers are given, commencing with this number, the compensation of Reports of Cases more or less after the manner of the late Current Law Reports.

The year has begun at Hultsdorf with judicial changes and rumours of changes. The Bar in Ceylon, we feel sure, greatly regrets that the present Chief Justice is to retire at the end of February. There have been chief justices who have been remembered for their great learning, but there has not been one in recent years so certain of being cherished in the affectionate memory of Ceylon lawyers as a very amiable Chief Justice, learned without ostentation, large-hearted and towering above many of his distinguished predecessors for his being

very lovably human, as Sir Joseph Turner Hutchinson. He came to Ceylon at a time of the revival of the Common Law, and he leaves us after inaugurating a revival of the study of Common Sense. We wish Sir Joseph and Lady Hutchinson many years of well-earned rest.

The confirmation of the Hon. Mr Joseph Grenier on the Supreme Court Bench is a tardy recognition of merit. He has been tried long, tested sufficiently, and found fit. The appointment, on which we congratulate his Lordship, is a tribute, well deserved though long deferred, to legal talent and high character His great learning, vast judicial experience, and the virtues of courtesy and humility are calculated to make his tenure of office of inestimable value to the administration of justice.

The rumour that the Hon. Mr Lascelles is to be the next Chief Justice has not caused any suprise. It has always been expected. The realisation of the expectation makes the appointment all the more pleasing. Opinion at Hultsdorf is unanimous that the appointment is highly acceptable. The colony is to be congratulated on so satisfactory a selection. Mr Lascelles by reason of his duties as Attorney-General and by his having more than once officiated on the Bench, brings to the discharge of his heavy responsibilities as Chief Justice a thorough working acquaintance with the law of the land. This is an immense advantage. May the new Chief Justice long shed lustre on the Court over which he has been worthily called upon to preside.

"At a meeting of the council held at the chambers of the Hon'ble the Attorney-General at 1-30 p.m on the 6th instant voting papers sent in by sixty-six members of the Bar were considered, and the following advocates were declared elected to constitute, together with the Attorney-General and the Solicitor-General, the new Council: Messrs P. Ramanathan, K.C; R. H. Morgan, H. L. Wendt, A. De A Seneviratne, A. Drieberg, H. J. C. Pereira, E. W. Jayewardene, F. De Zoysa, R. L. Pereira, and C. Battuwantudawe."

The publication of *Appeal Cases* (free to *Review* subscribers till June 1911) will not stand in the way of *Tambyah's Reports* or the Appeal Court Notes, both of which will continue to be features of the magazine.

Legal Proceedings in England.

Mr. J. S. Rubenstein of Messrs Rubenstein and Co, Solicitors of the Supreme Court, England, has written a shilling booklet on this subject. It is published by Messrs Sweet & Maxwell London. It aims at being a short guide to practice and procedure in the English Courts and contains a special cypher code. It is a business book, that is to say "overseas correspondents" having business with Messrs Rubenstein & Co. will find the book very useful.

Appeal Court Notes.

123. **Partition—Case off roll—No steps by plaintiff—Defendants' shares not ascertainable—Dismissal.**

When a person entitled to a share in a land was not found, and the plaintiff, on the partition case being taken off the roll, was not able to find out the absent man, but moved that defendants be asked to amend their answer to suit the then ascertained facts, and the D. J. dismissed the case on the ground, that the defendants' shares were not ascertainable, *Held* that the dismissal was wrong, and that the D. J. should have allotted plaintiff his share, reserving the absentee's share.

327 D. C. F. Kandy 18531. Jan. 19, 1911.

★ ★ ★

124. **Practice—Stamp duty—Writ against several defendants.**

Schedule stamp should be affixed to a writ of execution according to the number of the defendants.

160 D. C. Inty. Chilaw 3758. Jan. 6. 1911.

★ ★ ★

125. **Compensation—Hut—Tenant at will.**

A *bona fide* builder on another's land is entitled to compensation even though possession afterwards becomes *mala fide*. When a tenant at will put up a hut on the plaintiff's land with the express consent of the plaintiff, and the taxes were paid by the plaintiff, and the plaintiff contributed towards the expense of the building, *Held* tenant not entitled to compensation.

339 D. C. F. Kandy 19021, Jan. 12. 1911.

126. **Arbitration—Reference not signed by all parties at same time and place—Validity.**

The fact that a reference to arbitration is not signed by all the parties at the same time and place does not invalidate the award.

466 C. R. Avis. 6555. Jan. 16. 1911.

★ ★ ★

127. **No Steps taken—Ex parte order dismissing suit—No formal decree—order vacated—Seizure under exparte order-writ—Irregularity.**

Plaintiff took no steps to add certain parties ; on 1. 6. 10. *ex parte* motion for dismissal allowed, and decree for dismissal and costs entered. On 24.6.10 application for writ allowed. 26. 6. 10 writ. 4. 7. 10. plaintiff moved that *ex parte* order be vacated. 5. 8. 10. order made:

> Order of March 10. [to take steps] not having specified a date it was irregular. I allow case to remain on roll.

No formal order passed. Later plaintiff withdrew action. Defendant moved to sell property already seized under *ex parte* order. On refusal to withdraw writ plaintiff appealed. *Held* there was no warrant for issue of writ.

441 C. R. Chilaw, 13944. Jan. 16. 1911.

★ ★ ★

128. **Estoppel—Claim—Mortgage.**

Defendants as legal representative of mortgagor were parties to mortgage suit : when land was seized. second defendant claimed land in his own right. Then withdrew the claim and consented to pay debt within two months. Default. Land sold, bought by plaintiff. *Held*, defendants estopped by mortgage decree, and second defendant by abandoning his claim.

315 D. C. F. Kegalle 2674. Jan. 12. 1911.

★ ★ ★

129. **Gift—Prohibition against alienation—Fiscal's Sale—**

A sale by the fiscal is not a sale by the donee, and so is no breach of the condition in a gift that the land is not to be alienated.

304 D. C. Matara 4932, Dec. 1. 1910.

★ ★ ★

130. **Minor—Mortgage—Money paid into father's hands—Action after five years—Limitation.**

A mortgage by a minor is bad. Money paid under the mortgage deed not recoverable as no principal or interest

had been paid by or on account of the minor for over five years fom loan and before action.

425 C. R. Col. 19444. Dec. 21. 1910.

★ ★ ★

131. **Res Judicata—Suit in private capacity—Suit as administratrix—Estoppel.**

In D. C. Neg. 7162 A sued B alleging claim to property. B was sued in her private capacity. Judgment in favour of B, and dismissing action, and declaring property to belong to estate administered by B. Later on B, as administratrix sued A. and others for the property. *Held* that the first case was not res judicata in favour of B and that defendant was not estopped by that case from claiming the property as B in first suit was in her private capacity.

312 D. C. Neg. 8089, Dec. 16. 1910.

★ ★ ★

132. **Lease under heir—Lessee sued as trespasser by administrator—Heir added as party—Dismissal of case as against lessee.**

When the administrator of an intestate sued a person in possession of a land of the estate, and such person claimed to be lessee under an heir and the heir, made a party defendant, admitted the lease, *Held* that the dismissal of the suit as against such person in possession was wrong.

413 C. R. Awissawalla 6536. Dec. 30. 1910.

★ ★ ★

133. **Waste Lands—Reference—Ord. No. 10 of 1897.**

The fact that inquiry into a claim was made by the special officer but the reference was made by another officer is not a serious objection to the award.

162 D. C. Tang. 26. Dec. 20. 1910.

★ ★ ★

134. **Written contract with Government—Agreement to refer to arbitration—Director P.W. D.**

A contractor who agrees in writing to refer all disputes between him and the Government to the sole arbitration of the P. W. D. Director and to abide by his award, is not, in the absence of evidence, entitled to say that the arbitrator is not a suitable person.

171 D. C. Bad. 2420. Dec. 16. 1910.

135. **Pasture right—Interest in land—Ord. No. 7 of 1840—Local Board lease—Non notarial.**

A non-notarial grant by a Local Board of the right to collect rent for pasturing cattle on a Crown green is an agreement affecting interest in land and must be notarial.

442 C. R. Anuradhapura 6039. Dec. 21. 1910.

★ ☆ ★

136. **Evid. Act. Section 92—Bond—Agreement to pay interest—Giving paddy—Oral evidence of giving paddy.**

An agreement to pay a certain rate of interest does not mean that interest is to be paid in cash, and does not preclude payment in paddy. In 70 C. R. Matara, 4159 (S. C. M. 26. 6. 07.) subsequent oral agreement by which possession of the land itself was to take the place of interest established an interest in land under Ord. No. 7 of 1840. 392 C. R. Keg. 10137. Dec. 6. 1910.

★ ★ ★

137. **Court of Requests—Claim in reconvention against third party—Order to add third party as defendant—Cancellation of original order.**

When defendant claiming a sum against a third party moved his addition, and such addition was allowed, the court has no right subsequently to vacate such order.

429 C. R. Battic. 15590. Dec. 21. 1910.

★ ★ ★

138. **Brothers—One acknowledging title in plaintiff—Effect on other's title.**

Where one of two brothers acknowledged title in plaintiff, it by no means follows that the other brother is bound by it.

322 C. R. Matale, 8704, Dec. 5. 1910.

★ ★ ★

139. **Civil Pro. Code Secton 13,18—Action in the name of wrong person—Addition of right party—Superintendent of Company.**

Where the superintendent of a company claimed certain quantities of tea, and subsequently moved to have the company added as party plaintiff, he being merely superintendent, *Held* that the action having been commenced under a bona fide mistake the D. C. had discretion under Section 13,18 of code to add the company as plaintiff.

170 D. C. Int. Kandy, 20435 Dec. 16. 1910.

140. **Deed—Not to lease for more than 7 years—Fiscal's Sale—13 N. L. R. 301.**

A sale by the fiscal is not a voluntary alienation, nor is it a sale by donee, or heirs or assigns and is not a breach of a condition prohibiting alienation.

304 D. C. Matara 4932. Dec. 20. 1910.

★ ★ ★

141. **Appeal—Civil Pro. Code Section 87,823—Ord. No. 12 of 1895 Section 8—Order setting aside a decree Nisi for default—3 N. L. R. 108.**

A C. R. order setting aside a decree nisi (for default) is not an appealable order.

339 C. R. Rat. 10685. Dec. 1. 1910.

★ ★ ★

142. **Civil Procedure Code 184—Order without notice—Conflicting Orders.**

May 19, 1910 C. R. entered two orders; one dismissed claim, other upheld it. Later on order read out, but without notice. June 8, both orders brought to judge's notice, and on June 11 he allowed his second order to be dated June 9. This too without notice. The dismissal of 247 action affirmed but appellant's right to relief in respect of the claim order reserved.

345 C. R. Col. 19306. Dec. 5, 1910.

Decisiones Frisicæ.

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

XXII.

(lib. 3. tit. 4. def. 17.)

That the relief of *l. 2. c. de resc. vend.* does not apply in the case where one makes cession of all his property on the condition that he shall receive yearly 800 guilders and that he shall, in addition, be freed from all his debts.

Anna van Decama made cession to her brother and sister, Sixtus and Emilia van Decama, all her estate, property, rights (both active and passive) liabilities, on the condition that her brother and sister, so long as she lived, should give her 800 guilders, and after her death, to her husband Johan Hermana, so long as he lived, 300 guilders. On the death of Anna, Sixtus and Emilia repudiated her estate, being satisfied with the aforesaid property, but Catharina van Espelbach (her other sister) and the children of Hector van Decama (her deceas-

ed brother) adiated her inheritance. These sued Sixtus and Emilia contending that the agreement was quite inequitable and should therefore be rescinded and that the defendants should be condemned to restore all the property of the said Anna, save and except the money spent in the payment of Anna's debts or otherwise that they should supplement what they had spent, according to a just appraisement of the property. This procedure was quite in accord with the relief of *l. 2.c. de. rescind. vend.* and the *conditio Cod. 2. 12. 3. Cod. 38. 3.* Hence the question whether this is the apt procedure for impugning and rescinding the aforesaid contract. But the court thought otherwise.

For the relief of *d. l. 2.* only applies to purchase and sale against the theory of the old law by which contracting parties were allowed *naturaliter* in the contract to get the better of each other as regards the price, and therefore this *lex* should not be allowed to go outside its bounds, not even on grounds of similarity of reason or equity as questioned by Antonius Faber *decad* 8 *err. 8.* following others, on various grounds. And the other two *leges* hold good only in actions *bonæ fidei*, in which, in cases of less lesion viz less than half the just price, restitution was granted in order to amend the contract as stated by Ant. Faber *d. decad. 8. err. 8.* Gerard Maynard *lib 3. decis. Tholos. dec. 59. num. 2. 3.* Hubertus Giphanius *ad. d. l. 3. Cod. commun. utriusque judic.* But the contract aforesaid is neither purchase nor sale, as it is wanting in a certain price, nor is it a contract *bonæ fidei*, but altogether a contract *innominatus* not unlike the case in question in *Cod. 4. 64.* 8. where the emperors say that the action *praescriptis verbis* is competent where property is donated on the condition that something should be given monthly or yearly to the donor. But contracts *innominati* (except the action *aestimatoria* and that action which arises from an exchange)are *stricti juris Inst. 4. 6. 28.* The Court therefore dimissed the plaintiffs' action in the following terms:—

"The Court declares that the plainti ff's action is not maintainable in "its present form without prejudice otherwise to their collection and "individual rights, etc" and in revision, the said judgment was affirmed.*

XXIII.

(lib. 3. tit. 4. def. 18.)

On the restitution of property which during the Dutch war was sold for a debt. On the interpretation of articles 16 and 23 of the Truce of the year 1609 A bare tender is not sufficient but there should be a deposit of money. The benefit of the Truce is competent even to those who, before it, came back from the enemy.

Article 16 of the Dutch Truce of the year 1609 provided as follows:— "If the property was sold for lawful debts, those persons shall be "allowed to take it back on payment of the price within a year, to "be reckoned from the date of the present Treaty", that is to say, the property (of those who had followed the United Netherlands or Spaniards) sold for debt can be bought back for the same price for which it was sold, to be taken back within a year from the date of the present Treaty, wished to get back, by virtue of this article.

* 5 May 1627.

Hence, as a certain person his paternal property sold for a debt and at the instance of creditors, before, and whilst the father joined the Spaniards and had offered in court, in bare words, restitution of the price to the purchaser, who nevertheless refused to take the money which was ready to be paid, the question arose whether this bare offer was sufficient or whether the same should have been deposited within a year in favour of the purchaser refusing to accept the money.

Some of the judges thought that this bare tender was sufficient, basing their argument on the *actio pignoratitia*, which, although it arises on the condition if the money is paid or satisfaction is made to the creditor *Dig. 13. 7. 9. sec. 3. Dig. 20. 1. 13. sec. 4.* is nevertheless competent when the debtor is prepared to pay the debt *Dig. 20. 6. 6. sec. 1.*, or when it is the fault of the creditor that he is not paid *Dig 20. 1. 20*, or, as the Emperors say in *Cod 8. 31. 3*, or it is due to the creditors act that he is not paid. But the debtor is prepared to pay and it is the creditor's fault if he is not paid if he refuses to receive the money offered to him in bare words. Besides, the words "paying the price" show that the payment of the price is made a condition viz. that one can get back his property if he pays the price. But it is a rule of law that a condition is regarded as fulfilled when it is the fault of the adverse party that it cannot be fulfilled. *Dig. 35 1. 24. Dig. 50. 17 161.* Therefore, the payment which is only a condition, ought to be regarded as made if it is the fault of the creditor that it is not made, as very cleverly discussed by Antonius Faber *decad 22. err. 5* and he relates that the Court of Saxony has so ruled.

But notwithstanding this the majority of the judges held that consignation and deposit of the money were necessary, because, although the bare tender was enough to avoid the risk of destruction, and deterioration, or to escape the penalty or to stay the further course of interest on the ground of delay to pay, yet to get the right of action, or acquire the *dominium* or otherwise, after payment of a certain sum, a deposit or consignation in favour of the adverse party refusing to accept, seems necessary. *Cod. 4. 24. 10. Cod. 4. 54. 7. Cod. 4. 32. 19. Dig. 18. 3. 1. Cod. 4. 36. 2.* So writes Andr. Fachin *lib. 2. contra 41.* following others cited by him, and with this view agree Elbertus Leoninus *lib 4 Emendat. cap 17. num xi* and Charondas *in memorab. verb. offre.*

Indeeed this 16th article is restricted and limited by the 18th which says that the resumption of the property cannot take place where there arose a dispute between the parties as regards the same property before the treaty, where their case had been submitted to a judge and a valid defence set up. Therefore, as the plaintiff had claimed this property before the treaty by way of annulment of the decree which had been made for the sale of the property, the claim of the plaintiff was again rejected on the 16th article, firstly, because he had tendered the price in bare words without any deposit; secondly, because, there had been beforehand a decree with respect to this property between the parties. And the court so ruled †

At the same time the question was adjudicated upon as to whether the benefits of the Truce can be extended to those who had returned to us from the enemy before the Treaty and had been reconciled to us? The reason for the doubt was because this Treaty was made between two belligerent parties, between Spain and the Archdukes,

† 18 Feb. 1612 *Pybo van Hoorn.* plaintiff
v. Thomas Piers. *Poppe Haringhs.* defendant

who were bound by it, on the one hand and the United Province and their followers, on the other. Therefore it seems as that it must be said that the States General and their subjects are bound by the Treaty to Spain and the Archdukes and their subjects, and *vice versa* these to them only, but not that the subjects of the States were bound among themselves, but those who returned to us before the war were not more our enemies at the time of the Treaty than before they were reconciled to us and therefore it would seem that the action is not competent to them on the Treaty. The court has ever thought otherwise, as it appeared to it absurd that those should be in a worse position who, with better judgment, returned to us in time, and having deserted the enemy, joined us, than those who persisted in their rebellion against their country, and secondly as the terms of the Treaty were conceived in such general words that they seemed to include those who had returned beforehand.‡

Roman Dutch Law in the Reports.

(By G. Grenier, Advocate.)

Defamation.

Defamation is maliciously publishing either by word or mouth, by writing, by printing or by pictorial or other representation, either in his presence, or his absence, publicly or secretly, anything whereby a person's honour or good name is injured or damaged. (Grotius, bk. 3. cl. 26, sec. 2 ; Vandeeuwen, bk. 4. C. 37. Sec. 1 ; Vanderlinden bk. 1, C. 16, Sec. 4, Vanderkeesel, Sec. 802 ; Marshall, 402.) Per Temple J. and Thomson J. in Jayawardene *vs* Aberan [1864.] Rom. 63-68 p. 126.

Recission of Sale.

These two authorities (Voet lib. xxi, tit. 1; Vandeeuwen Censura Forensis, iv. C. xix, 15) are very clear on the point that the purchaser's right to recover in such a case (a latent defect in the thing sold) is not affected by the fact that the vendor was in ignorance, at the time of the sale, that the article was not that which it was represented to be.

In a case where the spuriousness of the article was so extremely difficult to detect the supreme Court does not think that the plaintiff's right to recover is barred by the fact that he himself was a goldsmith by trade : Voet, in

‡ So decided by the court on the said date.
Auck Andringa—plaintiff. *v. Beeun van Boorde*—defendant.
Also Lam Wyssringa—plaintiff. *v. Mr. Cias Kan*—dft.

the chapter already refrred to Section 9, p. 746, certainly says " Scientiae autem emptoris simile habendum si emptor artifex fuerit." But he goes on to add " et secundum artis suæ præcepta scire facile potuerit atque debuerit vitium quod subest "

Per Creasy C. J. Temple J. and Stewart J. in Meera Lebbe *vs.* Langenberg : [1865] Ram '63-68' p. 137.

Seizing of Salary of Public Officer.

Vandeeuwen (pt. 2, bk. c. xv. p. 61) says that certain things are "ab arrestis immunia"among which are reckoned " stipendia militum" and " hisce annumerantur advocatorum professorum et Ecclesiæ ministorum stipendia" (vide also xxxiii chapter—" de executione rei judicatæ :) Mathaeus de Auctionibus lib. i, c. v. Sect. 20 and Voet lib. 2 tit. 4 Sect. 52, also Commentaries xLii tit. 1 Sects. 42, 43 : Voet xvii title de re judicata, where he deals with it briefly using however these important words " Stipendia non posse capi quamdiu victor rem judicatam aliis potest rationibus exsequi", but he refers to what he had said on the subject of such property being seizable in his comment on book 2, tit. iv, Sec. 52,—He there says that the more correct opinion is that " professionibus verbi divini ministris, advocatis medicis aliisque debeta arresto gravar posse." But he adds this very important paragraph: " Sed an in totum an vero pro parte tantum et pro quo portione de eo variantes regionis cujusque subinde et providi ac circumspecti judicis arbitrio id definiendum."

We think that these high authorities fully warrant us in upholding the long usage of our courts so far as to adjudicate that the salary of a public officer is privileged from being seized in execution, until it has been proved to the judge that there is no other property available, and until the judge has made a special order for the seizing of the salary.

Per Creasy C. J. Temple J. Stewart J. in Jansz *vs.* Tranchell and O'Dowd *vs.* Silva [1865] Ram. '63-'68 pp. 162-163.

Enforceable Contracts.

Voet's words are unmistakeable. He lays it down as a general requisite for contracts being enforceable in the courts of law, that they must be " negotia non juri publicâ contraria, quaeve ad publicam spectarent lasionem " (2. 14. 16).

Per Creasy C. J. Temple J. and Stewart J. in Ramen Chetty *vs.* Joedt [1866] Ram. '63-'68 p. 198.

Mortgage of Moveables not in existence.

Voet lib. xx. tit. 1. Sec. 6—If a man can make a valid mortgage of all his future property, he can surely make a valid mortgage of part of his future property. Voet says of the kind of property that may be brought under such prospective mortgage—"nec interest mobilia sint an mobilia"

Per Creasy C. J. Temple J. and Stewart J. in re insolvency of Wilson Ritchie & Co.[1866] Ram. '62-'68 p. 219.

Intestate Succession.

The law of North Holland prevails in Ceylon and not the law of South Holland (Vanleeuwen p. 293, 298, VanderLinden i. Sec. 2 Ch. 3 ; Grotius p. 186 : Vanderkeessel 113).

Per Temple J in Fernando *vs.* Fernando [1867] Ram. '63-'68 p. 279.

"Regalia"

Voet, bk. 1 tit. viii, Sec. 9 and bk. 41 tit. i. Sec. 1. also Groenewegen de Legibus Abrogatis p. 18. Christinæu lib. vi. decis. i and vi. Vanleeuwen p. 4 and Liber Feodorum, book 2 title 4.

Per Temple J. and Stewart J. in Armentage Bros. *vs.* the Peninsular and Oriental Steam Navigation Co. [1868] Ram '63-'68 p. 303.

Title to Cattle and their Offspring.

Warnkoening—"Animalia fera tantum in libertate naturali degentia occupatione nostra fieri possunt": VanLeeuwen p. 107 : Voet on Dig. 41. tit i. n. 3 says "ad occupationem specierum imprimis pertinet venatis, piscatis, aucupium, locum habens in animalibus quæ nullius sunt ; adeoque non in mansuetis, veluti gallinis, anseribus ,ovibus, caeterisque pecoribus gregatim pascentibus, etiamsi longissime avolaverint aut aberaverint."

Per Creasy C. J. in Kantan Migael *vs.* Arumokottar. [1872] Ram '72-'76 pp. 6, 7.

Landlord's Lien.

Voet. 20. 2. 3.; Commentaries on the Pandects 20. 5. 1—"Pro rogato termino solutionis debiti principalis etiam differenda venditio pignoris pro illo debito obligati" Voet 14. 2. 21 and Censura Forensis 4. 36. 13 : also Voet 20. 6. 12 says "Similiter nec pignus legale perimitur, ubi conventionale constititur ; aut fidejussores dantur ; cum provisio hominis non tollat provisionem legis,quoties jam

ante hominis provisionem nata est legis provisio, ac ad eumdem utraque finem tendit, sed magis tunc applicandum sit illud, abundantem cautelam non nocere." Voet 21. 1. 14.

Per Berwick D. J. in re Ledward ex parte Austin [1872] Ram. '72-76' p. 21-22.

Prodigals.

VanderLinden p. 110 : Grotius (Introd. p. 47) Grœnewegen p. 198 : Voet 27. 10. 9.— 'Alias insuper inter furiosos ac prodigos differentias esse : quin imo in quam plurimis pupills potius quam furioso prodigos comparari.": also 27. 10. 12 : Vanderkeesel, thesis CLXV.; Voet' in his Commentaries on 5th Book of the Pandects title 1 Par. 49 says :—" Officium judicis est, lites dirimere, audita utraque parte, auditis illis quorum interest, omnibusque observatis quæ vel nobilis vel mercinarii officii ratio exigit. Mercenarium Docti appellant quod actioni propositæ inhaeret et subservit etc." "Nobile, quod nudæ notionis terminos egreditur, quo potissimum pertinent ea, quæ ad jurisdictionem et jus dicentis officium a Romanis legibus reducuntur, quorumque intuitu latissimum dicebatur esse jus dicentis officium in l. l. ff. de jurisdictione. Utrumque regulariter judex demum rogatus impertitur, quandoque tamen et non rogatus ; sed frequentius in iis quæ nobili, quam quæ mercenario officio adscribi solent. Etenim nobilis officii vi etiam sponte ea expedit quæ ad publicam respiciunt utilitatem ; in sceleratos inquirit, provinciam malis purgat nominibus, tutores fama publica grandis insimulatos sine accusatione a tutela repellit, si ipsi ex apertissimis liqueat rerum argumentis eos suspectos esse ; quæque id genus alia plura sunt."

Per Creasy C. J. Temple J. and Stewart J. in the matter of Rodrigo an alleged lunatic[1872] Ram'72-'76 p. 40-50.

Unlawful Contracts.

Vinnius' Commentary on the Institutes (3. 20. 23.) :— " Nec ea tantum quæ aperte flagitiosa sunt in stipulationem deduci non possunt, verum etiam quæ bonis moribus adversantur,—veluti si de futura successione contrahitur": Voet 2. 14. 16. 17 says " Nec turpia aut probrosa, in bonos mores incurrentia, aut invitantia ad delinquendum. " :

Per Berwick D. J. in Gabriel *vs.* Colende Marcar [1872] Ram· '72-'76 p. 82.

Validity of forfeiture clause in Last Will.

Grœnewegen referring to Code lib. 9 tit. 23 Sec. 6 (De Lerg. Abr. p. 743) says "qui testamentum falsum dicit

nec obtinet, perdit legatum sibi in eo relictum. Hoc autem moribus nostris non convenire videtur ex eo quod pænæ legates privantes aliquem jure suo ab usu recesserunt (see also p. 649 ad Cod. vi. tit. 3 Sec. 2 'moribus nostris . . . . . pœnæ legates privantes aliquem jure suo in universum sunt absoletæ.

Voet (lib. 24. tit. 9. Sec. 3) : "Quod autem Frœnewegio placet hodie relictis non privari eum qui testamentum falsum dixit aut inofficiosum nec obtinuit, tum demum admittendum videtur cum arbitrio judicis probabilem ita contendendi causam habuit nam si aperta calumnia falsi aut inofficiosilis mota sit nihil calumniatori præstandum esse dixi etc."—also Voet 24.tit. 6 Sec. 3 and VanLeeuwen (Comment. p. 248 of English translation.)

Per Cayley J. in Fonseka *vs*. Perera, [1875] Ram. '72-'76 p. 132, 133, 134.

The Supreme Court Bench.

Mr. Justice Grenier Confirmed as a Puisne Judge.

On Feb. 8, 1911, in the presence of the members of the Bar and many others Mr. Justice Grenier was sworn in as a permanent Puisne Judge of the Supreme Court. At 11 a.m. the Chief Justice accompanied by Mr. Justice Middleton, Mr. Justice Grenier, and Mr. Justice van-Langenberg, arrayed in their crimson robes came on the Bench. Mr G. Hazlerigg, Registrar, then read out the Letters Patent sent by His Excellency Sir Henry MacCallum from Nuwara Eliya dated 3rd February, 1911, appointing Mr. Justice Grenier as a Puisne Judge of the Island of Ceylon. Mr. Justice Grenier then took the oaths of allegiance and office, the Chief Justice administering the oaths.

Mr. B. W. Bawa, Acting Solicitor-General, addressing Mr. Justice Grenier said :—My Lord, in the unavoidable absence of the Attorney-General, who is detained by public business, Your Lordship will permit me, on behalf of the Bar of this Colony, to tender our respectful congratulations to Your Lordship on the high honour of an appointment as a permanent Judge of this Court. Your Lordship has acted so long on the Bench of the Supreme Court, that we find it difficult to realise that you

are now holding the office for the first time; and no assurance is needed of Your Lordship's eminent fitness to perform the functions—the high and honourable functions—of a Judge of this Court, and that the cordial relations always subsisting between the Bar and the Bench will be maintained by Your Lordship. It only remains for me to wish Your Lordship a long and honourable career.

His Lordship in reply said :— Mr. Solicitor, my old friends and comrades of the Bar, I thank you very much indeed for the very kind words of welcome you have accorded me on my assuming a permanent seat on the Bench. As you say, I have acted so frequently here that I myself came to regard the seat as almost assured to me when the last vacancy occurred. The relations that have existed both personal and judical between myself and the members of the Bar, both old friends and young friends, have been always of the most cordial nature. I think I have always endeavoured to maintain the traditions of the Bar, and to preserve the respect and honour which is due to the Bar; and now, that I have assumed the high trust which this office imposes on me. I can assure you that I will always respect the Bar and whilst I maintain the honour and traditions of the Bench I will never forget that I was once one of you, and I will always endeavour to do my best so far as your interests are concerned. I thank you once more for the very kind way you have welcomed me to a permanent seat on this Bench.